



Agreement Number:

NRBN VOICE SERVICES RETAIL AGREEMENT

(9-1-1 VoIP Emergency Calling)

THIS AGREEMENT is made between:

NIAGARA REGIONAL BROADBAND NETWORK LIMITED
(“NRBN”)

- and -

The party identified as “the Customer” on
the execution page of this Agreement
(“the Customer”)

WHEREAS NRBN utilizes the services of a third party (the
“Provider”), and the public Internet for delivery of Voice over Internet Protocol
service (the **“VoIP Service”**) to the Customer; and

WHEREAS 9-1-1 emergency calling using VoIP Service does not
work the same way as traditional wireline 9-1-1 emergency calling; and

WHEREAS the Customer agrees that in using the VoIP Service it
will comply with the provisions of this Agreement; and

WHEREAS, while this Agreement supplements the other
agreements between NRBN and the Customer with respect to the provision of
telecommunication and related services by NRBN to the Customer, this
Agreement stands alone and is independent from, and uninfluenced by, all such
other agreements.

WHEREAS the Customer acknowledges that it entering into this
Agreement is a precondition to VoIP Service being provided by NRBN to the
Customer.

NOW THEREFORE, in consideration of the premises hereto and the covenants and agreements herein and other good and valuable consideration, the receipt and sufficiency of such consideration being hereby acknowledged by each of NRBN and the Customer to the other, NRBN and the Customer covenant and agree as follows:

I. RESALE OF VoIP SERVICE PROHIBITED

The Customer shall not resell, and the Customer agrees that it will not allow the resale howsoever of, the VoIP Service or any part or aspect thereof.

II. CONFIDENTIALITY PROVISIONS OF CANADIAN CARRIERS

The Customer shall, and the Customer agrees that it will, adhere to the “*Confidentiality Provisions of Canadian Carriers*” as established by the Canadian Radio-television and Telecommunications Commission (“**CRTC**”) in Telecom Decisions CRTC 2003-33, Telecom Decision CRTC 2004-27.

III. INDEMNITY

Neither NRBN nor Provider (each a “**Party**”) makes, and each of NRBN and Provider expressly disclaim, any warranty of any kind whatsoever, whether express or implied, statutory or otherwise, in relation to the VoIP Service. Neither NRBN nor Provider make, and each of NRBN and Provider expressly disclaim, all conditions (including, without limitation, of quality, merchantability, non-infringement, fitness for a particular purpose) of the VoIP Service including, without limitation, those relating to: **(i)** network transmission capacity; **(ii)** whether data will be transmitted in an uncorrupted form; **(iii)** the security of any transaction; **(iv)** the fault-tolerance of the service or the suitability of same for high-risk activities; or **(v)** the reliability or compatibility of the facilities, including equipment, hardware or software of third parties which may be utilized by NRBN or Provider in providing the VoIP Service.

IV. EMERGENCY SERVICES 9-1-1 DIALING & 9-1-1 CALLING LIMITATIONS

In accordance with the regulatory requirements of the Canadian Radio-television and Telecommunications Commission, prior to making any NRBN VoIP Service available to users in Canada, you are required to review this Advisory with users and have them acknowledge that they have received, understand, and agree to the terms and conditions stated herein. This advisory is also available at: <http://nrbn.ca/terms-and-conditions/>

- a. The Customer agrees that the Customer shall fully inform each End User and every other person with access to the VoIP Service of the 9-1-1 emergency calling limitations set forth in this Agreement.
- b. Basic 9-1-1 service will be provided for 9-1-1 dialing. Customers placing a 9-1-1 call from a VoIP enabled telephone will be routed to an emergency operator (an "Operator") and will have to provide their specific address/location. Once this information has been successfully provided to the Operator, the Operator will route the customer's call to the appropriate Public Service Answering Point (PSAP) corresponding to the provided address/location. Customer further acknowledges and agrees that the call may not be handled by such PSAP in the same way as traditional wireline 9-1-1 service.
- c. Customer is solely responsible for providing the Operator with the correct address/location information and any other necessary information when Customer dials a 9-1-1 call using the VoIP Service. If Customer does not provide the Operator with the correct address/location information, the Customer acknowledges and agrees that emergency services may be dispatched to the wrong address and Customer further agrees to indemnify and hold harmless NRBN and its third-party Service Provider from any and all claims arising out of any such misrouted 9-1-1 calls.
- d. When making a 9-1-1 emergency call, the Customer must not hang up until requested to do so, and if the Customer is prematurely disconnected, the Customer must call back. The Operator and PSAP may not have an automatic call back capability.
- e. Customer acknowledges and agrees that 9-1-1 calls originating from an address or location outside of Canada cannot be routed to any PSAP or emergency service by the Operator.
- f. Customer acknowledges and understands that a Service outage for ANY reason including power outage, or equipment or network outage may terminate the availability of the VoIP Service and/or the 9-1-1 service.
- g. Customer acknowledges and understands that the VoIP Service utilizes an Internet Protocol connection. As a result, there is a greater possibility of network congestion, other types of service outages and/or reduced speed in the routing of a 9-1-1 emergency call as compared to traditional wireline 9-1-1 emergency calling.

V. Emergency Service Address Changes

NRBN has access to a portal operated by its third-party Emergency Service Provider, where it can provide the emergency location addresses for its Customer's and end-users. The emergency location addresses can be modified by NRBN, at any time that the address of the Customer is changed. This can be done by one of two ways: i) by notifying the NRBN customer service agent of the change of address by way an email; or ii) by placing a telephone call to the NRBN customer service department. NRBN will enter the address change into

the Service Provider's portal, at such time as the Customer's service is transferred to the new address.

VI. Current Address and Telephone Number to Be Visible

The Customer agrees that when installing a telephone or VoIP telephone adaptor in an address or moving the location of a telephone or VoIP telephone adaptor installed in an address or from one address to another, it will always make sure that the current address and telephone number is recorded in a location easily visible from each telephone connected to the VoIP Service so that it can be communicated to the Operator and the PSAP by any potential user of the Service in an emergency.

VII. End-User Warning Labels

In addition, Customer is responsible for affixing applicable 9-1-1 warning labels to phones to be used with the NRBN VoIP Service. Wording for such warning labels is set out below:

When dialing 9-1-1, the operator may not know your exact location. Be prepared to provide your address/location.

VIII. LIMITATIONS OF LIABILITY

Customer acknowledges and understands the following limitation of liability provisions governing the NRBN VoIP Service (the "Service"), any other NRBN services incorporating any NRBN VoIP Service and 9-1-1 Service.

i. NRBN and its third-party service Provider ("Provider") will not be liable for any damages arising out of or relating to interruptions or errors in routing or completing any 9-1-1 or other emergency response calls or any other calls or transmissions. NRBN makes no representations or warranties, express or implied, specifically disclaims any representation or warranty of merchantability, fitness for a particular purpose, or that calls or other transmissions will be routed or completed without error or interruption (including calls to 9-1-1 or any similar emergency response center).

ii. An outage includes any specific customer network hardware failure, ISP outage or capacity issues, or failure of any Provider. NRBN shall not be held liable for any materials, damages or loss caused by these third-party services or Provider. NRBN disclaims any and all responsibility or liability for the legality, reliability or operability or availability of the Service, when transmitted over the Internet or via a Provider. NRBN disclaims any responsibility for any harm resulting from service outages for data transmitted via the Internet or via the Provider, utilizing the NRBN Service.

iii. NRBN does not have any control over whether, or the manner, in which calls using the NRBN VoIP Service, any other NRBN services incorporating any NRBN VoIP

Service and 9-1-1 Service are answered or addressed by any emergency call or response center. NRBN disclaims any and all responsibility or liability for the ability of equipment or Service to connect to an emergency response center, the conduct of the emergency response center and the public safety answering point. NRBN relies on third parties to assist in routing 9-1-1 calls to emergency response centers and a geographically appropriate public safety answering point.

iv. NRBN disclaims any and all responsibility or liability in the event that data provided to and or accessed or used by such third party to route the call is incomplete, inaccurate, incorrect, or yields an erroneous or incomplete result. NRBN does not have control of Customer equipment that the Customer separately employs for use of the NRBN VoIP Service and 9-1-1 Service or matters of force majeure.

v. Except for liability for proven direct damages suffered by Customer arising out of any negligent or willful act of NRBN, neither NRBN or its respective officers, directors, employees, agents, contractors and assigns may be held liable for any claim, damage, liability or loss and Customer hereby waives any and all such claims or causes of action, arising from or relating to the NRBN VoIP Service or the 9-1-1 service. Customer shall defend, indemnify and hold harmless NRBN its respective officers, directors, employees, agents, Service Providers, contractors and assigns and any other service provider who furnishes services in connection with the equipment, 911 service, the NRBN VoIP Service from any and all claims, losses, damages, fines, penalties, costs and expenses (including without limitation, counsel fees) including claims based on negligence, gross negligence, willful misconduct or recklessness, by or on behalf Customer, any user or any other third party relating to the absence, failure, interruption, non-performance or outage of the NRBN VoIP Service and or 9-1-1 Service, including without limitation, incorrectly routed, incorrectly entered, incomplete or inaccurate user address information and/or the inability of any user to be able to use 9-1-1 Service or access emergency service personnel.

VI. IN NO EVENT SHALL NRBN OR PROVIDER BE LIABLE TO THE CUSTOMER FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE LOSSES OR DAMAGES OF ANY KIND OR NATURE WHATSOEVER OR HOWSOEVER CAUSED, INCLUDING WITHOUT LIMITATION, LOSS OF DATA, LOSS OF INCOME, LOSS OF PROFIT OR FAILURE TO REALIZE EXPECTED SAVINGS ARISING DIRECTLY OR INDIRECTLY FROM THE BREACH OF THIS AGREEMENT (INCLUDING FUNDAMENTAL BREACH OR OTHERWISE), NEGLIGENCE, ANY ACT OR OMISSION OF NRBN OR PROVIDER OR UNDER ANY OTHER THEORY OF LAW OR EQUITY, EVEN IF NRBN OR PROVIDER HAD BEEN ADVISED OF, HAD KNOWLEDGE OF, OR REASONABLY COULD HAVE FORESEEN THE POSSIBILITY OF SUCH DAMAGES.

vii. **NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE SOLE AND EXCLUSIVE REMEDY OF THE CUSTOMER IN CONTRACT, IN TORT OR OTHERWISE HOWSOEVER FOR ANY CLAIM, LOSS OR DAMAGE IN ANY WAY RELATED TO, OR ARISING OUT OF, THE VOIP SERVICE OR THIS AGREEMENT SHALL IN BE LIMITED TO THE CUSTOMER'S ACTUAL, DIRECT DAMAGES, AND SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT PAID BY THE CUSTOMER TO NRBN FOR FORTY-FIVE (45) DAYS FOR AFFECTED VOIP SERVICE. FOR GREATER CERTAINTY, "AFFECTED VOIP SERVICE" APPLIES SPECIFICALLY AND ONLY TO SUCH OF THE VOIP SERVICE TO WHICH THE CUSTOMER IS ACTIVELY SUBSCRIBING AND WHICH THE CUSTOMER IS SPECIFICALLY SEEKING REMEDY FOR AND FOR THE SPECIFIED PERIOD UNDER WHICH THE VOIP SERVICE WERE AFFECTED, CALCULATED AS AN AVERAGE OF THE PREVIOUS SIX (6) MONTHS.**

IX. ADDITIONAL TERMS AND CONDITIONS

Without limiting the generality of the foregoing, neither NRBN nor Provider shall be liable for:

- a. defamation or copyright or trademark infringement or intellectual property infringement or the violation of any third party rights from the use of the VoIP Service or material transmitted or received over NRBN's or Provider's network;
- b. infringement of patents arising from combining or using Customer, End User or anyone else's equipment with the VoIP Service or equipment used in relation to the VoIP Service;
- c. any act or omission of any connecting or underlying carrier, local exchange telephone company, local access provider, or acts or omissions of any other providers of connections, facilities, equipment, or services used by NRBN, Provider, the Customer or an End User to provide, use or in relation to the VoIP Service;
- d. capacity shortages not directly caused by NRBN or Provider;
- e. any unauthorized use or Improper Use of the VoIP Service. "**Improper Use**" means (i) the resale by the Customer or any End User of the VoIP Service, or any use which is (ii) causing, or is reasonably likely to cause, material damage to the relevant facilities, connections or network, or which is having, or is reasonably likely to have, a material adverse effect on NRBN's or Provider's performance under or in relation to the VoIP Service or this Agreement, (iii) or interference with other services provided by NRBN or Provider to third parties or (iv) in contravention of any Law. For the purposes of this Agreement, an "adverse effect" shall be deemed to be material where it results in NRBN or Provider performing at standards below those due to the Customer in relation to the VoIP Service or this Agreement. "**Law**" means a provincial or federal law,

governmental order, decision or regulation, or order of any court of competent jurisdiction, including without limitation, decisions and orders of the CRTC;

- f. VoIP Service interruptions, errors, delays or defects in transmission or failure to transmit caused by (i) power fluctuations or power failure at the Customer's location; or (ii) NRBN or Provider in the performance of any maintenance, installation, preparation, testing, adjustment, upgrade, repair or inspection of any equipment necessary in order for NRBN and/or Provider to provide the VoIP Service to the Customer; or (iii) any event beyond the reasonable control of NRBN or Provider;
- g. Any damages arising out of or relating to (i) facilities, equipment, software applications, service or content provided by the Customer or third parties; (ii) unauthorized access to or theft, alteration, loss or destruction of Customer or third parties applications, content, data, programs, information, network or systems by any means including without limitation viruses; or (iii) any act, omission, or failure of the equipment or connections provided by the Customer or third parties;
- h. The Customer hereby fully releases NRBN and Provider from any and all liability, and agrees to indemnify agrees to defend, indemnify and hold harmless NRBN and Provider, and their officers, directors, employees, agents, representatives and permitted assigns, from any claims, liabilities, losses, costs or damages, including legal fees, arising out of any and all claims by any person, including without limitation any third party, based on or related to: (i) the content of any transmissions by Customer, any End User or any third party using the VoIP Service; (ii) the use of the VoIP Service in any way related to or arising out of the Agreement by Customer, including without limitation, any Improper Use; (iii) Customer facilities, equipment or any connections provided by Customer; (iv) a warranty or representation by Customer to NRBN, Provider or to any third party; (v) the breach by Customer of any term or condition of this Agreement; or (vi) any violation or infringement of any applicable Law.
- i. NRBN and the Customer (each a "**Party**") shall each promptly notify the other of any suit, claim or action which may give rise to the other Party's (the "**Indemnifying Party**") obligation to indemnify the Party with such right to be indemnified (the "**Indemnified Party**"), and shall fully cooperate with the Indemnifying Party and its insurance agent(s) in the defense of such suit, claim or action. The Indemnifying Party shall have absolute and sole discretion to settle any such suit, claim or action except if to the detriment of the Indemnified Party. Any indemnification hereunder shall be offset by any insurance payment recovered by the Indemnified Party or insurance benefits to which it is entitled.

X. PROVIDER - THIRD PARTY BENEFICIARY

In addition to NRBN and the Customer, this Agreement shall be for the benefit of Provider, who shall be entitled to all of the benefits of, and to

enforce for its benefit, this Agreement to the same extent as if Provider was party to this Agreement together with NRBN and the Customer.

XI. MISCELLANEOUS

- a. **Further Assurances**: Each of the Parties shall at all times and from time to time hereafter, without further consideration, execute, deliver and acknowledge all such other documents and shall take or refrain from taking such action as may be reasonably necessary or desirable to give effect to the provisions and intent of this Agreement.
- b. **No Third Party Beneficiaries**: Nothing in this Agreement shall entitle anyone other than the Parties and Provider to any claim, cause of action, remedy or right of any kind in respect of this Agreement or the subject matter of this Agreement.
- c. **Law**: This Agreement shall be governed by and construed in accordance with the laws applicable in the Province of Ontario, Canada, excluding laws relating to choice of laws.
- d. **Severability**: Should any provision of this Agreement be determined to be void, invalid or otherwise unenforceable by any court of competent jurisdiction, such determination shall not affect the remaining provisions of this Agreement which shall remain in full force and effect.
- e. **Prior Agreements**: This Agreement replaces and supercedes all previous agreements between the Parties relative to, and only in relation to, the transaction (being the provision of VOIP Services by NRBN to the Customer) and related matters provided herein.
- f. **Entire Agreement**: This Agreement constitutes the entire agreement between the Parties with respect to the transactions and matters herein provided for.
- g. **Amendments**: No modification or addition to this Agreement shall be valid unless made in writing and signed by duly authorized representatives of each of the Parties.
- h. **Counterparts**: This Agreement may be executed in any number of counterparts with the same effect as if the Parties signed the same document. All counterparts will be construed together and will constitute one and the same Agreement.
- i. **Telefacsimile and E-mail Execution**: This Agreement and any other document delivered for the purposes of this Agreement may be executed by the Parties and transmitted by telefacsimile or e-mail transmission and will be for all purposes effective as if the parties executed and delivered one original document.

IN WITNESS WHEREOF NRBN and the Customer have executed and delivered this Agreement on this _____ day of _____, 20____.

“The Customer”:

[Name of the Customer]

By: _____

Name: _____

Title: _____

I have the authority to, and do hereby, bind the Customer.

Place of incorporation: _____

“NRBN”:

NIAGARA REGIONAL BROADBAND NETWORK LIMITED

By: _____

Name: _____

Title: _____

I have the authority to, and do hereby, bind NRBN.

Place of incorporation: Ontario



