

# Terms of Service

## 1. Service

**a. Acceptance of Terms:** AQUARIUS TELECOM reserves the right, at AQUARIUS TELECOM's sole discretion, to change, modify, update, add or remove portions of the Terms of Service at any time without notice to you. Please check these Terms of Service for changes. Your continued use of this website and of the Service following the posting of changes to the Terms of Service will mean you accept those changes.

**b. Term:** Service is offered on a monthly basis from the beginning to the end of the month prorated to the specific sign up day during that month. Subsequent terms of this Agreement automatically renew on a monthly basis without further action by you unless you give AQUARIUS TELECOM written notice of non-renewal at least [30] days before the end of the monthly term in which the notice is given. You are purchasing AQUARIUS TELECOM's services for full monthly terms, meaning that if you attempt to terminate Service prior to the end of a monthly term, you will be responsible for the full month's charges to the end of the then-current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable When you provide the said notice.

**c. Commercial Use of Service and Device:** AQUARIUS TELECOM's services and Device are provided to you as an end user. This means that you are not to resell or transfer AQUARIUS TELECOM's services or the Device to any other person for any purpose, without the express and prior written permission of AQUARIUS TELECOM in advance.

**d. Lawful Use of AQUARIUS TELECOM's Services and Devices:** You agree to use AQUARIUS TELECOM's services and Devices of AQUARIUS TELECOM only for lawful purposes. This means that you agree not to use them for transmitting or receiving any illegal, harmful, threatening, abusive, harassing, defamatory, obscene, sexually explicit, profane, racially or ethnically disparaging remarks or otherwise objectionable material of any kind, including but not limited to any material that encourages conduct that would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, provincial, national or international law. AQUARIUS TELECOM reserves the right to terminate your service immediately and without advance notice if you violate the above restrictions, leaving you responsible for the full month's charges to the end of the current monthly term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable once AQUARIUS TELECOM 's services is terminated.

**e. Unauthorized Usage of AQUARIUS TELECOM's Devices, Firmware or Software:** You acknowledge that you are not given by the present agreement any license to use the firmware or software embedded in the Device for any other purpose than that described in the present agreement as authorized by AQUARIUS TELECOM , and that the Devices are exclusively for use in connection with AQUARIUS TELECOM's services. If you decide to use AQUARIUS TELECOM 's Services through an interface device not provided or authorized by AQUARIUS TELECOM , AQUARIUS TELECOM reserves the right to prohibit or disconnect in particular cases or generally as deemed necessary.

**f. Tampering with AQUARIUS TELECOM's Devices:** You agree not to change the electronic serial number or equipment identifier of any of AQUARIUS TELECOM's Devices, or to perform a factory reset of the Devices, without express prior written permission from AQUARIUS TELECOM in each instance. AQUARIUS TELECOM reserves the right to terminate your Service should you tamper with any of the Devices, leaving you responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable.

**g. Theft of Service:** You agree to notify AQUARIUS TELECOM immediately, in writing or by calling the AQUARIUS TELECOM customer support line, if any AQUARIUS TELECOM Device is stolen or if you become aware at any time that your Service is being stolen or fraudulently used. When you call or write to AQUARIUS TELECOM, you must provide your account number and a detailed description of the circumstances of the said AQUARIUS TELECOM Device theft or stolen or fraudulent use of AQUARIUS TELECOM Services. Failure to do so in a timely manner may result in the termination of your Service and additional charges to you.

**h. Return of AQUARIUS TELECOM Devices:** AQUARIUS TELECOM Devices may be returned to AQUARIUS TELECOM within fourteen (14) days of the line activation provided that: (i) The Customer has retained proof of purchase and original packaging and (ii) AQUARIUS TELECOM items returned are undamaged and in original condition and (iii) that all documentation and packaging materials are returned in good order. If a Customer receives AQUARIUS TELECOM cartons and/or devices that are visibly damaged, please note the damage on the carrier's freight bill or receipt and keep a copy of same. Keep the original carton, all packing materials and parts intact and contact AQUARIUS TELECOM's customer care department immediately. Warranty coverage varies depending on the type of Device that Customer chooses. Please refer to the AQUARIUS TELECOM warranty materials included in the packaging of your AQUARIUS TELECOM Device(s). After this fourteen (14) day prescribed time limit, all disbursements for purchase of AQUARIUS TELECOM devices by you will be non-refundable at time of termination of AQUARIUS TELECOM services by user and/or AQUARIUS TELECOM.

Customer acknowledges that, under no circumstance, should there be any refund for the shipping charges nor the utilization fees based on a pro-rated period all of which immediately become due and payable when you return the said devices.

**i. Number Transfer on Service Termination:** Only if you transferred your telephone number to AQUARIUS TELECOM for use in connection with AQUARIUS TELECOM's services, AQUARIUS TELECOM will agree to transfer that number to another carrier of your choice upon your termination of AQUARIUS TELECOM 's services provided that (i) your account has been properly and lawfully terminated and (ii) your AQUARIUS TELECOM account is completely current including payment for all charges and disconnect fees and (iii) the number of which you are requesting to transfer was transferred to AQUARIUS TELECOM by you.

**j. Long-Distance Exclusivity:** It is understood that AQUARIUS TELECOM will be your exclusive long distance provider for the time that this agreement is in force. AQUARIUS TELECOM has the authority to direct all of your long distance calls through AQUARIUS TELECOM's lines.

**j. Residential Usage:** If you subscribe to AQUARIUS TELECOM's Residential services please note that the Service and the Device are provided to you solely for residential use. You shall not resell or transfer the Service or the Device to another party without our prior written consent. You are prohibited from using the Service or the Device for auto-dialing, continuous or extensive call forwarding, telemarketing, fax or voicemail broadcasting or fax or voicemail blasting. We reserve the right to immediately terminate or modify your Service if we determine, in our sole and absolute discretion, that your use of the Service or the Device is, or at any time was, inconsistent with normal residential usage patterns. In addition, you will be required to pay our higher rates for commercial service for all periods in which your use of the Service or the Device was inconsistent with normal residential use.

**k. AQUARIUS TELECOM Service Promotional Packages -** From time to time, AQUARIUS TELECOM may offer service promotional packages ("Promotions"), the duration (the "Trial Period") and terms of which may vary according to the terms of specific sales promotions as described in the promotional literature or on the website. Under the terms of these Promotions, if it applies, AQUARIUS TELECOM may refund some or all charges, excluding applicable taxes, provided the terms described below are satisfied. AQUARIUS TELECOM reserves the right to terminate, revoke, or change the terms of these Promotions at any time, without prior notice. In order to be entitled to this program, you must: (1) cancel the Service within the specified number of days in the Trial Period after the Activation Date; and (2) return the Equipment, if received directly from AQUARIUS TELECOM, undamaged and in original condition within 14 days of Service cancellation, with all original packaging, documentation, and accessory materials. Retail Customers who purchased the Equipment from an AQUARIUS TELECOM authorized retail dealer must return the Equipment to the dealer where it was purchased, and are subject to the terms and conditions of that dealer with respect to any refund of the purchase price of the Equipment. No refund of usage charges will apply, including but not limited to, international calling. You are responsible for the cost and risk of return shipping, unless otherwise specified in the terms of the promotional offer that applied to your enrolment and activation.

**l. Proprietary Rights:** You acknowledge and agree that all content available on this website is protected by copyright, trademarks, service marks, patents, trade secrets, or other proprietary rights and laws. Except as expressly authorized by AQUARIUS TELECOM Inc., you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit, or create derivative works from such materials or content. Notwithstanding the above, you may print or download one copy of the materials or content on this website on any single computer for your personal, non-commercial use, provided you keep intact all copyright and other proprietary notices. Systematic retrieval of data or other content from this website to create or compile, directly or indirectly, a collection, compilation, database or directory without written permission AQUARIUS TELECOM Inc. is prohibited. In addition, use of the content or materials for any purpose not expressly permitted in these Terms of Service is prohibited.

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## **2. Service Outage**

**a. Power Outage:** You acknowledge and understand that AQUARIUS TELECOM's services do not function in the event of a power failure. Should there be an interruption in the power supply; AQUARIUS TELECOM's services will not function until power is restored. A power failure or disruption may require the Customer to reset or reconfigure equipment prior to resuming AQUARIUS TELECOM's services.

**b. Broadband Service Outage:** You acknowledge and understand that service outages by your broadband provider will prevent ALL calls.

**c. Service Outage Due to Suspension of Your Account:** You acknowledge and understand that service outages due to suspension of your account as a result of billing issues will prevent ALL calls.

**d. Other Service Outages:** You acknowledge and understand that if there is a service outage for ANY reason, such outage will prevent ALL calls. Such outages may occur for a variety of reasons, including, but not limited to those reasons described elsewhere in this Agreement.

### **3. Service Limitations**

**DIFFERENCES TO TRADITIONAL TELEPHONE SERVICE:** You acknowledge and understand that AQUARIUS TELECOM Service is not a traditional telephone service. There are IMPORTANT DIFFERENCES between the traditional telephone service and the Service offering provided by AQUARIUS TELECOM as set out in these Terms and Conditions.

**PLEASE REVIEW THE SECTION BELOW IN ITS ENTIRETY**

#### **a) IMPORTANT INFORMATION ABOUT YOUR EMERGENCY 9-1-1 SERVICE: 9-1-1 SERVICE**

If you dial 9-1-1, you will automatically be routed to a specialized call centre that handles emergency calls. This call centre is different from the Public Safety Answering Point (PSAP) that would answer a traditional emergency call. You will be required to provide your name, telephone number and address to the call centre operator.

#### **9-1-1 ACCESS LIMITATIONS**

9-1-1 Service will **NOT** be available if your Internet connection is down or your Hosted PBX or Hosted PBX PC Phone service is not available, e.g. in the case of a power failure. 9-1-1 Service may not be available when calling from outside Canada.

If you change the address from which you use your Hosted PBX or Hosted PBX PC Phone service, your access to 9-1-1 Service will change and will not work properly. Upon any move to a new address, or change of use of your Hosted PBX or Hosted PBX PC Phone service, immediately advise AQUARIUS TELECOM by e-mail or by telephone.

**If you fail to advise AQUARIUS TELECOM of any changes, this will adversely affect your ability to access 9-1-1 Service.**

#### **USER TIPS**

- Ensure that you understand the 9-1-1 Service limitations and make all other potential users of the service aware of these limitations;

- 9-1-1 Service will not be available during a power outage or during an Internet outage. Therefore, it is always a good idea to have a backup power supply, such as UPS for such circumstances;
- Ensure that your location information is always kept current with AQUARIUS TELECOM. If you do not keep your information current, and you are not able to speak during a 9-1-1 call, the emergency operator may assume that you are at the last registered address;
- Be prepared to confirm your location and call-back number with the operator who answers the 9-1-1 call since the operator may not have this information;

During the 9-1-1 call, do not hang up until told to do so, and call back if you get disconnected.

**b) YOU CONFIRM THAT YOU HAVE READ AND UNDERSTOOD THESE 9-1-1 SERVICE DIFFERENCES. BY ACCEPTING THESE TERMS, YOU ACCEPT AQUARIUS TELECOM VoIP SERVICES ON THESE TERMS, AND HEREBY WAIVE ANY AND ALL CLAIMS OR CAUSES OF ACTION AGAINST AQUARIUS TELECOM, ITS AFFILIATES, UNDERLYING CARRIERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS, LICENSORS, AND SUPPLIERS ARISING FROM OR RELATING TO THE AQUARIUS TELECOM HOSTED PBX OR Hosted PBX PC Phone 9-1-1 SERVICE. YOU ALSO AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE ABOVE PERSONS FROM ANY SUCH CLAIMS FOR DAMAGES, INCLUDING LEGAL FEES. YOUR WAIVER AND INDEMNITY IN THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.**

**c) Collect Call and Operators Services:** Currently Not an Option. AQUARIUS TELECOM does not currently offer collect calls or operator assistance via this Service.

**d) Broadband Service Outage:** You acknowledge and understand that service outages by your broadband internet service provider will prevent said Service.

**e) Loss of Service Due to Power Failure:** You acknowledge and understand that the Service does not work in the event of power failure. If there is an interruption in the power supply, the Service will not function until power is restored. A power failure or disruption may require You to re-set or reconfigure Equipment prior to restoration of the Service.

**f) Service Outage Due to Suspension of Your Account:** You acknowledge and understand that service outages due to suspension of your account as a result of billing issues will prevent Service elements from operating.

**g) Other Service Outages:** You acknowledge and understand that if there is a service outage for any reason; such outage will prevent all Service, INCLUDING 911 SERVICE.

#### **4. Changes to this Agreement**

As technologies and services progress AQUARIUS TELECOM may change the terms of the Agreement from time to time on [14] days advance notice to you. We may give you notice either by:

- a. posting to the "Service Announcements" section of our Web Site, or
- b. electronic mail directed to the e-mail address you gave us when you signed up for AQUARIUS TELECOM 's services, or to your current e-mail address if you have notified us that your e-mail address has changed. You are responsible for notifying us of any changes in your email address by e-mailing us at [sales@AQUARIUSTEL.com](mailto:sales@AQUARIUSTEL.com), and we may continue to use your previous e-mail address unless and until we have received your notice of address change.

## **5. Charges / Payments / Default / Taxes / Termination**

**a. Billing: Payments and Billing.** Fixed charges are payable monthly in advance and other charges are payable when billed. We reserve the right to bill at more frequent intervals if the amount you owe to us at any time exceeds \$100. Customer is responsible for payment to AQUARIUS TELECOM of charges for all Service(s) and Equipment furnished to Customer. A late payment charge applies when payment has not been received thirty (30) days after the date of the statement of account for Service. This charge is a monthly fee of three dollars (\$3.00) plus a compound rate of 1.5%. An administrative fee will be charged for any payments returned for non-sufficient-funds ("NSF"). You agree to pay AQUARIUS TELECOM an administration fee of \$25.00 every time your credit card is denied or every time we are unable to withdraw the month's charges from your bank account due to NSF. No charge disputed by Customer can be considered past due unless AQUARIUS TELECOM, at its sole discretion, has reasonable grounds for believing that the purpose of the dispute is to evade or delay payment. Customer acknowledges that AQUARIUS TELECOM will not issue cheques for refunds for amounts lower than ten dollars (\$10.00). In the alternative, Customer agrees that any refunds lower than ten dollars (\$10.00) will be credited against Customer's account. Unless there has been deception with regard to a charge, Customer is not responsible for paying a previously unbilled or under billed charge except where: 1) in the case of a recurring charge it is correctly billed within a period of one year from the date it was incurred; or 2) in the case of a non-recurring charge, it is correctly billed within a period of 60 days from the date it was incurred. In the case of a recurring charge that should not have been billed or that was over billed, Customer will be credited with the excess back to the date of the error, subject to applicable limitation periods provided by law. However, if Customer does not dispute the charge within 60 days of the date of an itemized statement which shows that charge correctly, AQUARIUS TELECOM will not credit such charge for the period prior to that statement. Non-recurring charges that should not have been billed or that were over billed will be credited, provided that Customer disputes such charges within seven (7) days of receiving your statement.

**b. Billing Disputes:** You must notify AQUARIUS TELECOM in writing within 7 days after receiving your statement if you dispute any AQUARIUS TELECOM charges or such dispute will be deemed waived. Billing disputes should be notified to the following address:

Customer Care Billing Department  
AQUARIUS TELECOM  
94-260 Adelaide Street East  
Toronto, Ontario  
M5A 1N1 OR [sales@aquariustel.com](mailto:sales@aquariustel.com)

**c. Payment:** AQUARIUS TELECOM only accepts payments by credit card and company cheque. Your initial use of AQUARIUS TELECOM's services authorizes AQUARIUS

TELECOM to charge your credit card account number on file with AQUARIUS TELECOM, including any changed information given AQUARIUS TELECOM if the card expires or is replaced, for AQUARIUS TELECOM charges that accrue during any billing cycle. This authorization will remain valid until 30 days after AQUARIUS TELECOM receives your written notice requesting that AQUARIUS TELECOM terminates the charging of your credit card. AQUARIUS TELECOM may terminate your Service at any time in its sole discretion, if any charge to your credit card or bank account on file with AQUARIUS TELECOM is declined and/or in case of any other non-payment of account charges. Termination of Service for declined card or bank account or non-payment leaves you fully liable to AQUARIUS TELECOM for all charges accrued before termination and for charges incurred by AQUARIUS TELECOM owing to your non-payment, such as (but not limited to) collection costs and attorney's fees.

#### **PRE-AUTHORIZED BILLING FORM**

I authorize AQUARIUS TELECOM Inc. to keep my signature on file and to charge my credit card account, on an ongoing basis for amounts I owe.

I understand that this authorization is valid for as long as I am an AQUARIUS TELECOM [Hosted PBX or Hosted PBX PC Phone] customer unless I cancel the authorization through written notice. I also agree to contact the merchant if there are any changes to my credit card account information.

#### **d. CONSENT TO CREDIT VERIFICATION**

By Agreeing to AQUARIUS TELECOM's Terms of Service you hereby declare that all the information provided by you is to the best of your knowledge true, complete and correct and you understand that it may be used to determine your credit worthiness. You, hereby declare that all the information provided herein is to the best of your knowledge true, complete and correct and in order to assess your ability to meet your financial obligations, you authorize (Aquarius Telecom Inc.) and its agents or assigns:

i) to request and obtain personal information about you on an ongoing basis from credit bureaus from information they previously collected about you in order to assess your credit history;

ii) to exchange your personal information on an ongoing basis with credit bureaus in order to protect you, ensure the completeness of the information and maintain the integrity of the credit granting system;

iii) to co-operate with local, provincial and national authorities in the investigation of unlawful or improper activities in order to protect you and us from fraudulent transactions; and

iv) disclose your personal information where necessary to protect your interests, and ours.

If your desired payment method was Pre-authorized Monthly Chequing Account Withdrawals we would like to request that you please send us a copy of your void cheque. You may send it by fax to (416) 800-0757 and made out to the Attention of Hosted PBX Customer Care. This is requested primarily for two reasons:

1) as a means to verify the account details and

2) we are required by our auditors to have a copy of the banking details (void cheque) in our client file.

**e. Termination/Discontinuance of Service:** AQUARIUS TELECOM reserves the right to discontinue providing AQUARIUS TELECOM's services generally, or to terminate your Service, at any time in its sole discretion. If AQUARIUS TELECOM discontinues providing

AQUARIUS TELECOM's services generally, or terminates your Service in its discretion without a stated reason, you will only be responsible for charges accrued through the date of termination, including a pro-rated portion of the final month's charges. If your Service is terminated for any stated reason, including without limitation violation of this Agreement, or because of any improper use of AQUARIUS TELECOM's services (such as, but not limited to, your attempts to hack, disrupt, or misuse AQUARIUS TELECOM's services), you will be responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable.

**f. Taxes:** Any applicable sales, use, excise, public utility or other taxes, fees or charges imposed on AQUARIUS TELECOM as a result of providing AQUARIUS TELECOM's services or a Device will be billed to your account when imposed upon AQUARIUS TELECOM. If any Customer is exempt from payment of such taxes, then it will provide AQUARIUS TELECOM with an original government-issued certificate attesting to tax-exempt status. Tax exemption will only apply from and after the date AQUARIUS TELECOM receives the Tax Exempt Document.

**g. Disconnect Fee:** You will be charged a disconnect fee of \$39.99 per line upon any premature termination of your Service (except when termination results from AQUARIUS TELECOM discontinuing AQUARIUS TELECOM 's services generally or terminating your Service in its discretion without a stated reason or when Customer returns AQUARIUS TELECOM devices within fourteen (14) days of the line activation (please see also 1h) as stated above)). The disconnect fee will billed directly to your statement.

## **6. Limitations**

**a. Limitation of Liability:** AQUARIUS TELECOM shall not be liable for any failure to provide its services at any time or from time to time, or any degradation of voice quality, that is caused by any of the following:

- a. act or omission of an underlying carrier;
- b. equipment, network or facility failure;
- c. equipment, network or facility upgrade or modification;
- d. force majeure events such as (but not limited to) acts of god; strikes; fire; war; riot; government actions;
- e. equipment, network or facility shortage;
- f. equipment or facility relocation; or
- g. any other cause that is beyond AQUARIUS TELECOM 's control, including without limitation the failure of an incoming or outgoing call to be connected or completed, including a 9-1-1 emergency call, or degradation of voice quality. AQUARIUS TELECOM's liability for any failure or mistake shall in no event exceed Service charges on account of the affected time period. AQUARIUS TELECOM is not liable for incidental or consequential damages of any type.

UNDER NO CIRCUMSTANCES SHALL AQUARIUS TELECOM INC., ITS PARENTS, SUBSIDIARIES, OR ITS LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE, THIS SITE. THIS LIMITATION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF AQUARIUS

TELECOM INC. HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE; BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, AQUARIUS TELECOM INC.'S LIABILITY IN SUCH JURISDICTIONS SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

**b. Indemnification:** Customer agrees to defend, indemnify, and hold AQUARIUS TELECOM, its affiliates and agents and any other service provider who furnishes services to Customer in connection with this Agreement or AQUARIUS TELECOM's services, harmless from claims or damages by, or in the right of, Customer relating to this Agreement, AQUARIUS TELECOM's services or the Device. This paragraph shall survive termination of this agreement.

**c. No Warranties on Service:** AQUARIUS TELECOM, ITS AFFILIATES, DIRECTORS, EMPLOYEES AND AGENTS PROVIDE THE SERVICES "AS-IS" AND MAKE NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND IN CONNECTION WITH THE NETWORK, THE SERVICES (INCLUDING ANY FEATURES) OR THE EQUIPMENT CONTEMPLATED HEREIN, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE. ALL REPRESENTATIONS WARRANTIES OR CONDITIONS OF ANY KIND ARE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, HEREBY EXCLUDED.

**d. No Warranties, or Limited Warranties, for Devices:** If the Customer purchased a new Device from AQUARIUS TELECOM and the Device included a limited warranty at the time of purchase, the Customer must refer to the separate limited warranty document for information on the limitation and disclaimer of certain warranties. If Customer's Device did not include a limited warranty from AQUARIUS TELECOM at the time of purchase, Customer agrees that it accepts its Unit in question on an "as is" basis and that Customer is not entitled to replacement or refund in the event of any defect.

## **7. Confidential Information**

Confidential Information shall include all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information disclosed or submitted, orally, in writing, or by any other media, by one AQUARIUS TELECOM representative to the Customer. Except as otherwise specified herein, Customer and AQUARIUS TELECOM each expressly undertake to retain in confidence all information transmitted to them by the other party pursuant to this Agreement that the disclosing party identifies as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential ("Confidential Information"), and will make no use of such Confidential Information except under the terms and during the existence of this Agreement. Customer and AQUARIUS TELECOM shall treat the terms and conditions of this Agreement as confidential; however, either party may disclose such information in confidence to its immediate legal and financial consultants as required in the ordinary course of that party's business. The receiving party's

obligation hereunder shall extend for two (2) years following the disclosure of the Confidential Information.

## **8. Privacy and Notices**

**a. Privacy:** IP telephony utilizes, in whole or in part, the public Internet and third party networks to transmit voice and other communications. AQUARIUS TELECOM is not liable for any lack of privacy which may be experienced by any AQUARIUS TELECOM client with regard to AQUARIUS TELECOM's services. Please refer to our Privacy Policy for additional information.

**b. Notices:** Notices to Customer shall be sent to the email address on file for Customer at AQUARIUS TELECOM's offices and will be considered given on the date sent out by AQUARIUS TELECOM to the party concerned. Please refer to section 4 of this Agreement regarding a change of e-mail address.

### **AQUARIUS TELECOM Inc. PRIVACY POLICY**

We regard our Customers' privacy as one of our most important values. We want you to know how we protect customer information and what choices you have about its use. We believe that our Privacy Policy will give you confidence whenever you use AQUARIUS TELECOM services. This policy summarizes how we collect, use and disclose your personal information.

1. Purposes. AQUARIUS TELECOM collects personal information to help us to provide Customers with better service, including, to provide Customers with ongoing service; to understand each Customer's needs and to be able to recommend products or services that will address those needs; to manage our own operations better; and to comply with the law. AQUARIUS TELECOM will let you know the reason it collects personal information when or before we collect such information.
2. Consent. Your knowledge and consent to the collection, use or disclosure of your personal information is required, except where to do so would be inappropriate.
3. Limits. AQUARIUS TELECOM will limit its collection of personal information to that which is necessary for the purposes that we have identified. This collection shall only be done by fair and lawful means. AQUARIUS TELECOM will not use or disclose personal information for any purposes other than those for which it was collected, except with the consent of the individual or as required by law. When we provide information to third parties, such parties are required to adhere to confidentiality agreements to ensure that your information remains safe and secure. Third parties include AQUARIUS TELECOM agents, other communication service providers (to enable you to have service outside Canada), collection agencies, emergency services and law enforcement agencies. Personal information shall be retained only as long as necessary for the fulfillment of those purposes.
4. Accuracy. Personal information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used.
5. Security. Personal information shall be protected by security safeguards appropriate to the sensitivity of the information. Each and every AQUARIUS TELECOM employee must abide by AQUARIUS TELECOM's privacy policy. Only authorized AQUARIUS TELECOM employees are permitted to have access to your personal information and such access is limited by need. For example, if you call our Customer Care department

with a concern or complaint, the representative is allowed to access only the personal information that he or she needs to address your concern.

6. Customer Access. Upon request, Customers shall be informed of the existence, use, and disclosure of his or her personal information and shall be given access to that information. You may challenge the accuracy and completeness of the information and have it amended as appropriate.

Definition: "Personal Information" means information about an identifiable individual and includes information about your AQUARIUS TELECOM VoIP service selections. Information that is publicly available (such as a public directory listing of your name or information that is printed on a business card - including your address, telephone number and email address) is not considered personal information.

## **9. Resolution of Disputes**

**Mandatory Arbitration**: Any dispute or claim between a Customer and AQUARIUS TELECOM arising out of or relating to AQUARIUS TELECOM's services or Devices provided by AQUARIUS TELECOM in connection with this Agreement shall be resolved by arbitration before a single arbitrator. The arbitrator's decision shall follow the plain meaning of the relevant documents, and shall be final and binding. Without limiting the foregoing, the parties agree that no arbitrator has the authority to: (i) award relief in excess of what this Agreement provides; or (ii) award punitive or exemplary damages. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. All claims shall be arbitrated individually and Customer will not bring, or join a punitive or certified class action to arbitration or seek to consolidate or bring previously consolidated claims to the arbitration process. The arbitrator shall have no authority to award punitive damages. The Customer acknowledges that this arbitration provision constitutes a waiver of any right to a jury trial.

## **10. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable laws of Canada, without regard to its conflict of law provisions. You and AQUARIUS TELECOM agree to submit to the personal and exclusive jurisdiction of the courts located within the Province of Ontario. The failure of AQUARIUS TELECOM to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of AQUARIUS TELECOM's services or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

## **11. Entire Agreement**

This Agreement and the rates for Services found on AQUARIUS TELECOM's documents and website constitute the entire agreement between you and AQUARIUS TELECOM and govern your use of AQUARIUS TELECOM's services, superseding any prior agreements between you and AQUARIUS TELECOM and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter between

you and AQUARIUS TELECOM as regularly updated. No amendment to this Agreement shall be binding upon AQUARIUS TELECOM unless and until posted in accordance with Section 3 hereof.

## **12. Severability**

If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement are still valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect.