

# TERMS OF SERVICE

Valid as of 1<sup>st</sup> of March 2012

**IRISTEL**  
*Your Global Phone Company*

# 1. Service

## a. Acceptance of Terms:

Iristel reserves the right to change, modify, update prices (Price Plans, Features, special numbers, etc.) add or remove portions of the Terms of Service at any time without direct notification to subscribers.

The Customer must check these Terms of Service for changes. The Customer's continued use of this website and of the Iristel service following the posting of changes to the Terms of Service will be considered an acceptance of those changes.

## b. Term:

Service is offered on a monthly basis from the beginning to the end of the month. Fees are pro-rated based on the specific sign up date during that month.

Subsequent terms of this Agreement will be renewed automatically on a monthly basis without further action by the Customer unless the Customer provides Iristel with written notice of non-renewal at least [10] days before the end of the monthly term in which the notice is given.

Since the Customer is purchasing Iristel's services for full monthly terms, if the Customer attempts to terminate Service prior to the end of a monthly term, he or she will be responsible for the full month's charges to the end of the then-current term.

This will include unbilled charges, plus a Disconnection fee, all of which become due and payable immediately once the Customer provides notice.

## c. Commercial Use of Service and Device:

Iristel services and devices are provided for use by the Customer. The Customer cannot resell or transfer Iristel's services or devices to any other person for any purpose, without the express and written permission of Iristel in advance.

## d. Lawful Use of Iristel's Services and Devices:

The Customer agrees to use Iristel's services and devices solely for lawful purposes. Iristel's services cannot be used 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.

This includes, but is not limited to, any material that encourages conduct that would constitute a criminal offence, give rise to a civil liability, or otherwise violate any applicable local, state, provincial, national or international law.

Iristel reserves the right to terminate service immediately and without advance notice if the Customer violates the above restrictions.

In those cases the Customer will be responsible for the full month's charges to the end of the current monthly term, including unbilled charges, plus a Disconnection fee, all of which become due and payable immediately once Iristel's service is terminated.

**e. Unauthorized Usage of Iristel's Devices, Firmware or Software:**

The Customer acknowledges that he or she is 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 Iristel; and that the devices provided are exclusively for use in connection with Iristel's services.

If the Customer decides to use Iristel's services through an interface device not provided by Iristel, Iristel reserves the right to prohibit or disconnect service as deemed necessary.

**f. Tampering with Iristel's Devices:**

The Customer agrees not to change the electronic serial number or equipment identifier of any Iristel devices – or to perform a factory reset of the devices – without express prior written permission from Iristel.

Iristel reserves the right to terminate service should the Customer tamper with any of the devices, leaving the Customer responsible for the full month's charges to the end of the current term, including unbilled charges, plus a Disconnection fee, all of which immediately become due and payable immediately.

**g. Theft of Service:**

The Customer agrees to notify Iristel immediately, in writing or by calling the Iristel customer support line, if any Iristel device is stolen or if the Customer becomes aware that his or her service is being stolen or used fraudulently.

When contacting Iristel, the Customer must provide the account number and a detailed description of the circumstances of the said Iristel device theft or stolen or fraudulent use of Iristel services.

Failure to do so in a timely manner may result in the termination of the Customer's service and additional charges to you. Please note that it is the Customer's responsibility to secure any credentials provided to them by Iristel.

#### **h. Return of Iristel Devices:**

Iristel devices may be returned to Iristel within thirty (30) days of the line activation provided that:

- (i) The Customer has retained proof of purchase and original packaging;
- (ii) Iristel items returned are undamaged and in original condition;
- (iii) All documentation and packaging materials are returned in good order.

If a Customer receives Iristel cartons and/or devices that are visibly damaged, please note the damage on the carrier's freight bill or receipt and keep a copy. Keep the original carton, all packing materials and parts intact and contact Iristel's customer care department immediately.

Warranty coverage varies depending on the type of chosen device. Please refer to the Iristel warranty materials included in the packaging of the Iristel device(s).

After this thirty (30) day prescribed time limit, all disbursements for purchase of Iristel devices by the Customer will be non-refundable at time of termination of Iristel services by the Customer and/or Iristel.

The 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 these become due and payable immediately when the said devices are returned.

Customers renting the Iristel devices must return their device(s) within 45 days from the Account Cancellation date or Service Termination date to enable account closure and final billing, provided that items returned are undamaged and in original condition and that all documentation and packaging materials are returned in good order.

Please note that if the devices are not returned within the 45 days time frame, the full hardware cost(s) will be charged on the account.

It is understood that the Iristel devices are subsidized by Iristel and that the true cost of the Iristel devices are \$400.00 per two port analog unit. The Iristel devices are for Iristel's customers and are sold at a subsidized rate per unit on Iristel's website located at [www.iristel.ca](http://www.iristel.ca).

In the case of damage to a rented Iristel unit – or non-payment of the Customer's Iristel account – the full amount of \$400.00 plus applicable taxes will be charged to the Customer's account for the cost of the Iristel subsidized hardware.

**i. Number Transfer on Service Termination:**

Iristel will agree to transfer the number to another carrier of the Customer's choice upon termination of Iristel's services, provided that both:

- (i) The account has been properly and lawfully terminated, and;
- (ii) the Customer's Iristel account is completely current, given either of the following two cases:

**a) One Line with Iristel.**

If we receive a request from your new service provider to terminate our service for a number, we will release the number shortly after notification to Iristel by the relevant carrier (s), given that there are no reasons to reject.

Once your service is terminated and the port is completed, you will remain responsible for all charges and fees through the end of that billing cycle, including any disconnection fees (for non-returned equipment, special number porting out, promotions etc.).

If a port is unsuccessful for any reason (stranded services, suspended or inactive account, etc.), your service and your agreement with us will not terminate, you will remain an Iristel customer, and you will continue to be responsible for all charges and fees associated with your Iristel service.

**b) More than One Line with Iristel.**

If we receive a request from your new service provider to terminate our service for a number and you have multiple numbers assigned to your account and/or additional devices such as Softphone on your account, you are required to inform us of your intent to terminate all the services on your account, prior to the successful completion of the requested port or we will select the most appropriate billing plan for any remaining numbers and/or devices on your Iristel account, and you will continue to be responsible for all the charges and fees associated with the remaining services on your Iristel account.

Once the port of the requested number is completed, you will remain responsible for all charges and fees through the end of that billing cycle, including any disconnection fees applicable to the ported number.

**j. Long Distance Exclusivity:**

It is understood that Iristel will be the Customer's exclusive long distance provider for the time that this agreement is in force. Iristel has the authority to direct all of the Customer's long distance calls through Iristel's lines.

**k. Regular Usage:**

Iristel Customers must note that the service and device provided are solely for regular residential or commercial use.

The Customer shall not resell or transfer the service or the device to another party without prior written consent from Iristel. The Customer is also 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 a Customer's service if we determine that his or her use of the service or the device is, or at any time was, inconsistent with normal residential usage patterns.

In addition, the Customer will be required to pay our rates for wholesale service for all periods in which his or her use of the service or the device was inconsistent with normal residential or commercial use.

**l. Fraudulent calls:**

The Customer is solely responsible for the security and integrity of their VoIP gateway, and acknowledges that any usage charges resulting from unauthorized access to their gateway or network by a known or unknown party will be invoiced to the Customer.

**m. Iristel Service Promotional Packages:**

On occasion, Iristel may offer service promotional packages ("Promotions"). The duration ("Trial Period") and terms of these may vary according to the specifications of the sales promotions as described in the promotional literature or on the website.

**n. Proprietary Rights:**

The Customer acknowledges and agrees 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 Iristel Inc., the Customer agrees 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, the Customer may print or download one copy of the materials or content on this website on any single computer for their personal, non-commercial use, provided the Customer keeps 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 from Iristel Inc. is prohibited. In addition, use of the content or materials for any purpose not expressly permitted in these Terms of Service is prohibited.

As noted above, reproduction, copying, or redistribution for commercial purposes of any materials or design elements on this website is strictly prohibited without the express written permission of Iristel Inc.

## 2. Service Outage

### a. Power Outage:

The Customer acknowledges and understands that Iristel's services do not function in the event of a power failure. Should there be an interruption in the power supply; services will not resume until power is restored. A power failure or disruption may require the Customer to reset or reconfigure equipment prior to resuming Iristel's services.

### b. Broadband Service Outage:

The Customer acknowledges and understands that service outages by their broadband provider will prevent any calls from being made or received.

### c. Service Outage Due to Suspension of the Customer's Account:

The Customer acknowledges and understands that service outages due to suspension of his or her account as a result of billing issues will prevent any calls from being made or received.

### d. Other Service Outages:

The Customer acknowledges and understands that if there is a service outage for any reason, such outage will prevent any calls from being made or received. Such outages may occur for a variety of reasons, including but not limited to, those reasons described elsewhere in this Agreement.

## 3. Service Limitations

### a. IMPORTANT INFORMATION ABOUT EMERGENCY 9-1-1 SERVICE:

#### Description:

VoIP services allow the customers to make or receive telephone calls over the Internet to or from the public switched telephone network.

The nature of VoIP telephone calls, while appearing similar to traditional telephone calling services, create unique limitations and circumstances, and the customer acknowledges, understands and agrees that differences exist between

traditional telephone service and VoIP telephone services, including the lack of traditional 911 emergency services.

**Differences to Traditional Telephone Service:**

Because of the unique nature of VoIP telephone calls, emergency calls to 911 through Iristel will be handled differently than traditional telephone services.

The following provisions describe the differences and limitations of 911 emergency calls, and the **Customer hereby acknowledges and understands that the Iristel service is not a traditional telephone service.**

There are important differences between traditional 911 telephone services and the services provided by Iristel as set out in these Terms and Conditions. Customers **must review the section below in its entirety.**

**Placing 911 calls:**

If the customer makes a 911 emergency call, Iristel will attempt to automatically route the customers 911 call through a third-party service provider to the Public Safety Answering Point ("PSAP") corresponding to the customers address of record on his or her account.

However, due to the limitations of the VoIP telephone services, the customers 911 call may be routed to a different location than that which would be used for traditional 911 dialling.

For example, the customers call may be forwarded to a third-party, specialized call centre that handles emergency calls.

This call centre is different from the PSAP (Public Safety Answering Point) that would answer a traditional 911 emergency call which has automatically generated the customers address information.

**Consequently, the VoIP customer will be required to provide his or her name, address, and telephone number to the call centre operator.**

**How your information is provided:**

Iristel will attempt to automatically provide the PSAP dispatcher or emergency service operator with the name, address and telephone number associated with the customers account. However, for technical reasons, the dispatcher receiving the call may not be able to capture or retain the customers name, phone number or physical location.

**Therefore, when making a 911 emergency call, the customer must be prepared to immediately (confirm and) inform the dispatcher of his or her location and**

**call-back number (or the location of the emergency, if different), since the operator may not have this information.**

If the customer is unable to speak, the dispatcher may not be able to locate him/her if the customer's location information is not up to date.

**Failure to keep information current will result in a Customer not being able to communicate during a 9-1-1 call; and/or the emergency operator may assume that Customers are at the last registered address.**

**Correctness of information:**

The customer is responsible for providing, maintaining, and updating correct contact information (including name, residential address and telephone number) with his or her account.

If the customer does not correctly identify the actual location where he/she is located, or if the customer's account information has recently changed or has otherwise not been updated, 911 calls may be misdirected to an incorrect emergency response site.

For example, if the Customer changes the address from which he or she uses their Broadfone or Broadfone PC Phone service, access to 9-1-1 Service will not function properly.

**Upon moving to a new address, or change of use of Broadfone or Broadfone PC Phone service, the Customer must immediately notify and advise Iristel by email or by telephone with the most current location information.**

**Failure to advise Iristel of any changes will adversely affect the ability to access 9-1-1 Service. You may also update your most likely physical address online through the Iristel Portal.**

**911 NOTE for Auto Attendant clients:**

For Auto Attendant customers with their associated extensions, please note that **only** the main company number and the main company service address will be on file for 911, regardless of where the associated extension is located.

**Disconnections:**

During the 9-1-1 call, the customer must not disconnect the 911 emergency call until told to do so by the dispatcher, as the dispatcher may not have the customer's number or contact information.

If the customer is inadvertently disconnected, he/she must call back immediately.

**Connection time:**

For technical reasons, including network congestion, it is possible that a 911 emergency call will produce a busy signal or will take longer to connect when compared with traditional 911 calls.

**911 calls may not function:**

For technical reasons, the functionality of 911 VoIP emergency calls may cease or be curtailed in various circumstances, including but not limited to:

- if your service or your **system (service) access equipment fails** or is not configured correctly
- if your **VoIP service is not functioning correctly** for any reason, including power outages, VoIP service outage, suspension or disconnection of your service due to billing issues, network or Internet congestion,
- **network or Internet outage** in the event of a power; you may need to reset or reconfigure the system access equipment before being able to use the VoIP service, including for 911 emergency calls;
- **changing locations**—if you move your system access equipment to a location other than that described in the customer's account information or otherwise on record with Iristel.

Therefore, it is strongly advised that backup power supply be made available, such as a UPS.

**Inform other users:**

The customer must ensure full understanding of the 9-1-1 Service limitations and is responsible for notifying, and agrees to notify, any user or potential users of VoIP services aware of the nature and limitations of 911 emergency calls on the VoIP services as described herein.

**Liability:**

Customers are advised to review this section with respect to Iristel's limitations of liability.

**b) THE CUSTOMER CONFIRMS THAT THEY HAVE READ AND UNDERSTOOD THESE 9-1-1 SERVICE DIFFERENCES. BY ACCEPTING THESE TERMS, THE CUSTOMER ACCEPTS IRISTEL VoIP SERVICES ON THESE TERMS, AND HEREBY WAIVES ANY AND ALL CLAIMS OR CAUSES OF ACTION AGAINST IRISTEL, ITS AFFILIATES, UNDERLYING CARRIERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS, LICENSORS, AND SUPPLIERS ARISING FROM OR RELATING TO THE IRISTEL**

**BROADFONE OR BROADFONE PC PHONE 9-1-1 SERVICE. THE CUSTOMER ALSO AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE ABOVE PERSONS FROM ANY SUCH CLAIMS FOR DAMAGES, INCLUDING LEGAL FEES. THE CUSTOMER'S WAIVER AND INDEMNITY IN THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.**

**c) Collect Call and Operators Services:**

Iristel does not currently offer collect calls or operator assistance.

**d) Broadband Service Outage:**

The Customer acknowledges and understands that service outages by his or her broadband Internet service provider will prevent Iristel services.

**e) Loss of Service Due to Power Failure:**

The Customer acknowledges and understands that the service does not work in the event of power failure and will resume when power is restored. A power failure or disruption may require a re-set or reconfiguration of the equipment prior to restoration of the service.

**f) Service Outage Due to Suspension of a Customer's Account:**

The Customer acknowledges and understands that service outages due to suspension of the account as a result of billing issues will prevent all service elements from operating.

**g) Other Service Outages:**

The Customer acknowledges and understands that if there is a service outage for any reason, such outage will prevent all service, INCLUDING 9-1-1 SERVICE.

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

As technologies and services progress, Iristel may change the terms of the Agreement after providing [14] days advance notice to the Customer. Iristel provides notice by:

a. Posting to the "Service Announcements" section of our website

b. Electronic mail directed to the email address provided upon sign-up for Iristel's services, or to the current email address if Iristel has received notification that it has changed.

The Customer is responsible for notifying us of any changes in his or her email address by contacting [customercare@iristel.ca](mailto:customercare@iristel.ca).

Otherwise, we will continue to use the Customer's previous e-mail address until we have received notice of the address change.

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

### **a. Invoicing:**

Iristel will provide monthly invoices stating the recurring and non-recurring fees for the upcoming month on the second day of the month. Invoices are due by the sixteenth day of the same month. We reserve the right to bill at more frequent intervals if the amount owing at any time exceeds \$50. The Customer is responsible for payment to Iristel of charges for all service(s) and equipment supplied to them.

A late payment charge applies when payment has not been received within twenty one (21) days after the date of the statement of account for service.

This charge is a monthly compound rate of 1.5%. If the account has been suspended due to non-payment, Iristel reserves the right to apply a \$20 reactivation fee before re-instating all services.

An administrative fee will be charged for any payments returned for non-sufficient-funds ("NSF"). The Customer agrees to pay Iristel an administration fee of \$15.00 every time his or her credit card is denied or we are unable to withdraw the month's charges from their bank account due to NSF.

No charge disputed by the Customer can be considered past due unless Iristel has reasonable grounds for believing that the purpose of the dispute is to evade or delay payment.

The Customer acknowledges that Iristel will not issue cheques for refunds for amounts lower than ten dollars (\$10.00). Alternatively, the Customer agrees that any refunds lower than ten dollars (\$10.00) will be credited against the Customer's account.

Unless there has been a deception with regard to a charge, the Customer is not responsible for paying a previously unbilled or under billed charge except where:

- 1) A recurring charge it is correctly billed within a period of one year from the date it was incurred;

2) A non-recurring charge is correctly billed within a period of 150 days from the date it was incurred.

In the case of a recurring charge that should not have been billed or was over billed, the Customer will be credited with the excess back to the date of the error, subject to applicable limitation periods provided by law.

However, if the Customer does not dispute the charge within 60 days of the date of an itemized statement which shows that charge correctly, Iristel 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 the Customer disputes such charges within seven (7) days of receiving their credit card statement.

**b. Billing Disputes:**

The Customer must notify Iristel in writing within seven (7) days after receiving their credit card statement if there is dispute of any Iristel charges or such dispute will be deemed waived. Billing disputes should be reported to the following address:

Customer Care Billing Department  
Iristel  
11 Bowan Court  
Toronto, Ontario  
M2K 3A8 OR [customercare@iristel.ca](mailto:customercare@iristel.ca)

**c. Payment:**

Iristel accepts the following payment methods:

- Pre-authorized credit card withdrawals
- Pre-authorized checking account withdrawals
- Online/Telephone Banking
- Checks

**Pre-authorized Payments**

The customer's initial use of services, after having submitted credit card or bank account information with the express request to be used for pre-authorized payments, validates Iristel's processing of the provided information for the due charges. The customer must notify Iristel of any changes in payment information, and is responsible for charges that accrue during any billing charges.

The authorization will remain valid until 30 days after Iristel receives written notice requesting termination of pre-authorized payments. Iristel may terminate service at any time at its sole discretion, if any charge to the Customer's credit card or bank account on file with Iristel is declined and/or in the case of any other non-payment of account charges.

In the case of termination of service for declined card or bank account or non-payment, the Customer is fully liable to Iristel for all charges accrued before termination, as well as for charges incurred by Iristel owing to non-payment, such as (but not limited to) collection costs and attorney's fees.

#### **Pre-Authorized Billing Form**

I authorize Iristel Inc. to keep my signature on file and to charge my credit card account, on an ongoing basis for amounts owing. I understand that this authorization is valid for as long as I am an Iristel [Broadfone or Broadfone PC Phone] subscriber unless I provide 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 Iristel's Terms of Service I hereby declare that all the information provided by me is true, complete and correct to the best of my knowledge. I understand that this information may be used to determine my credit worthiness and in order to assess my ability to meet my financial obligations. I authorize Iris Technologies Inc. and its agents or assigns to:

- i) Request and obtain personal information on an ongoing basis from credit bureaus from previously collected credit history information;
- ii) Exchange personal information on an ongoing basis with credit bureaus in order to protect me, to ensure the completeness of the information and to maintain the integrity of the credit granting system;
- iii) Co-operate with local, provincial and national authorities in the investigation of unlawful or improper activities in order to protect myself and Iristel from fraudulent transactions;
- iv) Disclose my personal information where necessary to protect Iristel's and my interests.
- v) I agree that Iristel may conduct a preauthorization on my credit card, in order to determine my credit worthiness, which will imply blocking an amount at least equal to the first invoice. The amount will be released in 48 hours (Note: certain banks release the amount upon customer's request).

vi) I acknowledge that based on the result of the credit verification, Iristel may request a security deposit which stands as a primary condition for providing the service. The deposit is calculated as 150% out of the monthly charges, and might be returned upon request after 12 months of positive payment history.

If the service requires equipment, the customer agrees to choose one of the following options:

- to pay a security deposit equal to the purchase price of the equipment, and be charged for the monthly rental price; this deposit will be returned once the equipment is returned to Iristel undamaged; or
- to purchase the equipment

If the chosen payment method is Pre-authorized Monthly Chequing Account Withdrawals, the Customer is required to send Iristel a copy of a void cheque. The Customer may send a scanned copy by e-mail to [customercare@iristel.ca](mailto:customercare@iristel.ca) or by fax to (416) 848-7921 to the Attention of Broadfone Customer Care. This is required:

- 1) As a means to verify the account details; and
- 2) To meet auditor requirements to maintain a copy of the banking details (void cheque) in our client files.

**e. Termination/Discontinuance of Service:**

Iristel reserves the right to discontinue providing services generally, or to terminate the Customer's service, at any time at its sole discretion.

If Iristel discontinues providing services generally, or terminates the Customer's service at its discretion without a stated reason, the Customer will only be responsible for charges accrued through the date of termination, including a pro-rated portion of the final month's charges.

If service is terminated for any stated reason, including without limitation violation of this Agreement, or because of any improper use of Iristel's services (such as, but not limited to, attempts to hack, disrupt, or misuse Iristel's services), the Customer will be responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus a Disconnection fee, all of which become immediately due and payable.

Customer acknowledges and agrees to provide Iristel a thirty (30) day notice of Service / Account Cancellation by submitting an Account Termination Request. Customer may also benefit from the service during the 30 days period of cancellation. Upon the

Service Agreement Termination, customer will remain responsible for payment of all outstanding balances accrued throughout the effective date of cancellation as well as applicable disconnection fees or purchase fees.

Iristel's equipment may be returned within the 30 days of cancellation, or 14 days after the account has been closed; failing to do so, the Customer will be charged the full purchase price of any and all equipment not returned. Returned equipment must include original packaging, accessory materials and must not have any physical damage. If any of Iristel's equipment is returned in an unsatisfactory condition, damaged or broken, Iristel will charge the Customer the full purchase price of this equipment.

If the Customer cancels the Service prior to ninety (90) days from the Activation Date, Iristel may charge the customer an administrative fee of \$100.

**f. Taxes:**

Any applicable sales, use, excise, public utility or other taxes, fees or charges imposed on Iristel as a result of providing Iristel's services or a device will be billed to the Customer's account. If a Customer is exempt from payment of such taxes, then that Customer will provide Iristel with an original government-issued certificate attesting to tax-exempt status. Tax exemption will only apply from and after the date Iristel receives the Tax Exempt Document.

**g. Disconnection Fee:**

The Customer will be charged a disconnection fee of \$39.99 per line upon any termination of Service, with the following exceptions:

- When termination results from Iristel discontinuing services generally
- When Iristel terminates service at its discretion without a stated reason
- When the customer returns Iristel devices within 30 days of the line activation.

The disconnection fee will also be applied also in the case when the customer is not cancelling the entire account, but changing the offer to one with no disconnection fee, or cancelling one/ several lines, while keeping other lines active.

## **6. Limitations**

**a. Limitation of Liability:**

Iristel shall not be liable for any failure to provide its services or any degradation of voice quality 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
- g. Any other cause that is beyond Iristel'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. This includes degradation of voice quality. Iristel's liability for any failure or mistake shall in no event exceed service charges on account of the affected time period.

Iristel is not liable for incidental or consequential damages of any type.

UNDER NO CIRCUMSTANCES SHALL IRISTEL 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 IRISTEL 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, IRISTEL INC.'S LIABILITY IN SUCH JURISDICTIONS SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

**b. Indemnification:**

The Customer agrees to defend, indemnify, and hold Iristel, its affiliates and agents and any other service provider who furnish services to the Customer in connection with this Agreement or Iristel's services, free from claims or damages by, or in the right of, the customer relating to this Agreement, Iristel's services or the device. This paragraph shall survive termination of this agreement.

**c. No Warranties on Service:**

IRISTEL, 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 has purchased a new device from Iristel that includes 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 the device did not include a limited warranty from Iristel at the time of purchase, the Customer agrees to accept the unit in question on an “as is” basis and 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 Iristel representative to the Customer.

Except as otherwise specified herein, the Customer and Iristel 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.

The Customer and Iristel 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. Iristel is not liable for any lack of privacy which may be experienced by any Iristel Customer with regard to its services. Please refer to Iristel’s Privacy Policy for additional information.

### **b. Notices:**

Notices to Customers shall be sent to the email address on file for the Customer at Iristel’s offices and will be considered given on the date sent out by Iristel to the party concerned. Please refer to Section 4 of this Agreement regarding a change of e-mail address.

### **c. Iristel Inc. Privacy Policy**

Iristel regards its Customer's privacy as one of its most important values and believes that its Privacy Policy will give the Customer confidence whenever they use Iristel services. The following is a summary that outlines how Iristel collects, uses and discloses personal information:

#### **1. Purposes.**

Iristel collects personal information to:

- Help provide the Customer with better service delivery
- Understand each Customer's needs in order to recommend appropriate products or services
- Better manage its own operations
- Comply with legislative requirements

Iristel will advise the Customer of the reason it collects personal information when or before such information is collected.

#### **2. Consent.**

The Customer's knowledge and consent to the collection, use or disclosure of personal information is required, except where inappropriate to do so.

#### **3. Limits.**

Iristel will limit its collection of personal information to that which is necessary for the abovementioned purposes. This collection shall only be done by fair and lawful means.

Iristel 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 the Customer's information remains safe and secure.

Third parties include Iristel agents, other communication service providers (to enable service delivery 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 Iristel employee must abide by Iristel's Privacy Policy.

Only authorized Iristel employees are permitted to have access to a Customer's personal information and such access is limited by need.

If a customer calls Iristel's Customer Care department with a concern or complaint for example, the representative is allowed to access only the personal information that he or she needs to address that concern.

**6. Customer Access.**

Upon request, the Customer shall be informed of the existence, use, and disclosure of his or her personal information and shall be given access to that information.

The Customer may challenge the accuracy and completeness of the information and have it amended as appropriate.

**7. Definition: "Personal Information".**

Means information about an identifiable individual and includes information about the Customer's Iristel VoIP service selections.

Information that is publicly available (such as a public directory listing of a name or information that is printed on a business card – including the Customer's 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 Iristel arising out of, or relating to, Iristel's services or devices provided by Iristel 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 the 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.

The Customer and Iristel agree to submit to the personal and exclusive jurisdiction of the courts located within the Province of Ontario.

The failure of Iristel to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision.

The Customer agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of Iristel'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 Iristel's website constitute the entire agreement between the Customer and Iristel and govern the Customer's use of Iristel's services.

This Agreement supersedes any prior agreements between the Customer and Iristel and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter between the Customer and Iristel as regularly updated.

No amendment to this Agreement shall be binding upon Iristel 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 endeavour 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.