

## SECURENETMD TERMS OF SERVICE

These Terms of Service constitute the agreement ("Agreement") between SecureNetMD, LLC ("we," "us" "party" or "SecureNetMD") and Customer the user ("you," "user", "Customer", "Subscriber" or "party") of SecureNetMD's business services and any related product(s) or service(s) ("Service") (collectively the "parties").

This Agreement governs both the Service and any devices, such as an IP phone, Multimedia Terminal Adapter, Analog Telephone Adapter, switch, router or any other IP connection device ("Device" or "Equipment"), used in conjunction with the Service.

BY ACTIVATING OR USING THE SERVICE, YOU REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO THIS AGREEMENT AND THAT YOU HAVE READ, UNDERSTAND AND FULLY ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT.

### 1. SERVICE

**1.1 Term.** The Term shall begin on the earlier of: (i) the date we activate or you use any Service; (ii) the date you activate or use any Device or Equipment used in conjunction with the Service; or (iii) the date you enter into any contract or agreement that references this Agreement. The Term shall continue for the longer of a three (3) year period, or the period otherwise specified on your activation form(s), unless your activation form(s) indicate a period of less than three (3) years ("Term"). The Term ends on the day before the expiration of the three (3) year period, or the day before the period otherwise specified on your activation form(s).

**1.2 Automatic Renewal.** Upon the expiration of the original term or any renewal term, this Agreement shall be renewed automatically for succeeding terms of three (3) years each, or as otherwise specified on your activation form(s), unless either party gives written notice to the other of non-renewal at least ninety (90) days before the end of the current term.

**1.3 Monthly Billing Cycle.** You are purchasing the Service for a term of three (3) years billed on a fullmonth basis, meaning that monthly charges and fees will not be prorated for any reason.

**1.4 Use of Service and SecureNetMD provided Device.** You shall not resell or transfer the Service or the Device to another party without our prior written consent.

**1.5 Prohibited Uses.** You shall use the Service and the Device only for lawful purposes. If we believe that you have used the Service or the Device for an unlawful purpose, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. By activating or using the Service, you hereby consent to our forwarding of any such communications and information to the relevant authorities. In addition, SecureNetMD will provide information in response to law enforcement requests, subpoenas, court orders, to protect its rights and property and in the case where failure to disclose the information may lead to imminent harm to the customer or others. We reserve the right to terminate your Service if determined by law, the Company was negligent and used the Service or the Device for an unlawful purpose. In the event of such termination, you will be responsible for the full current month's charges, and the Termination Fee, in accordance with Section 3.2.

**1.6 Use of Service and Device by Customers outside the United States.** Although we encourage you to use of the Service to place calls to foreign countries from within the United States, we do not presently offer or support the Service in any countries other than the United States and Canada. If you use the Service or the Device outside of the United States or Canada, you will be solely responsible for any violations of local laws and regulations resulting from such use.

**1.7 Copyright; Trademark; Unauthorized Usage of Device; Firmware or Software.**

(a) *Copyright; Trademark.* The Service and Device and any firmware or software used to provide the Service or provided to you in conjunction with providing the Service, or embedded in the Device, and all Services, information, documents and materials on our websites are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All of our websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "Marks") are and will at all times remain our exclusive property. Nothing in this Agreement grants you the right or license to use any of our Marks.

(b) *Unauthorized Usage of Device; Firmware or Software.* You have not been granted any license to use the firmware or software used to provide the Service, or provided to you in conjunction with providing the Service, or embedded in the Device, other than a nontransferable, revocable license to use such firmware or software in object code form (without making any modification thereto) strictly in accordance with the terms and conditions of this Agreement. You expressly agree that the Device is exclusively for use in connection with the Service and that we will not provide any passwords, codes or other information or assistance that would enable you to use the Device for any other purpose. We reserve the right to prohibit the use of any interface device that we have not provided to you. In addition, you shall indemnify and hold us harmless against any and all liability arising out of your use of any such interface device with the Service. You shall not reverse compile, disassemble or reverse engineer, or otherwise attempt to derive the source code from the binary code of the firmware or software.

**1.8 Tampering with the Device of Service.** You shall not change the electronic serial number or equipment identifier of the Device or to perform a factory reset of the Device without our prior written consent. We reserve the right to terminate your Service if it is proven by log files or documentation or verified by a third party that you have tampered with the Device. In the event of such termination, you will remain responsible for the full current month's charges, and the Termination Fee, as defined in Section 3.2. You shall not attempt to hack or otherwise disrupt the Service or make any use of the Service that is inconsistent with its intended purpose.

**1.9 Theft of Service.** You shall notify us immediately, in writing or by calling our customer support line, if the Device is stolen or if you become aware at any time that your Service is being stolen, fraudulently used or otherwise being used in an unauthorized manner. When you call or write, you must provide your account number and a detailed description of the circumstances of the Device theft, fraudulent use or unauthorized use of Service. Failure to do so in a timely manner may result in the termination of your Service and additional charges to you. Until we receive notice of the theft, fraudulent use or unauthorized use, you will be liable for all use of the Service using a Device stolen from you and any and all stolen, fraudulent or unauthorized use of the Service.

**1.10 Number Transfer on Service Termination.** Upon the termination of your Service, we shall, release to your new service provider the telephone number that you ported (transferred or moved over) to us from your previous service provider and used in connection with your Service if:

- (a) such new service provider is able to accept such number;

(b) you request the transfer upon terminating your account; and

(c) your account is paid up to date, as defined in Section 1.3.

**1.11 Service Distinctions.** The Service is not a telecommunications service and we provide it on a best efforts basis. Important distinctions exist between telecommunications service and the Service offering that we provide. The Service is subject to different regulatory treatment than telecommunications service. This treatment may limit or otherwise affect your rights of redress before regulatory agencies.

**1.12 Ownership and Risk of Loss.** You will own the Device and bear all risk of loss of, theft of, casualty to or damage to the Device, from the time it is shipped to you until the time (if any) when it is returned to us in accordance with this Agreement.

**1.13 No 0+ or Operator Assisted Calling; May Not Support x11 Calling.** The Service does not support 0+ or operator assisted calling (including, without limitation, collect calls, third party billing calls or calling card calls). The Service may not support 311, 511 and/or other x11 (other than certain specified dialing such as 911 and 411, which are provided for in Section 5 of this Agreement) services in one or more (or all) service areas.

**1.14 Directory Listing.** The phone numbers you obtain from us will be listed in telephone directories. SecureNetMD is not responsible for any paid advertised listing (i.e. yellow pages, local book or similar paid phone number advertisements).

#### **1.15 Incompatibility with Other Services.**

(a) *Security Systems.* The Service may not be compatible with security systems. You may be required to maintain a telephone connection through your local exchange carrier in order to use any alarm monitoring functions for any security system installed in your home or business. You are responsible for contacting the alarm monitoring company to test the compatibility of any alarm monitoring or security system with the Service.

(b) *Certain Broadband and Cable Modem Services.* You acknowledge that the Service presently may not be compatible with some broadband services. You further acknowledge that some providers of broadband service may provide modems that prevent the transmission of communications using the Service. We do not warrant that the Services will be compatible with all broadband services and expressly disclaim any express or implied warranties regarding the compatibility of the Service with any particular broadband service.

## **2. CHARGES; PAYMENTS; TAXES**

**2.1 Billing.** When the service is activated, you must provide us with a valid email address and a credit or debit card number from a card issuer that we accept. We reserve the right to stop accepting credit or debit cards from one or more issuers. If your credit or debit card expires, you close your account, your billing address changes, or your credit or debit card is canceled and replaced on account of loss or theft, you must advise us at once. We will bill all charges, applicable taxes and surcharges monthly NET 30 (except for usage-based charges, which will be billed monthly in arrears, and any other charges which we decide to bill in arrears) via invoice pay, including but not limited to:

- Activation fees;

- Monthly Service fees;
- International usage charges;
- Advanced feature charges;
- Equipment purchases;
- Termination fees (as defined in Section 3.2); and
- Shipping and handling charges.

Notification of monthly invoices will be sent to you via email to the email address on file with us. Any usage charges will be billed in increments that are rounded up to the nearest minute, except as otherwise set forth in the rate schedules found on our website ([www.SecureNetMD.com](http://www.SecureNetMD.com), the “Website”). Price changes will be posted on [the](#) Website. It is your responsibility to check the Website to see if pricing rates have been updated. Your continued use of the Service constitutes your acceptance of such changes. The rate schedules, when posted, supersede all previously agreed to rates.

**2.2 Billing Disputes.** You must notify us in writing within ten (10) days after receiving your credit or debit card statement if you dispute any SecureNetMD charges on that statement or you will be deemed to have waived any right to contest such charges. All notices of disputed charges should be sent to:

SecureNetMD, LLC  
Attn: Billing Department  
16557 Coastal Highway  
Lewes, DE 19958

### **2.3 Payment and Collection.**

(a) *Payment.* We only accept payment by check, credit or debit card, unless other payment terms have been explicitly agreed to in writing by SecureNetMD. Your subscription to the Service authorizes us to charge your credit or debit card. This authorization will remain valid until 30 days after we receive written notice from you terminating our authority to charge your credit or debit card, whereupon we will charge your credit or debit card for the Termination Fee (as defined in Section 3.2.), if applicable, and any other outstanding charges and terminate your Service. We may terminate your Service at any time in our sole and absolute discretion if any charge to your credit or debit card is declined or reversed, your credit or debit card expires and you have not provided us with a valid replacement credit or debit card or in case of any other non-payment of account charges.

(b) *Collection.* If your Service is terminated, you will remain fully liable to us for all charges pursuant to this Agreement and any and all costs we incur to collect such amounts, including, without limitation, collection costs and attorney's fees.

**2.4 Taxes.** You are responsible for all applicable federal, state, provincial, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility or other taxes, fees or charges now in force or enacted in the future, that arise from or as a result of your subscription or use or payment for the Service or a Device. Such amounts are in addition to payment for the Service or Devices and will be billed to your credit card as set forth in this Agreement. If you are exempt from payment of such taxes, you must provide us with an original certificate that satisfies applicable legal requirements attesting to tax-exempt status. Tax exemption will only apply from and after the date we receive such certificate.

**2.5 Payphone Charges.** If you use our "Toll Free" feature or any toll free feature that we offer in the future, we will be entitled to recover from you any charges imposed on us either directly or indirectly in connection with toll free calls made to your number. We may recover these amounts by means of a per-call charge, rounded up to the next cent (\$0.01), or in such other fashion as we deem appropriate for the recovery of these costs.

**2.6 Charges for Directory Calls (For example: 215-555-1212 or 411).** SecureNetMD does not offer 411 dialing by default. We will charge you \$1.50 for each call made to directory assistance.

**2.7 Charges for Conference Bridge Calls.** We will charge you per minute for each caller who calls into your Conference Bridge. Your Conference Bridge per minute usage fee will be the lower of (i) 3.9 cents per minute, or (ii) the per minute Conference Bridge usage fee determined in your Service Activation Form or online order form. The per minute usage fee will be calculated based on all participants on the conference bridge, including on-network and off-network participants.

### 3. TERMINATION

**3.1 Termination; Discontinuance of Service.** If a breach of any provision of this Agreement occurs, written notification will be provided, and you will have Thirty (30) days from notification to remedy your breach of this Agreement. If you fail to remedy your breach of this Agreement within Thirty (30) days, or, if such breach is of such nature that it cannot be cured in such thirty (30) day period, and you have undertaken to remedy the breach, termination may occur immediately and you will be responsible for the full Term's charges to the end of the current month, and the Termination Fee, as defined in Section 3.2.

**3.2 Termination Fee.** If the customer, for any reason, including but not limited to those set out in Section 3.1 or moving to another facility, terminates the Agreement prior to the end of the Term, regardless of return of equipment, customer shall be responsible for payment for the balance of the current Term, as a Termination Fee, including, without limitation, unbilled charges if applicable, which will immediately become due and payable in full (hereinafter "Termination Fee"). Expiration of the Term or termination of Service will not excuse you from paying all accrued and unpaid charges due under this Agreement.

### 4. LIMITATION OF LIABILITY; INDEMNIFICATION; WARRANTIES

**4.1 Limitation of Liability.** We will not be liable for any delay or failure to provide the Service, including 911 Dialing, at any time or from time to time, or any interruption or degradation of voice quality that is caused by any of the following:

- an act or omission of an underlying carrier, service provider, vendor or other third party;
- equipment, network or facility failure;
- equipment, network or facility upgrade or modification;
- force majeure events such as (but not limited to) acts of God, acts of nature, strikes, fire, war, riot, acts of terrorism and government actions;
- equipment, network or facility shortage;
- equipment or facility relocation;
- service, equipment, network or facility failure caused by the loss of power to you;
- outage of, or blocking of ports by, your ISP or broadband service provider or other impediment to usage of the Service caused by any third party;
- any act or omission by you or any person using the Service or Device provided to you; or

- any other cause that is beyond our control, including, without limitation, a failure of or defect in any Device, the failure of an incoming or outgoing communication, the inability of communications (including, without limitation, 911 Dialing) to be connected or completed, or forwarded.

As set forth in Section 4.9, we will not be liable for any call recordings, storage, transfer, backup, recall, deletions or any other functionality involving the recording of conversations.

**4.2 Liquidated Damages.** Both parties acknowledge and consent that SecureNetMD's aggregate liability for the breach of any of the terms of this Agreement will in no event exceed the Service charges collected on your account with respect to the affected time period.

**4.3 Disclaimer of Liability for Damages.** IN NO EVENT WILL SECURENETMD, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS OR ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION THE SERVICE BE LIABLE FOR ANY DIRECT, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER DAMAGES, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, WRONGFUL DEATH, PROPERTY DAMAGE, LOSS OF DATA, LOSS OF REVENUE OR PROFITS, OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE THE SERVICE, INCLUDING INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL THROUGH THE 911 DIALING SERVICE OR TO OBTAIN EMERGENCY HELP. THE LIMITATIONS SET FORTH HEREIN APPLY TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT AND ANY AND ALL OTHER THEORIES OF LIABILITY AND APPLY WHETHER OR NOT WE WERE INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGES.

#### **4.4 Indemnification and Survival.**

- (a) *Indemnification.* You shall defend, indemnify, and hold harmless SecureNetMD, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection with the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys fees) by, or on behalf of, you or any third party or user of the Service, relating to the Services, including, without limitation, 911 Dialing, or the Device.
- (b) *Survival.* The provisions of this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall survive.

**4.5 No Warranties on Service.** WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SERVICE OR DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, WE DO NOT WARRANT THAT THE SERVICE OR DEVICE WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. NEITHER SECURENETMD NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS, OR ANY OTHER SERVICE PROVIDER OR VENDOR WHO FURNISHES SERVICES DEVICES, OR PRODUCTS TO CUSTOMER IN CONNECTION WITH THE SERVICE, WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO OUR OR YOUR TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION

THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF SECURENETMD'S OR ITS SERVICE PROVIDER'S OR VENDORS' NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR DEVICE, IF ANY, BY SECURENETMD OR SECURENETMD'S AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

#### **4.6 Device Warranties.**

- (a) *Limited Warranty.* Except as set forth herein, if you received the Device new from us and the Device included a limited warranty at the time of receipt, you must refer to the separate limited warranty document provided with the Device for information on the limitation and disclaimer of certain warranties. Remedies for breach of any such warranties will be limited to those expressly set forth in such documentation.
- (b) *No Warranty.* If your Device did not include a limited warranty from us at the time of receipt, you are accepting the Device "as is". You are not entitled to replacement, repair or refund in the event of any defect.
- (c) *Disclaimer.* OTHER THAN WARRANTIES AS TO THE DEVICE EXPRESSLY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE AND THE RETAIL CUSTOMER LIMITED WARRANTY EXPRESSLY SET FORTH HEREIN, WE MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS OF THE DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE DEVICE OR ANY FIRMWARE OR SOFTWARE IS "ERROR FREE" OR WILL MEET CUSTOMER'S REQUIREMENTS. THE FOREGOING WILL NOT BE DEEMED TO LIMIT ANY DISCLAIMER OR LIMITATION OF WARRANTY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE. DEVICE WARRANTIES DO NOT APPLY TO BUSINESS CUSTOMERS.

**4.7 No Third-Party Beneficiaries.** No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third-party beneficiary rights.

**4.8 Content.** You will be liable for any and all liability that may arise out of the content transmitted by you or to any person, whether authorized or unauthorized, using your Service or Device (each such person, a "User"). You shall assure that your and your User's use of the Service and content comply at all times with all applicable laws, regulations and written and electronic instructions for use. We reserve the right to terminate or suspend your Services and remove your or your Users' content from the Service, if we determine, in our sole and absolute discretion, that such use or content does not conform with the requirements set forth in this Agreement or interferes with our ability to provide Services to you or others. Our action or inaction under this Section will not constitute any review or approval of your or Users' use or content.

**4.9 Recording Conversations.** SecureNetMD provides a function that allows a user or Subscriber to record individual telephone conversations. The laws regarding the notice and notification requirements of such recorded conversations vary by state to state. Subscriber is solely responsible for applying the local laws in the relevant jurisdiction when using this feature.

## 5. EMERGENCY SERVICES - 911 DIALING

**5.1 Non-Availability of Traditional 911 or E911 Dialing Service.** The Service does not support traditional 911 or E911 access to emergency services in all locations. Where we do not offer traditional 911 or E911 access, we offer a feature known as "911 Dialing" which is a limited emergency calling service available only on SecureNetMD certified Devices or Equipment. The 911 Dialing feature may not work at all when used in conjunction with a Soft Phone, Virtual Numbers or Subscriber provided Customer Premise Equipment. Our 911 Dialing feature is not automatic; you must separately take affirmative steps, as described in this Agreement and on our Website, to register the address where you will use the Services in order to activate the 911 Dialing feature. You must do this for each SecureNetMD phone number that you obtain. You shall inform any household residents, guests and other third persons who may be present at the physical location where you utilize the Service of (i) the non-availability of traditional 911 or E911, and (ii) the important differences in and limitations of the SecureNetMD 911 Dialing feature as compared with traditional 911 or E911 dialing. The documentation that accompanies each Device that you purchase should include a sticker concerning the potential non-availability of traditional 911 or E911 dialing (the "911 Sticker"). It is your responsibility, in accordance with the instructions that accompany each Device, to place the 911 Sticker on each Device that you use with the Service. If you did not receive a 911 Sticker with your Device, or you require additional 911 Stickers, please contact our customer care department at (302)703-9717.

**5.2 Registration of Physical Location Required.** For each phone number that you use for the Service, you must register with SecureNetMD the physical location where you will be using the Service with that phone number. When you move the Device to another location, you must register your new location and notify SecureNetMD immediately. If you do not register your new location, any call you make using the 911 Dialing feature may be sent to an emergency center near your old address. You will register your initial location of use when you subscribe to the Service. Thereafter, you may register a new location by following the instructions from the "911" registration link on your SecureNetMD web administrative portal features page. For purposes of the 911 Dialing feature, you may only register one location at a time for each phone line you use with the Service.

**5.3 Confirmation of Activation Required.** Your 911 Dialing feature will not be activated for any phone line that you are using with the Service, unless and until you receive an email from us confirming that the 911 Dialing feature has been activated for that phone line or you are otherwise notified by a SecureNetMD representative.

**5.4 How Emergency Personnel are contacted.** We contract with a third-party to use the address of your registered location to determine the nearest emergency response center and then forward your call to a general number at that center. When the center receives your call, the operator will not have your address and may not have your phone number. You must therefore provide your address and phone number in order to get help. Some local emergency response centers may decide not to have their general numbers answered by live operators 24 hours a day. If we learn that this is the case, we will send your call instead to a national emergency calling center and a trained agent will contact an emergency center near you to dispatch help. You hereby authorize us to disclose your name and address to third-party service providers, including, without limitation, call routers, call centers and public service answering points, for the purpose of dispatching emergency services personnel to your registered location.

### **5.5 Service Outages.**

- (a) *General Disruption.* There are a variety of circumstances where our Services, including 911 Dialing, may not function. You acknowledge that SecureNetMD is not responsible for any loss of service, including 911 Dialing that may result under such circumstances.



- (b) *Service Outages Due to Power Failure or Disruption.* 911 Dialing does not function in the event of a power failure or disruption. If there is an interruption in the power supply, the Service, including 911 Dialing, will not function until power is restored. Following a power failure or disruption, you may need to reset or reconfigure the Device prior to utilizing the Service, including 911 Dialing.
- (c) *Service Outages Due to Internet Outage or Suspension or Termination of Broadband Service or ISP Service.* Service outages or suspensions or terminations of service by your broadband provider or ISP will prevent all Service, including 911 Dialing, from functioning.
- (d) *Service Outage Due to Suspension or Termination of Your SecureNetMD Account.* Service outages due to suspension or termination of your account will prevent all Service, including 911 Dialing, from functioning.
- (e) *Service Outages Due to ISP or Broadband Provider Blocking of Ports or Other Acts.* Your ISP or broadband provider or other third party may intentionally or inadvertently block the ports over which the Service is provided or otherwise impede the usage of the Service. In that event, provided that you alert us to this situation, we will attempt to work with you to resolve the issue. During the period that the ports are being blocked or your Service is impeded, and unless and until the blocking or impediment is removed or the blocking or impediment is otherwise resolved, your Service, including the 911 Dialing feature, may not function. You acknowledge that SecureNetMD is not responsible for the blocking of ports by your ISP or broadband provider or any other impediment to your usage of the Service, and any loss of service, including 911 Dialing that may result. In the event you lose service as a result of blocking of ports or any other impediment to your usage of the Service, you will continue to be responsible for payment of the Service charges unless and until you terminate the Service in accordance with this Agreement.
- (f) *Other Service Outages.* If there is a Service outage for any reason, such outage will prevent all Service, including 911 Dialing, from functioning. Such outages may occur for a variety of reasons, including, but not limited to, those reasons described in Sections 5.5(b)-(e) of this Agreement.

**5.6 Re-Activation Required if You Change Your Number or Add or Port New Numbers.** 911 Dialing does not function if you change your phone number or if you add or port new phone numbers to your account, unless and until you successfully register your location of use for each changed, newly added or newly ported phone number.

**5.7 Network Congestion; Reduced Speed for Routing or Answering 911 Dialing Calls.** There may be a greater possibility of network congestion and/or reduced speed in the routing of a 911 Dialing call made utilizing the Service as compared to traditional 911 dialing over traditional public telephone networks.

**5.8 Possible Lack of Automatic Number Identification.** It may or may not be possible for the local emergency personnel to automatically obtain your phone number when you use 911 Dialing. Our system is configured to send the automatic number identification information; however, one or more other telephone companies route the traffic to the emergency response center and that center may not be capable of receiving and passing on that information. As a result, the operator who answers your 911 Dialing call may not be able to automatically obtain your phone number and call you back if the call is not completed or is not forwarded, is dropped or disconnected, if you are unable to speak to tell the operator your phone number, or if the Service is not operational for any reason.

**5.9 No Automated Location Identification.** In most service areas, it is not possible at this time to transmit to the local emergency response center the address that you registered for 911 Dialing. You will need to state the nature of your emergency promptly and clearly, including your location (and possibly your telephone number), as the operator will not have this information. Emergency personnel will not be able to find your location if the call is not completed or is not forwarded, is dropped or disconnected, if you are unable to speak to tell the operator your location, or if the Service is not operational for any reason.

**5.10 Disclaimer of Liability and Indemnification.** SecureNetMD does not have any control over whether, or the manner in which, calls using our 911 Dialing service are answered or addressed by any local emergency response center. We disclaim all responsibility for the conduct of local emergency response centers and the national emergency calling center. We rely on third parties to assist us in routing 911 Dialing calls to local emergency response centers and to a national emergency calling center. We disclaim any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. Neither SecureNetMD, nor its officers or employees may be held liable for any claim, damage, or loss, and you hereby waive any and all such claims or causes of action, arising from or relating to our 911 Dialing service unless such claims or causes of action arose from our gross negligence, recklessness or willful misconduct. You shall defend, indemnify, and hold harmless SecureNetMD, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorney's fees) by, or on behalf of, you or any third party relating to the absence, failure or outage of the Service, including 911 Dialing, incorrectly routed 911 Dialing calls, and/or the inability of any user of the Service to be able to use 911 Dialing or access emergency service personnel. Alternate 911 Arrangements. If you are not comfortable with the limitations of the 911 Dialing service, you should consider having an alternate means of accessing traditional 911 or E911 services or terminating the Service. We further disclaim any liability for any call recordings, storage, transfer, backup, recall, deletions or any other functionality involving the recording of conversations.

## 6. MISCELLANEOUS

**6.1 Governing Law.** The Agreement, all rights and remedies, and the relationship between the parties shall be governed and construed in accordance with the laws of the Delaware, without regard to conflicts of laws principles. To the extent court action is initiated to enforce an arbitration award or for any other reason consistent with Section 6.2, you shall submit to the personal and exclusive jurisdiction of the state and federal courts of Delaware and irrevocably waive any objection to jurisdiction or venue, and shall not any defense based on lack of jurisdiction or venue or based on inconvenient forum.

**6.2 Mandatory Arbitration and No Jury Trial.** Any dispute or claim between you, any member of your household or any guest or employee of either party, arising out of or relating to the Service or Device, will be resolved by arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration will take place in Delaware. The arbitrator's decision will follow the plain meaning of the relevant documents, and will 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. **REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICE MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR BE FOREVER BARRED.** All claims shall be arbitrated individually. You shall not bring, or join, any class action of any kind in court or in arbitration or seek to consolidate or bring previously consolidated claims in arbitration. **THIS ARBITRATION PROVISION CONSTITUTES**

A WAIVER OF ANY RIGHT TO A JURY TRIAL AND AN AGREEMENT TO BE SUBJECT TO JURISDICTION IN, AND CONDUCT ARBITRAL PROCEEDINGS IN, DELAWARE.

**6.3 Attorney's Fees.** In the event that any arbitration, as described in Section 6.2, or any resulting legal proceeding arises in connection with the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to receive from the other party the prevailing party's costs and expenses, including reasonable attorneys' fees and collection fees, incurred in connection therewith, in preparation therefor and on appeal therefrom.

**6.4 No Waiver of Rights.** Our failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision.

**6.5 Entire Agreement.** This Agreement, including any future modifications as may occur within the terms of the Agreement, and the rates for Services found on our Website constitute the entire Agreement between you and SecureNetMD and govern the use of the Service by you, members of your business, employees and guests. This Agreement supersedes any prior agreements between you and SecureNetMD and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter.

**6.6 Severability.** If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement will remain valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement.

## 7. FUTURE CHANGES TO THIS AGREEMENT

**7.1 Future Changes.** We reserve the right to change the terms and conditions of this Agreement from time to time. Notice by SecureNetMD will be considered given and effective on the date posted on the Website. If in our sole discretion we deem a revision to these Terms to be material, we will notify you via email to the email address associated with your account. Such changes will become binding on you on the 90<sup>th</sup> day after they are posted to the Website and no further notice is required. Price changes will also be posted to the Website, as provided in Section 2.1. Therefore, we encourage you to check the Website to see if these terms of service have been updated. Your continued use of the Service constitutes your acceptance of such changes. The Agreement as and when posted supersedes all previously agreed to electronic and written terms of service, including, without limitation, any terms included with the packaging of the Device, and also supersedes any written terms provided to Retail Customers in connection with retail distribution, including, without limitation, any written terms enclosed within the packaging of the Device.