

**TERMS OF SERVICE**  
**Rainier Connect Digital Phone Service**  
MASHELL TELECOM, INC (D/B/A Rainier Connect)

These Terms of Service constitute the agreement ("Agreement") between Mashell Telecom, Inc d/b/a Rainier Connect the "Company" and the user ("you," "user" or "Customer") of the Company's Residential Digital Phone service and any related products or services ("Service"). This Agreement governs both the Service and any equipment, such as an IP phone, Multimedia Terminal Adapter (MTA), Embedded Multimedia Terminal Adapter (EMTA), Analog Telephone Adapter or any other IP connection Equipment, ("Equipment") used in conjunction with the Service. By activating the Service, you acknowledge that you have read and understood, and you agree, to these Terms of Service, and you represent that you are of legal age to enter this Agreement and become bound by its terms.

## **1. SERVICE**

### **1.1 Term**

**1.1.1** Service is offered on a monthly basis for a term, which begins on the date the Company activates your Service and ends on the day before the same date in the following month. Subsequent terms of this Agreement automatically renew on a monthly basis without further action by you unless you give the Company notice of non-renewal. Rates for the Service are set out on the rate schedules on the Company's web site at [www.RainierConnect.com](http://www.RainierConnect.com), under Legal Notices & Tariffs.

### **1.1.2 PROMOTIONAL OFFERS / TERMINATION PENALTY**

If you received a special promotional discount rate and/or a period of free service or free equipment when signing up for Rainier Connect Digital Phone service and you cancel your service at any time prior to the end of the service commitment, you will be billed for the value of the free service period, free equipment and any difference between the promotional rate and our standard rates for the period your service was active.

### **1.2 Restricted to Residential Use**

**1.2.1** This Service is available for residential customers only. This Service may not be used for any commercial or governmental activities, profit-making or non-profit, including but not limited to home office, business, sales, telecommuting, telemarketing (including without limitation charitable or political solicitation or polling), autodialing, continuous or extensive call forwarding, fax broadcast, fax blasting or any other activity that would be inconsistent with normal residential usage patterns. This Service may not be resold or transferred to any other person for any purpose, nor may you charge others for the use of the Service, without express written permission from the Company in advance. The Company reserves the right to immediately terminate or modify the Service if the Company determines, in its sole discretion, that the Service is being used for non-residential or commercial use.

### **1.2.2 Excessive Use**

Usage in excess of 3,000 minutes per month is considered excessive usage inconsistent with normal residential usage patterns. If Rainier Connect determines, in its sole discretion, that your usage regularly exceeds 3,000 minutes per month, Rainier Connect reserves the right to immediately terminate your Service without advance notice or modify the Service and assess additional charges for each month in which excessive usage occurred.

**1.2.3** If the Service is used for a commercial or governmental activity, Customer agrees to pay the Company three times the applicable residential rate for the period from the time the Customer began using the Service to the date the Service is terminated.

### **1.3 International Calling and Other Measured Services**

Rainier Connect calling plans promoted as having flat monthly fees may not include certain types of calls. International calls are not included in the basic rate for Rainier Connect Digital Phone Service and will always be billed on a per-minute basis. This is the case even if your service plan has been described as having "Unlimited Long

Distance". Operator Assisted calls and Directory Assistance calls are also not included with the basic plan. Rates for these types of calls as well as other measured services are listed in the appropriate Price List or Tariff on Company's web site at [www.RainierConnect.com](http://www.RainierConnect.com), under Legal Notices & Tariffs.

#### **1.4 TTY Calling**

During emergency situations, TTY Callers should directly dial 911 or other emergency numbers. All 911 centers are equipped to handle TTY calls. If you use Relay Service for an emergency rather than dial 911 directly, your urgent call may be delayed.

**1.5 Telecommunications Relay Service ("TRS").** TRS is a free service that connects customers who are deaf, hard of hearing or have speech disabilities with others, using either standard telephone equipment or telephone equipment that has been specifically designed for individuals with disabilities. This service is accessible with Rainier Connect Digital Phone Service. You can access TRS by dialing "711," or using the toll-free number listed in your telephone directory.

#### **1.6 Electrical Power Failures**

Rainier Connect Digital Phone Service does not function in the event of power failure. The Service requires a fully functional broadband connection to the Internet and accordingly, in the event of an outage of, or termination of broadband service, the Service will not function, but you will continue to be billed for the Service unless and until you or the Company terminate the Service. 911 dialing does not function in the event of a power failure or disruption. Should there be an interruption in the power supply, the Service and 911 dialing will not function until power is restored. A power failure or disruption may require the customer to reset or reconfigure equipment prior to utilizing the Service or 911 dialing after power is restored.

#### **1.7 Copyright / Trademark / Unauthorized Usage of Equipment, Firmware or Software**

The Service and Equipment and any firmware or software used to provide the Service or provided to you in conjunction with providing the Service, or embedded in the Equipment, and all Services, information, documents and materials on the Company's website(s) are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "marks") of the Company are and shall remain the exclusive property of the Company and nothing in this Agreement shall grant you the right or license to use any of such marks. You acknowledge that you are not given 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 Equipment, 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 Equipment is exclusively for use in connection with the Service and that the Company will not provide any passwords, codes or other information or assistance that would enable you to use the Equipment for any other purpose. If you decide to use the Service through Equipment not provided by the Company, which the Company reserves the right to prohibit in particular cases or generally, you warrant and represent that you possess all required rights, including software and/or firmware licenses, to use that Equipment with the Service and you will indemnify and hold harmless the Company, its officers, directors, employees and agents against any and all liability arising out of your use of such interface Equipment 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 Illegal Use**

The Service may not be used for any unlawful, abusive or fraudulent purpose, including without limitation, using the Service in a way that (i.) interferes with Rainier Connect's ability to provide service to its customers, (ii) avoids your obligation to pay for communication services, (iii) constitutes a criminal offense, (iv) gives rise to a civil liability, or (v) otherwise violates any laws.

## **1.9 Theft of Service**

You agree to notify the Company immediately, in writing or by calling the Company customer support line, if the Equipment is stolen or if you become aware at any time that your Service is being stolen or fraudulently used. When you call or write, you must provide your account number and a detailed description of the circumstances of the Equipment theft or fraudulent 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 such time as the Company receives notice of the theft or fraudulent use, you will be liable for all use of the Service using Equipment stolen from you and any and all stolen Service or fraudulent use of the Service.

## **1.10 Equipment**

### **1.10.1 Ownership and Risk of Loss**

You shall bear all risk of loss of, theft of, casualty to or damage to the Equipment, from the time it is shipped to you until the time (if any) when it is returned by you pursuant to Section 1.5 and has been received by the Company. This is true whether the Equipment has been leased from the Company or purchased (owned) by the Customer.

### **1.10.2 Battery Replacement and Other Maintenance**

Some equipment may include batteries which will require replacement from time to time in order to function properly. It is solely the responsibility of the Customer to replace batteries and perform any other equipment maintenance when needed at the Customer's own expense, whether the equipment has been purchased or leased by the Customer.

**1.10.3 Security Systems and other Non-voice Communications Equipment.** All non-voice communications equipment (whether or not provided by Rainier Connect), including but not limited to, security and fire systems that are set up to dial call-monitoring centers, fax machines, satellite systems, modems and medical monitoring devices, are not compatible with Rainier Connect Digital Phone Service. By accepting these Terms and Conditions, you waive any claim against Rainier connect for failure of such systems or your Service due to such incompatibility.

### **1.10.4 Tampering with the Equipment or Service**

You agree not to change the electronic serial number or equipment identifier of the Equipment, or to perform a factory reset of the Equipment, without express permission from the Company in each instance, which the Company may deny in its sole discretion. The Company reserves the right to terminate your Service should you tamper with the Equipment, leaving you responsible for all charges described in Section 4.2 of these Terms of Service.

### **1.10.5 Wireless Access Points**

The use of a Wireless Access Point such as a wireless cable modem or wireless switch or router presents security risks that the user needs to be aware of. If you decide to use such a wireless device on your broadband Internet connection and it is not properly configured with a password, WEP Key or WPA Key, others can gain access to your computer(s) and other network devices causing damage to your data, software and the devices themselves. Use of your connection in this manner by others can impinge on your Internet bandwidth and degrade your own service. Further, these unknown persons could use your Internet service for illegal or nefarious purposes. You could be held responsible by law enforcement authorities for these acts of others and possibly become subject to civil or criminal penalties. You acknowledge that you understand this risk and will take steps to properly configure any wireless devices that may be installed on your network so as to prevent unauthorized access to your broadband connection.

### **1.10.6 Return of Equipment**

Upon termination of the Service, user shall be responsible for the return of Company furnished, leased or rented premise equipment or be liable for the cost thereof.

## **1.11 Release of Phone Number**

Upon termination of the Service, the Company may, at its sole discretion, release a telephone number used in connection with a customer's Rainier Connect Digital Phone service to a new service provider, if such new service

provider is able to accept such number, and provided that the customer's account (i) has been terminated; (ii) is completely current including payment for all charges and disconnect fees; and (iii) the customer requests the transfer immediately upon terminating the account.

## **2. IMPORTANT LIMITATIONS - EMERGENCY SERVICES - 911 DIALING**

**2.1** Please read this information carefully. By using the service you acknowledge and accept any limitations of Rainier Digital Phone service regarding 911. You agree to explain these limitations to any and all persons who may have occasion to place calls over the service(s). If you have specific questions about 911 and Rainier Connect Digital Phone service, call us at 1-800-832-5725 or 1-360-832-6161.

### **2.1 Broadband Connection Required**

Rainier Connect Digital Phone service requires a fully functional broadband Internet connection in order to work. Service outages or suspension or termination of broadband service will prevent ALL service, including 911 dialing. Service outages due to suspension of your account as a result of billing issues will prevent ALL Service, including 911 dialing. If there is a service outage for ANY reason, such outage will prevent ALL Service, including 911 dialing. Such outages may occur for a variety of reasons, including, but not limited to those reasons described elsewhere in this Agreement.

### **2.2 Service Moves Affect 911**

911 dialing does not function properly or at all if the customer moves or otherwise changes the physical location to a different street address. Failure to provide to Rainier Connect the current and correct physical address and location of the Equipment used in providing the Service may result in any 911 dialing being routed to the incorrect local emergency service provider. If you move your Rainier Connect Digital Phone equipment to a different location without notifying Rainier Connect at least **10 business days in advance**, the 911 Operator may not be able to identify the correct address. Even if the 911 caller is able to convey the correct address to the 911 Operator, there may be confusion due to the discrepancy between your true location and the location the Rainier Connect Digital Phone system is displaying to the 911 Operator. The 911 call may fail altogether or, if the call is dropped before you are able to provide your true location, the Operator may not be able to call you back to assist you with your emergency. **LIFE-THREATENING DELAYS IN THE RESPONSE TIME OF EMERGENCY RESPONDERS COULD RESULT IF YOU MOVE YOUR EQUIPMENT WITHOUT NOTIFYING RAINIER CONNECT.**

### **2.3 Limitation of Liability and Indemnification for 911**

Please see Section 5 of these Terms of Service.

## **3 CHANGES TO TERMS OF SERVICE**

The Company may change the Terms of Service from time to time. Notices will be considered given and effective on the date posted on to the "Service Announcements" section of the Company's website at [www.rainierconnect.net](http://www.rainierconnect.net). It is incumbent upon the Customer to check for announcements regularly. Such changes will become binding on Customer on the date posted to the Company website and no further notice by the Company is required. The Terms of Service as posted supersedes all previously agreed to electronic and written terms of service, including without limitation any terms included with the packaging of the Equipment and also supersedes any written terms provided in connection with retail distribution, including without limitation any written terms enclosed within the packaging of the Equipment.

## **4 CHARGES / PAYMENTS / DEFAULT / TAXES / TERMINATION**

### **4.1 Billing**

The Company will bill all charges, applicable taxes and surcharges monthly in advance (except for usage-based charges, which will be billed monthly in arrears, and any other charges which the Company decides to bill in arrears). Including but not limited to: activation fees, monthly Service fees, international usage charges, advanced feature charges, equipment purchases, disconnect fees and shipping and handling charges. 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 the Company's website.

#### **4.2 Termination/Discontinuance of Service**

**4.2.1** If your service is terminated for any stated reason, including without limitation, violation of this Agreement, or because of any improper use of the Service or Equipment (such as, but not limited to, your attempts to hack, disrupt, or misuse the Service or your acts or omissions that violate any acceptable use policy of the Company or of a third party provider to which the Company is subject), you will be responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus the Termination Penalty described in Section 1.1.2, all of which immediately become due and payable.

#### **4.2.2 Release of Phone Number**

Upon termination of the Service, the Company may, at its sole discretion, release a telephone number used in connection with a customer's Rainier Connect Digital Phone service to a new service provider, if such new service provider is able to accept such number, and provided that the customer's account (i) has been terminated; (ii) is completely current including payment for all charges and disconnect fees; and (iii) the customer requests the transfer immediately upon terminating the account.

#### **4.3 Taxes**

You are responsible for, and shall pay, any 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, use, or payment for the Service or Equipment.

#### **4.5 Billing Disputes**

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

##### **Billing Department**

**Rainier Connect**

**PO Box 639**

**Eatonville, WA 98328**

### **5 WARRANTY and LIABILITY LIMITATIONS / INDEMNIFICATION**

#### **5.1 Limitation of Liability**

The Company shall 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:

1. Act or omission of an underlying carrier, service provider, vendor or other third party;
2. Equipment, network or facility failure;
3. Equipment, network or facility upgrade or modification;
4. Force majeure events such as (but not limited to) acts of god; strikes; fire; war; riot; government actions;
5. Equipment, network or facility shortage;
6. Equipment or facility relocation;
7. Service, equipment, network or facility failure caused by the loss of power to Customer;
8. Outage of Customer's broadband service;
9. Act or omission of Customer or any person using the Service or Equipment provided to Customer; or
10. Neither the Company nor its officers, directors, employees or agents may be held liable for any claim, damage, or loss. By using the Service you waive any and all such claims or causes of action, arising from or relating to 911 dialing unless it is proven that the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct on the part of the Company.

11. Any other cause that is beyond the Company's control, including without limitation a failure of or defect in any Equipment, the failure of an incoming or outgoing communication, the inability of communications to be connected or completed, or degradation of voice quality.

The Company's aggregate liability for (i) any failure or mistake; (ii) any claim with respect to the Company's performance or nonperformance hereunder or (iii) any Company act or omission in connection with the subject matter hereof shall in no event exceed Service charges with respect to the affected time period.

## **5.2 Disclaimer of Damages**

In no event shall the company, its officers, directors, employees or agents or any other service provider who furnishes services to customer in connection with this agreement or 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 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 be able to dial 911 or to access emergency service personnel through the service. 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 the company was informed of the likelihood of any particular type of damages.

## **5.3 Indemnification**

Customer agrees to defend, indemnify, and hold harmless the Company, its officers, directors, employees and agents and any other service provider who furnishes services to Customer in connection with this Agreement or the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys fees) by, or on behalf of, Customer or any third party or user of Customer's Service, relating to this Agreement, the Services, including 911 dialing, or the Equipment.

The customer agrees to indemnify and hold harmless the Company and its officers, directors, employees and agents from any claim or action arising out of misroutes of 911 calls, including but not limited to customer's failure to follow correct activation procedures for 911 calling or the provision to the Company of incorrect information in connection therewith.

You acknowledge and understand that the Company's liability is limited for any Service outage and/or inability to dial 911 from your line or to access emergency service personnel, as set forth in this Agreement. You agree to defend, indemnify, and hold harmless the Company, its officers, directors, employees and agents and any other service provider who furnishes services to Customer in connection with this Agreement or the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys fees) by, or on behalf of, customer or any third party or user of the Service relating to the absence, failure or outage of the Service, including 911 dialing and/or inability of Customer or any third person or party or user of the Service to be able to dial 911 or to access emergency service personnel.

## **5.4 No Warranties on Service**

The company makes no warranties, express or implied, including but not limited to, any implied warranties of merchantability, fitness of the service 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, the company does not warrant that the service will be without failure, delay, interruption, error or degradation of voice quality or loss of content, data or information. Neither the company nor its officers, directors, employees or agents or any other service provider or vendor who furnishes services or products to customer in connection with this agreement or the service will be liable for unauthorized access to the company's or customer's 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 equipments or any other method, regardless of whether such damage occurs as a result of the company's or

its service provider's or vendors' negligence. Statements and descriptions concerning the service or equipment, if any, by the company or the company's agents or installers are informational and are not given as a warranty of any kind.

### **5.5 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.

### **5.6 Benefit of Bargain**

This Section 5 is the basis of the pricing to customer and is an integral part of bargain. This Section 5 shall survive termination of this Agreement.

### **5.7 Content**

You are liable for any and all liability that may arise out of the content transmitted by or to you or users using the Service. You shall assure that yours and others use of the Service and content will at all times comply with all applicable laws, regulations and written and electronic instructions for use. The Company reserves the right to terminate or suspend affected Service, and/or remove your or users' content from the Service, if the Company determines that such use or content doer not conform with the requirements set forth in this Agreement or interferes with the Company's ability to provide Service to you or others or receives notice from anyone that your or users' use or content may violate any laws or regulations. The Company's actions or inaction under this Section shall not constitute review or approval of your or users' use or content. You will indemnify and hold the Company and its officers, directors, employees and agents harmless against any and all liability arising from the content transmitted by or to you or to Users using the Services. A "user" means any person, whether authorized or unauthorized, using the Service and/or Equipment provided to you.

## **6. OTHER TERMS**

### **6.1 Entire Agreement**

This Agreement as modified by the Company on its web site constitutes the entire agreement between you and the Company and governs your use of the Service, superseding any prior agreements between you and the Company and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter. No amendment to this Agreement shall be binding upon the Company unless and until posted in accordance with Section 3 hereof.

### **6.2 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.

### **6.3 Privacy**

The Company Service utilizes, in whole or in part, the public Internet and third party networks to transmit voice and other communications. The Company is not liable for any lack of privacy which may be experienced with regard to the Service.

### **6.4 Acceptable Use**

Use of the Service is subject to Company's Acceptable Use policies posted Company's web site at [www.RainierConnect.com](http://www.RainierConnect.com), under Policies.