

# SMART PHONE SERVICE & HARDWARE COMMITMENT AGREEMENT



1046 Lithium Drive, Thunder Bay, ON P7B 6G3

Tel.: 623-4400, 1-800-264-9501

Fax: 622-1900, 1-877-729-0746

ACTIVATION DATE: \_\_\_\_\_ PROMO: \_\_\_\_\_

## ASSESSMENT:

### 1. AUTHORIZED SUBSCRIBER INFORMATION (BUSINESS OR PERSONAL)

NEW ACCOUNT     UPGRADE     ADD TO EXISTING \_\_\_\_\_  
ACCOUNT NO. ACCOUNT NAME

COMMUNITY: \_\_\_\_\_ MEID (HEX): \_\_\_\_\_

PORT IN     OLD SERVICE PROVIDER: \_\_\_\_\_ ESN (DEC): \_\_\_\_\_

ESN (HEX): \_\_\_\_\_

PIN NO.: \_\_\_\_\_

MIN (OLD SERVICE PROVIDER)

CELLULAR NUMBER

ACTIVATION TYPE:     PERSONAL     SOLE-OWNERSHIP BUSINESS     INCORPORATED BUSINESS

### 2. HARDWARE COMMITMENT (EARLY CANCELLATION REPAYMENT SCHEDULE)

DEVICE: \_\_\_\_\_ AMOUNT PAID: \_\_\_\_\_

TERM:     30-DAY     12-MONTH     24-MONTH     36-MONTH     OTHER \_\_\_\_\_

MONTHLY CANCELLATION REPAYMENT COMMITMENT:     \$8.00     \$16.00     OTHER \$ \_\_\_\_\_

### 3. VOICE PLANS (MONTHLY ACCESS)

<input type="checkbox"/> SMARTTIME \$19.95	<input type="checkbox"/> SMARTTIME ANYTIME \$64.95	<input type="checkbox"/> DIGITAL 3000 \$125.00	<input type="checkbox"/> CANADIAN 1000 \$179.95
<input type="checkbox"/> SMARTTIME PLUS \$24.95	<input type="checkbox"/> SMARTTIME UNLIMITED \$199.95	<input type="checkbox"/> CANADIAN 250 \$39.95	<input type="checkbox"/> CANADIAN 1500 \$258.95
<input type="checkbox"/> SMARTTIME MORE \$34.95	<input type="checkbox"/> DIGITAL 950 \$95.00	<input type="checkbox"/> CANADIAN 500 \$69.95	<input type="checkbox"/> FAMILY PLAN \$35.00

OTHER PKG NAME: \_\_\_\_\_ MONTHLY ACCESS AMT \$ \_\_\_\_\_

### 4. MANDATORY DATA SERVICE (MONTHLY ACCESS)

SMARTPHONE:     SURF & EMAIL \$25.00 (500MB)     SURF & EMAIL \$30.00 (1GB)     SURF & EMAIL \$45.00 (UNLIMITED)

BLACKBERRY INTERNET SERVICE:     BIS TEXT & EMAIL \$15 (UNLIMITED)     BIS SURF & EMAIL \$25 (500MB)     BIS SURF & EMAIL \$30 (1GB)  
 BIS SURF & EMAIL \$45 (UNLIMITED)     OTHER \_\_\_\_\_ \$ \_\_\_\_\_

BLACKBERRY ENTERPRISE SERVER:     BES SURF & EMAIL \$40 (8MB)     BES SURF & EMAIL \$50 (30MB)     BES SURF & EMAIL \$70 (1GB)

US DATA ROAMING FEATURE:     \$8.00 (2MB)     \$15.00 (5MB)     \$30.00 (10MB)    DEFAULT ROAMING RATE OF 1¢/KB. DATA SERVICE MUST BE MAINTAINED FOR DURATION OF CONTRACT. \_\_\_\_\_

### 5. VOICE FEATURES

CALLER ID \$3.00     WEEKENDS UNLIMITED \$10.00     TOLL DENIAL \$1.95/MTH

TEXT MESSAGING UNLIMITED \$4.95     VISUAL MESSAGE WAITING \$3.00

VOICE MAIL \$7.00     DIRECTORY LISTING \$2.75     OTHER: \_\_\_\_\_

ENHANCE VOICE MAIL \$ \_\_\_\_\_     DO NOT DISPLAY CELL NO.

TEXTING RATE IS 15¢/MESSAGE UNLESS SUBSCRIBING TO A TEXTING FEATURE.

### PERSONAL BILLING AND CREDIT INFORMATION (PLEASE PRINT)

MR     MS    FULL NAME: \_\_\_\_\_ USER NAME: \_\_\_\_\_

ADDRESS (STREET): \_\_\_\_\_

CITY: \_\_\_\_\_ PROVINCE: \_\_\_\_\_ POSTAL CODE: \_\_\_\_\_

HOME NO.: (\_\_\_\_\_) BUSINESS NO.: (\_\_\_\_\_) \_\_\_\_\_

S.I.N.: \_\_\_\_\_ DRIVERS LICENCE: \_\_\_\_\_ BIRTH DATE: \_\_\_\_\_ YR. MO. DAY

CREDIT CARD:     VISA     MC     AMEX    CARD NO.: \_\_\_\_\_ EXPIRY: \_\_\_\_\_ MO. YR.

OCCUPATION: \_\_\_\_\_ TERM EMPLOYED (YRS.): \_\_\_\_\_ EMPLOYER: \_\_\_\_\_ BUSINESS NO.: (\_\_\_\_\_) \_\_\_\_\_

ALTERNATE INQUIRY AUTH (NAME): \_\_\_\_\_ I.D.: \_\_\_\_\_

PERSONAL REFERENCE (NAME): \_\_\_\_\_ PHONE NO.: (\_\_\_\_\_) \_\_\_\_\_

### CORPORATE BILLING AND CREDIT INFORMATION

LEGAL NAME: \_\_\_\_\_

MAILING ADDRESS (STREET): \_\_\_\_\_ SUITE NO.: \_\_\_\_\_

CITY: \_\_\_\_\_ PROVINCE: \_\_\_\_\_ POSTAL CODE: \_\_\_\_\_

ATTN: \_\_\_\_\_ NATURE OF BUSINESS: \_\_\_\_\_ YRS. EST.: \_\_\_\_\_

USER NAME: \_\_\_\_\_ BUSINESS NO.: (\_\_\_\_\_) \_\_\_\_\_ FAX NO.: (\_\_\_\_\_) \_\_\_\_\_

### PAYMENT OPTIONS I AUTHORIZE TBAYTEL MOBILITY TO DEBIT THE TOTAL AMOUNT DUE EACH MONTH FROM MY:

BANK ACCOUNT (A BLANK CHEQUE MARKED 'VOID' IS ATTACHED)

VISA     MASTERCARD     AMERICAN EXPRESS    CARD NO.: \_\_\_\_\_ EXPIRY: \_\_\_\_\_ MO. YR.

### SYSTEM ACCESS FEE    \$75.00/YEAR    OR    \$7.75/MONTH    (NON-REFUNDABLE) \_\_\_\_\_

THE CUSTOMER ACKNOWLEDGES THAT THE TERMS AND CONDITIONS ON THE REVERSE SIDE SHALL FORM PART OF THE AGREEMENT BETWEEN THE CUSTOMER AND TBAYTEL MOBILITY AND BE BINDING UPON THE CUSTOMER (SIGNATURE REQUIRED). THE CUSTOMER CERTIFIES THE ABOVE INFORMATION TO BE TRUE AND CORRECT. THE CUSTOMER CONSENTS TO THE OBTAINING FROM ANY CREDIT REPORTING AGENCY OR CREDIT GRANTOR SUCH INFORMATION AS TBAYTEL MOBILITY MAY REQUIRE FROM TIME TO TIME TO VERIFY THE INFORMATION PROVIDED HEREIN AND THE CREDIT WORTHINESS FOR THE CUSTOMER. PERSONAL INFORMATION ON THIS FORM IS COLLECTED UNDER THE AUTHORITY OF THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION AND WILL BE USED FOR CREDIT, BILLING, DIRECTORY AND COLLECTIONS. I, THE UNDERSIGNED, HEREBY AGREE TO THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT AND AUTHORIZE A HARDWARE COMMITMENT REPAYMENT CHARGE AS SPECIFIED IN THE HARDWARE COMMITMENT SECTION PLUS APPLICABLE TAXES TO MY TBAYTEL ACCOUNT IN THE EVENT THAT TBAYTEL MOBILITY'S SERVICES ARE SUSPENDED OR DISCONTINUED AT ANY TIME BEFORE THE CONTRACT TERM PERIOD FOR ANY REASON WHATSOEVER. QUESTIONS ABOUT THIS COLLECTION SHOULD BE DIRECTED TO: THE SUPERVISOR, 1046 LITHIUM DRIVE, THUNDER BAY, ONTARIO P7B 6G3. TELEPHONE NUMBER 626-2355. FAX 622-1900.

#### TBAYTEL MOBILITY REPRESENTATIVE

BY: \_\_\_\_\_ NAME, PLEASE PRINT

BY: \_\_\_\_\_ SIGNATURE

DEALER CODE \_\_\_\_\_ DATE \_\_\_\_\_

#### CUSTOMER

BY: \_\_\_\_\_ NAME, PLEASE PRINT

BY: \_\_\_\_\_ SIGNATURE \_\_\_\_\_ DATE

# SMART PHONE SERVICE & HARDWARE COMMITMENT AGREEMENT

## TERMS AND CONDITIONS

THIS AGREEMENT for smart phone service (the Service) is between the party whose name appears at the bottom of the reverse side of this Agreement (the Customer) and the Corporation of the City of Thunder Bay/Telephone Department, hereinafter called Tbaytel, 1046 Lithium Drive, Thunder Bay, Ontario.

THIS AGREEMENT shall become effective upon execution by the parties hereto, subject to cancellation by Tbaytel upon failure of the Customer to receive credit approval. For the purpose of this Agreement, the Service period shall commence on the date that the assigned cellular number is activated and continue for the term chosen by the subscriber (the "Initial Service Period") and shall automatically renew for successive periods of thirty (30) days thereafter unless bonded by a term period and until the Agreement is terminated either by the customer or Tbaytel as herein provided.

### 1. TBAYTEL SERVICE

- 1.1 The Service is available to wireless devices equipped for the Service when those units are within range of cell sites located in the Service area served by Tbaytel.
- 1.2 The Customer shall not use the Service for any purpose contrary to law, for annoying any person or in such manner as to interfere unreasonably with the use of the Service by one or more Customers. Without limitation, you may not use (or allow anyone else to use) the Services, our products or your wireless device or equipment to directly or indirectly:
  - a) invade another person's privacy or collect or store personal data about other users; "stalk" or harass another person or entity; harm minors; unlawfully use, possess, post, upload, transmit, disseminate or otherwise make available obscene, profane or pornographic material; post, upload, transmit, disseminate or otherwise make available content that is unlawful, threatening, abusive, libelous, slanderous, defamatory, deceptive or otherwise offensive or objectionable; unlawfully promote or incite hatred; or post, upload, transmit, disseminate or otherwise make available objectionable information, including, without limitation, any transmissions constituting or encouraging conduct that would constitute a criminal offence, give rise to civil liability or otherwise violate any municipal, provincial, federal or international law, order or regulation;
  - b) access any computer, software, data or any confidential, copyright-protected or patent-protected material of any other person, without the knowledge and consent of that person, or use any tools designed to facilitate access, such as "packet sniffers" or port scan a person's computer without that person's consent, or use any tools designed to facilitate these scans;
  - c) upload, post, publish, deface, modify, transmit, reproduce, distribute in any way or otherwise make available information, software or other material protected by copyright or other proprietary or contractual right (such as a non-disclosure agreement) or related derivative works, without obtaining permission of the copyright owner or rightholder;
  - d) restrict, inhibit or interfere with the ability of any person to access, use or enjoy the Internet, the Services or any device or equipment used to connect to the Services, or create an unusually large burden on the Tbaytel network, including, without limitation, posting, uploading, transmitting or otherwise making available information or software containing a virus, lock, key, bomb, worm, trojan horse or other harmful, limiting, destructive or debilitating feature; distributing mass or unsolicited e-mail ("spam"); or otherwise generating levels of traffic sufficient to impede others' ability to send or retrieve information;
- 1.3 This Agreement is for provision of Service only. Tbaytel shall not be responsible for the supply, installation, operation or the maintenance of the Customer's wireless device. The Customer must ensure that his wireless device is technically and operationally compatible with Tbaytel's cellular system and that it complies with the rules and regulations of Industry Canada.
- 1.4 The Customer agrees to abide by all rules and regulations governing the use of the Service that may be issued or adopted by Tbaytel from time to time and furnished to the customer in connection with the provisions of Service.

In addition to our termination rights set out elsewhere in this Agreement, we may suspend or terminate your Services and this Agreement, without notice to you, if you engage in one or more of the above prohibited activities. Additionally, you may be charged for any costs incurred by us or our affiliate(s) in connection with your breach of the terms of this Section, including, without limitation, costs incurred to enforce your compliance with this Section.

### 2. TELEPHONE NUMBER

- 2.1 The Customer shall be assigned a cellular number. The Customer shall have no property right in the cellular number assigned to him in connection with the service and Tbaytel may change such assigned number at such time or times as Tbaytel, in its sole discretion, considers necessary without any liability whatsoever provided that the Customer is provided with reasonable notice in the circumstances.
- 2.2 Customer acknowledges that the NEW NUMBER ACTIVATION for this purchase represents a new subscription and is NOT a replacement for a number de-activated within the last twelve (12) months. Furthermore, the Customer acknowledges that if this new Agreement for Cellular Service includes a free/subsidized phone offer, the free/subsidized phone only applies if the Customer does not de-activate any currently active Tbaytel numbers associated with this company and/or person within the next twelve (12) months from the date of this new Agreement. A recovery charge will be levied against the applicable account in the amount of three-hundred and eighty-five dollars (\$385.00) per new free/subsidized cellular phone offer or six-hundred and thirty dollars (\$630.00) per new free/subsidized data device (i.e. BlackBerry, Treo, Sierra Wireless 1X, ...) offer on this Agreement if a de-activation occurs.
- 2.3 The Customer acknowledges that the assigned cellular number will be displayed to other landline or wireless Call Display/Caller I.D. subscribers where technically possible.

### 3. RATES AND CHARGES

- 3.1 The Customer is responsible for the payment to Tbaytel of the following charges, such charges to accrue from the commencement of the Initial Service period and during any renewal thereof until termination of this Agreement:
  - a) Current Tbaytel charges for the use of the Service including but not limited to fixed monthly access charges and usage charges; and
  - b) Message toll charges and other charges incurred by the Customer to make long distance calls; and
  - c) All charges including message toll charges, data usage charges and other network charges incurred by the Customer in the exercise of roaming privileges described in Section 9.2 as provided by Tbaytel; and
  - d) Directory listings and advertising charges and any other charges paid by Tbaytel to the Corporation of the City of Thunder Bay Telephone Department on the Customer's behalf; and
  - e) All charges for optional features and charges for establishment of the Service pursuant to Tbaytel's schedule of charges revised from time to time; and
  - f) Any Service provided under the terms of a term contract shall not qualify for temporary suspension of service reduced rates; and
  - g) Applicable provincial, local and other taxes which may be levied upon the Service provided or upon the charges payable hereunder.
- 3.2 All charges are due and payable as specified by Tbaytel. Charges will be in accordance with the then current rate schedules as published by Tbaytel from time to time. Accounts past due will be subject to Tbaytel's then current late payment charge as approved by the Canadian Radio-television & Telecommunications Commission from time to time.
- 3.3 The Customer acknowledges that Tbaytel will invoice the Customer through its billing system for the System Access Fee and 911 Fee. These fees are non-refundable. The Customer further acknowledges that he will pay such charges.
- 3.4 Unused free airtime during any monthly period cannot be transferred to any other month(s) nor is it refundable.

### 4. CHANGES IN RATE

- 4.1 Tbaytel reserves the right, without prior notice to the Customer, to change or modify the terms and conditions, rates, charges or any other charges in connection with the Service, as well as with accessing the Service of other telephone companies or telecommunications carriers or in using the Service of other cellular networks with which Tbaytel has roaming Agreements.

### 5. TERMINATION OF SERVICE

- 5.1 If the Initial Service Period is thirty (30) days, this Agreement may be terminated by the subscriber effective after the Initial Service Period upon thirty (30) days prior written notice. If the Initial Service Period is greater than thirty (30) days, subscriber may terminate this Agreement in its entirety by written notice of termination to Tbaytel and by paying to Tbaytel the cancellation repayment commitment amount on the reverse side of this agreement, if no amount is indicated then a rate will be selected from our current hardware commitment table for a device similar to the one specified in this application. This amount will be charged per month remaining on the term of this Agreement. The Customer shall remain liable for all charges for Service which has been provided by Tbaytel. Notwithstanding the termination hereof, the Customer agrees to pay all charges owing to Tbaytel outstanding on the date of termination in accordance with this Agreement.
- 5.2 In the event of theft, loss or destruction of the wireless device used by the Customer, the Customer agrees to pay for all charges up to the time of notification in writing of such theft, loss or destruction, provided however that such charges shall not be less than the fixed charges and in addition any other liability provided for hereunder, including Hardware Commitment charges, which would have occurred during the Service period. Written notification to be received by a Tbaytel Service Representative located at 1046 Lithium Drive.
- 5.3 If the Customer discontinues service or converts to the service of a different carrier before the end of the contract term (see reverse side), then the customer permits Tbaytel to debit the credit card referred to on the reverse, the Hardware Commitment charges.
- 5.4 Temporary Suspension of Service may result in termination of any applicable promotions and the application of cancellation penalties. Furthermore, the Customer must re-activate on a current rate plan.
- 5.5 Should it become necessary to commence collection proceedings to collect on this Agreement, the Customer agrees to pay all costs, including reasonable lawyer's fees, for said collection.
- 5.6 All written notice to be given by the customer shall be made to Tbaytel, 1046 Lithium Drive, Thunder Bay, Ontario, P7B 6G3.

### 6. DEFAULT

- 6.1 The occurrence or happening of any one or more of the following events shall constitute an event of default.
  - a) The Customer fails to make any payments due hereunder when due or otherwise upon Tbaytel's request whether or not an invoice has been rendered; or

- b) The Customer fails to perform or observe any covenant, condition or agreement to be performed or observed by it hereunder; or
  - c) any representation or warranty made by the Customer herein or in any document or certificate furnished by the Customer in connection herewith or pursuant hereto shall have proven to be incurred at any time in any material respect; or
  - d) The Customer uses the Service in a manner that adversely affects Tbaytel Service to another Customer in any way whatsoever; or
  - e) The Customer uses the Service for any purpose contrary to law, for annoying any person or in such manner as to interfere unreasonably with the use of the Service by one or more Customers.
- 6.2 In the event of default, Tbaytel may at Tbaytel's sole option either terminate this Agreement or suspend the Customer's Service as per the Terms of Service as issued by the Canadian Radio - television & Telecommunications Commission and bill the Customer immediately for all outstanding charges accrued up to the date of such termination or suspension. In all such cases, TBayTel incurs no liability whatsoever. The Customer shall be liable for the costs and expenses incurred by Tbaytel by reason of an event of default or the exercise by Tbaytel of its remedies in respect thereof and such costs and expenses, including without limitation, legal costs and early termination charge if applicable, shall be due and payable immediately. Furthermore, Tbaytel shall be entitled and is hereby authorized to charge any amounts due to Tbaytel under this Agreement to any of the Customer's credit cards specified on the reverse hereof.

### 7. LIMITATION OF LIABILITY

- 7.1 Tbaytel does not warrant all uninterrupted working of the Tbaytel Equipment or Service and shall not be liable to any Customer, User or other person for damages resulting from mistakes, omissions, interruptions, delays, errors in transmission, defects in transmission, failure or defects in equipment, coverage, acts of God, fire, explosion, war, riots, strike, lockouts, picketing, boycotts, acts of Government Authorities, causes originating in the facilities or operations of Tbaytel or any part of the publicly switched telephone network or from any other cause of any nature or kind whatsoever and whether similar to the specified causes herein stated. Without restricting generally the foregoing, in no event will Tbaytel be liable for direct, consequential or economic loss or damage, including loss of profits, even if advised of the possibility thereof. The sole compensation or claim is limited to the credit allowance under Section 7.2.
- 7.2 In the event of a Service interruption, Tbaytel shall make a credit allowance, at the Customer's request, in the form of a prorated adjustment to the fixed monthly charges billed to the Customer. The prorated adjustment will be computed by dividing the duration of the Service interruption (measured in 24-hour days from the time the interruption is reported to Tbaytel) by a standard 30-day month and then multiplying that result by the fixed monthly access charge for each interrupted cellular number. A period of time less than 24 hours shall not be credited and an additional period of 12 hours or more shall be considered an additional day. In no case shall the credit exceed the monthly access charge.
- 7.3 No credit allowance will be given for interruption caused by the Customer's negligence or by the Customer's willful acts or for interruptions caused by failure of the Customer's equipment.
- 7.4 Tbaytel shall not be liable for damages for any accident or injury caused by or to a vehicle, watercraft or aircraft owned or operated by the Customer in which a wireless device or supplementary apparatus provided in conjunction therewith is placed or installed.
- 7.5 Tbaytel undertakes only to transmit a signal for the purpose of activating a signal on the wireless device, and accepts no responsibility for the transmission of further intelligence.
- 7.6 If requested to do so by the Customer, Tbaytel will arrange for a Directory Listing to be placed in the telephone directory by Tbaytel in accordance with Tbaytel's tariff. However, Tbaytel shall not be liable for damages arising from errors or omissions in any directory listing, information services, or reference of call to another telephone number, or arising from the omission of a listing from a directory and/or information records at the request of the Customer or of any person purporting to act on its behalf. No liability shall attach to Tbaytel by reason of the continuation of the Customer's listing in a directory after the termination of its Service.
- 7.7 The Customer specifically agrees that Tbaytel will not be liable for any damages resulting from, or in connection with any interruption, or failure of 911, or any emergency service, or identification of the telephone number associated with any person accessing or attempting to access such emergency services from your phone.
- 7.8 The foregoing is Tbaytel's complete and only liability to the Customer.

### 8. CONFIDENTIALITY OF CUSTOMER INFORMATION

- 8.1 Unless a Customer consents in writing or disclosure is pursuant to a legal power, all information kept by Tbaytel other than the Customer's name and address, are considered as confidential and may not be released by Tbaytel to anyone other than:
  - a) the Customer; or
  - b) a person, who in the reasonable judgement of Tbaytel, is acting as an agent for the Customer; or
  - c) another telecommunications carrier or other person providing services to a telecommunications carrier, provided the information is to be used for the establishment of, or the efficient and cost effective provision of wireless service and disclosure is made on a confidential basis with the information to be used solely for that purpose; or
  - d) at a Customer's request to a company providing a directory listing service provided that disclosure or information other than name, address and listed telephone number is made on a confidential basis with the information to be used solely for that purpose; or
  - e) an agent retained by Tbaytel to collect outstanding balances owed to Tbaytel by the Customer, or to perform other administrative functions for Tbaytel provided that the information is released solely for those purposes; or
  - f) to a law enforcement agency whenever Tbaytel has reasonable grounds to believe that the Customer has knowingly supplied Tbaytel with false or misleading information or is otherwise involved in unlawful activities directed against Tbaytel.

### 9. ROAMING

- 9.1 If the Customer operates as a roamer on any other wireless carrier's system pursuant to any roaming Service Agreement entered into by Tbaytel and such other carrier, then in such event, the Customer shall be subject to the limitation of liability provisions as are imposed by such other carrier on its own Customers. The use of such other carriers system by the Customer shall constitute conclusive acceptance of the said limitation of liability provisions with respect to such use.
- 9.2 The Customer shall be responsible for all roaming charges as may be levied by the serving carrier providing roaming privileges and service.

### 10. DEPOSITS

- 10.1 Tbaytel may require the Customer at any time to provide a deposit in an amount satisfactory to Tbaytel to be held by Tbaytel for a minimum of twelve (12) months with interest to the Customer, to be applied by Tbaytel, as Tbaytel may see fit from time to time to amounts outstanding hereunder or outstanding pursuant to the terms of any Agreement for Cellular Service. In the event of termination of this Agreement, through default of the Customer, Tbaytel may retain the deposit as a genuine pre-estimate of damage, not as a penalty.

### 11. EQUIPMENT

- 11.1 Industry Canada requires that all wireless devices used in Canada be certified to meet certain operational and safety requirements. Users should therefore ensure that equipment activated on the Tbaytel Network is approved by Industry Canada. Tbaytel reserves the right NOT to activate any equipment which does not comply.

### 12. COMPLETE AGREEMENT

- 12.1 The parties acknowledge that this Agreement contains the entire agreement of the parties, and that there are no new terms of conditions relating to the subject matter hereof except as set out in this Agreement. This Agreement may not be modified or amended except by the expressed written agreement of the parties.

### 13. GOVERNING LAW

- 13.1 This Agreement shall be governed by and construed in accordance with the laws applicable in the Province of Ontario, and shall be subject to the exclusive jurisdiction of the Courts of Ontario.

### 14. WAIVER

- 14.1 No failure or delay on the part of either party to exercise any right or remedy hereunder, or otherwise arising at law, shall operate as a waiver thereof, nor shall it preclude the further exercise thereof of the exercise of any other right or remedy. Except as expressly provided to the contrary, the remedies provided herein are cumulative and not exhaustive of any remedies provided by law.

### 15. INTERPRETATION

- 15.1 The headings shall not form part of this Agreement. This Agreement shall be read with all changes of number and gender required by the context. In witness whereof, the parties hereto have executed this agreement as of the date of activation.

### 16. END USER / SOFTWARE LICENSE AGREEMENT

- 16.1 The customer agrees to comply to the End-User Software License Agreements for use of Tbaytel's data network and use of various manufacturers' wireless data devices. Research In Motion (RIM) provides an End-User Software License Agreement in the "Software License Agreement and Warranty Booklet" provided to you upon the purchase of your BlackBerry device and a copy is also available online at [http://www.blackberry.com/legal/soft\\_lic\\_agree.shtml](http://www.blackberry.com/legal/soft_lic_agree.shtml).
- 16.2 In addition the customer agrees to abide by Export Restrictions placed on data devices such as the BlackBerry with details of this restriction found in the "Software License Agreement and Warranty Booklet" provided to you upon the purchase of your BlackBerry device and a copy is also available online at [http://www.blackberry.com/legal/soft\\_lic\\_agree.shtml](http://www.blackberry.com/legal/soft_lic_agree.shtml).