

# End User License Agreement for METRONET GO ("Agreement")

## Important Points

Please read this Agreement carefully before installing or using **METRONET GO** (the "Product"). There are a few important points that we need to emphasize:

- **THE PRODUCT IS NOT INTENDED, DESIGNED OR FIT FOR ACCESS TO EMERGENCY SERVICES.** There are important differences between traditional telephone services and the Product. It is your responsibility to obtain, separately from the Product, traditional wireless (mobile) or fixed line telephone services that offer access to emergency services. The Product is not a replacement for your primary telephone service.
- **IN SOME LOCATIONS THERE MAY RESTRICTIONS ON YOUR USE OF THE PRODUCT OR FEATURES OR FUNCTIONS PROVIDED BY THE PRODUCT.** It is your responsibility to ensure that you are legally allowed to use the Product where you are located.

### 1. ACCEPTANCE OF AGREEMENT; CHANGES.

- 1.1. This is a legally binding contract between you (either an individual or a single entity) on the one hand, and Metro Fibernet, LLC and CMN-RUS, Inc. (collectively with its affiliated companies, "Metronet"), on the other hand. In order to install or use the Product, you must first accept this Agreement. This Agreement is accepted by you when: (a) you click to accept or agree to the Agreement, or (b) when you install and/or use the Product. The use of the Product may be subject to separate third party terms of service and fees, including without limitation the terms of service of and fees charged by other service providers.
- 1.2. The Product is not intended for use by persons under the age of thirteen (13). If you are under 13 years old, you may not use the Product or provide Metronet with any personal information.
- 1.3. By installing or using the Product, you affirm that you (a) are either over the age of majority in your jurisdiction of residence, are an emancipated minor or possess legal parental or guardian consent, (b) are fully able and competent to enter into the terms and conditions of this Agreement, and (c) agree to be bound by all of the terms and conditions of this Agreement.
- 1.4. Metronet may make changes to this Agreement from time to time, and the changes will become effective at the earliest of the following: (a) you click to accept or agree to the modified Agreement, or (b) you install and/or use a new version of the Product that is subject to the modified Agreement.

### 2. LICENSE.

- 2.1. Subject to your compliance with this Agreement, including any additional terms set out in Section 13 (as applicable), Metronet grants you a non-exclusive, non-transferable, limited, revocable license to install and use the executable code version of the Product for personal or internal business purposes. This license does not entitle you to receive from Metronet hard-copy documentation, technical support, telephone assistance, or enhancements or updates to the Product. All rights not granted under this Section 2.1 are reserved to Metronet and its suppliers and licensors.

#### 2.2. License Restrictions. You may not:

- a. modify or create any derivative works of the Product or documentation, including customization, translation or localization;
- b. decompile, disassemble, reverse engineer, "unlock", attempt to access or otherwise attempt to discover the source code for the Product, unless and to the extent as may be required under applicable law or under the licensing terms governing use of any software components that are included in the Product that are subject to "open source software" licenses as defined by the open source initiative at [www.opensource.org/osd.html](http://www.opensource.org/osd.html) ("Open Source Software");
- c. redistribute, encumber, sell, rent, lease, sublicense, or otherwise transfer rights to the Product;
- d. remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Product; or
- e. publish any results of benchmark tests run on the Product to a third party.

- 2.3. **Proprietary Rights.** The Product is licensed to you, not sold. This Agreement does not grant you title to or ownership of any copy of the Product. Title, ownership rights, and intellectual property rights in the

Product shall remain with Metronet and/or its suppliers and licensors. The Product is protected by copyright, trademark and other intellectual property laws and by international treaties.

3. **PRIVACY.** You consent to the collection and use of information about you and your use of the Product in accordance with the Metronet Privacy Policy, which you can find at [www.metronet.com/aup-privacy](http://www.metronet.com/aup-privacy). By using the Product you acknowledge that you have read this policy and that you will periodically check this website to receive any updated terms. You also acknowledge that information collected about you under the Privacy Policy may include, but is not limited to, technical, diagnostic and/or personally identifiable information about you, your systems, your location and your use of Product.
4. **THIRD PARTY SITES; THIRD PARTY TECHNOLOGY.**
  - 4.1. The Product may contain links to external websites for your convenience. You acknowledge and agree that Metronet is not responsible for, and has no control over, these sites. Links to external sites should not be taken as a recommendation or endorsement of the external site's information, products or services by Metronet.
  - 4.2. **Open Source Software.** As set forth in the "About" menu in the Product, the Product contains Open Source Software. To the extent that this Agreement is incompatible with a license governing an Open Source Software component contained within the Product, such Open Source Software component will not be subject to the terms and conditions of this Agreement. Nothing in this Agreement should be construed to limit your rights under or to grant you rights that supersede the terms and conditions of any applicable Open Source Software license.
5. **DISCLAIMER OF WARRANTIES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THIS PRODUCT IS USED AT YOUR SOLE RISK AND THE PRODUCT IS PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES THAT IT IS FREE OF DEFECTS, VIRUS FREE, SECURE, ABLE TO OPERATE ON AN UNINTERRUPTED OR ERROR-FREE BASIS, COMPATIBLE WITH ANY OPERATING SYSTEM OR DEVICE, MERCHANTABLE, FIT FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER METRONET NOR ITS SUPPLIERS OR LICENSORS HAS ANY OBLIGATION TO INDEMNIFY OR DEFEND YOU AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. THIS DISCLAIMER OF WARRANTIES AND THE OTHER PROVISIONS OF THIS SECTION 5 CONSTITUTE AN ESSENTIAL PART OF THE BASIS FOR THE BARGAIN PURSUANT TO THIS AGREEMENT. NO USE OF THE PRODUCT IS AUTHORIZED UNDER THIS AGREEMENT EXCEPT AS SUBJECT TO THE DISCLAIMER OF WARRANTIES AND OTHER PROVISIONS OF THIS SECTION 5.
6. **LIMITATION OF LIABILITY.**
  - 6.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL METRONET OR ITS PARENT, AFFILIATE OR SUBSIDIARY COMPANIES, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS, SUPPLIERS OR LICENSORS, EVEN IF ADVISED OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE, BE LIABLE FOR (A) ANY CLAIMS, LOSSES OR DAMAGES ARISING EITHER DIRECTLY OR INDIRECTLY FROM THE USE OF, OR THE INABILITY TO USE, THE PRODUCT FOR EMERGENCY CALLS TO EMERGENCY SERVICES AND FOR CALLS FOR THE PURPOSE OF OBTAINING ASSISTANCE, HELP OR AID IN THE EVENT OF ANY EMERGENCY, OR (B) ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE PRODUCT, INCLUDING, WITHOUT LIMITATION, CLAIMS OF THIRD PARTIES, OR FOR LOSSES DUE TO LOST PROFITS, INCOME OR SAVINGS, WORK STOPPAGE, OPPORTUNITY COSTS, LOSS, THEFT OR CORRUPTION OF DATA, COMPUTER FAILURE OR MALFUNCTION OR LOSS OF USE OF FACILITIES OR EQUIPMENT.
  - 6.2. METRONET'S AND ITS SUPPLIERS' AND LICENSORS' TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE MANUFACTURE, SALE OR SUPPLYING OF THE PRODUCT OR THE USE, OPERATION OR INSTALLATION OF THE PRODUCT, BASED ON ANY CAUSE OF ACTION OR LEGAL THEORY, INCLUDING WITHOUT LIMITATION WARRANTY, CONTRACT, TORT (REGARDLESS OF THE DEGREE OF FAULT),

INFRINGEMENT AND STRICT LIABILITY, SHALL NOT EXCEED THE GREATER OF THE SUM OF THE FEES YOU PAID FOR THIS LICENSE (IF ANY) AND TEN DOLLARS (US \$10).

- 6.3. THE LIABILITIES LIMITED BY THIS SECTION 6 INCLUDE WITHOUT LIMITATION LIABILITY FOR NEGLIGENCE AND APPLY EVEN IF YOUR REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE, EXCEPT THAT NOTHING IN THIS SECTION 6 SHALL LIMIT METRONET'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE. TO THE EXTENT THAT APPLICABLE LAW RESTRICTS THE APPLICATION OF THIS SECTION 6, THE PROVISIONS OF THIS SECTION 6 WILL APPLY TO THE MAXIMUM EXTENT PERMITTED.
7. INDEMNITY. YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS METRONET AND ITS PARENT, AFFILIATE AND SUBSIDIARY COMPANIES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS, SUPPLIERS AND LICENSORS, FROM ANY AND ALL THIRD PARTY CLAIMS, LIABILITY, DAMAGES, EXPENSES AND COSTS (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES) ARISING FROM (A) YOUR USE OF THE PRODUCT, (B) YOUR NEGLIGENCE, FRAUD OR WILFUL MISCONDUCT, (C) YOUR VIOLATION OF THIS AGREEMENT OR ANY APPLICABLE LAW, RULE OR REGULATION OR (D) YOUR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT OR OTHER RIGHT OF ANY PERSON OR ENTITY. YOU AGREE TO NOTIFY METRONET IMMEDIATELY OF ANY SUCH BREACH, VIOLATION OR INFRINGEMENT KNOWN TO YOU.
8. EXPORT RESTRICTIONS; COMPLIANCE WITH LAWS.
- 8.1. You represent and warrant that you: (a) are not located in a country that is subject to a U.S. Government embargo or that has been designated by the U.S. Government as a "terrorist supporting" country; and (b) are not listed on any U.S. Government list of prohibited or restricted parties. You acknowledge that the Product may be subject to the export and import laws of the U.S. and other countries. You agree to comply with all international and national laws that apply to the Product, including the U.S. Export Administration Regulations and all end-user, end-use and destination restrictions issued by U.S. and other governments.
- 8.2. In some locations there may be restrictions on your use of the Product or features or functions provided by the Product, including without limitation the call recording function which is available on some versions of the Product. It is your responsibility to ensure that you are legally allowed to use the Product where you are located. Applicable law may require you to advise all participants on a call prior to activating the call recording function available on some versions of the Product, otherwise restrict your use of the call recording function or prohibit the recording of any call. You agree that you will not use the Product or any features provided by the Product for any purposes prohibited by U.S. or other applicable law.
9. NOT INTENDED TO ACCESS EMERGENCY SERVICES. You expressly acknowledge and agree that:
- 9.1. The Product is not intended, designed or fit for placing, carrying or supporting emergency calls to any hospitals, law enforcement agencies, medical care units, emergency services personnel, public safety answering points or any other kind of emergency services or any other calls for the purposes of obtaining assistance, help or aid in the event of an emergency.
- 9.2. There are important differences between traditional telephone services and the Product. The Product is not a replacement for your primary telephone service. It is your responsibility to obtain, separately from the Product, traditional wireless (mobile) or fixed line telephone services that offer access to emergency services.
10. PROHIBITED USES. You may not use, encourage, promote, facilitate or instruct others to use the Product for any illegal, harmful or offensive use, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful or offensive. You agree that your use of the Product shall in no way, and to no extent, whether directly or indirectly, adversely affect, impede or otherwise hinder or disrupt the functionality or performance of the platform or systems on which the Product runs. Prohibited activities or content include:
- 10.1. Illegal Activities. Any activities that violate any applicable laws, rules or regulations, including without limitation, all applicable laws relating to the privacy of communications and wiretapping laws.
- 10.2. Harmful or Fraudulent Activities. Activities that may be harmful to other users of the Product, their operations, or their reputations, including without limitation, offering or disseminating fraudulent goods, services, schemes or promotions (e.g., make-money-fast schemes, Ponzi and pyramid schemes, phishing or pharming), or engaging in other deceptive practices.
- 10.3. Infringing Content. Content that infringes or misappropriates the intellectual property or proprietary rights of others.

- 10.4. Offensive Content. Content that is defamatory, obscene, abusive, invasive of privacy, offensive, indecent or otherwise objectionable.
- 10.5. Harmful Content. Content or other computer technology that may damage, interfere with, surreptitiously intercept, or expropriate any system, program or data, including viruses, Trojan horses, worms, time bombs or cancelbots.
- 10.6. Spam. Spam-related activities, including the distribution, publication, sending, or facilitating of unsolicited mass e-mailings, promotions, advertising or solicitations, including commercial advertising and informational announcements.
- 10.7. Security Violations. Use of the Product to violate the security or integrity of any network, computer or communications system, software application or network or computing device.
- 10.8. Commercial or Unauthorized Use. Use of the Product for any revenue generating endeavor, commercial enterprise or other purpose which is not authorized under this Agreement or for which it was not designed.
- 10.9. Network Abuse. Use of the Product to carry out network abuse, including denial of service attacks or intentional interference with the proper functioning of any network, computer or communications system, software application or network or computing device.
11. TERMINATION. Metronet may terminate this Agreement (a) at any time, for any reason or no reason, or (b) if you breach any of its terms and conditions. Upon termination, you must cease all use of the Product and destroy all copies of the Product in your possession or under your control.
12. MISCELLANEOUS.
  - 12.1. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Indiana applicable to contracts made and to be performed entirely in the State of Indiana without regard to its conflicts of law provisions. You and Metronet irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts in Vanderburgh, Indiana, for all disputes arising out of or relating to this Agreement or the Product that are heard in court, and in the event that there is no other effective manner of service, Metronet and you each hereby appoints the Secretary of State of Indiana as its agent for purposes of service of process.
  - 12.2. If any provision in this Agreement should be held illegal or unenforceable by a court of competent jurisdiction, such provision shall be modified to the extent necessary to render it enforceable without losing its intent, or severed from this Agreement if no such modification is possible, and other provisions of this Agreement shall remain in full force and effect.
  - 12.3. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof.
  - 12.4. If you have any questions concerning this Agreement, or if you wish to contact Metronet for any reason, please use the contact information available at [www.metronet.com](http://www.metronet.com).
13. ADDITIONAL TERMS (APPLE TERMS).
  - 13.1. Apple Store Terms. References in this Agreement to Metronet may include Metronet's suppliers and licensors but do not include Apple, Inc. ("Apple"). In the event of any conflict between Section 5 and the provisions of this Section 13, Section 5 will prevail except in respect of Apple's rights and responsibilities. This Section 13 does not expand Metronet's liability or obligations to you beyond that required elsewhere in this Agreement or by applicable law.
  - 13.2. Acknowledgement. This Agreement is concluded between Metronet and you only, and not with Apple. Metronet, and not Apple, is solely responsible for the Product and its content.
  - 13.3. Scope of License, Definitions. The License granted in Section 2 of this Agreement is solely for use on an Authorized Device in accordance with this Agreement and the Store Usage Rules. "Authorized Device" refers to any Apple iPhone, iPad or iPod Touch that you own or control. "Store Usage Rules" refers to the "Usage Rules" set forth in Apple's App Store Terms of Service, currently posted at <http://www.apple.com/legal/itunes/us/terms.html>, as it may be amended by Apple from time to time.
  - 13.4. Maintenance & Support. This Agreement does not provide for maintenance or support services, but in the event that applicable law requires that such services be provided to you for the Product, Metronet will be solely responsible for providing the services. You and Metronet acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Product.

- 13.5. **Warranty.** Section 5 of this Agreement disclaims all warranties to the maximum extent permitted under applicable law, but to the extent not effectively disclaimed, if any, Metronet and its suppliers and licensors will be solely responsible for any warranties in respect of the Product. In the event of any failure of the Product to conform to any such applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Product (if any) to you. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Product, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Metronet's and its suppliers' and licensors' sole responsibility.
- 13.6. **Product Claims.** You and Metronet acknowledge that Metronet and its suppliers and licensors, not Apple, are responsible for addressing any claims of yours or of any third party relating to the Product or your possession and/or use of the Product, including, but not limited to: (a) product liability claims; (b) any claim that the Product fails to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation.
- 13.7. **Intellectual Property Rights.** Metronet and you acknowledge that, in the event of any third party claim that the Product or your possession and use of the Product infringes that third party's intellectual property rights, Metronet and its suppliers and licensors and not Apple will be solely responsible for the investigation, defense, settlement, and discharge of any such intellectual property infringement claim.
- 13.8. **Third Party Beneficiary.** Metronet and you acknowledge and agree that Apple and Apple's subsidiaries are third party beneficiaries of this Agreement and that, upon your acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary.