



## GENERAL COMMERCIAL TERMS AND CONDITIONS

### PART I - AGREEMENT

#### General

1. These General Commercial Terms and Conditions constitute part of a Master Services Agreement ("**MSA**") or Network Services Agreement ("**NSA**") between Niagara Regional Broadband Network Limited ("**the Supplier**") and the Customer ("**the Customer**") identified in the MSA or NSA, as the case may be.

A NSA (a "**Service Agreement**") provides for the provision by the Supplier to the Customer of those telecommunication and related services identified in the NSA ("**the Services**"). A MSA provides a framework for the Supplier and the Customer entering into agreements (each also a "**Service Agreement**") for the provision by the Supplier to the Customer of those telecommunication and related services identified in Service Agreements (also "**the Services**"). A MSA and a NSA are each a "**Source Agreement**" for the purposes hereof.

These General Commercial Terms and Conditions and any Service Descriptions, Terms and Conditions, Policies and other provisions expressly incorporated by a Source Agreement or a Service Agreement collectively constitute the "**Terms and Conditions**" applicable to the provision of the Services pursuant to the particular agreement. A Service Agreement includes all Terms and Conditions applicable thereto and includes the Source Agreement.

#### Entire Agreement. Previous Agreements and Assignment

2. A Service Agreement: (i) constitutes the entire understanding and agreement between the Customer and the Supplier with respect to the provision by the Supplier to the Customer of the Services to which the Service Agreement relates; and, (ii) supersedes and merges all prior agreements, contracts, commitments, understandings, quotations, purchase orders, representations, advertising and promotional materials, correspondence and communications, whether written or oral, between the Supplier and the Customer with respect only to the provision by the Supplier to the Customer of the specific Services to which the Service Agreement relates; (iii) may not be assigned or transferred by the Customer without the prior written consent of the Supplier, which may be withheld; and, (iv) may be assigned by the Supplier, without the consent of the Customer, to the purchaser of or successor howsoever to all or substantially all of the assets of the Supplier.

#### Purchase Orders

3. Notwithstanding any contrary language in any purchase order or similar document issued by the Customer to the Supplier with respect to the Services, any such purchase order or similar document shall be deemed to be for the Customer's internal use only and the provisions thereof shall have no effect whatsoever upon the provisions of the Service Agreement or the provision of the Services.

#### Amendments and Interpretation

4. A Service Agreement may only be amended by a written agreement signed by the authorized representatives of the Customer and the Supplier. Any additional or different terms proposed by the Customer or the Supplier shall be of no effect unless expressly agreed to in writing by the Supplier and the Customer. Prior dealings, usage of trade and course of conduct shall not be relevant to determine the meaning of a Service Agreement. Headings in a Service Agreement shall not be considered in the interpretation of the Service Agreement. All dollar amounts in a Service Agreement are Canadian currency.

#### Additional Definitions

5. Terms used and not defined herein shall have the meanings given thereto elsewhere in the Service Agreement. Unless otherwise expressly defined in the Service Agreement, words having well known technical or trade meanings within the telecommunications industry shall have such meanings.

#### Priorities and Conflicts

6. In the event of a conflict between any of the Terms and Conditions and a Source Agreement, the Source Agreement shall prevail and govern. In the event of a conflict between any of the Terms and Conditions and a Service Agreement, the Service Agreement shall prevail and govern. Unless otherwise provided in a Service Agreement, in the event of a conflict between these General Commercial Terms and Conditions and any other of the Terms and Conditions, these General Commercial Terms and Conditions shall prevail and govern.

### PART II-TERM

#### Term of Service Agreements

7. A Service Agreement shall have the term (the "**Term**") and shall be in effect as provided for in the Service Agreement, until and unless otherwise terminated as provided for in the Service Agreement, herein or the Source Agreement.

#### Overholding

8. If the Customer continues to use the Services after the end of the Term then: (i) the Services Agreement shall continue in effect on a month to month basis until terminated at the end of any calendar month by either the Customer or the Supplier giving the other 30 days prior written notice of termination; and (ii) the Customer shall pay for Services provided to the Customer after the end of the Term at a price (the "**Overholding Price**") that is fifteen per cent (15%) greater than the Supplier's prices at the end of the Term for the Services for a one year term. For all other purposes, the month to month extension of the Term shall be regarded as part of the Term.

### **PART III - PRICE & PAYMENT**

9. The prices ("**the Prices**") for the Services provided by the Supplier to the Customer are those provided for in the applicable Service Agreement and/or elsewhere in any of the Terms and Conditions.

10. The Prices do not include any taxes. The Customer shall be responsible for the payment of Harmonized Sales Tax ("**HST**") and other taxes of a similar nature applicable to, or arising from the price or value, the purchase or sale or the provision or use of any of the Services, regardless of when, or who is, actually taxed. In order for the Supplier to not charge the Customer HST or any such other tax, the Customer must provide the Supplier with an exemption certificate satisfactory to the Supplier.

#### **Invoices & Payment**

11. The Supplier shall invoice the Customer one month in advance for all Services to be provided under a Service Agreement except those Services ("**Usage Based Services**") for which the charges are based on usage of the Services. The Supplier shall invoice the Customer in arrears for Usage Based Services. Invoices will be sent to the Customer's address in the Source Agreement unless the Customer provides the Supplier with written notice of an alternative address to which invoices should be sent. Each of the Services will be invoiced upon the provision of the Service commencing regardless of whether all of the Services to be provided pursuant to the Service Agreement are being provided. The monthly charges for the Services shall be prorated for any month when the Services are provided for part only of the month. Invoices are due and payable within thirty days of the date of the invoice sent to the Customer.

#### **Payment by Bank Account Debit or Credit Card**

12. Where a Service Agreement authorizes the Supplier to debit a bank account or a credit card of the Customer for amounts payable, from time to time, by the Customer to the Supplier for the Services, the Supplier shall debit the bank account or credit card of the Customer in accordance with the provisions of the Service Agreement. For the purposes of Sections 13, 14 and 15 hereof, a debit not being honoured shall constitute non-payment of an invoice for the amount of the debit.

#### **Suspension for Non-Payment**

13. If an invoice is unpaid thirty days after its payment due date, the Supplier may, by ten days prior written notice to the Customer, in addition to and without prejudice to all other rights and remedies under the Service Agreement and at law and in equity, suspend the supply of any or all Services to the Customer pursuant to the Service Agreement. Any suspension of the supply of Services shall not constitute a termination of the Service Agreement and shall not relieve the Customer from liability to make the payments to the Supplier required by the

Service Agreement during the period that the provision of the Services to the Customer is suspended. The supply of Services pursuant to the Service Agreement shall resume upon payment by the Customer to the Supplier of all outstanding invoices, any and all costs of the Supplier to suspend and restore service and a \$500 reinstatement charge.

#### **Termination for Non-Payment**

14. If an invoice is unpaid sixty days after its payment due date identified in the invoice, the Supplier may, in addition and without prejudice to all other rights and remedies under the Service Agreement and at law and in equity, terminate the Service Agreement by ten days prior written notice to the Customer whereupon all payments not yet paid by the Customer to the end of the Term shall become immediately due and payable as liquidated damages, and not as a penalty. If the Supplier is required to bring legal action to recover any amount due to the Supplier by the Customer under the Service Agreement, the Customer agrees to pay to the Supplier the amount of the reasonable legal fees and costs incurred by the Supplier in such regards.

#### **Interest**

15. The Customer shall pay the Supplier interest on all amounts not paid by the Customer to the Supplier when due at a simple interest rate of 18.00% per annum, before and after judgement. This obligation of the Customer to pay, and/or the payment of, interest on amounts not paid by the Customer to the Supplier when due shall not prejudice the right of the Supplier to immediate payment of amounts due to the Supplier.

#### **Additional Work**

16. Should the Supplier incur additional expense in order to provide the Services to the Customer as a result of: (i) the action or inaction of the Customer; or (ii) any error, omission, defect or other problem contained in the information, equipment, materials or instructions provided to the Supplier by the Customer, the Customer shall reimburse the Supplier for the reasonable amount of such additional expense within thirty days from the date of the invoice therefor from the Supplier to the Customer.

#### **Assurances**

17. If, in the judgment of the Supplier, the financial condition of the Customer, at any time during the Term, does not afford the Supplier adequate assurance that the Supplier will be paid in accordance with the provisions of a Service Agreement, the Supplier may require assurances satisfactory to the Supplier as a pre-condition for the Supplier to continue to provide the Services to the Customer. If the Supplier requests such assurances and these are not provided by the Customer as and when requested, the Supplier may, by ten days prior written notice to the Customer, in addition to and without prejudice to all other rights and remedies under the Services Agreement and at law and in equity, suspend and/or terminate the supply of any or all Services to the Customer pursuant to all Service Agreements. The Customer hereby consents to the Supplier and the Supplier's bank obtaining credit and consumer reports and information with respect to the Customer from financial institutions and credit reporting agencies and, further, the Customer hereby authorizes all

financial institutions and credit reporting agencies to provide such reports and information relative to the Customer to the Supplier and the Supplier's bank.

#### **PART IV - THE CUSTOMER**

##### **Customer's Obligations**

18. Subject to express contrary provision elsewhere in a Service Agreement, the Customer shall: **(i)** be solely responsible for the provision and maintenance of all of its equipment except as expressly otherwise provided in the Service Agreement; **(ii)** ensure that all of its equipment that interacts with the Supplier's equipment is installed and maintained in accordance with the manufacturer's specifications, with the requirements of the Supplier and of the Supplier's suppliers and with the requirements of the Canadian Standards Association and any other regulatory body having jurisdiction; **(iii)** provide all necessary infrastructure including, without limitation, electricity, electricity outlets, grounding and temperature, humidity, anti-static and other manufacturer or supplier compliant environments required for the safe and efficient operation and maintenance of the Supplier's equipment located on the Customer's property or premises; **(iv)** provide personnel who will be the interface between the Supplier and the Customer for the purposes of the Service Agreement; **(v)** notify the Supplier of the Customer's due date for moves, adds and changes, which must (subject to any agreement dealing with moves, adds and changes) be approved by the Supplier in writing; **(vi)** not re-arrange, disconnect, remove or otherwise tamper with the Supplier's equipment or facilities; **(vii)** not modify, decompile, reverse engineer, disassemble or reproduce any of the software, systems, applications or components used in providing the Services to the Customer; **(viii)** use interconnection equipment compatible with the equipment of the Supplier; **(ix)** not use the name of the Supplier or of any of the suppliers of the Supplier for any marketing or other purposes without the prior written approval of the Supplier; **(x)** comply with all laws, regulations, rules, codes, guidelines, licences and other governmental or regulatory mandates applicable to the Supplier and/or the Customer relative to the Services; **(xi)** not use the trademarks, logos, service marks, trade names, tag lines, slogans and/or any other right in or to the identity of the Supplier or the Supplier's suppliers; **(xii)** be solely responsible for obtaining the execution by any property and/or building owner, landlord and/or operator of any agreement allowing the Supplier access to the premises, property and/or building of the Customer and any customer of the Customer; and **(xiii)** cause all underground facilities (including the components of storm and other sewers, lighting, communications and sprinkler systems) within the boundaries of any excavation on the Customer's site related to the installation of facilities needed by the Supplier in order to provide the Services to the Customer to be clearly located for and advised to the Supplier.

##### **CRTC Requirements re: VoIP**

19. If the Customer may be using or allowing the use by its customers of the Services for the provision of Voice over Internet Protocol services ("**VoIP Services**"), then the Customer shall, and shall require its customers to, comply with the decisions, directives and other requirements of the Canadian Radio-television and Telecommunications

Commission (the "**CRTC**") relative to VoIP Services including with respect to emergency services obligations, message relay services obligations and consumer privacy safety obligations. It is the responsibility of the Customer to fully inform itself in such regards.

##### **CRTC Requirements re: Customer Complaints Agency**

20. As required by Telecom Decision 2007-130 (the "Decision") of the CRTC, if, within the meaning of the Decision, the Customer: **(i)** resells any of the Services provided by the Supplier to the Customer; **(ii)** it is a Canadian carrier; and **(iii)** it had annual Canadian telecommunications service revenues exceeding ten million dollars in its previous fiscal year, then it is required, and it is a condition of the Supplier providing the Services to the Customer, that the Customer be a member of the Commission for Complaints for Telecommunications Services Inc. (the "Agency").

##### **Customer's Equipment**

21. It is the Customer's responsibility to ensure that its computer, communications and other equipment and systems are sufficient to access and use the Services as provided by the Supplier. From time to time, the equipment and/or systems required to access and use the Services may change and, as a consequence, the Customer's equipment may cease to be sufficient to access and use the Services and in such event the Supplier shall have no liability to the Customer and it shall be the responsibility of the Customer to upgrade its equipment and systems in order to access and use the Services.

##### **Access**

22. The Customer is responsible for: **(i)** providing the Supplier and its employees and representatives with prompt and safe access, during and after business hours, to the property and premises of the Customer and any customer of the Customer, to the cables, termination panels and any other equipment located on the premises of the Customer and any customer of the Customer and to other private property that is needed for the provision of the Services; and, **(ii)** obtaining and maintaining all access and property rights that the Supplier needs in order to connect the Supplier's facilities to the facilities of the Customer and any customer of the Customer and to provide the Services to the Customer.

##### **Return of Equipment**

23. Upon termination of a Service Agreement the Customer shall allow or secure permission for the Supplier to remove the Supplier's equipment and other facilities from the property and premises of the Customer and any customer and landlord of the Customer.

##### **Co-Operation of Customer**

24. The Customer shall take all reasonable action necessary to give effect to each Service Agreement.

## **PART V - SUSPENSION & TERMINATION**

### **Suspension/Termination of Service Agreement**

25. The Supplier may by ten days prior notice to the Customer suspend or terminate a Service Agreement and/or the provision of all or any of the Services to the Customer pursuant to the Service Agreement if: (i) except where otherwise specifically provided in a Service Agreement, the Customer fails to fulfill any of its obligations under the Service Agreement within ten days of written notice thereof by the Supplier to the Customer; (ii) the Customer becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or bankruptcy trustee appointed for it or becomes subject as a debtor to the provisions of any creditor arrangement, winding-up, bankruptcy or insolvency laws; (iii) the Customer transfers, assigns or sub-licences howsoever any part of its interest in the Service Agreement or attempts to do so; or, (iv) unless permitted by the Source Agreement or a Service Agreement, the Customer sells, resells or distributes howsoever any of the Services provided by the Supplier to the Customer or attempts to do so. Any such suspension shall not constitute a termination of the Service Agreement and shall not excuse the Customer from liability to make the payments to the Supplier required by the Service Agreement during the period of such suspension. The supply of Services suspended pursuant to this Section shall resume upon the Customer no longer being in breach of the requirements of this Section and of the Service Agreement and the payment by the Customer to the Supplier of any and all costs of the Supplier to suspend and restore service to the Customer and a \$500 reinstatement charge. If the Supplier terminates a Service Agreement for reasons set forth in this Section, then all payments under the Service Agreement not yet paid to the Supplier by the Customer for the balance of what would have been the term of the Service Agreement shall become immediately due and payable by the Customer to the Supplier as liquidated damages, and not as a penalty.

### **Migration**

26. The Customer may terminate a Service Agreement before the end of the Term thereof provided that: (i) the Customer has theretofore entered into a new agreement for the Supplier to provide other or increased services to the Customer and the net benefit to the Supplier of the total payments under such new agreement over the period to the end of the Term of the Service Agreement exceed the net benefit to the Supplier of the total payments yet to be made by the Customer under the Service Agreement; and, (ii) any switch from Internet service or any Service being resold by the Supplier to the Customer requires the consent of the Supplier which the Supplier will grant provided the Supplier is able to reach arrangements satisfactory to the Supplier with the provider of the Internet or other Service and with anyone else that the Supplier has entered into agreements with respect to the provision of the Service to the Customer under the Service Agreement.

## **PART VI - LIABILITY**

### **Provision of Services**

27. The Supplier shall use commercially reasonable efforts to provide the Services to the Customer, subject to and in accordance with the terms and conditions of the applicable Service Agreement. Subject to any express provisions otherwise in a Service Agreement relative to the levels at which the Services will be provided, the Supplier does not guarantee or warranty the availability or reliability of the Services.

### **Installation/Commencement of Services**

28. The commencement of the provision of a particular Service to the Customer is targeted for the first day of the Initial Term for such Service. Any date in a Service Agreement for the commencement of the provision of a particular Service to the Customer is an estimate only and, while the Supplier will use commercially reasonable efforts to meet such date, the Supplier shall not have any liability for failing to meet such date. In the event that the Supplier foresees a delay, the Supplier will endeavor to inform the Customer as to the changed dates foreseen for such completion and commencement. Notwithstanding the foregoing, should the Supplier not be able to make attachment, aerial, subsurface or site installation arrangements or site access, power or environment arrangements necessary for the provision of any Service within ninety (90) days of the date of the Service Agreement relating to the particular Service, the Supplier shall so notify the Customer and either the Supplier or the Customer may by written notice to the other terminate the Services Agreement relating to the particular Service.

### **Force Majeure**

29. Neither the Supplier nor the Customer shall be liable for failure to perform or delay in performance due to anything beyond the reasonable control of the Supplier including, without restricting the generality of the foregoing, any fire, flood, windstorm, ice or snow storm, natural disaster or other act of God, strike, lockout, slowdown, boycott, picketing or other labour difficulty, the act of any governmental, regulatory or judicial authority, any act or negligence of the Customer or of a third party affecting the provision of a Service, the failure of any telecommunication service of a third party upon which the Supplier is reliant to provide any Service to the Customer, fuel or energy shortage, unavailability of materials or equipment or delays in transportation (collectively and separately "**Force Majeure**"). In no event shall lack of money constitute Force Majeure. In the event of delay in performance due to Force Majeure, any date for delivery or time for completion (but not a date for payment) will be extended by a period of time reasonably necessary to overcome the effect of such delay.

### **Insurance**

30. The Supplier and the Customer shall each maintain reasonable insurance to cover itself and the other with respect to any activities that could possibly cause damage to the other.

### **Liability re: Services**

31. Subject to express provision otherwise elsewhere in a Service Agreement, the Supplier shall not be responsible or liable to the Customer, to anyone claiming by, through or under the Customer or to any third party for

any loss, cost (including lawyers and court costs), damage, injury, liability, claim, penalty, fine, interest or cause of action whatsoever resulting howsoever from the interruption or quality of the provision by the Supplier to the Customer of the Services, or any of them, which results from the acts and/or defaults (including negligence and/or misconduct) of, or is otherwise howsoever caused by, the Supplier or its employees, officers, directors, representatives and/or suppliers.

#### General Liability

**32. The Supplier shall not be liable for any damages that result in damage to tangible property or for bodily damage or death unless, and only to the extent that, the Supplier has been grossly negligent.**

#### Limitation on Liability

**33. Notwithstanding any other provision in a Service Agreement or otherwise howsoever, in no event shall the Supplier be liable on any basis for: (i) any indirect, special, incidental, consequential, punitive or exemplary damages howsoever caused; (ii) any damages for any anticipated or lost profit, revenue or expense reduction, business interruption loss, loss of contract or goodwill, loss of customers, loss of data, loss of use of any information, software or system, failure to realize expected savings or other business, commercial or economic loss whatsoever and howsoever caused, whether arising in negligence, tort, statute, equity, contract, common law or any other cause of action or legal theory even if the Supplier has been advised or could foresee of the possibility; (iii) where a specific remedy or credit is provided to the Customer under a Service Agreement in respect to any circumstance, the Supplier shall not have any liability to the Customer beyond the specific remedy or credit provided for the Customer; (iv) any liability whatsoever unless the Supplier receives from the Customer a written claim in respect thereof within one year of the basis for the claim, or any part thereof, first arising; and (v) any liability in excess of the lesser of what has been paid by the Customer to the Supplier pursuant to the applicable Service Agreement and \$2,000,000. The Customer agrees that the limitations on liability contained herein and elsewhere in any Service Agreement are fair and reasonable in the circumstances of the Service Agreement and that the Supplier would not have entered into a Service Agreement unless the Customer agreed to limit the Supplier's liability in the manner and to the extent provided herein.**

#### Indemnity

**34. The Customer shall indemnify and hold harmless the Supplier and its employees, officers, directors and representatives against any and all loss, cost (including lawyers and court costs), damage, injury, liability, claim, penalty, fine, interest or cause of action whatsoever resulting howsoever from; (i) the breach of the Source Agreement or any Service Agreement or from any act or omission whatsoever by the Customer or its employees, officers, directors and representatives; (ii) without limiting any other provision herein, the breach of Sections 19 and 20 hereof; (iii) any information or Content passing through the Supplier's**

network and/or the Customer's local loop(s) originating with or allowed, knowingly or unknowingly, by the Customer; or (iv) claims from third parties arising from the Customer's use of the Services.

#### Limited Warranty

**35. The Supplier represents and warrants that it has sufficient rights to provide the Services to the Customer and that, to the actual knowledge of the Supplier, such provision of the Services will not infringe or violate any patent, trademark, trade name, copyright, trade secret or other intellectual or proprietary right. Except as expressly provided for otherwise elsewhere in a Service Agreement, the Supplier does not give any representation or warranty, whether express, implied or statutory, as to description, quality, merchantability, completeness or fitness for any purpose of any of the Services or as to any other matter, all of such representations and warranties are, to the extent permitted by applicable law, excluded, disclaimed by the Supplier and waived by the Customer.**

#### Change of Services

**36. The Supplier shall not have any liability to the Customer or otherwise if the Services or any change in the Services cause hardware or software of the Customer to become obsolete, require modification or attention or otherwise affects the performance thereof.**

#### Use of Content

**37. The Customer acknowledges and accepts that: (i) some information, data, files, pictures, products, services or other content whatsoever available with or through the Services ("**Content**") may be offensive or may not comply with applicable laws; (ii) neither the Supplier nor its suppliers attempt to censor or monitor any Content; (iii) neither the Supplier nor its suppliers have any obligation to monitor the Customer's use of the Services and, unless otherwise expressly provided elsewhere in a Service Agreement, have no control over such use; and (iv) the Supplier and its suppliers assume no liability whatsoever for any claims or losses arising out of or otherwise relating to access to or use of Content by the Customer. The Customer assumes total responsibility and risk for access to and use of Content and for use of the Services.**

#### Privacy

**38. The Supplier cannot guarantee privacy for Internet users. Messages on the Internet may be subject to third party interception and review. Therefore, the Supplier recommends that either the Services not be used for the transmission of confidential information or all transmissions be adequately encrypted. The Privacy Policy of the Supplier relative to personal information is posted on the website of the Supplier – [www.nrbn.ca](http://www.nrbn.ca)**

#### Monitoring

**39. The Supplier has no obligation to monitor the Services. However, in order to protect itself, its suppliers and its customers, the Supplier and its suppliers reserve the right to electronically or otherwise monitor the Services and to disclose**

any information obtained thereby which is required by law or court or regulatory order. The Supplier and its suppliers will not intentionally disclose any private e-mail messages unless required by law or court or regulatory order. The Supplier and its suppliers will comply with all privacy and data protection laws when monitoring the Services and disclosing information obtained thereby and the Customer agrees that such laws supercede the provisions of any Service Agreement in the event of any conflict or uncertainty.

#### **Restoration - Outside Sites**

40. The Supplier shall restore outside sites at which the Supplier has conducted construction activities to the condition that the site was in at the time the Supplier commenced such construction activities. Restoration shall be in accordance with generally accepted construction industry practices (e.g. asphalt patching, concrete sealant, seeding or sod as applicable). Restoration work is guaranteed by the Supplier for a period of one (1) year from the date of restoration.

#### **Scheduled Outages**

41. The Supplier shall endeavour to conduct maintenance of its Network between 00:01 a.m. and 6:00 a.m. on Sunday mornings. If an outage of the provision of any of the Services to the Customer is expected, the Supplier shall provide the Customer with one week's advance notice of the outage, such notice to advise of the time, date and expected duration of the outage. No notice will be given to the Customer of outages associated with unscheduled emergencies or of regular maintenance where no outage of the Services provided to the Customer is expected.

### **PART VII - CUSTOMER SUPPORT**

#### **Requesting Service**

42. Priority 1 Service Requests are to be made by telephone to 310.1214. Priority 2 Service Requests are to be made by e-mail to [support@atrianetworks.com](mailto:support@atrianetworks.com).

#### **Information to be Provided**

43. Service Requests must provide the Customer's name, address, phone number, circuit number and a description of the problem. Service Requests related to Internet service must have supporting technical information (pings, traceroutes and show interfaces, etc.) e-mailed to [support@nrbn.ca](mailto:support@nrbn.ca)

#### **Priority 1 Service Requests**

44. A "**Priority 1 Service Request**" must relate to the Customer being unable to access the Services or to circumstances where there is a critical impact to the Customer's business operations: *i.e.* the Services are severely degraded or significant aspects of the Customer's business operations are being negatively and materially impacted. For Priority 1 Service Requests in relation to the Services, it is the objective of the Supplier during the Supplier's regular business hours to provide a live hand off to a technician and outside regular business hours to page a technician with the intention of having the Customer called back within thirty minutes. In all

but exceptional circumstances the Supplier will commit necessary resources 24X7 to resolve Priority 1 Service Requests.

#### **Priority 2 Service Requests**

45. A "**Priority 2 Service Request**" will relate to: (i) the operational performance of the Services having been impaired with only minimal or no impact on the Customer's business operations; or (ii) requests by the Customer for information or assistance on the Supplier's network capabilities, installation or configuration; or (iii) to requests for moves, adds or changes in relation to the Services. The Supplier will provide resources during the Supplier's regular business hours to resolve Priority 2 Service Requests in relation to the Services.

#### **Customer Support Required**

46. The Supplier's commitment to respond to and fulfill Service Requests from the Customer is conditional upon and limited by the co-operation of the Customer both generally and specifically in assigning the personnel and technical resources required by the Supplier from the Customer to enable the Supplier to respond to the Service Request. As a pre-requisite to the Supplier responding to a Service Request in relation to the Services the Customer must have conducted diagnostics sufficient for the Customer to certify to the Supplier that the trouble is not related to the Customer's equipment, cabling, other hardware or software. The Customer is responsible for remedying trouble related to the Customer's equipment, cabling, other hardware or software. Whenever joint testing by the Customer and the Supplier is necessary in relation to responding to a Service Request, the Customer shall assign the personnel and technical resources of the Customer required by the Supplier in such regards.

#### **Diagnostic Services**

47. If there is a fault with respect to the provision of the Services and the Customer requests, the Supplier will perform basic diagnostic checks to identify the nature and/or location of the fault.

### **PART VIII - MISCELLANEOUS**

#### **Sale of Equipment**

48. The Services include the sale of equipment if such is provided for in the Agreement.

#### **Confidentiality**

49. The terms and provisions of a Service Agreement and information of the Supplier which the Customer may learn in the course of the Supplier's performance of its obligations under the Service Agreement are strictly confidential and shall not be disclosed by the Customer to any third party except: (i) with the express prior written consent of the Supplier, which consent may be arbitrarily withheld by the Supplier; or, (ii) pursuant to applicable law or court or regulatory order. The Customer shall protect all of Supplier's information by using the same degree of care, but no less than a reasonable standard of care, to prevent the unauthorized use, dissemination, or



publication thereof as the Customer uses to protect its own confidential information.

### **Proprietary Rights**

50. No patent, copyright, trademark, trade secret or technological, proprietary or intellectual property right whatsoever is licensed, granted or otherwise transferred to the Customer by any Service Agreement except for the right to benefit therefrom in the course of the use of the Services.

### **Dispute Resolution**

51. Any claim, dispute or controversy (whether in contract or tort, pursuant to statute or regulation, or otherwise, and whether pre-existing, present or future) arising out of or relating to: **(i)** the Service Agreement; or **(ii)** the Services (collectively, the "Claim") shall be referred to and determined by arbitration (to the exclusion of the courts). The Customer waives any and all rights to commence or participate in any class proceeding against the Supplier and, where applicable, the customer agrees to opt out of any class proceedings against the Supplier. Arbitrations shall be conducted in accordance with the following: **(1)** upon written demand of either the Customer or the Supplier to the other, their representatives shall attempt to agree to a single arbitrator. If within ten days a person to be the single arbitrator cannot be agreed to, then the single arbitrator shall be appointed by any Justice of the Ontario Superior Court of Justice; **(2)** the arbitrator shall be qualified by education, experience and training to pass judgement upon the particular disagreement; **(3)** the arbitrator shall complete a hearing of the dispute within thirty days after appointment and will render a decision within seven days following completion of the hearing; **(4)** the decision of the arbitrator shall be in writing and shall be final, and binding upon and non-appealable by each Party to this Agreement; **(5)** each Party shall bear and pay its own costs; and **(6)** the arbitration shall be governed in all respects by The *Arbitrations Act, 1991* (Ontario) and regulations thereunder.

### **Time / Waiver/ Invalid Provisions / Governing Law / Notice**

52. Time is of the essence in respect of the Source Agreement and each Service Agreement. Any waiver with respect to one event is without prejudice and shall not constitute a waiver of any similar or other event. Failure to insist upon or enforce strict performance of any provision of the Service Agreement shall not be construed as a waiver of any such provision or right. If any provision of the Source Agreement or any Service Agreement is determined to be void, invalid or otherwise unenforceable by a court of competent jurisdiction, such determination shall not affect the other provisions of the Source Agreement or Service Agreement which shall remain in full force and effect. The Source Agreement and each Service Agreement shall be governed, interpreted and construed by and in accordance with the laws in effect in the Province of Ontario, Canada. The Supplier cooperates with lawful authorities in the enforcement of all laws, rules and regulations applicable to the Supplier and the Services. Written notice to the Customer shall be deemed received by the Customer three days after being mailed to the Customer's address in the Source Agreement.

### **Changes to Terms and Conditions**

53. The Supplier may by notice to the Customer change the provisions of any of the Terms and Conditions provided that the changes are reasonable and applicable generally to all of the customers of the Supplier and do not change any provision that applies only to the Customer. The Customer agrees that notice of changes to the Acceptable Use Policy and privacy policies of the Supplier shall be sufficiently given to the Customer for the purposes of this Section if the changed Acceptable Use Policy and privacy policies are posted on the website of the Supplier, and the Customer agrees that it shall be the responsibility of the Customer to regularly visit the website of the Supplier to determine if there has been any changes to the Acceptable Use Policy or privacy policies of the Supplier.

### **Future Regulation**

54. In the event that a Service Agreement or any part or provision thereof, the provision of any Services or the Services should become subject to regulation or approval by any authority having lawful jurisdiction, then the Customer shall cooperate with the Supplier to make reasonable amendments to the Service Agreement and to obtain any required approvals with respect to the provision of the Services in order to comply with applicable regulatory requirements and to allow the continued supply of the Services by the Supplier to the Customer under circumstances as close as practicable to those provided for in the Services Agreement.