

PART I - AGREEMENT**General**

1. These General Commercial Terms and Conditions constitute part of a Service Agreement ("**SA**") or a Master Services Agreement ("**MSA**") or a Network Services Agreement ("**NSA**") between HCE Telecom Inc. ("**Supplier**") and Customer ("**Customer**") identified in the SA, MSA or NSA, as the case may be.

An SA and a NSA (each a "**Supply Agreement**") each provide for the provision by Supplier to Customer of those telecommunication and related services ("**the Services**") identified in the SA or NSA, as the case may be. A MSA provides a framework for Supplier and Customer to enter into agreements (each also a "**Supply Agreement**") for the provision by Supplier to Customer of those telecommunication and related services identified in such Supply Agreements (also "**the Services**"). An SA, 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 Supply Agreement collectively constitute the "**Terms and Conditions**" applicable to the provision of the Services pursuant to the particular agreement. A Supply Agreement includes all Terms and Conditions applicable thereto and includes the Source Agreement.

Entire Agreement, Previous Agreements and Assignment

2. A Supply Agreement: (i) constitutes the entire understanding and agreement between Customer and Supplier with respect to the provision by Supplier to Customer of the Services to which the Supply 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 Supplier and Customer with respect only to the provision by Supplier to Customer of the specific Services to which the Supply Agreement relates; (iii) may not be assigned or transferred by Customer without the prior written consent of Supplier, which may be withheld; and, (iv) may be assigned by Supplier, without the consent of Customer, to the purchaser of or successor howsoever to all or substantially all of the assets of Supplier.

Purchase Orders

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

Amendments and Interpretation

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

Additional Definitions

5. Terms used and not defined herein shall have the meanings given thereto elsewhere in the Supply Agreement. Unless otherwise expressly defined in the Supply 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 Supply Agreement, the Supply Agreement shall prevail and govern. Unless otherwise provided in a Supply Agreement, in the event of a conflict between these General Commercial Terms and Conditions and any other of the Terms and Conditions (excepting those in and for a particular Supply Agreement), these General Commercial Terms and Conditions shall prevail and govern.

PART II – TERM**Term of Supply Agreements**

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

Overholding

8. If Customer continues to use the Services after the end of the Term then: (i) the Supply Agreement shall continue in effect on a month to month basis until terminated at the end of any calendar month by either Customer or Supplier giving the other 30 days prior written notice of termination; and (ii) Customer shall pay for Services provided to Customer after the end of the Term at a price (the "**Overholding Price**") that is twenty per cent (20%) greater than 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

Price

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

Taxes

10. The Prices do not include any taxes. 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 Supplier to not charge Customer HST or any such other tax, Customer must provide Supplier with an exemption certificate satisfactory to Supplier.

Invoices & Payment

11. Supplier shall invoice Customer one month in advance for all Services to be provided under a Supply Agreement except those Services (“**Usage Based Services**”) for which the charges are based on usage of the Services. Supplier shall invoice Customer in arrears for Usage Based Services. Invoices will be sent to Customer’s address in the Supply Agreement unless Customer provides 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 Supply Agreement are being provided. The monthly charges for the Services shall be pro-rated 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 Customer.

Payment by Wire Transfer

12. Invoices may be paid by cheque payable to Supplier. Where a Supply Agreement authorizes, amounts payable by Customer to Supplier may be made by Customer to Supplier by wire transfer (to be received by Supplier in full without any deduction on account of any bank or other charges whatsoever) into the bank account of Supplier, the co-ordinates for which Supplier shall notify Customer upon the Supply Agreement becoming binding on Supplier and Customer.

Payment by Bank Account Debit or Credit Card

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

Suspension for Non-Payment

14. If an invoice is unpaid thirty days after its payment due date, Supplier may, by ten days prior written notice to Customer, in addition to and without prejudice to all other rights and remedies under the Supply Agreement and at law and in equity, suspend the supply of any or all Services to Customer pursuant to the Supply Agreement. Any suspension of the supply of Services shall not constitute a termination of the Supply Agreement and shall not relieve Customer from liability to make the payments to Supplier required by the Supply Agreement during the period that the provision of the Services to Customer is suspended. The supply of Services pursuant to the Supply Agreement shall resume upon payment by Customer to Supplier of all outstanding invoices, any and all costs of Supplier to suspend and restore service and a \$500 reinstatement charge.

Termination for Non-Payment

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

Interest

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

Additional Work

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

Assurances

18. If, in the judgment of Supplier, the financial condition of Customer, at any time during the Term, does not afford Supplier adequate assurance that Supplier will be paid in accordance with the provisions of a Supply Agreement, Supplier may require assurances satisfactory to Supplier as a

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pre-condition for Supplier to continue to provide the Services to Customer. If Supplier requests such assurances and these are not provided by Customer as and when requested, Supplier may, by ten days prior written notice to Customer, in addition to and without prejudice to all other rights and remedies under the Supply Agreement and at law and in equity, suspend and/or terminate the supply of any or all Services to Customer pursuant to all Supply Agreements. Customer hereby consents to Supplier and Supplier's bank obtaining credit and consumer reports and information with respect to Customer from financial institutions and credit reporting agencies and, further, Customer hereby authorizes all financial institutions and credit reporting agencies to provide such reports and information relative to Customer to Supplier and Supplier's bank.

PART IV – CUSTOMER

Customer's Obligations

19. Subject to express contrary provision elsewhere in a Supply Agreement, Customer shall: **(i)** be solely responsible for the provision and maintenance of all of its equipment except as expressly otherwise provided in the Supply Agreement; **(ii)** ensure that all of its equipment that interacts with Supplier's equipment is installed and maintained in accordance with the manufacturer's specifications, with the requirements of Supplier and of 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 Supplier's equipment located on Customer's property or premises; **(iv)** provide personnel who will be the interface between Supplier and Customer for the purposes of the Supply Agreement; **(v)** notify Supplier of Customer's due date for moves, adds and changes, which must (subject to any agreement dealing with moves, adds and changes) be approved by Supplier in writing; **(vi)** not re-arrange, disconnect, remove or otherwise tamper with Supplier's equipment or facilities; **(vii)** not modify, alter, decompile, reverse engineer, disassemble, reproduce or tamper with any of the software, hardware, systems, applications or components used in providing the Services to Customer; **(viii)** use interconnection equipment compatible with the equipment of Supplier; **(ix)** not use the name of Supplier or of any of Suppliers of Supplier for any marketing or other purposes without the prior written approval of Supplier; **(x)** comply with all laws, regulations, rules, codes, guidelines, licences and other governmental or regulatory mandates and all industry standards applicable to Supplier and/or 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 Supplier or 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 Supplier access to the premises, property and/or building of Customer and any customer of 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 Customer's site related to the installation of facilities needed by Supplier in order to provide the Services to Customer to be clearly located for and advised to Supplier.

CRTC Requirements re: VoIP

20. If 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 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 Customer to fully inform itself in such regards.

CRTC Requirements re: Customer Complaints Agency

21. As required by Telecom Decision 2007-130 (the "Decision") of the CRTC, if, within the meaning of the Decision, Customer: **(i)** resells any of the Services provided by Supplier to 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 Supplier providing the Services to Customer, that Customer be a member of the Commission for Complaints for Telecommunications Services Inc. (the "Agency").

Customer's Equipment

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

Access

23. Customer is responsible for: **(i)** providing Supplier and its employees and representatives with prompt and safe access, during and after business hours, to the property and premises of Customer and any customer of Customer, to the cables, termination panels and any other equipment located on the premises of Customer and any customer of 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 Supplier needs in order to connect Supplier's facilities to the facilities of Customer and any customer of Customer and to provide the Services to Customer.

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Return of Equipment

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

Co-Operation of Customer

25. Customer shall take all reasonable action necessary to give effect to each Supply Agreement.

PART V – SUSPENSION & TERMINATION**Suspension/Termination of Supply Agreement**

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

Migration

27. Customer may terminate a Supply Agreement before the end of the Term thereof provided that: (i) Customer has theretofore entered into a new agreement for Supplier to provide other or increased services to Customer and the net benefit to Supplier of the total payments under such new agreement over the period to the end of the Term of the Supply Agreement exceed the net benefit to Supplier of the total payments yet to be made by Customer under the Supply

Agreement; and, (ii) any switch from Internet service or any Service being resold by Supplier to Customer requires the consent of Supplier which Supplier will grant provided Supplier is able to reach arrangements satisfactory to Supplier with the provider of the Internet or other Service and with anyone else that Supplier has entered into agreements with respect to the provision of the Service to Customer under the Supply Agreement.

PART VI - LIABILITY**Provision of Services**

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

Installation/Commencement of Services

29. The commencement of the provision of a particular Service to Customer is targeted for the first day of the Initial Term for such Service. Any date in a Supply Agreement for the commencement of the provision of a particular Service to Customer is an estimate only and, while Supplier will use commercially reasonable efforts to meet such date, Supplier shall not have any liability for failing to meet such date. In the event that Supplier foresees a delay, Supplier will endeavor to inform Customer as to the changed dates foreseen for such completion and commencement. Notwithstanding the foregoing, should 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 Supply Agreement relating to the particular Service, Supplier shall so notify Customer and either Supplier or Customer may by written notice to the other terminate the Supply Agreement relating to the particular Service.

Force Majeure

30. Neither Supplier nor Customer shall be liable for failure to perform or delay in performance due to anything beyond the reasonable control of 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 Customer or of a third party affecting the provision of a Service, the failure of any telecommunication service of a third party upon which Supplier is reliant to provide any Service to 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

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payment) will be extended by a period of time reasonably necessary to overcome the effect of such delay.

Insurance

31. Supplier and 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

32. Subject to express provision otherwise elsewhere in a Supply Agreement, Supplier shall not be responsible or liable to Customer, to anyone claiming by, through or under 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 Supplier to 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, Supplier or its employees, officers, directors, representatives and/or suppliers.

General Liability

33. 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, Supplier has been grossly negligent.

Limitation on Liability

34. Notwithstanding any other provision in a Supply Agreement or otherwise howsoever, in no event shall 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 Supplier has been advised or could foresee of the possibility; (iii) where a specific remedy or credit is provided to Customer under a Supply Agreement in respect to any circumstance, Supplier shall not have any liability to Customer beyond the specific remedy or credit provided for Customer; (iv) any liability whatsoever unless Supplier receives from 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 Customer to Supplier pursuant to the applicable Supply Agreement and \$2,000,000. Customer agrees that the limitations on liability contained herein and elsewhere in any Supply Agreement are fair and reasonable in the circumstances of the Supply Agreement and that Supplier would not have entered into a Supply

Agreement unless Customer agreed to limit Supplier's liability in the manner and to the extent provided herein.

Indemnity

35. Customer shall indemnify and hold harmless 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 Supply Agreement or from any act or omission whatsoever by 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 Supplier's network and/or Customer's local loop(s) originating with or allowed, knowingly or unknowingly, by Customer; or (iv) claims from third parties arising from Customer's use of the Services.

Limited Warranty

36. Supplier represents and warrants that it has sufficient rights to provide the Services to Customer and that, to the actual knowledge of 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 Supply Agreement, 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 Supplier and waived by Customer.

Change of Services

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

Use of Content

38. 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 Supplier nor its suppliers attempt to censor or monitor any Content; (iii) neither Supplier nor its suppliers have any obligation to monitor Customer's use of the Services and have no control over such use; and (iv) 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 Customer. Customer assumes total responsibility and risk for access to and use of Content and for use of the Services.

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Privacy

39. Supplier cannot guarantee privacy for Internet users. Messages on the Internet may be subject to third party interception and review. Therefore, 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 Supplier relative to personal information is posted on the website of Supplier – www.HCE.net.

Monitoring

40. Supplier has no obligation to monitor the Services. However, in order to protect itself, its suppliers and its customers, 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. Supplier and its suppliers will not intentionally disclose any private e-mail message unless required by law or court or regulatory order. Supplier and its suppliers will comply with all privacy and data protection laws when monitoring the Services and disclosing information obtained thereby and Customer agrees that such laws supercede the provisions of any Supply Agreement in the event of any conflict or uncertainty.

Restoration – Outside Sites

41. Supplier shall restore outside sites at which Supplier has conducted construction activities to the condition that the site was in at the time 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 Supplier for a period of one (1) year from the date of restoration.

Scheduled Outages

42. 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 Customer is expected, Supplier shall provide 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 Customer of outages associated with unscheduled emergencies or of regular maintenance where no outage of the Services provided to Customer is expected.

PART VII – CUSTOMER SUPPORT

Requesting Service

43. Priority 1 Service Requests are to be made by telephone to 1-844-423-4443. Priority 2 Service Requests are to be made by e-mail to support@HCE.net.

Information to be Provided

44. Service Requests must provide 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@HCE.net.

Priority 1 Service Requests

45. A “**Priority 1 Service Request**” must relate to Customer being unable to access the Services or to circumstances where there is a critical impact to Customer’s business operations: *i.e.* the Services are severely degraded or significant aspects of 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 Supplier during 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 Customer called back within thirty minutes. In all but exceptional circumstances Supplier will commit necessary resources 24X7 to resolve Priority 1 Service Requests.

Priority 2 Service Requests

46. 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 Customer’s business operations; or (ii) requests by Customer for information or assistance on Supplier’s network capabilities, installation or configuration; or (iii) to requests for moves, adds or changes in relation to the Services. Supplier will provide resources during Supplier’s regular business hours to resolve Priority 2 Service Requests in relation to the Services.

Customer Support Required

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

Diagnostic Services

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

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PART VIII - MISCELLANEOUS

Sale of Equipment

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

Confidentiality

50. The terms and provisions of a Supply Agreement and information of Supplier which Customer may learn in the course of Supplier's performance of its obligations under the Supply Agreement are strictly confidential and shall not be disclosed by Customer to any third party except: (i) with the express prior written consent of Supplier, which consent may be arbitrarily withheld by Supplier; or, (ii) pursuant to applicable law or court or regulatory order. 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 Customer uses to protect its own confidential information.

Proprietary Rights

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

Dispute Resolution

52. 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 Supply Agreement; or (ii) the Services (collectively, the "Claim") shall be referred to and determined by arbitration (to the exclusion of the courts). Customer waives any and all rights to commence or participate in any class proceeding against Supplier and, where applicable, Customer agrees to opt out of any class proceedings against Supplier. Arbitrations shall be conducted in accordance with the following: (1) upon written demand of either Customer or 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

53. Time is of the essence in respect of the Source Agreement and each Supply 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 Supply Agreement shall not be construed as a waiver of any such provision or right. If any provision of the Source Agreement or any Supply 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 Supply Agreement which shall remain in full force and effect. The Source Agreement and each Supply Agreement shall be governed, interpreted and construed by and in accordance with the laws in effect in the Province of Ontario, Canada. Supplier co-operates with lawful authorities in the enforcement of all laws, rules and regulations applicable to Supplier and the Services. Written notice to Customer shall be deemed received by Customer three days after being mailed to Customer's address in the Source Agreement.

Changes to Terms and Conditions

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

Future Regulation

55. In the event that a Supply 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 Customer shall co-operate with Supplier to make reasonable amendments to the Supply 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 Supplier to Customer under circumstances as close as practicable to those provided for in the Supply Agreement.

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