

**NEWT Fibernetics MSA and Schedules Combined**

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## **1.0 FIBERNETICS MASTER SERVICES AGREEMENT**

This Master Services Agreement is entered into between Fibernetics Corporation, having its principal office at 96 Grand Ave S (Suite #203), Cambridge, Ontario, N1S 2L9, a company incorporated under the laws of the Province of Ontario (“Fibernetics”) and the Customer as defined in a Schedule attached hereto and signed by the parties.

### **1. Services**

- 1.1. The Customer agrees to subscribe to the services (“Services”) offered by Fibernetics and its affiliates and subsidiaries as set out in any Schedules executed from time to time by the Customer in accordance with the terms and conditions set out and/or referenced in this Master Services Agreement and the applicable Schedule(s) (the “Agreement”).

### **2. Fibernetics’ Facilities**

- 2.1. Fibernetics is the owner of all right, title and interest in all facilities, networks and equipment provided by Fibernetics (the “Fibernetics’ Facilities”) or has obtained the right to make the Fibernetics’ Facilities available for use by the Customer from a third party and the Customer shall have no rights therein.
- 2.2. It is the Customer’s responsibility to provide, prepare and maintain the locations and facilities for the installation of Fibernetics’ Facilities necessary in order for Fibernetics to provide the Services to the Customer. Such provision, preparation and maintenance shall comply with Fibernetics’ specifications and shall be at the Customer’s expense. The Customer may choose to interconnect the Services with services or facilities of other authorized communications carriers, with underlying carriers, and with private systems where those services and facilities are compatible with Fibernetics’ services and facilities. Any special interface equipment or facilities necessary to achieve compatibility with Fibernetics’ facilities will be provided at the Customer’s expense and Fibernetics shall have no liability for any loss or damage resulting from such interconnection.
- 2.3. In the event that the Customer fails to provide, prepare or maintain the locations and facilities for the installation of Fibernetics’ Facilities, or fails to do so in a timely manner as Fibernetics may deem necessary in the circumstances, Fibernetics shall not be liable for any resulting delay in commencing the Services or any service interruption and related damages, and the Customer shall be liable for any additional costs incurred by Fibernetics in order to install or restore the Services.
- 2.4. The Customer shall not, without Fibernetics’ written consent and then subject to such conditions as Fibernetics may require, make any alternation, addition or repair to

Fibernetics' Facilities or permit access to Fibernetics' Facilities by any person not approved by Fibernetics.

- 2.5. The Customer shall be responsible for the security of and any loss or damage to Fibernetics' Facilities located on the Customer's premises.
- 2.6. If, in connection with a particular Service or under a specific Schedule, the Customer purchases any of the Fibernetics Facilities from Fibernetics, the terms and conditions related thereto shall be specified in the Schedule. However, all Fibernetics Facilities remain the property of Fibernetics until Customer has paid for such Fibernetics Facilities in full.

### **3. Billing and Payment**

- 3.1. Unless otherwise stated in this Agreement, on a monthly basis, Fibernetics will invoice the Customer by e-mail for Services to be provided in the said month. Recurring charges will be pro-rated for any month in which the Services are provided for only part of that month. Unless otherwise specified in this Agreement, any other charges associated with the provision of the Services, including but not limited to, one-time charges, installation charges, equipment charges and post-paid service charges, will be invoiced on Customer's monthly invoice immediately following the time the charges were incurred (collectively, the advance and post billed charges, the "Charges"). Invoiced amounts are due thirty (30) business days from the invoice date.
- 3.2. Any under billed charge shall be payable when correctly billed, provided that Fibernetics provides a revised invoice to the Customer within one (1) year of the date when the Service was rendered.
- 3.3. Fibernetics' invoice will include, and the Customer is responsible for, in addition to the Charges, any applicable taxes, any other charges imposed by law, interest on prior overdue invoices and charges for returned cheques.
- 3.4. Interest will accrue on any amount not paid for thirty (30) business days after the date of invoice as and from the invoice date at the rate of 1.5% per month (19.56% per annum), or the maximum legal rate, if less.
- 3.5. Third party charges incurred by Fibernetics in connection with the Services are subject to change and Fibernetics reserves the right to pass on such charges to the Customer.
- 3.6. In the event Fibernetics, at the request of the Customer, incurs unusual expense in the provision of a Service to the Customer, for example and without limitation, for special construction, the Customer shall be liable for such expenses.

- 3.7. Fibernetics shall bear the expense of maintenance and repairs required due to normal wear and tear to Fibernetics' Facilities. Fibernetics may charge for additional expenses incurred when the Customer requires maintenance and repair work to be performed on the Customer's facilities or any equipment or facilities leased to the Customer at Fibernetics' standard prevailing rates.
- 3.8. If the Customer has any good faith disputes concerning any Fibernetics' invoice, it shall make full payment of the undisputed portion of the invoice and shall give written notice to Fibernetics within thirty (30) business days of the invoice date, together with any supporting documentation substantiating the disputed amount. After that time, the Customer will be deemed to have agreed to the contents of the invoice and will have no right to challenge any element of the invoice. Fibernetics and the Customer agree to use their respective good faith efforts to resolve any dispute within thirty (30) business days after Fibernetics receives written notice of the dispute from the Customer. Any dispute resolved in favor of the Customer shall be credited to the Customer's account on the next invoice following resolution of the dispute. Any disputed amounts determined to be payable to Fibernetics will be due within five (5) business days of the resolution of the dispute. Any dispute arising out of or relating to this Agreement that has not been resolved by the good faith efforts of the parties shall be settled by binding arbitration conducted in accordance with this Agreement. The Customer must pay any undisputed portion of an invoice and subsequent invoices in accordance with this Agreement.
- 3.9. The Customer shall be liable to Fibernetics for all costs and/or expenses incurred, including legal fees, in the collection or attempted collection of any unpaid Charges.

#### **4. Resale and Restrictions on Use**

- 4.1. The Customer shall not resell the Services, or otherwise make the Services available to third parties for value.
- 4.2. The Customer shall ensure that its customers or potential customers or other users of the Services (collectively, the "**End Users**") comply with the terms of this Agreement, the applicable Schedules and Fibernetics' Acceptable Use Policy which can be found at [www.fibernetics.ca](http://www.fibernetics.ca). The Customer shall be responsible for the End Users' use of the Services and the content of End User information passing through the Services to the same extent as the Customer would be liable hereunder.
- 4.3. The Customer will not, nor will it permit others or assist others to, tamper with, alter or rearrange the Services or the Fibernetics Facilities required to provide the Services, or otherwise abuse or fraudulently use the Services, including, without limitation, using the Services:

- a) in any manner which interferes with Fibernetics' facilities, network or equipment, or access thereto by other persons;
- b) contrary to reasonable instructions communicated to the Customer by Fibernetics;
- c) for any purpose or in any manner, directly or indirectly, in violation of applicable laws or in violation of any third party rights; or
- d) in a manner to avoid the payment of Charges.

4.4. Notwithstanding anything to the contrary herein, if in Fibernetics' sole judgment, the Customer or the End Users violate this Article, and such violation or failure to comply poses an immediate threat of harm to or destruction of Fibernetics' Facilities or Services, violates existing law or regulation, or puts Fibernetics's Facilities or Services at risk with its providers of network services or other customers, Fibernetics shall have the right to immediately take any all steps reasonably necessary to remove such threat, including but not limited to suspension or termination of the Services immediately and without notice.

4.5. The Customer shall indemnify and hold harmless Fibernetics for illegal activities caused by the End Users using Fibernetics' Facilities and/or the Services. Fibernetics shall not: (i) have any obligation or liability to the Customer or any third party for any unlawful or improper use of the Services by a End User; nor (ii) have any duty or obligation to exercise control over the use or the content of information passing through the Services.

## **5. Inspection and Maintenance**

5.1. Fibernetics may, upon providing reasonable notice to the Customer, access the Customer's premises and make such inspections, tests and adjustments as it may deem necessary to investigate, modify, repair or maintain the installation or operation of Fibernetics' Facilities.

5.2. Fibernetics may, from time to time and without notice to the Customer, update, maintain or migrate the Services or the Fibernetics' Facilities, provided the Services are not impaired or interrupted. If required, the Customer shall provide reasonable cooperation to Fibernetics with respect to any such update, maintenance or migration.

5.3. In the event Fibernetics determines that it is necessary to interrupt the Services or that there is a potential for Services to be interrupted for the performance of system maintenance, Fibernetics will use good faith efforts to notify the Customer prior to such interruption. Fibernetics will schedule system maintenance during non-peak hours (midnight to 6 a.m. local time). Notwithstanding the foregoing, in the event of an emergency (as determined in Fibernetics' sole discretion, including without limitation, network-affecting disruptions involving the Customer's facilities, potential harm to Fibernetics' Facilities or pursuant to a court order), Fibernetics may access the Customer's premises and perform maintenance at any time and without notice. In no event shall interruption for system or emergency maintenance constitute a failure of performance by

Fibernetics.

## **6. Insurance**

6.1. Throughout the Term of this Agreement and any extension thereof, each party shall maintain, and upon written request, shall provide proof of adequate Commercial General Liability Insurance covering claims for injury, death or damage to property arising out of the Agreement. Limits must be no less than one million dollars (\$1,000,000) per occurrence.

## **7. Term and Termination**

7.1. The Services will be provided for the period and pursuant to the terms set out in the applicable Schedules (the "Service Term"). The Schedules will be renewed for the period set out in the applicable Schedule (the "Renewal Period") on the same terms and conditions set forth therein unless either party gives the other party written notice of its intention to terminate the applicable Schedule with sixty (60) days notice prior to the expiry of the Service Term or in any Renewal Term, as the case may be. This Agreement, as it applies to a Schedule, will continue so long as any Schedule remains in effect. If Services continue after expiration of the Service Term, Fibernetics may, upon fifteen (15) business days' written notice to the Customer, adjust rates for Services hereunder to its then current rates. Without incurring liability, Fibernetics may at any time suspend, restrict or terminate any or all Services without penalty:

- a) if the Customer fails to pay any undisputed amount when due and has not remedied such breach for a period of ten (10) business days following written notice from Fibernetics; or
- b) if the Customer breaches a material obligation of this Agreement and/or a Schedule and has not remedied such breach within thirty (30) business days of receipt of written notice from Fibernetics;
- c) immediately where any law or court order or other authority prohibits Fibernetics from furnishing such Services.

7.2. Either party may terminate this Agreement by notice in writing to the other party:

- a) if the other party breaches a material obligation of this Agreement and has not remedied such breach within thirty (30) business days of receipt of written notice from the non-defaulting party;
- b) immediately if the other party commits an act of bankruptcy or insolvency, is placed into liquidation or receivership, passes a resolution for its winding up (otherwise than for the purpose of amalgamation or reconstruction) or makes any assignment or arrangement for the benefit of its creditors; or
- c) upon sixty (60) business days' prior written notice to other without cause, during any Renewal Term.

7.3. Upon termination or expiration of this Agreement:

- a) all amounts owing by the Customer shall immediately become due and payable;
- b) the Customer shall immediately cease using the Services;
- c) the Customer shall return to Fibernetics, at the Customer's expense, and make no further use of, any Fibernetics' Facilities at the Customer's premises or in the Customer's control, or any copies of any documentation or material or confidential information relating to the Services in the Customer's possession or control.

7.4. Termination of a Schedule and/or this Agreement through any means for any reason shall not relieve either party of any obligation accrued prior to such termination.

7.5. In addition to the provisions of Section 7.4, if the Customer terminates this Agreement or a Schedule without cause, or if Fibernetics terminates this Agreement or a Schedule for cause, the Customer shall pay to Fibernetics, as liquidated damages and not as a penalty, an amount which is equal to the sum of:

- a) the greater of 50% of (i) the average monthly charges for the terminated Service(s) (as determined over the previous three months) multiplied by the number of months remaining in the Service Term from the effective date of termination or (ii) if applicable, the minimum monthly commitment for the terminated Service(s) for the balance of the Service Term (prorated, in the case of a yearly minimum monthly commitment) calculated from the effective date of termination;
- b) any cost which Fibernetics is liable to continue to pay to third parties for the remainder of the applicable Service Term incurred by Fibernetics with the knowledge and/or approval of the Customer for the provision of the terminated Service(s); and
- c) a lump sum representing the aggregated total of any installation, one-time or monthly recurring charges associated with the terminated Service(s) which have been waived or discounted by Fibernetics in consideration of the Customer's commitment to the Service Term for such Service(s).

The Customer acknowledges that the termination fees described in this Agreement represent liquidated damages and not a penalty.

## 8. Ownership

8.1. The Customer does not have property rights in dial numbers and in some cases "IP" numbers or domain names assigned to them. Fibernetics may change such numbers or domain names assigned to the Customer provided that Fibernetics is requested to do so by a legal or regulatory authority, including without limitation, the Canadian Radio-television and Telecommunications Commission (CRTC), the Federal Communications Commission (FCC) or a court order, and provided that Fibernetics promptly notifies the Customer of any such action.

8.2. Any software and accompanying documentation provided by Fibernetics to the Customer remains the property of Fibernetics or its licensors. The Customer shall take reasonable steps to protect such software or documentation from theft, loss or damage. The Customer must review and agree to any applicable end user license agreement (provided separately

or in a Service Schedule) before installing or using the software or documentation. Unless otherwise provided in the applicable end use license agreement, all software licenses will terminate upon termination of this Agreement.

## **9. No Warranty**

**9.1. FIBERNETICS DOES NOT GUARANTEE ERROR-FREE OR UNINTERRUPTED OPERATION OF THE SERVICES NOR SHALL IT BE LIABLE FOR ANY FAILURE, BREAKDOWN, INTERRUPTION OR DEGRADATION IN A SERVICE OR IN THE NETWORK OR ANY OTHER NETWORK OR CONNECTION INVOLVED IN THE PROVISION OR USE OF SERVICES WHATEVER THE CAUSE OF SUCH FAILURE, BREAKDOWN, DEGRADATION OR INTERRUPTION AND HOWEVER LONG IT LASTS. NEITHER FIBERNETICS NOR ANY OF ITS AFFILIATES, EMPLOYEES, AGENTS OR REPRESENTATIVES MAKES ANY WARRANTIES, REPRESENTATIONS ,CONDITIONS OR GUARANTEES OF ANY NATURE WHATSOEVER REGARDING ANY SERVICE, PRODUCT OR FACILITIES PROVIDED BY FIBERNETICS TO THE CUSTOMER, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO: (I) FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY WITH RESPECT TO THE SERVICES; (II) NETWORK TRANSMISSION CAPACITY; (III) THE SECURITY OF ANY TRANSACTION; (IV) THE FAULT TOLERANCE OF THE SERVICES OR THE SUITABILITY OF SAME FOR HIGH RISK ACTIVITIES; OR (V) THE RELIABILITY OR COMPATIBILITY OF THE FACILITIES AND EQUIPMENT OR SOFTWARE OF THIRD PARTIES WHICH MAY BE UTILIZED BY FIBERNETICS IN PROVIDING, OR BY THE CUSTOMER IN USING, THE SERVICES, AND ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS, EXPRESS OR IMPLIED, ARE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, HEREBY EXCLUDED. THE CUSTOMER ACKNOWLEDGES THAT IS HAS NOT RELIED UPON ANY REPRESENTATION, WARRANTY, CONDITION OR GUARANTEE MADE BY FIBERNETICS.**

## **10. Limitation of Liability**

10.1. For the purposes of this Article 10 and Articles 11 and 12, "Fibernetics" shall include Fibernetics, any affiliated or subsidiary companies of Fibernetics, and the directors, officers, employees, consultants, contractors and agents of all of them.

10.2. Except with regard to direct damages to real or tangible personal property, or for bodily injury or death proximately caused by Fibernetics' negligence, Fibernetics' entire liability to the Customer, the End Users or any third party in connection with the Services(s) and Fibernetics' Facilities or the provision or non-provision thereof is limited to the Customer's proven direct damages, such amount not to exceed per claim (or in the aggregate during any three (3) month period) the amount paid by the Customer for one month of the affected Service(s)) (such amount to be based on average monthly charges paid by the Customer over the six (6) months prior to the month in which the damages



was incurred or the length of the Agreement, whichever is less).

10.3. Without limiting the generality of the foregoing, Fibernetics shall not be liable for:

- a) defamation or copyright or trademark infringement or the violation of any third party rights arising from the use of the Services or material transmitted or received over Fibernetics' network;
- b) infringement of patents arising from combining or using Customer or End User equipment with the Services or Fibernetics Facilities;
- c) any act or omission of any connecting carrier, underlying carrier, local exchange telephone company, local access provider, or acts or omissions of any other providers of connections, facilities (including equipment), or service other than Fibernetics, which are used by Fibernetics, the Customer or the End Users under this Agreement;
- d) delays with respect to the installation of Services or the transfer of existing Services;
- e) capacity shortages not directly caused by Fibernetics;
- f) any unauthorized use of the Services;
- g) Service interruptions, errors, delays or defects in transmission or failure to transmit caused by power fluctuations or power failure at the Customer's or the End Users' location(s);
- h) Service interruptions, errors, delays or defects in transmission or failure to transmit caused by Fibernetics in the performance of system or emergency maintenance under Section 5.3 hereof; or
- i) Service interruptions, errors, delays or defects in transmission or failure to transmit caused by an act of God, fortuitous event, war, insurrection, riot, strike, walkout, lockout or other labour unrest affecting Fibernetics or its suppliers, storm, fire, flood, explosion, lightning, government restraint, delays in producing supplies, shortages of suitable labour, equipment or materials, power shortages or interruptions or any other event beyond the reasonable control of Fibernetics.

10.4. **UNDER NO CIRCUMSTANCES SHALL FIBERNETICS BE LIABLE FOR ANY LOSS, COST, CLAIM OR DAMAGE (INCLUDING, BUT NOT LIMITED TO, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, LOST SAVINGS, LOST PROFITS, DAMAGES FOR HARM TO BUSINESS, ANTICIPATED REVENUE OR LOST REVENUE OR THE LOSS OF ANY DATA/INFORMATION) SUFFERED OR INCURRED BY THE CUSTOMER OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO THE END USERS) AND ARISING OUT OF ANY FAULTS, INTERRUPTIONS OR DELAYS IN THE SERVICES OR OUT OF ANY INACCURACIES, ERRORS OR OMISSIONS IN THE INFORMATION CONTAINED IN THE SERVICES WHETHER OR NOT FIBERNETICS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

10.5. Fibernetics will not be liable for any damages arising out of or relating to: facilities, equipment, software, applications, services or content provided by the Customer, the End

Users or third parties; unauthorized access to or theft, alteration, loss or destruction of the Customer's, the End User's or third parties' applications, content, data, programs, information, network or systems by any means (including without limitation viruses); or any act, omission or failure of the Customer.

10.6. In no event shall Fibernetics be liable for the use of the Services by the Customer, the End Users or any third party for unlawful or illegal purposes.

10.7. These limitations of liability shall apply regardless of the form of action, whether in contract, warranty, strict liability, or tort, including without limitation negligence of any kind, whether active or passive, or any combination thereof, and shall survive failure of an exclusive remedy.

## **11. Liability of the Customer**

11.1. For the purposes of this Article and Articles 10 and 12, "Customer" shall include the Customer and any affiliated or subsidiary companies of the Customer, and the directors, officers, employees, consultants, contractors and agents of all of them.

11.2. The Customer shall be liable to Fibernetics for all damages caused to real or tangible personal property, or for bodily injury or death caused by the Customer or a End User.

11.3. UNDER NO CIRCUMSTANCES SHALL THE CUSTOMER BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES, INCLUDING DAMAGES FOR HARM TO BUSINESS, LOST PROFITS, LOST SAVINGS OR LOST REVENUES, WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF SUCH DAMAGES.

## **12. Indemnity**

12.1. The Customer shall defend, indemnify and hold harmless Fibernetics from and against all damages, liabilities, obligations, losses, injuries, claims, demands, penalties, costs and expenses (including reasonable legal fees and disbursements) arising from any and all claims by any person, including without limitation any End User, based on: the content of any transmissions by the Customer or any End User using the Services; the use of the Service by the Customer or any End User, including without limitation, in contravention of the restrictions outlined in Article 4; the Customer's or a End User's facilities or connections provided by the Customer or a End User; or the breach by the Customer or any End User of any term, condition or warranty of the Agreement.

## **13. Confidentiality**

13.1. Each party (the "Receiving Party") undertakes and covenants to the other party (the "Disclosing Party") that it will treat as confidential, and will use its best efforts to ensure that its directors, employees, professional advisers, contractors and agents will treat as confidential, the terms and conditions of this Agreement as well as all proprietary information received by it from the other party whether in oral or written format, including

without limitation, data, summaries, rates, reports, pricing, customer lists, financial information and all other confidential information relating in any manner to the business or affairs of the Disclosing Party (“Confidential Information”) which it may receive in connection with this Agreement. The Receiving Party will not, except with the written permission of the Disclosing Party, use or disclose such Confidential Information to its employees, agents, contractors or professional advisers other than those who have a need to know such Confidential Information, and strictly for the purposes of this Agreement. The Receiving Party shall protect the Confidential Information from disclosure using the same degree of care used to protect its own confidential information, but in no event less than a reasonable degree of care.

13.2. The Receiving Party may disclose Confidential Information pursuant to judicial or governmental request, requirement or order; provided that the Receiving Party take all reasonable steps to give the Disclosing Party prior notice sufficient to contest such request, requirement or order.

13.3. The restriction on use and disclosure of Confidential Information shall not apply to information held by the Receiving Party which:

- a) is in or comes into the public domain other than by breach of this Agreement;
- b) is in the possession of or is known to the Receiving Party prior to the date of this Agreement;
- c) is rightfully received from a third party without knowledge of any confidentiality obligation; or
- d) is approved for release by written authorization of the Disclosing Party.

13.4. Unless the Customer provides express consent or disclosure is pursuant to a legal power, all information kept by the company regarding the Customer, other than the Customer's name, address, and listed telephone number, is confidential and may not be disclosed by Fibernetics to anyone other than;

- a) the Customer;
- b) a person who, in the reasonable judgment of Fibernetics, is seeking the information as an agent of the Customer;
- c) another telephone company, provided the information is required for the efficient and cost-effective provision of telecommunication service and disclosure is made on a confidential basis with the information to be used only for that purpose;
- d) a company involved in supplying the Customer with telephone or telephone directory related services, provided the information is required for that purpose and disclosure is made on a confidential basis with the information to be used only for that purpose;
- e) an agent retained by Fibernetics to evaluate Customer’s creditworthiness, to assist in the collection of the Customer's account, or to perform other administrative functions, provided the information is required for and is to be used only for that purpose;
- f) a law enforcement agency whenever Fibernetics has reasonable grounds to believe that the Customer has supplied false or misleading information or is otherwise involved in unlawful activities;
- g) a public authority or agent of a public authority, for emergency public alerting

purposes, if a public authority has determined that there is an imminent or unfolding danger that threatens the life, health or security of an individual and that the danger could be avoided or minimized by disclosure of information; or

- h) an affiliate of Fibernetics involved in supplying the Customer with telecommunications and/or broadcasting services, provided the information is required for that purpose and disclosure is made on a confidential basis with the information to be used only for that purpose.

13.5. Confidential Information shall remain the property of the Disclosing Party and shall be returned to the Disclosing Party or destroyed upon request by the Disclosing Party.

13.6. Because monetary damages may be insufficient in the event of a breach or threatened breach of the foregoing provisions, the Disclosing Party may be entitled to seek an injunction or restraining order in addition to such other rights or remedies as may be available under this Agreement, at law or in equity.

#### **14. Dispute Resolution**

14.1. Prior to initiating arbitration, the parties shall first use good faith efforts to resolve any dispute informally and confidentially. If a dispute cannot be resolved or settled informally, it shall be settled and determined by arbitration pursuant to the laws of Ontario. Either party may at any time given written notice to the other of its desire to submit the dispute to arbitration stating with reasonable particularity the subject matter of the dispute. Within five (5) business days after receipt of such notice, the parties shall appoint a single arbitrator to arbitrate the dispute. If the parties are unable to agree upon an arbitrator, the parties shall apply to a court of competent jurisdiction to appoint an arbitrator and the parties agree to be bound by such appointment. The costs of the arbitration shall be paid as determined by the arbitrator. The award of the arbitrator shall be final and binding upon the parties.

#### **15. General**

15.1. Force Majeure. Neither party is liable to the other by reason of any failure in performance under this Agreement (other than a failure to pay money) if such failure arises out of causes beyond the reasonable control of such party, provided the parties make reasonable efforts to limit or remedy such effect. Such causes may include, but are not limited to, acts of God, acts of the public enemy, acts of civil or military authority, fires, strikes, unavailability of energy source, delay in transportation, riots or war.

15.2. Notice. Any communication required to be given under this Agreement must be given in writing and either delivered personally, or sent by prepaid registered post, overnight and/or express courier, or facsimile or other electronic communication to the person at the relevant address detailed as follows:

**Fibernetics Corporation**  
CFO  
96 Grand Ave S (Suite  
#203), Cambridge, ON  
N1S 2L9

**The Customer:** as set out in the applicable Schedule signed by the parties or to such other person or address as notified in writing by a party from time to time.

Any notice or other communication is deemed to be received:

- (a) if delivered personally or by overnight and/or express courier, on delivery;
- (b) if sent by prepaid registered post, five (5) business days after the date of posting unless actually received earlier;
- (c) by facsimile or electronic communication, the day following transmission.

15.3. Governing Law. This Agreement shall be governed by the laws of Ontario and the laws of Canada applicable therein, without reference to its principles of conflict of laws, and the parties shall attorn to the jurisdiction of the Courts of Ontario for all matters arising under this Agreement.

15.4. Entire Agreement. This Agreement together with all schedules attached hereto from time to time contains the entire contractual arrangements between the parties with respect to the subject matter of this Agreement and supersedes all other communications, negotiations, correspondence, arrangements, understandings, or representations, oral or written, between the parties relating to same.

15.5. Amendment. This Agreement may be amended only by agreement in writing and signed by each party. Notwithstanding the foregoing, in the event Fibernetics is compelled to revise a term or condition of the Agreement as a result of an applicable statutory or regulatory rule, decision or order, including without limitation any rules or regulations of the CRTC, the Customer agrees to be bound by such statutory rule, decision or order and both parties shall work together in good faith and in a timely manner to minimize any adverse impact to the Customer.

15.6. Severability. Any provision of this Agreement that is unenforceable at law will be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this Agreement. It is the intention of the parties that any provision found to be illegal or unenforceable should not be terminated but should be amended to the extent necessary to render it valid and enforceable.

15.7. Relationship of Parties. The relationship between Fibernetics and the Customer is that of independent contractors. Neither this Agreement nor the provision of Services by Fibernetics creates, nor shall be deemed to create, an agency, partnership, joint understanding or joint venture between Fibernetics and the Customer. The Customer does not have, and will not hold itself out as having, any authority to act for or create any obligation of, or make any representation on behalf of or in the name of, Fibernetics. No agents or employees of the Customer shall be deemed to be agents or employees of Fibernetics.

- 15.8. Waiver. No failure by Fibernetics to exercise any right under this Agreement or to insist upon full compliance by the Customer with its obligations under this Agreement will constitute a waiver of any provision of this Agreement.
- 15.9. Assignment. Neither party may assign this Agreement without the prior written consent of the other, except that Fibernetics may without the Customer's consent assign: (i) its right to receive payment hereunder; (ii) this Agreement to an affiliate; or (iii) this Agreement in connection with the sale of all or substantially all of its assets. This Agreement will be binding upon, and will enure to the benefit of, the parties and their respective successors and permitted assigns.
- 15.10. Order of Preference. In the event of conflict between this Agreement and any other Schedule attached hereto by reference, the terms and conditions of the applicable Schedule will prevail to the extent of the conflict.
- 15.11. Language. This Agreement has been drawn up in the English language at the express request of the parties.

## **2.0 PBX SCHEDULE TO FIBERNETICS' MASTER SERVICES AGREEMENT**

This PBX Schedule is an attachment to and forms an integral part of Fibernetics' Master Services Agreement (the "Agreement") and the Customer agrees to be bound by the terms and conditions set in this PBX Schedule as well as the Master Services Agreement which can be found at [www.fibernetics.ca/MSA](http://www.fibernetics.ca/MSA)

THIS PBX SCHEDULE IS SUBJECT TO THE LIMITATION OF LIABILITY CONTAINED IN THE MASTER SERVICES AGREEMENT.

By signing below, the Customer indicates that it has read, understands and agrees with all of the terms and conditions set out or referenced in this PBX Schedule, including the Master Services Agreement.

In the event of a conflict or inconsistency between the terms of the Master Services Agreement and the terms of this PBX Schedule, the terms of this PBX Schedule shall prevail.

This PBX Schedule becomes a binding contract upon its acceptance in writing by Fibernetics and the Customer.

**Network Access:** In order to subscribe to the PBX Services, Customer must have network access service between Customer's facilities and Fibernetics Network. Customer shall subscribe to such

network access services from Fibernetics and the associated terms and conditions shall be detailed and agreed to by Customer in the Fibernetics Network Access Schedule to the Fibernetics Master Services Agreement. In certain circumstances and when authorized by Fibernetics, Customer may elect to obtain its network access from another service provider. In these circumstances, Customer may still subscribe to the Services; but shall accept all responsibility for managing their network and issues related to network connectivity to Fibernetics' Network. Technical support and assistance relating to Customer network access from a service provider other than Fibernetics shall incur additional charges as detailed in the Quote.

**Service Term:** the term of the PBX Services shall begin on the date the Services are installed by a Fibernetics Authorized Integrator ("Install Date") and shall continue for a period of three (3) years (the "Service Term").

**Renewal Period:** The Service Term shall renew for subsequent one (1) year periods (the "Renewal Period"); however Customer may terminate the Services in the Renewal Period upon providing sixty (60) days prior written notice to Fibernetics.

**Co-termination:** The Service Term for the Network Access Services (or Alternate Network Access, as the case may be) must be co-terminous with the Service Term for the PBX Services. If Customer is already subscribed for Network Access Services (or Alternate Network Access), the term of such Network Access Services (or Alternate Network Access) will extend and become co-terminous with the Service Term (and Renewal Period, as the case may be) of these PBX Services.

**Rates and other Charges:** All rates and charges pertaining to the Services (including monthly recurring, monthly non-recurring, installation charges, and other fees) shall be detailed in the Quote attached to this Schedule (as Addendum 1) and must be signed by Customer.

## **TERMS AND CONDITIONS**

### **16. Network Requirements & Integration**

- a) The Services shall be deployed on the Customer's LAN network. It is the Customer's responsibility to provide, prepare and maintain its locations and facilities for the installation of Fibernetics' equipment and facilities necessary in order for Fibernetics to provide the Services to the Customer, including ensuring that its cabling, internal network and power requirements all meet the minimum network requirements specified by Fibernetics. Such provision, preparation and maintenance shall comply with Fibernetics' specifications and shall be at the Customer's expense.
- b) The integration and installation of the Services to Customer's network shall be performed by a Fibernetics approved and authorized integrator ("Authorized Integrator") at Customer's expense.
- c) Prior to deployment, the Authorized Integrator shall perform a site audit at the Customer's

premises where the PBX system is to be installed to determine if the Customer's network and facilities are voice ready. The Authorized Integrator shall provide an audit report to Fibernetics identifying any potential issues and steps required to prepare the Customer's network and facilities.

- d) Fibernetics' standard pricing does not include any upgrades in cabling, switches, or routers necessary for the Customer's network to be made voice ready. Items or upgrades identified from the site audit, if required, will be quoted to the Customer by Fibernetics. Customer will be responsible to make and pay for any required changes or upgrades.
- e) In the event that the Customer fails to provide, prepare or maintain its locations and facilities for the installation and deployment of the Services, or fails to do so in a timely manner as Fibernetics may deem appropriate in the circumstances, Fibernetics shall not be liable for any resulting delay in commencing the Services or any service interruption and related damages, and the Customer shall be liable for any additional costs incurred by Fibernetics in order to install or restore the Services.
- f) In the event that a provider other than Fibernetics or an Authorized Integrator performs the required upgrades and /or changes to the Customer site(s), the site(s) is subject to re-inspection(s) and verification by Fibernetics to ensure that the Customer's network is voice ready prior to deployment of the Services. The cost of re-inspections shall be charged to the Customer at Fibernetics current rates for Time and Materials. In the event any upgrades and/or changes are performed by a provider other than Fibernetics or an Authorized Integrator, neither Fibernetics nor its Authorized Integrator shall have any responsibility for any errors or delays caused by or relating to such third party upgrades and/or changes.
- g) Dedicated Circuit for Services: In some cases Fibernetics may require dedicated network access for deployment of the Services. In cases where network access is shared for voice and data purposes, the Services may be less reliable. If Services have repeated failures or interruptions, Customer may be required to change to a dedicated network access for the Services. Any costs related to the change shall be borne by the Customer.

## **17. Equipment**

- a) The Customer may purchase equipment from Fibernetics or in some cases Fibernetics may provide equipment in connection with the Services (the "Equipment"). Equipment shall be purchased directly from Fibernetics or Customer may enter into a lease arrangement with a third party leasing company regarding such Equipment. The lease arrangement shall be between Customer and the leasing company such that Fibernetics shall not be part of such lease. Any Equipment subject to a lease shall be treated as if purchased from Fibernetics and the Equipment shall remain the property of Fibernetics until all payments have been made in full.
- b) The Equipment shall be located and used only at the equipment location designated by the parties in writing (the "Equipment Location"). The Customer shall cause the Equipment to be operated in compliance with the general operating specifications and standards of the manufacturer, and all applicable laws.
- c) The Customer will not sell, lease or otherwise dispose of the Equipment (or any part thereof) and will keep the Equipment free of all encumbrances until all amounts owing to Fibernetics have been satisfied. In the case of purchased Equipment only, the Customer may sell, lease or otherwise dispose of the Equipment after all amounts owing to



Fibernetics have been satisfied. All Equipment provided by Fibernetics remains the property of Fibernetics.

- d) At all times, the Customer will use the Equipment only in the manner for which it is designed and as a prudent and careful owner would.
- e) The Customer will bear the risk of loss, destruction or confiscation to the Equipment from the time the Equipment is delivered to the Equipment Location and the Customer is responsible for insuring the Equipment as of the date of such delivery.
- f) Software is licensed on an “as is” basis. The Customer’s right to use any software programs included with the Equipment shall be subject to the license terms and conditions specified by the suppliers of such software programs. If required by such suppliers, the Customers shall sign software license agreements with such suppliers in the form required by them
- g) Upon the occurrence of any default, Fibernetics shall have the following remedies: (i) to retain all payments made by the Customer as liquidated damages; (ii) to enter upon the Equipment Location and remove all or any part of the Equipment; (iii) to sell, lease or otherwise dispose of the Equipment for the account of the Customer, the Customer to be liable for the cost of any repair or deficiency; (iv) at its option, to retain all or any part of the Equipment in satisfaction of the Customer’s indebtedness; and (v) to enjoy and exercise all of the rights and remedies of a secured party under applicable personal property security legislation. All remedies are cumulative and enforceable by Fibernetics successively or concurrently.

**18. Warranty:** The Warranty on the Equipment purchased by Customer shall be 1 year beginning from the date of delivery of the equipment. An optional extended Warranty may be purchased at the time of the initial order and details shall be included in the Quote in Addendum 1.

## **19. Technical Support and Repair**

- a) Fibernetics will offer technical assistance and support for the Services in accordance with the Fibernetics Customer Support Details Document provided to Customer, or as posted at [www.fibernetics.ca/CSD](http://www.fibernetics.ca/CSD).
- b) No on-site support (at Customer premises) is provided by Fibernetics as part of the Services. Customer should arrange for on-site technical support from a maintenance or support services provider.
- c) Fibernetics will not provide technical support for third party services, software, hardware, PC repair services, enhancements, upgrades or modifications or any other services provided by third parties.
- d) Fibernetics will not in any event be held responsible to correct or fix any problems or errors relating to or caused by the installation, configuration or modification of the Customer’s equipment or system or any components thereof or to incur any costs related thereto. Repair and support for Equipment purchased by the Customer will be in accordance with the Warranty (or extended Warranty, as the case may be) on such purchased Equipment.
- e) For Equipment provided by Fibernetics in connection with the Services, Fibernetics will be responsible for repair or replacement of the Equipment upon degradation or malfunction

due to normal use, wear and tear as long as the Customer continues to be an active subscriber to the Services. Upon receipt of replacement Equipment, Customer must, within 15 days, return the old malfunctioning Equipment to Fibernetics. If Equipment is not returned in this time period, Customer will be invoiced and must pay for the cost of the new Equipment. Returns must be made in accordance with the Fibernetics Returned Merchandise Authorization (RMA) Policy provided to the Customer, or as posted at [www.fibernetics.ca/RMA](http://www.fibernetics.ca/RMA)

- f) Fibernetics will not be responsible for the cost to repair or replace Equipment that has been damaged due to Customer negligence and Customer will be responsible for the cost to repair or replace such Equipment.

## **20. Service Cancellation**

- a) Termination and termination charges will be in accordance with the termination provisions outlined in Fibernetics' Master Services Agreement.
- b) Upon termination of the Services, all Equipment provided by Fibernetics in connection with the Services must be returned to Fibernetics within fifteen (15) days from the date of termination, failing which the Customer will be charged the full purchase price for the Equipment. Returned equipment must include all original cables and power adapters and must not have any physical damage and must be returned in accordance with the Fibernetics RMA Policy.

## **21. Service Specifications**

- a) Local Calling Area: Customer shall choose a Local Calling Area ("LCA") from Fibernetics' on-net areas for each PBX/PBX remote installed in connection with the Services. This LCA will define the geographic area that constitutes local calls (at no charge) for the Customer. If the PBX is not installed in the same LCA that was chosen, then local calls may be subject to long distance charges. For PBX units installed where Fibernetics is not on-net, all local calls will be subject to long distance charges.
- b) Direct Inward Dial (DID) numbers: Fibernetics will provide Customer with one (1) DID number at no charge for each Equivalent Line Capacity of the PBX at time of sale. Additional DIDs will be charged at the rates set out in the Quote (Addendum 1) . If the Customer increases its Equivalent Line Capacity, one (1) additional DID will be provided at no charge for each incremental increase in Equivalent Line Capacity.
- c) Long Distance: Long Distance calls are defined as calls outside the Customer's LCA. Fibernetics will provide Long Distance service for North American calls at the rates set out in the Quote (Addendum 1). International Long Distance calls will be charged at current rates as posted at <https://www.newt.ca/products/business-phone-system/newt-pbx-long-distance-rates/>, which are subject to change without notice to Customer. All Long Distance charges will be billed monthly to Customer.
- d) Toll Free: Customer may subscribe to Toll Free services at the rates set out in the Quote (Addendum 1).

- e) Software Phones: The Fibernetics Digital PBX system allows registration of third party provided software based phones (“Softphones”) as convenience extensions on the Fibernetics platform. These Softphones may be used as convenience extensions by Customer at its own risk and liability, as they may not be reliable for regular day-to-day business use. Due to the number of variables in software, networking, service providers, VPN software , Operating Systems, PC’s, etc. Fibernetics shall not provide support for Softphone functionality in accordance with section 4 (c) above. Further, any incompatibility issues, Services degradations or 911 service limitations that may be attributable to the use of the Softphones (or any associated software or equipment) shall not be the responsibility of Fibernetics and shall be resolved by Customer and all related costs shall be borne by Customer.

## **22. Billing**

- a) For Equipment purchased by Customer, fifty (50%) of the Equipment purchase price is required as a deposit at the time the Quote is signed. The balance of the purchase price shall be due upon delivery of the Equipment.
- b) Monthly and any other charges associated with the Services described above shall be charged to Customer’s monthly invoice in accordance with the Master Services Agreement.

## **23. Shipping and Handling**

- a) Unless otherwise specifically stated, shipping is not included with any orders or returns . The Customer agrees to pay for all shipping and handling of equipment in addition to any fee or charge for the Service.

## **24. 911 Services**

PLEASE READ THE INFORMATION BELOW ABOUT 911 EMERGENCY SERVICE CAREFULLY.

By using the Fibernetics PBX Services, the Customer acknowledges and agrees to all of the information below regarding the limitations of using the Services for dialing 9-1-1.

The Customer acknowledges and understands that the Fibernetics PBX Services offer a Basic 9-1-1 type service and may in certain circumstances also offer Enhanced 9-1-1 service. With the Basic 9-1-1 service, Customer or any of its users placing a 9-1-1 call from Fibernetics PBX Services Equipment will be routed to an emergency operator (an "Operator") and will have to provide their specific address/location. Once this information has been successfully provided to the Operator, the Operator will route the call to the appropriate Public Safety Answering Point

(PSAP) corresponding to the provided address/location. Where Enhanced 9-1-1 service is available, in order to have 9-1-1 calling routed correctly, the Customer must ensure that its service address is correct and up to date by updating the 9-1-1 configuration in their PBX interface. Further, for Basic or Enhanced 9-1-1 service, the phone number and address designated by the Customer in Fibernetics records will be the location information passed on the local PSAP or local emergency dispatcher. Therefore, it is critical that Customer, at time of activation and following any moves or location changes, provide correct and up to date address and contact information to Fibernetics.

9-1-1 calls originating from an address or location outside of Canada cannot be routed to any PSAP or emergency service by the Operator.

Fibernetics can only support Equipment provided by or purchased from Fibernetics for purposes of 9-1-1 emergency dialing with the PBX Services. 9-1-1 service is available for fixed PBX systems; however only Basic 9-1-1 service will be available for roaming PBX users. If a roaming PBX user calls 9-1-1, he/she must be prepared to immediately inform the emergency services dispatcher of his/her location or the location of the emergency, if different.

Should there be a service outage with the Services including (but not limited to) power outage, network service outage, or suspension or disconnection of the Services, it may prevent 9-1-1 dialing from working. For technical reasons associated with the possibility of network congestion, with the Services there is a possibility that a 9-1-1 call will produce a busy signal or will take longer to answer, as compared to traditional 9-1-1 calls.

For further clarification, when using the Services, the PSAP or local emergency service dispatcher receiving the Customer's 9-1-1 call may not be able to capture and/or retain automatic number or location information. This means that the dispatcher may not know the phone number or physical location of the person who is making the 9-1-1 call. Therefore, users of the PBX Services dialing 9-1-1 must immediately inform the dispatcher of their location (or the location of the emergency, if different). The user must ensure not to disconnect the line, as the dispatcher may not have a phone number to use for call back. If the user is unable to speak and describe the location, the emergency dispatcher may not be able to obtain the location information. If 9-1-1 is dialed and the receiver is then hung up, the call will be disconnected.

The Customer acknowledges the nature and limitations of the 9-1-1 service and the Customer agrees that it must inform all users and potential users of the PBX Services of these limitations of the Services in connection with 9-1-1 calls at the locations where the PBX system has been installed and at any remote locations connected to the Customers' PBX Services subscription.

**THE CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT FIBERNETICS WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE AND/OR INABILITY TO DIAL 9-1-1**

USING THE PBX SERVICES OR FOR ANY INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL DUE TO THE 9-1-1 DIALING CHARACTERISTICS AND LIMITATIONS LISTED HEREIN. THE CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS FIBERNETICS, ITS OFFICERS, DIRECTORS, EMPLOYEES, PARENTS, SUCCESSORS, AFFILIATES, AGENTS AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO THE CUSTOMER IN CONNECTION WITH THE PBX SERVICES, FROM ANY AND ALL INJURY, DEATH OR DAMAGE TO PERSONS OR PROPERTY, CLAIMS, LOSSES, FINES, PENALTY AND COSTS (INCLUDING SOLICITOR'S FEES) BY, OR ON BEHALF OF, THE CUSTOMER OR ANY THIRD PARTY OR USER OF THE PBX SERVICES RELATING IN ANY WAY TO THE FAILURE OR OUTAGE OF THE PBX SERVICES RELATED TO 9-1-1 DIALING.

CUSTOMER IS ADVISED TO KEEP AN ANALOG LINE FOR SECURITY AND/OR FAX SERVICES. THIS ANALOG LINE SHOULD BE USED AS A BACKUP ANALOG LINE TO BE USED FOR 9-1-1 IN THE EVENT OF A SERVICE OUTAGE ON THE PBX SERVICES, INCLUDING A SERVICE OUTAGE CAUSED BY POWER OUTAGE. ALL USERS SHOULD BE MADE AWARE OF THE LOCATION OF THE ANALOG PHONE.

## **25. Traffic Mix**

Customer acknowledges and agrees that it is using the Services for normal business usage. Normal usage is defined as an average of 50% inbound and 50% outbound calling mix on all voice traffic. Fibernetics reserves the right to adjust charges to Customer where calling patterns reflect an abnormal mix of outbound to inbound traffic.

## **26. Directory Listing**

BASIC directory listing information is provided by Fibernetics to the 411 directory listing service. Customer is responsible for arranging for any other directory listings it so desires (e.g. Complex listings, 411.ca, Yellow Pages).

## **27. Porting**

Customer may request that Fibernetics port a telephone number from another carrier or service provider. However, Fibernetics reserves the right to decline to port a number if the number and area code are not on-net to Fibernetics.

## **3.0 NETWORK ACCESS SCHEDULE TO FIBERNETICS' MASTER SERVICES AGREEMENT**

This Network Access Schedule is an attachment to and forms an integral part of Fibernetics' Master Services Agreement (the "Agreement") and the Customer agrees to be bound by the terms and conditions set in this Network Access Schedule as well as the Master Services Agreement which can be found at [www.fibernetics.ca/MSA](http://www.fibernetics.ca/MSA).

THIS NETWORK ACCESS SCHEDULE IS SUBJECT TO THE LIMITATION OF LIABILITY CONTAINED IN THE MASTER SERVICES AGREEMENT.

By signing below, the Customer indicates that it has read, understands and agrees with all of the terms and conditions set out or referenced in this Network Access Schedule, including the Master Services Agreement.

In the event of a conflict or inconsistency between the terms of the Master Services Agreement and the terms of this Network Access Schedule, the terms of this Network Access Schedule shall prevail.

This Network Access Schedule becomes a binding contract upon its acceptance in writing by Fibernetics and the Customer.

**Service Term:** the term of the Services shall begin on the date the Services are installed by a Fibernetics Authorized Integrator ("Install Date"), and shall continue for a period of three (3) years (the "Service Term"). If Customer signs up for Digital PBX Voice Services, or any other services from Fibernetics, the term of these Network Access Services shall extend to and become co-terminous with the Service Term of the Digital PBX Voice Services or other services, as the case may be.

**Renewal Period:** The Service Term shall renew for subsequent one (1) year periods (the "Renewal Period"); however Customer may terminate the Services in the Renewal Period upon providing sixty (60) days prior written notice to Fibernetics.

**Rates and other Charges:** All rates and charges pertaining to the Services (including monthly recurring, monthly non-recurring, installation charges, and other fees) shall be detailed in the Quote attached to this Schedule (as Addendum 1) and must be signed by Customer.

### **Terms and Conditions**

#### 1. Customer Network Requirements

- a. It is the Customer's responsibility to provide, prepare and maintain the locations and facilities for the installation of Fibernetics' facilities necessary in order for Fibernetics to provide the Services to the Customer, including ensuring that its network elements meet the minimum requirements based on its usage and needs. Such provision, preparation and maintenance shall

comply with Fibernetics' specifications and shall be at the Customer's expense.

- b. In the event that the Customer fails to provide, prepare or maintain the locations and facilities for the installation of Fibernetics' facilities, or fails to do so in a timely manner as Fibernetics may deem necessary in the circumstances, Fibernetics shall not be liable for any resulting delay in commencing the Services or any service interruption and related damages, and the Customer shall be liable for any additional costs incurred by Fibernetics in order to install or restore the Services.

## 2. 3rd Party Software and Downloads

- a. Fibernetics is not responsible for third party software downloads or hardware installed by the Customer which alter the Service connection, the Customer's computer configuration or which prevent Internet connection, speed or service.
- b. Fibernetics is not responsible for any spyware, malware or virus the Customer contracts on its computer from using the World Wide Web.

## 3. Equipment

- a. The Customer may purchase equipment from Fibernetics or in some cases Fibernetics may provide equipment in connection with the Services (the "Equipment"). Equipment shall be purchased directly from Fibernetics or Customer may enter into a lease arrangement with a third party leasing company regarding such Equipment. The lease arrangement shall be between Customer and the leasing company such that Fibernetics shall not be part of such lease. Any Equipment subject to a lease shall be treated as if purchased from Fibernetics and the Equipment shall remain the property of Fibernetics until all payments have been made in full.
- b. The Equipment shall be located and used only at the equipment location designated by the parties in writing (the "Equipment Location"). The Customer shall cause the Equipment to be operated in compliance with the general operating specifications and standards of the manufacturer, and all applicable laws.
- c. The Customer will not sell, lease or otherwise dispose of the Equipment (or any part thereof) and will keep the Equipment free of all encumbrances. In the case of purchased Equipment only, the Customer may sell, lease or otherwise dispose of the Equipment after all amounts owing to Fibernetics have been satisfied. All Equipment provided by Fibernetics remains the property of Fibernetics.
- d. At all times, the Customer will use the Equipment only in the manner for which it is designed and as a prudent and careful owner would.
- e. The Customer will bear the risk of loss, destruction or confiscation to the Equipment from the time the Equipment is delivered to the Equipment Location and the Customer is responsible for insuring the Equipment as of the date of such delivery.
- f. Software is licensed on an "as is" basis. The Customer's right to use any software programs included with the Equipment shall be subject to the license terms and conditions specified by the suppliers of such software programs. If required by such suppliers, the Customers shall sign software license agreements with such suppliers in the form required by them.

- g. Upon the occurrence of any default, Fibernetics shall have the following remedies: (i) to retain all payments made by the Customer as liquidated damages; (ii) to enter upon the Equipment Location and remove all or any part of the Equipment; (iii) to sell, lease or otherwise dispose of the Equipment for the account of the Customer, the Customer to be liable for the cost of any repair or deficiency; (iv) at its option, to retain all or any part of the Equipment in satisfaction of the Customer's indebtedness; and (v) to enjoy and exercise all of the rights and remedies of a secured party under applicable personal property security legislation. All remedies are cumulative and enforceable by Fibernetics successively or concurrently.

#### 4. Technical Support and Repair

- a. Fibernetics will offer technical assistance and support for the Services in accordance with the Fibernetics Customer Support Details Document provided to Customer, or posted at [www.fibernetics.ca/CSD](http://www.fibernetics.ca/CSD).
- b. No on-site support (at Customer premises) is provided by Fibernetics as part of the Services. Customer should arrange for on-site technical support from a maintenance or support services provider.
- c. Fibernetics will not provide technical support for third party services, hardware, PC repair services, enhancements, upgrades or modifications.
- d. Fibernetics will not in any event be held responsible to correct or fix any problems or errors relating to or caused by the installation, configuration or modification of the Customer's equipment or network or any components thereof or to incur any costs related thereto.
- e. Repair and support for Equipment purchased by the Customer will be in accordance with the warranty (or extended warranty, as the case may be) on such purchased Equipment.
- f. For Equipment provided by Fibernetics in connection with the Services, Fibernetics will be responsible for repair or replacement of the Equipment upon degradation or malfunction due to normal use, wear and tear as long as the Customer continues to be an active subscriber to the Services. Upon receipt of replacement Equipment, Customer must, within 15 days, return the old malfunctioning Equipment to Fibernetics. If Equipment is not returned in this time period, Customer will be invoiced and must pay for the cost of the new Equipment. Returns must be made in accordance with the Fibernetics Returned Merchandise Authorization (RMA) Policy provided to the Customer, or posted at [www.fibernetics.ca/RMA](http://www.fibernetics.ca/RMA)
- g. Fibernetics will not be responsible for the cost to repair or replace Equipment that has been damaged due to Customer negligence and Customer will be responsible for the cost to repair or replace such Equipment.

#### 5. Service Cancellation

- a. Termination and termination charges will be in accordance with the termination provisions outlined in Fibernetics' Master Services Agreement.
- b. Upon termination, all Equipment provided by Fibernetics in connection with the Services must be returned within fifteen (15) days from the date of termination, failing which the Customer will be charged the full purchase price. Returned equipment must include all original cables



and power adapters and must not have any physical damage. Returns must be made in accordance with the Fibernetics RMA Policy.

## 6. Service Specifications

- a. Voice Only xDSL services will be delivered at the optimal rate (speed) as determined by Fibernetics.
- b. Service speed is up to the advertised upload and download speeds listed on Fibernetics' website; for example, the speed 'up to 5 Mbps' means that the Customer can expect speeds up to 5Mbps.
- c. Fibernetics cannot make any guarantees on the speed of the Customer's connection due to the fact that speeds vary on the distance between the Customer's premise and Fibernetics' Central Office or remote server.
- d. Fibernetics shall use reasonable efforts to deliver and install the Service by the activation date. However, delays may occur due to such factors as the Customer's availability or the acts or omissions of third party suppliers or providers. Fibernetics does not guarantee that Services will be delivered and installed by the activation date.

## 7. Service Level Agreement

The Service Level Agreement relating to these Network Access Services is appended as an Addendum to this Schedule.

## 8. Installation

- a. The Customer demarcation point for Services will be a standard location where all external wiring feeds terminate and connect with inside wiring owned by the Customer. Services will be installed up to the Customer demarcation point.
- b. Fibernetics is not responsible for any equipment beyond the demarcation point, save and except for Fibernetics' customer premise equipment (CPE) device. Fibernetics is also not responsible for any wires beyond the Customer's demarcation point.

## 9. Billing

- a. Monthly and any other charges associated with the Services shall be charged to Customer's monthly invoice in accordance with the Master Services Agreement.
- b. ANA Burstable Billing (95th Percentile):

Fibernetics will measure Customer bandwidth usage by taking samples in five minute intervals, for each point of connection between the Customer and Fibernetics, in two categories: incoming and outgoing. At the end of each billing cycle, all data samples in each category will be sorted from highest to lowest and the top 5% of measurements will be discarded. The highest remaining data sample in the higher of the two categories will then constitute the Bandwidth Use Level for that particular billing cycle. Burstable Bandwidth is the bandwidth usage calculated by subtracting Customer's committed level of bandwidth from the Bandwidth Use Level for a particular billing cycle; only a positive remainder shall calculate Burstable Bandwidth. Any positive remainder shall be charged to Customer's monthly invoice in accordance with the Master Services Agreement and overage rates specified in the contract.

#### 10. Shipping and Handling

- a. Unless otherwise specifically stated, shipping is not included with any orders or returns. The Customer agrees to pay for all shipping and handling of equipment in addition to any fee or charge for the Service.

### **4.0 VOICE SCHEDULE TO FIBERNETICS' MASTER SERVICES AGREEMENT**

This VOICE Schedule is an attachment to and forms an integral part of Fibernetics' Master Services Agreement (the "Agreement") and the Customer agrees to be bound by the terms and conditions set in this VOICE Schedule as well as the Master Services Agreement which can be found at [www.fibernetics.ca/MSA](http://www.fibernetics.ca/MSA)

THIS VOICE SCHEDULE IS SUBJECT TO THE LIMITATION OF LIABILITY CONTAINED IN THE MASTER SERVICES AGREEMENT.

By signing below, the Customer indicates that it has read, understands and agrees with all of the terms and conditions set out or referenced in this VOICE Schedule, including the Master Services Agreement.

In the event of a conflict or inconsistency between the terms of the Master Services Agreement and the terms of this VOICE Schedule, the terms of this VOICE Schedule shall prevail.

This VOICE Schedule becomes a binding contract upon its acceptance in writing by Fibernetics and the Customer.

**Service Term:** the term of the VOICE Services shall begin on the date the Services are installed by a Fibernetics Authorized Integrator (“Install Date”) and shall continue for a period of three (3) years (the “Service Term”).

**Renewal Period:** The Service Term shall renew for subsequent one (1) year periods (the “Renewal Period”); however Customer may terminate the Services in the Renewal Period upon providing sixty (60) days prior written notice to Fibernetics.

**Rates and other Charges:** All rates and charges pertaining to the Services (including monthly recurring, monthly non-recurring, installation charges, and other fees) shall be detailed in the Quote attached to this Schedule (as Addendum 1) and must be signed by Customer.

## **TERMS AND CONDITIONS**

### 2. Customer Network Requirements

- c. It is the Customer’s responsibility to provide, prepare and maintain the locations and facilities for the installation of Fibernetics’ facilities necessary in order for Fibernetics to provide the Services to the Customer, including ensuring that its network elements meet the minimum requirements based on its usage and needs. Such provision, preparation and maintenance shall comply with Fibernetics’ specifications and shall be at the Customer’s expense.
- d. In the event that the Customer fails to provide, prepare or maintain the locations and facilities for the installation of Fibernetics’ facilities, or fails to do so in a timely manner as Fibernetics may deem necessary in the circumstances, Fibernetics shall not be liable for any resulting delay in commencing the Services or any service interruption and related damages, and the Customer shall be liable for any additional costs incurred by Fibernetics in order to install or restore the Services.

### 11. 3rd Party Software and Downloads

- c. Fibernetics is not responsible for third party software downloads or hardware installed by the Customer which alter the Service connection, the Customer's computer configuration or which prevent Internet connection, speed or service.
- d. Fibernetics is not responsible for any spyware, malware or virus the Customer contracts on its computer from using the World Wide Web.