



TERMS AND CONDITIONS BUSINESS SERVICES

1.0 DEFINITIONS

"Affiliate" of a party means any entity which controls, is under common control with, or is controlled by, that party.

"ALPHA TELECOM" means ALPHA TELECOM Services inc., its Affiliates, successors and assigns, and their respective employees, directors, and officers.

"Annual Contract Value" means the aggregate dollar value of the Service(s) set out in the applicable Service Schedule that the Customer has committed to for each year of the Initial Term and any renewal term.

"Charges" means the fees, rates and charges for the Services set out in the applicable Service Schedule or as otherwise invoiced by ALPHA TELECOM in accordance with the MSA and which may include Third Party charges incurred by ALPHA TELECOM.

"Claims" means any claim, demand, liability, damage, loss, suit, action, investigation, proceeding or cause of action between ALPHA TELECOM and the Customer or between either party or a Third Party, and all related costs and expenses, including without limitation, legal fees and expenses.

"Confidential Information" means either party's confidential technical and business information, including without limitation, information relating to inventions, software, research and development, future product specifications, engineering processes, network architecture, costs, profit or margin information, customer or prospective customer information, and marketing and business plans.

"Confidential Information" does not include information which:

(a) is or becomes publicly known otherwise than by reason of a breach of the MSA;

(b) has been independently developed outside the scope of the MSA and without reference to or knowledge of the other party's Confidential Information;

(c) is previously known to a party free of any obligation

to keep it confidential; or

(d) is required to be disclosed pursuant to subpoena, court order, or other governmental or legal process, whereupon the receiving party shall provide prompt written notice to the disclosing party prior to such disclosure, so that the disclosing party may seek a protective order or other available relief.

"Content" means information made available, displayed or transmitted in connection with a Service including, without limitation, all trade-marks and domain names as well as the contents of any bulletin boards or chat forums, all updates, upgrades, modifications and other versions of any of the foregoing, and information made available by means of an HTML "hot link," a Third Party posting or similar means.

"Customer" means the company or other corporate entity or organization whose name appears on the MSA as the recipient of the Services, and includes the Customer's Affiliates, Users, and each of their respective employees, directors, and officers.

"Customer Location" means the Customer's business address or location for the purposes of Service delivery, as set out in the applicable Service Schedule or otherwise agreed to by the parties in writing.

"Facilities" means any network facilities, fibre, conduit, equipment, hardware or software provided in connection with ALPHA TELECOM's delivery of the Services or the Customer's use of the Services.

"Force Majeure Event" means any event beyond the reasonable control of a party.

"Initial Term" means the initial term of a Service Schedule specified in the applicable Service Schedule, MSA or Service Quote.

"Maintenance Activities" has the meaning set out in Section 5.6.

"MSA" means the Master Services Agreement between ALPHA TELECOM and the Customer, which includes these Terms of Service, all Service Schedule(s), Quotes accepted by the customer and all other subsequent written agreements or amendments between ALPHA TELECOM and the Customer regarding the Services.

"Minimum Charge" has the meaning set out in Section 4.3.

"Service(s)" means collectively any product(s) and service(s) provided by ALPHA TELECOM to the

Customer including, but not limited to, any product(s) and service(s) provided under the MSA, but does not include the provision of any non-forborne or regulated services.

“Service Quote” means ALPHA TELECOM’s standard quote issued for each Service or Service bundle provided by ALPHA TELECOM under the MSA, as may be executed by the parties from time to time.

“SQuote Acceptance Date” has the meaning set out in Section 6.1.1.

“Special Build” has the meaning set out in Section 4.6.

“Terms of Service” means the provisions set out in Sections 1 to 11 herein. ALPHA TELECOM may amend these Terms of Service, by posting the change on www.Alpha Telecom.com. Customer’s continued access to and use of the Services after the change has come into effect constitutes Customer’s acceptance of the change and Customer expressly agrees that:

(a) Customer will be deemed to have accepted the change, with no additional written agreement or express acknowledgment required; and

(b) Customer will continue to be responsible for all Charges.

“Third Party” means a party other than ALPHA TELECOM or Customer (including ALPHA TELECOM’s Affiliates).

“User” means any person the Customer permits to access or use the Services.

“Web Portal” means a secure facility maintained on ALPHA TELECOM’s servers, which is available to Customers to facilitate the Customers’ management of the Services.

2.0 SERVICE RESPONSIBILITIES (ALPHA TELECOM)

2.1 ALPHA TELECOM shall provide the Services to the Customer in a professional and workmanlike manner in accordance with the MSA during the Initial Term (and any applicable renewal term), provided however that ALPHA TELECOM continues to use the requisite technology for such Services, the Services continue to be an ALPHA TELECOM supported service, and ALPHA TELECOM is permitted by law to provide the Services.

2.2 Certain of the Services, or components of the Services may be provided by ALPHA TELECOM’s

Affiliates or suppliers. All Services provided through an Affiliate or supplier shall be subject to and governed by the terms and conditions of the MSA as if such Services were provided directly by ALPHA TELECOM.

3.0 SERVICE RESPONSIBILITIES (CUSTOMER)

3.1 General

3.1.1 Unless otherwise expressly provided in the MSA, the Customer shall not resell the Services or otherwise make the Services available to Third Parties for value. If Customer resells the Services contrary to the MSA, then effective the date of resale, Customer will be subject to the then prevailing terms and conditions as applicable to Resellers of ALPHA TELECOM Services ; and ALPHA TELECOM may, at its sole discretion terminate the MSA or affected Service immediately without notice

3.1.2 The Customer shall co-operate with ALPHA TELECOM to provide and maintain the Services. This includes, among other things, providing and maintaining the Customer Locations (including supplying power and other utilities) and Customer-provided Facilities in accordance with any specifications that may be provided by ALPHA TELECOM to the Customer.

3.1.3 The Customer shall be responsible for Customer’s use of the Services and Content. The Customer shall use the Services and Content in compliance with the MSA, all applicable laws, regulations and written and electronic instructions for use, and shall not interfere with any ALPHA TELECOM Facilities or ALPHA TELECOM’s ability to provide the Services to the Customer or others.

3.1.4 Unless otherwise required by law or regulatory authority, if Customer’s use of the Services interferes with any ALPHA TELECOM Facilities or ALPHA TELECOM’s ability to provide the Services to the Customer or others, or if ALPHA TELECOM suspects or receives notice (followed by reasonable investigation) that the Customer’s use of the Services or Content may violate any laws or regulations, ALPHA TELECOM may, at its sole discretion:

(a) suspend the affected Service without notice if such use interferes with any ALPHA TELECOM Facilities or ALPHA TELECOM’s ability to provide the Services to others; or

(b) if the interference or violation is not remedied or capable of remedy within twenty-four (24) hours of ALPHA TELECOM’s notice to the Customer,

(i) terminate the MSA, the affected Service or Service Schedule; or

- (ii) suspend the affected Service and remove or require the Customer to remove the Customer's Content from the affected Service. ALPHA TELECOM's actions or inaction under this Section shall not constitute review or approval of the Customer's use of the Services or Content. ALPHA TELECOM shall use reasonable efforts to provide notice to the Customer before taking action under (b) contemplated in this Section 3.1.4.

3.1.5 The Customer shall ensure that Customer complies with the terms and conditions of the MSA. The Customer shall be responsible for Customer's failure to comply with the terms and conditions of the MSA, Customer's use of the Services and Customer's Content. Customer shall be jointly and severally liable for the obligations of any Affiliate who orders Services from ALPHA TELECOM under the MSA.

3.1.6 The customer shall observe and abide by the National Do-Not-Call list maintained by the CRTC. Failure to do so may constitute cause for ALPHA TELECOM to suspend services in part or in fully.

3.1.7 The customer shall observe and abide by the anti-spam regulations set by the CRTC. Failure to do so may constitute cause for ALPHA TELECOM to suspend services in part or in fully.

3.1.8 The customer shall be solely responsible for any legal action or regulatory action arising from failure to abide by sections 3.1.6 and/or 3.1.7.

3.2 Web Portal

3.2.1 Access to and use of the Web Portal by the Customer is authorized only through a User ID and password(s) issued by ALPHA TELECOM. The Customer is responsible for maintaining the confidentiality of the User ID and password(s) and for all activities that occur under such User ID and password(s). The Customer shall contact ALPHA TELECOM immediately if the Customer has any reason to believe that the User ID or password(s) have been compromised.

3.2.2 The Customer acknowledges and agrees that any change made through the Web Portal to the type of Services purchased by the Customer from ALPHA TELECOM will be as effective as if it had been made through a written agreement between the parties. Notwithstanding the foregoing, the Web Portal cannot be used to change any terms and conditions relating to the Services (such terms and conditions can only be changed by written amendment signed by authorized representatives of each party), and no

cancellation of a Service through the Web Portal shall be considered effective unless such cancellation is made in accordance with this MSA and confirmed in writing by ALPHA TELECOM.

3.2.3 While ALPHA TELECOM uses reasonable efforts to include accurate, up-to-date information on the Web Portal, ALPHA TELECOM makes no warranties, representations or guarantees as to its accuracy and assumes no liability for any errors or omissions in the information available through the Web Portal. ALPHA TELECOM reserves the right (at any time, in its sole discretion and without prior notice to the Customer) to:

- (a) change, remove or terminate the functions associated with ALPHA TELECOM's Web Portal; or
- (b) deny access to and use of the Web Portal.

4.0 CHARGES AND BILLING

4.1 Unless otherwise agreed to by the parties in writing, Charges for each Service shall begin to accrue upon the date such Service is provisioned by ALPHA TELECOM. The Customer shall pay to ALPHA TELECOM the Charges for the Services in accordance with the applicable Service Schedule, subject to the Minimum Charge (as defined in Section 4.3). In the event that ALPHA TELECOM, with Customer's approval, incurs unusual expense in the provision of a Service, for example and without limitation, for securing rights of way or for special construction, Customer will pay for such expenses in accordance with this Section 4. The Charges shall remain in effect during the Initial Term.

Notwithstanding the foregoing, Charges for the Services are subject to change at any time if Third Party charges in connection with a Service are increased or newly charged to ALPHA TELECOM. Such Third Party charges may include, but are not limited to, Charges for services, changes, connections, disconnections or terminations of a Service or any component of a Service, including individual circuits, lines or features.

4.2 The Customer shall pay all monthly recurring Charges in advance and all other Charges monthly in arrears. All Charges shall be payable thirty (30) days from the invoice date, and shall be exclusive of any value added tax, goods and services tax, or other transaction or indirect tax, fee or surcharge (collectively, the "Taxes") that may apply, including any related interest, penalty or similar charge. The Customer shall pay all Taxes that apply to the Services.

4.3 If the Customer is late in making any payment, or if the Customer's bank returns any payment, the

Customer shall reimburse ALPHA TELECOM for any reasonable collection costs ALPHA TELECOM incurs. The Customer shall pay interest on any late payments at the lower of 3.5% per month or the maximum rate allowed by applicable law.

4.4 The Customer shall pay for any reasonable costs that ALPHA TELECOM incurs to conduct an on-site service call or restore a suspended Service, if the services call or suspension results from faulty Customer-provided Facilities or Customer's failure to comply with the MSA.

4.5 In the event that the Customer requests provision of the Services at a Customer location to which ALPHA TELECOM does not have existing facilities and a fibre build, lease of Third Party facilities or other special arrangement is required in order to accommodate the request (a "Special Build"), the Customer shall pay ALPHA TELECOM the actual cost of the Special Build (whether by way of a lump sum payment or monthly payment).

4.6 The Customer shall review the Customer's invoices and inform ALPHA TELECOM promptly in writing of any errors, omissions or irregularities. The Customer shall pay the undisputed portion of any invoice when due. If the Customer disputes a portion of an invoice, the Customer shall give ALPHA TELECOM written notice within six (6) months of the invoice date, otherwise the Customer shall be considered to have accepted the accuracy and validity of the invoice. In the event that any dispute respecting an invoice under this Section 4.7 is not resolved within sixty (60) calendar days, ALPHA TELECOM shall be entitled to treat the invoice as being an unpaid and undisputed invoice and ALPHA TELECOM shall have the right to pursue all remedies that it may have available to it under the MSA and by law.

4.7 The Customer shall be responsible for paying a previously unbilled or under billed Charge, provided that the maximum period of the payment adjustment shall be six (6) months (even if the Customer's use of the Service exceeds such six (6) month period). In the event there has been deception by the Customer regarding a Charge, Customer shall be responsible for paying a previously un-billed or under-billed Charge for the entire period of such deception.

4.8 In the event that there is an adverse change in the Customer's financial position, business prospects or payment history under the MSA, ALPHA TELECOM may require that the Customer provide ALPHA TELECOM with a security deposit or increase the amount of a security deposit, as the case may be, as security for the full and faithful performance of the Customer of the terms, conditions and covenants of the MSA. In the event that the Customer does not

comply with ALPHA TELECOM's requirements, ALPHA TELECOM reserves the right to suspend any or all Services under the MSA without further notice until ALPHA TELECOM's requirements are met. The Customer acknowledges and agrees that ALPHA TELECOM may conduct any credit inquiries necessary to review the Customer's payment history.

4.9 The Customer is responsible and liable for payment of all calls originating from or passing through the Facilities (including telephones), whether charged to Customer's account or not, including all applicable Service and usage Charges associated with such calls, regardless of who made the calls, who accepted the Charges, or how the Facilities were intercepted. ALPHA TELECOM, if it so elects, may collect all or part of the Charges referred to in the preceding sentence, from the person placing the call or from any person who may otherwise be responsible for the Charges incurred.

4.10 In the event the Customer wishes to unilaterally change the location where all or portion of the Services is provided, Customer acknowledges that such migration may result in an increase to the applicable Charges and/or to the Annual Contract Value. In such circumstances, Customer and ALPHA TELECOM must enter into discussions to negotiate a mutually agreeable addendum to the applicable Service Schedule(s), failing which the parties may terminate the Service Schedule(s), subject to the payment of any applicable Termination Charge by the Customer in accordance with Section 6.4.

5.0 FACILITIES

5.1 Each party shall continue to own its respective Facilities. Neither the Customer nor ALPHA TELECOM shall create or permit any liens or encumbrances on the other party's Facilities.

5.2 ALPHA TELECOM:

(a) is the owner of all right, title and interest in all Facilities supplied, built or otherwise provided by ALPHA TELECOM, whether or not the Customer has paid any costs towards the purchase and supply of such Facilities (including, without limitation, any Special Build) (the "ALPHA TELECOM Facilities"); or

(b) has obtained the right to make the ALPHA TELECOM Facilities available for use by the Customer from a Third Party. The Customer shall have no rights in the ALPHA TELECOM Facilities.

5.3 The Customer shall not make any change or repair to ALPHA TELECOM's Facilities, connect any of the Customer-provided Facilities to ALPHA TELECOM's Facilities, or allow access to ALPHA TELECOM's

Facilities without ALPHA TELECOM's prior written consent. ALPHA TELECOM may, without notice to the Customer, migrate the Services to ALPHA TELECOM's Facilities, or to a new technology, provided the Services are not impaired. If required, the Customer shall provide reasonable cooperation to ALPHA TELECOM with respect to any such migration.

5.4 The Customer shall be responsible for the security of and any loss or damage to ALPHA TELECOM Facilities located on the Customer's premises, reasonable wear and tear excepted.

5.5 ALPHA TELECOM grants the Customer a personal, non-transferable and nonexclusive licence to use, in object code form, any software provided by ALPHA TELECOM under the MSA, provided:

(a) the Customer uses the software solely in connection with the Services and in accordance with the applicable written and electronic documentation ("Documentation");

(b) the Customer does not reverse engineer the software to derive its source code;

(c) the Customer does not copy or download the software, except as permitted in the Documentation; and

(d) the Customer complies with any additional terms and conditions that are provided with any Third- Party software.

5.6 ALPHA TELECOM may make any routine or unscheduled maintenance, inspections, tests, repairs and adjustments ("Maintenance Activities") necessary to investigate, modify, repair or maintain the installation or operation of ALPHA TELECOM's Facilities or the Customer-provided Facilities managed by ALPHA TELECOM and located on ALPHA TELECOM's premises. ALPHA TELECOM shall give the Customer reasonable notice of any such Maintenance Activities that may impact Service, except in cases of emergency (in which case, ALPHA TELECOM will notify the Customer as soon as reasonably possible thereafter).

5.7 Upon reasonable notice to the Customer, the Customer shall provide timely access to ALPHA TELECOM to any of the Customer-provided Facilities located on the Customer's premises that ALPHA TELECOM may need for ALPHA TELECOM's Maintenance Activities. ALPHA TELECOM shall not be liable for any resulting Service problem in the event that the Customer does not provide such timely access.

5.8 Upon the expiration or termination of the MSA or any Service Schedule, the Customer shall provide ALPHA TELECOM with access to the Customer-provided Facilities to enable the removal of ALPHA TELECOM's Facilities.

6.0 TERM & TERMINATION

6.1 Term

6.1.1 Unless otherwise specified in the Service Schedule, the Initial Term of each Service Schedule (and the associated Service(s)) shall begin on the "Acceptance Date" set out in the applicable Service Schedule or MSA (the "Service Schedule Acceptance Date"). The Initial Term shall automatically renew for successive one (1) term periods unless either party gives the other party prior written notice of termination at least thirty (30) days prior to the end of the Initial Term or renewal term, as applicable.

6.1.2 Upon expiry of the Initial Term and any time thereafter, ALPHA TELECOM has the right to increase the Charges for some or all of the Services provided that Customer is given no less than forty-five (45) days' written notice of this change. Should the Customer not be in agreement with the proposed increased Charges, Customer may terminate the applicable Service by providing thirty (30) days' written notice of termination no later than ninety (90) days of the date of the first invoice reflecting the increase, the whole without penalty, except for the obligation of Customer to pay for all Charges incurred up to the effective date of termination.

6.2. Termination for Cause

6.2.1 ALPHA TELECOM may terminate the MSA, a Service or Service Schedule in accordance with Section 3.1.4.

6.2.2 If Customer breaches any payment obligation under the MSA, or either party breaches any material term or condition of the MSA, and the breach is not remedied by the breaching party within thirty (30) days after receipt of written notice by the non-breaching party, then the non-breaching party may immediately terminate for cause the applicable Service Schedule. Either party may immediately terminate the MSA if:

(a) the other party breaches its obligations under Section 7 (Confidential Information) or Section 11.2 (trade-marks);

(b) any proceeding under bankruptcy, creditor protection or similar law is commenced against the other party; or

(c) a receiver is appointed for the other party.

6.3 Termination Notice

6.3.1 Where a party can terminate the MSA, a Service or Service Schedule and unless otherwise stated in the MSA, each party shall provide the other party with thirty (30) days prior written notice of the termination of the MSA, a Service or Service Schedule.

6.4 Termination Charge

6.4.1 Unless otherwise expressly provided in the applicable Service Schedule or MSA, if the Customer terminates the MSA, a Service or Service Schedule without cause, or if ALPHA TELECOM terminates the MSA, a Service or Service Schedule with cause, the Customer shall pay ALPHA TELECOM an amount equal to 50% of the remainder of the Term, multiplied by the remaining number of billing periods ("Termination Charge").

6.4.2 If the Customer delays a request for any Service after the Service Schedule Acceptance Date but before the Service is provisioned, the Customer shall pay a one-time installation charge ("Installation Charge") to cover any additional costs ALPHA TELECOM incurs that are attributable to such delay including, but not limited to, ordering Facilities, installing and provisioning such Service, and Third Party charges or costs incurred by ALPHA TELECOM for Special Builds.

6.4.3 If the Customer cancels a request for any Service after the Service Schedule Acceptance Date but before the Service is provisioned, the Customer shall pay an Installation Charge to cover ALPHA TELECOM's reasonable costs that ALPHA TELECOM incurs that are attributable to such cancellation, including, but not limited to, ordering Facilities, installing and provisioning such Service, and Third Party charges or costs incurred by ALPHA TELECOM for Special Builds. For clarity, in the event Customer is subject to an Installation Charge pursuant to a cancelled Service under this paragraph, Customer shall not be subject to a Termination Charge as described in Section 6.4.1, or any Special Termination Charge described in the Service Schedule for the cancelled Service.

6.4.4 The Customer acknowledges that any Termination Charge or Installation Charge payable under this Section 6 is a realistic pre-estimate of the damages that ALPHA TELECOM shall suffer for the delay, cancellation or termination of the Service.

6.4.5 The Customer shall not be required to pay an otherwise applicable Termination Charge if the Customer enters into a new Service Schedule with an Initial Term equal to or greater than the period of time remaining in the Initial Term or renewal term of

the terminated Service or Service Schedule, and Annual Contract Value equal to or greater than the Annual Contract Value of the terminated Service or Service Schedule.

6.4.6 The Customer shall pay all Charges incurred up to the effective date of termination of the MSA, a Service or Service Schedule, including without limitation, any amounts owing for a Special Build(s).

7.0 CONFIDENTIAL INFORMATION

7.1 Each party shall keep confidential for three years after disclosure the disclosing party's Confidential Information (except software shall be kept confidential for an indefinite period), using at least the same precautions the receiving party uses to safeguard its own confidential or proprietary information.

7.2 Each party shall use the disclosing party's Confidential Information solely to fulfill its obligations under the MSA. In the case of ALPHA TELECOM, this includes the ability to monitor and record the Customer's use of the Services in order to detect fraud, check quality, confirm compliance with the MSA, and to operate, maintain and repair the Services.

7.3 Neither party shall disclose the disclosing party's Confidential Information, except to:

(a) Affiliates, employees, directors, officers, and agents on a need-to-know basis, provided that such Affiliates and agents are not direct competitors of the disclosing party and agree in writing to use disclosure restrictions that are as restrictive as those contained in this Section 7; or

(b) to the extent required by law.

7.4 In order to fulfil its obligations under the MSA, ALPHA TELECOM may, without Customer's consent, disclose Customer's name, address, listed telephone number, domain name or 'IP' number to:

(a) the Customer;

(b) a person who, in the reasonable judgment of ALPHA TELECOM, 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 telephone 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; or

(e) an agent retained by ALPHA TELECOM in the collection of Customer's account, provided the information is required for and is to be used only for that purpose.

Unless otherwise stated in this Section 7, ALPHA TELECOM may only disclose Customer's Confidential Information with Customer's express consent. Express consent may be taken by ALPHA TELECOM to be given by Customer where the Customer provides:

(a) written consent;

(b) oral confirmation verified by an independent Third Party; electronic confirmation through the use of a toll-free number;

(c) electronic confirmation via the Internet;

(d) oral consent, where an audio recording of the consent is retained by ALPHA TELECOM; or

(e) consent through other methods, as long as an objective documented record of Customer consent is created by the Customer or by an independent Third Party.

7.5 ALPHA TELECOM shall only use personal information that ALPHA TELECOM collects in accordance with ALPHA TELECOM's privacy code, a current copy of which is available at www.AlphaTelecom.com or upon request.

7.6 Notwithstanding any other provisions of the MSA, these Terms of Service or any applicable Service Schedule, ALPHA TELECOM may, at its sole discretion and without seeking the prior consent of the Customer, make public by way of the issuance of a news release, all or a portion of the following information with respect to the sale of Services:

(a) name and logo of Customer;

(b) type of Services sold to Customer;

(c) the total value of the Services sold to Customer; and

(d) the term of this MSA and/or any Service Schedule issued thereunder.

8.0 LIMITATIONS OF LIABILITY & INDEMNITY

8.1 The parties shall be liable for and shall indemnify

each other ("Liability") for any Claims arising in connection with the MSA in accordance with the following:

(a) for:

(i) breach of Confidential Information obligations or software license obligations;

(ii) bodily injury or death to any person or damage to any real or tangible property caused by negligence or willful misconduct;

(iii) unlawful use of ALPHA TELECOM's Services, ALPHA TELECOM's Facilities or the Customer-provided Facilities; or

(iv) damage caused by the Customer's Content, the Liability of each party shall be limited to proven direct damages;

(b) for errors and omissions of a party with respect to directory listings, the Liability of that party shall be limited to a refund or credit of any charges associated with such listings for the period during which the error or omission occurred; and

(c) for damages other than those described in Sections 8.1(a) and 8.1(b), the Liability of each party shall be limited to proven direct damages of the other party, not to exceed per claim (or in the aggregate during any twelve (12) month period) an amount equal to the amount paid by the Customer for the affected Service during the three (3) months preceding the month in which the damage occurred. Nothing in this Section 8.1 shall limit the Customer's responsibility for the payment of all properly due Charges for the Services under the MSA.

8.2 Notwithstanding any other provision in the MSA:

(a) neither party shall be liable for any indirect, incidental, consequential, punitive, reliance or special damages, including without limitation, damages for lost profits, advantage, savings or revenues of any kind, or increased cost of operations;

(b) neither party shall be liable for a Force Majeure Event except that Customer's obligation to pay for all Charges incurred for Services received will not be excused; and

(c) ALPHA TELECOM shall not be liable for any damages arising out of or relating to:

(i) Facilities or Content provided by the Customer or Third Parties; (ii) delays with respect to the installation of Service(s) or the transfer of existing Service(s);

(iii) Service interruptions, degradation, errors,

delays or defects in transmission;

(iv) unauthorized access to or theft, alteration, loss or destruction of the Customer's or Third Parties' applications, content, data, programs, information, network or systems by any means, including without limitation, viruses; or

(v) any act or omission of the Customer or Third Parties.

8.3 The limitations of Liability in the MSA shall apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise, and whether or not the damages were foreseeable.

8.4 For the purpose of this Section 8, the indemnified party shall include the indemnified party's employees, officers, directors, agents and suppliers.

9.0 WARRANTIES

9.1 Unless otherwise expressly provided in the MSA, ALPHA TELECOM makes no representations, warranties, conditions or guarantees as to merchantable quality, fitness for a particular purpose or any other representations, warranties, conditions or guarantees regarding any Service or Facilities provided by ALPHA TELECOM to the Customer, whether express or implied in law or in fact, including without limitation, those relating to:

(a) network transmission capacity;

(b) whether data shall be transmitted in an uncorrupted form;

(c) the security of any transmission or network;

(d) the fault tolerance of the Service; and

(e) the reliability or compatibility of Third Party Facilities which may be utilized by ALPHA TELECOM in providing, or by the Customer in using, the Service.

10.0 REGULATORY REQUIREMENT

10.1 If the Canadian Radio-television and Telecommunications Commission ("CRTC"), a foreign or state regulatory body, or a court of competent jurisdiction, issues a rule, regulation, law or order which has the effect of increasing the cost to provide the Services or canceling, changing, or superseding any material term or provision of the MSA (collectively "Regulatory Requirement"), then the MSA shall be deemed modified in such a way as is necessary to comply with such Regulatory Requirement. In the event that any Service becomes subject to a tariff

imposed by the CRTC, the parties agree to adjust the Charges in order to meet the tariff rate. In addition, the parties acknowledge and agree that the terms and conditions contained or incorporated by reference in such tariff shall, to the extent of any conflict or inconsistency, prevail over any provision of the MSA.

11.0 GENERAL PROVISIONS

11.1 The Customer is not entitled to property rights in "IP" numbers or domain names assigned by Alpha Telecom to the Customer. ALPHA TELECOM may change any IP addresses or domain names assigned to the Customer's PBX, if ALPHA TELECOM is required to do so by any legal or regulatory authority, or other service provider.

11.2 Neither party shall use the other party's trade names, logos, or trademarks (collectively "Marks") without the other party's prior written consent. This written consent may be revoked at any time.

11.3 Except as expressly provided in the MSA, no amendment or waiver of the MSA shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of the MSA shall constitute a waiver of any other provision nor shall any waiver of any provision of the MSA constitute a continuing waiver or operate as a waiver of, or Estoppel with respect to any subsequent failure to comply.

11.4 The Customer may not assign the MSA without ALPHA TELECOM's prior written consent, which consent shall not be unreasonably withheld. ALPHA TELECOM may assign the MSA without Customer's consent; for clarity, failure to notify the Customer of an assignment will not impact the validity and enforceability of the MSA.

11.5 If any portion of the MSA is found to be invalid or unenforceable, the remaining provisions shall remain in effect.

11.6 Unless otherwise specified in the MSA, any legal action arising in connection with the MSA must be brought within two (2) years after the cause of action arises.

11.7 Any notices to the other party shall be in writing and either sent or delivered by regular, certified or registered mail, sent by express courier, e-mail or hand delivery and addressed to each party at the address set out in the MSA, or such other address that a party indicates in writing. Unless otherwise provided in the MSA, all notices to ALPHA TELECOM shall be directed to: 5925 Airport Road Suite 200 Mississauga ON L4V 1W1

11.8 The laws in effect in the Province of Ontario shall apply to the MSA. The parties agree that jurisdiction and venue in the courts of the Province of Ontario is appropriate, and that any legal proceedings shall be brought only in the Province of Ontario.

11.9 All dollar amounts referred to in this MSA are in lawful money of Canada unless expressly indicated otherwise.

11.10 The parties' obligations, which by their nature would continue beyond the termination or expiration of the MSA or any Service Schedule, including without limitation, obligations regarding confidentiality, trademarks, and limitations of liability, shall survive such termination or expiration.

11.11 The MSA, as may be amended by the parties in writing from time to time, constitutes the entire agreement between the parties with respect to the Services. The MSA supersedes all prior agreements, proposals, representations, statements or understandings, whether written or oral with respect to the Services. Any purchase order submitted by the Customer to ALPHA TELECOM shall be used only for invoice processing and order purposes.

11.12 In the event of any conflict or inconsistency between these Terms of Service, any Service Schedule or any other written agreement between the parties, such documents shall be interpreted in accordance with the following order of priority:

(a) the MSA;

(b) these Terms of Service;

(c) the other written agreement, including without limitation, a purchase order submitted by the Customer to ALPHA TELECOM.

11.13 The parties confirm that it is their wish that the MSA, as well as all other documents relating thereto, including all notices, be drawn up in the English language only. Les parties aux présentes confirment leur volonté, que la présente convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.

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