

SCHEDULE "A"

MASTER BUSINESS COMMUNICATIONS AGREEMENT

EFFECTIVE AS OF SEPTEMBER 14, 2010

1. Certain Definitions

There are certain definitions set out in Appendix I to this Master Business Communications Agreement which provide that certain terms beginning with a capital letter have certain meanings when used in this Master Business Communications Agreement.

2. Term

This Agreement shall have a term which shall be the same as the term set out in any Purchase Agreement between Netcelerate and the Customer.

3. Fees for Services

- (a) The fees for the Services provided by Netcelerate to the Customer pursuant to this Agreement and a Purchase Agreement, which are recurring fixed monthly fees, are as set out in a Purchase Agreement and are payable in advance on the first day of each and every month during the Term of this Agreement and during the Term of a Purchase Agreement. Any part month time period during the Term of this Agreement or the Term of a Purchase Agreement shall be apportioned on a daily basis calculated by the number of days in the complete month.
- (b) The fees for the Services provided by Netcelerate to the Customer pursuant to this Agreement and a Purchase Agreement which are recurring monthly fees but are not fixed in amount are as set out in a Purchase Agreement and are payable in arrears on the first day of each and every month, for the previous month, during the Term of this Agreement and during the Term of a Purchase Agreement.
- (c) The fees for the purchase of Equipment by the Customer from Netcelerate or the provision of Professional Services by Netcelerate to the Customer are one-time fixed fees and are as set out in a Purchase Agreement and are payable as set out in that Purchase Agreement.

4. Taxes on Fees and Purchase Price

The Customer is responsible to pay all taxes of any kind levied by any governmental authority in relation to the fees being charged by Netcelerate to the Customer for any Services and for the purchase price of Equipment being sold by Netcelerate to the Customer, pursuant to this Agreement and a Purchase Agreement. Any such taxes shall be added to such fees and purchase price and, with regard to such fees shall be payable at the time the

fees are payable and, with regard to such purchase price, shall be payable at the time the purchase price is payable. Should there be any error made in the collection of such taxes such that the taxes paid by the Customer were insufficient, the Customer shall pay to Netcelerate, immediately upon demand, any additional amount of taxes required by the taxing authority. Should the Customer have overpaid such taxes the Customer must claim any refund due to it from the taxing authority and Netcelerate shall have no responsibility to refund any overpayment of taxes.

5. Customer Pre-Paid Account

- (a) A Customer who, pursuant to this Agreement and a Purchase Agreement, shall pay fees for Services to Netcelerate, shall pre-pay such fees to Netcelerate in the amount of the Deposit set out in a Purchase Agreement to be held by Netcelerate in a Customer Pre-Paid Account.
- (b) Netcelerate may deduct, at any time and from time to time, from the Customer Pre-Paid Account, and deposit to its own general revenues, any fees, purchase price, late payment charges and taxes payable by the Customer to Netcelerate pursuant to this Agreement and a Purchase Agreement.
- (c) A Customer with a Customer Pre-Paid Account held by Netcelerate shall, within fifteen (15) days of an amount being withdrawn from its Customer Pre-Paid Account pursuant to paragraph 5 (b) of this Agreement, pay the amount so withdrawn to Netcelerate for deposit to the Customer Pre-Paid Account by means of:
 - (i) authorization to have Netcelerate debit the amount to a credit card; or
 - (ii) authorization to Netcelerate to make an electronic funds transfer of the amount from an account maintained at a Canadian chartered bank,

in order to continually maintain the amount in the Customer Pre-Paid Account at the amount initially paid into the Customer Pre-Paid Account pursuant to paragraph 5 (a) of this Agreement.

- (d) Netcelerate, entirely in its discretion, may, at any time and from time to time, increase the amount to be held in a Customer Pre-Paid Account as set out in a Purchase Agreement by giving written notice to the Customer of the new credit amount to be maintained in the Customer Pre-Paid Account and the Customer, within fifteen (15) days of receiving such notice, shall pay the amount

required to bring the amount in the Customer Pre-Paid Account to the new credit amount. Thereafter, the Customer shall pay, pursuant to paragraph 5 (c) of this Agreement, any amount withdrawn from the Customer Pre-Paid Account pursuant to paragraph 5 (b) of this Agreement so as to maintain the new credit amount in the Customer Pre-Paid Account.

6. Late Payment Charges, Cancellation or Suspension of Services and Termination Charges

- (a) All fees, purchase price and taxes not paid when due pursuant to this Agreement and a Purchase Agreement shall have added to them a late payment charge of 3.50% of the outstanding amount on the day following the due payment date and 3.50% of the outstanding amount on the first day of each and every subsequent month until payment in full is received by Netcelerate. Such late payment charges are payable immediately upon being added to the outstanding fees, purchase price and taxes and shall be compounded monthly and shall themselves bear a late payment charge of 3.50% of their outstanding amount commencing on the first day of the month following the date such late payment charges are added to the fees, purchase price and taxes and on each and every subsequent first day of the month until payment in full of such late payment charges is received by Netcelerate.
- (b) Netcelerate may, in its entire discretion, suspend or cancel Services to the Customer if accounts payable by the Customer remain unpaid fifteen days after the payment due date. If Services are cancelled this Agreement and a Purchase Agreement are terminated. If Services are suspended, either for non-payment or for any other reason as set out in this Agreement or a Purchase Agreement, this Agreement and a Purchase Agreement continue in force but Netcelerate is relieved of all of its obligations thereunder. Neither cancellation nor suspension shall relieve the Customer of its obligations thereunder. If cancelled or suspended the Customer shall immediately pay the Termination Charges as provided for in this Agreement. If suspended for any reason and re-instatement is agreed upon by Netcelerate, the Services shall be reinstated upon payment by the Customer of all amounts due and payable, including any late payment charges and Termination Charges, together with Netcelerate's reinstatement fee. Netcelerate may cancel or suspend Services for non-payment of accounts by the Customer without prior notice to the Customer and Netcelerate shall not be liable for any loss, damage, claim, proceeding or matter arising directly or indirectly as a result of such cancellation or suspension, even if such cancellation or suspension was based upon an error in the accuracy of the fees, purchase price, late payment charges

or taxes unless prior to such cancellation or suspension the Customer gives Netcelerate the notice provided for in paragraph 7 of this Agreement.

- (c) The Customer shall pay all costs of Netcelerate, including legal fees and disbursements, incurred in collecting fees, purchase price, late payment charges, Termination Charges and taxes not paid on the due date for payment.

7. Error in Fees, Purchase Price, Late Payment Charges or Taxes

If Customer disputes the accuracy of any fees, purchase price, late payment charges or taxes, Customer must notify Netcelerate of the dispute, with all appropriate details, within fourteen (14) days of the due date for payment of such fees, purchase price, late payment charges and taxes otherwise there shall be no adjustment or correction made by Netcelerate to such fees, purchase price, late payment charges or taxes. Any disputed amount which has been paid, of which Netcelerate receives notice within the time limited by this paragraph for the giving of such notice and which Netcelerate determines was incorrect shall be credited by Netcelerate to the Customer by having such credit reduce the next following fees, purchase price, late payment charges and taxes payable by the Customer.

8. Data and Internet Services

If a Purchase Agreement provides for Netcelerate to deliver to the Customer Data and Internet Services, Netcelerate shall provide the Customer with internet-related access Data and Internet Services. Netcelerate shall apply reasonable commercial measures to ensure that the Data and Internet Services are secure and that the Customer can use the Data and Internet Services safely. Because of the nature of the internet, Netcelerate can not and does not guarantee safety and security and accepts no responsibility for the Customer's safe and secure use of the Data and Internet Services. The Customer is responsible for any third party misuse of the Data and Internet Services that the Customer has contracted for with Netcelerate, even if the misuse was unintentional.

9. Term of Use of Data and Internet Services

- (a) The customer is solely responsible for its use and Content of the Internet Services and for protecting against unauthorized use of the Internet Services.
- (b) Data and Internet Services may be incorporated into and may incorporate third party software and/or hardware which may be distributed by Netcelerate with the Data and Internet Services and, in that event, the Customer must accept a license agreement with that third party in order to use the Data and Internet Services.
- (c) If Data and Internet Services being provided pursuant to this Agreement and a Purchase Agreement are interrupted for a continuous

period of at least 24 hours and the Customer gives written notice to Netcelerate of such interruption, an allowance equal to 1/30th of any fixed billing cycle charges for the affected Data and Internet Services shall be granted to the Customer for each complete 24-hour period during which such interruption continued. Credit in any billing period shall not exceed the total average monthly charges for that period or 20% of the recurring charges for Netcelerate Data and Internet Services during a contract year. Customer must give notice of the interruption and request a credit within 60 days of the interruption.

- (d) If the Flexband Service being provided pursuant to this agreement and a Purchase Agreement are interrupted for a continuous period of at least 30 minutes as measured from the time a trouble ticket is raised with Netcelerate support and the time the service is restored the customer is entitled to the following credit:

30 minutes to 1 hour	1 day
1 hour to 24 hours	3 days
>24 hours	1 month

Customer must give notice of the interruption and request a credit within 60 days of the interruption.

No allowance or credit shall apply to any non-recurring or usage charge.

- (e) Should the Customer believe Netcelerate has failed to meet its network availability commitment, the Customer must give written notice to Netcelerate and, should Netcelerate verify that the core network availability was less than its core network availability commitment, Netcelerate shall issue a credit to the Customer, the amount of such credit to be determined by Netcelerate in its entire discretion.

10. Hosted Business Applications Services

If a Purchase Agreement provides for Netcelerate to deliver to the Customer Hosted Business Applications Services, Netcelerate shall provide the Customer with access to Hosted Business Applications Services. Netcelerate shall be responsible for and shall follow good industry practices for safeguarding, maintaining confidentiality of data of Customer and shall comply with all applicable data protection and privacy laws with respect to any data of Customer. The Customer is responsible for any third party misuse of the Hosted Business Applications Services that the Customer has contracted for with Netcelerate, even if the misuse was unintentional.

11. Term of Use of Hosted Business Applications Services

- (a) The customer is solely responsible for its use and Content of the Hosted Business Applications Services and for protecting against unauthorized use of the Hosted Business Applications Services.

- (b) Hosted Business Applications Services may be incorporated into and may incorporate third party software and/or hardware which may be distributed by Netcelerate with the Hosted Business Applications Services and, in that event, the Customer must accept a license agreement with that third party in order to use the Hosted Business Applications Services.

- (c) If the Hosted Business Applications Services being provided pursuant to this agreement and a Purchase Agreement are interrupted for a continuous period of at least 4 hours as measured from the time a trouble ticket is raised with Netcelerate support and the time the service is restored or if the combined outage time is larger than 17.5 hours in year, the customer is entitled to the following credit:

4 hours to 8 hours (one event)	1 day
8 hours to 17.5 hours	10 days
>17.5 hours (combined in year)	1 month

Customer must give notice of the interruption and request a credit within 60 days of the interruption.

No allowance or credit shall apply to any non-recurring or usage charge.

- (d) Should the Customer believe Netcelerate has failed to meet its Hosted Business Applications Services availability commitment, the Customer must give written notice to Netcelerate and, should Netcelerate verify that the core network availability was less than its core network availability commitment, Netcelerate shall issue a credit to the Customer, the amount of such credit to be determined by Netcelerate in its entire discretion.

12. Voice Services

If a Purchase Agreement provides for Netcelerate to deliver to the Customer Voice Services such Voice Services shall provide a connection to Netcelerate's broadband internet protocol voice network and to the public switched telephone network, through a third-party-provided broadband connection. The Customer agrees not to participate in or contribute to any unlawful or prohibited third-party-provided broadband connection.

The Customer has taken steps to confirm that any phone number that is requested to be ported to Netcelerate using the Local Number Portability Form is not under contract with the current provider. The customer acknowledges responsibility for any termination charges from their current provider should any subsequent charges arise.

13. Terms of Use of Voice Services

- (a) Netcelerate shall monitor the quality of the Customer's telephones as part of the Voice Services using a monitoring system as determined by Netcelerate and shall promptly inform the Customer of any concerns regarding quality of Voice Services

detected by such monitoring system. Failure by Netcelerate to so monitor the quality of the Customer's telephones, however, shall not affect the Customer's obligations pursuant to this Agreement or a Purchase Agreement.

- (b) The calculation of the telephone call length shall be from the time the telephone call is connected through the time the telephone call is disconnected. Each telephone call's length is calculated in whole minutes with partial minutes rounded to the nearest next full one minute increment.
- (c) CDRs shall be provided by Netcelerate, on a reasonable efforts basis and the Customer can access, download and copy the CDRs from the Customer User Portal accessible on the Netcelerate web site www.netcelerate.com. Failure by Netcelerate to provide CDRs, however, shall not affect the Customer's obligations pursuant to this Agreement or a Purchase Agreement.
- (d) Telephone calls to pay-for-call services, such as collect calls, calls to 500, 700, 900 and 976 exchanges and air to ground and high seas service calls may not be completed using the Voice Services.
- (e) Voice Services are for ordinary and usual office voice telephone calls and do not confer the right to use any type of automated, continuous use telephone call system which is hereby prohibited.
- (f) In the event the Customer configures its PBX or has it configured by a third party other than Netcelerate, Netcelerate shall not be responsible to the Customer or any third party for any damage, service interruptions, degradation, errors, delays or defects in transmission caused by or contributed to by such PBX configuration. Customer shall be responsible and liable for all long distance and other costs incurred because of a breach in security that affects such a PBX.
- (g) If Netcelerate Voice services are interrupted for a continuous period of at least 30 minutes as measured from the time a trouble ticket is raised with Netcelerate support and the time the service is restored the customer is entitled to the following credit:

30 minutes to 1 hour	1 day
1 hour to 24 hours	3 days
>24 hours	1 month

Customer must give notice of the interruption and request a credit within 60 days of the interruption.

No allowance or credit shall apply to any non-recurring or usage charge.

14. General terms of Use Applicable to All Services

- (a) Netcelerate may, without penalty, without having to grant any credit or pay any allowance to the Customer and without being held in breach of this Agreement or a Purchase Agreement, suspend at any time

and from time to time the provision of Services to the Customer, for a reasonable length of time, in order to maintain, upgrade, test or configure the Services equipment or to perform such other work as Netcelerate may determine is necessary or appropriate. Whenever possible the Customer shall be given notice of such suspension and such suspension shall be scheduled after midnight and before 6:00 a.m. (EST) local time or on weekends.

- (b) No credit or allowance referred to in paragraph 9 (b) and (c) and paragraph 11 (g) hereof shall be granted or paid to the Customer by Netcelerate if an interruption in Services was caused by:
 - (i) capacity shortages not caused by Netcelerate;
 - (ii) the failure of any service equipment or facilities provided by the Customer, an inter-exchange carrier or other third party;
 - (iii) any act or omission by the Customer, including interruptions required to correct interference to the Services caused by the equipment of the Customer or a third party connected to or used in conjunction with the Services;
 - (iv) any unlawful, illegal or improper use of Netcelerate's equipment or the Services;
 - (v) the occurrence of an event of force majeure;
 - (vi) power fluctuations or power failure at the Customer's premises; or
 - (vii) because access could not be gained to the Customer's premises.

15. 911 Services

- (a) If a Purchase Agreement provides for Netcelerate to deliver to the Customer Voice Services 911 Services shall be included in Voice Services for emergency purposes.
- (b) 911 Services as part of Voice Services is different from the traditional 911 service available in most locations in conjunction with traditional telephone service which sends 911 telephone calls directly to the nearest PSAP and automatically provides that PSAP with the address and call-back telephone number from which the 911 telephone call originated. It is, therefore, crucial for the Customer who is receiving Voice Services from Netcelerate pursuant to this Agreement and a Purchase Agreement, which Voice Services includes 911 Services, to understand the differences between how the traditional 911 service operates and how the 911 Services as part of the Voice Services operates. The Customer acknowledges and accepts those differences and accepts responsibility for taking the

- necessary and appropriate steps to ensure the 911 Services as part of the Voice Services will function as required.
- (c) When the Customer or a person in the Customer's premises places a 911 telephone call utilizing the 911 Services as part of the Voice Services that 911 telephone call:
 - (i) shall be sent to a national emergency call centre to be answered by an operator who will confirm the location information of the 911 telephone call; and
 - (ii) shall be transferred by the operator at the national emergency call centre to the appropriate PSAP nearest to the location from which the 911 telephone call originated, and the Customer or the person making the 911 telephone call from the Customer's premises must:
 - (A) remain on the 911 telephone call and be prepared to confirm the address and call-back telephone number with the operator at the national emergency call centre, which is crucial if the 911 telephone call was made using Wi-Fi, V-Phone or Softphone as, in that case, regardless of what address the Customer has registered, the emergency response personnel do not receive the physical location or telephone number from where the 911 telephone call originated; and
 - (B) remain on the 911 telephone call and not hang up unless directly instructed to do so by the operator at the national emergency call centre and, if the 911 telephone call is disconnected, dial 911 again.
 - (d) The Customer must ensure its location information is provided to Netcelerate as of the date Voice Services start to be provided to the Customer by Netcelerate and must ensure this information is kept current at all times.
 - (e) If the Customer placing the 911 telephone call can not speak during the telephone call, the operator at the national emergency call centre will dispatch emergency response personnel to the last registered address of the Customer and, accordingly, if the Customer moves locations, equipment or travels within Canada with the adapter or adds a new telephone line the Customer must update its 911 location information.
 - (f) The 911 Services will not function in the event of a power or broadband outage or if the broadband, ISP or Netcelerate 911 Services are cancelled or suspended.
 - (g) The Customer should inform persons present at its premises of the difference in the 911 Services provided as part of the Voice Services by Netcelerate pursuant to this Agreement and a Purchase Agreement compared to traditional 911 service.
 - (h) The Customer acknowledges and agrees that in order to route 911 telephone calls to the appropriate PSAP the Customer's premises must be located within the boundaries of a PSAP serving area where Netcelerate has established its 911 Services.
 - (i) While certain call-back capabilities may function on the 911 Services being provided by Netcelerate as part of Voice Services pursuant to this Agreement and a Purchase Agreement, any interruption in power supply, broadband internet connection, internet service provider login or 'timing out', network congestion, reduced speed for routing or answering 911 telephone calls, at any time before, during or after a 911 telephone call has been completed, may cause these capabilities to fail.
 - (j) Following a disruption in Voice Services or 911 Services as part of Voice Services, the Customer may need to reset or reconfigure the system used by the Customer prior to being able to utilize the 911 Services.
 - (k) 911 Services provided by Netcelerate as part of Voice Services pursuant to this Agreement and a Purchase Agreement are available only on equipment or other approved devices and only in specific areas.
 - (l) 911 Services provided by Netcelerate as part of Voice Services pursuant to this Agreement and a Purchase Agreement can not be used in conjunction with any 'soft phone' application which is hereby acknowledged and accepted by the Customer.
 - (m) Netcelerate does not have any control over whether or the manner in which telephone calls using its 911 Services are answered or addressed by the national emergency call centre or any PSAP and disclaims all responsibility for the conduct of local emergency response centres and the national emergency call centre. Netcelerate relies on third parties to assist Netcelerate in routing 911 telephone calls to a national emergency call centre and a PSAP and disclaims any and all liability or responsibility in the event such third party data used to route 911 telephone calls is incorrect or yields an erroneous result. Netcelerate, its directors, officers, employees and agents can not be held liable for any claim, damage or loss arising out of the use by the Customer of the 911 Services unless caused by gross negligence, recklessness or willful misconduct of Netcelerate and the Customer hereby waives any and all such claims or causes of action.
 - (n) The Customer agrees to defend, indemnify and hold harmless Netcelerate, its directors,

officers, employees and agents and any other service provider that furnishes services to the Customer in connection with the 911 Services from any and all claims, losses, damages, fines, penalties, costs and expenses, including legal fees and disbursements, by, or on behalf of, the Customer or any third party relating to the absence, failure or outage of the 911 Services, including 911 dialing, incorrectly routed 911 telephone calls and/or the inability of any user of the 911 Services to be able to use the 911 dialing or access to emergency service personnel.

16. Professional Services

Netcelerate offers high-standard Professional Services in the telecommunications field. A Customer who wishes to utilize such Professional Services may do so by becoming a party to a Purchase Agreement which sets out in detail the Professional Services to be provided by Netcelerate, the milestones and deliverables and the fees.

17. Unlawful and Prohibited Activities

(a) The Customer agrees not to participate in or contribute to any unlawful or prohibited activities in using any Services provided to it by Netcelerate, including:

- (i) posting, transmitting, linking to, disseminating or otherwise distributing any unlawful material, such as child pornography or legally obscene material;
- (ii) operating pyramid or other illegal soliciting or fund-raising schemes;
- (iii) engaging in fraudulent activities, including forgery, impersonation or identity theft;
- (iv) engaging in activities which disseminate hate propaganda, contrary to law;
- (v) intentionally violating any applicable laws;
- (vi) participating in or contributing to activities which interfere with the legal rights of others, including:
 - (A) disseminating material which violates the copyright, moral rights or other intellectual property rights of others;
 - (B) defaming, abusing, stalking, harassing or threatening others;
 - (C) otherwise violating the contractual, property or civil rights of others, including rights related to personal information, privacy and publicity;
- (vii) using the internet to send out unsolicited e-mail, whether of a commercial nature or not, which degrades the performance of the network;

- (viii) sending e-mail messages to another person or entity or another system when explicitly having been asked not to do so;
- (ix) distributing chain letters, pyramid schemes, 'Ponzi' schemes or multi-level marketing scams;
- (x) improperly restricting, inhibiting or degrading others' use of the internet;
- (xi) breaching the security of another Services user or internet user or to attempt to gain access to another person's computer, software or data, without the knowledge and consent of that person;
- (xii) circumventing a user identification code or authentication or password or security of any host, network or account, including accessing data not intended for the Customer to access, unauthorized logging into or making use of a server or account or probing the security of other networks;
- (xiii) using the internet to interfere with, or encourage others to interfere with, computer networking or telecommunication services to any user, host or network, including denial or service attacks, flooding of a network, overloading a server or attempting to crash a host;
- (xiv) distributing, or encouraging others to distribute, spamware, mass e-mailing programs or technologies designed to overburden internet operations;
- (xv) seizing or abusing operator privileges;
- (xvi) using or distributing tools designed for compromising security, such as packet sniffers, ping bombers, cracking tools, password guessing programs or network probing tools;
- (xvii) transmitting or disseminating any information or software which contains a virus, cancelbot, Trojan horse, worm or other harmful or disruptive component;
- (xviii) notifying, reverse engineering or decompiling, disassembling or creating derivative works based on Netcelerate-provided software;
- (xix) breaching current bandwidth or data storage restrictions to the point such breach degrades network performance;
- (xx) improperly restricting, disrupting or degrading Netcelerate's ability to maintain the network and deliver any Services or monitoring the Services, backbone, network nodes and other network services or components;
- (xxi) overburdening the Netcelerate network or affecting the ability of

Netcelerate to provide Services to others; and/or

- (xxii) using any Services provided to it by Netcelerate contrary to or not in compliance with all applicable laws.
- (b) If the Customer does not fully and completely comply with this Agreement and a Purchase Agreement, including all of the restrictions and prohibitions set out in paragraph 15 (a) of this Agreement, Netcelerate shall have the right, in its entire discretion, to:
 - (i) cancel one or more or all Services being provided to the Customer pursuant to this Agreement and a Purchase Agreement in which case the Customer shall be liable for Termination Charges pursuant to this Agreement;
 - (ii) suspend one or more or all Services being provided to the Customer pursuant to this Agreement and a Purchase Agreement in which case the Customer shall be liable for Termination Charges pursuant to this Agreement;
 - (iii) require the Customer to remove any Content that is in breach of any part of paragraph 15 of this Agreement; and/or
 - (iv) itself remove any Content that is in breach of any part of paragraph 15 of this Agreement.

18. Right of Netcelerate to Investigate Breaches of this Agreement or a Purchase Agreement

Netcelerate reserves to itself the right, in its entire discretion, to investigate occurrences which may involve breaches of any part of this Agreement or of any part of a Purchase Agreement and may involve, and cooperate with, law enforcement authorities in prosecuting those who have participated or encouraged such breaches, including the Customer.

19. Standard of Services

Netcelerate shall provide its Services in a professional and workmanlike manner, consistent with industry standards applicable to such Services where:

- (a) applicable Services and technology exist;
- (b) the Services continue to be Services supported by Netcelerate; and
- (c) Netcelerate is permitted by law to provide the Services.

20. Services for Use of Customer Only

All Services supplied by Netcelerate are provided to the Customer for its own business use only and not as a reseller or on a service bureau basis. The Customer agrees to use all Services for its own

internal purposes and not to resell or make available to third parties any Services.

21. Customer Responsibilities

- (a) The Customer shall cooperate with Netcelerate to provide and maintain all Services being provided to the Customer by Netcelerate pursuant to this Agreement and a Purchase Agreement, including providing and maintaining the location of such Services in the Customer's premises, supplying all utilities, including power, to such locations all in accordance with Netcelerate specifications.
- (b) The Customer shall be fully responsible and Netcelerate shall have no responsibility for providing all necessary third party software and hardware and other goods and services which are not being provided by Netcelerate and which are required for the proper use of any Services provided to the Customer by Netcelerate pursuant to this Agreement and a Purchase Agreement.

22. Use of Customer Information

Netcelerate shall have the right to use and disclose the Customer's information:

- (a) for the purposes described in this Agreement and a Purchase Agreement and to provide the Customer with information regarding Netcelerate Services and Equipment;
- (b) to use the Customer's name, logo and trademark in any Netcelerate customer reference list or in any media release regarding the marketing of Netcelerate Services or Equipment;
- (c) where required by applicable law;
- (d) when Netcelerate believes, in its sole judgment, and to the extent consistent with applicable law, that such disclosure is required to protect the rights or safety of others or to enforce or protect Netcelerate's rights under this Agreement or a Purchase Agreement; and
- (e) in order to ensure continuity of any Services being provided by Netcelerate.

23. Identification Code and Password

In order to use some of the Services to be provided by Netcelerate pursuant to this Agreement and a Purchase Agreement, the Customer may be required to establish an account, including a unique identification code, name or user ID and a password. In such case the Customer is the sole and exclusive owner of the identification code and password combination and is solely responsible to maintain the confidentiality of the identification code and password for the use and protection of the Customer and for all transactions undertaken by means of any account opened, held, accessed or used and the use of any Services provided by Netcelerate accessed via such identification code and password. Netcelerate shall not be responsible for any losses incurred by the Customer in

connection with any use or misuse of Customer's identification code or password. If Netcelerate suspects that the security of a Customer identification code and/or password has been compromised, it has the right to cancel or suspend the Customer's accounts with Netcelerate and refuse any current or future use by the Customer of Services to be provided pursuant to this Agreement and a Purchase Agreement and in that event the Customer shall be liable for the Termination Charges pursuant to this Agreement.

24. Termination and Termination Charges

- (a) The Customer may terminate this Agreement and/or a Purchase Agreement upon sixty (60) days prior written notice provided the Customer has or confirms it will pay all fees, purchase price, late payment charges, Termination Charges and taxes due to Netcelerate upon the due date for payment of such fees, purchase price, late payment charges, Termination Charges and taxes.
- (b) If the Customer terminates this Agreement and/or a Purchase Agreement or if Netcelerate cancels or suspends any Services provided by it to the Customer exercising its right to do so pursuant to this Agreement and/or a Purchase Agreement, the Customer shall pay Netcelerate a termination charge calculated as 100% of the annual value of this Agreement and a Purchase Agreement based on the year of termination multiplied by the number of years remaining in the Term plus the year of termination of this Agreement and the Term of a Purchase Agreement which amount shall be payable within thirty (30) days of termination and which the Customer and Netcelerate agree is a reasonable amount and is to be considered as liquidated damages.
- (c) The Customer may terminate this Agreement and/or a Purchase Agreement without any penalties and/or Termination Charges in case when Netcelerate delivered Services do not meet defined Service Level Objectives for period of 90 consecutive days from a day the Customer furnish Netcelerate with a written notice defining the below standard deficiency and Netcelerate was not able to remedy this deficiency, provided the Customer has or confirms it will pay all fees, purchase price, late payment charges and taxes due to Netcelerate upon the due date for payment of such fees, purchase price, late payment charges and taxes.

25. General

- (a) Trademarks
Netcelerate logo, mark and associated tag line are Netcelerate registered trademarks. No claim is made to the right to use BUSINESS COMMUNICATIONS apart from the mark as shown on the Netcelerate logo.
- (b) The Customer shall respect the rights of copyright holders and if Customer does not do so Netcelerate may cancel or suspend the

provision of all Services to be provided under this Agreement or a Purchase Agreement which will cause the Customer to be liable for Termination Charges pursuant to this Agreement and may remove Content under its control that infringes the rights of others.

- (c) All Data and Internet Services to be provided by Netcelerate pursuant to this Agreement or a Purchase Agreement are exposed to various security issues, including unauthorized access, interception, corruption, damage or misuse and the Customer acknowledges and accepts this and shall regard such Services as non-secure.
- (d) Netcelerate makes no representations, warranties or assurances regarding:
 - (i) Customer's equipment or services to be used in conjunction with or their compatibility with the Services to be provided by Netcelerate pursuant to this Agreement or a Purchase Agreement;
 - (ii) as to the timeliness, sequence, continuity of service, accuracy, completeness, reliability or Content of any of the Services to be provided to the Customer pursuant to this Agreement or a Purchase Agreement or any information, service or transaction provided thereby unless specifically noted in the Service definition;
 - (iii) that the Services to be provided to the Customer pursuant to this Agreement or a Purchase Agreement will operate in an uninterrupted or error-free manner;
 - (iv) that errors or defects related to the Services to be provided to the Customer pursuant to this Agreement and a Purchase Agreement will be corrected;
 - (v) that Netcelerate will recognize or prevent any occurrence of identity theft;
 - (vi) that the Services to be provided to the Customer pursuant to this Agreement and a Purchase Agreement or the Content available through such Services is appropriate, accurate or available for use in any particular jurisdiction;
 - (vii) that the Services to be provided to the Customer pursuant to this Agreement and a Purchase Agreement are free of defects, of merchantable quality or fit for a particular purpose, including:
 - (A) network transmission capacity;
 - (B) whether data will be transmitted in an uncorrupted form;
 - (C) the security of any transmission or network;

- (D) the fault tolerance of any Services to be provided by Netcelerate pursuant to this Agreement and a Purchase Agreement; or
 - (E) the reliability or compatibility of the facilities, equipment or software of third parties which may be utilized in providing or by the Customer in using the Services being provided by Netcelerate pursuant to this Agreement and a Purchase Agreement, whether express or implied in law or in fact.
- (viii) that the Services to be provided to the Customer pursuant to this Agreement and a Purchase Agreement do not infringe the rights of third parties.
- (e) The Customer represents and warrants to Netcelerate and understands Netcelerate in entering into this Agreement and a Purchase Agreement is relying upon such representations and warranties:
- (i) Customer is the owner or authorized user of any device not provided by Netcelerate and used in conjunction with the Services provided by Netcelerate pursuant to this Agreement and a Purchase Agreement;
 - (ii) Customer shall not use the Services provided by Netcelerate pursuant to this Agreement and a Purchase Agreement in violation of any obligation by which the Customer is bound;
 - (iii) Customer shall not use any scanner, dialer, robot, spider or other automatic or manual device or process that interferes with or attempt to interfere with the proper working of any Services to be provided by Netcelerate pursuant to this Agreement and a Purchase Agreement;
 - (iv) Customer shall install anti-virus software and related protections against viruses, Trojan horses, worms, time bombs, cancelbots or other techniques that may have the effect of damaging, destroying, disrupting or otherwise impairing a computer's functionality or operation;
 - (v) Customer has all requisite legal capacity, power and authority to enter into and fulfill its obligations under this Agreement and a Purchase Agreement which are legally enforceable against the Customer;
 - (vi) Customer shall notify Netcelerate immediately of any unauthorized use of the accounts or Services provided by Netcelerate pursuant to this Agreement and a Purchase Agreement or any breach of security, including any loss, theft or unauthorized use of the Customer's identification code and/or password;
- (f) The provision of any and all Services provided by Netcelerate pursuant to this Agreement and a Purchase Agreement is subject to all decisions, approvals and determinations pursuant to laws and regulations by any authority or agency having authority over the subject matter, including the Canadian Radio-Television and Telecommunications Commission; a non-Canadian government, federal, state or municipal; a regulatory body or a court of competent jurisdiction. Neither Netcelerate nor the Customer shall be in breach of this Agreement or a Purchase Agreement as a consequence of any action taken in complying with such decisions, approvals, determinations, laws and regulations. In that event both Netcelerate and the Customer agree to negotiate, in good faith, an amendment to this Agreement and a Purchase Agreement consistent with the form, intent and purpose of this Agreement and a Purchase Agreement which is necessary to comply with such regulatory requirement. In the event that any Services being provided by Netcelerate to the Customer pursuant to this Agreement and a Purchase Agreement becomes subject to a tariff imposed by a regulator, Netcelerate and the Customer agree to adjust the fees, purchase price, late payment charges and taxes provided for in this Agreement and a Purchase Agreement to comply with such tariff. Netcelerate and the Customer agree that the terms and conditions contained or incorporated by reference in such tariff will, to the extent of any conflict or inconsistency, prevail over any provision in this Agreement or a Purchase Agreement.
- (g) This Agreement and a Purchase Agreement may be amended at any time and from time to time by Netcelerate and the Customer's use of any of the Services provided by Netcelerate pursuant to this Agreement and a Purchase Agreement after such an amendment shall be deemed to be affirmative consent by the Customer to the amendment. If the Customer does not accept such amendment the Customer must cease any use of any of the Services provided to the Customer by Netcelerate pursuant to this Agreement and a Purchase Agreement and this Agreement and a Purchase Agreement shall be deemed to be terminated by the Customer and the Customer shall be subject to the Termination Charge pursuant to this Agreement.
- (h) This Agreement and a Purchase Agreement shall be governed by the laws of Ontario, Canada and the laws of Canada applicable thereto, excluding any conflict of laws provisions.

- (i) If any term or condition of this Agreement or a Purchase Agreement should be held to be illegal or unenforceable by a court of competent jurisdiction, such term or condition shall be modified to the extent necessary to render it legal and enforceable without losing its intent or shall be severed from this Agreement or a Purchase Agreement if no such modification is possible and the other terms and conditions of this Agreement and a Purchase Agreement shall remain in full force and effect.
- (j) Netcelerate and the Customer agree that this Agreement and a Purchase Agreement shall be prepared only in the English language which shall be the controlling language of the documents.
- (k) All dollar amounts referred to in this Agreement and in a Purchase Agreement shall be in lawful money of the jurisdiction determined in the Purchase Agreement.
- (l) A waiver by either Netcelerate or the Customer of any term or condition of this Agreement or a Purchase Agreement or any breach thereof shall only be effective if done in writing and shall not amount to a further waiver of such term or condition or any subsequent breach thereof.
- (m) The terms and conditions of this Agreement and a Purchase Agreement that require or contemplate performance after the expiration or termination of this Agreement or a Purchase Agreement shall be enforceable notwithstanding such expiration or termination.
- (n) the Customer is not entitled to property rights in IP numbers or domain names assigned to the Customer by Netcelerate as part of Netcelerate providing any Services to the Customer pursuant to this Agreement and a Purchase Agreement. Netcelerate reserves the right to change any domain names assigned to the Customer whether or not Netcelerate is required to do so by any legal or regulatory authority or other service provider.
- (o) The Customer shall not use Netcelerate's trade names, logos or trademarks without Netcelerate's prior written consent.
- (p) The Customer may not assign or otherwise transfer, by operation of law or otherwise, this Agreement and a Purchase Agreement or any rights or obligations thereunder without the prior written consent of Netcelerate. Netcelerate shall be free to assign or transfer this Agreement and a Purchase Agreement with or without the consent of the Customer.
- (q) The relationship between Netcelerate and the Customer is that of independent contractors and they are not joint venturers or partners and neither shall have the right or authority to bind the other.
- (r) All modifications or amendments to this Agreement and to a Purchase Agreement must be in writing and signed by both parties before being effective.
- (s) The headings to the paragraphs or sections of this Agreement and a Purchase Agreement are for convenience only and shall have no interpretative function or substantive meaning.
- (t) The Customer covenants and agrees not to solicit, interfere with or endeavour to entice away any Netcelerate director, officer, employee or agent for the purpose of the Customer or its Affiliate hiring such a person during the term of this Agreement and a Purchase Agreement and for a period of two years following the termination of this Agreement and a Purchase Agreement.
- (u) Nothing in this Agreement or a Purchase Agreement shall restrict, in any way, the ability of Netcelerate to provide any Services or sell any Equipment or contract with any competitor of the Customer.
- (v) Time shall be of the essence for each and every term and condition of this Agreement and a Purchase Agreement and all time periods specified in this Agreement and in a Purchase Agreement for performance of any obligation or the accrual of any rights are a material part of the consideration for the execution of this Agreement and a Purchase Agreement.
- (w) Each of Netcelerate and the Customer have been represented in connection with the negotiation of this Agreement and a Purchase Agreement by legal counsel of its choosing or has had the opportunity for such representation and has waived it. This Agreement and a Purchase Agreement shall be deemed to be jointly prepared by the parties hereto and no party shall claim the benefit of any rule of contract interpretation which would cause ambiguities in this Agreement and a Purchase Agreement to be interpreted against the party who drafted this Agreement or a Purchase Agreement.
- (x) No representation or promise not expressly contained in this Agreement and a Purchase Agreement has been made and no party hereto has entered into this Agreement or a Purchase Agreement on the basis of any promise or representation, express or implied, not otherwise contained herein. This Agreement and a Purchase Agreement supersedes any prior agreement or understanding and contains the entire agreement of the parties hereto.

26. Confidentiality

Netcelerate and the Customer hereby agree not to disclose Confidential Information of the other unless required by law to do so. Netcelerate and the Customer shall do everything reasonably necessary to protect and secure all Confidential Information. The obligations under this provision

shall continue in force for a period of two years following the expiration or termination of this Agreement and a Purchase Agreement.

27. Limitation of Liability

- (a) Netcelerate and its Affiliates, directors, officers, employees and agents shall have a limited liability to the Customer and its Affiliates, directors, officers, employees and agents for any claims rising in connection with the sale of any Equipment to the Customer and any Services being provided to the Customer by Netcelerate pursuant to this Agreement or a Purchase Agreement such limited liability being:
 - (i) for errors or omissions in directory listings, a credit in the amount of and charges paid by the Customer to Netcelerate associated with such listings for the period during which the error or omission occurred; and
 - (ii) for all claims other than for the matters set out in paragraph 25 (a) (i) of this Agreement, including a breach of Confidential Information obligations or software license obligations, for bodily injury to or death of any person or tangible property damage caused by the negligence or willful misconduct of Netcelerate, for proved direct damages not to exceed, per claim or in the aggregate during any twelve (12) month period, an amount equal to the amount payable by the Customer to Netcelerate for all Services provided by Netcelerate pursuant to this Agreement and a Purchase Agreement during the three (3) months preceding the month during which the claim arose.
- (b) Netcelerate and its Affiliates, directors, officers, employees and agents shall, under no circumstances, be liable to the Customer and its Affiliates, directors, officers, employees or agents for any indirect, incidental, consequential, punitive, reliance or special damages, including damages for lost profits, advantage, savings or revenues of any kind or increased cost of operations.
- (c) Netcelerate and its Affiliates, directors, officers, employees and agents shall, under no circumstances, be liable to the Customer and its Affiliates, directors, officers, employees and agents for any damages arising out of or related to:
 - (i) facilities, equipment, software, applications, services or Content provided by the Customer or third parties;
 - (ii) service interruptions, degradation, errors, delays or defects in transmission;
 - (iii) unauthorized access to or theft, alteration, loss or destruction of the Customer's or third party's

applications, Content, data, programs, information, network or systems by any means, including viruses; or

- (iv) any act or omission of the Customer or third parties.
- (d) The limitation of liabilities provided for in paragraph 25 of this Agreement shall survive the cancellation, suspension or expiry of this Agreement or a Purchase Agreement and shall apply:
 - (i) regardless of the form of action, whether in contract, tort, including negligence, strict liability or otherwise; and
 - (ii) whether or not damages were foreseeable.
- (e) Netcelerate shall not be liable for a *force majeure* event and despite a *force majeure* event the Customer's obligation to pay charges incurred for Services provided by Netcelerate to the Customer pursuant to this Agreement and a Purchase Agreement shall not be excused.

28. Indemnity

The Customer shall indemnify and hold harmless Netcelerate against any and all claims relating to:

- (a) the Customer's unlawful use of Netcelerate's Facilities or the Customer's facilities or any Services to be provided by Netcelerate pursuant to this Agreement and a Purchase Agreement;
- (b) property damage, personal injury or death claims caused by the negligence or willful misconduct of the Customer;
- (c) breach of the Customer's obligations under this Agreement and a Purchase Agreement; and
- (d) the Customer's Content.

29. Arbitration of Disputes

Any dispute between Netcelerate and the Customer regarding the terms and conditions and their interpretation of this Agreement and a Purchase Agreement shall be determined by binding arbitration of one arbitrator. Either Netcelerate or the Customer may refer such a dispute to arbitration by giving written notice to that effect to the other. The parties shall agree upon the single arbitrator within thirty (30) days of the notice being given and failing such agreement the single arbitrator shall be appointed pursuant to the *Arbitration Act* (of Ontario).

30. Notices

Any notice required by this Agreement or a Purchase Agreement shall be in writing and may be delivered by personal delivery, fax or pre-paid mail addressed as follows:

If to Netcelerate: 3448 Richmond Road

Ottawa Ontario K2H 8H7

Canada

Attention: Chief Executive Officer

If to the Customer: [insert address of Customer for notice]

Such notices shall be deemed to have been received immediately upon personal delivery or fax delivery and on the fifth business day after deposit, postage paid, in a post office box provided notice by mail shall not be used in the event of a postal disruption.

31. This Agreement and a Purchase Agreement Binding

This Agreement and a Purchase Agreement shall be binding upon Netcelerate and the Customer and shall enure to the benefit of the parties hereto, their successors and permitted assigns and to no third parties.