

**NIAGARA REGIONAL BROADBAND NETWORK LIMITED
MANAGED SERVICES AGREEMENT
TERMS & CONDITIONS**

1. Interpretation

1.01 Words, phrases and terms not expressly defined in these Terms and Conditions shall have the meanings ascribed to them in the Managed Services Agreement (the “Agreement”) made between you, the CUSTOMER, and NRBN.

1.02 Unless the context of these Terms and Conditions require otherwise, reference to a Schedule or Section shall mean a reference to the relevant Schedule or Section contained in the Agreement.

1.03 In these Terms & Conditions, the following terms have the specific meanings hereinafter set forth:

- (a) “Change Request” means a written request submitted by either NRBN or the CUSTOMER, for changes to the Services, in accordance with section 2 hereof;
- (b) “Default Notice” means a notice delivered in accordance with subsection 17.02.3(a) hereof;
- (c) “Managed Services Agreement” means the managed services agreement made between the CUSTOMER and NRBN, of which these Terms & Conditions form a part;
- (d) “Notice of Impact” has the meaning ascribed in subsection 2.03 hereof;
- (e) “NRBN Parties” means any one or more of NRBN, its affiliate, successors, assigns, or their respective directors, officers, employees and agents;
- (f) “Service Level Agreement” means the service level agreement attached as Schedule “A” to the Managed Services Agreement;
- (g) “Taxes” has the meaning ascribed to that term in subsection 3.4 of the Managed Services Agreement;
- (h) “Termination Notice” means a notice given pursuant to section 17 hereof; and
- (i) “Third Party” means a party as defined in subsection 9.01;

2. Modifications and Changes

2.01 Subject to Section 2.04 of these Terms and Conditions below, at any time CUSTOMER or NRBN may request changes in the Services by submitting such requests (a “Change Request”) to the other party in writing.

2.02 In the case of a Change Request from the CUSTOMER, NRBN will, within a reasonable time, and in any event not more than thirty (30) days, after receiving the CUSTOMER Change Request, advise the CUSTOMER whether the change can be made, and if so, the effect the change will have on the Agreement and the Services.

2.03 Every Change Request from NRBN shall be accompanied by a Notice of Impact, setting forth the effect of the Change on the Services and terms of the Agreement. The CUSTOMER will, within a reasonable time, and in any event not more than thirty (30) days, after receiving the NRBN Change Request and Notice of Impact, the CUSTOMER will notify NRBN whether it authorizes the implementation of the Change and the resulting change to the Services and terms, Pending authorization to implement changes, NRBN shall proceed in accordance with the last authorized terms of the Services.

2.04 The parties acknowledge that from time to time, and at any time, NRBN may make such unilateral changes and modifications to the Services as NRBN determines are necessary or advisable, provided such changes do not adversely affect NRBN’s ability to meet its obligations under the Services Levels provided for in Schedule B to the Agreement. NRBN shall endeavor to provide at least fifteen (15) days’ advance notice to CUSTOMER of any such unilateral changes and modifications which may affect CUSTOMER either directly or indirectly.

2.05 Should NRBN incur any additional costs or expenses resulting from any errors, omissions, defects or other problems contained in the information, materials and/or instructions provided to it by the CUSTOMER, NRBN shall

be fully paid for said additional costs and expenses by the CUSTOMER over and above all payments due under the Agreement, within thirty (30) days of receipt by the CUSTOMER of a statement to that effect.

3. Credit Authorization

3.01 By signing the Agreement, the CUSTOMER authorizes NRBN, and gives consent to NRBN under applicable privacy laws for it, or its designates, to obtain credit information and other financial references regarding CUSTOMER for the purposes of assessing CUSTOMER's credit worthiness, and CUSTOMER will promptly execute and deliver to NRBN such further documents and assurances and take such further actions as NRBN may from time to time reasonably request in order to carry out the intent and purpose of this Section.

4. Limit of Liability

4.01 NRBN is responsible solely for the provision of the Services pursuant to the Agreement. Under no circumstances shall any one or more of the NRBN Parties be liable to the CUSTOMER or any third party for any indirect, incidental, special or consequential damages, expenses, costs, liability, loss or damage whatsoever, whether arising in negligence, tort, statute, equity, contract, common law or any other cause of action or legal theory.

4.02 The CUSTOMER agrees, acknowledges and confirms that the CUSTOMER's exclusive remedy shall be limited to a refund of the balance of amounts pre-paid by the CUSTOMER to NRBN for that period in the Term for which Services will not be provided. The CUSTOMER acknowledges and agrees that this limitation is fair and reasonable in the commercial circumstances of the Agreement and that NRBN would not have entered into the Agreement but for the CUSTOMER's agreement to limit the liability of the NRBN Parties in the manner, and the extent, provided for herein.

4.03 For greater certainty, none of the NRBN Parties shall be liable for any lost profits, anticipated revenue, loss of data, loss of use of any information system, lost business revenue, failure to realize expected savings or any other commercial or economic loss of any kind whatsoever arising out of or in connection with the Agreement or the provision of the Services, even if any of the NRBN Parties have been advised of the possibility of such loss.

4.04 None of the NRBN Parties shall have any liability to the CUSTOMER or any third party arising from the failure, for any reason, to activate the Services on the activation date requested by the CUSTOMER. None of the NRBN Parties are liable for any failure or delay in performance hereunder if such failure is due, in whole or in part, to any cause beyond NRBN's reasonable control.

5. No other Representations and Warranties

ANY WARRANTIES EXPRESSLY MADE BY NRBN IN THE AGREEMENT ARE IN LIEU OF, AND NONE OF THE NRBN PARTIES SHALL BE LIABLE OR RESPONSIBLE FOR, AND EACH EXPRESSLY DISCLAIM, ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND (WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE) INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, SATISFACTORY QUALITY AND NONINFRINGEMENT, AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. NONE OF THE NRBN PARTIES OFFERS ANY OTHER ASSURANCES, GUARANTEES OR WARRANTIES THAT:

(A) THE SERVICES WILL MEET THE CUSTOMER REQUIREMENTS;

(B) THE SERVICES WILL BE ERROR-FREE, VIRUS-FREE, OR THAT SERVICES WILL BE PROVIDED ON AN UNINTERRUPTED OR CONTINUOUS BASIS; OR

(C) ALL DEFICIENCIES IN THE SERVICES CAN BE FOUND OR CORRECTED.

6. Service Only

6.01 NRBN is responsible for delivery of the Services only, in accordance with the Agreement, including, but not limited to, the General Service Provisions set forth in Schedule "A" to these Terms & Conditions, and in no circumstances shall the NRBN Parties be responsible or liable for:

- (a) protection of privacy of electronic mail or other information transferred through the Services or any other network provider its CUSTOMER may utilize;
- (b) any use of the Services furnished by or on behalf of NRBN in combination with services, products or equipment or combination therein provided by CUSTOMER or any third parties; or
- (c) any fault or error in the CUSTOMER's programs or data (the preparation of which the CUSTOMER shall have sole responsibility) or in, or caused by, any programs or data accessed through the Services or the Internet.

7. Survival of Limitations

7.01 Sections 4, 5, and 6 above shall apply even in the event of a breach of condition, a breach of an essential or fundamental term or a fundamental breach of the Agreement.

8. Indemnity

8.01 The CUSTOMER shall indemnify and save each of the NRBN Parties harmless from and against all loss, liability or damages of any type and expense, including, without limitation, reasonable legal fees and disbursements on a substantial indemnity basis, arising from any and all claims by any third party, including, without limitation, end users and distributors (herein a "Third Party"), in connection with:

- (a) the use of the Services (and any related equipment or software, if any) by the CUSTOMER or any Third Party; or
- (b) the CUSTOMER's failure to comply with its obligations under the Agreement, including, without limitation, Section 13 (Restrictions on Use), whether the failure is attributable to the CUSTOMER's, or a Third Party's, use of the Services, with or without permission of the CUSTOMER.

8.02 The CUSTOMER shall indemnify each of the NRBN Parties from and against any claim by a Third Party for alleged infringement of any copyright, trademark or any other intellectual property rights which arises as a result of the storage or processing of any of the CUSTOMER's programs or data on or through the Services or the Internet.

8.03 CUSTOMER agrees to hold harmless the NRBN Parties from all claims and liability arising from CUSTOMER failure to report or pay Taxes in a timely fashion.

8.04 The CUSTOMER shall indemnify each of the NRBN Parties from and against damage to business or property, or injury to, or death of any person, including without limitation, any such claim from a Third Party, occasioned by or in connection with any act or omission of the CUSTOMER or any person utilizing the CUSTOMER's services, equipment or facilities with or without the consent or knowledge of the CUSTOMER.

8.05 If NRBN is required to bring legal action to recover any amount due to NRBN by the CUSTOMER under the Agreement, or enforce any obligations of the CUSTOMER under the Agreement, the CUSTOMER agrees to pay to NRBN, in addition to any other amounts owing by the CUSTOMER to NRBN pursuant to the terms of the Agreement, the amount of the reasonable legal fees and costs, on a substantial indemnity basis, incurred by NRBN in respect of same.

The indemnities contained within this Section 9 shall survive termination of the Agreement for the maximum time period permitted by law.

9. Confidentiality

9.01 In the course of the performance of the Agreement, a party (the “Receiving Party”) may obtain, receive or have access to information and materials of a confidential or proprietary nature, of the other party (the “Disclosing Party”) including, without limitation:

- i) trade secrets;
- ii) customer and website visitor information;
- iii) software and data residing on the CUSTOMER’s equipment;
- iv) business plans; and
- v) other information of a strategic, financial or technical nature

(all such information being collectively referred to herein as “Confidential Information”)

Subject to subsection 13.02 below, each Receiving Party agrees that it shall treat the Disclosing Party’s Confidential Information as strictly confidential and shall not disclose or permit the disclosure of such Confidential Information to any person without the Disclosing Party’s prior written consent, except that NRBN may disclose Confidential Information to:

- (a) another party involved in supplying the CUSTOMER with telecommunications, data or related services; or
- (b) an agent retained by NRBN in the collection of the CUSTOMER’s account.

9.02 Subject to subsection 13.02 below, the Receiving Party agrees that it shall not use the Confidential Information of the Disclosing Party other than as required for the performance of the Agreement, and shall take all reasonable security measures to protect against unauthorized access, such measures to be of the same standard of care as the Receiving Party uses for its own Confidential Information and in any event no less than a commercially reasonable standard of care.

9.03 Upon request, the Receiving Party shall return all tangible material concerning the Confidential Information of the Disclosing Party.

10. Customer Equipment and Infrastructure

10.01 NRBN will provide the Service through network access points in each case, connected at a point of demarcation, usually at a termination panel located in proximity to the electrical metering equipment and/or electrical service entrance equipment on the CUSTOMER’s premises. CUSTOMER will comply with its obligation as set out in the Service Level Agreement. Furthermore, any service extension construction beyond any such demarcation point, and any and all maintenance of equipment and facilities beyond the point of demarcation, will be the responsibility of the CUSTOMER or its agents.

11. Permitted Service Suspension

11.01 The CUSTOMER agrees that it may be necessary for NRBN to temporarily suspend service for technical or maintenance reasons, the timing of which, other than emergency maintenance, will be agreed upon in advance. The parties may agree to regularly scheduled maintenance windows for this purpose. Such a suspension of service will not be considered Outage Time for the purposes of the Service Level Agreement.

11.02.1 Without incurring liability, and without an obligation to do so, NRBN may immediately and without notice:

- (a) discontinue or suspend the Services;
- (b) cancel a request for the Services; or
- (c) temporarily block service to a particular jurisdiction, sector, authorized code or other criteria

as NRBN may determine, if NRBN, in its discretion, deems such action is necessary, either to prevent improper use, as outlined in the Agreement, or to protect against fraud or the commission of suspected illegal activities, or to otherwise protect its personnel, agents, facilities or services. In no circumstances shall such actions by NRBN, in and of themselves be deemed, or construed, to be a termination of the Agreement by NRBN.

12. Customer Obligations

12.01 Subject always to the other terms of the Agreement, the CUSTOMER shall:

- (a) at the CUSTOMER's sole cost and expense, provide NRBN and its employees, agents and representatives with access to conduit, cables, termination panels and any other equipment located on private property, where such access is required or desirable to provide the Services;
- (b) on reasonable notice, provide NRBN and its designates with 24 hour per day, 7 days per week access to the CUSTOMER's property and premises as required to support the Service Level Agreement; and
- (c) be responsible to provide first line support personnel, as identified in Schedule C to the Managed Services Agreement, who will be the interface between NRBN and the CUSTOMER for all services performed as part of the Agreement.

13. Restrictions on Use of Services

13.01 The CUSTOMER shall not:

- (a) Resell NRBN services without prior written consent from NRBN;
- (b) re-arrange, disconnect, remove or otherwise alter or tamper with NRBN's equipment or facilities;
- (c) use the names of NRBN or any of its agents for any marketing purposes whatsoever without prior written consent of NRBN;
- (d) use the Services to:
 - i) invade another person's privacy;
 - ii) unlawfully use, possess, post, transmit or disseminate obscene, profane or pornographic material;
 - iii) post, transmit, distribute or disseminate content which is unlawful, threatening, harassing, abusive, libelous, slanderous, defamatory or otherwise offensive or objectionable;
 - iv) unlawfully promote or incite hatred; or
 - v) post, transmit or disseminate objectionable information, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offence, give rise to civil liability, or otherwise violate any municipal, provincial, federal or international law, order or regulation;
- (e) use the Services to access any computer systems, software, data, or any confidential, copyright protected or patent protected material of any other person, without the knowledge and consent of such person, make unauthorized attempts to gain access to any account or computer resource not belonging to the CUSTOMER (i.e. engage in spoofing), or otherwise gain unauthorized access to, alter, or destroy any information of another person by any means or device;
- (f) use the Services to upload, post, publish, deface, modify, transmit, reproduce, or distribute in any way, information, software or other material which is protected by copyright, or other proprietary right, or related derivative works, without obtaining permission of the copyright owner or right holder;
- (g) disrupt NRBN backbone network nodes or network services, or directly or indirectly use the Services to restrict, inhibit or otherwise interfere with the ability of any other person to use or enjoy the use of the Services or the Internet, including without limitation, posting or transmitting any information or software which contains a virus, lock, key, bomb, worm, Trojan horse or other harmful or debilitating feature;
- (h) send unsolicited e-mail that causes complaints from the recipients of such unsolicited e-mail (i.e. engage in spamming), or send large quantities of unwanted or unsolicited e-mail to individual e-

mail accounts (i.e. engage in mail bombing), including without limitation, commercial advertising and informational announcements;

- (i) obtain or attempt to obtain Services by any means or device with intent to avoid payment;
- (j) knowingly engage in any activities that will cause a denial of service to any NRBN customers or end-users, including without limitation, synchronized number sequence <SYN> attacks; or
- (k) facilitate, aid or encourage any of the above activities, whether using NRBN's network or service by itself or via a third party's network or service.

13.02 NRBN cannot and does not guarantee privacy for Internet users. Messages on the Internet may be subject to interception and review by persons other than the CUSTOMER. NRBN therefore recommends that the Services not be used for the transmission of confidential information.

13.03 The CUSTOMER shall not have the power, authority or right to create, and will not permit to exist, any lien or encumbrance, including without limitation, tax liens, mechanics' liens, builder's liens, construction liens, or other license or encumbrances with respect to work performed, in connection with the Services.

14. Right to Monitor

14.01 NRBN shall have the right, but not the obligation, to monitor the Services in order to protect itself, its suppliers and its customers. NRBN and its suppliers will be entitled to electronically or otherwise monitor the Services and to disclose any information obtained thereby as is required by law or court order. NRBN and its suppliers will not intentionally monitor or disclose any private e-mail message unless required by law or court order. NRBN and its suppliers will comply with all privacy and data protection laws when monitoring and disclosing information and agree that such laws supersede the provisions of the Agreement in the event of any conflict or uncertainty.

15. Compliance with Laws

15.01 The CUSTOMER agrees to comply with all applicable laws relating to the use of the Services.

16. Authorized Suspension to Enforce

16.01 If the CUSTOMER is, at any time, in breach of the requirements of Section 13 or Section 15 hereof, NRBN may, at its discretion, immediately and without notice, and in addition to all other rights and remedies under the Agreement and at law and in equity, suspend the supply of any or all Services to the CUSTOMER pursuant to the Agreement. Any such suspension of the supply of Services shall not constitute a termination of the Agreement and shall not excuse the CUSTOMER from liability to make the payments to NRBN required by the Agreement during the period that the provision of the Services to the CUSTOMER is suspended. The supply of Services pursuant to the Agreement shall resume upon the CUSTOMER no longer being in breach of the requirements of the Agreement and the payment by the CUSTOMER to NRBN of any and all costs of NRBN, including without limitation, legal fees on a substantial indemnity basis, to suspend and restore service and a \$500.00 reinstatement charge.

17. Termination

17.01 Upon giving sixty (60) days' prior written notice (the "Termination Notice") to NRBN, the CUSTOMER may, during any Term and without cause, terminate:

- (a) any one of the Services specified in the Agreement; or
- (b) the Agreement;

provided, however, that in either case, the CUSTOMER shall deliver to NRBN, together payment, in one lump sum, as liquidated damages and not as a penalty, an amount equal to 100% of the product obtained when the monthly revenue for the terminated Services is multiplied by the number of unpaid months (or part thereof) remaining in the

Term. Both parties agree that such liquidated damages are a genuine pre-estimate of the damages NRBN would suffer as a result of the CUSTOMER terminating the Agreement at any time during the Term, as the case may be, and the CUSTOMER shall not seek any set-off against such liquidated damages, or require an accounting thereof from NRBN.

17.02 NRBN may terminate the Agreement upon written notice to the CUSTOMER in the event of any one or more of the following events occur:

17.02.1 Insolvency

- (a) the CUSTOMER commits any act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (Canada)
- (b) the CUSTOMER becomes the subject of any bankruptcy or insolvency proceeding;
- (c) the CUSTOMER makes any voluntary assignment for the benefit of its creditors;
- (d) if a receiver takes possession of any of the CUSTOMER's property;
- (e) the CUSTOMER ceases to carry on business in the normal course;

17.02.2 Non Payment

- (a) the CUSTOMER fails to make full payment of any invoice within sixty (60) days after the date of the invoice;

17.02.3 Other Default

Subject to Section 25, if

- (a) the CUSTOMER fails to cure to NRBN's satisfaction, in its sole discretion, any default under the Agreement, within fifteen (15) calendar days of receiving written notice from NRBN (the "Default Notice") describing the nature of such default;
- (b) the CUSTOMER violates any applicable municipal ordinance or provincial or federal law, governmental order, decision or regulation, or order of any court of competent jurisdiction, including without limitation, decisions and orders of the CRTC (each, an "Applicable Law");
- (c) the CUSTOMER fails to obtain or maintain any required license or regulatory approval;
- (d) the CUSTOMER transfers or assigns the use of the Services without the express written consent of NRBN;
- (e) NRBN is prohibited by any Applicable Law from providing the Services;
- (f) if any license, easement, right of way, permit or regulatory authorization or approval required by NRBN to provide the Services in accordance with the Agreement, cannot be obtained, maintained or renewed, without unreasonable expense to NRBN, or is terminated or revoked for any reason; or
- (g) The CUSTOMER is repeatedly in breach of the requirements of the Agreement, including but not limited to Section 15;

The parties agree that, in the event NRBN terminates the Agreement pursuant to this Section 17.02, NRBN shall be entitled to receive any amounts due and owing to the date of termination and any excess funds shall be returned to the CUSTOMER forthwith.

17.03 Upon termination of the Agreement, the CUSTOMER shall return to NRBN all property that is owned by NRBN and has been installed at the CUSTOMER location for the purpose of providing the Services. Upon termination of the Agreement the CUSTOMER shall allow NRBN to remove its equipment and other facilities from the CUSTOMER's property and premises.

18. Governing Law

18.01 The Agreement shall be interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The CUSTOMER submits to the exclusive jurisdiction of the courts of the Province of

Ontario. Each party hereby irrevocably and unconditionally submits to the nonexclusive jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.

19. Force Majeure

19.01 None of the NRBN Parties shall be liable for failure to perform or delay in performance due to anything beyond the reasonable control of NRBN including, without restricting the generality of the foregoing, any fire, flood, natural disaster or other act of God, strike, lockout or other labour difficulty, the act of any governmental authority, the act or negligence of the CUSTOMER, the failure of any telecommunication system of a third party upon which NRBN is reliant to provide the Services to the CUSTOMER, fuel or energy shortage, unavailability of materials or equipment, or delays in transportation (collectively and separately "Force Majeure"). In the event of delay in performance due to Force Majeure, the date for delivery or time for completion (and the date for payment) will be extended by a period of time reasonably necessary to overcome the effect of such delay.

20. Notice

20.01 Every notice, approval, request, authorization, direction or other communication under the Agreement will be given in writing to the party at the address set out on the first page of the Agreement for such party and will be deemed to have been delivered and given, for all purposes:

- (i) two business days after deposit with a commercial overnight carrier, with written verification of receipt;
- (ii) five business days after deposit at a post office for delivery by registered mail, with written verification of receipt; and
- (iii) upon completion of transmission (excluding weekends and holidays, and if transmitted after 4:30pm it will not be deemed received until the next business day), if sent via facsimile, with a confirmation of successful transmission.

21. Severability

21.01 The invalidity or unenforceability of any portion or provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable portion or provision.

22. Time/ Waiver/ Invalid Provisions

22.01 Time is of the essence in respect of the Agreement. Any waiver with respect to one event is without prejudice and shall not constitute a waiver of any similar or other event. Failure to insist upon or enforce strict performance of any provision of the Agreement shall not be construed as a waiver of any such provision or right. If any provision of the Agreement is determined to be void, invalid or otherwise unenforceable by a court of competent jurisdiction, such determination shall not affect the other provisions of the Agreement which shall remain in full force and effect.

23. Assignment

23.01 The CUSTOMER shall not assign or transfer its rights or obligations under the Agreement without the prior written consent of NRBN.

23.02 NRBN, at its sole discretion, shall have the right to assign:

- (a) monies payable under the Agreement to a lender or financier, whether pursuant to a lease, a conditional sale, receivable sale or otherwise;
- (b) all or any part of the payments due under the Agreement; and

(c) NRBN's rights under the Agreement to any Product provided for in the Agreement, in such case to secure its obligations in connection with the financing of, or the provision of, such Product.

24. Proprietary Rights

24.01 No patent, copyright, trademark, trade secret or technological or proprietary right is licensed, granted or otherwise transferred to the CUSTOMER by the Agreement or otherwise, except for the right to benefit there from in the course of the use of the Services.

25. Dispute Resolution

25.01 Subject to Section 25.04, any dispute between the parties shall be resolved in accordance with this Section 25.

25.02 Prior to initiating arbitration pursuant to Section 25.03, the parties shall first attempt to resolve any dispute informally and confidentially, in the following way:

- (a) upon the written request of a party, the other party shall appoint a designated representative whose task it will be to meet for the purpose of attempting to resolve the dispute;
- (b) the designated representatives shall meet as often as the parties reasonable deem necessary in order to gather from, and furnish to each other, all information with respect to the dispute which the parties believe to be appropriate and germane to its resolution.
- (c) The designated representatives shall discuss the issue and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding;
- (d) during the course of negotiations, the parties may request and exchange non-privileged information reasonably related to the Agreement; and
- (e) the specific format of the discussion shall be left to the discretion of the designated representatives, but may include the preparation of agreed-upon statements of facts or written statements of position. In the case of a dispute with respect of billing, the CUSTOMER may require an in-depth review of the disputed amount. It is agreed that all communications between the parties, and by the parties pertaining to the dispute during the negotiations, shall be without prejudice to the party's rights regarding the dispute.

25.03 If a dispute cannot be resolved or settled informally, it shall be settled and determined by arbitration pursuant to the laws of the Province of Ontario, and the parties are deemed to submit to the *Arbitration Act, 1991* (Ontario) (the "Act"), and:

- (a) Either party may at any time give written notice to the other of its desire to submit the dispute to arbitration stating with reasonable particularity the subject matter of the dispute;
- (b) Within five (5) days after receipt of such notice, the parties shall appoint a single arbitrator. Should the parties not be able to agree upon a single arbitrator, they shall apply to a court of competent jurisdiction to appoint an arbitrator and the parties agree to be bound by such appointment;
- (c) The arbitration shall take place in a location in the Region of Niagara;
- (d) The costs of the arbitration shall be paid as determined by the arbitrator;
- (e) Notwithstanding anything to the contrary contained in the Act, the award of the arbitrator shall be final and binding upon the parties and all persons claiming through or under them.
- (f) An award of the arbitrator shall be a condition precedent to the right of either party, or any person claiming through or under a party, to bring any suit, action or other proceeding in any court of law or equity against the other party, any person claiming through or under a party, or against the arbitrator, in respect of any matter to which this arbitration process applies. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction, and execution or other legal process may issue upon such judgment.
- (g) The parties and all persons claiming through or under them attorn to the jurisdiction of the arbitrator and to the jurisdiction of any court in which judgment may be entered.

25.04 Arbitration may not be waived except upon delivery by all parties of a written notice to that effect.

26 **Non-Arbitrable Disputes**

26.01 Notwithstanding Section 25 above, the following disputes are not subject to the dispute resolution procedures set forth in that Section 25 above, unless, in respect of any particular dispute, the parties otherwise mutually agree:

- (a) any dispute involving a request for a temporary restraining order or other form of injunctive relief;
- or
- (b) any dispute involving a claim by or against a third party (except with the express written consent of such third party to participate in arbitration on the basis set forth in the Agreement or in another mutually agreed upon form of alternative dispute resolution).

THIS IS SCHEDULE "A" TO THE TERMS & CONDITIONS
FORMING PART OF THE NIAGARA REGIONAL BROADBAND NETWORK LIMITED'S
MANAGED SERVICES CONTRACT

GENERAL SERVICE PROVISIONS

1. Provision of Services

NRBN shall use commercially reasonable efforts to provide to the CUSTOMER those Services identified in the Agreement, subject to and in accordance with the terms and conditions of the Agreement. Subject to contrary provision in the Agreement, NRBN does not provide the Services to destinations outside NRBN's service area. Subject to the provisions in the Agreement relative to the levels at which the Services will be provided, NRBN does not guarantee error-free or uninterrupted operation of the Services.

2. Service Connection

The dates in the Agreement for the completion of installation of the facilities of NRBN and for the commencement of the provision of the Services to the CUSTOMER are estimates only and, while NRBN will use commercially reasonable efforts to meet such dates, NRBN shall not have any liability for failing to meet such dates. NRBN will keep the CUSTOMER informed as to the dates foreseen for such completion and commencement.

3. Point of Demarcation

If the Services include access to NRBN's Network, NRBN will provide such access via a single mode optical fibre or wireless connection, connected at a "point of demarcation" provided in the Agreement or, if there is no such provision in the Agreement, at a termination panel located in proximity to the electrical metering equipment in, and/or the electrical service entrance to, the CUSTOMER's premises. The connection from the point of demarcation to the CUSTOMER's communication network is the responsibility and cost of the CUSTOMER.

4. Wireless Access Component

Where any of the Services are provided to the CUSTOMER, in whole or in part, through a wireless connection over the public spectrum, NRBN shall not be in breach of its obligations to the CUSTOMER and shall not have any liability to the CUSTOMER in the event that the Services are not delivered to the CUSTOMER by virtue of a failure of, or interrupted or interfered access to, the public spectrum service for the delivery of the Services and any such interruption or interference and the period thereof shall not:

- (a) constitute Outage Time in the calculation of Availability; and
- (b) constitute error seconds in the calculation of Performance.

5. Network Management Services

NRBN shall provide network surveillance and fault management services to the CUSTOMER in accordance with the provisions of the Agreement on a 7 days a week, 24 hours a day basis. NRBN shall provide management of names and addresses during NRBN's normal business hours, Monday through Friday.

6. Faults

If there is a fault with respect to the provision of the Services and the CUSTOMER requests, NRBN will perform basic diagnostic checks to identify the location of the fault. If the fault is not with NRBN's equipment or connection or within NRBN's service area, the CUSTOMER shall be billed for all testing and other work done, with a minimum charge of \$500.00

7. Maintenance and Repair

All requests by a CUSTOMER for maintenance and repair service shall be made to NRBN's Network Operation Centre. The objective of NRBN is to have a mean time to repair and restore service of four (4) hours and while NRBN will use commercially reasonable efforts to achieve such objective, NRBN shall not have (subject to Force Majeure and scheduled routine maintenance) any liability for failing to achieve such objective.