

## COGECO PEER 1 (CANADA) INC. SERVICES - CONNECTIVITY TERMS AND CONDITIONS

### 1. Terms and Conditions of Service

The Terms and Conditions of Service set forth herein, any Cogeco Peer 1 service order form ("**Service Order**", "**Service Order Form**" or "**SOF**") and any schedules hereto ("**Schedules**") including, but not limited to, Service Levels ("**Service Levels**" or "**SLA**") thereto, together constitute the full and final expression of this agreement (the "**Agreement**") for the sale of products and services (the "**Services**") by Cogeco Peer 1 (Canada) Inc. ("**Cogeco Peer 1**") to the Customer. Cogeco Peer 1 shall furnish the Services to the Customer in accordance with the terms and conditions set forth herein and in the Service Order Forms and the Schedules that may be attached hereto and amended from time to time by mutual written consent of the parties.

### 2. Term

This Agreement shall commence on the day a Service Order Form under this Agreement is fully executed by both parties and shall continue in force for the duration of the term specified on the Service Order Form ("**Term**") and continue until the expiration or termination of the last remaining Service Order Form hereunder, unless otherwise terminated earlier in accordance with the provisions herein. Upon expiration of the Term specified on a Service Order Form, the expired Service(s) shall be automatically extended on a month-to-month basis at the rate of the then current monthly recurring charges (the "**Monthly Recurring Charges**" or "**MRC**") plus twenty-five (25%) percent, effective on the first day following the expiration of the Service Order Form, unless and until the Service(s) are terminated in accordance with the provisions herein, or Customer renews the Service(s) for a fixed term pursuant to a rate agreed to by Cogeco Peer 1 and the Customer.

### 3. Service Order Procedure

The Customer shall acquire Services from Cogeco Peer 1 using a Service Order Form. Each Service Order Form shall be prepared and furnished by Cogeco Peer 1 and shall contain the following provisions at a minimum:

- (a) Description of Service(s);
- (b) Anticipated date(s) of activation of the Service;
- (c) Location(s) of the service site(s) ("**Service Site**");
- (d) Length of the Term of the Services expressed in years or months, as applicable and the minimum contract period (the "**Minimum Contract Period**");
- (e) Monthly Recurring Charges and non-recurring charges ("**Non-Recurring Charges**" or "**NRC**") payable to Cogeco Peer 1;
- (f) Customer provisioning, technical, and billing contacts;
- (g) Technology and equipment ("**Equipment**") requirements for each Service Site including point(s) of demarcation (the "**Demarcation Point**") and/or interconnection; and
- (h) Any additional terms and conditions applicable to the Services.

### 4. Provisioning of Service Procedure:

Cogeco Peer 1 shall notify the Customer in writing (the "**Service Provision Notice**") as to the date and time that Cogeco Peer 1 intends to activate the Service(s) at the Demarcation Point. Upon receipt of the Service Provision Notice, the Customer shall designate a Customer representative to meet a Cogeco Peer 1 representative of Cogeco Peer 1 at the Service Site at a mutually agreeable time and date within two (2) Business Days (the "**Service Provision Date**") in order to complete the installation and testing of the Service(s) from the Demarcation Point to the Customer's communications equipment. Unless the Customer notifies Cogeco Peer 1 in writing of non-acceptance of the Services within such two (2) day period, it shall be deemed that Cogeco Peer 1 shall have completed all necessary work for provision of the Service(s) as of the Service Provision Date and the Effective Date for each Service shall be the Service Provision Date. All charges payable to Cogeco Peer 1 for the Service(s) shall be calculated from the Service Provision Date. If the Service Provision Date falls on a day other than the first day of the calendar month, the monthly charge(s) for the Service(s) during that calendar month shall be pro-rated to the Service Provision Date. For the purposes of this Agreement, "**Business Days**" means Monday to Friday from 08:00 to 17:00 Eastern time, excluding Statutory Holidays as observed in the Province of Ontario, Canada.

### 5. Equipment

The Equipment, as detailed in a Service Order Form, shall be supplied and installed by Cogeco Peer 1 and shall be maintained and repaired only by Cogeco Peer 1 or Cogeco Peer 1 authorized agents. The Customer acknowledges that, unless otherwise specified elsewhere in this Agreement, the Equipment shall remain the property of Cogeco Peer 1 and shall not by reason of the attachment,

## **COGECO PEER 1 (CANADA) INC. SERVICES - CONNECTIVITY TERMS AND CONDITIONS**

installation or connection of any part thereof to any realty become or be deemed a fixture to such realty. Customer shall not sell, assign, transfer the Equipment or pledge the Equipment as part of collateral to any third party. Customer shall not permit or suffer any lien, encumbrance, charge or security interest to exist with respect to the Equipment and shall cooperate with Cogeco Peer 1 at Customer's expense to defend Cogeco Peer 1's title to the Equipment. The Customer shall not, except to the extent necessary in an emergency, make any alteration, addition or correction to the Equipment, connect any of Customer's equipment to the Equipment, or permit access to the Equipment by any person not approved by Cogeco Peer 1 without Cogeco Peer 1's prior written consent. The Customer shall at all times carry adequate insurance for and be responsible for any loss or damage to the Equipment at the Service Site resulting from any cause whatsoever except to the extent such loss or damage is caused by the negligence or wilful misconduct of Cogeco Peer 1 or Cogeco Peer 1's authorized agents and Customer shall notify Cogeco Peer 1 of any such loss or damage without delay. Customer shall return the Equipment to Cogeco Peer 1 in good condition and working order (except for normal wear and tear) at the earlier of the date of expiry or termination (i) of the applicable Service(s); and (ii) this Agreement

### **6. Access Requirements**

The Customer shall obtain and grant to Cogeco Peer 1 and its representatives, safe access to the Service Site, including cables, termination panels and any other equipment located on private property, at any agreed upon hour for the purpose of installing, maintaining and removing Cogeco Peer 1 Equipment and providing the Service(s). After normal business hours, it shall be the obligation of the Customer to grant access to the Service Site(s) for repair and/or restoration of Service(s). Service outage time shall not include any time that Cogeco Peer 1 or its employees, contractors, subcontractors, agents and representatives are delayed by the Customer in providing Cogeco Peer 1 with such access.

### **7. Customer Responsibilities**

The Customer shall:

- (a) be responsible to provide first line support personnel who will be the interface between the parties for all Services performed as part of the Agreement; and
- (b) assume full responsibility for ensuring that its employees, representatives, customers and other third party end-users access and use the Services, Equipment and Service Site(s) only in accordance with the terms and conditions of this Agreement including the Cogeco Peer 1 Acceptable Use Policy (AUP) as published or posted on Cogeco Peer 1 website ([www.cogecopeer1.com](http://www.cogecopeer1.com)) and all applicable law.

Cogeco Peer 1 shall have no liability for losses, damages, delays or other deficiencies in the delivery or performance of the Services that result from failure of Customer to fulfill its responsibilities under this Agreement.

### **8. Price**

The total price for Service(s) (exclusive of taxes) shall be specified in the Service Order Form(s). All prices shall be quoted and invoiced in Canadian currency.

### **9. Taxes**

The price stipulated in the Service Order Form does not include any taxes. Customer shall be responsible for the timely payment of the Goods and Services Tax, Provincial Sales Tax, Harmonized Sales Tax, and other taxes of a similar nature applicable to, or imposed by a government entity (or quasi-governmental agency) in Canada.

### **10. Invoicing**

The Customer shall be invoiced thirty (30) days in advance (the "**Billing Date**") for all Service(s) provided under this Agreement with payment due within thirty (30) days of the Billing Date (the "**Payment Due Date**"). When any payment falls due on a day other than a Business Day, the Payment Due Date shall be the following Business Day. Payments will be credited to the account of the Customer as of the date the payment is received by Cogeco Peer 1. Monthly Recurring Charges for Service(s) will not be considered in arrears until the Business Day following the first calendar day of the month when Service(s) are provided. In the event of non-payment of an invoice, Cogeco Peer 1 may suspend any or all Service(s) after providing the Customer with five (5) Business Days prior written notice. Suspended Service(s) shall be restored to the Customer upon payment in full to Cogeco Peer 1 of all amounts owing plus all costs and expenses incurred by Cogeco Peer 1 relating to the suspension and restoration of such Service(s). The foregoing right of suspension shall be in addition to any other rights or remedies Cogeco Peer 1 may have under this Agreement or at law.

## **COGECO PEER 1 (CANADA) INC. SERVICES - CONNECTIVITY TERMS AND CONDITIONS**

### **11. Delayed Payment**

Without prejudice to the right of Cogeco Peer 1 to receive payment when due, Cogeco Peer 1 may assess a late payment charge of 1.5% per month or fraction of a month (equivalent to 19.56 % per annum) on the unpaid balance. The late payment charge provides for recoupment of administration and carrying charges relating to amounts that are owed to Cogeco Peer 1 and are in arrears.

### **12. Security for Arrears**

In addition to the other remedies available to Cogeco Peer 1 including under Sections 10 and 11 above, in the event that the Customer fails to pay Cogeco Peer 1 by the Payment Due Date, Cogeco Peer 1, at its sole and exclusive option, may require the Customer to provide advance payment for three (3) month's Service(s) ("**Security for Arrears**"), payable in the form of a certified cheque, money order or bank draft within five (5) Business Days following receipt of written notice thereof. In the event that the Customer fails to provide Cogeco Peer 1 the Security for Arrears in accordance with the provisions above, Cogeco Peer 1 may, at its sole and exclusive option, suspend or terminate the Service(s). Cogeco Peer 1 will refund the Security for Arrears to the Customer at such time as the Customer successfully re-establishes a reliable credit record by paying in full all amounts owing to Cogeco Peer 1 when due for a period of six (6) consecutive months.

### **13. Changes**

The parties may, by mutual written agreement, make changes to a Service or Service Order Form. The party requesting the change shall describe in writing the details of the requested change. Cogeco Peer 1 reserves the right to reject or modify in its sole discretion any change request made by Customer. Changes may result in adjustments to the Monthly Recurring Fees and other costs and charges.

Cogeco Peer 1 reserves the right in its sole discretion to make unilateral changes to the Services. Except in case of emergency, Cogeco Peer 1 will use commercially reasonable efforts to give customer at least five (5) weeks advance notice of any significant change that will materially affect a Service. In the case of emergency changes affecting the Services, including where a change is required to address a security vulnerability, ensure stability, avoid service interruption or restore service, Cogeco Peer 1 will use all reasonable efforts to provide as much advance notice as possible to the Customer.

### **14. Additional Work**

Customer shall reimburse Cogeco Peer 1 for all reasonable incremental or additional costs and expenses incurred by Cogeco Peer 1 in providing the Services which arise as a result of any errors, discrepancies, omissions or defects in the information, materials and/or instructions provided to it by the Customer. Payment shall be made to Cogeco Peer 1 for such additional costs, within thirty (30) days of receipt of an invoice.

### **15. Network Management Service**

The following Network management functions shall be performed on a 7 day per week, 24 hour a day basis for operational Service(s):

- (a) Network Surveillance;
- (b) Fault Management;

The following Network management functions will be performed during Cogeco Peer 1 normal business hours, 08:00 to 17:00 EST Monday through Friday:

- (c) Management of Moves, Adds and Changes;
- (d) Name and Address Management.

### **16. Scheduled Network Downtime**

To ensure that the Cogeco Peer 1 Network is operating at optimal performance, Cogeco Peer 1 may elect to schedule and inform the Customer of periodic downtimes for diagnosis and maintenance. Cogeco Peer 1 shall endeavour to (i) provide the Customer with seven (7) days advance notice of such scheduled downtime, which may be by email; and (ii) schedule such downtimes during non-peak hours from 12:01 AM Sunday until 6:00 AM Sunday.

## COGECO PEER 1 (CANADA) INC. SERVICES - CONNECTIVITY TERMS AND CONDITIONS

### 17. Customer Care

The Customer can contact a Cogeco Peer 1 Customer Service representative by any of the following methods:

Via telephone at 416-542-2525 (to open trouble tickets)

Via facsimile at 416-626-5419

Via e-mail at: noc@cogecopeer1.com

Via Mail sent to:

Cogeco Peer 1 (Canada) Inc.  
413 Horner Avenue  
Toronto, Ontario, M8W 4W3

The Customer shall notify Cogeco Peer 1 immediately in the event of degradation or interruption of Service(s). Cogeco Peer 1 shall make available a Cogeco Peer 1 customer service representative on a twenty-four (24) hours a day, seven (7) days a week basis. The Customer should request the Cogeco Peer 1 representative to open a "trouble ticket".

The Customer may be assessed incremental maintenance service charges for incidents involving a service call in response to customer requested support in the event of no fault found or where the problem is determined not to be a Cogeco Peer 1 service issue. A maintenance service charge will be not billed for an incident that is determined to have arisen as a result of a fault of the Cogeco Peer 1 network. Requests to have a Cogeco Peer 1 or a contractor available on a standby basis for support of a customer-initiated move or change to their Service(s) may be subject to charges.

### 18. Cancellation of Service(s) by Customer

In the event that the Customer wishes to cancel all or any portion of the Service(s) at any time during the period commencing on the date of the acceptance of the Service Order Form by Cogeco Peer 1 and ending prior to the Service Provision Date, the Customer shall provide Cogeco Peer 1 prior written notice of cancellation and shall pay to Cogeco Peer 1 all of the charges including out-of-pocket expenses incurred by Cogeco Peer 1 in respect of the cancelled Services prior to the date of receipt of the notice of cancellation from the Customer. For greater clarity, such charges may include Cogeco Peer 1' engineering costs, as well as third party contractual obligations (including inter-carrier costs) incurred by Cogeco Peer 1 for which Cogeco Peer 1 is obligated to make payment with respect to the cancelled Service(s). No rebate will be given for any activation or installation charges paid by the Customer prior to the Service Provision Date.

Unless otherwise specified in writing on the Service Order Form, the Minimum Contract Period for a Service shall be twelve (12) months. Provided that Customer is not in arrears on any amounts owing to Cogeco Peer 1 or otherwise in default of this Agreement, the Customer may cancel all or any portion of the Service(s) prior to the end of the Minimum Contract Period by providing Cogeco Peer 1, unless otherwise prohibited by applicable laws, with sixty (60) days' prior written notice of cancellation and paying Cogeco Peer 1 a fee as liquidated damages and not as a penalty ("**Early Cancellation Fee**") equal to one hundred percent (100%) of the remaining Service Order Form contract value for the cancelled Service(s) for the Minimum Contract Period, plus sixty (60%) percent of the Service Order Form contract value for the cancelled Service(s) for the remainder of the contracted Term, plus applicable third party costs and taxes for the cancelled Service(s), calculated from the date of termination.

Provided that Customer is not in arrears on any amounts owing to Cogeco Peer 1 or otherwise in default of this Agreement, the Customer may cancel all or any portion of the Service(s) after completion of the Minimum Contract Period, or during any renewal following expiration of the original Term, by providing Cogeco Peer 1 with sixty (60) days' prior written notice and paying Cogeco Peer 1 an Early Cancellation Fee equal to sixty (60%) percent of the outstanding Service Order Form, or renewal Service Order Form, contract value for the cancelled Services, plus applicable third party costs and taxes, calculated from the date of cancellation.

Upon receipt of Customer written notice requesting a cancellation of Service under this Section 18, Cogeco Peer 1 shall provide written confirmation: (a) detailing the applicable termination charges, third party costs and applicable taxes, (b) confirming the date of Service disconnection (i.e. date the applicable circuit(s) will be disconnected and/or removed from the Cogeco Peer 1 network), and (c) identifying the applicable circuits and site locations ("**Service Cancellation Request Form**"). Cogeco Peer 1 shall have no obligation to cancel Services and Customer shall remain responsible for all applicable fees and charges until such time as Customer provides Cogeco Peer 1 with an executed Service Cancellation Request Form.

## **COGECO PEER 1 (CANADA) INC. SERVICES - CONNECTIVITY TERMS AND CONDITIONS**

### **19. Substituted Service Requests**

Provided that Customer is not in arrears on any amounts owing to Cogeco Peer 1 or otherwise in default of this Agreement and subject to execution of a Move, Add, Change (“**MAC**”) Service Order Form, Customer may substitute a Service (“**Original Service**”) with another Service (the “**Substituted Service**”), provided that: (a) the Monthly Recurring Charges of such Substituted Service is equal to or greater than the cost of the Original Service; (b) the Term of the Substituted Service is equal to or greater than the remaining Term of the Original Service, (c) Customer is responsible for payment of any applicable third party costs, and (d) Cogeco Peer 1, in its sole discretion, has sufficient capacity available on its network to provide the Substituted Service. The Customer shall bear all non-recurring de-activation, activation and installation charges in respect of the provision of the Substituted Service.

Upon receipt of Customer written notice requesting a Substituted Service under Section 19, Cogeco Peer 1 shall provide written confirmation: (a) detailing the applicable substitution charges, third party costs and applicable taxes, (b) confirming the effective date of Substituted Service, and (c) identifying the applicable circuits and site locations.

The cancellation provisions set out in Section 18 shall apply in the event Customer wishes to cancel a Substituted Service.

### **20. Confidentiality**

Any and all information provided directly or indirectly by one party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”), including, but not limited to, any software, hardware, inventions, processes, designs, drawings, specifications, blueprints, technical information, know-how, trade secrets, product, marketing, business, or financial information related to the Disclosing Party (collectively, “**Confidential Information**”), will be kept confidential by the Receiving Party and may not be used, communicated, disclosed, or divulged, except as necessary in the performance of the Receiving Party’s obligations under this Agreement or otherwise in connection with the deployment, operation, and maintenance of the Services. The Receiving Party agrees to limit access to the Confidential Information to those of its directors, officers, employees, contractors, agents and professional advisors (“**Representatives**”) and to those of its Affiliates and the Representatives of those Affiliates as are reasonably required for the purpose of performing the Receiving Party’s obligations under this Agreement or otherwise in connection with the deployment, operation, and maintenance of the Products. Prior to disclosing any Confidential Information to any of its Representatives, the Receiving Party will obtain from each such Representative an agreement substantially as protective of the Disclosing Party’s Confidential Information as the provisions hereof. Notwithstanding the foregoing, Confidential Information does not include any information that the Receiving Party can verify based on its written records was (a) already lawfully in the Receiving Party’s possession without confidentiality obligations prior to receiving it from the Disclosing Party, (b) independently received from a third party without an accompanying duty of confidentiality and without breach of such third party’s obligations of confidentiality, (c) becomes available in the public domain through no action or inaction of the Receiving Party, or (d) developed independently by the Receiving Party without use of or reference to Disclosing Party’s Confidential Information. If Receiving Party becomes legally compelled to disclose any Confidential Information, other than pursuant to a confidentiality agreement, Receiving Party will provide Disclosing Party prompt written notice, if legally permissible, and will use its best efforts to assist Disclosing Party in seeking a protective order or another appropriate remedy. For the purposes of this Agreement “**Affiliate**” means, with respect to a party, an entity controls or that is directly or indirectly controlled by or is under common control with such party, where “control” means (a) ownership, including beneficial ownership, of fifty percent (50%) or more of the voting securities of the relevant entity; or (b) the ability to elect a majority of the directors (or other governing body) of the relevant entity.

### **21. Adequate Assurances**

The Customer authorizes Cogeco Peer 1, its Affiliates, and/or their respective agents to disclose, share and/or exchange information that they have concerning the Customer for the purpose of assessing the Customer’s credit worthiness.

### **22. Intellectual Property Rights**

Except to the extent expressly set out in this Agreement, Cogeco Peer 1 and its licensors retain all right, title and interest (including all copyrights, patent rights, trade secret rights and other proprietary rights) in and to the (i) Services and Cogeco Peer 1 Equipment and any and all copies and derivative works thereof and all related documentation and materials including, without limitation, the Confidential Information of Cogeco Peer 1 and its licensors; and (ii) all of their respective service marks, trademarks, trade names or any other designations.

### **23. Limited Liability**

Except as explicitly set forth in this Agreement, Cogeco Peer 1 makes no warranties of any kind, whether express, implied, statutory or otherwise for the Services it is providing and, except to the extent prohibited by applicable law, disclaims on behalf of itself and its

## **COGECO PEER 1 (CANADA) INC. SERVICES - CONNECTIVITY TERMS AND CONDITIONS**

licensors all warranties including without limitation any implied warranties of merchantability, fitness for a particular purpose, satisfactory quality, non-infringement and quiet enjoyment.

Without limiting the generality of the foregoing, but for greater certainty, except to the extent specifically provided in a Service Order Form, Cogeco Peer 1 does not provide any warranty on and disclaims any responsibility for the (i) legality, reliability, security, quality or accuracy of Customer or third party content, data or other information obtained or transmitted through the Services or residing on the Cogeco Peer 1 Equipment and Cogeco Peer 1 shall not be liable for any loss, errors or omissions in such content, data or other information; (ii) security of the Cogeco Peer 1 Equipment and Cogeco Peer 1 shall not be liable for any security breaches, including without limitation, security breaches resulting from computer hackers, unlawful entry, unauthorized access, disgruntled employees, computer viruses or other malware, theft or other unlawful acts; (iii) availability of the Cogeco Peer 1 Equipment and Cogeco Peer 1 shall not be liable for a user's unsuccessful attempts to access the Cogeco Peer 1 Equipment when it is down, either because of periodic maintenance or because of a technical problem; (iv) reliability of the Cogeco Peer 1 Equipment to retrieve or store information, including Customer's or any third party data and Cogeco Peer 1 shall not be liable for any loss resulting from any loss of information of data, including Customer's data. The Customer is advised to utilize appropriate encryption technology to safeguard the content of its transmissions. Use of all information obtained or transmitted via the Services is at the Customer's own risk.

Without limiting the generality of the foregoing, but for greater certainty, Cogeco Peer 1 is not liable for:

- (a) any act or omission of a telecommunications carrier whose facilities are used in establishing connections to points that Cogeco Peer 1 does not directly serve; and
- (b) defamation or copyright infringement or any other claim arising from material transmitted or received over Cogeco Peer 1' networks or equipment.

IN NO EVENT SHALL Cogeco Peer 1 BE LIABLE TO THE CUSTOMER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, ANY DAMAGES, PENALTY OR FINE WHATSOEVER RESULTING FROM LOSS OF OR INABILITY TO USE THE SERVICES, TEMPORARY OR PERMANENT LOSS OR CORRUPTION OF DATA OR LOST PROFITS (INCLUDING WITHOUT LIMITATION ANY DAMAGES CLAIMED FOR LOSS OF INCOME, REVENUE OR PROFITS OR FAILURE TO REALIZE EXPECTED SAVINGS OR FOR LOSS OF GOODWILL OR BUSINESS REPUTATION) OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES WHETHER IN AN ACTION FOR, OR ARBITRATION, MEDIATION OR OTHER DISPUTE RESOLUTION PROCEEDINGS RESPECTING, BREACH OF CONTRACT, NEGLIGENCE OR OTHER TORTIOUS ACTION ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT. THESE LIMITATIONS ON Cogeco Peer 1' LIABILITY SHALL APPLY EVEN IN THE EVENT OF FUNDAMENTAL BREACH OR FAILURE OF THE ESSENTIAL PURPOSE OF THE AGREEMENT AND SHALL APPLY WHETHER OR NOT Cogeco Peer 1 HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH LOSSES ARISING.

The liability of Cogeco Peer 1 for claims arising from the furnishing of Service(s) or equipment pursuant to this Agreement or claims arising from the interruption or loss of use thereof, whether such Services are provided over its own facilities or through any connecting carriers or through facilities operated by its agents, shall be limited to, and the Customer's exclusive remedies shall be an outage credit for the affected Service which is specified in the Service Level schedule. Cogeco Peer 1' total liability in any event (including claims based on negligence) shall be limited in the aggregate to the Customer's direct damages not to exceed the invoiced value for a thirty (30) day period of the specific Service(s) giving rise to the claim.

### **24. General Indemnity**

Customer shall indemnify, defend (by counsel reasonably acceptable to Cogeco Peer 1) and hold Cogeco Peer 1, its principals, officers, directors, agents, employees and customers harmless from and against any and all demands, claims, suits, judgments, losses, liability, damages and expenses (including, but not limited to, reasonable legal, mediation, arbitration and dispute resolution fees) arising out of or in connection with: (i) damages to any tangible property or bodily injury to or death of any persons, including, but not limited to, customers, agents and employees of either party hereto (including payment under any worker's compensation law or under any plan for employee disability and death benefits) which may arise out of or be caused by the negligence or any willful and wrongful act or omission of Customer; (ii) any use or resale of the Services or Equipment by Customer or any third party in a manner not authorized by this Agreement and/or in violation of this Agreement including its applicable restrictions, AUPs and/or applicable law; and (iii) any content, data or other information or content used, stored or transmitted in connection with Customer's use or resale of the Services, including infringement or misappropriation of third party rights or third party claims resulting from Customer's failure to obtain all necessary consents or authorizations from the appropriate physical persons for: (A) the use, storage or disclosure by Customer or any of its agents of any and all their personal information to Cogeco Peer 1 in connection with this Agreement; or (B) the transfer of such



## **COGECO PEER 1 (CANADA) INC. SERVICES - CONNECTIVITY TERMS AND CONDITIONS**

personal information by Customer to Cogeco Peer 1 or its agents under this Agreement. The provisions of this Section 24 shall survive termination of this Agreement.

### **25. Termination for Loss of Access**

Cogeco Peer 1 may terminate affected Service(s) without liability at any time upon written notice to the Customer if Cogeco Peer 1' right of access to a Service Site through which it serves the Customer is terminated by the building owner or property manager. Cogeco Peer 1 however, shall employ commercially reasonable efforts, at reasonable cost, to provide reasonable advance notice of any such termination and to renew or extend access to the affected Service Site(s) or develop a plan for migration of the Services to an alternative Service Site. Such efforts may include a request for regulatory intervention.

In the event that Cogeco Peer 1' right of access to a Service Site is terminated by the building owner or property manager due to damage or destruction or reconstruction of the premises housing the Equipment, Cogeco Peer 1 and Customer shall consult to determine whether there shall be work-around solutions in order to continue to provide Service(s) to the Service Site and determine a plan for migration of the Service(s) to an alternative Service Site.

### **26. Termination of Service by Cogeco Peer 1**

Cogeco Peer 1 shall have the right at Cogeco Peer 1' sole option to terminate or suspend Service(s) immediately if the Customer ceases to carry on business as a going concern, becomes insolvent, becomes or may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or if a receiver or similar officer is appointed with respect to the whole or a substantial part of its assets, or an event similar to any of the foregoing occurs under applicable law.

### **27. Termination for Material Breach**

Either party shall have the right to terminate this Agreement in the event the other party is in material breach of the Agreement and the breaching party fails to remedy such breach to the satisfaction of the non-breaching party within the lesser of the cure period specified herein and thirty (30) days from the date of written notice by the non-breaching party.

Events of material breach include, without limitation:

- (a) any use or resale of the Services or Cogeco Peer 1 Equipment in a manner not authorized by this Agreement;
- (b) except to the extent expressly permitted by this Agreement, or in cases of emergency, modification, re-arrangement, disconnection, removal or repair of the Cogeco Peer 1 Equipment;
- (c) failure by Customer to pay any amounts owing under this Agreement when due, in which case the breach must be cured within a ten (10) day period;
- (d) any use or resale of the Services or Cogeco Peer 1 Equipment in violation of the Acceptable Use Policy; in which case the breach must be cured within twenty-four (24) hours of written notice; and
- (e) engaging in or permitting illegal activity relating to the Services where termination or suspension of Services is necessary in order to protect Cogeco Peer 1 from legal liability, in which case the breach is not subject to cure period or requirement of prior notice.

### **28. Effect of Termination**

In addition to any remedies at law, if Cogeco Peer 1 terminates any Service or this Agreement pursuant to Section 26 or Section 27, the Customer shall pay the full charges, plus applicable taxes, for the entire Term of the terminated Service(s) including any unpaid costs and expenses incurred by Cogeco Peer 1 prior to the date of termination which may include Cogeco Peer 1' engineering costs and charges for any procured Equipment, as well as third party contractual obligations (including inter-carrier costs) incurred by Cogeco Peer 1 for which Cogeco Peer 1 is obligated to make payment with respect to the terminated Service(s).

### **29. No Right of Offset**

The right of Cogeco Peer 1 to any payment provided for under this Agreement shall not be subject to any abatement, reduction, set off, defence, counterclaim or recoupment of any amount due or alleged to be due by reason of any past, present or future claims of the Customer.

## **COGECO PEER 1 (CANADA) INC. SERVICES - CONNECTIVITY TERMS AND CONDITIONS**

### **30. Force Majeure**

Neither party shall be liable or responsible to the other party for any delay in performance or for non-performance in whole or in part of this Agreement and periods set out for performance of responsibilities pursuant to this Agreement shall be extended for a period equal to the period of the delay caused by the occurrence of (“**Force Majeure Event**”) acts of God, floods, war, fires, natural disasters, famine, earthquake, embargoes, labour disputes, casualties, civil disturbance, acts of insurrection by civil and military authorities, terrorist acts, fibre, fibre cuts, other material or component failures, failure or disturbance of the Internet or of the networks of other companies, lack of or delay in transportation, shortages, public health emergencies, unavailability or delay in delivery not resulting from the responsible party’s failure to timely place orders therefore, government action or any other cause or contingency beyond its reasonable control. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

If a Force Majeure Event causes a material failure or delay in the performance of any Service(s) by Cogeco Peer 1 for more than thirty (30) consecutive days, the Customer may, in addition to any other rights it may have, immediately terminate the affected Service(s) with two (2) Business Days written notice to Cogeco Peer 1 without liability to Cogeco Peer 1.

### **31. Dispute Resolution**

In the event of any dispute arising out of this Agreement, (or Service Orders or Schedules hereto) the parties agree as follows:

To attempt in good faith, to negotiate a settlement of the dispute between themselves within twenty (20) Business Days from the date the dispute arose; and in the event that the parties cannot settle the dispute between themselves, either party may, following the passage of at least twenty (20) Business Days from the date the dispute arose (as evidenced by writing between the parties), submit the dispute for resolution by arbitration by delivery of a notice of submission to the other party. The notice of submission shall name an arbitrator. Any arbitrator selected to act under this Agreement shall be qualified by education, training and experience to arbitrate the particular question in dispute and shall have no connection to either of the parties other than in acting in previous arbitrations. If the party receiving the notice delivers a reply, disagreeing with the arbitrator named in the notice within five (5) Business Days of receipt of the notice, either party may make an application to the courts for appointment of arbitrator. If no reply is received disagreeing with the arbitrator named in the notice is received within the five (5) Business Day period, the arbitrator named in the notice shall conduct the arbitration relating to any dispute. Arbitration shall be conducted in Toronto, in accordance with the provisions of the *Arbitration Act, 1991, S.O. c-17* as amended and the decision shall be final and binding with no right of appeal.

Notwithstanding the foregoing, the following matters will not be subject to arbitration proceedings and will be dealt with through litigation in the courts of competent jurisdiction: disputes or claims respecting confidential and/or proprietary information, disputes or claims for which an indemnification has been provided; and disputes involving claims for injunctive relief by a party herein.

### **32. Assignment**

This Agreement shall not be assigned in whole or in part by either party without the prior written consent of the other party, such consent not to be unreasonably withheld, provided that this Agreement may be assigned to any Affiliate of a party on written notice. Any permitted assignment requiring consent shall be conditional upon the assigning party providing to the other party a true copy of the assignment agreement, and an agreement and undertaking from the assignee to be directly bound by the provisions of this Agreement and not to further assign its rights hereunder without complying with the provisions herein contained. Cogeco Peer 1 shall have the right to deny an assignment of this Agreement, to party unaffiliated with the Customer in the event that Cogeco Peer 1 shall determine that such unaffiliated party is not in Cogeco Peer 1’s judgment, credit-worthy.

### **33. Entire Agreement**

This Agreement constitutes the entire understanding between the Customer and Cogeco Peer 1 with respect to the subject matter, merging and superseding all prior agreements, understandings and representations and warranties. No amendment or modification hereto shall be binding on Cogeco Peer 1 unless made in writing by an authorized representative of each party. Only completed Service Order Forms in the form proscribed by Cogeco Peer 1 shall obligate Cogeco Peer 1 to provide a Service hereunder. It is expressly agreed that if the Customer issues a Purchase Order or other document for the Service(s) provided under this Agreement, such document will be deemed for the Customer’s internal use only, and any provisions contained therein shall have no effect whatsoever upon this Agreement.



## **COGECO PEER 1 (CANADA) INC. SERVICES - CONNECTIVITY TERMS AND CONDITIONS**

### **34. Governing Law**

This Agreement shall be governed, interpreted and construed by and in accordance with the laws of the Province of Ontario and the laws of Canada.

### **35. Export and Anti Corruption**

Services, products, technology, materials, tools, and technical data delivered by or to Cogeco Peer 1 may be subject to the trade, commerce and export control laws of Canada and other countries, including the United States. The Customer agrees to comply with all applicable trade, commerce and export laws of these countries, including but not limited to those which may prohibit export to certain destinations or require you to obtain export or import permits and licenses from governmental trade authorities. The Customer will not use or provide products, Services, technology, materials, tools, and technical data for nuclear, missile, or chemical and biological weaponry end uses.

The Customer will comply with all applicable anti-corruption laws of Canada and other countries, including the United States Corrupt Practices Act, the Canadian Criminal Code and Corruption of Foreign Public Officials Act. Neither the Customer nor any of its representatives shall, directly or indirectly, offer or pay anything of value (including gifts, travel, entertainment expenses and charitable donations) to any official or employee of any government, government agency, political party or public international organization, or any candidate for political office, to (i) improperly influence any act or decision of such official, employee or candidate for the purpose of promoting the business interests of the other party in any respect, or (ii) otherwise improperly promote the business interests of the other party in any respect.

Neither the Customer nor any of its representatives shall use its relationship with Cogeco Peer 1 to attempt to disguise the sources of illegally obtained funds.

### **36. Notice**

Any notice, request, demand, consent or other communication provided or permitted hereunder shall be in writing and given by personal delivery, or sent by registered mail, postage prepaid, or transmitted by facsimile or other form of recorded communication tested prior to transmission, addressed to the party for which it is intended at its address set out in this Agreement provided, however, that either party may change its address for purposes of receipt of any such communication by giving five (5) Business Days prior written notice of such change to the other party in the manner prescribed above. Any notice given by mail shall be deemed to have been received three (3) Business Days following mailing. In the case of notices delivered by courier, on the date following transmission, and if it was delivered or transmitted by facsimile or other form of electronic communication, on the date of transmission provided that the party transmitting the facsimile or other form of electronic communication retains proof of successful transmission of the communication. During times of postal disruption, notice shall be given by personal delivery or transmitted by facsimile or other form of recorded communication tested prior to transmission.

To Cogeco Peer 1 at the following addresses:

President  
Cogeco Peer 1 (Canada) Inc.  
413 Horner Avenue  
Toronto, Ontario, M8W 4W3  
Phone: (416) 847-0872  
Fax: (416) 245-4410

With copies to be given at the same time and in the same manner to:

Legal Department  
Cogeco Peer 1 (Canada) Inc.  
413 Horner Avenue  
Toronto, Ontario, M8W 4W3  
Fax: (416) 245-4410

### **37. Method of Payment**

Invoices must be paid by wire transfer, electronic funds transfer or by cheque made payable to Cogeco Peer 1 (Canada) Inc. and sent to the following address:

## **COGECO PEER 1 (CANADA) INC. SERVICES - CONNECTIVITY TERMS AND CONDITIONS**

Cogeco Peer 1 (Canada) Inc.  
Attention: Collections Analyst  
413 Horner Avenue  
Toronto, Ontario, M8W 4W3

### **38. General Conditions**

Any Section or other subdivision of the Agreement which is, or becomes illegal, invalid or unenforceable shall be severed from the Agreement and be ineffective to the extent of such illegality, invalidity or unenforceability and shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.

The Customer is permitted to resell the Services provided by Cogeco Peer 1 pursuant to a Service Agreement. If the Customer uses or allows the use by its customers (the “**End Users**”) of the Services for the provision of Voice over Internet Protocol services (“**VoIP Services**”) and the Customer or its End Users are not already subject to the requirements of the Canadian Radio-television and Telecommunications Commission (the “**CRTC**”), as regards the provision of VoIP Services, then the Customer shall ensure it, and its End Users comply with the decisions, directives and other requirements of the CRTC with respect to emergency services obligations (including E-9-1-1), message relay services obligations and consumer privacy and safety obligations applicable to the provision of VoIP Services, and Customer indemnifies and saves harmless Cogeco Peer 1 in this regard.

This Agreement, including any schedules, addenda, Service Order Forms, appendices or other attachments hereto, shall enure to the benefit of, and be binding upon, the parties hereto, and their respective successors and permitted assigns.

The individuals executing this Agreement, including any Service Order Form hereunder, on behalf of Cogeco Peer 1 or the Customer, as the case may be, each represent that they are authorized to execute the Agreement (including but not limited to the Service Order Form(s)) on behalf of Cogeco Peer 1 and the Customer, as the case may be.

Any delay or omission of Cogeco Peer 1 (or the Customer) in the enforcement of any provision of the Agreement shall not affect the right of Cogeco Peer 1 (or the Customer) thereafter to enforce the same provision. Nor shall the waiver by Cogeco Peer 1 (or the Customer) of any breach of any provision of the Agreement be taken or held binding by the Customer (or Cogeco Peer 1), unless in writing and such waiver shall not be taken or held to be a waiver of any future breach of the same provision or prejudice the enforcement of any other provision.

Any document to be executed by the parties under this Agreement, including any Service Order Form hereunder, may be signed in one or more counterparts, each of which may be considered an original and all of which, taken together, shall constitute one and the same instrument.

The Parties’ rights and obligations which, by their nature, would continue beyond the termination, cancellation, or expiration of this Agreement shall survive such termination, cancellation, or expiration: for certainty, and without limiting the foregoing, the following sections of this Agreement shall survive termination or expiration of a Service Order or this Agreement: Sections 1, 5, 7, 20, 21, 22, 23, 24, 28, 29, 30, 31, 34 and 38.

### **39. Order of Precedence**

In the event of any inconsistency or contradiction with regards to interpretation or applicability between or among them, the following declining order of precedence shall govern:

- (a) Terms and Conditions of Service;
- (b) Service Orders;
- (c) Schedules to the Service Orders, including SLA.