



MASTER SERVICES
AGREEMENT
("AGREEMENT")

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1. AGREEMENT

1.1 PURCHASE OF SERVICES

This Master Services Agreement (“Agreement”) between TELoIP Inc. (“TELoIP”) (487 Adelaide St. W. – Suite 200, Toronto, ON M5V 1T4, 416-203-7838 / 1-877-783-5647) and the customer identified at the end of this Agreement (the “Customer”) (each a “Party”) applies to each communications service or related product or service (each a “Service”) specified in one or more Service Orders attached to this Agreement, which TELoIP agrees to sell to Customer and Customer agrees to purchase from TELoIP pursuant to this Agreement. Terms and conditions specific to TELoIP’s various Services are set out in Schedules “A”, “B” and “C” to this Agreement.

1.2 APPLIES TO OTHER SERVICE ORDERS

Even where a Service Order does not refer to this Agreement, any Service Order for one or more Services provided by TELoIP to Customer during the Initial Term or during any Renewal Term, as defined below, will be deemed to have been issued pursuant to this Agreement unless TELoIP, represented by a director or officer, expressly agrees in writing to the contrary.

1.3 SUPPLEMENTARY AGREEMENTS

This Agreement does not supersede any other service or maintenance agreement that may be executed between the Parties, in writing, for additional Customer requirements (“Supplementary Agreement”), such as the installation, maintenance or warranty of Customer equipment (including data switches, routers, or endpoints as defined in such separate agreement).

1.4 FUTURE CHANGES-NOTICES

- a) *Future changes to terms and conditions by notice on www.teloip.com.* TELoIP may, from time to time, and at its sole discretion, modify the terms and conditions of the Service and this Agreement. Notices will be considered given, effective and binding on the date posted on www.teloip.com, at which time the modified Agreement will immediately become binding and supersede any previously agreed-to terms and conditions. No further notice by TELoIP is required upon Customer’s continued use of the Service.
- b) *Other notices and registrations in writing.* Any notices or registrations by either Party to the other shall be in writing and either mailed by certified or registered mail, sent by express courier or hand delivered to the addresses identified in this Agreement, or such other address that a party indicates in writing.

2. TERM AND PAYMENT

2.1 INITIAL TERM

The term of a Service Order executed under this Agreement shall start on the date Customer executes the Service Order (“Effective Date”). The term shall continue thereafter for the Initial Term specified in the aforementioned Service Order or, if the Service Order specifies no Initial Term, for an Initial Term ending one (1) year after the Effective Date.

2.2 AUTOMATIC RENEWALS

Following the expiration of the Initial Term for a Service Order, this Agreement shall, as it applies to that Service Order, be automatically renewed for successive one (1) year terms (each a "Renewal Term"), unless terminated by written notice from one Party to the other at least thirty (30) days prior to the expiration of the Initial Term or a Renewal Term. TELoIP may increase fees for any Renewal Term of this agreement, upon notice to Customer at least 60 days prior to the end of the current term.

2.3 PAYMENT

- a) *Agreement to pay.* Customer is responsible for and agrees to pay TELoIP for every Service at the rates specified on the relevant Service Order or on an Addendum to such Service Order, or on any other amendment thereto executed by the Parties, together with all applicable taxes and other government fees and charges. The rates for any Service the Parties agree to add after the Effective Date shall be at TELoIP's list prices in effect at that time, unless otherwise agreed by TELoIP.
- b) *Invoices.* TELoIP will provide Customer with monthly invoices. Monthly recurring charges shall be billed in advance of the month to which such charges apply, unless otherwise specified.
- c) *Due dates.* All charges are due and payable within thirty (30) calendar days of the date of the invoice. Charges for non-recurring Services may be invoiced when such Services are provided.
- d) *Late payments-cost of collection.* Overdue charges shall incur a charge at the rate of one and one-half percent (1.5%) per month on the outstanding amount from the date due until paid. In addition, Customer shall be liable to TELoIP for any costs incurred in enforcing any payment or other Customer obligation under this Agreement including, without limitation, collection costs and legal fees and expenses.
- e) *Advance payment.* In the event Customer fails to pay any invoice on or before its due date, TELoIP may, at its sole discretion, require Customer to pay TELoIP an advance security deposit ("advance payment") in the form of a cashier's or certified cheque, to provide a letter of credit, or to provide a guarantee satisfactory to TELoIP. Any advance payments may be applied against Customer's past due amounts at TELoIP's sole discretion.
- f) *Disputes.* If Customer has a *bona fide* dispute with any amount on an invoice ("Disputed Amount") (not to exceed twenty percent (20%) of Customer's invoice), Customer must pay all amounts not in dispute, and provide TELoIP with a written request for a billing adjustment together with all supporting documentation within ninety (90) days of receiving the invoice on which the Disputed Amount appears. If TELoIP does not receive this information within this ninety (90) day period, Customer's right to a billing adjustment shall be waived.

2.4 TERMINATION

- a) *Customer substitution.* Upon thirty (30) written days' notice to TELoIP, Customer may terminate portions of any Service and substitute one or more other services available from TELoIP without incurring a termination charge, provided that the total monthly recurring charges for the substituted Services are equal to or higher than the terminated Services.

- b) *Customer election.* If Customer elects to terminate any or all of TELoIP's Services, without substituting other services available from TELoIP such that the total monthly recurring charges for the substituted Services are equal to or higher than the terminated Services ("Election"), then
- i. if Customer gives notice of an Election to TELoIP in respect of a Service after a Service Order has been signed by Customer but before TELoIP has provisioned that Service, Customer will pay in a single payment a termination charge equal to all costs reasonably incurred by TELoIP, to be determined by TELoIP at its sole discretion, for installing, provisioning and terminating third-party services that relates to the terminated Service; and
 - ii. if Customer gives notice of an Election to TELoIP in respect of a Service after that Service has been provisioned, the Company will pay in a single payment to TELoIP a termination charge equal to the monthly recurring fees for that Service multiplied by the number of months remaining in the Initial Term or Renewal Term in effect for that Service.
- c) *Commercial non-feasibility or Customer Default.* TELoIP shall have the right, which it may exercise at its sole discretion and without any liability, to disable, suspend or terminate this Agreement as it applies to any Service in the following circumstances:
- i. in the event TELoIP determines that the Services are no longer commercially feasible, provided that TELoIP shall provide ninety (90) days written notice to Customer prior to such termination, or
 - ii. in the event of a "Customer Default", which shall occur if:
 - a) Customer fails to make any payment under this Agreement when due and such failure continues uncured for a period of five (5) days after TELoIP gives Customer notice of such failure to pay;
 - b) Customer denies TELoIP reasonable access to Customer's network or equipment over which Services are being delivered, including access to Customer premises, to examine, maintain and/or effect corrective actions deemed necessary by TELoIP to fulfill TELoIP obligations as enumerated herein;
 - c) Customer uses the Services for any unlawful purpose or in any unlawful manner, or violates the Acceptable Use Policy set out at paragraph 3 of this Agreement;
 - d) Customer makes use of Proprietary Material, as that term is set out at paragraph 3.7 of this Agreement, in a manner which violates the terms of that paragraph.
- d) *Network harm.* If a Customer Default under sub-clause c) of this Agreement has a material adverse effect on TELoIP's network or on the network of a supplier of TELoIP, TELoIP shall have the right, at its sole discretion and without any liability, to immediately suspend or terminate any or all Services being provided to Customer without notice.

2.5 EFFECT OF TERMINATION

- a) *Effect of ordinary termination.* The termination or expiration of this Agreement shall not relieve Customer of its obligations under this Agreement, or under any Service Order. These obligations include, without limitation, Customer's obligation to make payments for all unpaid and outstanding amounts due TELoIP that have been accrued as of the date of termination or expiration of this Agreement.
- b) *Effect of Customer Default.* In the event the Agreement is terminated as the result of a Customer Default under clause ii of this Agreement,
 - i. Customer shall remain responsible both for the monthly fees for the balance of the Initial Term or Renewal Term applicable to the terminated Service, and for any associated unpaid usage charges; and
 - ii. Customer shall be liable for all charges reasonably incurred by TELoIP for unscheduled termination of Customer's Services, including but not limited to termination costs payable by TELoIP to a supplier for deactivation of carrier network access circuits, and reasonable expenses (including any legal and collection agency fees) incurred in the enforcement of TELoIP's rights.
- c) *Survival.* Customer's obligation to make any payment to TELoIP shall survive the termination or expiration of this Agreement.

3. USE OF SERVICES

3.1 ACCEPTABLE USE POLICY ("AUP")

Customer agrees to use TELoIP Services in accordance, and in compliance, with all applicable laws, regulations, and rules, and to obtain all approvals, consents and authorizations necessary to conduct business and initiate or conduct any transmissions over any facilities covered by this Agreement. In addition, Customer agrees to use TELoIP Services in accordance with the guidelines, manuals, instructions and list of acceptable uses provided by TELoIP, which may be updated from time to time. Conduct that violates this policy includes, but is not limited to, the activities in the following list, when such violations involve or use or are handled by TELoIP's network or servers:

- a) use of automatic dialling-announcing devices ("ADADs") or automatic dialling devices, which are strictly prohibited; initiating or propagating electronic chain letters; and outbound telemarketing, spam, or mass marketing via e-mail that violates good marketing industry practice as set out in any law, regulation, or recognized industry association guidelines in force anywhere in North America;
- b) use of Services in such a way that would violate TELoIP's contracts with its service providers;
- c) giving access to an account, through sharing of passwords or otherwise, to any person other than the assigned user or pre-authorized group users for that account;
- d) using the network to gain unauthorized access to any computer system or to purposely install a virus or any other unauthorized program on any computer system;

- e) unauthorized attempts to circumvent data protection schemes or uncover security loopholes. This includes running programs that are designed to identify security loopholes or decrypt intentionally secure data;
- f) knowingly or recklessly performing an act that will interfere with the normal operation of TELoIP's computers, peripherals, or network;
- g) deliberately wasting or overloading TELoIP's network or server resources, or those of any other system via TELoIP;
- h) inappropriate or unsolicited mass mailings or talk requests such as multiple mailings to newsgroups, mailing lists or individuals;
- i) inappropriate posting of commercial or inflammatory material to newsgroups not intended or inappropriate for such postings;
- j) forging communications to make them appear to originate from another person;
- k) attempting to monitor or tamper with another user's electronic communications, or reading, copying, changing or deleting another user's files or software without the express agreement of the other user.

3.2 NOTICE OF INFRACTION

TELoIP will attempt to resolve minor infractions of the AUP set out above informally. However, depending on TELoIP's assessment of the severity and likely consequences of a violation of any part of the AUP set out in paragraph 3 of this Agreement, TELoIP may, at its sole discretion and without any liability:

- a) notify the individual user or Customer point of contact with a warning;
- b) without notice, disable, suspend or terminate one or more Services being provided to the specific user or Customer; or
- c) notify and cooperate with the appropriate federal or provincial authorities.

3.3 CONFIDENTIALITY

Customer consents to the use, collection and disclosure by TELoIP, assignees of TELoIP, and their respective affiliates, agents and contractors of Customer's name, address, telephone and fax numbers and e-mail address for the following purposes:

- a) providing products and services to Customer,
- b) contract management and administration,
- c) establishing a relationship and communicating with Customer,
- d) developing, implementing and managing products and services for Customer,
- e) assisting in law enforcement purposes and collecting unpaid debts,

- f) protecting, managing and promoting their business interests and activities,
- g) providing information to Customer on other products and services which may be available from TELoIP or an organization related to TELoIP, or
- h) otherwise as required or permitted by law or this Agreement.

Customer may withdraw consent in respect of subparagraph g) without affecting his or her other arrangements with TELoIP, by contacting TELoIP.

3.4 SOFTWARE

Any software incorporated into or provided for use in or with any TELoIP Service (whether initially, as part of maintenance or support; or otherwise) is not sold, but rather provided under license only, solely for Customer's internal use in or with the applicable product, strictly in accordance with documentation and any other use restrictions, that are applicable for that product.

Such license is non-exclusive, non-sub-licensable, subject to the terms and conditions of this Agreement, and does not include the right to (and Customer will not, directly or indirectly) modify, reverse engineer (except to the extent applicable statutory law expressly prohibits reverse engineering restrictions), incorporate or use in any other works, create derivatives of, or copy any portion of such software (except as specifically authorized in documentation provided by TELoIP for purposes of installation, support or maintenance with respect to the Service).

3.5 HARDWARE

TELoIP represents and warrants that any hardware provided by TELoIP to Customer for use in or with any TELoIP Service is either original with TELoIP or has been fully licensed by TELoIP, and that neither the hardware nor Customer's use of the hardware as contemplated by this Agreement will infringe or violate any rights of any person or entity, nor shall Customer be required to pay or incur any sums to any person or entity as a result of TELoIP's ownership, acquisition or use of the hardware, except as herein provided.

3.6 TITLE TO EQUIPMENT AND RISK OF LOSS

TELoIP shall, as between TELoIP and Customer, retain title to all hardware and other equipment, all software and all associated property residing in TELoIP's facilities used in connection with providing any Service to Customer. Upon expiration or termination of this Agreement for any reason with respect to any Service, Customer shall surrender any and all TELoIP equipment, software and associated property in respect of each such Service to TELoIP in the same condition as installed, with the exception of ordinary wear and tear. Customer shall be liable to TELoIP for the cost of repair or replacement of equipment, software and associated property lost, stolen or damaged while in the care of Customer.

3.7 PROPRIETARY MATERIAL

- a) "Proprietary Material" is information or material
 - i. compiled by, obtained by, or furnished to either Party to the other regarding the disclosing Party, any of its parent, subsidiary or affiliated companies, employees or business, and that is not available to the public without disclosure by a Party, nor

becomes available to either Party on a non-confidential basis from a source which is entitled to disclose it; or

- ii. that is proprietary property or content, including any copyrights, trademarks, service marks, patents or other intellectual property.

b) Each Party agrees that

- i. all Proprietary Material shall remain the sole and exclusive property of the providing party, and no license or other interest in it is hereby granted except as expressly provided herein, and
- ii. unless compelled by public authorities exercising proper legal authority, it will not, directly or indirectly, during or after an Initial Term or any Renewal Term, disclose in any manner, or use or permit others to use, any Proprietary Material.

3.8 AS-IS BASIS

All services hereunder are provided on an “as is” basis. Customer’s or its users’ use thereof is at such parties’ own decision and risk. TELoIP does not make, and hereby disclaims, any and all other express and implied warranties including, but not limited to, warranties of merchantability, fitness for a particular purpose, title, and any warranties arising from a course of dealing, usage, or trade practice. TELoIP makes no warranty that any service will be without failure, delay, interruption, error, degradation or loss of data.

3.9 LIMITATION OF LIABILITY

- a) *Liability for damages.* TELoIP shall not be liable for any special, indirect, incidental, or consequential damages including, without limitation, lost income or lost revenue (whether or not such damages were foreseen at the time this Agreement was entered into). This limitation applies to claims founded in breach of contract, breach of warranty, product liability, tort (including both active and passive negligence of TELoIP), or any other theory of liability.
- b) *Liability for direct damages.* The liability of TELoIP for direct damages including, without limitation, injuries to persons or property, arising out of TELoIP’s performance hereunder, including mistakes, interruptions, delays, or defects in transmission during TELoIP’s provision of any Service, shall not exceed an amount equivalent to the proportionate charge to Customer for the period of time during which such mistake, interruption, delay or defect in transmission adversely affects such Service.
- c) *Liability for defacement or damage to premises or equipment.* TELoIP shall not be liable for any defacement of or damage to Customer’s premises or the equipment of Customer or others resulting from TELoIP’s furnishing of any Service on such premises or by the installation or removal of any equipment included in the Services, unless such defacement or damage is the result of negligence of TELoIP’s agents or employees.
- d) *Holds harmless.* Customer hereby holds TELoIP and its agents and employees harmless from, and agrees to be responsible for, all losses, damages and liabilities resulting from unauthorized use of a Service and any content transmitted using a Service.

4. MISCELLANEOUS

4.1 CUSTOMER NETWORK

Customer acknowledges that all data and voice network infrastructure, LAN, and IP voice equipment located at Customer's premises, including but not limited to routers, switches, firewalls, cable plant, analog converters, analog telephone adapters, modems, fax machines, music on hold devices, IVR devices, CTI devices, IP phones, IP softphones, servers, and personal computers ("Customer Network") is the responsibility of Customer. TELoIP shall provide Customer point of contact or Customer IT vendor point of contact with Customer Network IP voice minimum system, compatibility and LAN configuration documentation outlining IP voice best practices. Unless contracted otherwise to do so, Customer acknowledges that TELoIP is not responsible for ongoing support and maintenance of Customer Network. Customer must notify TELoIP in writing a minimum of thirty (30) days in advance of a change to Customer's Network in order to allow TELoIP adequate time to analyze, test and assess the impact of the changes on the performance of TELoIP's Products in the Customer's Network. Where TELoIP determines that lack of such notice has resulted in degradation or failure of TELoIP's Products, TELoIP may bill the Customer for support time incurred by TELoIP staff to rectify such degradation or failure of Products at the then standard hourly rate charged by TELoIP for professional services.

4.2 TELoIP'S ROLE

Customer hereby acknowledges that TELoIP is distinct from any value-added reseller, service provider or any other agent ("Contractor"), and that this Agreement constitutes a separate and independent obligation of Customer which is unrelated to the performance or non-performance of any Contractor. Customer shall not have any right to abate, decline to pay or otherwise fail to honour its obligations under any Contractor agreement as a result of TELoIP's performance or non-performance of any obligation under this Agreement, and Customer shall not have any right to abate, decline to pay or otherwise fail to honour its obligations under this Agreement as a result of any Contractor performance or non-performance of any obligations under any agreement with Customer.

4.3 INDEMNIFICATION

Customer shall defend and indemnify TELoIP and its officers, directors, agents and employees from and against all third-party claims, liabilities, damages, settlements, attorney's fees and expenses resulting from (i) Customer's use of a Service; (ii) any content transmitted using a Service and (iii) any breach by Customer of its representations, warranties and undertakings hereunder.

4.4 FORCE MAJEURE

TELoIP may adjust or suspend its performance to the extent performance is beyond TELoIP's reasonable control for reasons including, without limitation, acts of God, fire, explosion, atmospheric conditions such as rain fade, cable cut, governmental action, or national emergencies, war, riot, insurrection, terrorism, vandalism, or labour difficulties such as work stoppages, strikes, or lockouts. In such event, TELoIP shall not be responsible for any non-performance or delay in performance of any of its obligations under this Agreement.

4.5 LEGAL AND REGULATORY CHANGES

If the Canadian Radio-television and Telecommunications Commission (“CRTC”), court of competent jurisdiction, or any other agency with jurisdiction over the services covered by this Agreement issues a rule, regulation, law or order which has the effect of cancelling, changing, or superseding any material term or provision of this Agreement (collectively, “Regulatory Requirement”), then this Agreement shall be deemed modified in such a way as the Parties mutually agree is consistent with the form, intent and purpose of this Agreement and is necessary to comply with such Regulatory Requirement. Should the Parties not be able to agree on modifications necessary to comply with a Regulatory Requirement within 30 days after the Regulatory Requirement is effective, then upon written notice either Party may, to the extent practicable, terminate that portion of this Agreement impacted by the Regulatory Requirement.

4.6 OTHER

- a) *Assignment.* Customer may not assign this Agreement except with the prior written consent of TELoIP, whose consent shall not be unreasonably withheld. TELoIP may subcontract any or all of the work to be performed by TELoIP under this Agreement, but shall retain responsibility for the work subcontracted.
- b) *Jurisdiction.* This Agreement shall be governed by the laws of the Province of Ontario, Canada without regard to choice of law principles. The parties agree to submit to the exclusive jurisdiction of the courts in Ontario in any legal action arising from this Agreement, a Service Order, or a Service provided hereunder.
- c) *Severability.* If any term or provision of this Agreement shall be determined to be invalid or unenforceable by a court or body of competent jurisdiction, then both Parties shall be relieved of all obligations arising under such provision and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it valid and enforceable while preserving its intent. However, the remainder of this Agreement shall not be affected. Each remaining term and provision shall be valid and enforceable.
- d) *No contra proferentem.* No rule of construction requiring interpretation against the draftsman hereof shall apply in the interpretation of this Agreement.
- e) *No permanent waiver.* The failure of either party to enforce any provision hereof shall not constitute the permanent waiver of such provision.
- f) *Complete agreement.* This Agreement, including any future modifications entered into by the Parties under the terms of the Agreement, constitutes the complete and exclusive statement of the understanding between the Parties and supersedes all proposals and prior agreements (oral or written) between the Parties relating to the content of this Agreement as it applies to any Service.
- g) *Original agreement.* This Agreement may be signed in counterparts, each of which when executed, shall be deemed an original, and all such counterparts shall constitute one and the same instrument.
- h) *Alternative format (Braille or large print).* TELoIP will make available, upon Customer’s request, a Braille or large-print copy of this Agreement.
- i) *Language.* The parties confirm that it is their wish that this Agreement and all related documents, including all Service Orders and all notices, be drawn up in the English

language only. Les parties aux présentes confirment leur volonté que cette convention, de même que tout document qui s'y rattache, dont tout avis et toute Commande de Service, soient rédigés en langue anglaise.