

1. Definitions

In this Agreement, the following capitalized words have the following meanings:

- a) **"Supplier"** means telMAX Inc., an Ontario corporation.
- b) **"Customer"** means the Party identified on the first page of an executed telMAX Service Agreement
- c) **"Demarcation Point"** means the operational interface and location to which the Services are delivered, as described in the Service Agreement;
- d) **"Equipment"** means the cable, circuits, instruments, equipment and other facilities owned by Supplier and required in order to provide the Services;
- e) **"Off-Net Location"** means any location where Supplier uses a third-party carrier to provide local access circuits to the Supplier Backbone Network;
- f) **"On-Net Location"** means any location where Supplier owns local access circuits which are directly connected to the Supplier Backbone Network;
- g) **"Parties"** means Supplier and the Customer and **"Party"** means either one of them;
- h) **"SA"** means one of more Services Agreements signed by both Parties
- i) **"Service Level Agreement"** means the Service Level Agreement attached as Schedule A to these Terms & Conditions;
- j) **"Service Location"** means the building or premises at which the Demarcation Point is located, as more particularly described in the Service Agreement;
- k) **"Services"** means the services provided by Supplier to Customer as set out in any one or more Service Agreements, and executed by the Parties from time to time which Services shall include, without limitation, installation and maintenance of the Equipment and any temporary services provided while installation and/or maintenance is taking place;
- l) **"Taxes"** means all taxes, levies, fees, imposts, duties, charges, surcharges, assessments or withholdings of any kind or nature levied or imposed upon Supplier, its network, Equipment, facilities, or arising from or relating to the provision by Supplier of the Services or use thereof by Customer (including, without limitation, sales and excise taxes, real property, gross receipts, and license fees), together with any penalties, fines or interest thereon by any Canadian or U.S. federal, state, provincial or local government, public authority, including its agencies, commissions and tribunals, having jurisdiction;
- m) **"Term"** for any particular Service has the meaning ascribed thereto in Clause 4 and in the applicable Service Agreement.

The headings contained in this Agreement are for reference purposes only and shall not be used in the interpretation of this Agreement. Words importing any one gender includes the other gender, the singular includes the plural and vice versa, and natural persons include created legal entities (corporate or unincorporate, including partnerships) and vice versa.

2. Services

Supplier will provide Customer with the Services set out in one or more Service Agreements referencing these Terms & Conditions, and executed by the Parties from time to time. Each Service Agreement will set out a description of the Services to be provided, the price for the Services, and any other applicable terms and conditions.

3. Charges and Payments

- a) The fees for the Services are as set out in the applicable Service Agreement. Once the Service installation provided by Supplier is complete in all respects and the Service is ready to be delivered pursuant to this Agreement, Supplier shall notify the Customer in writing (including by email). Supplier shall then have the right to initiate billing within 5 business days. Supplier shall invoice Customer for the Services monthly in advance, monthly in arrears or a combination of both, as described in the applicable Appendix, and payments shall be due and payable to Supplier within thirty (30) days after the date of the Supplier invoice to Customer. Payments past due date will be subject to an interest charge stipulated on the invoice and such interest charge shall accrue from and after the due date of payment to the date that the payment is made to Supplier.
- b) Customer shall be responsible for payment of all applicable Taxes shown on the invoice.
- c) If Customer is entitled to an exemption from any applicable Taxes, Customer is responsible for presenting Supplier with a valid exemption certificate (in a form reasonably acceptable to Supplier). Supplier will give

effect to any valid exemption certificate provided in accordance with the foregoing sentence to the extent it applies to any Service billed by Supplier to Customer following Supplier's receipt of such exemption certificate.

- d) All amounts due for Services shall be billed and paid in Canadian dollars.

4. Effective Date and Term

The Service Agreement shall be effective from the date of the last signature by Supplier or Customer. Services will be provided for the period set out in the Service Agreement ("Term").

5. Customer Obligations

Customer agrees as follows:

- a) **Service Location.** Customer will obtain and maintain access to the Service Location, including the Demarcation Point, to Supplier, its employees, agents, contractors and subcontractors for the purpose of providing the Services, as well as providing electrical power and outlets at the Service Location as Supplier reasonably required for the provision of the Services. Customer is solely responsible for the payment of any and all electrical charges associated with the Services and access charges at the Service Location.
- b) **Equipment.** The location of the Demarcation Point and Equipment to be installed at the Service Location shall be determined by Supplier in consultation with Customer. Customer shall take all steps reasonably required in order to protect the Equipment from trespass or damage by Customer or other persons where such Equipment is located at the Service Location.
- c) **Cable Wiring.** Customer shall be responsible for and shall pay for any and all cable wiring and equipment required to interconnect the Equipment from the Demarcation Point to Customer's equipment or to Customer's customer equipment, if applicable, to permit Customer to use the Services. Customer will be responsible for use of the Services beyond the Demarcation Point.
- d) **Property Ownership.** Any and all Equipment provided by Supplier in connection with the provision of the Services at or to the Service Location shall remain the property of Supplier and shall not by reason of the attachment, installation or connection of any part thereof to any realty become or be deemed a fixture appurtenant to such realty. Supplier shall remove the terminating Equipment from the Service Location upon termination or expiry of the Term of any Services.
- e) **Responsibility.** If the Equipment is damaged or destroyed by the negligence of or any acts or omissions of Customer, its employees, agents or contractors, then Customer will be responsible for any such damage.

6. Use of Service

- a) Customer will not permit any of the Equipment to be re-arranged, disconnected, removed, repaired or otherwise interfered with, except with Supplier's prior approval.
- b) Customer will not use the Services, nor permit them to be used, for any purpose contrary to law.
- c) Customer will not be allowed to resell the Services under its own branding, unless this is specifically authorized in the applicable SA. Customer shall be responsible for all support and customer care matters associated with Customer's customers.
- d) Customer shall not have the right to use Supplier's trademarks or trade names in any manner and on any support unless Supplier gives prior written consent and/or grants the appropriate license. Supplier shall not have the right to use Customer's trademarks or trade names in any manner without Customer's prior written consent.
- e) If any changes are necessary to the Services, an amended Service Agreement will be executed by the Parties.

7. Customer Responsibilities

- a) Customer is responsible for, and shall indemnify Supplier against, all losses, liability, claims, damages, judgments, expenses and costs, of any kind whatsoever, including reasonable legal fees and disbursements, suffered or incurred by Supplier arising from claims of any third party (including Customer's customers and end-users) and arising from or in connection with the following:
 - i. use of the Services by Customer or its customers or end-users or by any third party authorized by Customer;
 - ii. the Customer's (or its customer's or end-user's) data, equipment, computer network and other facilities;
 - iii. breach of any covenant, term, representation or warranty of this Agreement by Customer or by any third party authorized by Customer;

- iv. the negligence or misconduct of Customer, its customers, end-users or any third party authorized by Customer in connection with use of the Services;
 - v. claims made by Customer against any third party who in turn claims contribution or indemnity from Supplier; and
 - vi. Claims by any third party for libel, slander, passing off or infringement of copyright, trademark or patent, illegal, improper or unauthorized use of the Services arising from the content of the video, voice or data carried by Customer, or its customers or end-user except for content as may be directly derived from Supplier
- b) Supplier is responsible for, and shall indemnify Customer against, all losses, liability, claims, damages, judgments, expenses and costs, of any kind whatsoever, including reasonable legal fees and disbursements, suffered or incurred by Customer arising from third party claims arising from or in connection with the provision of the Services by Supplier or any breach by Supplier of its obligations under this Agreement.

8. Limitation of Liability

- a) Except with respect to loss or damage caused as a direct result of Supplier's negligence, Customer agrees that Supplier will not be liable to Customer or any third party for (i) any act or omission of any carrier or other person other than Supplier; (ii) any act or omission of the Customer or its customers or end-users; (iii) any claims related to defamation, copyright or trademark infringement or the violation of any third party rights arising from use of the Services; (iv) infringement of patents arising from combining or using Customer-provided facilities with the Services or the Equipment where the Services or the Equipment would pose no infringement in the absence of such combination or use; or v) any unauthorized use of the Services.
- b) Supplier's total cumulative liability, if any, to Customer or any third party for damages related to this Agreement (including fundamental breach or otherwise), negligence, any act or omission by Supplier or its representatives, or under any other theory of law or equity will be limited to those damages actually proven as directly attributable to Supplier and will in no event exceed the aggregate of six (6) months of fees and charges for all Services under this Agreement.
- c) NOTWITHSTANDING ANYTHING IN THIS AGREEMENT, IN NO EVENT WILL ANY PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOSS OR DAMAGE TO DATA, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- d) EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, SUPPLIER MAKES NO WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE AND, WITHOUT LIMITATION ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABLE QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT ALL REQUIREMENTS OF CUSTOMER WILL BE MET WITH RESPECT TO ANY SERVICES PROVIDED BY SUPPLIER HEREUNDER, ARE HEREBY DISCLAIMED BY SUPPLIER AND EXCLUDED FROM THIS AGREEMENT.

9. Termination of this Agreement

- a) Either Party may terminate this Agreement, and accordingly all Services, without penalty on written notice to the other Party if the other Party has filed a petition in or has been assigned into bankruptcy or become an insolvent person within the meaning of any applicable bankruptcy or insolvency legislation, or makes any assignment for the benefit of creditors or makes any arrangements or otherwise becomes subject to any proceedings under applicable bankruptcy laws or insolvency laws with a trustee, or receiver appointed in respect of a substantial portion of the property of the other Party, or in the event the other Party liquidates or winds up its daily operations for any reason whatsoever.
- b) Customer may terminate Services upon thirty (30) days' written notice to the Supplier provided that the Customer pays Supplier upon demand, in one lump sum, an amount equal to one hundred percent (100%) of the remaining monthly service charges set out in the applicable SA.
- c) Customer may terminate the Services, at its option and without penalty, if Supplier fails, within sixty (60) days following written notification to Supplier by Customer, to remedy any breach of a material term or condition of this Agreement to be performed or fulfilled by Supplier.
- d) Supplier may suspend delivery of the Services, terminate any or all Services, or terminate this Agreement, at its option and without penalty if:
 - i. Customer fails, within thirty (30) days following written notification to Customer by Supplier, to make full payment of any invoice that remains unpaid in accordance with the terms of payment set out in this Agreement (other than charges which are being disputed by Customer in good faith);

- ii. Customer has failed within five (5) days following written notification to Customer by Supplier to remedy any breach of any material term or condition of this Agreement to be performed or fulfilled by Customer.
 - iii. Fifty percent (50%) of the total monthly service charges for the Services connecting Customer's On-Net Location which would otherwise have been payable by Customer to Supplier had the Agreement not been terminated and had the Services been provided as contemplated in the Agreement for the balance of the applicable Term; and/or
 - iv. One hundred percent (100%) of the total monthly service charges for the Services connecting Customer's Off-Net Location which would otherwise have been payable by Customer to Supplier had the Agreement not been terminated and had the Services been provided as contemplated in the Agreement for the balance of the applicable Term.
- e) If Supplier has terminated this Agreement in accordance with Section 9 (d), then Supplier shall cease providing all Services and Customer shall pay to Supplier forthwith upon demand by Supplier, as a genuine pre-estimate of liquidated damages, an amount equal to the total monthly service charges for the Services which would otherwise have been payable by Customer to Supplier had the Agreement not been terminated and had the Services been provided as contemplated in the Agreement for the balance of the applicable Term.

10. General

- a) **Governing Law.** This agreement shall be governed by, and construed in accordance with, the laws in force in the Province of Ontario, and the laws of Canada applicable therein. The Parties attorn to the jurisdiction of the Courts of Ontario, and agree that any action or proceeding brought by either party to enforce this Agreement shall be commenced in Ontario.
- b) **Successors and Assigns.** This Agreement may not be assigned by any Party without the prior written consent of the other Party, such consent not to be unreasonably withheld; provided that either party may, without consent, assign this Agreement in connection with a corporate reorganization or merger or to any entity that controls, is controlled by or is under common control with the assigning party or to a purchaser of all or substantially all of its assets or business, and in any such event, the assigning party shall be released from its obligations hereunder to the extent they are assumed by the assignee.
- c) **Force Majeure.** Except for payment obligations, any delay or failure of either party to perform its obligations under this Agreement shall be excused, to the extent that the delay or failure is caused by an event or occurrence beyond the reasonable control of the Party and without its fault or negligence, such as by way of example and not by way of limitation, acts of God, action by any governmental authority, fires, floods, war, acts of terrorism, insurrection, revolution, nuclear reaction, windstorms, explosions, riots, natural disasters, inability to obtain power, material, labour, Equipment or transportation, or court injunction provided that, written notice of the delay shall be given by the affected Party to the other Party within ten (10) days.
- d) **Severability.** Each provision and/or Service of this Agreement shall be severable. If any provision or any one or more Services is illegal or invalid, the illegality or invalidity shall not affect the validity of the remainder of this Agreement. In the event that this Agreement is a tripartite agreement, then the Agreement shall be divisible in relation to the Parties insofar the Agreement can be performed without the collaboration of the excluded Party.
- e) **Rights Arising from Agreement.** Nothing herein expressed or implied is intended nor shall be construed to confer on or to give any person, other than the Parties and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.
- f) **Time.** Time shall be of the essence of this Agreement and every part thereof.
- g) **Agency Limitations.** This Agreement does not constitute any Party a partner, employee, agent or legal representative or joint venturer with the other, and no Party may act on behalf of the other in any manner nor assume or create any obligation of any kind express or implied, on behalf of the other Party nor bind the other Party in any respect whatsoever, except in accordance with this Agreement.
- h) **Waiver and Indulgence.** Waiver by any Party of any violation or breach of this Agreement in any instance shall not be taken or held to be a waiver of any subsequent violation or breach or as a waiver of the provision itself that is breached, nor shall any delay or omission on the part of any Party to exercise any right arising from such violation or breach alter or impair that Party's right as to the same or any future violation or breach. Similarly, no indulgence or goodwill of any kind by a Party not contemplated in this Agreement shall be taken or construed as a right that can be enforced against such Party by the other.
- i) **Notices.** Any notice or other written communication provided or permitted hereunder shall be in writing and given by personal delivery (against receipt), or sent by registered mail (against receipt) postage prepaid, or

transmitted by email, addressed to the other Party as set out in the SA. Any notice so given shall be deemed to have been received on the date on which it was delivered in person, or, if transmitted by email during the regular business hours of the party receiving the notice, on the date it was transmitted, or if transmitted after business hours, on the next business day, or if sent by registered mail on the fifth business day thereafter.

- j) **Confidentiality.** Each Party (the "Receiving Party") agrees to protect the confidentiality of any information disclosed by the other Party (including the existence and terms of this Agreement) and shall not copy or use any such confidential information except as contemplated by this Agreement. Without limiting the generality of the foregoing, no public announcement, advertising or any other form of public release (including any disclosure to obtain financing) regarding the existence or the contents of this Agreement shall be made by any Party without the prior written consent of the other Party. The foregoing shall not apply to information which is or becomes publicly known otherwise than by reason of a breach of this Agreement by the Receiving Party or has been independently developed outside the scope of this Agreement. Notwithstanding the above, the Parties acknowledge that disclosure of this Agreement will be required to certain of their respective employees, agents or representatives to effectuate the purposes hereof, or as is necessary to comply with federal, provincial or local regulatory requirements, including disclosure requirements of public corporations, in Canada and/or the USA, as applicable, and any such disclosure shall not require the prior written consent of the other Party. Each Party shall be entitled to all remedies available at law, including the right to injunctive relief and specific performance. Furthermore, each Party shall have the right to make use of self-help on a reasonable basis in order to pre-empt any infringements.
- k) **Regulatory Approval.** In the event that this Agreement, or any of the terms hereof, become subject to regulatory approval by various local, state or federal agencies in Canada and/or the USA, as applicable, the Parties shall cooperate, to the extent reasonable and lawful, in providing such information as is necessary to complete any required filing or in obtaining any required regulatory approval.
- l) **Counterparts and Signing.** This Agreement may be executed in one or more counterparts and sent by scanned pdf, each of which will be deemed an original, but all of which shall constitute one and the same instrument. Signatures may be provided in writing or using a certificated electronic signature (such as DocuSign).
- m) **Survival.** The terms of sections 3, 5(d), 5(e), 7, 8, 10(j), and this section 10(m) and the definitions of any terms referred to therein, shall survive the termination or expiration of this Agreement.
- n) **Legality.** Nothing contained in this Agreement shall be construed so as to require the commission of any act or the payment of any compensation which is contrary to law, whether Canadian and/or USA law, as applicable, which may, from time to time, be in effect and by its terms controlling of this Agreement. If there is any conflict between any provision of this Agreement and any such applicable law the latter shall prevail and the provisions of this Agreement affected shall be modified to the extent (but only to the extent) necessary to remove such conflict and permit such compliance with the law.
- o) **Execution of Further Documents.** The Parties further agree to perform all acts and to execute, verify, acknowledge, and deliver any documents that any Party shall deem necessary or advisable to give effect to the obligations in terms of this Agreement.
- p) **Cumulative Remedies.** No remedy conferred upon or reserved in favour of a Party shall exclude any other remedy herein or existing in law or in equity or by statute, but each shall be cumulative and in addition to every other remedy given hereunder or now hereafter existing.
- q) **Non-Variation.** No amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by a duly authorized representative from all Parties. The Parties acknowledge having read and understood this Agreement and are not entering into this Agreement on the basis of any representations not expressly set forth in it. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract between the Parties or not.
- r) **Entire Agreement.** The executed Service Agreement, including these Terms & Conditions set forth the entire agreement between the Parties hereto and supersedes any and all prior and contemporaneous agreements, understandings, negotiations and communications between the Parties whether oral or in writing relating to the subject matter of this Agreement.

SCHEDULE A: SERVICE LEVEL COMMITMENT

This schedule to the Terms & Conditions is incorporated into and forms part thereof. This Service Level Commitment is applicable to all services provided by Supplier.

Customer Outage Credit Schedule

Service Outage Duration during Calendar Month	Credit Amount of Monthly Recurring Charges (MRC)
4 – 8 hours	5% of MRC for affected service
8 – 12 hours	20% of MRC for affected service
12 - 24 hours	30% of MRC for affected service
24 - 36 hours	50% of MRC for affected service
36+ hours	100% of MRC for affected service

“Outage” is defined as an interruption to Availability that ceases transmission of data. Credits apply to only that portion of the Customer’s bill that relates to the affected service. In no month shall Customer be credited more than the MRC for the affected services (inclusive of any other credits).

Exclusions:

Outage credits do not apply to scheduled and utilized maintenance windows, 3rd party network interruptions or extended latency issues, acts or omissions by Customers or their agents or end-users including configuration, misuse or failure of their equipment, or force majeure.

Any Outage must be reported immediately to Supplier so that Supplier can give Customer a trouble ticket number. The Outage will be deemed to have begun from the moment of such notification.

To obtain the service credit, a written request including the trouble ticket number must be made via email to support@telmax.com. Requests must be made no later than 5 business days after the relevant Availability issue occurred, failing which the right to any credit shall lapse.