



STANDARD TERMS AND CONDITIONS

1. Definitions

“**Agreement**” means the agreement between ITEL and Customer which is composed of the following documents:

- I. the document entitled “Service Agreement”;
- II. the document entitled “Standard Terms and Conditions”;
- III. the document entitled “Acceptable Use Policy”;
- IV. the document entitled “Service Level Agreement”; and
- V. The document entitled “Change Management”

“**Customer**” means the entity identified as the customer in the Service Agreement.

“**Demarcation Point**” means the operational interface and location to which a Service is delivered as set out the Service Agreement.

“**Equipment**” means the cable, circuits, instruments, equipment and other facilities owned by ITEL and required in order to provide a Service.

“**Incidentals**” means those goods and/or services provided by ITEL to Customer that are incidental to the provision of a Service, including but not limited to ITEL’s set-up and maintenance services, ITEL’s acquisition of necessary Equipment and services from third party providers, ITEL’s installation and maintenance of the Equipment, courier and delivery charges and any temporary services provided by ITEL to Customer while installation or maintenance is taking place.

“**ITEL**” means iTel Networks Inc., a company incorporated under the laws of Canada.

“**Monthly Recurring Charge**” , a.k.a. “MRC” means the amounts Customer shall pay ITEL, every month, for each Service as set out in the applicable Service Form.

“**Non-Recurring Charge**”, a.k.a. “NRC” means the amounts Customer shall pay ITEL, from time-to-time, for Incidentals.

“**Parties**” means ITEL and Customer and “Party” means either one of them.

“**Service**” means a service provided by ITEL to Customer as set out in a Service Agreement.

“**Service Location**” means the building or premises at which the Demarcation Point is located as described in the Service Agreement.

“**Term**” means the term for a particular Service, as set out in the Service Agreement.

2. Charges and Payments

- a. Customer shall pay ITEL the amounts invoiced by ITEL in Canadian Dollars unless specified otherwise in the Service Agreement.
- b. Customer shall become responsible for payment for Incidentals upon signature by Customer of the Service Agreement.
- c. Customer shall be responsible for payment of all applicable taxes for each Service. If Customer is entitled to an exemption from any applicable tax, Customer must present ITEL with a valid exemption certificate.
- d. Customer shall pay ITEL an interest charge of 18% per annum, compounded monthly, on all undisputed amounts still outstanding after the due date for payment as set forth on ITEL’s invoice and such interest charges shall accrue from and after the due date of payment to the date that the payment is made to ITEL.
- e. Customer shall have forty-five (45) days following receipt of ITEL’s invoice within which to dispute any amounts appearing in that invoice; failure on the part of Customer to do so shall be deemed a waiver of Customer’s right to dispute such amounts and Customer shall be deemed to have irrevocably accepted all amounts contained in that invoice.
- f.

3. Credit Checks and Security Deposit

The Customer acknowledges that execution of this Agreement signifies Customer’s acceptance of ITEL’s initial and continuing credit approval procedures and policies as determined by ITEL from time to time. ITEL reserves the right to withhold initiation or full implementation of ITEL Services under this Agreement pending initial satisfactory credit review and approval thereof which may be conditioned upon terms specified by ITEL, including, but not limited to, security for payments due hereunder in the form of a cash deposit, guarantee, irrevocable letter of credit or other means, which may be increased upon ITEL’s request at its discretion. As may be determined by ITEL in its sole discretion, acting reasonably, at any time, if the Customer is delinquent in its payment obligations on three (3) occasions or more in any rolling six (6) month period, ITEL may require a new or increased deposit, partial payment, guarantee or irrevocable letter of credit, at ITEL’s option, to secure Customer’s payments for the term of this Agreement. Failure of Customer to provide the requested security shall constitute a material breach of this Agreement and shall provide ITEL with cause to terminate this Agreement; such termination entitling ITEL to collect any outstanding amounts forthwith.

4. Access and Equipment

- a. Customer shall provide ITEL and its agents, contractors and subcontractors, with access to the Service Location, including the Demarcation Point, for the purpose of providing the Services as well as providing such electrical power and outlets at the Service Location as ITEL shall require for the provision of the Services. Customer is solely responsible for the payment of all electrical charges associated with the Services and access charges at the Service Location.
- b. The location of any parts of the Equipment to be installed at the Service Location shall be determined by ITEL in consultation with Customer. Customer shall take all steps necessary to protect the Equipment located at the Service Location from damage.
- c. Customer shall not permit any of the Equipment to be re-arranged, disconnected, removed, repaired or otherwise interfered with, except with ITEL’s prior written approval and then only as agreed by ITEL.
- d. Customer shall be responsible for and shall pay for all cable wiring and equipment required to interconnect the Equipment from the Demarcation Point to Customer’s equipment, to permit Customer to use the Services. Customer shall be responsible for its equipment beyond the Demarcation Point.



- e. If the Equipment is damaged or destroyed as a result of Customer's breach of contract, negligence, or willful acts or omissions, Customer shall reimburse ITEL for the costs of repairing or replacing such Equipment within ten (10) business days from the date of receiving an invoice for the cost of such damage or destruction.
- f.

5. Use of Service

- a. Customer shall not use a Service nor permit a Service to be used for any purpose contrary to law.
- b. Customer shall at all times ensure that the Service(s) are used by it and its customers and end-users in accordance with ITEL's Acceptable Use Policy as published or posted on ITEL's Website, as may be amended from time-to-time.
- c. Use of each Service is deemed acceptance of the terms of the Agreement. Use of each Service is at the Customer's own risk to the maximum extent permitted by the laws of the Province of British Columbia.

6. Customer's Responsibilities

- a. Customer shall indemnify and save harmless ITEL from all losses, liability, claims, damages, judgments, expenses and costs, of any kind whatsoever, including reasonable legal fees and disbursements, suffered or incurred by ITEL arising from claims of any third party on any legal basis whatsoever ("Claims") and arising from or in any way connected to Customer's receipt of a Service, including but not limited to Claims arising from:
 - i. use of a Service by Customer (or its customers or end-users) or by any third party authorized by Customer;
 - ii. harm to the Customer's (or its customer's or end-user's) data, equipment, computer network and other facilities;
 - iii. the breach of any provision of the Agreement by Customer or by any third party authorized by Customer;
 - iv. the negligence or willful misconduct of Customer, its customers, end-users or any third party authorized by Customer in connection with use of a Service;
 - v. a claim made by Customer against any third party who in turn claims contribution or indemnity from ITEL;
 - vi. a claim by any third party for libel, slander, passing off or infringement of copyright, trademark or patent, illegal, improper or unauthorized use of a Service arising from the content of the video, voice or data carried by Customer, or its customers or end-users; and
 - vii. any claims or fines levied against the Customer (or its customers or end-users) or any third party authorized by the Customer an Act which may be levied by any governmental agency in relation to but no limited to the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, S.C. 2010, c.23, as amended ("CASL").

7. Limitation of Liability

- a. Customer agrees that ITEL shall not be liable to Customer for:
 - i. any act or omission of any carrier or other person other than ITEL;
 - ii. any act or omission of the Customer or its customers or end-users;
 - iii. any claims of defamation, copyright or trademark infringement, violation of CASL, or the violation of any third-party rights arising from the use of a Service;
 - iv. any infringement of patents arising from combining or using Customer-provided facilities with a Service or the Equipment where the Service or the Equipment would pose no infringement in the absence of such combination or use; or

Each Party's total cumulative liability, if any, to the other party for damages related to the Agreement (including for fundamental breach or otherwise), negligence, any act or omission by either Party or its representatives, or under any other theory of law or equity will be limited to those damages actually proven as directly attributable to the other Party and will in no event exceed the aggregate of the most recent three (3) months of fees and charges paid by Customer to ITEL for Services under the Agreement.

NOTWITHSTANDING ANYTHING IN THE AGREEMENT, EXCEPT IN THE CASE OF GROSS NEGLIGENCE OR WILLFULL MISCONDUCT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOSS OR DAMAGE TO DATA EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT AS EXPRESSLY STATED IN THE AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, ITEL PROVIDES NO WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE AND, WITHOUT LIMITATION ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT ALL REQUIREMENTS OF CUSTOMER WILL BE MET WITH RESPECT TO ANY SERVICE PROVIDED BY ITEL HEREUNDER, ARE HEREBY DISCLAIMED BY ITEL AND EXCLUDED FROM THE AGREEMENT.

8. Termination and Suspension of Services

- a. Either Party may terminate the Agreement (the "Terminating Party"), and accordingly all Services, on written notice to the other Party (the "Defaulting Party") if the Defaulting 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 Defaulting Party, or in the event the Defaulting Party liquidates or winds up its daily operations for any reason whatsoever (each an "Event of Bankruptcy").
- b. Within fifteen (15) days of an Event of Bankruptcy, Customer (or any trustee or receiver acting on Customer's behalf) must either:



Provide ITEL with notice, in writing, of Customer's affirmation of its intent to be bound by the remaining Term of all Services or Terminate all Services and provide ITEL with:

1. one hundred percent (100%) of the Monthly Recurring Charges for the Service(s) during the first year of the term which are payable by Customer to ITEL in the Service Agreement regardless of whether such Service Term has actually commenced, and fifty percent (50%) of the total monthly service charges for the Service(s) which are payable by Customer to ITEL in the Agreement for the balance of the applicable Service Term as defined in the Service Agreement, regardless of whether such Service Term has actually commenced; and
 2. one hundred percent (100%) of all amortized installation and construction costs ITEL has incurred but not yet collected in connection with providing the Service(s) to the Customer as well as one hundred percent (100%) of any other costs incurred to provision the Service(s) to Customer,
- c. ITEL may suspend delivery of a Service, terminate any or all Services, or terminate the Agreement, at its option and without liability if Customer breaches the Agreement by:
- i. failing, within the time set forth in any written notification to Customer by ITEL, to make full payment of any invoice that remains unpaid in accordance with the terms of payment set out in the Agreement (other than charges which are being disputed by Customer in good faith); or
 - ii. failing within five (5) business days following written notification to Customer by ITEL to remedy any breach of a material term or condition of the Agreement to be performed or fulfilled by Customer.
- d. ITEL may terminate the Agreement, at its option and without liability if Customer conducts itself in a manner which unnecessarily delays the commencement of the Term of a Service either by its action or inaction which in turn frustrates ITEL's ability to install the service and set it up so it is ready for the Customer's use. Action or inaction may include but is not limited to situations where:
- i. Customer fails to provide information necessary for the set-up of a Service within five (5) business days of a request by ITEL to do so; or
 - ii. Customer fails to provide assistance or carry out instructions necessary to set-up the Service within five (5) business days of a request by ITEL to do so.
- e. Customer may terminate a Service upon thirty (30) days written notice to ITEL.
- f. Should either ITEL or the Customer terminate a Service or the Agreement in accordance with Paragraph 8.c., 8.d. or 8.e. then the Customer shall become responsible for and immediately pay;
- i. one hundred percent (100%) of the Monthly Recurring Charges for the Service(s) during the first year of the which are payable by Customer to ITEL in the Agreement as defined in the Service Agreement, regardless of whether such Service Term has actually commenced or installation work has been commenced or completed, and fifty percent (50%) of the total monthly service charges for the Service(s) which are payable by Customer to ITEL in the Service Agreement for the balance of the applicable Service Term, regardless of whether such Service Term has actually commenced, or installation work has been commenced or completed; and
 - ii. one hundred percent (100%) of any amortized installation and construction costs ITEL has incurred but not yet collected in connection with providing the Service(s) to the Customer as well as one hundred percent (100%) of any other costs incurred to provision the Service(s) to the Customer,
- g. Customer acknowledges and agrees that ITEL's ability to offer the prices in the Service Agreement is dependent upon Customer completing a full Service Term and that without the early termination fee set out herein ITEL would suffer losses as a result of Customer's early termination. Customer specifically acknowledges and agrees that the early termination fee set out herein is not a penalty but rather a mutually agreed upon premium for allowing the Customer to terminate a Service prior to the expiration of a Service Term. Notwithstanding the foregoing,
- h. Customer shall be permitted to terminate a Service prior to the end of the applicable Service Term without incurring any fees or early termination charges pursuant to the Agreement provided that:
- i. Customer migrates to another Service as a replacement service to the terminated Service (the "New Service");
 - ii. the New Service has a Monthly Recurring Charge ("MRC") equal to or greater than the MRC of the Service being terminated;
 - iii. Customer selects a Service Term for the New Service which is equal to or greater than the remaining term for the terminated Service;
 - iv. Customer pays all provisioning or other installation fees associated with the New Service and all cancellation charges incurred by ITEL to terminate the Service(s);
 - v. the requested delivery date for the New Service is no later than sixty (60) days from the termination date of the terminated Service, and
 - vi. Customer's account is in good standing and Customer is not otherwise in breach of its obligations under the Agreement.

9. Dispute Resolution

If a dispute arises with respect to the Agreement the aggrieved Party shall notify the other Party in writing of the dispute (a "Notice of Dispute"). Following receipt of a Notice of Dispute, both Parties shall make best efforts to resolve the dispute amicably. In the event that the dispute has not been resolved within 30 days of receipt of a Notice of Dispute, the dispute shall be referred to and finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Centre, pursuant to its Rules. In the absence of any written agreement otherwise, the place of arbitration shall be Kamloops, British Columbia. The decision of the arbitrator shall be binding and may be entered in any court with jurisdiction to allow such a decision to be entered.



10. Miscellaneous

a. **Ownership of Equipment**

Unless the Service Agreement specifically indicates that the Equipment is being sold to Customer, any and all Equipment provided by ITEL in connection with the provision of the Services at or to the Service Location shall remain the property of ITEL and shall not by reason of the attachment, installation or connection of any part thereof to the property become or be deemed a fixture attached to such property. ITEL shall remove the Equipment from the Service Location upon termination or expiry of the Term of any Services requiring such Equipment and Customer agrees to provide ITEL with such access as necessary to remove the Equipment.

b. **Successors and Assigns**

The 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 ITEL may, without consent, assign the Agreement in connection with a corporate reorganization or merger or to any entity that controls, is controlled by or is under common control with ITEL or to a purchaser of all or substantially all of its assets or business, and in any such event, ITEL shall be released from its obligations hereunder to the extent they are assumed by the assignee.

c. **Force Majeure**

A Party is excused from performing its obligations under this Agreement if, to the extent that, and for so long as:

- i. such Party's performance is prevented or delayed by an act or event (other than economic hardship, changes in market conditions, insufficiency of funds, or unavailability of equipment and supplies) that is beyond its reasonable control and could not have been prevented or avoided by its exercise of due diligence; and
- ii. such Party gives written notice to the other Party, within ten (10) business days of the act or event that so prevents such Party from performing its obligations.

By way of example, and not by limitation, acts or events that may prevent or delay performance (as contemplated by this Section) include: acts of God or the public enemy, acts of civil or military authority, acts of terrorism, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods and abnormal weather conditions where the Services are being performed (as determined by comparison to the ten (10) year average conditions indicated by NOAA for the area in which the Services are being provided).

d. **Purchase Orders**

Notwithstanding any contrary language in any purchase order or similar document issued by the Customer to ITEL with respect to the Services, any such purchase order or similar document shall be deemed for the Customer's internal use only and the provisions thereof shall have no effect whatsoever upon the provisions of the Service Agreement.

e. **Rights Arising from Agreement**

Nothing expressed or implied in the Agreement 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 the Agreement.

f. **Permitted Changes**

ITEL may make changes to these Standard Terms and Conditions from time-to-time by providing the Customer with written notice at least thirty (30) days prior to the effective date of the change. In the event that Customer disputes such changes, Customer must initiate the dispute resolution process set out in Article 9 above within thirty (30) days of receipt of notice of the revised terms from ITEL. In the event that Customer does not initiate the dispute resolution process within thirty (30) days of receipt of notice, Customer agrees to be bound by such changes.

g. **Agency Limitations**

The 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 the Agreement.

h. **Waiver and Indulgence**

Waiver by any Party of any violation or breach of the 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 the 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 prepaid courier (against receipt), or by email: if to ITEL at: Itel Networks Inc., 1850 Mission Flats Road, Kamloops, BC V2C 1A9, or by facsimile to 1-888-377-4835, or by email to billing@itel.com; if to the Customer to the address or facsimile number or email address as provided on the Service Agreement. 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 facsimile 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, or if by Courier on the day the package is signed for by the Receiving Party, or if by email upon acknowledgement of receipt by the other party.



j. **Confidentiality**

Each Party agrees to protect the confidentiality of any information disclosed to it (the "Receiving Party") by the other Party (the "Disclosing Party") and shall not disclose, copy or use any such confidential information except as contemplated by the Agreement, except for information:

- i. the Receiving Party deems necessary to share with its professional advisors in connection with the Agreement;
- ii. that is or becomes publicly known otherwise than by reason of a breach of the Agreement by the Receiving Party;
- iii. that has been independently developed outside the scope of the Agreement;
- iv. that is required to be disclosed by law.

The Receiving Party acknowledges that damages would not be an adequate remedy for a breach of this clause and agrees that the Disclosing Party shall be entitled to the granting of equitable relief (including injunctive relief) with respect to any threatened or actual breach of this clause.

k. **Regulatory Approval**

In the event that the 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. **Survival**

Those clauses that by their natural or implied meaning or intent impose an obligation on either Party after termination or expiration of the Agreement, or that by their natural or implied meaning or intent are intended to survive the termination or expiration of the Agreement, shall survive the termination or expiration of the Agreement.

m. **Publicity**

Unless Customer gives notice in writing that it does not give consent to do so, ITEL shall have the right to display Customer's name and fact that Customer is a customer of ITEL on ITEL's website and in ITEL's promotional materials for the duration of the Agreement.

n. **Legality**

Nothing contained in the 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 the Agreement. If there is any conflict between any provision of the Agreement and any such applicable law the latter shall prevail, and the provisions of the 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**

Customer agrees to perform all further acts and to execute, verify, acknowledge, and deliver any further documents as may be necessary to give effect to the obligations set out in the 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. **Headings**

The headings contained in the Agreement are for reference purposes only and shall not be used in the interpretation of the 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 unincorporated, including partnerships) and vice versa.

r. **Entire Agreement**

The Agreement constitutes the entire agreement between the Parties and supersedes all other agreements, whether written or oral. There are no other promises, conditions, understandings or other agreements, whether written or oral, relating to the subject matter of the Agreement.