

## CNAC - SERVICE USER AGREEMENT

**THIS AGREEMENT** is made between **CANADIAN NUMBERING ADMINISTRATION CONSORTIUM INC./CONSORTIUM DE GESTION DE LA NUMEROTATION CANADIENNE INC.**, (“CNAC”) and the person identified as the Service user executing this Agreement (“**Service User**”) on the date as indicated on the execution page hereof.

**WHEREAS** the Canadian Steering Committee on Numbering (“**CSCN**”) operating as a sub-working group of the Canadian Radio-television and Telecommunications Commission Interconnection Steering Committee (“**CISC**”) has agreed that it is in the best interests of the Canadian telecommunications industry that certain functions in respect of the administration and assignment of numbering resources in Canada should be performed by an independent third party numbering administrator (the “**CNA**”) and has authorized CNAC, a consortium of interested parties from the telecommunications industry, to select and supervise the CNA and provide for the funding of the independent third party numbering administrator;

**AND WHEREAS** the CSCN has determined that the costs associated with the administration and assignment of numbering resources in Canada are to be recovered from individual Canadian telecommunications service providers, including the Service User, (collectively, hereinafter referred to as the “**Service Users**”) which benefit from numbering resources in Canada and in furtherance of this the CSCN has established a funding formula to apportion the costs in respect of the administration and assignment of numbering resources in Canada and has authorized CNAC to select and engage a neutral third party (the “**B&C Agent**”) to implement and administer the funding formula established by the CSCN and to provide collection services in respect of each Service Users’ applicable share of such costs;

**AND WHEREAS** the Service User hereby agrees to pay to CNAC its share of the costs related to the administration and assignment of numbering resources in Canada in accordance with the terms and conditions contained in this Agreement;

**AND WHEREAS** the execution of this Agreement by the Service User is a condition to the service User obtaining and/or continuing to obtain numbering resources from the CNA;

**NOW THEREFORE** in consideration of these premises and the covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### ARTICLE 1 INTERPRETATION

**1.1 Definitions.** Schedule 1 sets out the defined terms used in this Agreement.

**1.2 Headings and Table of Contents.** The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**1.3 Number and Gender.** Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

**1.4 Currency and Payment Obligations.** Except as otherwise expressly provided in this Agreement:

- (1) all dollar amounts referred to in this Agreement are stated in Canadian Dollars; and
- (2) any payment contemplated by this Agreement shall be made by cash, certified cheque, electronic transfer or any other method that provides immediately available funds.

**1.5 Section, Schedule and Exhibit References.** Unless the context requires otherwise, references in this Agreement to Sections, Schedules or Exhibits are to Sections, Schedules or Exhibits of this Agreement. The Schedules to this Agreement are incorporated by reference into this Agreement and are deemed to be a part hereof. The Exhibits and Schedules to this Agreement are as follows:

Schedule 1	-	Definitions
Schedule 3.1	-	CSCN Funding Formula
Schedule 3.2	-	Additional Fees

## **ARTICLE 2 SERVICES**

**2.1 CNA.** The Service User acknowledges and agrees that it benefits from the administration and assignment of numbering resources in Canada, and that it will benefit from the provisions of services related to the administration and assignment of numbering resources (the “**Services**”) by the CNA. The Service User further acknowledges that CNAC shall pay directly the fees of the CNA to provide the Services, on behalf of the Canadian telecommunications industry, including the Service User, subject to such amounts being reimbursed by Service Users. CNAC reserves the right to change the CNA at any time. In the event of such change, CNAC shall provide notice of such change to the Service User following the selection of a new CNA.

**2.2 Eligibility for Services.** In order to be eligible to obtain Services from the CNA, the Service User shall throughout the Term:

- (a) be an ILEC, CLEC, an Independent Telephone Company, a Canadian International Carrier, an Interexchange Carrier or a Wireless Service Provider;
- (b) meet the guidelines and/or other documentation established and/or adopted by the CSCN, CRTC or other Governmental Entities from time to time (copies of which may be obtained by the Service User from the CNA upon request); and
- (c) not be in default with respect to the provisions of this Agreement including but not limited to not being in default with respect to the payment of any amount required to be paid under this Agreement, the provision of any information or document required by CNAC and/or B&C Agent, or the completion and delivery of any forms required by CNAC and/or B&C Agent for the purposes as set out in this Agreement.

(the above items (a), (b) and (c) shall be collectively referred to as the “**Eligibility Requirements**”).

**2.3 Provision of Services.** In order to obtain and continue to obtain the Services from the CNA during the Term, the Service User must enter into an agreement (the “**CNA-Service User Agreement**”) with the CNA, which sets out, in addition to other matters, the method to obtain the Services. The terms of such agreement have been established by CNAC and the most current form of the CNA-Service User Agreement can be found on CNAC’s website at [www.cnac.ca](http://www.cnac.ca). The Service User acknowledges that the Services shall be provided directly by the CNA to the Service User in accordance with the terms and conditions contained in the CNA-Service User Agreement, as amended from time to time. The Service User further acknowledges that the CNA-Service User Agreement is a generic industry wide agreement, and the terms of which may be amended from time to time upon the agreement of the CNA and CNAC without the prior consent of the Service User and such amended provisions shall thereafter be incorporated by reference into the CAN-Service User Agreement and be binding on the Service User.

### ARTICLE 3 SERVICE USER CONTRIBUTION

**3.1 Payment for Services.** Notwithstanding that the Services are to be provided by the CNA directly to the Service User, the Service User hereby agrees to pay to CNAC the Service User's share of the ongoing annual costs related to the administration and assignment of numbering resources in Canada (the "User Fee"). The calculation of the User Fee shall be in accordance with the provisions as set out in Schedule 3.1 hereto. The Service User acknowledges and agrees that CNAC, at its discretion, may change, including increasing the same, any or all of the fees comprising the User Fees upon thirty (30) days' notice to the Service User.

**3.2 Additional Fees.** In addition to the User Fee, the Service User shall be required to pay to CNAC the fees as set out in Schedule 3.2 hereof upon the occurrence of any of the following:

- (1) the Service User selects the Quarterly Payment Plan or Monthly Payment Plan;
- (2) the Service User fails to submit the Reporting Worksheet and/or the Supporting Document to the B&C Agent by the applicable due date or if submitted by the applicable due date the Reporting Worksheet and/or the Supporting Document are incomplete or incorrect; and/or
- (3) the Service User fails to pay the User Fee and/or Additional User Fee by its applicable due date.

(The fees to be paid as per this Section 3.2 shall be collectively referred to as the "Additional Fees".)

The Service User shall be invoiced separately for the applicable Additional Fees, which fees shall be due and payable to CNAC within thirty (30) days of the invoice date. The Service User acknowledges and agrees that CNAC, at its discretion, may change, including increasing the same, any or all of the fees comprising the Additional Fees upon thirty (30) days notice to the Service User.

**3.3 Payment Option.** Subject to payment of any applicable Additional Fees, the Service User shall have the option to pay the annual User Fee on the following basis:

- (i) annually (one lump sum payment) ("Annual Payment Plan");
- (ii) monthly (twelve equal payments) ("Monthly Payment Plan"); and
- (iii) quarterly (four equal payments) ("Quarterly Payment Plan").

The Service User shall indicate its selection of its desired payment plan for the next period on the Reporting Worksheet to be delivered to the B&C Agent, as per Schedule 3.1. The Service User shall be required to select its payment plan each year. If no indication of the selection of payment plan is received by the B&C Agent, the Service User shall be deemed to have selected the Annual Payment Plan.

**3.4 Payment Due Dates.** The applicable due dates for the payment of the User Fee, Additional User Fee and Additional Fees shall be as follows:

- (a) if the Service User selects the Annual Payment Plan, the User Fee for the applicable year is due to be paid on June 1 of that year;

- (b) if the Service User selects the Monthly Payment Plan, then 1/12 of the User Fee for the applicable year is due on the first of each month commencing on June 1 of that year;
- (c) if the Service User selects the Quarterly Payment Plan, then 1/4 of the User Fee for the applicable year shall be payable on each of June 1, September 1, December 1, and March 1;
- (d) if there are Additional Fees owing, such amounts are due within thirty (30) days of the date of the invoice on which the applicable Additional Fee first appeared; and
- (e) if there is an Additional User Fee owing, such amount is due within thirty (30) days of the date of the invoice on which the Additional User Fee first appeared.

**3.5 Interest.** In the event that any payment required to be made by the Service User hereunder, including the Additional Fees, is not made on its applicable due date, interest shall be charged at a rate established by CNAC from time to time. Until amended by CNAC upon notice to the Service User, the interest to be charged on overdue accounts shall be at a rate of prime plus 2% per annum, calculated on the outstanding balance compounded monthly.

**3.6 Billing and Collection Agent.** In order to assist CNAC in the calculation and collection of the User Fee, Additional User Fee and Additional Fees from the Service Users, CNAC may appoint a billing and collection agent to act on its behalf (the “**B&C Agent**”). As of January 1, 2014, CNAC has appointed Welch LLP to act as the B&C Agent and Welch LLP shall remain B&C Agent until replaced by CNAC. Until the Service User receives written notice to the contrary, all amounts required to be paid hereunder shall be paid directly to Welch LLP as the B&C Agent upon invoice.

**3.7 Notice of Non-Payment.** If the Service User fails to: (a) pay any amount due hereunder, including the User Fees and/or Additional Fees, within five (5) Business Days of its applicable due date; or (b) submit the Reporting Worksheet and/or Supporting Document to the B&C Agent by the applicable due date or if so submitted such forms are incomplete or incorrect; or (c) submit any additional information or reports requested by CNAC and/or B&C Agent by the indicated due date (the “**Additional Information**”), CNAC and/or the B&C Agent shall notify the Service User in writing (the “**Default Notice**”) of such default and demand the immediate rectification of such default. If the default has not been cured, or if CNAC has not received written notice (“**Dispute Notice**”) from the Service User, in good faith, that it disputes, on bona fide grounds, the default indicated by CNAC in the Default Notice, on or before five (5) Business Days of the date of receipt of the Default Notice, CNAC, at its discretion, may provide written notice to the CNA (the “**Service Suspension Notice**”) that the Service User is in default of its obligations hereunder. In the event that CNAC receives a Dispute Notice, it and the Service User shall proceed without delay to resolve the dispute pursuant to the provisions of Article 8 hereof. If the dispute is in relation to amounts owed hereunder and CNAC is found to be entitled to the amount in dispute, or any part thereof, the Service User shall be obligated to pay such amount within fifteen (15) days of the resolution of such dispute, failing which CNAC and/or the B&C Agent shall be entitled to deliver a Service Suspension Notice to the CNA without further notice to the Service User.

**3.8 Service Cancellation.** The Service User acknowledges that upon receipt of the Service Suspension Notice from CNAC and/or the B&C Agent the CNA shall cease providing the Services to the Service User until such time as the CNA receives a second written notice from CNAC and/or the B&C Agent that the default has been cured or otherwise dealt with and the Service user is again in good standing under this Agreement and that Services to the Service User may be reinstated. The Service User

continues to be obligated to pay the User Fees and Additional Fees, as applicable, during any suspension period.

**3.9 Collection of Additional Fees.** The Service User acknowledges and agrees that, in the event that the Additional Fees owing by it are in default, CNAC has the right to assign its cause of action against the Service User to the B&C Agent. In such an event, the B&C Agent will have the authority to pursue any legal channels available to it to seek payment of the Additional Fees directly from the Service User.

#### **ARTICLE 4 PROPRIETARY INFORMATION**

**4.1 Rights in Numbering Resources.** The Service User acknowledges and agrees that all right, title and interest in and to any number resources, or in and to any materials, reports, forms and any reformatting, reproductions, copies, enhancements, abridgements, extracts, updates, derivative works or other modifications of or relating to any numbering resources or information, whether provided by CNAC, the CNA, the B&C Agent or any other party, and whether or not authorized by the terms of this Agreement or any other agreement, does not and shall not vest with or reside in the Service User and the Service User has no interest therein and will not claim any interest therein. For greater certainty, the Service User acknowledges and agrees that the CNA obtains its numbering resources from the NANPA and as such has no rights in or to the numbering resources and the NANPA may, in accordance with Telecommunications Industry Guidelines and subject to appropriate regulatory authority, recall any numbering resources assigned to the Service User.

**4.2 Information and Data.** CNAC acknowledges that during the Term of this Agreement, it, the CNA and/or the B&C Agent may obtain information and data, such as the information and data contained in the Reporting Worksheet, which is proprietary to the Service User. CNAC agrees to and agrees to cause each of the CNA and the B&C Agent to maintain all such information and data obtained from the Service User in the provision of the Services and the collection services, as applicable, in strict confidence for the Service User. For greater certainty, CNAC, the CNA and the B&C Agent shall only be entitled to disclose the Service User's information and data as may be required to perform the Services and the collection services and for no other purpose unless required to do so by Applicable Law or by the CRTC.

#### **ARTICLE 5 CONFIDENTIALITY**

**5.1 Confidentiality.** Subject to Section 4.2 above, each party (including any of its Affiliates and their respective Representatives) hereby agrees that it will not, except with the prior written consent of the other party, whether during or at any time after the termination of this Agreement, use for itself or others, divulge or convey to others, any Confidential Information, knowledge, data, or property relating to the affairs of the other party or its Affiliates in any way obtained by it pursuant to this Agreement during the Term or in any way obtained by others other than published material properly in the public domain.

**5.2 Copies.** Each party shall not make, or permit to be made, whether by photocopy or otherwise, any copies, abstracts or summaries of any Confidential Information belonging to the other party except in strict pursuance of its obligations under this Agreement.

**5.3 Return of Confidential Information.** Each party agrees to promptly return to the other party, upon its request, or certify as destroyed all Confidential Information of the other party in whatever form, including all electronic or magnetic or other copies and notes thereof, regardless of which party furnished, made or compiled such Confidential Information.

**5.4 Service User Customers.** Notwithstanding anything herein to the contrary, CNAC hereby agrees to maintain as Confidential Information, all information concerning or in any way related to any of the Service User's customers and all databases and updates thereto provided by the Service User, regardless of whether the same was disclosed to CNAC, the CNA, B&C Agent or any third party by the Service User or directly by any customer, in confidence in accordance with the obligations set out in Sections 4.1 and 4.2 above, even if, *a priori*, an exception contained in the definition of Confidential Information would apply.

**5.5 Irreparable Harm.** Each party acknowledges and agrees that the breach by it of any of the provisions of this Article 5 would cause serious and irreparable harm which could not be adequately compensated for in damages and, in the event of a breach or threatened breach of any such provisions, each party hereby consents to an interim injunction being issued against it restraining it from any further breach of such provisions, but such action shall not be construed so as to be in derogation of any other remedy which each party may have in the event of such a breach.

## **ARTICLE 6 REPRESENTATIONS, WARRANTIES AND COVENANTS**

**6.1 Representations, Warranties and Covenants of the Service User.** The Service User hereby represents, warrants and covenants to CNAC that:

(1) *Due Authorization.* It has all necessary power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments and that this Agreement and such other agreements and instruments have been duly authorized by all necessary action on the part of the Service User.

(2) *Eligibility to Obtain Services.* The Service User does as at the date of this Agreement, and throughout the Term covenants that it will, meet the Eligibility Requirements and is entitled to obtain the Services in accordance with Applicable Law.

(3) *Compliance.* It shall:

- (a) comply with the terms and conditions set forth in this Agreement;
- (b) comply with all laws, regulations, industry standards and trade practices, including the Telecommunications Industry Guidelines and relevant orders, policies and directives issued by the CRTC from time to time, applicable to it hereunder; and
- (c) comply with policies, procedures, requirements and rules established by CNAC from time to time applicable to it hereunder.

## **ARTICLE 7 TERM AND TERMINATION**

**7.1 Term.** The term of this Agreement shall commence on the date first written above and continue until terminated in accordance with the provisions of this Agreement (the "**Term**").

**7.2 Termination by CNAC.** CNAC shall have the right to terminate this Agreement by written notice, if the Service User shall at any time:

- (1) subject to Section 7.5 hereof, (a) fail to make any payments required to be paid by it to CNAC in relation to its share of the costs to administer number resources in Canada, including the Services or any other payment owing hereunder when due; or (b) fail to submit the Reporting Worksheet, Supporting Document, and/or Additional Information to CNAC or the B&C Agent, as applicable, by the applicable due date or if so submitted such documents are incomplete or incorrect; and for each such case such default continues uncured for a period of fifteen (15) Business Days after written notice of such failure is sent to the Service User by CNAC, the B&C Agent or such other party as may be designated by CNAC; or
- (2) cease to meet the Eligibility Requirements; or
- (3) other than a default covered by Section 7.2(1) above, any other default in the performance or observance of any of its obligations and covenants under this Agreement and such default continues for a period of thirty (30) days following notice to the Service User of such default; or
- (4) have any proceeding in bankruptcy, receivership, liquidation or insolvency, instituted or commenced by or against it or its property to adjudicate it a bankrupt or insolvent, or to petition it into bankruptcy, or to seek liquidation, winding-up, reorganization or arrangement, or relief from its debts, under any applicable legislation now or in the future, and such proceeding is not being contested by it diligently and in good faith; or
- (5) make any assignment for the benefit of its creditors, become insolvent, commit any act of bankruptcy, cease to do business as a going concern, or seek any arrangement or compromise with its creditors under any statute or otherwise; or
- (6) cease to carry on business.

**7.3 Termination by Service User.** The Service User shall have the right to terminate this Agreement on thirty (30) days written notice if it ceases to meet the Eligibility Requirements.

**7.4 Action on Termination.** In the event that this Agreement is terminated for any reason, the following shall occur:

- (1) *Return of Confidential Information.* Each party shall, within ten (10) days of such termination, deliver or cause to be delivered to the other party, or to its direction, all Confidential Information belonging to the other party, that is in its possession or in the case of CNAC, Confidential Information of the Service User in its possession or in the possession of the B&C Agent and/or the CNA.
- (2) *Payment of Fees.* Subject to the terms of this Agreement, notwithstanding the termination of this Agreement, the Service User shall be responsible for the immediate payment of all outstanding amounts under this Agreement up to and including the effective date of termination..

- (3) *Numbering Resources.* The Service User shall cease using any numbering resource obtained from the CNA and/or CNAC and the Service User will provide all assistance necessary in order to allow for an orderly reclamation of the numbering resources granted to it.

**7.5 Continuation During Dispute.** In the event that the Service User is subject to a Default Notice and the Service User has delivered a Dispute Notice and such notice is based on a bona fide dispute made in good faith by the Service User and such dispute falls within the provisions of Article 8 hereof, the right of CNAC to terminate this Agreement pursuant to Subsections 7.2(1), (2) or (3) shall be suspended until such time as the dispute has been resolved in accordance with the provisions of Article 8. If the default which is the subject to of the Dispute Notice is in relation to the non-payment of amounts under this Agreement and CNAC is found to be entitled to the amount in dispute, or any part thereof, the Service User shall be obligated to pay such amount within fifteen (15) days of the resolution of such dispute failing which this Agreement may be terminated by CNAC in accordance with the provisions of Article 7 without any further cure provisions permitted.

**7.6 Remedies.** Termination of this Agreement pursuant to this Article 7 shall not deprive any party, of any of its rights, remedies or actions against the other in law or in equity, or as otherwise provided under this Agreement except as otherwise limited elsewhere in this Agreement.

## ARTICLE 8 DISPUTE RESOLUTION

**8.1 Dispute Resolution.** At any time during the Term of this Agreement, should any dispute or question arise between the parties concerning the obligations of either party under the terms of this Agreement, the parties agree to utilize and abide by any industry numbering resource guideline and dispute resolution process developed by the CSCN or CISC, regulatory decisions made by the CRTC, policy statements issued by Industry Canada or such other guidelines, decisions, directives or policy statements of any other Governmental Entity as may be applicable to this Agreement.

**8.2 Co-operation.** Each party hereby agrees to co-operate fully with any applicable body or Person charged with dealing with disputes under consideration and to abide by the decisions rendered by such bodies or Persons regarding disputes that will fall within the scope of this Article 8.

**8.3 Other.** In the event that the dispute at issue between the parties is not one that is properly dealt with by any of the bodies or processes as stated in Section 8.1 hereof, the parties shall use all reasonable efforts to resolve the dispute themselves. If the parties are unable to resolve the dispute within (30) days of receipt of written notice of the dispute, the parties shall be entitled to seek redress by judicial means.

## ARTICLE 9 AMENDMENTS

**9.1 CNAC Approval.** The Service User acknowledges and agrees that this Agreement is derived from a form of master agreement developed by CNAC to serve as an industry-wide agreement. The Service User also agrees that the terms of this Agreement may change from time to time in the event that the CSCN, the CRTC or other relevant Governmental Entity requires, or CNAC deems is required, such amendment to be effective upon receipt by the Service User of written notice of such amendments. Upon receipt of such written notice, the parties agree to abide by the terms of such amendment.



**9.2 *Regulatory Approval.*** The parties acknowledge and agree that this Agreement may be subject to the approval of the CRTC, or approval of other relevant Governmental Entity prior to it becoming or remaining effective. In the event that such approval is denied or revoked, CNAC or the Service User may immediately terminate this Agreement by providing written notice of such intention to the other party.

## **ARTICLE 10 GENERAL**

**10.1 *Force Majeure.*** Unless dealt with elsewhere in this Agreement, neither party shall be liable to the other for any costs, expenses or claims related to any delays or failure to perform resulting directly from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labour dispute, war or other violence, or any law, order or requirement of any Governmental Entity. If the event of force majeure continues for a period greater than thirty (30) days, all payments required to be made by the Service User hereunder shall be suspended commencing on the thirty-first day following the occurrence of the event of force majeure until the date on which such event has ended and the Services hereunder have been resumed. Once the Services have resumed, all payments otherwise owing during such suspended period shall be immediately due and payable. Where applicable, performance time shall be considered extended for a period of time equivalent to the time lost because of any such delay.

**10.2 *Further Assurances.*** Each of the parties hereto, from time to time, at the request and expense of the other party hereto and without further consideration, shall execute and deliver such other documents and take such further action as the other party may require to more effectively complete any matter provided for herein.

**10.3 *Time of the Essence.*** Time shall be of the essence in this Agreement.

**10.4 *Governing Law.*** This Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**10.5 *Waiver.*** A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the party to be bound by the waiver. No waiver shall be inferred from or implied by any failure to act or delay in acting by a party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other party. The waiver by a party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

**10.6 *Survival.*** The provisions of Articles 3, 4, 5 and 7 shall forever survive the termination of this Agreement.

**10.7 *Severability.*** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

**10.8 *Notices.*** Any notice required or permitted to be given hereunder shall be in writing and shall be effectively given if (1) delivered personally; or (2) sent by fax or other similar means of electronic communication, in each case to the applicable address set out on the execution page of this Agreement or to such other address as the parties may supply to each other from time to time. Any notice so given shall

be deemed conclusively to have been given and received when so personally delivered or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day. Any party hereto or others mentioned above may change any particulars of its address for notice by notice to the others in the manner aforesaid.

**10.9 *Successors and Assigns.*** This Agreement shall enure to the benefit of, and be binding on, the parties and their respective successors and permitted assigns. CNAC may only assign this Agreement and its obligations hereunder to any subsidiary or Affiliate or any successor entity established or authorized by the CRTC. The Service User may only assign this Agreement and their obligations hereunder to an Affiliate provided such entity meets the Eligibility Requirements to obtain the Services and first enters into the then current master form of this Agreement. Other than the foregoing, neither party may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its respective rights or obligations under this Agreement without the prior written consent of the other party.

**[Remainder of page is blank]**

**10.10 Counterparts and Facsimile.** This Agreement may be executed by the parties in any number of separate counterparts each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties, provided, however that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was so faxed.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date listed below:

Date: \_\_\_\_\_

**CANADIAN NUMBERING ADMINISTRATION CONSORTIUM INC.  
/ CONSORTIUM DE GESTION DE LA NUMEROTATION CANADIENNE INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SERVICE USER**

Per: \_\_\_\_\_

Name of  
Service User: \_\_\_\_\_

Name of  
Person Signing: \_\_\_\_\_

Title of Person  
Signing: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

Facsimile: \_\_\_\_\_

e-mail: \_\_\_\_\_

## SCHEDULE 1 DEFINITIONS

In the Agreement, the following terms shall have the meanings set out below unless the context requires otherwise:

- (1) **“Additional Fees”** shall have the meaning ascribed thereto in Section 3.2 hereof.
- (2) **“Additional Information”** shall have the meaning ascribed thereto in Section 3.7 hereof.
- (3) **“Additional User Fee”** shall have the meaning ascribed thereto in Schedule 3.1 hereof.
- (4) **“Affiliate”** means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate.
- (5) **“Agreement”** means this Agreement, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time.
- (6) **“Annual Payment Plan”** shall have the meaning ascribed thereto in Section 3.3(i).
- (7) **“Applicable Law”** means, with respect to any Person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law (collectively the “Law”) relating or applicable to such Person, property, transaction, event or other matter. Applicable Law also includes, where appropriate, any interpretation of the Law (or any part) by any Person having jurisdiction over it, or charged with its administration or interpretation.
- (8) **“B&C Agent”** has the meaning ascribed thereto in Section 3.6 hereof.
- (9) **“Business Day”** means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Ottawa, Ontario.
- (10) **“Canadian Carrier”** shall have the meaning as provided for in the *Telecommunications Act*, as amended.
- (11) **“Canadian International Carrier”** means a Canadian Carrier which provides Telecommunications Services between any place in Canada and any place outside Canada;
- (12) **“CLEC”** means a Canadian Carrier which is a competitive local exchange carrier, as contemplated by Telecom Decision CRTC 97-8, or as otherwise determined by the CRTC;
- (13) **“CNA-Service User Agreement”** shall have the meaning ascribed thereto in Section 2.3 hereof.
- (14) **“Confidential Information”** of a party at any time means all information (and all documents and other tangible items which record information, whether on paper, in computer readable format or otherwise) relating to such party’s business or affairs (including, without limitation, any information required to be exchanged between the Service User and the CNA, the B&C Agent and CNAC hereunder, forecasts related to demand for numbering services and operational and block of line number requests) or intellectual property (including, without limitation, copyrights, trade secrets and know-how), or including customers of the Service User which,
  - (a) at the time is of a confidential nature (whether or not specifically identified as confidential) and is known or should be known by the recipient of the information or its Representatives as being confidential; and

- (b) has been or is from time to time made known to or is otherwise learned by the recipient of the information or any of its Representatives as a result of the matters provided for in this Agreement,

but not including any information that at such time:

- (c) has become generally available to the public other than as a result of a disclosure by the recipient of the information or any of its Representatives; or
  - (d) was available to the recipient of the information or its Representatives on a non-confidential basis before the date of this Agreement; or
  - (e) becomes available to the recipient of the information or its Representatives on a non-confidential basis from a Person other than the disclosing party or any of its Representatives who is not, to the knowledge of the recipient of the information or its Representatives, otherwise bound by confidentiality obligations to the disclosing party in respect of such information or otherwise prohibited from transmitting the information to the recipient of the information or its Representatives.
- (15) **“CRTC”** means the Canadian Radio-television and Telecommunications Commission or any successor thereof.
  - (16) **“Default Notice”** shall have the meaning ascribed thereto in Section 3.7 hereof.
  - (17) **“Dispute Notice”** shall have the meaning ascribed thereto in Section 3.7 hereof.
  - (18) **“Eligibility Requirements”** has the meaning ascribed thereto in Section 2.2 hereof.
  - (19) **“Governmental Entity”** means any (a) multi-national, federal, provincial, state, municipal, local or other governmental or public department, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (b) subdivision, agent, commission, board, or authority of any of the foregoing; or (c) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing.
  - (20) **“Gross Telecommunications Service Revenues”** shall have the meaning ascribed thereto in Schedule 3.1 hereto.
  - (21) **“ILEC”** means any of TELUS Communications Company, MTS Allstream Inc., Saskatchewan Telecommunications, Bell Canada, Telebec Limited Partnership, Northwestel Inc., Bell Aliant Regional Communications, Limited Partnership or their successors, or as otherwise determined by the CRTC.
  - (22) **“Independent Telephone Company”** means a Canadian Carrier that is any of the small incumbent local exchange carriers identified by the CRTC in Decision CRTC 2001-756.
  - (23) **“Interexchange Carrier”** means a Canadian Carrier that provides interexchange Telecommunications Services that are interconnected to the PSTN.
  - (24) **“Late Payment Fee”** means the amount, as set out in Schedule 3.2 hereto.
  - (25) **“Late Reporting Fee”** means the amount, as set out in Schedule 3.2 hereto.

- (26) **“Monthly Payment Plan Fee”** means the amount, as set out in Schedule 3.2 hereto.
- (27) **“Monthly Payment Plan”** shall have the meaning ascribed thereto in Section 3.3(ii).
- (28) **“NANPA”** means the North American Numbering Plan Administrator.
- (29) **“Numbering Resources”** means the numbering resources administered by the CNA.
- (30) **“Person”** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity.
- (31) **“PSTN”** means the world-wide voice telecommunications network, or any portion thereof, which utilizes the International Telecommunications Union (ITU) Recommendation E. 164 numbering plan, or as amended, of which the NANP is an integral part, and which is composed of all transmission, signaling and switching facilities supplied and operated by all telecommunications common carriers, including wireless and wireline carriers, for use by the public.
- (32) **“Quarterly Payment Plan Fee”** means the amount, as set out in Schedule 3.2 hereto.
- (33) **“Quarterly Payment Plan”** shall have the meaning ascribed thereto in Section 3.3(iii).
- (34) **“Reporting Deadline”** has the meaning ascribed thereto in Schedule 3.1 hereto.
- (35) **“Reporting Worksheet”** means the standardized form of worksheet from time to time developed by CNAC, and approved by the CRTC if required, for use by the Service User in reporting its Gross Telecommunications Service Revenue and related information (which includes, company name, address, contact name, telephone number, facsimile number and e-mail address) for the purposes of calculating the User Fees.
- (36) **“Representatives”** with respect to any party means its Affiliates and its or their respective directors, officers, employees, agents and other representatives and advisors.
- (37) **“Services”** has the meaning ascribed thereto in Section 2.1 hereof.
- (38) **“Service Suspension Notice”** has the meaning ascribed thereto in Section 3.7 hereof.
- (39) **“Supporting Document”** has the meaning ascribed thereto in Schedule 3.1 hereof.
- (40) **“Telecommunications Industry Guidelines”** means those number administration guidelines, policies, regulations, and directions implemented by the CRTC or other Canadian Governmental Entity, from time to time, and those number administration guidelines and documents developed by the CSCN and those developed by other bodies, such as the North American Industry Numbering Committee (INC), as amended from time to time, which are adopted by the CSCN or the CRTC or other Governmental Entity for use in Canada, or otherwise required to be used in Canada, and implemented by CNAC from time to time, in its sole discretion, generally in relation to the administration and assignment of the numbering resources to be used by the CNA in the performance of the Services.

- (41) **“Telecommunications Services”** means services which are provided over the PSTN by Eligible Persons and which utilize Numbering Resources including, for greater certainty and without limitation, local exchange services, long distance services, wireless telephony services, and international long distance services; but shall exclude enhanced services (e.g. call answer, speed dialing, three-way calling), the sale or lease of terminal equipment (e.g. telephone sets, PBX's, key systems, answer-record machines, computers), the sale or lease of private lines, other private line and private network services, internet services, and paging services.
- (42) **“Term”** shall have the meaning ascribed thereto in Section 7.1 hereof.
- (43) **“User Fee”** shall have the meaning ascribed thereto in Section 3.1 hereof and includes any Additional User Fees levied from time to time.
- (44) **“Wireless Service Provider”** means a Canadian Carrier, which is duly licenced under the *Radiocommunication Act*, as amended and which is authorized to provide wireless telecommunications services and wireless personal communications services.

### SCHEDULE 3.1 CSCN FUNDING FORMULA

(1) *Acknowledgement.* The Service User is required to pay its proportionate share of all costs incurred by CNAC, on its and the Canadian telecommunications industry's behalf, related to the administration and assignment of numbering resources in Canada. The formula presented below was developed and approved by the CSCN, and is subject to change during the Term by CNAC, the CSCN and/or the CRTC. Any amended formula shall be incorporated by reference into this Agreement at the time of its adoption by CNAC, the CSCN and/or the CRTC without the further consent or agreement of the Service User.

(2) *Calculation.* The annual User Fee to be paid by the Service User shall be the Service User's proportionate share of the estimated costs for the administration, assignment and supervision of the numbering resources in Canada to be incurred by CNAC based upon the Service User's previous year's Gross Telecommunications Service Revenue plus an annual base-line fee based on the Service User's previous year's Gross Telecommunications Service Revenue, as determined by the following formula:

$$\text{User Fee} = S/T * C + ABF$$

Where the **User Fee** is the amount of the User Fees to be paid by the Service User for CNAC's current fiscal year (July 1 to June 30);

*S* is the Service User's Gross Telecommunications Service Revenues for the previous calendar year (Jan. 1 to Dec. 31);

*T* is the Gross Telecommunications Service Revenues of all the Service Users who have submitted, or are required to submit, Reporting Worksheets for the previous calendar year (Jan. 1 to Dec. 31);

*C* is the costs associated with the establishment, funding, maintaining and supervising of the administration and assignment of numbering resources in Canada, including the costs of the B&C Agent, in CNAC's current fiscal year (July 1 to June 30) as estimated by CNAC;

*ABF* is the annual base-line fee as set out in the table in Section (3) below that corresponds with the Service User's Gross Telecommunications Service Revenues for the previous calendar year (Jan. 1 to Dec. 31).

(3) *Minimum User Fee.* The annual User Fee to be paid by the Service User hereunder shall be the greater of: (i) the amount calculated in (2) above; and (ii) the minimum annual charge as determined using the following table:

Annual Gross Telecommunications Services Revenue of Service User as Reported on Reporting Worksheet	Minimum Annual Fee (A)	Annual Base-line Fee (B)	Minimum Annual Charge (A + B)
Less than \$5,000,000	\$ 50	\$ 50	\$ 100
Equal to or more than \$5,000,000	\$ 1,250	\$ 1,250	\$ 2,500

(4) *Calculation of User Fees.* The Service User shall complete and deliver to the B&C Agent on or before April 1 of each year during the Term (or on such other date as CNAC may determine from time to time) (the "**Reporting Deadline**"), a Reporting Worksheet, certified by an officer of the Service User, in such form as determined by CNAC from time to time. Along with the completed Reporting Worksheet, the Service User shall also complete or have completed and deliver to the B&C Agent by the Reporting Deadline the following (the "**Supporting Document**"): an affidavit sworn by the following 2 persons: (i)



the Chief Financial Officer (CFO) of the Service User and (ii) one other senior officer of the Service User, in such form as determined by CNAC from time to time, attesting to the accuracy of the information on the Reporting Worksheet.

(5) *Verification of Revenue Data.* The Service User acknowledges that the B&C Agent will be the sole recipient of confidential Gross Telecommunications Service Revenue data as presented in the Reporting Worksheet collected from the Service Users. The Service User also acknowledges that the B&C Agent is responsible to ensure that the revenues reported on a Service User's Reporting Worksheet are reasonable based upon the B&C Agent's knowledge of the Canadian telecommunications industry. In the event the B&C Agent determines that the information and/or data presented by a Service User in its Reporting Worksheet is not reasonable, the B&C Agent shall advise such Service User of its concerns and ask for further clarification and/or proof as to the amounts presented in the particular Reporting Worksheet within ten (10) days from such notice. If the B&C Agent is not satisfied with the response from such Service User to its request for further clarification, then the B&C Agent shall notify CNAC of its concerns and seek further instructions as to how to proceed. In such instance, notwithstanding that CNAC or its shareholders, directors, or officers, shall not be entitled to review the Reporting Worksheet, or the Service User revenue data, CNAC shall, at its sole discretion, be entitled to request that the Service User engage, or engage itself, a Third Party auditor to audit, at the Service User's expense, the information presented on the Reporting Worksheet. In the event that the audit results in the information on the Reporting Worksheet being amended, the B&C Agent shall use the information on the Reporting Worksheet as amended by the audit to determine the Service User's applicable User Fee.

(6) *Incomplete or Missing Data.* In the event that the Service User fails to deliver the Reporting Worksheet within fifteen (15) days of the Reporting Deadline, or if the Reporting Worksheet is missing data necessary to allow the B&C Agent to calculate the User Fee, the B&C Agent may make a reasonable estimate of the information required by the Service User which it is missing in order to calculate the User Fee. Where the Service User has filed a Reporting Worksheet previously found to be acceptable by the B&C Agent for a prior period, the B&C Agent shall base its estimation on that Reporting Worksheet.

(7) *Deficit and Surplus.* In the event that the estimate by CNAC of the costs (C in (2) above) to administer the numbering resources in Canada is incorrect and CNAC overestimated the costs for the year, CNAC shall not be required to return any portion of the User Fee but shall apply any surplus to reduce the costs required to be funded in the next year. In the case where CNAC underestimated the costs for the year, CNAC shall have the right to levy a special charge on Service Users for the deficit amount ("**Additional User Fee**") based upon the same proportionate share related to the Service User used to calculate the last User Fee if funds are required for the continued operation of CNAC, however, CNAC will only utilize its right to levy an Additional User Fee only when it deems it necessary, and where appropriate such deficit amount will be added to costs to be recovered from Service Users during the next year. Any Additional User Fee invoiced to the Service User is due within thirty (30) days of the invoice date no matter what payment plan the Service User has selected.

(8) *Gross Telecommunications Services Revenue.* For the purpose of this Schedule 3.1 and the Reporting Worksheet, the term "**Gross Telecommunications Services Revenue**" shall mean the revenue (without any deductions) derived by the Service User from the following:

services which are provided over the PSTN and which utilize Canadian numbering resources including, for greater certainty and without limitation, local exchange services, long distance services, wireless telephony services, and international long distance services; but shall exclude enhanced services (ie. call answer, speed dialling, three-way calling), the sale or lease of terminal equipment (ie. telephone sets, PBX's, key systems, answer-record machines, computers), the sale

or lease of private lines, other private line and private network services, Internet services, and paging services.

**SCHEDULE 3.1B**

**SCHEDULE 3.2  
ADDITIONAL FEES**

The Service User agrees that CNAC may upon thirty (30) days written notice change the amount or term of the fees listed below, which new amount or amounts shall be incorporated by reference into this Agreement. Until amended by CNAC, the Additional Fees shall be as follows:

Late Payment Fee <sup>(1)</sup>	\$300
Late Reporting Fee <sup>(2)</sup>	\$410
Monthly Payment Plan Fee <sup>(3)</sup>	\$95
Quarterly Payment Plan Fee <sup>(4)</sup>	\$95

1. The Late Payment Fee is levied on a Service User for each instance that the Service User fails to make any payments to CNAC and/or the B&C Agent on the due date as provided for in this Agreement or on the due date as indicated on the invoice related to the original amount due.
2. The Late Reporting Fee is levied on a Service User for each instance that the Service User fails to file a Reporting Worksheet and/or Supporting Document by April 1 of each year; and/or if the Reporting Worksheet and Supporting Document are filed by such due date, the Reporting Worksheet and/or Supporting Document is incomplete or incorrect.
3. The Monthly Payment Plan Fee is the amount to be paid with each monthly payment of the User Fee by a Service User selecting the Monthly Payment Plan. For greater certainty, the total annual amount to be paid by the Service User, in addition to the User Fee, for selecting the Monthly Payment Plan shall be one thousand and one hundred and forty dollars (CDN\$1,140) in lawful money of Canada.
4. The Quarterly Payment Plan Fee is the amount to be paid with each quarterly payment of the User Fee by a Service User selecting the Quarterly Payment Plan. For greater certainty, the total annual amount to be paid by the Service User, in addition to the User Fee, for selecting the Quarterly Payment Plan shall be three hundred and eighty dollars (CDN\$380) in lawful money of Canada.