



## Customer Service Agreement

### 1. Customer Obligations

- a. The Customer shall:
  - i. for any Customer or third party provided equipment or software, arrange for the supply, installation and maintenance of such equipment, if applicable, and ensure that such equipment or software is installed and maintained according to the manufacturer's specifications and the specifications, if any;
  - ii. understand that service available where technology permits.  
Rates do not include installation by a technician and costs to correct internal wiring problems at customers' premises.
  - iii. ensure at all times that the Cyberjet Provided Equipment and Customer or third party provided equipment is stored in a manner and in an environment which conform to the relevant equipment manufacturer's specifications;
  - iv. be responsible for the loss of and risk or damage to the Cyberjet Provided Equipment except where caused by the negligence or willful misconduct of Cyberjet;
  - v. provide all necessary infrastructure, including without limitation, power outlets, grounding and anti static environments required for the safe and efficient operation and maintenance of the Cyberjet Provided Equipment and the Customer or third party provided equipment in accordance with Canadian Standards Association or other specifications or regulations as applicable; and
  - vi. permit Cyberjet or its Third Party Providers prompt and safe access to its premises for the purpose of performing its obligations under the service(s) provided or disconnecting and removing the Cyberjet Provided Equipment.
- b. The Customer, its agents, employees or representatives shall not commit any act or cause or permit any act to be committed or provide any services which will conflict with or affect in any way the provision of the Services by Cyberjet.
- c. The Customer agrees not to tamper with, alter or otherwise rearrange the Services nor shall it permit or assist others to abuse or fraudulently use the Services including but not limited to using the Services (i) in any manner which interferes unreasonably with the Services or Cyberjet's network, or access thereto by other persons; or (ii) for any purpose or in any manner directly or indirectly in violation of applicable laws or in violation of any third party rights.
- d. The Customer shall solely be responsible for use of the Services by any of its employees, officers, directors, agents as well as its end users and agrees to take all necessary measures to ensure that such persons use the Services in accordance with these terms and conditions. The Customer agrees to comply with (i) the Internet Use Policy set forth herein, which policy may be amended by Cyberjet from time to time; to the extent the Customer is receiving an Internet based service, and (ii) any third party software license terms and conditions in respect of software used by the Customer in connection with the use of the Services.
- e. The Customer shall be solely responsible for obtaining necessary licenses and/or authorizations for all software and equipment, which are not provided by Cyberjet. Cyberjet shall not be responsible if any changes in the Services cause equipment, hardware or software not provided by Cyberjet to become obsolete, require modification or attention, or otherwise affect

performance of same. Cyberjet shall provide the Customer with one (1) month's notice of such changes.

- f. Cyberjet reserves the right to take all actions, including immediate suspension of the Services, which it considers necessary to assure compliance with the Customer Obligations. The Customer will be responsible for all additional costs, liabilities and expenses incurred by Cyberjet resulting directly from a breach by Customer of this Section.

## 2. Warranty

- a. Customer acknowledges that Cyberjet does not warrant uninterrupted or error free Services or the content, availability, accuracy or any other aspect of any information including, without limitation, all data, files and all other information or content in any form or of any type, accessible or made available to or by Customer or its end users through the use of the Services. Cyberjet shall be permitted from time to time to interrupt the Services in order to provide maintenance to the Services, as more specifically set out in the Schedules.
- b. **The warranties provided in this Agreement are in lieu of all other warranties and conditions. The Customer hereby waives all other warranties and conditions, express, implied or statutory, including any warranty of merchantability, fitness of a particular purpose, or availability or reliability of the Services.**

## 3. Remedies

- a. SUBJECT TO SECTION 4, CYBERJET'S AND THE THIRD PARTY PROVIDERS' TOTAL CUMULATIVE LIABILITY, IF ANY, TO THE CUSTOMER FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE PROVISION OF THE SERVICES WILL IN NO EVENT EXCEED THE TOTAL AGGREGATE MONTHLY CHARGES (NET OF ALL DISCOUNTS AND CREDITS) PAID BY THE CUSTOMER DURING THE PERIOD SUCH DAMAGES WERE INCURRED, SUCH PERIOD NOT TO EXCEED THREE (3) MONTHS, FOR THE SPECIFIC SERVICES THAT ALLEGEDLY GIVE RISE TO THE DAMAGES.
- b. CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AGAINST CYBERJET IN RESPECT OF THE SERVICES AND THIS AGREEMENT SHALL BE AS STATED IN THIS AGREEMENT.

## 4. Termination

- a. Either Party may, at its option, terminate this Agreement effective 5 days after notice or prior opportunity to cure the default if the other party makes or is deemed to have made a general assignment for the benefit of creditors under the Bankruptcy and Insolvency Act (the "Act"), or if a petition is filed against it under the Act (and is not removed within thirty (30) days after the filing thereof), or if it shall be declared or adjudicated bankrupt, or if an application is made in respect of it under the Companies' Creditors Arrangement Act, or if a liquidator, trustee in bankruptcy, custodian, receiver, receiver and manager, moderator, or any other officer with similar powers shall be appointed of or for it (and is not removed within thirty (30) days, if such appointment was not voluntary), or if it shall commit any act of bankruptcy or institute proceedings to be adjudged bankrupt or insolvent or consents to the institution of such appointment or proceedings, or if it admits in writing an inability to pay debts generally as they become due or becomes an "insolvent person" as that term is defined in the Act.
- b. Cyberjet may terminate this Agreement in the event that the Customer is in breach of any material term of this Agreement (other than a failure to pay an amount when due) and shall fail to remedy such breach within two (2) days after receiving written (by email, mail or fax) notice thereof from the Cyberjet. Notwithstanding the foregoing, if the breach is not capable of being remedied within such two (2) day period, the period in which the breach may be remedied shall

be extended for an additional period of three (3) days, provided that the Customer has used and continues to use all reasonable commercial/personal efforts to cure the breach in a timely manner.

- c. Cyberjet may terminate this Agreement in the event the Customer fails to pay any amount payable hereunder when due and fails to remedy such breach within two (2) days after receiving written (by email, mail or fax) notice thereof from Cyberjet.
- d. Customer may terminate this Agreement in the event Cyberjet fails to provide the service requested hereunder when due and fails to remedy such breach within two (5) days after receiving written (by email, mail or fax) notice thereof from Customer. The sole remedy for such breach is the value of up to one (1) months service, unless mutually agreed by both parties.
- e. For the purposes of this Article 8, in the event that Customer does not perform its respective obligations, responsibilities or provide the deliverables agreed to in this agreement, and such breach is not cured within the two (2) day period referred to in section 8.2 above, Cyberjet may, at its option, immediately terminate this Agreement and all fees under this Agreement, shall be immediately due and payable to Cyberjet.

\*\*\*\* CUSTOMER MUST PROVIDE CYBERJET A NOTICE OF CANCELLATION 5 DAYS AHEAD OF THE MONTHLY RENEWAL DATE. IF A CONFIRMATION NOTICE HAS NOT BEEN RECEIVED BY CUSTOMER FROM CYBERJET FOR THE CANCELLATION, IT WILL BE ASSUMED THE CANCELLATION HAS NOT BEEN RECEIVED. IT IS THE RESPONSIBILITY OF THE CUSTOMER TO ENSURE CANCELLATION HAS BEEN RECEIVED. A CANCELLATION NUMBER WILL BE PROVIDED ON RECEIPT OF CANCELLATION FROM CYBERJET.\*\*\*\*

## **5. Limitation of Liability**

- a. UNDER NO CIRCUMSTANCES WILL CYBERJET OR THE THIRD PARTY PROVIDERS BE LIABLE TO THE CUSTOMER FOR ANY INDIRECT INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, EXPENSES, COSTS, LIABILITY, LOSS, OR DAMAGE WHATSOEVER, INCLUDING, LOST PROFITS, LOST REVENUE, LOSS OF DATA, LOSS OF USE OF ANY INFORMATION SYSTEM, FAILURE TO REALIZE EXPECTED SAVINGS OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS, WHETHER ARISING IN NEGLIGENCE, TORT, STATUTE, EQUITY, CONTRACT, COMMON LAW, OR ANY OTHER CAUSE OF ACTION OR LEGAL THEORY EVEN IF CYBERJET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. CUSTOMER AGREES, ACKNOWLEDGES AND CONFIRMS THAT THE LIMITATIONS OF LIABILITY SET OUT IN THIS SECTION ARE FAIR AND REASONABLE IN THE COMMERCIAL CIRCUMSTANCES OF THIS AGREEMENT AND THAT CYBERJET WOULD NOT HAVE ENTERED INTO THIS AGREEMENT BUT FOR CUSTOMER'S AGREEMENT TO LIMIT CYBERJET'S AND ITS THIRD PARTY PROVIDERS' LIABILITY IN THE MANNER, AND TO THE EXTENT, PROVIDED FOR HEREIN.
- b. CYBERJET AND THE THIRD PARTY PROVIDERS ASSUME NO LIABILITY ARISING FROM (i) THE USE OF THE SERVICES FURNISHED BY CYBERJET IN COMBINATION WITH SERVICES, PRODUCTS OR EQUIPMENT PROVIDED BY CUSTOMER OR ANY THIRD PARTIES AND (ii) THE FAILURE BY THE CUSTOMER TO PERFORM ITS OBLIGATIONS.
- c. SECTIONS 3 AND 4 OF THIS AGREEMENT SHALL APPLY EVEN IN THE EVENT OF A

BREACH OF CONDITION, A BREACH OF AN ESSENTIAL OR FUNDAMENTAL TERM, OR A FUNDAMENTAL BREACH OF THIS AGREEMENT.

## INTERNET USE POLICY

*The Customer is solely responsible for use of the Services by any of its employees, officers, directors, agents and any other end user of the Services (collectively, the «End Users»). The Customer agrees to comply, and to ensure that, the End Users comply with the following policies and procedures associated with the use of the Services (the Customer and/or End Users are sometimes hereinafter referred to as «you»).*

1. **Rules.** While using the Service, you may not:
  - a. post, transmit or otherwise distribute information constituting or encouraging conduct that would constitute a criminal offense or give rise to civil liability, or otherwise use the Service in a manner which is contrary to law or would serve to restrict or inhibit any other user from using or enjoying the Service or the Internet;
  - b. post or transmit messages constituting "spam", which includes but is not limited to unsolicited e-mail messages, inappropriate postings to news groups, false commercial messages, mail bombing or any other abuse of e-mail or news group servers;
  - c. post or transmit any information or software which contains a virus, "cancelbot", "trojan horse", "worm" or other harmful or disruptive component; or
  - d. upload or download, post, publish, retrieve, transmit, or otherwise reproduce, distribute or provide access to information, software or other material which: (i) is confidential or is protected by copyright or other intellectual property rights, without prior authorization from the rights holder(s); (ii) is defamatory, obscene, child pornography or hate literature; or (iii) constitutes invasion of privacy, appropriation of personality, or unauthorized linking or framing.
2. **Your Equipment.** It is your responsibility to ensure that your computer system meets the minimum requirements stated by Cyberjet as being necessary to use the Service. From time to time, the computer equipment required to access and use the Service may change. Accordingly, your computer equipment may cease to be adequate to access and use the Service.
3. **You Can Best Control the Risk and Therefore Are Responsible.** Cyberjet will not assume any responsibility for your acts or omission. Account and password protection will be your responsibility.
4. **Monitoring.** Cyberjet has no obligation to monitor the Service. However, in order to protect itself and its subscribers, Cyberjet will be entitled to electronically monitor the Service from time to time and disclose any information concerning the End User required by the Customer or that is necessary to satisfy any law, regulation or lawful request. Cyberjet will not intentionally monitor or disclose any private e-mail message unless required by law. Cyberjet reserves the right to refuse to post, or to remove any information or materials, in whole or in part, that it determines, in its sole discretion, are unacceptable, undesirable, or in violation of these policies.
5. **Content.** You acknowledge that some content, products or services available with or through the Service («Content») may be offensive or may not comply with applicable laws. You understand that neither Cyberjet nor any of its affiliates attempt to censor or monitor any Content. You also acknowledge that neither Cyberjet nor any of its affiliates have any obligation to monitor your use of the Service and, except as provided herein, have no control over such use. You assume total responsibility and risk for access to or use of Content and for your use of the Service. Cyberjet and its affiliates assume no liability whatsoever for any claims or losses arising out of or otherwise relating to

your access to or use of Content.

6. **Privacy.** Cyberjet cannot guarantee privacy. Your messages may be the subject of unauthorized third party interception and review. Cyberjet therefore recommends that the Service not be used for the transmission of confidential information.
7. **E-mail.** Sending unsolicited, e-mail messages, including, without limitation, commercial advertising and informational announcements is prohibited. Users will not use another site's mail server to relay mail.
8. **Usenet.** Users shall not post ten (10) or more messages similar in content to Usenet or other newsgroups, forums, e-mail mailing lists or other similar groups or lists. Users will not post any Usenet or other newsgroup, forum, email mailing list or other similar group or list articles which are off-topic according to the charter or other owned-published FAQ or description of the group or list.
9. **System and Network Security.** Users are prohibited from violating any system or network security measures including but not limited to engaging in unauthorized access or use of Cyberjet's or a third party's network, data or information. Users are unauthorized to monitor Cyberjet or third party's data, systems or network traffic. Users are prohibited to interfere with service to any user, host or network including without limitation, mail bombing, flooding, and deliberate attempts to overload a system and broadcast attacks. Users are prohibited to forge any TCP-IP packet header or any part of the header information in an e-mail or newsgroup posting.

## **VIOLATION OF ACCEPTABLE USE POLICY**

Cyberjet considers the above practices to constitute abuse of its service. Therefore, Cyberjet' terms and conditions of service prohibit these practices. Engaging in one or more of these practices may result in termination or suspension of the offender's account and/or access to Cyberjet's services. Nothing contained in this policy shall be construed to limit Cyberjet' actions or remedies in any way with respect to any of the foregoing activities. Cyberjet reserves the right to take any and all additional actions it may deem appropriate with respect to such activities, including without limitation taking action to recover the costs and expenses of identifying offenders and removing them from the Cyberjet service, and levying cancellation charges to cover Cyberjet' costs. In addition, Cyberjet reserves at all times all rights and remedies available to it with respect to such activities at law or in equity.