

Residential Connectivity Plans Additional Terms and Conditions



Last Updated: February 19, 2005

1. Preliminary

1.1 Where used in these Terms of Service, the expression "this Agreement" means the Service Plan Detail, Service Contract, Residential Connectivity Plans Additional Terms and Conditions and the Network Data Services Agreement, and all appendices to it. Terms used herein and not defined shall have the meanings assigned thereto in the Network Data Services Terms and Conditions.

2. Obligation to Monitor Network

2.1 Govital internet inc. will provide 24 hours per day, 7 days per week monitoring of the network supporting the Connectivity Service. The Customer will be responsible for, and bear all costs for, maintaining equipment that is owned by the Customer.

3. Obligation to Provide Service

3.1 The obligation of govital internet inc. to provide a service is contingent upon it gaining access to appropriate support structures to deliver services to the Customer's site described in the this agreement.

3.2 Subject to the express provisions hereof, neither govital internet inc. nor the Customer shall be liable for any delay in performance, or for non-performance in whole or in part caused by the occurrence of any contingency beyond its reasonable control; and any period of time within which Govital internet inc., or the Customer is to do any act or thing, shall be extended for any such period of delay. Any such delay shall excuse govital internet inc. or the Customer, as the case may be, from performance and its time for performance shall, notwithstanding anything to the contrary contained in this Agreement, be extended for the period of delay.

4. Right to Enter Premises

4.1 The Customer shall obtain and grant to govital internet inc., its employees, agents, contractors and subcontractors, access to service sites at any agreed hour for the purpose of **providing requested service**, including installation, maintenance and removal. Such employees, agents, contractors and subcontractors may be required to present proper identification before being permitted access to the sites.

4.2 In order to enable govital internet inc. to provide the Services, (including installation, maintenance and removal), the Customer shall provide or cause to be provided, at each service site at no cost to Govital internet inc. and in a timely manner, the following:

- i. suitable equipment shelter at each site, including the required environmental control systems, lighting and security provision according to govital internet inc. specifications;
- ii. any electrical outlets and conditioned electrical power required at each site, and payment for the consumption thereof in connection with the installation, operation and maintenance of the Services;
- iii. any cable, wiring, modems, switching equipment or amplifiers required to interface each Service with the Customer's communication equipment at each Customer site within the demarcation for the Services as described in the Service Plan Detail;
- iv. an on-site contact and the telephone number at the site by which govital internet inc. will be able to

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contact the Customer by telephone; and

- v. one on-site telephone line at each Customer site located within three meters of the equipment, and the use of such telephone if the Service Plan Detail specifies connection via the telephone network, e.g. ADSL service.

5. Services Facilities

5.1 Notwithstanding the equipment that is located on a site provided by the Customer, govital internet inc. shall be the sole and exclusive owner of equipment or facilities provided by govital internet inc.. Such equipment or facility shall remain the property of govital internet inc., and shall not by reason of the attachment, installation or connection of any part thereof to any realty become or be deemed a fixture appurtenant to such realty. Govital internet inc. may abandon or remove, but shall not be obligated to remove, the facilities at the termination of the Services.

5.2 Govital internet inc. shall be responsible for, and bear the expense of, ordinary maintenance and repairs of its equipment or facilities necessary to provide the Services, and will arrange in advance with the Customer when routine scheduled maintenance will take place.

5.4 The Customer shall be responsible, and shall reimburse govital internet inc., for all costs and expenses relating to any repair, replacement or maintenance service to the equipment or facilities which are not due to reasonable wear and tear, or to the negligence of govital internet inc.. In addition, govital internet inc. reserves the right to charge for unnecessary service calls requested by the Customer, including, without limitation, service calls relating to any repair, replacement or maintenance for which the Customer is responsible.

6. Limitation of Liability

6.1 Govital internet inc. and/or its directors, officers, employees, contractors or agents, shall not be liable in any way or manner whatsoever to the Customer, or to any person, firm or corporation whatsoever, for any loss or damage (whether direct or indirect or founded in tort or contract or otherwise at law or in equity) resulting from, or arising out of the provision of the Services, or any defect in or the failure, inoperability or malfunctioning of govital's facilities as contemplated by this Agreement including, without limitation, any indirect, consequential or economic loss, whether or not the same was or may have been reasonably foreseeable by Govital internet inc., excepting only the liability of Govital internet inc. to the Customer for any rebates or credits contemplated in the Agreement.

6.2 Govital internet inc. is not liable for:

- i. any act or omission of a telecommunications carrier whose facilities are used in establishing connections to points which govital internet inc. does not directly serve;
- ii. defamation or copyright infringement arising from material transmitted or received over govital internet inc. facilities; or
- iii. infringement of patents arising from combining or using customer-provided facilities with govital internet inc. facilities.

7. Rebates in Cases of Service Problems

7.1 Govital internet inc. does not guarantee uninterrupted performance of the Services, and its liability for any interruption shall be limited to a rebate of charges as provided for elsewhere in the Agreement, or if not so provided, to a rebate equal to the amount obtained by multiplying the number of hours of Service interruption by the hourly equivalent (based upon a day of 24 hours in a month of 30 days) of the monthly service fee payable by the Customer for the particular Service under this Agreement

7.2 For the purposes of calculating rebates in accordance with paragraph 7.1 above, the duration of the interruptions in Service shall commence **when govital internet inc. has been informed of the problem** by an authorized representative of the Customer and shall end when Govital internet inc. has notified the Customer that Service has resumed.

7.3 Rebates shall **not be allowed** for and the following interruptions shall not be included in calculating the rebates referred to in paragraph 7.1:

- i. interruptions due to tests, maintenance and adjustments being carried out at times and for durations agreed upon in advance by govital internet inc. and the Customer;
- ii. durations when tests, maintenance and adjustments are delayed at the request of the Customer;
- iii. interruptions resulting from a failure by the Customer to perform any of its responsibilities;

- iv. interruptions required to correct interference to a Service caused by the Customer's facility or that of its agents connected to or used in conjunction with the Service or such other equipment as may be co-located with the Service;
- v. interruptions due to actions or omissions of the Customer, its officers, employees, agents, contractors or invitees;
- vi. interruptions due to primary power fluctuations or primary power failure at a site; or
- vii. duration of interruptions when access could not be gained to a site; or
- viii. Interruptions of less than 24 hours.

8. Payment Time Limits

8.1 Unless otherwise specified in the invoice relating to the provision of any Service, payments are considered past due if not received by Govital internet inc. within the period of 30 days following the date of the invoice for any Service.

8.2 Payments that are past due are subject to a late payment charge as specified in paragraph 13.2.

8.3 No charge disputed by a Customer will be considered past due unless govital internet inc. has reasonable grounds for believing that the purpose of the dispute is to evade or delay payment.

9. Billing Errors

9.1 Where payments have been made for charges that should not have been billed, or that were over-billed, the Customer will be credited with the overpayment back to the date of the error up to a maximum of one year from the date the error was identified. However, if the Customer does not dispute the charge within one year of the date of a statement that shows the charges correctly, the Customer shall no longer have the right to have the excess credited for the period prior to such statement.

9.2 Where Customer is credited for amounts billed in error, interest will also be credited at the rate specified in paragraph 14.1.

10. Termination of Service by the Customer

10.1 The Customer may terminate Service under the following circumstances (**upon written notice to govital internet inc.**):

- i. if over any consecutive twenty-eight day period, commencing on a Monday and ending on a Sunday, the performance of the Service is repeatedly and materially worse than that specified in this Agreement and govital internet inc. fails to re-establish performance to specifications within twenty-eight days of receiving written notice thereof from Customer;
- ii. if a Service is not initiated within sixty (60) days of the agreed upon completion date; or
- iii. at any time upon not less than thirty (30) days written notice to govital internet inc. and payment of a **termination charge** equal to 75% of the service fee for the Services for the unexpired portion of the Term

10.2 The termination charge identified in paragraph 10.1(iii) above will be waived if the following conditions have been met:

- i. the contract term of any new service to be supplied by govital internet inc. to the Customer is equal to or greater than the remaining duration of the term; and
- ii. the monthly charge of any new service to be supplied by govital internet inc. to the Customer is equal to or greater than the monthly charge of the old service.

11. Termination of Service by govital internet inc.

11.1 Govital internet inc. may terminate any Service at its option exercisable by written notice to the Customer under the following circumstances:

- i. the Customer defaults in performance or compliance with any material provision of this Agreement including, without limitation, its obligation to pay the charges provided for in a timely manner, and such breach is not remedied within fifteen (15) days after the Customer has received written notice indicating the nature of such breach or default;
- ii. If the Customer should file a petition in bankruptcy, voluntary or involuntary, or become insolvent or make any as-

signment for the benefit of creditors or make any arrangements or otherwise become 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 Customer, or in the event the Customer;

- iii. if any licenses, easements, rights-of-way, permits or regulatory authorizations or approvals required by Govital internet inc. to permit it to fulfill its obligations in respect of the Services in a lawful manner cannot be obtained or are obtained but are subject to conditions involving unreasonable expense to Govital internet inc. or are terminated or revoked or expire and are not renewed without unreasonable expense to Govital internet inc. or if the provision of the Services would violate any applicable federal, provincial or municipal law, regulation or by-law or would otherwise be unlawful; or
- iv. the service is used, or is permitted to be used, for a purpose or in a manner that is contrary to law or for the purpose of harassment over electronic media.

12. Confidentiality of Customer Information

12.1 Unless a Customer consents in writing or disclosure is pursuant to a legal power, all information kept by Govital internet inc., other than the Customer's name and address, are considered as confidential and may not be released by Govital internet inc. to anyone other than:

- i. the Customer(s) named in the contact information form;
- ii. a person, who in the reasonable judgment of Govital internet inc., is acting as agent for the Customer;
- iii. another telecommunications or similar company, provided the information is to be used for the establishment of, or the efficient and cost effective provision of the Services and disclosure is made on a confidential basis with the information to be used solely for that purpose;
- iv. an agent retained by Govital internet inc. to collect outstanding balances owed to Govital internet inc. by the Customer, or to perform other administrative functions for Govital internet inc., provided that the information is released solely for those purposes;
- v. to a law enforcement agency whenever Govital internet inc. has reasonable grounds to believe that the Customer has knowingly supplied Govital internet inc. with false or misleading information or is otherwise involved in unlawful activities; or
- vi. as may be required by law.

12.2 Upon request, the Customer is permitted to inspect any of Govital internet inc.' records related to the Services.

12.3 Govital internet inc. shall have no liability whatsoever for any damages suffered by Customer as a result of the release of any information by Govital internet inc. in accordance with paragraph 12.1.

13. Late Payment Charges

13.1 Govital internet inc. may, but need not, issue invoices monthly for Services provided for a particular month of Service and, in any event, payment of such charges for Services shall be due by the Customer no later than the time provided in this Agreement. The failure of the Customer to receive an invoice for charges in respect of any month shall not relieve the Customer from making prompt payment of such amount on or before the time it is due.

13.2 Payments not received by Govital internet inc. when due shall be subject to a late payment charge of 1.5% per month (effective annual rate 19.6%).

14. Interest on Credits for Over-billed Charges

14.1 The interest paid by Govital internet inc. on credits for amounts billed in error, as specified in paragraph 9.2, will be calculated at the same interest rate payable on Customer credit balances, which rate shall be determined from time to time by Govital internet inc., based on interest rates payable by financial institutions on short-term deposits.

15. NSF Cheques

15.1 Where a Customer's cheque for payment of service is returned because of non-sufficient funds (NSF) in the Customer's account, the NSF Charge below will be applied in addition to any Late Payment Charge which may be applicable.

16. Contract Renewal

16.1 The Agreement is renewed automatically unless cancellation letter is received 60 days before the contract is ended. After the completion of the initial term of the contract, the agreement will be automatically renewed unless a cancellation request is received 20 days before the end of the regular term.

17. Configuration Changes

17.1 The Customer shall not change the configuration of the network equipment, or reconfigure their network devices in such a way to use unauthorized IP addresses, unless so directed by a govital technical staff member.

17.2 In cases where the customer does reconfigure their equipment or govital's provided network equipment without authorization, a service charge may be applicable for corrective repairs.

17.3 Any damages or service problems caused by a mis-configuration by the Customer, even if done within the Customers' internal network, will be the responsibility of the Customer.

18. Reselling of Services

18.1 Unless expressly permitted by govital internet inc., the Customer shall not resell or provide the Services, or access to Services, directly or indirectly to third parties. Should govital internet permit such resale to or access by third parties, the Customer shall be responsible for all such third party use or access and shall indemnify govital internet inc. against all damages, costs and legal fees incurred by govital internet inc. from any claim arising from third party use or access to Services.