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Website: www.apexia.ca
Email: info@apexia.ca

Retail Cable Internet Services Agreement (Dynamic IP address)

Name: _____ Business: _____

Address: _____

City: _____ Province: _____ Postal Code: _____ - _____

Phone: _____ - _____ - _____ Email Addr: _____

Account info: (will be automatically generated)

Serial Number: _____ MAC Address: _____

Plan:	Access speed (Mbps):	Data transfer:	Price (1-year term):
Retail Cable D1	up to 30 down / 5 up	unlimited	\$109.00/month ___
Retail Cable D2	up to 150 down / 20 up	unlimited	\$129.00/month ___
Retail Cable D3	up to 500 down / 20 up	unlimited	\$149.00/month ___
Retail Cable D4	up to 1024 down / 50 up	unlimited	\$179.00/month ___

All plans include one dynamic IP address.

Required Hardware:

Wireless 4-port modem/router included.

Setup Fee:

Onsite installation (includes jack installation if required): \$99

Options:

Pick up modem in office (free) ___ Shipping of modem: (\$20) ___

Payment:

Interac/Cash ___ Cheque ___ MC ___ Visa ___ Auto Credit Card ___

Credit Card: Number: _____ Expiry: ___/___

Term: (Note: Discount applies to Plan prices only)

1-year ___ 2-year (less 15%) ___ 3-year (less 20%) ___

Upon signing, customer acknowledges to have read, understood and agreed to the Terms and Conditions attached to this form. Under 18 requires parent/guardian signature.

Signature: _____ Date: _____

How did you hear about us? I'm a current customer ___ Other Apexia customer ___
Phone book ___ Internet search ___ Other: _____

Terms and Conditions

The following terms and conditions apply to Apexia Voice and Data (“Apexia”) provision of services outlined in this agreement (the “Services”) and sets out the basic rights, obligations and limitations of Apexia to its Customers (the “CUSTOMER”). All of the terms and conditions contained herein (hereinafter referred to as “Terms”) bind both Apexia and the CUSTOMER and are subject to change from time to time at the sole discretion of Apexia, without any prior notice to the CUSTOMER.

1. Services

Apexia agrees to supply the services described in SERVICES AGREEMENT (the “Services”) in accordance with the terms of this Agreement. CUSTOMER agrees to receive the Services from Apexia in accordance with the terms of this Agreement.

2. Term

This Agreement shall commence on the Effective Date and shall remain in effect for the period outlined in SERVICES AGREEMENT (“Term”) unless terminated by either party as permitted by this Agreement. The Term of each service will commence upon completion of the installation for each service location outlined in the SERVICES AGREEMENT and billing will begin for that location once the service has been installed. This Agreement will automatically renew for successive terms equal in duration to the initial Term unless written notice is provided by either party to the other at least sixty (60) days prior to the expiration of the initial Term or any renewal Term, as the case may be, in which case the contract will expire on said expiration date. Upon termination of this Agreement, the CUSTOMER will return to Apexia all property that is owned by Apexia and has been installed at the CUSTOMER location for the purpose of providing the Services.

3. Compensation

3.1 All Services provided are invoiced monthly in advance. The first invoice will be issued by Apexia upon receipt of this Agreement signed by the CUSTOMER. Subsequent months will be invoiced in advance once the Services have been established and are available for use by the CUSTOMER. Apexia shall invoice the CUSTOMER based on the rates indicated in SERVICES AGREEMENT Section of this Agreement for the Services to be provided in that month and, except for payment of the first invoice, which must be paid by CUSTOMER to Apexia before commencement of the Term, the CUSTOMER shall pay all invoices within thirty (30) days after the date the invoice is issued. Upon thirty (30) days or greater written notice prior to the end of the Term, Apexia may change any fees payable under this Agreement. CUSTOMER is solely responsible for payment of any taxes (including without limitation sales, use, capital, intangible and property taxes) resulting from the CUSTOMER’s purchase or use of the Services. CUSTOMER agrees to hold harmless Apexia from all claims and liability arising from CUSTOMER failure to report or pay such taxes in a timely fashion.

3.2 Some services and rates provided by Apexia are governed by certain regulatory filings. These filings are demonstrable by referencing the corresponding authority such as the CRTC in Canada, the FCC in the United States and others internationally. If any of these filings are revised, and all parties are impacted equally, Apexia reserves the right to amend our pricing to accommodate any material change of our pricing structure if the impact is deemed material. Material is deemed to be any amount in excess of two percent. For purposes of interpretation, this will be treated similarly to how taxes are levied and revised within term.

3.3 Invoices outstanding for more than twenty-five (25) days shall bear interest at a monthly rate of three percent per month and such interest charges shall accrue from and after the due date of payment to the date that payment is made to Apexia.

3.4 In the event of non-payment of an invoice, Apexia may, in addition to all other rights and remedies under this Agreement and in law, suspend the provision of any or all Services. Any such suspension of Services shall not constitute the termination of this Agreement. If Apexia is required to bring legal action for the recovery of any amounts due hereunder, the CUSTOMER agrees to be responsible for, and to reimburse Apexia for, the payment of reasonable legal fees and costs incurred by Apexia. In the case of late payment of an invoice, or if Apexia is concerned regarding the CUSTOMER's credit worthiness, Apexia reserves the right to require the CUSTOMER to enter into on a pre-authorized Payment plan to mitigate the potential of non-payment. In such circumstances, the CUSTOMER shall authorize the payment to Apexia from a Canadian credit card issuer or similar institution acceptable to Apexia, of a fixed monthly amount that will not exceed the recurring or delayed charges included in the price payable each month during the Term.

3.5 All invoicing will be sent to the CUSTOMER that is indicated on the signed SERVICES AGREEMENT.

4. Termination

4.1 Upon giving sixty (60) days prior written notice to Apexia, the CUSTOMER may, during the initial Term or any renewal Term and without cause, terminate: (a) any one of the Services specified in this Agreement or (b) this Agreement; provided, however, that in either case, the CUSTOMER shall pay Apexia, upon written demand in one lump sum as liquidated damages and not as a penalty, 100 percent of the total monthly revenue for the terminated Services multiplied by the number of months and any portions thereof remaining in the Term.

4.2 CUSTOMER acknowledges that there are set-up costs that are individual to the customer and must be re-couped under this Agreement and agrees that this provision is a pre-estimate of damages and not oppressive.

4.3 Apexia may terminate this Agreement upon written notice to the CUSTOMER if: (a) the CUSTOMER commits any act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act (Canada), if any bankruptcy or insolvency proceeding is taken against the CUSTOMER, if the CUSTOMER makes any voluntary assignment for the benefit of its creditors, if a receiver takes possession of any of the CUSTOMER's property, or if the CUSTOMER ceases to carry on business in the normal course; or (b) the CUSTOMER fails to make full payment of any invoice within sixty (60) days after the date of the invoice; or (c) the CUSTOMER fails to cure to Apexia's sole satisfaction any material default under this Agreement, which default is not cured to Apexia's sole satisfaction within fifteen (15) calendar days of receiving written notice describing the nature of such default from Apexia.

4.4 If the CUSTOMER terminates this agreement prior to installation of services for whatever reason, CUSTOMER will remain responsible for any costs that are assessed to Apexia which can include costs outside of Apexia's control. These charges can include design, engineering and interim construction charges. CUSTOMER agrees that construction and installation delays are outside of Apexia's control and dates and time-lines provided prior to and at the time of signature are estimates only. These charges may also include equipment or services provided by Apexia for the provided service.

4.5 At termination or at the end of the agreement, and at the request of Apexia, the customer is responsible for the return of any and all Apexia provided equipment including Routers, IP Phones, Analogue Terminal Adapters and other items indicated at the time of the request. Failure to do so within

60 days of the request by Apexia may result in additional one time charges for the replacement value of the equipment. CUSTOMER is responsible to obtain the appropriate size box and packing material, packing the equipment securely to prevent shifting or damage and will ensure that equipment is wrapped with at least two layers of packing material and place in the box. CUSTOMER also agrees to return the equipment using a traceable carrier, such as FedEx, UPS or USPS and provide the tracking number.

4.6 In the event of breach and cancellation of a WHOLESALER for non-payment, WHOLESALER accounts at termination in addition to other collection remedies available to Apexia, Apexia reserves the right to sell, assign or bill direct any or all of the customers associated with the WHOLESALER account to recover and mitigate damages.

5. Indemnity and Waivers

5.1 The CUSTOMER shall indemnify and save Apexia, or their respective directors, officers, employees and agents harmless from and against all loss, liability or damages of any type and expense, including without limitation reasonable legal fees and disbursements, arising from any and all claims by any third party, including without limitation end users and distributors (collectively, the "Third Party"), in connection with the use of the Services (and related equipment) by the CUSTOMER or any Third Party or in connection with the CUSTOMER's failure to comply with its obligations under this Agreement, whether the failure is attributable to the CUSTOMER's, or one or more other person's, use of the Services with or without permission of the CUSTOMER.

5.2 Under no circumstances shall Apexia, or their respective directors, officers, employees and agents, be liable to the CUSTOMER for any incidental, special or consequential damages, expenses, costs, liability, loss or damage whatsoever.

5.3 Neither Apexia, nor their respective directors, officers, employees and agents, shall be liable for any lost profits, anticipated revenue, loss of data, loss of use of any information system, lost business revenue, failure to realize expected savings or any other commercial or economic loss of any kind whatsoever arising out of or in connection with this Agreement or the provision of the Services, even if the Apexia has been advised of the possibility of such loss.

5.4 Apexia, its affiliates, their successors and assigns, and their respective directors, officers, employees and agents, are not liable for any failure or delay in performance here under if such failure is due, in whole or in part, to any cause beyond Apexia's reasonable control.

5.5 This section 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. The indemnities contained within this section shall survive termination of this Agreement for the maximum time period permitted by law.

6. Change Request for Service

6.1 If the CUSTOMER wishes to order additional services or make a change to the Services:

a) the CUSTOMER may submit to Apexia a change request in writing via email, detailing the change in the Services being requested;

b) Apexia will respond to the CUSTOMER in writing via e mail within ten (10) business days of receipt of the Change Request (the "Estimate"), stating whether the change may be made, and if so, specifying the estimated cost and time required to implement the change and the impact, if any, of the change on the Services otherwise such change will not be made and this Agreement will remain unamended.

7. CUSTOMER Equipment & Infrastructure

7.1 Apexia will provide a network service, connected at a point of demarcation, usually at a termination panel located in proximity to either the telecommunication or electrical service entrance at the CUSTOMER's place of business.

8. CUSTOMER Obligations

8.1 Subject always to any other term of this Agreement, the CUSTOMER shall:

- a) provide Apexia and its employees, agents and representatives with access to conduit, cables, termination panels and any other equipment located on private property to which access is required or desirable to provide the Services;
- b) provide Apexia with 24 hour/day, 7 days/week access to their premises as required to provide and/or repair the Services;
- c) be responsible to provide first line support personnel who will be the interface between Apexia and the CUSTOMER for all services performed as part of this Agreement;
- d) notify Apexia of the CUSTOMER due date for moves, adds and changes; and
- e) obtain written consent for moves, adds, and changes from Apexia;
- f) review our service schedules that outline additional terms and conditions around the use of our service. It outlines both our obligations to you and limits our liability and exposure. These can be viewed at locations specified below:

For information on installation dates, time-frames and expectations that are to be communicated when any service is ordered from Apexia.

<https://apexia.ca/policies> Click on "Installation Information".

For information on Apexia's Acceptable Use Policy or AUP

<https://apexia.ca/policies> Click on "Acceptable Use Policy".

For information on our Service Level Objectives for our broadband products

<https://apexia.ca/policies> Click on "Service Level Objectives".

9. Restrictions on Use of Services

9.1 The CUSTOMER shall use the provided service in accordance with the terms and conditions outlined in Apexia's standard Acceptable Use Agreement. This agreement can be viewed at <https://apexia.ca/policies> Click on "Acceptable Use Policy".

10. Permitted Service Suspension

10.1 The CUSTOMER agrees that it may be necessary for Apexia to temporarily suspend service for technical or maintenance reasons, the timing of which, other than emergency maintenance, will be agreed upon in advance. The parties may agree to regularly scheduled maintenance windows for this purpose.

Such a suspension of service will not be considered Network unavailability for the purposes of the Uniform Terms and Conditions hereto.

10.2 Without incurring liability, Apexia may immediately and without notice: (i) discontinue or suspend the Services; (ii) cancel a request for the Services; or (iii) temporarily block service to a particular jurisdiction, sector, authorized code or other criteria, as Apexia determines, if Apexia deems such action is necessary, either to prevent improper use, as outlined in this Agreement, or to protect against fraud or the commission of suspected illegal activities, or to otherwise protect its personnel, agents, facilities or services.

11. Compliance with Laws

The CUSTOMER agrees to comply with all applicable laws relating to the use of the Services. Without limiting the generality of the foregoing, the CUSTOMER shall not use the Services to upload, download or transmit any illegal content.

12. Confidentiality

The CUSTOMER agrees that the terms and provisions of this Agreement shall remain strictly confidential and may not be disclosed to any third party without the express written consent of Apexia, which consent may be arbitrarily withheld.

13. Governing Law

This Agreement shall be interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. CUSTOMER and Apexia attorn to the exclusive jurisdiction of the Courts of Ontario and CUSTOMER and Apexia attorn to the exclusive venue for litigation of Barrie, Ontario, Canada.

14. Force Majeure

Apexia shall not be liable for failure to perform or delay in performance of its obligations due to fire, flood, extreme weather, strike or other labour difficulty, act of God, act of any governmental authority or of the CUSTOMER, embargo, fuel or energy shortage, car shortage, wrecks or delays in transportation, or due to any other cause beyond Apexia's reasonable control. In the event of delay in performance due to any such cause, the date of delivery, time for completion or performance of the Services will be extended by a period of time reasonably necessary to overcome the effect of such delay.

15. Notice

Every notice, approval, request, authorization, direction or other communication under this Agreement may be given in writing to the party at the address set out on the first page of this Agreement for such party and will be deemed to have been delivered and given for all purposes (i) two business days after deposit with a commercial overnight carrier, with written verification of receipt; or (ii) five business days after deposit at a post office for delivery by registered mail, with written verification of receipt; or (iii) upon completion of transmission, if sent via facsimile, with a confirmation of successful transmission; or (iv) by e-mail for the purposes of section 6.1 a) herein

16. Severability

The invalidity or non-enforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable

portion or provision shall be severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.

17. Assignment

This Agreement shall be binding on Apexia and CUSTOMER and their respective successors in interest and assigns. CUSTOMER shall not have the power to assign or subcontract this Agreement without the prior written consent of Apexia.

18. Receivables Assignment

Apexia, at its sole discretion, shall have the right to assign monies payable under this Agreement to a Financing Partner whether pursuant to a lease, a conditional sale, receivable sale or otherwise, (a) all or any part of the payments due under this Agreement; and (b) Apexia's rights under this Agreement to any Product provided for in this Agreement, in such case to secure its obligations in connection with the financing of and or provision of such Product. CUSTOMER shall make all payments under this Agreement to Apexia provided that Apexia is not in default ("Default") of an assignment agreement with a Financing Partner for all or part of the payments under this Agreement. In the event of a Default, the Financing Partner may notify CUSTOMER of the Default and direct CUSTOMER in writing to remit the payments under this Agreement directly to such Financing Partner. Upon receipt of and in accordance with such notice and direction, CUSTOMER agrees to make the payments under this Agreement directly to the Financing Partner. The CUSTOMER will be required to sign an acknowledgement with respect to their concurrence with said assignment and direction to make such payments directly to the assignee in the event of a default by Apexia.

19. Survival

All terms and conditions of this Agreement, which by their nature extend beyond the terms hereof or which are required to ensure that Apexia and CUSTOMER fully exercise their rights and perform their obligations hereunder, shall survive the completion or earlier termination of this Agreement.

20. Enurement

This Agreement shall enure to the benefit of and be binding upon Apexia and CUSTOMER and their respective successors and permitted assigns.

21. Entire Agreement

The terms and conditions set forth in this Agreement constitute the full and final expression of the sale of the Services to the CUSTOMER by Apexia. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all proposals and prior discussions and writings between the parties with respect thereto.

22. Modification

Apexia reserves the right to modify this agreement from time to time. CUSTOMER agrees to review the Terms and Conditions periodically to ensure CUSTOMER is apprised of the terms of service contained within the Terms and Conditions.

23. Relationship

The relationship of Apexia to the CUSTOMER will be that of an independent contractor, and neither Apexia nor any employee of Apexia will be deemed to be an agent or employee of the CUSTOMER.

24. Confidentiality

The receiving party agrees that it shall not use the Confidential Information of the disclosing party other than as required for the performance of this Agreement, and shall take all reasonable security measures to protect against unauthorized access, such measures to be of the same standard of care as the receiving party uses for its own Confidential Information and in any event no less than a commercially reasonable standard of care. Upon request, the receiving party shall return all tangible material concerning the Confidential Information of the disclosing party.