

Fastnet Terms of Service and Service Agreement

1. **General:** The laws of the Province of Manitoba shall govern This Agreement. It may not be modified except by in writing signed by both parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any of the other provisions, nor shall such waiver constitute a continuing waiver. This Agreement may not be assigned by the Customer without the written consent of Fastnet Communications

Any provision of this Agreement, which is deemed to be unenforceable, shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this Agreement.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

2. **Term of Contract and Renewal:** The initial term of this contract is non-cancelable. This agreement shall become effective on the date the service noted on Page 1, Service Start Date and shall remain in effect for the minimum period specified in the Agreement. Once the initial term (or subsequent renewal) has expired, the Customer will have the following available options:
 - Provide thirty (30) calendar days written notification of the Customer's intention to terminate services, in which case Fastnet Communications will disable the service in accordance with the "Service Until" date indicated by the Customer in their notification.
 - Continue to use the Service after the initial (or renewal) term expiry, in which case the Customer will have thirty (30) calendar days to select a new service plan, the details of which will be provided upon request of the Customer. Upon the thirty-first calendar day following expiry of the initial (or subsequent renewal) term, if no Renewal Term Agreement is made, the original terms of the agreement will automatically renew for the original term as specified in this Agreement, as modified by subsequent renewals. The Customer, by not indicating an alternative plan will deem their acceptance of the renewal term.
3. **Termination:** Upon termination of the Services Fastnet Communications will remove the Equipment from the Premises. Notwithstanding other sections of this agreement, this agreement shall terminate automatically if the Customer commits any act of bankruptcy within the meaning of the Bankruptcy 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. The Customer shall remain obligated to pay for the Services to date of termination.
4. **Early Termination:** The Customer agrees that if the Customer chooses to terminate the initial contract prior to the expiration of the initial term, Fastnet Communications has the right, in addition to all other amounts due pursuant to these Terms of Service, as liquidated damages and not as penalty, to receive from the Customer an aggregate amount determined by multiplying the number of full months remaining in the non-cancelable initial term, by the monthly Fees service and rental Fees as specified on the signed Service Agreement.
5. **Assignment/Change of Ownership:** Under a change of Ownership of the Property, as part of that change, the Property Owner shall transfer this Agreement to the new Owners. This Agreement shall remain in effect with the new Owners. Under a change of ownership of the Operator, the Operator shall transfer this Agreement to the new Owners. This Agreement shall remain in effect with the new Owners. All infrastructure and equipment installed by the Operator under this Agreement shall remain the property of the Operator. This Agreement shall endure to the benefit and be binding upon both parties, their successors, assigns, heirs and personal representatives.
6. **The Service:** Upon acceptance of this Service Agreement, Fastnet Communications agrees to provide the Customer with the Services described herein, subject to the terms and conditions noted herein. The Services shall include the installation and maintenance at the Premises, at the address specified in the proposal, the premise equipment necessary to provide the Services.

The Customer acknowledges that the facilities used to provide the Service may change from time to time. The Customer understands that if there is a change in facilities, Fastnet Communications may be required to realign and/or relocate the Premise equipment at Fastnet's expense in order to continue to receive the Service.

Fastnet Communications cannot and does not guarantee privacy to users of the Service and therefore the Customer is advised against using the Service for the transmission of confidential information. The Service does

not include content filtering, firewall services, scanning of communications traffic for viruses, worms or trojans, or similar malicious content. The Customer is advised to implement appropriate security measures.

7. **Start Date:** Fastnet Communications will make its best effort to begin providing the Customer with the Services on the Starting Date specified in the Agreement, however, Fastnet Communications does not guarantee that the Service will commence on that date.

Payment: The Customer authorizes Fastnet Communications to charge the specified fees to the account specified at the time of purchase. Fastnet Communications is not responsible for any fees for overdrawn accounts, exceeding credit card limits, or similar expenses resulting from automatic billing.

Payments that are not honoured, for any reason, by the Customer's banking institution will be subject to a \$25.00 penalty, payable immediately upon notification to the Customer. Failure to pay the penalty shall be considered a breach of this contract.

Accounts are due on the first of each month for the forward month's service. Automatic billings will be made at the beginning of each month in advance. Accounts outstanding for more than 10 days are subject to reduction of service bandwidth. Accounts outstanding for more than 20 days are subject to disconnection. Upon disconnection, all Fastnet Communications equipment shall be immediately returned to Fastnet Communications at the Customer's expense. The Customer agrees to make payment of a \$50.00 re-connection charge for a reinstatement of service. Accounts outstanding for more than 30 days shall bear interest at an annual rate of 24%, which shall be calculated monthly. Delinquent accounts may be suspended or cancelled in our sole discretion. Service fees will continue to accrue until the account is cancelled. Fastnet Communications reserves the right to disconnect services and commence proceedings to recover its costs and its equipment without notice should an account be in arrears 60 days or longer.

Current payment options are:

- One cheque for full payment of installation charges and pre-payment for first month of service.
- One cheque for the installation charges and for the service charges for full term of the contract.
- Pre-authorized automatic bank account debit.
- For bulk rate services, monthly cheques paid prior to the beginning of the month.

8. **Installation Charges:** Installation charges are due prior to activation of the Service. The installation charges assume that right of way for services is readily accessible. Fastnet Communications will accept reasonable costs in completing the installation and providing continuing service. Any special charges, one time or ongoing that may be incurred for construction or space and facilities rental will be passed directly, at cost, to the Customer. Fastnet Communications will advise the client in writing prior to installation and commencement of service of the requirement and amount of the extra fees.

9. **Taxes:** All applicable taxes shall be added to the amounts payable.

10. **Access to the Premises:** The Customer shall provide Fastnet Communications access to the Premises as reasonably required from time to time for purposes of maintenance of the system. The Customer gives permission for Fastnet Communications to enter the Customer's property, and agrees to cooperate fully with Fastnet Communications, to remove the equipment upon termination of this Agreement. Fastnet Communications shall be provided with their own means to access their equipment. Possible means includes keys, key cards, access cards, alarm code or whatever means is necessary to access all equipment. Fastnet communication shall have 24 hour, 7 day a week access to it's equipment.

11. **Demarcation of Installation:** Fastnet Communications installation, and liability for that installation, will terminate at the demarcation point, defined as either the RJ-45 receptacle within a suite, POE adapter, or port on Fastnet Communications equipment unless otherwise agreed upon.

Where Fastnet Communications installs or modifies any equipment, wiring, ancillary devices, software computer hardware or computer software downstream of the demarcation point, such work shall be done only as a courtesy to the Customer and at the Customer's risk.

The Customer shall provide a 120VAC, 15A receptacle or equivalent, on backup power if available, in each equipment room to allow Fastnet Communications to provide service. Power to be provided by The Customer for Fastnet Communications equipment.

12. **Installation and Maintenance:** Fastnet Communications shall be responsible for the cost of installation and removal of the Premise Equipment as well as any required maintenance or repairs arising from normal wear and tear of the Premise Equipment. Removal of the Premise Equipment for reasons of Customer default will be at the expense of the Customer.
13. **Responsibility of the Customer for the Premise Equipment:** The Customer agrees to be completely responsible for the care of all Premise Equipment installed on the Premises by Fastnet Communications for the purpose of providing the Service. The Customer shall keep the equipment free of physical damage. The Customer shall be responsible for all losses or damages to the Equipment, which results from the negligence of the Customer or third parties (other than Fastnet Communications). Fastnet Communications may call upon the customer from time to time to conduct inspection and maintenance on the equipment.

The Customer will provide property insurance for the Premise Equipment naming Fastnet Communications as loss payee. The Customer will provide to Fastnet Communications evidence of such insurance upon request.
14. **Ownership of Premise Equipment:** All equipment provided by Fastnet Communications for the provision of high speed Internet service shall remain the property of Fastnet Communications.
15. **Warranty of Premise Equipment:** Fastnet Communications is renting the Premise Equipment to the Customer on an "as-is" basis. The Customer acknowledges that Fastnet Communications does not manufacture the Premise Equipment. Fastnet Communications makes no warranties, express or implied, including warranties of merchantability or fitness for a particular purpose in connection with this Agreement and with the Equipment. Fastnet Communications will repair or replace, at our discretion, and at our expense, any Equipment, which malfunctions under conditions of normal usage.
16. **On-Site Service Calls:** Customer calls for on-site service by a technician shall be subject to a charge of \$75.00 per hour, including travel time, and a vehicle charge of \$0.50 per kilometer. These charges will be waived if the reason for the call proves, in the sole discretion of Fastnet Communications, to be a fault with the Premise Equipment, upstream of the demarcation point.
17. **Limitation of Liability:** Fastnet Communications makes no representations or warranties regarding the Services. Fastnet Communications shall not be liable to the Customer or any other person or party for damages, loss or personal injury resulting directly or indirectly from the use of the service including, without limitation, malfunctions or complete breakdowns of the Services, installation, use and removal except as (a) results from negligence or willful misconduct on that part of Fastnet Communications, its employees and agents.

Fastnet Communications shall not be liable to the Customer for any loss, cost, expense or damage of any kind caused directly or indirectly by the Equipment or the use, operation, ownership or maintenance of the Equipment or for any loss of business or damages whatsoever or however caused. Fastnet Communications shall have no liability whatsoever for any claims, losses, actions, damages, suits, or proceedings resulting from: others accessing the Customer's computer; security breaches; eavesdropping; denial of service attacks; interception of traffic sent or received using the service or similar acts of mischief perpetrated by persons known or unknown.

The service is provided on an "as is" and "as available" basis. Fastnet Communications does not warrant that the Service will be uninterrupted, error-free, free of viruses or other harmful components. Fastnet Communications does not warrant that any data or files sent by or to the Customer will be transmitted in uncorrupted form or within a reasonable period of time. The entire risk as to the quality and performance of the service rests with the Customer. Fastnet Communications makes no express or implied warranties including, but not limited to, warranties of title, non-infringement, merchantability, and fitness for a particular purpose regarding the service or any merchandise, information or service provided through the service or the internet generally.

No advice or information given by any Fastnet Communications representatives shall create a warranty. Fastnet Communications, its employees and agents are not liable for any costs or damages arising directly or indirectly from the Customer's use of the service or the internet including any indirect, incidental, exemplary, multiple, special, punitive, or consequential damages.

The Customer assumes complete risk and responsibility for reliance on or use of the equipment or services, or the mistakes, omission, interruptions, deletion of files, errors, defects, delays in operation, transmissions, or any failure of performance of the equipment or services. The Customer assumes complete risk and responsibility the use of the equipment or services by the Customer, or by a third party, that infringes the copyright, patent, trademark, trade secret, confidentiality, privacy, or other industrial or intellectual property rights, proprietary rights or contractual rights of any third party; and the use of the equipment or services by the Customer or a third party that infringes defamation, passing off, unfair competition, or obscenity laws including any communication transmitted in Canada that is "obscene" as defined by the Canadian Criminal Code.

The Customer agrees to hold Fastnet Communications harmless against any and all claims originating from the Customer's use of the equipment or services provided to the Customer by Fastnet Communications.

18. **Usage Guidelines and Prohibited Activities:** If it is determined that the Customer is in violation of our Acceptable Usage Guidelines, the Customer will be reported to the appropriate local, provincial and federal authorities. Abuse of Internet access and e-mail account services is considered a violation of our usage Guidelines and Terms of Service The Customer agrees to not engage in prohibited activities such as, but not limited to, those listed below:

- Commercial e-mail: Defined as sending unsolicited commercial e-mails. The Customer is not permitted to use the Fastnet Communications service or e-mail alias/account to send unsolicited commercial. Using an e-mail address hosted anywhere on Fastnet Communications' service to collect responses from unsolicited commercial e-mail is prohibited.
- Mail bombing: Defined as sending large volumes of unsolicited e-mails.
- Harassment: Defined as sending threatening or harassing e-mail after being requested to stop.
- Fraud: Defined as incorporating a false subject line, false return address or false transmission path into any e-mail sent.
- Engage in any activity that compromises or threatens the ability of Fastnet Communications to provide the Service in a reasonable and efficient manner.
- Running servers for mail, http, ftp, irc, and multi-user interactive forums,
- Providing Internet access to others through a dial-up connection, multi-user interactive forums, or any other means.
- Use the Service for commercial purposes unless otherwise agreed to in writing by Fastnet Communications, resell, share or otherwise distribute the Service or any portion thereof to any third party; or provide network services to others via the Service;
- Improperly restrict, inhibit, or degrade any other member's use of the Service, or restrict, inhibit, disrupt, degrade or impede the ability of Fastnet Communications to deliver the Service and monitor its delivery of the Service;
- Install automated search and retrieve programs or similar automated and manual routines, which generate excessive amounts of net traffic
- Violating any system or network security measures including but not limited to engaging in unauthorized access or use of Fastnet Communications or a third party's network, data or information.
- Monitoring data, systems or network traffic of Fastnet Communications or any third party's
- Interfering with the provision of service to any user, host or network by any means including without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks.
- Forging any TCP-IP packet header or any part of the header information in an e-mail or newsgroup posting.
- Using the Service in breach of any local, provincial, or federal privacy laws.
- Using the Service in the breaching any local, provincial, or federal statute, law, by-law or regulation.
- Engage in any other activity which is in violation of law, or threatens the integrity of any computer system, or violates generally accepted standards of Internet conduct and usage, including but not limited to denial of service attacks, web page defacement, port and network scanning and unauthorized system penetrations.

19. **No Resale or Redistribution of the Service:** Re-sale or redistribution of the Service in any form to a third party is prohibited unless agreed to in writing by Fastnet Communications. The Customer agrees to not distribute the Service to any third party by any means. The Customer shall keep and use the Equipment only at the location shown on the Service Agreement and agrees that the Equipment cannot be moved without advance written permission from Fastnet Communications.

20. **Fair Access Policy:** To ensure fair access for all Fastnet Communications customers, Fastnet Communications reserves the right to implement a fair access policy. Fair access establishes an equitable balance in Internet access across all broadband services for all Fastnet Communications customers regardless of their frequency of use or volume of traffic. To ensure this equity, customers may experience temporary bandwidth limitations. Fastnet Communications Internet access is not guaranteed.

This policy applies to all service plans. Fastnet Communications has information that approximately 5% of subscribers are responsible for a disproportionate share of the total Fastnet Communications service traffic. To ensure that all Fastnet Communications Customers have fair and equitable access to the benefits of the Service, Fastnet Communications has enacted a Fair Access Policy (FAP) to minimize abusive consumption of bandwidth. Based on an analysis of usage data, Fastnet Communications has established a download data usage threshold. When a Customer exhibits patterns of system usage, which exceed that threshold for an extended period of time, the FAP may temporarily limit that subscriber's bandwidth to ensure the integrity of the system for all Customers.