

1 CUSTOMER name  
Utilities Kingston

2  
3 **Metropolitan Area Network (MAN) Service Level Agreement**

4 B E T W E E N:

5 **CUSTOMER ("xxx")**

6 - and -

7 **1425445 Ontario Ltd**

8 This agreement made in duplicate this date

9 Party xxx ) Contract No. xxxxxx  
 )  
10 Hereinafter called the ) Contract for Metropolitan Area  
 ) Network Services  
11 "**CUSTOMER**" )  
 )  
12 and )  
 )  
13 "**1425445 Ontario Ltd**", )  
 )  
14 Herein after called the

15 "**UTILITIES KINGSTON**"

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16  
17 Upon execution of this Agreement by both parties, UTILITIES KINGSTON agrees  
18 to provide and the CUSTOMER agrees to purchase certain products and services  
19 on the following terms and conditions:

20 **1 SCOPE**

21 UTILITIES KINGSTON shall furnish to the CUSTOMER certain network services  
22 (the "Services") in accordance with the details and specifications marked as  
23 Schedule "A", attached and forming part of this Agreement, and other  
24 Schedules which may be attached hereto from time to time. These Schedules  
25 may include additional terms and conditions applicable to the Services

1 contained therein. The schedules must be approved by both parties before  
2 being attached and included as part of the contract.

## 3 **2 TERM**

4 This Agreement shall be effective for a term of three (3) years commencing on  
5 the \_\_\_\_ day of \_\_\_\_\_, 199\_ and shall continue in effect until the  
6 \_\_\_\_ day of \_\_\_\_\_, 200\_, unless otherwise terminated as provided herein or  
7 unless otherwise specified in any Schedule to this Agreement.  
8

## 9 **3 PRICE**

10 Subject to the provisions contained in the service contract section of this  
11 Agreement, the total price for UTILITIES KINGSTON's Services shall be  
12 specified in the applicable Schedule. The CUSTOMER'S price will reflect the  
13 lowest available long distance rates available to UTILITIES KINGSTON. If long  
14 distance rates charged to UTILITIES KINGSTON change, the pricing agreement  
15 between UTILITIES KINGSTON and the CUSTOMER, where it includes long distance  
16 charges, and which is attached to this agreement, will be amended  
17 accordingly, at the earliest opportunity for UTILITIES KINGSTON.  
18

## 19 **4 INVOICING**

20 The CUSTOMER shall be invoiced monthly in advance for all Services provided  
21 under this Agreement. All invoiced amounts shall be due and payable upon  
22 receipt. Payment within in 5 business days will earn a 2% discount on net  
23 invoiced amount. In the event the non-payment of an invoice, within ninety  
24 (90) days after invoice date, UTILITIES KINGSTON may, in addition to all  
25 other rights and remedies under this contract and in law, suspend any or all  
Services and terminate this Agreement with a 48 hours prior notice, in

1 writing, to the CUSTOMER. All services shall be restored to the CUSTOMER  
2 upon payment in full to UTILITIES KINGSTON of all payments in arrears. If  
3 UTILITIES KINGSTON is required to bring legal action for the recovery of any  
4 amounts due hereunder, the CUSTOMER agrees to be responsible for the payment  
5 of reasonable legal fees and costs incurred by UTILITIES KINGSTON. The right  
6 of cancellation shall be in addition to any other rights or remedies  
7 UTILITIES KINGSTON may have in law or equity.

## 8 **5 MIGRATION**

9 Upon the written agreement of UTILITIES KINGSTON and the CUSTOMER, the  
10 CUSTOMER may be permitted to terminate this Agreement or any of the Schedules  
11 attached hereto before the end of the applicable term provided that the  
12 CUSTOMER migrates to any other network Service offered by UTILITIES KINGSTON  
13 which has a dollar value equal to or greater than the remaining value of the  
14 Agreement or Schedule being terminated. If costs from Interexchange Carriers  
15 are reduced to UTILITIES KINGSTON, those savings will be passed through to  
16 the CUSTOMER and the CUSTOMER will be notified in writing.

## 18 **6 LIMITED LIABILITY**

19 The CUSTOMER agrees that UTILITIES KINGSTON shall not be responsible or  
20 liable to the CUSTOMER, to anyone claiming through the CUSTOMER or to any  
21 third party for any loss, cost (including lawyers and court costs), damage,  
22 injury, liability, claim, penalty, fine, interest, or any course of action  
23 whatsoever with respect to any damages of any kind which may arise as a  
24 result of the CUSTOMER's access to the Metropolitan Area Network. The  
25 CUSTOMER further agrees to indemnify and hold UTILITIES KINGSTON and its

1 officers, managers, employees, agents, and representatives harmless from and  
2 against any loss, cost (including lawyers and court costs), damage, injury,  
3 liability, claim, penalty, fine, interest, or any course of action whatsoever  
4 resulting howsoever from the breach of this license or from any act or  
5 omission whatsoever by the CUSTOMER, its officers, managers, employees,  
6 agents, and representatives.

7 Except with respect to liability for damages arising from death, bodily  
8 injury, or damage to tangible property caused by UTILITIES KINGSTON's  
9 negligence, the liability of UTILITIES KINGSTON for claims arising from the  
10 furnishing of Services or equipment pursuant to this Agreement or from the  
11 interruption or loss of use thereof, shall be limited to, and CUSTOMER's  
12 exclusive remedies shall be: (i) the correction of errors of which UTILITIES  
13 KINGSTON has received written notice and proof within thirty (30) days of  
14 occurrence; or (ii) where such correction is not practicable, CUSTOMER shall  
15 be entitled only to an equitable credit not to exceed the charges invoiced to  
16 CUSTOMER for that portion of Service which produced the erroneous result.  
17 UTILITIES KINGSTON, its servants, agents or employees shall in no event be  
18 liable for any failure or delay in performance hereunder if such failure is  
19 due, in whole or in part, to any cause beyond its control. In no event shall  
20 UTILITIES KINGSTON be liable for any indirect, special, incidental or  
21 consequential damages in connection with or arising out of the performance of  
22 this Agreement howsoever caused including, without limitation of the  
23 foregoing, any business or economic loss whatsoever even if UTILITIES  
24 KINGSTON has been advised of the possibility.

1 **7 ADDITIONAL WORK**

2 Should UTILITIES KINGSTON incur any additional costs or expenses in the  
3 execution of its work pursuant to this agreement, which additional costs or  
4 expenses arise or result from any errors, omissions, defects or other  
5 problems contained in the information, materials and/or instructions provided  
6 to it by the CUSTOMER, UTILITIES KINGSTON shall be fully paid for said  
7 additional costs and expenses by the CUSTOMER within thirty (30) days of the  
8 CUSTOMER'S receipt of UTILITIES KINGSTON'S invoice for same.

9  
10 **8 ACCESS**

11 UTILITIES KINGSTON will provide access to the Metropolitan Area Network  
12 service via single mode fibre, connected at a point of demarcation usually at  
13 a termination panel located in proximity to the UTILITIES KINGSTON Hydro  
14 metering equipment and/or electrical entrance equipment. Extension single  
15 mode fibre to the computer room is an additional cost to the customer based  
16 on distance and conduit accessibility.

17 The network excludes CUSTOMER premise equipment, and does not include  
18 destinations beyond UTILITIES KINGSTON's jurisdiction. Within reason,  
19 UTILITIES KINGSTON will perform basic diagnostic checks to isolate problems  
20 to CUSTOMER premise equipment.

21 **9 SERVICE LEVELS**

22  
23 **9.1 Performance**

24 Performance is a measure of the quality of the service during the time that  
25 the facility is available for use. The parameter is established by counting

1 the number of errored seconds (ES) that occur within a given measurement  
2 period. This measurement period is 24 hours.

3 The performance objective for this service is to be equal to or greater than  
4 97.8% Error Free Seconds (EFS) or no more than 1900 errors in a 24 hour  
5 period.

## 6 7 **9.2 Network Availability**

8 Availability is a measure of the time during which the service is available  
9 for use. It is a complement of outage where availability equals total time  
10 minus outage time. Outage time begins when the customer releases a faulty  
11 circuit to UTILITIES KINGSTON for repair and ends when the circuit is  
12 returned to the customer for service.

13 Outages due to scheduled routine maintenance procedures shall not be  
14 considered in the availability objective calculation. The availability  
15 objective also does not include transient service degradation of short  
16 duration, which are cleared before any repair action can be taken. These  
17 short outages are accounted for in the performance objectives above.

18 For this service, the availability objective is 99.7% averaged over a period  
19 of 12 consecutive months, i.e., the total outage time in a 365-day period  
20 shall not be greater than 26.28 hours.

## 21 22 **9.3 ATM Overhead**

23 This service is provided with a clock speed of up to 155Mbps sustained ATM  
24 cell rate. There is overhead associated with the ATM transports used in this  
25

1 service which will reduce the effective burst and sustained throughput  
2 available for usable customer data.

### 3 **9.4 Mean Time to Repair (MTTR)**

4 The Mean Time To Repair objective will be less than 4 hours.  
5

## 6 **10 TERMINATION OF SERVICE**

7 Unless otherwise advised in writing, this Service Level Agreement will  
8 automatically be renewed at the end of the initial term. If it is the  
9 CUSTOMER's intention to terminate the Service Level Agreement at the end of  
10 the three-year term, or any renewal term thereof, the CUSTOMER shall provide  
11 UTILITIES KINGSTON with at least 60 days prior notice in writing.

12 If there is an increase change in pricing, UTILITIES KINGSTON will send a  
13 renewal notice 90 days prior to the termination of the attached License  
14 Agreement, reflecting the pricing changes.  
15

## 16 **11 NETWORK MANAGEMENT SERVICE**

17 The following Network management functions shall be performed by UTILITIES  
18 KINGSTON or its agents on a 7 day per week, 24 hour a day basis:

- 19 a) Network Surveillance;
- 20 b) Help Desk;
- 21 c) Fault Management.

22 The following Network Management functions will be performed during UTILITIES  
23 KINGSTON normal business hours, 08:00 to 17:00 EST Monday through Friday:

- 24 d) Management of Moves, Adds and Changes;
- 25 e) Name and Address Management.

1 **12 CUSTOMER OBLIGATIONS**

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

- 3 i) Be responsible to provide first line support personnel who will be the  
4 interface between UTILITIES KINGSTON and the CUSTOMER for all services  
5 performed as part of the Agreement;
- 6 ii) Notify UTILITIES KINGSTON of the CUSTOMER due date for moves, adds and  
7 changes and such moves, adds and changes must be with UTILITIES KINGSTON'S  
8 prior consent;
- 9 iii) Provide UTILITIES KINGSTON with access and enable passwords.
- 10

11 **13 COMPLIANCE WITH LAWS**

12 The CUSTOMER agrees to comply with all federal, provincial, and municipal  
13 laws while using the products and services provided by UTILITIES KINGSTON  
14 pursuant to this agreement. And further, without limiting the generality of  
15 the foregoing the CUSTOMER agrees not to upload or download any illegal  
16 material.

17 **14 CONFIDENTIALITY**

18 The CUSTOMER Agrees that the terms and provisions of this Service Level  
19 Agreement shall remain strictly confidential and may not be disclosed to any  
20 third party without the express written consent of UTILITIES KINGSTON, which  
21 consent may be withheld at UTILITIES KINGSTON's sole discretion.

22

23 **15 SERVICE CONNECTION**

24 The service connection time, is approximately 4 to 6 weeks from the date of  
25 signing this contract. UTILITIES KINGSTON will advise in writing as to the  
scheduled date of completion.

1 **16 SUPPLEMENTARY SERVICES**

2 UTILITIES KINGSTON offers Supplementary Services over and above services  
3 associated with this document, e.g. Internet access. The charges applicable  
4 will be at prevailing prices, terms and conditions and made under separate  
5 agreement.

6  
7 **17 ENTIRE AGREEMENT**

8 This Agreement constitutes the entire agreement between the CUSTOMER and  
9 UTILITIES KINGSTON with respect to the subject matter, superseding all prior  
10 agreements, understandings and representations and shall be construed and  
11 governed by the laws of the Province of Ontario. It is expressly agreed that  
12 if the CUSTOMER issues a Purchase Order or other document for the Services  
13 provided under this Agreement, such instrument will be deemed for the  
14 CUSTOMER's internal use only, and any provisions contained therein shall have  
15 no effect whatsoever upon this Agreement.

16 IN WITNESS WHEREOF the parties hereto have caused this Agreement to be  
17 executed on the day and year first above written.

18 Dated this 27 September 2001

19 CUSTOMER Name

UTILITIES KINGSTON

20  
21 Per:

Per:

22  
23 \_\_\_\_\_

\_\_\_\_\_

24 Signature:

Signature:

25  
\_\_\_\_\_

\_\_\_\_\_

1 Print Name and Title:

Print Name and Title:

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4 Date:

Date:

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## **18 Attachments**

### **18.1 Schedule A**

UTILITIES KINGSTON Metropolitan Area Network (MAN) Fibre Optic Pricing Agreement.

**Insert pricing agreement here**

The term of this agreement shall be for a period of \_\_\_\_\_,  
commencing \_\_\_\_\_ and terminating on or about \_\_\_\_\_.

### **18.2 Schedule B**

Letter of Intent