



"Accepting the Challenge"

Finance Committee Minutes

Tuesday, September 7, 2010 – 1:00 p.m.
Board Room, Administration Office

Present: G. Buri (Chairperson), R. Coey, L. Ross (alternate), Dr. D. Michaels
(exited at 1:30 p.m.), G. Barnes, K. Zabowski.

Guest: B. Ewasiuk, Director of MIST.

1. ELECTIONS

The Committee agreed Trustee Buri would serve as Chairperson of the Committee for the remainder of the term.

2. CALL TO ORDER:

The Finance Committee Meeting was called to order at 1:00 p.m. by Committee Chairperson, Mr. Buri.

3. APPROVAL OF AGENDA

The Finance Committee Agenda was approved as circulated.

4. COMMITTEE GOVERNANCE GOAL ITEMS

NIL

5. OTHER COMMITTEE GOVERNANCE GOAL ITEMS

A) WCG Connectivity Agreement

The Secretary-Treasurer provided the history and background information relating to the proposed WCG Connectivity Agreement. He reviewed the various phases, timelines and the payment plan involved with respect to installation of connectivity as outlined in the proposed agreement. He noted that WCG would be limited as to what could be done this late in the calendar year and that much of the work will have to wait until spring. Mr. Ewasiuk, Director of MIST spoke to the network services provided in the agreement, including the potential for growth that has been built into the proposal and the redundancy that has also be built into the system. Mr. Barnes, Secretary-Treasurer, noted the system proposed would be an unmanaged system and explained to the Committee what maintenance the Division would be responsible for and what maintenance would be WCG's responsibility. Trustees asked questions for clarification regarding responsibility and costs as noted in the agreement. The Committee agreed to recommend approval of the proposed agreement to the Board of Trustees. (Attached Appendix "A" & "B").

Recommendation:

That the Connectivity Agreement between Westman Communications Group and the Brandon School Division for the Division wide connectivity project be approved; and that the Chairperson and Secretary-Treasurer be authorized to sign the agreement.

5. **OPERATIONS INFORMATION**

NIL

6. **NEXT REGULAR MEETING: Monday, September 20, 2010, 10:00 a.m., Board Room.**

The meeting adjourned at 1:35 p.m.

Respectfully submitted,

G. Buri, Chair

R. Coey

L. Ross (alternate)

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (MSA) is made between:

Westman Media Cooperative Ltd., carrying on business under the firm name and style of Westman Communications Group, a corporation duly incorporated under the laws of Manitoba, having its principal place of business at 1906 Park Avenue, Brandon MB R7B 0R9 ("Westman", "the Company")

and

Brandon School Division, a corporation duly incorporated under the laws of Manitoba having its principal place of business at 1031 - 6th Street ("the Customer");

WHEREAS the Company owns and operates telecommunications facilities and is a provider of a telecommunication services;

AND WHEREAS the Customer wishes to purchase telecommunication transmission services from the Company, and the Company wishes to provide such services to Customer in accordance with the terms and conditions of this Agreement;

NOW THEREFORE AND IN CONSIDERATION of the mutual promises and covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Composition of Agreement

1.1 This Agreement is composed of:

- (a) the document titled: "Master Services Agreement";**
- (b) Schedule A: General Terms of Service;**
- (c) Schedule B: Service Terms and Conditions;**
- (d) Schedule C: Service Order**
- (e) Schedule D: Operations Agreement**

1.2 The aforementioned documents are incorporated by reference into this document and make up the entire agreement (the "Agreement") between the Company and the Customer and replace any prior oral or written communications. Any modifications of this Agreement shall not be valid unless reduced to writing and agreed to by both parties.

2. Term of Agreement

- 2.1 This Agreement comes into effect when signed by both the Customer and the Company (the "Effective Date") and, unless terminated earlier, shall continue in full force and effect for a period of twenty (20) years after the Effective Date ("Initial Term"). After the expiration of the Initial Term, this Agreement will continue on a month-to-month basis (each month, a "Renewal Term") unless either party has provided the other party with written notice of its intention not to renew the Term of this Agreement not less than sixty (60) days prior to the expiration of the Initial Term or not less than thirty (30) days prior to the expiration of the then-current Renewal Term. The Initial Term together with any Renewal Terms shall be collectively referred to herein as the "Term".

3. Service Order Process

- 3.1 Customer may, unless otherwise set forth in the applicable Service Terms and Conditions, (from time to time and in its discretion) elect to purchase Services from the Company during the Term of this Agreement by delivering a completed service order ("Service Order") to the Company for approval and acceptance detailing: (a) the Services that the Customer wishes to purchase; (b) the Initial Service Term during which the Customer agrees to purchase the Services; (c) the charges payable for such Services; and (d) any other information and details relating to the provision of the Services, such as installation, service implementation intervals and personnel allocation requirements.
- 3.2 The acceptance of any Service Order issued under this Agreement is subject to both credit approval and availability of the Services in question at the time Customer places such Service Order.

4. Notices

- 4.1 All notices, consents or other communications provided for under this Agreement shall be in writing and shall be deemed to be sufficiently given if delivered by overnight courier, in which case the notice shall be deemed to have been received two (2) business days after the sending thereof, or if delivered by hand to a representative of such party, in which case the notice shall be deemed to have been received on the date of delivery thereof, or if sent by telecopier to such party, in which case the notice shall be deemed to have been received on the business day (in the locality of the addressee) following the sending thereof (so long as it is received or reproduced at the address of the recipient on paper). Until notice of change of address has been given in the manner provided in this section, notices shall be addressed as follows:

- (a) If to the Company, at:

Westman Communications Group
1906 Park Avenue
Brandon, Manitoba R7B 0R9

Attention: Chief Technology Officer
Fax: 204-726-0853

(b) if to Customer, at:
BRANDON SCHOOL DIVISION
1031 6th Street
Brandon, Manitoba R7A 4K5

Attention: Secretary-Treasurer
Tel: 204-729-3100
Fax: 204-727-2217

5.0 Execution of Agreement

Each of the parties has caused this Agreement to be signed by their respective authorized representatives.

Westman Communications Group

Brandon School Division

Per: _____

Name: David Baxter

Title: President and CEO

Date: _____

Per: _____

Name: G. Buri

Title: Chairperson

Date: _____

Per: _____

Name: G.F. Barnes

Title: Secretary-Treasurer

Date: _____

General Terms of Service

1. Definitions

In this Agreement:

- 1.1 "Affiliate" shall have the meaning ascribed to such term as defined in section 2 of the Canada Business Corporations Act, R.S., 1985, c. C-44, as amended.
- 1.2 "Agreement" has the meaning set forth in section 1.2 of the document titled the "Master Services Agreement".
- 1.3 "Customer Equipment" shall mean any equipment, hardware, software, systems, cabling and facilities provided by Customer (or provided by any third party to the Customer) and used in conjunction with the Service Facilities in order to obtain the Service.
- 1.4 "Customer Site" shall mean any Customer or End User facility or site specified in the Service Terms and Conditions or in a Service Order, to or at which Service is to be provided.
- 1.5 "Force Majeure" shall mean an event: (a) the cause of which is beyond the reasonable control of the party affected thereby and which could not reasonably have been foreseen and provided against, including, without limitation, acts of God, strikes, lock-outs or other labor or industrial disturbances, accidents, fires, explosions, weather conditions materially preventing or impairing work, inability to secure fuel, power, materials, contractors or labor, mechanical breakdown, failure of equipment or machinery, delays in transportation, wars, civil commotion, riot, sabotage, applicable legislation and regulations there under, interruptions by government or court orders and future orders (lawful or otherwise) of any regulatory body of competent jurisdiction but shall not include financial difficulty; and (b) which could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans or other means or which, by the exercise of reasonable efforts such party is unable to overcome.
- 1.6 "Initial Service Term" shall mean the initial period of time during which Customer agrees to purchase a Service.
- 1.7 "Renewal Term" has the meaning ascribed to such term in Section 2.1 of the Master Services Agreement.
- 1.8 "Services" shall mean the telecommunication services described in Schedule "B".
- 1.9 "Service Facilities" shall mean the equipment, hardware, software, systems, cabling and facilities used by Westman to provide the Services to the Customer.
- 1.10 "Service Levels" shall mean, for each Service, the service levels, if any, set forth in the applicable Service Terms and Conditions attached hereto.

- 1.11 "Service Level Objectives" shall mean, for each Service, the service level objectives, if any, set forth in the applicable Service Terms and Conditions attached hereto as Schedule B.
- 1.12 "Service Term" shall mean the Initial Service Term during which a given Service is to be provided by Westman to Customer and any Renewal Terms or monthly extensions to the Initial Service Term or any Renewal Term.
- 1.13 "Service Terms and Conditions" shall mean the service specific terms and conditions set forth in Schedule "B" upon which (in addition to the General Terms of Service set forth herein) Westman is willing to provide a specific Service to the Customer.
- 1.14 "Tax" or "Taxes" shall mean any and all sales tax, goods and services tax, value-added tax, or other similar tax now or in future charged to or against the Customer with respect to the supply of the service provided under this Agreement.

2. Services

- 2.1 Westman will provide the Customer with the Services specified herein or in each Service Order in accordance with the terms and conditions of this Agreement. The Customer acknowledges and agrees that the Services shall be offered and provided by Westman subject to: (a) compliance with all applicable laws and regulations; (b) obtaining any domestic or foreign approvals and authorizations required or advisable; (c) creditworthiness of Customer; and (d) availability of the Services or required facilities in any jurisdiction, location or country. Customer acknowledges and agrees that Westman may elect not to offer the Services in or to any particular jurisdiction, location or country. Further, the availability of the associated charges or pricing as set forth herein is subject to availability of required facilities.
- 2.2 Customer acknowledges that some of the Services referred to herein may be provided by an Affiliate of Westman, as identified in the Service Terms and Conditions and, in such case, this Agreement shall be read as though such Affiliate were a party to this Agreement in the place and stead of Westman, such that all of the benefits and obligations of Westman pursuant to this Agreement, as they relate to Services provided by such Affiliate, shall instead be the benefits and obligations of such Affiliate, provided that such Affiliate agrees to adopt, comply with and be bound by the terms of this Agreement as if such Agreement were made between such Affiliate and Customer. For greater certainty, Westman represents and warrants to the Customer, for the purposes of this section 2.2, that it has the authority to act as agent on behalf of its Affiliates who provide Services referred to herein and to execute and deliver this Agreement as agent on behalf of such Affiliates.
- 2.3 These General Terms of Service apply to all Services provided by Westman to Customer pursuant to this Agreement.
- 2.4 Where a Service Order contains supplementary terms and conditions which have been approved by the parties, such Service Order terms and conditions shall apply only to those Services to which the Service Order relates and shall be deemed to be supplemental to these General Terms of Service.

- 2.5 The Customer does not have the right to resell the Services or otherwise provide the Services to any third party, unless Westman provides permission in writing.
- 2.6 Title to, ownership of, and all intellectual property rights, in any facilities, equipment, software, systems, processes and documentation used to provide the Services to the Customer, including without limitation, the Service Facilities, shall be and remain with Westman, or its suppliers and licensors. Unless expressly stated herein, this Agreement does not grant to the Customer any intellectual property or other rights or licenses in or to any such facilities, equipment, software, systems, processes or documentation or Service Facilities.
- 2.7 Westman shall use commercially reasonable efforts to provide the Services in accordance with applicable Service Level Objectives contained in the relevant Service Terms and Conditions Schedule, which Service Level Objectives outline the processes under which, in the ordinary course of business, the Services will be provisioned and administered to Customer. Failure to achieve Service Level Objectives shall not constitute a breach of this Agreement or any Service Order. In the event that Westman fails to achieve a Service Level Objective, Westman shall, upon request by the Customer, investigate the failure and advise the Customer what actions, if any, Westman will undertake to minimize such failure and advise the Customer what actions, if any, Westman will undertake to minimize such failures in the future.
- 2.8 Some Services may be provisioned in accordance with specified Service Levels or Service Level Objectives set forth in the Service Terms and Conditions. Westman shall not be responsible for any failure to achieve Service Levels or Service Level Objectives set forth in the Service Terms and Conditions:
- 2.8.1 caused or contributed to by any unlawful or improper use of any equipment, systems, cabling or facilities provided by Westman at any Customer Site or third party termination point to or at which Service is to be provided;
 - 2.8.2 caused or contributed to by an act or omission of Customer;
 - 2.8.3 caused or contributed to by the failure or non-performance of any service, equipment or facility provided by Customer, or a connecting third party carrier including, without limitation, Customer Equipment;
 - 2.8.4 during periods of scheduled maintenance or repair by Westman which is carried out by Westman in accordance with the terms and conditions of this Agreement;
 - 2.8.5 during any period in which Westman or its authorized agent or representative is not given access to a Customer Site, Interconnection Point or third party termination point, where such access is required in connection with the provision of Services; or
 - 2.8.6 resulting from any event of Force Majeure.

3. Term of Services

- 3.1 The Initial Service Term for each Service shall be specified in the Service Terms and Conditions or, where not specified in the Service Terms and Conditions, in the applicable Service Order and shall commence on the date the applicable Services have been installed and/or commenced by Westman. After the expiration of the Initial Service Term, the Services or Service Order will continue on a month-to-month basis during the Term of this Agreement unless terminated by either party upon thirty (30) days written notice to the other party. The Initial Service Term together with any renewal terms shall be collectively referred to herein as the "Service Term". For certainty, no such renewal shall occur subsequent to the expiration of the Term of this Agreement.
- 3.2 At the expiry of any Initial Service Term, Westman shall be entitled to change the charges for the Services provided under the applicable Service Terms and Conditions or Service Order, provided that it gives sixty (60) calendar days prior written notice of such change to Customer. Customer shall provide written acceptance of the change to the service charges or terminate the agreement within thirty (30) calendar days of receiving such notice from Westman.

4. Obligations of Westman and the Customer; Service Facilities

- 4.1 The Customer shall obtain and continue in effect all approvals, consents, licenses, waivers, registrations or other permissions necessary to use the Services and perform its obligations hereunder, and the Customer shall notify Westman in writing immediately of any termination, suspension or revocation of the same. In the event Customer fails to obtain or maintain the appropriate approvals, Westman shall not be liable for any delay or failure to provide Services.
- 4.2 The Customer shall comply with any restrictions on use of the Services in this Agreement, and with any use policies or instructions communicated in writing to the Customer by Westman, and the Customer shall not:
- 4.2.1 tamper with or change the Services or any Service Facilities other than as expressly authorized herein;
 - 4.2.2 abuse the Services or use them in a manner that interferes with any Service Facilities, Westman's network, or the use of Westman services by other persons, or in a manner that avoids the payment of any charges; or
 - 4.2.3 use the Services in violation of any law.
- 4.3 Customer shall be responsible for obtaining, installing, testing, operating and maintaining all Customer Equipment and communications services necessary for interconnection to any applicable Interconnection Point, or any service demarcation or third party termination point located at any Customer Site or otherwise, as set forth in an applicable Service Order ("Service Demarcation Point"), or otherwise for use in conjunction with any of the Services. Westman is not responsible for the installation, maintenance, compatibility or performance of any equipment or software not provided by or operated by or on behalf of Westman including, without limitation, the Customer Equipment. If any Customer Equipment is believed by Westman, acting reasonably, likely to cause hazard or service obstruction, the Customer shall use commercially

reasonable efforts to eliminate such likelihood at Westman's reasonable request. Subject to the terms and conditions of this Agreement, in no event will the untimely installation or non-operation of Customer Equipment relieve Customer of its obligation to pay charges for the Services after the installation or commencement of Services, provided that the Services themselves continue to function in accordance with this Agreement.

- 4.4 Westman shall be responsible for installing and maintaining the Service Facilities required to provide Services to any applicable Service Demarcation Point or Interconnection Point, as more particularly described or set forth in the Service Terms and Conditions or Service Order.
- 4.5 Westman shall, unless otherwise set forth in the Service Terms and Conditions or Service Order, be responsible for obtaining, at its sole cost and expense, all necessary licenses, permits, or other registrations as may be required to permit Westman to install and maintain any applicable Service Facilities to the legal boundary of each Customer Site to the Service Demarcation Point including, but not limited to, all required rights-of-way, permissions and/or third party consents.
- 4.6 The Customer shall, unless otherwise set forth in the Service Terms and Conditions or Service Order, be responsible for obtaining, at its sole cost and expense, all necessary licenses, permits, or other registrations as may be required to permit Westman to install and maintain any applicable Service Facilities from the legal boundary of each Customer Site to the Service Demarcation Point including, but not limited to, all required rights-of-way, permissions and/or third party consents. The Customer shall be responsible for satisfying all requirements imposed by a building's design or by building management as it applies to the installation of the Services or the Service Facilities, including the payment of any additional fees, conduit installation, design submissions, and installation approvals. The Customer shall, at its cost, prepare the Customer Site for the installation of the Services or any Service Facilities in accordance with Westman's reasonable instructions. The Customer shall notify Westman of any existing technical or other facilities including, but not limited to, water and gas which could be damaged during the installation of the Service Facilities. The Customer shall identify, monitor, remove, and dispose of any dangerous objects, hazardous materials and substances present at a Customer Site prior to any work being performed by Westman at such Customer Site. The Customer shall advise Westman in writing of all health and safety at work rules and regulations and any other reasonable security requirements applicable at each Customer Site. The Customer is responsible for any additional installation costs incurred by Westman as a result of the Customer's failure to comply with such instructions or the foregoing obligations. Changes in the environment or location of any Service Facilities at a Customer Site will require the prior written consent of Westman.
- 4.7 The Customer is responsible for the care and protection of (but not the support and maintenance of), and is liable to Westman for, all loss or damage, other than ordinary wear and tear, to any Service Facilities installed on a Customer Site. Any such Service Facilities are, and shall remain, the sole property of Westman or its suppliers or licensors. The Customer grants Westman access to each Customer Site to install and maintain the Services and Service Facilities. Westman shall not be responsible for any delays, interruptions in the Services, damages or costs that may result if Westman is unable to obtain access to a Customer Site.

5. Payment Terms

- 5.1 The Customer shall pay to Westman all charges specified herein and in each applicable Service Order and all applicable Taxes relating to the Services in accordance with the terms and conditions contained in this Agreement.
- 5.2 Unless otherwise stated herein or in a Service Order, all charges will be billed monthly upon installation of applicable Services. Where such charges include fees payable on a monthly basis, any partial months shall be invoiced on a prorated basis.
- 5.3 All charges stated on each monthly invoice are due and payable to Westman on the due date shown on the invoice or, if no due date is shown on the invoice, within thirty (30) days of receipt of invoice (the "Due Date") to the correspondence address for Westman, specified in this Agreement.
- 5.4 Interest on all charges or amounts overdue under this Agreement shall be paid at the simple interest rate shown on the invoice or, if no interest rate is shown on the invoice, at the simple interest rate of one and one half percent (1.5%) per month (eighteen percent (18%) per annum).
- 5.5 All Taxes shall be separately identified on each invoice and shall be paid by the Customer at the same time as all other charges set forth on the invoice. If the Customer believes that it should be exempt from the application and collection of certain Taxes, it shall provide Westman with an appropriately completed and legally valid Tax exemption certificate or other evidence that it is not subject to such Taxes. Westman shall not be required to issue any exemption, credit or refund of any Tax payment for usage prior to the Customer's submission of such acceptable Tax exemption evidence.
- 5.6 Westman reserves the right to validate the creditworthiness of the Customer through available verification procedures or sources and the Customer hereby consents to Westman obtaining credit information regarding the Customer. Prior to the provision of Services pursuant to a Service Order submitted by the Customer, Westman may impose a credit limit or demand reasonable assurance of payment from the Customer if it reasonably deems itself insecure with respect to the Customer's ability to pay applicable charges for such Services. Westman's assessment of the Customer's ability to pay applicable charges may be based on any of the following: (a) the Customer has repeatedly failed to pay any undisputed charges hereunder when due; (b) the Customer has a change of control which has not been consented to by Westman; or (c) if there is a material adverse change in the Customer's financial condition. Westman may refuse to accept Service Orders if the Customer fails to comply with these security obligations.
- 5.7 In the event that the Customer fails to make any payment of charges when due in accordance with the terms hereof, Westman shall be entitled in addition to any remedy which it might have under this Agreement or otherwise at law or in equity, in its sole discretion, to set off any charges owed by Customer to Westman hereunder against: (a) any cash deposit, letter of credit or other form of security provided to Westman hereunder; or (b) any payables or amounts owed by Westman to Customer.

6. Representations and warranties

6.1 Each party hereby represents and warrants to and covenants with the other party that:

6.1.1 it has the corporate power and authority to enter into this Agreement and to perform its obligations under this Agreement;

6.1.2 it has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement;

6.1.3 this Agreement constitutes a valid and binding obligation on it enforceable against it in accordance with its terms;

6.1.4 neither the execution nor the delivery of this Agreement by it, nor compliance with the terms, conditions and provisions thereof (i) conflicts with, or will conflict with, or results or will result in, any breach of, or constitute a default under any of the provisions of any material agreement or instrument to which it is a party, or (ii) will result in the contravention of any applicable law;

6.1.5 it is conducting its material business and operations in compliance with all applicable laws.

6.2 Westman represents and warrants to and covenants with the Customer that all Services provided hereunder shall be designed, produced, installed, furnished and in all respects provided and maintained in conformance and compliance with applicable federal, provincial and local laws, administrative and regulatory requirements and requirements of any other authorities having jurisdiction over the subject matter of this Agreement and it shall be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by such authorities. Westman further represents and warrants to and covenants with Customer that the Services: (a) shall comply with the terms and conditions of this Agreement and any accepted Service Orders and any applicable specifications set forth therein, as applicable; (b) shall conform to and be provisioned in accordance with the description of the Services set forth in this Agreement (including its Schedules); and (c) shall be performed by qualified personnel in a professional manner and in accordance with reasonably applicable industry standards.

6.3 The Customer represents and warrants to and covenants with Westman that it shall not use the Services for any illegal, fraudulent or unlawful purpose and that all Services resold by the Customer, subject to the permission of Westman, hereunder shall be resold in conformance and compliance with applicable federal, provincial and local laws, administrative and regulatory requirements and requirements of any other authorities having jurisdiction over the subject matter of this Agreement and it shall be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by such authorities directly related to the Customer's resale of Services to its End Users. Customer further represents and warrants to and covenants with Westman that it shall comply with any restrictions on use of the Services or applicable use policies set forth or referenced herein and Customer shall not authorize, assist or permit any use of the Services by its End Users or any third party which is illegal, fraudulent or unlawful under applicable law or which otherwise is not in compliance with the any restrictions on use of the Services or applicable use policies set forth or referenced herein. Further, the Customer will not, nor will it authorize, assist or permit its End Users or any third party to tamper with, alter or change the Services or

Service Facilities required to provide the Services, or otherwise abuse the Services in any manner that interferes with any Service Facilities, Westman's network or the use of Westman services by any other persons.

7. Indemnities

- 7.1 Westman shall indemnify, defend and hold harmless the Customer from and against any loss, damage, liability, claim, cost or expense (including reasonable legal fees and court costs) incurred or suffered by the Customer arising out of, based upon or attributable to any third party claims of infringement of any valid patent or copyright interests or trade secrets or intellectual property or other related rights related to the Services or the Service Facilities. Notwithstanding the foregoing, Westman shall be under no obligation to indemnify, defend or hold harmless the Customer to the extent that such infringement or third party claim arises out of or relates to: (a) modification of the Services or the Service Facilities, or any part thereof, by anyone other than Westman or its authorized agents; (b) use of the Services or the Service Facilities, or any part thereof, by the Customer, any End User or their respective employees, agents or contractors in combination with the Customer Equipment or any other devices, equipment, facilities, products, processes, systems or materials not provided by Westman that have not been expressly approved in writing by Westman; (c) use of the Services or Service Facilities in contravention of the terms and conditions of this Agreement; or (d) Internet information, data or other content accessed through the Services that is not provided by Westman.
- 7.2 With respect to any pending or threatened claim, suit or other demand as to which Westman is the indemnifying party pursuant to section 7.1, Westman may in its sole discretion and at its own expense obtain for the Customer the right to continue using the Services or alternatively replace or modify the Services or the Service Facilities so that they are functionally equivalent but non-infringing. If achievement of the foregoing is not commercially reasonable, Westman may terminate this Agreement without liability of either party to the other except for:
- a) The Customer's obligation to pay for Services delivered prior to termination; and
 - b) Westman's obligation to pay for Customer's reasonable transition costs to a maximum of \$10,000.00.
- 7.3 The Customer shall indemnify and hold harmless Westman from and against any loss, damage, liability, claim, cost or expense (including reasonable legal fees and court costs) incurred or suffered by Westman arising out of, based upon or attributable to any claims for damage to tangible property and/or personal injuries (including death) arising out of the negligence or willful act or omission of Customer.
- 7.4 Westman shall indemnify and hold harmless the Customer from and against any loss, damage, liability, claim, cost or expense (including reasonable legal fees and court costs) incurred or suffered by the Customer arising out of, based upon or attributable to any claims for damage to tangible property and/or personal injuries (including death) arising out of the negligence or willful act or omission of Westman.

- 7.5 Customer shall indemnify and hold harmless Westman from and against any loss, damage, liability, claim, cost or expense (including reasonable legal fees and court costs) incurred or suffered by Westman arising out of, based upon or attributable to any claims, demands, suits or actions which may be asserted by any third party against Westman, arising out of or relating in any way to the use of the Services by the Customer.
- 7.6 A party's obligations of indemnity ("Indemnifying Party") under this section 7 shall be subject to the following: (a) the Indemnifying Party shall give the indemnified party ("Indemnified Party") prompt written notice of any claim, action, suit or proceeding which is subject to indemnification under this section 7 upon becoming aware of same and shall not make any admissions in respect of such Claim; (b) the Indemnified Party shall take all steps reasonably requested by the Indemnifying Party, at the Indemnifying Party's expense, to mitigate any Claims; (c) the Indemnifying Party shall have the right to control and direct the defense of the Claim, at the Indemnifying Party's expense, but shall keep the Indemnified Party up to date with respect to the status of the Claim and the Indemnifying Party shall not settle, compromise or consent to the entry of any judgment in or otherwise seek to terminate such Claim unless the Indemnifying Party has given the Indemnified Party reasonable prior written notice thereof and such settlement, compromise, consent or termination includes a release of the Indemnified Party from any liabilities arising out of such Claim and does not require a payment by the Indemnified Party; (d) the Indemnifying Party will not permit any such settlement, compromise, consent or termination to include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of the Indemnified Party without the Indemnified Party's prior written consent, such consent not to be unreasonably withheld; and (e) the Indemnified Party shall fully cooperate (to the extent that such cooperation is reasonable), at the Indemnifying Party's expense, with the Indemnifying Party in such defense.
8. **Limitations of Liability**
- 8.1 EXCEPT FOR THE OBLIGATIONS OF INDEMNITY CONTAINED IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY DAMAGES FOR LOSS OF PROFITS OR BUSINESS, LOST REVENUE OR LOSS OF OR DAMAGE TO DATA OR FAILURE TO REALIZE EXPECTED SAVINGS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 8.2 EXCEPT FOR (1) THE OBLIGATIONS OF INDEMNITY CONTAINED IN THIS AGREEMENT, OR (II) BREACHES OF THE CONFIDENTIALITY PROVISIONS HEREOF, WESTMAN'S TOTAL LIABILITY TO THE CUSTOMER IN CONNECTION WITH THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO LIABILITY RELATED TO ANY PERFORMANCE OR FAILURE TO PERFORM HEREUNDER) WILL NOT EXCEED \$10,000.00.

9. Confidentiality and Privacy

- 9.1 For the purposes of this Agreement, "Confidential Information" shall mean the terms and conditions of this Agreement and any information that is either: (a) marked as confidential, or which is accompanied by written notice that such information is confidential, or (b) not marked or notified as confidential, but which, if disclosed to any third party, could reasonably and foreseeably cause competitive harm to the owner of such information. Such information may include, but is not limited to business information concerning a party and its clients or customers, specifications, research, software, trade secrets, discoveries, ideas, know-how, designs, drawings, flow charts, data, computer programs, marketing plans, customer names and other technical, financial or business information which is disclosed, whether orally, visually or in a material form, to a party by another party in support of the activities provided for in this Agreement. For greater certainty prices, rates, charges and costs of the Service is Confidential information. Any Confidential Information of third persons disclosed to a party by another party in the course of performing such activities shall be deemed to be the disclosing party's Confidential Information and such information shall be governed by the terms of this Agreement. Each party acknowledges that the Confidential Information disclosed by a party is and shall remain the property of the party that disclosed the Confidential Information.
- 9.2 The parties agree that they shall hold Confidential Information exchanged under this Agreement in confidence and shall use the same solely for the purpose of performing their obligations under this Agreement. The parties further agree that they shall not disclose any Confidential Information to anyone except those employees or contractors to whom such disclosure is necessary for the purposes authorized herein. In the event such Confidential Information must be disclosed by any party to third persons for the purpose of performing this Agreement, the disclosing party shall, prior to disclosure, obtain written consent from the party that disclosed the Confidential Information and obtain from the third person a written agreement regarding confidentiality of the Confidential Information, the terms of which shall be substantially the same as those contained herein. Notwithstanding the foregoing, a party may disclose Confidential Information to its professional advisors under a fiduciary obligation of confidentiality without the written consent of the disclosing party where, in the opinion of the receiving party, the advice of its professional advisors is necessary to accomplish the objectives of this Agreement. Each party shall use not less than the same degree of care to avoid disclosure of Confidential Information as it uses for its own confidential information of like importance and, in any event, shall use a reasonable degree of care.
- 9.3 Confidential Information shall not include information: (a) previously known to a party free of any obligation to keep it confidential; (b) that has been or is subsequently made public by a party that owns that information or by a third party who is under no obligation of confidence to any party; (c) that is independently developed by a party or an affiliate without reference to or knowledge of the other party's Confidential Information; or, (d) that is disclosed with the prior approval of the owner of the information. Any combination of Confidential Information regarding, for example, products or features of technology, shall not be deemed to be within the foregoing exception merely because individual portions of such combination are disclosed or separately known in the public domain or known by the receiving party.
- 9.4 If the Confidential Information is requested by a government agency, a party may disclose the Confidential Information of another, provided that the disclosing party has attempted to obtain, at the owners' cost, protective arrangements reasonably satisfactory to the owner; provided further that if the governmental

agency has jurisdiction to compel production of the Confidential Information and exercises that jurisdiction, the request shall be treated as a demand for discovery. Notwithstanding the foregoing, either party may reveal such Confidential Information as may be reasonably necessary to any regulatory authority having jurisdiction over it, or its Affiliates, for the purpose of analyzing the regulatory implications and constraints that may apply to the business relationship contemplated herein and in order to obtain such regulatory approvals as may be required, provided that, to the extent reasonably possible, such Confidential Information does not identify Customer specifically. If a party is involved in court proceedings and is subject to a legally enforceable demand for discovery of Confidential Information, that party shall give written notice to the owner of the Confidential Information prior to disclosing the Confidential Information, and shall cooperate in seeking such reasonable protective arrangements as may be requested by the owner. Nothing in this clause shall affect the right of any party to take such action, as it may deem advisable, including legal action, to protect its Confidential Information.

- 9.5 Each party acknowledges and agrees that any use or disclosure of Confidential Information of the other party in a manner inconsistent with the provisions of this Agreement may cause such other party harm which will not be compensated by monetary damages alone and, accordingly, each party will, in addition to other available legal or equitable remedies, be entitled to seek an immediate injunction restraining the other party from committing or continuing to commit a breach. A party need not show or prove any actual damage sustained by it and may avail itself of injunctive relief in addition to and without prejudice to any other remedies available to it.
- 9.6 Without limiting the generality of the foregoing, unless a customer provides express consent or disclosure is pursuant to a legal power, all information kept by Westman regarding the Customer, other than the Customer's name, address and listed telephone number, is confidential and may not be disclosed by Westman to anyone other than:
- 9.6.1 the Customer;
 - 9.6.2 a person who, in the reasonable judgment of Westman, is seeking the information as an agent of the Customer;
 - 9.6.3 another telephone company, provided the information is required for the efficient and cost effective provision of telecommunications services and disclosure is made on a confidential basis with the information to be used only for that purpose and as authorized by the Customer.
 - 9.6.4 a company involved in supplying the customer with telephone or telephone directory related services, provided the information is required for that purpose and disclosure is made on a confidential basis with the information to be used only for that purpose and as authorized by the Customer.
 - 9.6.5 an agent retained by Westman to evaluate the Customer's creditworthiness or in the collection of the Customer's account, provided the information is required for and is to be used for that purpose; or,

- 9.6.6 a public authority or agent of a public authority, if in the reasonable judgment of Westman it appears that there is imminent danger to life or property which could be avoided or minimized by disclosure of the information.

Express consent may be taken to be given by the Customer where the Customer provides written consent.

- 9.7 In connection with carrying out its obligations under this Agreement, Westman may be provided with or otherwise receive from the Customer personal information about identifiable individuals including without limitation customer names and other data related to customers, including email addresses, financial and billing information ("Personal Information"). As between Westman and the Customer, the Customer shall own all right, title and interest to all Personal Information. Westman agrees as follows: (i) not to use or collect Personal Information for any purposes other than those related to the performance of Westman's obligations under this Agreement; (ii) to treat Personal information as the Confidential Information of the Customer in accordance with the confidentiality provisions set out in this Section 9; and (iii) not to use or disclose Personal Information except as expressly permitted in this Agreement. In no event will Westman transfer any Personal Information to any third party without the Customer's prior written consent.
- 9.8 In connection with its provision of Services hereunder, Westman also agrees as follows: (a) to establish and maintain adequate security measures to protect the security and confidentiality of Confidential Information and Personal Information, including physical, technological and administrative measures; (b) to immediately forward any individual's request for access to Personal Information to the Customer, and to co-operate with the Customer, as the Customer may reasonably require, in responding to such access request, including the provision of information regarding the use and disclosure of such Personal Information by Westman; (c) to immediately notify the Customer of any complaints received or any notices of investigation or non-compliance received from any governmental or regulatory authority or agency related to the collection, use or disclosure of Personal Information, and to co-operate with the Customer and assist in any such investigation; (d) to amend any Personal Information upon the Customer's or the relevant individual's request; and (e) to promptly rectify any alleged breaches of Westman's confidentiality and protection of Confidential Information and Personal Information obligations in this Agreement. Upon the termination of this Agreement or upon the Customer's or an individual's request, as applicable, Westman shall cease any and all use of Confidential Information and Personal Information, and all copies thereof, and shall return same to the Customer or destroy same in a manner designated by the Customer, or as otherwise agreed by the parties, and certify such return/destruction to the Customer in the timeframe reasonably requested by the Customer.
- 9.9 Westman acknowledges that the Customer is a public body subject to The Freedom of Information and Protection of Privacy Act ("FIPPA"), and The Personal Health Information Act ("PHIA"), as well as other federal and provincial legislation which governs its obligations with respect to public disclosure, and Westman agrees that where a term of this agreement conflicts with either FIPPA or PHIA, or any other applicable legislation, the legislation shall override and take precedence to the extent of the conflict.

The Customer undertakes to notify and consult with Westman before releasing information under this paragraph. The Customer further undertakes to release only the minimum required information and to invoke such exemptions or restrictions as may be lawfully available.

10. Dispute Resolution

- 10.1 The parties agree that during the Term of this Agreement, they will utilize commercially reasonable efforts to resolve any dispute that arises relating to the validity, construction, meaning, performance or effect of this Agreement or the rights and liabilities of the parties or any other matter arising out of or connected with this Agreement (each, a "Dispute"), promptly and in an amicable manner by negotiation.
- 10.2 Upon the written request of either party, a senior executive representative of each of the parties, or their respective designates (the "Management Committee"), shall meet for the purpose of endeavouring to resolve a Dispute. The Management Committee shall meet as soon as is reasonably possible after a Dispute is referred to it, giving due regard to the nature and impact of the issue under consideration.
- 10.3 In the event that the Management Committee cannot resolve a Dispute within a time frame satisfactory to the party raising the Dispute, then, upon the mutual agreement of the parties, the Dispute may be referred to arbitration by a single arbitrator in accordance with the Arbitration Act (Manitoba). If the parties are unable to agree, within three (3) business days, on a single arbitrator who will be named to resolve the dispute, either party may apply to the Court of Queen's Bench to appoint a single arbitrator who will be suitably qualified by education and professional experience to deal with the matters that are the subject of the arbitration. The arbitration will take place in Brandon, Manitoba. The decision of the arbitrator shall be in writing, stating the reasons for the award, shall be final and binding on the parties to the arbitration and no appeal shall be taken from any decision of the arbitrator unless the decision contains an error of law, which results in a determination that is patently unreasonable.
- 10.4 In the event that the Management Committee cannot resolve a Dispute within a time frame satisfactory to the party raising the Dispute, and either of the parties declines to proceed to arbitration, then each party shall be free to pursue such other remedies as may be available to it at law or in equity.
- 10.5 Except where clearly prevented by the nature of the matter in dispute, both parties agree to continue performing their respective obligations under this Agreement while the dispute is being resolved or arbitrated unless and until such obligations are terminated or expire in accordance with the provisions hereof.
- 10.6 Nothing in this Dispute Resolution section will prevent either party from applying for or obtaining any interim, interlocutory or preliminary injunctive or declaratory relief or from bringing any claim for contribution or indemnity in the same Court in which a suit against the party is brought by any third person.

11. Service Suspension

- 11.1 If the Customer fails to comply with any of its obligations under this Agreement including, without limitation, a failure to pay any undisputed charges when due, Westman may suspend Services to Customer without liability if the Customer fails to cure such breach within thirty (30) calendar days after receiving notice thereof from Westman. Westman may continue a suspension of Services, for a failure to pay undisputed charges when due, until such time as the Customer has paid in full all Charges then due, including any late fees as specified herein. Following such payment, Westman shall reinstate the Services; provided however,

that the Customer shall pay to Westman all reasonable costs and expenses incurred by Westman in respect of the recommencement or re-installation of the Services.

11.2 Westman may suspend any affected Services to the Customer without liability:

11.2.1 immediately, without notice, if Westman reasonably deems that such action is necessary to prevent or protect against fraud, to protect its personnel or agents, or otherwise prevent damage or degradation to Westman's equipment, service facilities, network or services which may be caused by the Customer or anyone using the Customer's access;

11.2.2 immediately, without notice, to comply with any law, regulation, court order or other governmental request or order which requires immediate action;

11.2.3 immediately, upon notice, for a material violation of any use restrictions or policies set forth herein by the Customer or any End User if the Customer fails to remedy such violation within three (3) business days after receipt of notice from Westman notifying the Customer of the violation; or

11.2.4 immediately, upon notice, for any other Customer or End User behaviour that in Westman's reasonable discretion may be deemed to be illegal or to otherwise to protect Westman from legal liability if the Customer fails to correct such behaviour within three (3) business days after receipt of notice from Westman notifying the Customer of the behaviour.

11.3 For greater certainty, Westman acknowledges and agrees that it will use commercially reasonable efforts to limit any suspension of Services under section 11.2 to only those Services, or portion of Services, that in Westman's reasonable discretion, require suspension in order to (a) address the damage or behaviour referred to above or to comply with any law, regulation, court order or other governmental request, as listed above, and (b) minimize the impact of such suspension on the overall provision of Services hereunder. The parties shall work together to restore Services as soon as possible after any suspension of Service pursuant to section 11.2; provided however, that (excluding subsection 11.2.2) the Customer shall pay all reasonable costs and expenses incurred by Westman for the restoration of such Services in the event that the Services were suspended as a result or in connection with the material breach of this Agreement by the Customer or any negligent or willful act or omission of the Customer.

11.4 Suspension of Services, as set forth in this section, shall not affect the Customer's obligation to pay for the Services rendered prior to the suspension. Westman shall not be liable for any loss, damage or inconvenience suffered by Customer as a result of any suspension of Services pursuant to this section.

11.5 The rights of suspension set forth in this section are in addition to any other remedies available to Westman for such breach or default.

12. Termination

12.1 Each Service Order shall remain in effect for the Service Term specified therein unless renewed or terminated in accordance with the terms of this Agreement.

12.2 Either party may terminate this Agreement, and all Service Orders, immediately upon an occurrence of the following:

12.2.1 the other party becoming insolvent or bankrupt;

12.2.2 the other party making an assignment for the benefit of creditors;

12.2.3 the other party appointing a receiver or trustee in bankruptcy; or

12.2.4 upon any proceeding in bankruptcy, receivership or liquidation being instituted against a party and continuing for thirty (30) calendar days without being dismissed.

12.3 Either party may terminate this Agreement if the other party is in breach of a material obligation under this Agreement or any Service Order, and fails to remedy same within thirty (30) calendar days after receipt of a written notice from the non-breaching party notifying the other party of the breach and requiring that the breach be remedied.

12.4 Westman shall have the right (consistent with or in response to any mandate promulgated by any applicable governmental authority), without incurring any liability to the Customer, to disconnect or terminate any affected forborne or non-regulated Service (or portion thereof), as the case may be, where:

12.4.1 Westman is prohibited by governmental authority from furnishing that Service (or any portion thereof) on a forborne or non-regulated basis; and

12.4.2 Customer does not wish to receive such affected Service from Westman pursuant to applicable Tariffs.

13. General Provisions

13.1 The headings in this Agreement are solely for convenience of reference and do not affect the interpretation thereof or define, limit or construe the contents of any provision of this Agreement.

13.2 Nothing in this Agreement will be construed as establishing or implying any partnership between the parties and except as expressly set out in this Agreement nothing in this Agreement will be deemed to constitute either of the parties as the agent of the other party or authorize either party to incur any expenses on behalf of the other party or to commit the other party in any way whatsoever, without obtaining the other party's prior written consent.

13.3 This Agreement forms the entire agreement between the parties concerning the subject matter hereof and supersedes all prior written and oral agreements between the parties. Any modification of this Agreement shall not be valid unless reduced to writing and agreed to by both parties.

13.4 No remedy conferred upon or reserved in favour of a party shall exclude any other remedy herein or existing at law or in equity or by statute, but each shall be cumulative and in addition to every other remedy given hereunder or now hereafter existing.

- 13.5 Neither party may issue any press release or other public announcement concerning the existence of or the terms and conditions of this Agreement or Westman's provision of Service hereunder without the prior express written consent of the other party.
- 13.6 Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition or enforceability without invalidating the remaining provisions or affecting the validity or unenforceability of such provision in any other jurisdiction.
- 13.7 This Agreement shall be binding upon and inure to the benefit of each party and their respective successors and permitted assigns. This Agreement shall not be assigned in whole or in part by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, this Agreement may be assigned without consent, by either party to any Affiliate, provided that the assignor remains liable for any obligations of the Affiliate assignee. Any permitted assignment requiring consent shall be conditional upon the assigning party providing to the other party a true copy of the assignment agreement, and an agreement and undertaking from the assignee to be directly bound by the provisions of this Agreement and not to further assign its rights hereunder without complying with the provisions herein contained. If Westman sells or transfers ownership of the service subject to this agreement to a non-affiliate, Westman shall obtain and provide an agreement and undertaking from the transferee to be directly bound by the provisions of this agreement.
- 13.8 Notwithstanding any other provision of this Agreement, if by reason of an event of Force Majeure, any party is wholly or partly unable to perform certain of its obligations under this Agreement, it shall be relieved of those obligations to the extent, and for the period, that it is affected by the event of Force Majeure, provided that the affected party gives the other party prompt notice of such inability and nature, cause and expected duration of the event of Force Majeure. The party affected by the event of Force Majeure shall use all reasonable efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the cause of its inability to perform, provided that there shall be no obligation on a party so affected to settle labor disputes or to test or to refrain from testing the validity of any order, regulation or law in any court having jurisdiction.
- 13.9 No indulgence or forbearance by any party hereunder shall be deemed to constitute a waiver of its rights to insist on performance in full and in a timely manner of all covenants of the other party hereunder and any such waiver, in order to be binding upon a party, must be express and in writing and signed by such party and then such waiver shall be effective only in the specific instance and for the purpose for which it is given. No waiver of any term, condition or covenant by any party shall be deemed to be a waiver by such party of its rights to require full and timely compliance with the same term, condition or covenant thereafter, or with any other term, covenant or condition of this Agreement at any time.
- 13.10 Customer authorizes Westman, its subsidiaries and Affiliates, and/or their respective agents, to disclose, share and/or exchange information that they have about Customer for the purposes of assessing Customer's creditworthiness, provided that such sharing and/or exchange of information shall be restricted to those of Westman, its subsidiaries, Affiliates and agents who have a need to know same and that such information shall not in any way be disclosed to any other or third party in any manner whatsoever.

- 13.11 The terms of this Agreement, which by their nature are intended to extend beyond the term of this Agreement, shall survive any termination or expiration of this Agreement.
- 13.12 Each party has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.
- 13.13 This Agreement may be executed in any number of counterparts, which may be exchanged by facsimile, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.
- 13.14 Each party shall bear its own costs incurred in connection with the preparation and negotiation of this Agreement.
- 13.15 In the event it is necessary for a party to seek a determination or enforcement of its rights under this Agreement in any court of competent jurisdiction, the prevailing party shall be entitled to recover, in addition to any and all other remedies awarded by such court, its reasonable legal fees and court costs, including such fees and costs on appeal.
- 13.16 Westman executes and delivers this Agreement on its own behalf and on behalf of its Affiliates. Westman reserves the right to subcontract this Agreement, or any part of this Agreement, or any of its obligations under this Agreement without the prior written consent of Customer. The use of a subcontractor shall not relieve Westman of its obligations under this Agreement. Westman shall be wholly responsible for the acts and omissions of its subcontractors.
- 13.17 This Agreement shall be governed and interpreted in accordance with the laws of the Province of Manitoba and the federal laws of Canada applicable therein. Venue and jurisdiction shall exclusively be in such Province.

**Service Terms and Conditions
for
Optical Wide Area Network Service**

1. Definitions

- 1.1 "Gbps" or "Gigabits per second" means billions of bits per second as used to measure bandwidth on a digital data transmission media;
- 1.2 "MTTR" means mean time to repair;
- 1.3 "NOC" means Network Operations Centre
- 1.4 "WAN" means Wide Area Network;
- 1.5 "SLO" means Service Level Objective
Westman's services are available 24 hours per day, 7 days per week, except during scheduled and Emergency Maintenance periods. Westman's networks are monitored and managed from Westman's Network Operations Centre to ensure a monthly committed level of availability of 99.9% or more (excluding the exclusions set out in the definition of Service Interruption).
- 1.6 "Service interruption" is defined as the loss of service availability caused by an event or series of events, internal or external to Westman. Service interruption excludes; 1) the failure of any service or facilities provided by the Customer or an entity other than Westman or any third party from which Westman has acquired any service or facilities used in providing service; 2) the negligence or willful act or omission of the Customer; 3) termination of the Service by Westman pursuant to the terms of the Master Services Agreement; or 4) Force Majeure.

2. Service Description and Demarcation

- 2.1 The Optical Wide Area Network Service provides dedicated non-switched terrestrial circuits to carry voice, data, and/or video traffic among specified customer site locations. The Service is available on a point to point fixed port capacity basis and may be provisioned as Unprotected, Meshed protected, or with protection. The service is capable of supporting speeds of 1 Gbps or 10 Gbps.
- 2.2 The service is available to customer site service locations determined by Brandon School Division specified customer sites, identified in Schedule D.

- 2.3 The Service is available as a managed or unmanaged. Westman provides and maintains all active electronics for maintaining the connections for a managed service. An unmanaged service requires the Customer to supply and maintain all active electronics. The customer has been offered the option of acquiring a Westman managed service but has declined that option and has chosen to be responsible for all electronics beyond the point of demarcation.
- 2.4 Except as otherwise set forth in the applicable Service Order Form, the service demarcation point will be at a fibre patch panel, provided by Westman.
- 3. Processes & Procedures**
- 3.1 Duration of Coverage
- 3.1.1 The services described by this section will be provided during the initial Term or Renewal Term as set out in MSA.
- 3.2 Service Availability Commitment
- 3.2.1 Westman's services are available 24 hours per day, 7 days per week, except during scheduled and Emergency Maintenance periods. Westman's networks are monitored and managed from Westman's Network Operations Centre to ensure a monthly committed level of availability of 99.9% or more (excluding the exclusions set out in the definition of Service Interruption).
- 3.2.2 Service interruption is defined as the loss of service availability caused by an event or series of events, internal or external to Westman. Service interruption excludes, 1) the failure of any service or facilities provided by the Customer or an entity other than Westman or any third party from which Westman has acquired any service or facilities used in providing service; 2) the negligence or willful act or omission of the Customer; 3) termination of the Service by Westman pursuant to the terms of the Master Services Agreement; or 4) Force Majeure.
- 3.2.3 Westman will provide notification to the Customer in advance of carrying out work activities that will result in or could be reasonably expected to result in Service Interruption. Westman will coordinate the schedule of the work with the Customer.
- 3.2.4 Customers may report any service problem to Westman's Network Operations Centre 24 hours per day, 7 days per week. The telephone number is 204-725-4300 Ext. 2807.
- 3.3 Scheduled Maintenance and Emergency Maintenance
- 3.3.1 Westman conducts weekly maintenance of its networks, most of which does not require any downtime for its Customers. Planned down times occur on a scheduled basis between the hours of 22:00 to 06:00, the Customer's local time, to perform system maintenance, backup and upgrade functions for the Westman network ("Scheduled Maintenance"). Westman will notify the Customer via email of any Scheduled Maintenance at least five days prior to the Scheduled Maintenance.

- 3.3.2 Additionally, Westman may perform Emergency Maintenance, if required. Westman will provide the greatest amount of lead-time possible, and will coordinate with the Customer's management or IT contact to ensure that Emergency Maintenance is performed in a manner that minimizes its impacts on users.

3.4 Mean Time to Repair

- 3.4.1 Westman strives to restore the Customer's services in a timely manner. In the event that Westman is required to dispatch one of its field service technicians, the MTTR objective is not more than twenty four (24) hours for Out of Service (OOS) conditions. This MTTR is contingent on Westman having prompt access to its equipment in the Customer's site.

3.5 Problem Classification and Notification

- 3.5.1 Upon notification by the Customer, problems or service requests are recorded in the Westman ticketing system and are evaluated by Westman personnel by level of severity. There are three levels of severity by which Customer problems are recorded and prioritized:

CRITICAL – Complete service interruption

MAJOR – Service degradation or preventable service outage

MINOR – Information request or minor service degradation

When requesting support, the Customer is required to:

- Provide the Customer name, caller's name, department name, and location of the problem.
- Date and Time of the occurrence
- Provide a detailed description of the problem, the severity of the problem, and potential alternative solutions.

The following severity codes table provides target times for problem resolution:

| Priority Level | Customer Impact* | Description | Examples | Target Resolution Time |
|--------------------------|--|---|---|---|
| Severity 1 - Critical | Complete Service Interruption | Network Outage, severe business impact | The Customer connectivity outage, or Westman's dual backbone connectivity is down | Restoration of service within 24 hours |
| Severity 2 - Major | Service Degradation | The Customer still has service but the service is degraded and the situation could lead to a service interruption if not attended to in a timely manner | Optical integrity breach, or loss of one upstream backbone connectivity | Resolution of situation in 48 hours or less |
| Severity 3 - Minor | Information Request or Minor Service Degradation | The Customer still has service, a development, enhancement or non-critical request | Situations which may need to be addressed but which do not impact the functionality of the network, or minor threshold issues | Reasonable efforts to resolve |

3.6 Escalation Procedures

- 3.6.1 The table below describes the vertical escalation path followed by Westman in order to deliver its service commitment to the Customer. As soon as the Westman representative recognizes that he or she cannot respond to the problem within the response time set out in the time allocated in the first column of each table below, the call is escalated to the next level.
- 3.6.2 The following tables illustrate how the Westman representative must notify the next level, within a certain time frame, and escalate the matter until the problem is resolved.

Severity Level 1 – Critical

| Time | Escalate to | Notify and Update |
|---------|-----------------------------|---|
| 2 hours | Team Lead, Network Services | Operations Desk and the Customer |
| 4 hours | Manager, Network Services | Operations Desk, the Customer and Manager, Network Services |
| 6 hours | Chief Technology Officer | Operations Desk, the Customer and Manager, Network Services |

Severity Level 2 – Major

| Time | Escalate to | Notify and Update |
|----------|-----------------------------|---|
| 7 hours | Team Lead, Network Services | Operations Desk and the Customer |
| 14 hours | Manager, Network Services | Operations Desk, the Customer and Manager, Network Services |
| 21 hours | Chief Technology Officer | Operations Desk, the Customer and Manager, Network Services |

Severity Level 3 – Minor

| Time | Escalate to | Notify and Update |
|--------|-----------------------------|---|
| 1 day | Team Lead, Network Services | Operations Desk and the Customer |
| 2 days | Manager, Network Services | Operations Desk, the Customer and Manager, Network Services |
| 4 days | Chief Technology Officer | Operations Desk, the Customer and Network Services |

SERVICE ORDER FORM
for
Optical Wide Area Network Service

1. Contact Information

The undersigned, Brandon School Division ("Customer"), submits the following order pursuant to the Master Services Agreement entered into between Westman and Brandon School Division. In the event Customer did not execute the Master Services Agreement, Customer hereby agrees to be bound by the terms and conditions of the Master Agreement to the same extent as if Customer were a signatory to such Master Services Agreement.

CONTACT INFORMATION:

Customer Name: Brandon School Division

Address: 1031 - 6th Street
Brandon, MB

Contact Name: _____

Contact Title: _____

Contact Tel: _____

Contact email: _____

Contact Fax: _____

2. Service Rates and Charges, excluding taxes

| | |
|---------------------|----------------------------|
| Monthly Service Fee | \$ 735.00 per month |
| Other | |
| TOTAL | \$ 735.00 per month |

| | |
|-----------------------|----------------------|
| One-time Capital Cost | \$ 947,500.00 |
| Other | |
| TOTAL | \$ 947,500.00 |

One-time capital cost of \$947,500 is total cost to the Division for installation and contribution for the fibre optic network from the fibre optic patch panel located in each Division facility to the Westman fibre network, including all system operation testing following installation, that meets fibre specifications as identified in Schedule D, section 3.2.1.

The one-time capital cost will be paid 25% upon signing of the Agreement and 25% upon completion and testing of demarcation points in the locations identified in each of the 3 phases as per specifications in Schedule D, section 3.2.1, at which time the \$947,500 shall be fully earned.

3. Optical Wan Service is an Unmanaged service

Monitoring of active electronics in an unmanaged environment is the responsibility of the BSD.

4. Labour Rates and Charges

To isolate a problem, where the problem is not caused by Westman's facilities or equipment; or for work provided by Westman that is not required in support of the Service or Westman's obligations, set out in the MSA and schedules, the following labour rates apply.

| | |
|---|--------------------------|
| Labor rates may be adjusted by Westman Communications Group, at its sole discretion, on each anniversary date of the Acceptance Date to a maximum of the percentage increase of the Consumer Price Index for the preceding 12 months. In such event, Westman Communications Group shall advise Brandon School Division in writing of the amount of the increase in the prevailing rate within 30 days thereafter. | Per Hour or part thereof |
| For each Westman employee or contractor | \$150.00 |
| | |

Nothing in this Agreement prevents the parties from entering into separate agreements for other specific work or projects where different rates will apply provided said agreements are entered into between the parties in writing.

5. Locations, Proposed Installation Dates

| | Customer Site | Address | Construction Phase |
|-----|---|-----------------------|--------------------|
| 1. | Brandon School Division Administration Office | 1031 6th St. | 1 |
| 2. | Neelin High School | 1020 Brandon Ave. | 1 |
| 3. | Vincent Massey High School | 725 McDiarmid Drive | 1 |
| 4. | Crocus Plains Regional School | 1930 1st St. | 1 |
| 5. | BSD Maintenance & Transportation | 800 Richmond Ave East | 1 |
| 6. | Betty Gibson School | 701 12th St. | 3 |
| 7. | Earl Oxford School | 540 18th St. | 2 |
| 8. | George Fitton School | 1129 3rd St. | 3 |
| 9. | Green Acres School | 335 Queens Ave East | 3 |
| 10. | Harrison Middle School | 415 Queens Ave. | 2 |
| 11. | J.R. Reid School | 813 26th St. | 3 |
| 12. | King George School | 535 Park St | 2 |
| 13. | Linden Lanes | 49 Silver Birch Drive | 2 |

| | | | |
|-----|--------------------------|---------------------------|---|
| 14. | Meadows School | 1220 22 nd St. | 2 |
| 15. | Ecole New Era School | 527 Louise Ave. | 2 |
| 16. | St Augustine School | 330 3 rd St. | 3 |
| 17. | Valleyview School | 65 Whillier Drive | 3 |
| 18. | Kirkcaldy Heights School | 10 Knowlton Drive | 2 |
| 19. | Riverheights School | 32 E Fotheringham Drive | 2 |
| 20. | Riverview School | 1105 Louise Ave. East | 3 |
| 21. | Waverly Park School | 3800 Park Ave. | 2 |

The approximate installation time line can vary depending on date of signature, payment of deposit and on weather conditions/force majeure.

The estimated completion dates for the identified three identified Construction Phases are;

- Phase 1 – September 16, 2011,
- Phase 2 – January 20, 2012
- Phase 3 – August 10, 2012.

6. Order Authorization

Company Name: Brandon School Division

Per: _____

Name: _____

Title: _____

Date: _____

SCHEDULE D



WESTMAN | COMMUNICATIONS GROUP

**Operations Agreement
Between**

**Westman Communications Group
And
Brandon School Division**

**For
*Optical WAN Service***

PROPRIETARY WARNING

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1.0 INTRODUCTION

This document will provide a common set of operational guidelines for use between Westman Communications Group and Brandon School Division for the services described in the section 'Scope of Service'. These guidelines reflect the Operating Practices established at the time this document was signed. It should be used to complement any related contracts and/or legally binding documents.

2.0 Scope of Service

The purpose of this section is to detail the areas to which this operational agreement will address, outlining the products and services provided by Westman Communications Group. Specifically, it will detail both network operation and service centric accountabilities between Westman Communications Group and Brandon School Division.

2.1 Network Services

Westman Communications Group will provide Brandon School Division with:

Passive optical dark fibre (leveraging Dense Wave Division Multiplexing "DWDM" technology) as specified in section 3.2.1 for service connectivity between the locations listed Schedule D, section 2.2. Fibre/wavelengths for service connectivity will adhere to the fibre specifications listed in Schedule D, section 3.2

Westman Communications Group will provide and install all passive equipment necessary to implement a DWDM solution with the following characteristics:

- i) Each site, 2 through 4, will be configured with eight (8) full duplex connections supporting either 1 gigabit or 10 gigabit speeds
- ii) Each site, 5 through 21, will be configured with four (4) full duplex connections supporting either 1 gigabit or 10 gigabit speeds
- iii) Each site will have half (1/2) their full duplex connections connecting them to the Division Office, 1031 – 6th Street, and the other half (1/2) connecting them to Vincent Massey High School, 725 McDiarmid Drive.
- iv) Vincent Massey will have eight (8) full duplex connections to the Division Office, half (1/2) to be routed in one direction, the other half (1/2) in the opposite direction.
- v) Fibre termination panel location to be mutually agreed to by both parties

2.2 Locations

| | Customer Site | Address | Phases |
|-----|---|-------------------------|---------|
| 1. | Brandon School Division Administration Office | 1031 6th St. | Phase 1 |
| 2. | Neelin High School | 1020 Brandon Ave. | Phase 1 |
| 3. | Vincent Massey High School | 725 McDiarmid Drive | Phase 1 |
| 4. | Crocus Plains Regional School | 1930 1st St. | Phase 1 |
| 5. | BSD Maintenance & Transportation | 800 Richmond Ave East | Phase 1 |
| 6. | Betty Gibson School | 701 12th St. | Phase 3 |
| 7. | Earl Oxford School | 540 18th St. | Phase 2 |
| 8. | George Fitton School | 1129 3rd St. | Phase 3 |
| 9. | Green Acres School | 335 Queens Ave East | Phase 3 |
| 10. | Harrison Middle School | 415 Queens Ave. | Phase 2 |
| 11. | J.R. Reid School | 813 26th St. | Phase 3 |
| 12. | King George School | 535 Park St | Phase 2 |
| 13. | Linden Lanes | 49 Silver Birch Drive | Phase 2 |
| 14. | Meadows School | 1220 22nd St. | Phase 2 |
| 15. | Ecole New Era School | 527 Louise Ave. | Phase 2 |
| 16. | St Augustine School | 330 3rd St. | Phase 3 |
| 17. | Valleyview School | 65 Whillier Drive | Phase 3 |
| 18. | Kirkcaldy Heights School | 10 Knowlton Drive | Phase 2 |
| 19. | Riverheights School | 32 E Fotheringham Drive | Phase 2 |
| 20. | Riverview School | 1105 Louise Ave. East | Phase 3 |
| 21. | Waverly Park School | 3800 Park Ave. | Phase 2 |

2.3 Maps

Maps and diagrams will be supplied prior to completion of each Phase. As built maps and diagrams will be supplied after completion of each Phase if any changes are made.

3.0 Infrastructure Connectivity

3.1 Network Core Infrastructure

3.1.1 Definition

The purpose of this section will be to identify the roles and responsibilities of both Westman Communications Group and Brandon School Division in the support of these facilities.

3.1.2 Fiber Facilities

Westman Communications Responsibilities:

Westman will be responsible to provide the following:

- A 7 x 24 single point of contact
- Appropriate escalation lists
- Clear physical demarcation points
- Adequate termination/splice points
- Resources to participate in trouble resolution activities as required
- Operational demarcation points
- Ensure that all work activities adhere to local safety standards

Brandon School Division Responsibilities:

Brandon School Division will be responsible to provide the following:

- A 7 x 24 single point of contact
- Appropriate escalation lists
- Resources to participate in trouble resolution activities as required
- Ensure all Brandon School Division owned equipment is compatible and meets Westman Communication Group standards
- Ensure that Westman staff have full 7 x 24 access to facilitate any testing or repairs as required
- Ensure that all work activities adhere to all local safety standards
- Ensure that Westman is contacted for fibre locates prior to construction activity on any Brandon School Division school properties
- Ensure that all work activities are coordinated through the Westman Communications Group Network Operations Centre (NOC)

3.2 Fiber Specifications & Maintenance

3.2.1 Fiber Specifications

All fiber optic connector assemblies will be LC unless otherwise specified. Each connector will meet or exceed 50dB return loss, and will have insertion loss less than 0.6dB.

The splice loss will not exceed 0.15dB insertion loss. Splices will be measured bi-directionally with an OTDR and averaged to distinguish actual splice loss from differences in back-scatter levels. In no case should a fiber show a point discontinuity of greater than 0.1dB. Discontinuities (known as steps, splices, or attenuation non-uniformity) will be measured with an optical time domain reflectometer to determine the magnitude of the localized attenuation. The least squares approximation method of analysis must be used to make this measurement.

All fiber-to-fiber, fiber-to-pigtail, or any other splices will be made with fusion splicing methods. All splices will be non-reflective.

All terminal equipment, patch panels and patch cables shall meet optical performance characteristics compatible with single-mode optical transmission.

3.2.2 Fiber Restoration

Monitoring

All Westman Communications fiber optic cable routes will be visually inspected by an Outside Plant technician at six-month intervals.

Monitoring of active electronics in an unmanaged environment is the responsibility of the Brandon School Division.

Problem Identification

If Westman staff are dispatched to resolve an issue at the request of BSD, and the fibre optic network is working within agreed specifications, then BSD is responsible for reimbursing Westman, as identified in Schedule C, section 4.

In the event that the fiber optic cable has been compromised, Westman staff will follow through with standard fiber restoration protocols.

This will consist of:

- Determination of the point of failure
- Specific circumstances of the failure, and what types of equipment will be required to perform the cable restoration
- Stabilize and prepare the restoration site
- Repair the fiber and restore service

4.0 Notifications

4.1 Network Failure Notification

Westman Communications Group will provide the Brandon School Division with a Single Point of Contact (SPOC) to allow for notification of outage conditions that may impact Brandon School Division equipment.

Notification Information Requirements

- Date of activity/trouble
- Time of Activity/trouble
- Customer name/caller name/department or school name
- Fibres/site affected including civic address
- Severity level (critical, major, minor)
- Detailed description of the issue
- Alternate solutions
- Emergency contacts including Single Point of Contact (SPOC)

Notification Information Requirements:

Notification by Brandon School Division to Westman Communications Group for all issues must include the following information detailing outages:

- Provide Customer name, caller's name, department name, and location of the problem.
- Date/Time of the occurrence
- Provide a detailed description of the problem, the severity of the problem, and potential alternative solutions.

Notification Example:

- Date of activity
- Time of activity
- Customer name/Department name
- Fibers/Sites affected including civic addresses
- Severity Level (Critical, Major, Minor)
- Detailed description of the issue
- Alternative solutions
- Emergency contacts including the Single Point of Contact (SPOC)

4.2 Severity Levels

The urgency of the problem must be determined and a severity level assigned. Situations involving a current or immediate out-of-service (OOS) condition require immediate action and will be deemed as a Critical severity. Situations involving potential near-term OOS conditions are considered to be a Major severity. Non-service affecting problems are designated Normal Network Maintenance Activities (NMA) and are deferrable and should be addressed to the NOC, Engineering, or Operations as appropriate.

5.0 Maintenance

5.1 Business Hours

Normal business hours described in this agreement are:

- Business Day 8:00 AM CST (Central Standard Time) to 4:30 PM CST (Central Standard Time)
- Full business days are those between, but not including, the reporting day and the day of the work activity.
- Business days exclude Weekends and WESTMAN COMMUNICATIONS GROUP Statutory Holidays in Manitoba.

Off-hours are defined as any period of time not covered within the definition of normal business hours and working business days.

5.2 Maintenance Activities

Emergency Maintenance Activities shall commence immediately, although consideration should be given to any possible impact to services that are not already affected. For instance a service affecting fiber cut requires immediate attention, but extreme caution should be used in patching circuits around the cut as these operations may potentially impact other services. Priority Maintenance Activities should be evaluated for urgency versus potential impact. These activities should be deferred to a less service affecting window when the benefit of doing so outweighs the risk. Normal Maintenance Activities should be performed during off-hours.

Notwithstanding any other term of the Agreement and Exhibits, no threat activities may commence prior to 22:00 local time and must end prior to 06:00 local time, save except in emergency situations.

| Priority Level | Customer Impact* | Description | Examples | Target Resolution Time |
|--------------------------|--|---|---|---|
| Severity 1 - Critical | Complete Service Interruption | Network Outage, severe business impact | Customer connectivity outage, or Westman's dual backbone connectivity is down | Restoration of service within 24 hours |
| Severity 2 - Major | Service Degradation | Customer still has service but the service is degraded and the situation could lead to a service interruption if not attended to in a timely manner | Optical integrity breach, or loss of one upstream backbone connectivity | Resolution of situation in 48 hours or less |
| Severity 3 - Minor | Information Request or Minor Service Degradation | Customer still has service, a development, enhancement or non-critical request | Situations which may need to be addressed but which do not impact the functionality of the network, or minor threshold issues | Reasonable efforts to resolve |

Customer Notification

Customer notifications will be performed by Help desk personnel. They will be the group responsible for determining when customers are to be notified. During emergency outages customers will be notified of the outage and estimated time of repair. The customers shall be notified when service restoration is complete, and verification with the customer that the service has been restored.

When Westman Communications has discretion over the time of a planned service affecting maintenance activity, Help Desk will contact the affected customer in advance. A reasonable attempt should be made to accommodate the customer in selecting the repair time. Unusual events pertaining to the customer's schedule that increase the customer's potential exposure should be especially considered. Generally, the customer should be then notified at the start and completion of the maintenance activity.

Maintenance and Change Management Window

| Notification to Customer | | Window |
|--|--|----------------------------------|
| Release: Service Interruption: Non-Managed and Transport, Switching | | Daily: 22:00 to 06:00 Local Time |

6.0 Escalation and Contact Lists

Technical Escalation List

| Escalation (Bus. Day) | | |
|----------------------------|-----------------------------|---------------|
| Level I | NOC | 20-717-2807 |
| Level II | Team Lead, Network Services | 204-571-7226 |
| Level III | Manager, Network Services | 204-717-2820 |
| Level IV | Chief Technology Officer | 204- 571-7313 |
| After Hours 16:30 to 08:00 | On Call Technician | TBD |

Brandon School Division
Connectivity Project Funding
2010/2011

Expenditures:

| | |
|-------------------------------|--------------------|
| WCG Agreement - one time cost | \$947,500 |
| Division equipment | 305,000 |
| | <u>\$1,252,500</u> |

Funding:

| | |
|------------------|--------------------|
| Computer Reserve | \$725,400 |
| 2009/2010 Budget | 236,900 |
| 2010/2011 Budget | 193,500 |
| 2011/2012 Budget | 96,700 |
| | <u>\$1,252,500</u> |