



**Cybera Request for Proposal
12212011**

**PROVISION OF INTERNET TRANSIT SERVICES
FOR CYBERA INC.**

DATE OF ISSUE: **January 26th, 2012**

RETURN RECEIPT CONFIRMATION FORM: **February 8th, 2012**

TO RESPOND BY: **February 22th, 2012**

RESPOND TO:

Administrator
Cybera Inc.
3608 - 33 Street NW,
Calgary, AB, T2L 2A6
Attention: JF Amiot
Phone: 403-210-5314
Fax: 403-210-5339
<http://www.cybera.ca>
RFP@cybera.ca

Cybera Inc. 3608 33rd Street NW, Calgary, Alberta T2L 2A6
403-210-5333 Fax: 403-210-5339



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1.0 INFORMATION AND INSTRUCTIONS

1.1 PURPOSE

Cybera is seeking to obtain Internet Transit Services for all of the Transit Exchange locations itemized in Attachment C. An Internet Transit Service offers a reliable, high speed communications link, or multiple links possibly at diverse locations, with the Internet, and operate within multi-homing environments. See Attachment A and Attachment B for details of the requirements.

Through this Request for Proposal, Cybera seeks to:

- obtain pricing terms
- specify the terms and conditions that would govern any resulting contract; and
- select a successful Vendor(s).

This Request for Proposal states the instructions for submitting proposals, and the procedure by which Vendor(s) will be selected.

1.2 ABOUT CYBERA

Cybera is a not-for-profit organization that works to spur and support innovation, for the economic benefit of Alberta, through the use of cyberinfrastructure.

Cybera works with public and private partners to accelerate research and product development in priority areas, including health, energy and environment, and ICT. Cybera also manages CyberaNet and acts as the prime contractor for the management of WestGrid, a consortium that provides advanced computing in support of research across the province. Cybera maintains primary offices and staff at the University of Calgary and at the University of Alberta.

Any individual, firm, corporation, institution, organization, government or governmental agency that subscribes to the objectives of the Company, agrees to be bound by the Letters Patent of the Company and the Bylaws and pays the prescribed membership fee (if any), shall be eligible for membership in the Company.-Cybera's governance structure allows for weighted voting and varying classes of membership for research and higher education.



Cybera's Board of Directors have control over the organization and are largely drawn from publicly funded not-for-profit educational institutions.

As Cybera is a not-for profit entity, it is exempt from Federal and Provincial Corporate income taxes. Cybera is generally subject to all other taxes. The Members of Cybera have agreed to use the services, policies, and procedures of Cybera for purchasing and financial matters relating to this request. More information about Cybera is provided in Attachment A.

1.3 DEFINITIONS

Hereinafter, each company receiving this Request for Proposal is referred to as a "Vendor", a Vendor's proposal in response to this Request for Proposal is referred to as a "Proposal".

1.4 ISSUING OFFICE

Cybera
3608-33 Street N.W.
Calgary,
Alberta
T2L 2A6
Attention: Administrator

Phone: 403.403.210.5314
Fax: 403.210.5339
<http://www.cybera.ca>
Info@cybera.ca



1.5 KEY DATES

Listed below are the important events and the target dates and times by which the events are expected to be completed:

Event	Date
Issue of Request for Proposal	January 26, 2012
Return Receipt Confirmation Form	February 8, 2012
Inquiries Up to	February 15, 2012
Due Date for Submission of Responses	February 22, 2012
Evaluation & Acceptance of successful Response(s) (if any)	February 29, 2012

1.6 CLOSING DATE AND TIME

The Receipt Confirmation Form, see Attachment D, must be received by the Issuing Office not later than 4:00 p.m. local time **February 8, 2012**.

Responses, signed by the Vendor's authorized representative, must be received by the Issuing Office, not later than 4:00 p.m. local time, **February 22, 2012**.

Cybera will not accept submission of any Responses after the closing date and time.

1.7 PROPOSAL SUBMISSION

An electronic copy of the Vendor's Proposal must be submitted as an attachment to email in Microsoft Word or PDF format to RFP@cybera.ca and Jfamiot@cybera.ca. Faxed replies will not be accepted.

Vendors may not make modifications to their Proposals after the closing date and time except as may be allowed by Cybera pursuant to the Inquiries Section.

Cybera may reproduce any of the Vendor's Proposal and supporting documents for internal use or for any other purpose required by law.



Cybera will not be obligated in any way by the Vendor's Proposal. Cybera will not return any of the Vendor's Proposal and supporting documents to the Vendor.

Cybera retains the right to cancel or defer the project and not proceed with any vendor's proposal.

1.8 PROPOSAL COSTS

The Vendor has the sole responsibility for any costs associated with preparing its Proposal in response to this Request for Proposal.

In no event will Cybera be responsible for the costs of preparation or submission of any Proposal.

1.9 IRREVOCABLE OFFER

Proposals submitted to Cybera shall constitute a valid and irrevocable offer which is open for acceptance by Cybera from and after submission until the expiration of the 60th day following the Closing Date specified in Confidentiality Section.

Cybera reserves the right to accept the Proposal which it deems most advantageous, and the right to reject any or all Proposals.

Cybera will not be liable under any contract in connection with this Request for Proposal, or the submission of Proposals, unless and until Cybera has accepted one or more Proposals. Cybera has no obligation to accept any proposal submitted.

1.10 INQUIRIES AND CHANGES

It is the responsibility of each Vendor to inquire about and clarify any requirements of this Request for Proposal which are not understood.

Inquiries should reference the RFP title and number, emailed to the Issuing Office to the attention of:



Cybera Administrator: RFP@cybera.ca and Jean-Francois Amiot, Technical Operations Manager: jfamiot@cybera.ca

Inquiries should be sent to the email addresses above. A Vendor who sends in an inquiry will receive confirmation of receipt by email no later than the following business day. Cybera shall not be responsible for failure to receive or delay in receiving email for any reason or cause. Questions and answers will be distributed to all vendors by email on a timely basis.

Vendors must obtain their own information on all matters and things that may in any way influence them in making their Proposals and fixing prices.

Vendors must satisfy themselves in all respects as to the risks and obligations to be undertaken by them.

If a Vendor discovers any inconsistency, discrepancy, ambiguity, errors, or omissions in this Request for Proposal, it must notify Cybera immediately in writing.

Cybera may, at any time, make and stipulate changes to this Request for Proposal.

Cybera may provide additional information, clarification or modification by written addenda. All addenda shall be incorporated into and become part of this Request for Proposal. Cybera shall not be bound by oral or other informal explanations or clarifications not contained in written addenda.

1.11 SELECTION PROCESS

Because Cybera bases any decision to award a contract on the Proposals submitted, Vendors should include all requirements, terms or conditions it may have in their Proposal, and should not assume that any opportunity will exist to add such matters after the Proposal is submitted.

If Cybera determines, in its sole discretion, that one Vendor is clearly more highly qualified than the others under consideration, it may decide to award a contract directly to that Vendor.



Cybera reserves the right, at its sole discretion, to negotiate with any Vendor as it sees fit, or with another Vendor or Vendors concurrently. In no event will Cybera be required to offer any modified terms to any other Vendor. Cybera shall incur no liability to any other Vendor as a result of such negotiations or modifications.

1.12 BASIS OF SELECTION

In the tendering process, Cybera supports the principle that Canadian companies are to be given preference when all other conditions, as assessed by Cybera, are equal.

Cybera will not necessarily accept the lowest price or any Proposal. Any implication that the lowest or any Proposal will be accepted is hereby expressly negated.

Cybera will not be limited as to its criteria for evaluation of Proposals. Cybera may take into account whatever criteria and considerations it wishes to. These may include:

Selection Criterion	Weight
The Vendor's capability to provide a high quality reliable Internet Transit Service as described in <u>Attachment A</u> and the information contained in the documentation supplied by the Vendor in response to this Request for Proposal.	10%
The Vendor's capability or planned capability to provide a high quality reliable IPv6 Transit Service in addition to an IPv4 service.	10%
The Vendor's relevant experience, qualifications and success in providing the type of services to meet the requirements and objectives described in Attachment A.	5%
The Vendor's peering relationships.	10%
The Vendor's ability to provision services at all or multiple Transit Exchange locations.	10%
The Vendor's Network Affiliate status. Preference is given to Vendors who are or who intend to become a Network Affiliate of Cybera.	10%
The Vendor's financial Proposal.	20%



The quality of the Proposal, specifically: Proposals shall be prepared in a straight forward manner, and shall describe the Vendor's services and equipment capabilities in a format that is reasonably consistent, comprehensible, and appropriate to the purpose.	5%
The contractual terms proposed by the Vendor that would govern any contractual relationship with Cybera. This includes the terms of the service level agreement, the capacity, availability, and reliability of transit links.	5%
The Vendor's references from institutions which are comparable to Cybera.	5%
The Vendor's implementation schedule.	5%
Any feature or advantages which are unique to the Vendor's Proposal which Cybera has not listed in <u>Attachment A</u> . This would include other optional related equipment and services such as network monitoring, reporting, or quality of service features, that are included at no extra charge or at a discount.	5%

1.13 CONTRACTUAL OBLIGATION

Mandatory Contractual Provisions (Mandatory Provisions) and Preferred Contractual Provisions (Preferred Provisions) that will govern any subsequent contract issued are outlined in this Request for Proposal. The Vendor's Proposal is automatically deemed to include the Vendor's agreement to the Mandatory Provisions and the Preferred Provisions unless the Vendor expressly and specifically provides otherwise in its Proposal.

The Mandatory Provisions Section is included in this document. The Vendor may not modify any Mandatory Provisions in its Proposal. If the Vendor has any Mandatory Provisions or wishes to incorporate or use any Vendor standard terms and conditions, the Vendor shall append such materials to its Proposal and indicate thereon such Mandatory Provisions. The Vendor's Mandatory Provisions will also be considered as part of the selection process.

The Preferred Provisions Section is included in this document. Such provisions are desirable to Cybera but are open to negotiation between Cybera and the Vendor. The Vendor may reject or make changes to preferred provisions by explicitly stating so in its Proposal.



1.14 CONTRACT PROVISIONS BY REFERENCE

Cybera's acceptance of the Vendor's Proposal by issuance of a Purchase Order shall create a contract between Cybera and such Vendor containing all specifications, terms and conditions in the Proposal except as amended in the Purchase Order. Any exceptions taken by the Vendor which are not included in the Purchase Order will not form part of the contract.

In the event of a conflict between the terms and conditions of the Request for Proposal and information submitted by a Vendor, the terms and conditions of this Request for Proposal and the Purchase Order will govern.

1.15 CONFIDENTIALITY

The Vendor acknowledges that Cybera is a public body subject to the Freedom of Information and Protection of Privacy Act (the Act). The Vendor shall review the Act and determine the categories of records which are excepted from disclosure under the Act. The Vendor shall clearly mark "Confidential" all information regarding the items and conditions, financial and/or technical aspects of the Vendor's Proposal, which in the Vendor's opinion are of a proprietary or confidential nature at the relevant item or page.

If Cybera receives a Request for Information under the Act which includes information provided by the Vendor, Cybera will give the Vendor notice of such request and the Vendor will respond to such notice within 10 days or less. If the Vendor does not respond to the notice from Cybera, Cybera will proceed to process the Request for Information. Cybera shall use all reasonable efforts to hold all information marked "Confidential" by the Vendor in strict confidence but shall not be liable for any inadvertent disclosure.

If Cybera's response to a request under the Act is appealed to the Office of the Information and Privacy Commissioner, the Vendor shall have the burden of proof per section 57 (3) of the Act. The Vendor shall be responsible for all costs related to its confidentiality requirements.

Cybera shall declare and mark certain information about Cybera to be received by the Vendor as "Confidential". The Vendor must not disclose such "Confidential" information to any third parties unless authorized to do so in writing by Cybera.



The Vendor and Cybera agree that the reciprocal obligations of confidentiality will survive the termination of any contract that might arise between the parties.



2.0 GUIDELINES TO SUBMISSION OF PROPOSAL

In order to receive a uniform format of Proposal from all Vendors, the following guidelines for formatting the Proposal have been outlined.

2.1 TITLE PAGE

Title page, showing Request for Proposal number, Vendor's name and address, closing date and time, vendor's telephone number, and a contact person.

2.2 LETTER OF INTRODUCTION AND EXECUTIVE SUMMARY

One or two page letter of introduction identifying the Vendor and signed by the person or persons authorized to sign on behalf of, and bind the Vendor to, statements made in the proposal. The Vendor shall provide a summary of its qualifications to both provide and support the proposed service and any required equipment or software. The Vendor shall include a summary of pertinent points in the Proposal that the Vendor wishes to highlight.

2.3 VENDOR QUALIFICATIONS AND REFERENCES

The Vendor shall provide a summary of its qualifications to both supply and support the services, and any equipment and software being proposed. The Vendor shall supply a minimum of three references that are being provided with service similar to that being proposed to Cybera.

References to organizations or institutions similar to Cybera are preferred.

2.4 PROPOSED SERVICES

The Vendor shall describe how the proposed Internet Transit Services meet the requirements set forth in Attachment A and Attachment B and include complete details of the proposed services. These details shall include:

- Information on its network infrastructure.



- Peering relationships, including the network AS, the network name, capacity of each peering link, and current utilization. Preference will be given to direct peering located on the west coast of North America with sufficient capacity.
- A description of any procedures in place for performance analysis of the communications link and the transit service.
- A list and description of any optional related services and equipment which are included in the proposal either at no extra charge or at a discount.

2.5 SERVICE LEVEL AGREEMENT (SLA) AND SUPPORT

The Vendor shall provide the complete terms and conditions of the Service Level Agreement. This shall include the hours of technical support, access to the network access point, mean time between failures, fail over provisioning, and service levels such as network availability.

The Vendor shall describe any support that is not covered in the service level agreement. Include estimated charges for service calls and/or maintenance contracts for the term of the service.

The Vendor shall describe the incident reporting, escalation procedures, and maintenance procedures for the proposed service.

The Vendor must clearly detail any charges associated with the SLA and support which begin to accrue (e.g. after the service representative has been on site for eight (8) hours, service outage of 1 hour, etc.).

2.6 SITE PREPARATION AND REQUIREMENTS

The installation requirements and site services required, including environmental conditions must also be specified in the Proposal.

Appropriate modifications to the Communications Rooms in which any system shall be housed will be the responsibility of Cybera and such modification shall be completed in such a manner that delivery and installation by the Vendor will not be impeded.



The Vendor is responsible to provide all the information necessary for a proper site preparation.

2.7 DOCUMENTATION REQUIREMENTS

The Vendor shall describe all documentation included.

2.8 SOFTWARE

The Vendor shall advise Cybera of any software considered necessary to operate, update, and maintain the Transit Service.

2.9 COSTS

All prices should be in Canadian dollars, should include all costs of providing all the Services required, and should include all taxes except Canadian federal Goods and Services Tax (G.S.T.) The Vendor shall provide:

- A schedule of fees for volume usage rates and any minimum fees, if any. Include a complete description of the volume rate calculation. Cybera has included an example of a preferred volume rate calculation (see Attachment B - Volume Usage Rate Calculation). Options may be included for a no monthly minimum, low monthly minimum, flat rate pricing, pricing for two years and three years of a service contract.
- All costs related to installation.
- All costs for any software considered necessary to operate the service, if any.
- Costs for proposed equipment, if any.
- All costs related to delivery.
- Clearly itemize all costs to deliver the service to each location noted in Attachment C for which the Vendor is bidding. In particular if they are different for each location.
- Any charges not specified in the above which will or may be billed to Cybera by the Vendor in performing the work proposed. In addition, the Vendor shall clearly indicate any known possibility for unanticipated charges to Cybera, other than the Vendor's charges specified in its Proposal, as well as make any suggestions for cost savings in any area.



2.10 IMPLEMENTATION DATES

The Vendor shall provide an implementation schedule in days from Cybera's acceptance of the successful Proposal.



3.0 MANDATORY CONTRACTUAL PROVISIONS

The following terms and conditions are mandatory and shall be deemed to be incorporated in all Proposals.

3.1 CYBERA'S AUTHORIZED REPRESENTATIVES

The only persons who are or shall be authorized to speak or act for Cybera in any way with respect to any contract resulting from this Request for Proposal are those whose positions or names have been specifically designated in the Issuing Office Section.

It is hereby declared and agreed by the Vendor that all Proposals submitted to Cybera by the Vendor have been prepared on the basis of its own knowledge of the nature of the work to be performed or of the goods to be supplied, the location, quality, and character of the equipment and facilities needed, as well as general and local conditions and all other such matters which can affect the Vendor's performance under any contract between the parties that might result from the Vendor's Proposal.

The Vendor further agrees that it does not rely upon any information given or statements made by representatives of Cybera with regard to the Vendor's Proposal or work to be performed.

3.2 AMENDMENTS

No amendment of a contract resulting from this proposal process shall be effective unless it is reduced to writing and executed by Cybera's Authorized Representative or Officer and by the individual signing the Vendor's Proposal or another individual named by the Vendor as specified in Section 3.3.

3.3 NOTICES

All notices provided hereunder shall be delivered by email:

If To Cybera:

Email:



Cybera RFP Administrator RFP@cybera.ca

and

Jean-Francois Amiot, Technical Operations Manager jfamiot@cybera.ca

If to the Vendor:

The person signing the Vendor's Proposal in response to Cybera's Request for Proposal, at the Vendor's address indicated in such Proposal; or to such other person or address as either may designate for itself in writing and provide to the other. Notice shall be deemed given when delivered the next business day following the day such notice is sent by email.

3.4 INDEMNITY

The Vendor shall indemnify Cybera for all damage suffered by it due to the negligent actions or wrongful acts of the Vendor, its employees, servants or agents. The Vendor shall indemnify and hold harmless Cybera, the Cybera Board, its employees, Member, and agents from all claims, demands, losses, costs, damages, actions, suits, or proceedings initiated by third parties arising from the negligence of the Vendor, its employees, servants or agents.

3.5 INSURANCE

The Vendor warrants and represents that it has the following insurance coverage:

3.6 GENERAL LIABILITY INSURANCE

General Liability Insurance with a limit of not less than \$5,000,000.00 inclusive per occurrence for bodily injury, (including death) and damage to property including loss of use thereof. Such insurance shall include coverage for broad form property damage, contractual liability, completed operations and product liability. Cybera shall be named as an additional insured on the policy, but only with respect to the operations of the Vendor in the performance of the contract.



3.7 AUTOMOBILE LIABILITY INSURANCE

Automobile Liability Insurance for a limit of not less than \$2,000,000.00 for all owned, leased or rented licensed vehicles used in the performance of the contract.

3.8 PROPERTY INSURANCE

Property Insurance (all risk installation floater) for the value of the work performed and the full value of products specified by Cybera, if any, for incorporation into the work. Such insurance shall include a waiver of subrogation against Cybera, its servants, employees and agents.

3.9 WORKERS' COMPENSATION

The Vendor warrants and represents that it shall comply with all relevant Workers' Compensation Board requirements.

3.10 APPLICABLE REGULATIONS

All equipment provided shall comply with all applicable provincial and federal regulations.

3.11 GOVERNING LAW

Any contract resulting from this Request for Proposal shall be governed by and interpreted in accordance with the laws of the Province of British Columbia.

3.12 ASSIGNMENT

Any agreement(s) made as a result of this Request for Proposal may not be assigned or transferred by the Vendor without the prior written approval of Cybera.



4.0 PREFERRED CONTRACTUAL PROVISIONS

The following terms and conditions are desirable. Vendors may propose alternate language, but are requested to limit their changes to those of a substantive nature. Except to the extent that changes are made in the Vendor's Proposal, these provisions shall be deemed to be incorporated in the Vendor's Proposal.

4.1 COMMITMENTS, SERVICE LEVELS AND REPRESENTATIONS

Any commitment made by a Vendor pursuant to its Proposal shall be binding upon the Vendor. For the purposes of its Proposal, a commitment by a Vendor includes:

- Prices and options committed to remain in force over specified periods of time;
- Any written warranty or representation made by the Vendor in a Proposal as to equipment or performance, total system performance, and other physical, design or functional characteristics of a software package or service.
- Any written service level agreement or representation made by the Vendor concerning the characteristics of items described above made during the course of negotiations whether or not incorporated into a formal amendment to the Proposal in question; and
- Any written service level agreement or representation by the Vendor in a Proposal, support documents, side letters or other memoranda, or negotiations subsequent thereto as to training to be provided, services to be performed, prices and options committed to remain in force over fixed periods of time, or any other similar matter regardless of the fact that the duration of such commitment may exceed the duration of any contract that may be entered into by the parties.

4.2 INSTALLATION

The Vendor and Cybera shall agree in writing, on a start-up date to have the system operational and the service available for use.

- Any changes by Cybera to an order, or any part thereof, may require the establishment of a new mutually agreed to start-up date. Cybera may delay the start-up date by notifying the Vendor at least ten (10) days before the start-up date previously established.



- Failure of the Vendor to have the system operational and the service available by the agreed to start-up date shall result in liquidated damages against the Vendor in accordance with the provisions of the Liquidated Damages Section.
- If the service is not fully operational according to the terms of the Vendor's Service Level Agreement within thirty (30) days after the original start-up date, Cybera reserves the right to cancel the contract without further obligation. In the event of such cancellation, the Vendor shall be liable for liquidated damages in accordance with the provisions of the Liquidated Damages Section for every day up to and including the effective date of termination.
- Neither the Vendor nor Cybera shall be responsible for delays resulting from acts beyond the control of each party. These include, but are not limited to, acts of God, riots, acts of war, fire, earthquakes, epidemics, or disasters, but do not include lack of funds or financial resources by either party.

4.3 LIQUIDATED DAMAGES

If the service is not fully operational according to the terms of the Vendor's Service Level Agreement, and, as a result, the service is not ready for use on the start-up date, then liquidated damages shall be paid by the Vendor equal to one (1%) percent per day of the total purchase cost. The parties agree that this is a genuine pre estimate of damage and not a penalty.

4.4 PRICE PROTECTION

Cybera will not pay any additional costs above those costs listed in a Vendor's Proposal including those listed for equipment, software and maintenance. If the Vendor's general list prices decrease prior to the date of acceptance or for three (3) months after such acceptance, any contract entered into by the parties shall be modified to reflect such lower prices.

4.5 REQUIRED PERFORMANCE LEVEL

This section establishes a standard of performance which must be met by the service before any contract is formed between the parties. Upon completion of installation, the Vendor shall test the service using the Vendor's own assurance procedures.



The Vendor shall then demonstrate to Cybera's designate that the service operates in accordance with performance characteristics outlined in the Vendor's Proposal. Once performance characteristics have been demonstrated, the performance characteristics shall be verified in writing by Cybera's designate. Successful performance will be completed when the service is able to carry out, with complete reliability, all operations specified in the Request for Proposal. Complete reliability is defined as continuous problem free operation over a 30 calendar day period. The Vendor shall correct deficiencies until complete reliability is achieved. Should the Vendor be unable to overcome deficiencies within a reasonable time, the service will be discontinued at the Vendor's own expense. All payments made to the Vendor shall be refunded in full to Cybera prior to termination of the service.

4.6 DATE OF ACCEPTANCE

The Transit Service shall not be accepted pursuant to any contract formed between the parties until the standard of performance defined in the Required Performance Level Section is met. The date of acceptance shall be the first day after the completion of the successful performance period.

4.7 TERMINATION AND CANCELLATION

Cybera shall have the unilateral right to terminate without any additional cost any contract formed between the parties in the event that any one or more of the following events of default occur or continue during the term of the contract: (a) the Vendor shall fail to deliver the services required by the agreement or (b) the Vendor shall fail to respond to requests for maintenance or other services within the time limits set forth in the agreement or (c) the Vendor shall breach any of the other terms set forth within the agreement or (d) upon 30 days notice by Cybera.

4.8 PATENT PROTECTION

The Vendor, at it's own expense, will defend any suit which may be brought against Cybera for the infringement of any patents, trade secrets or copyright by services, equipment or software furnished pursuant to the Proposal. Cybera shall give the Vendor prompt written notice of such suit and full right and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation. If in the Vendor's opinion the services, equipment or software furnished hereunder is likely to or does



become the subject or claim of infringement of the patent, copyright, or trade secret then the Vendor may, at its option, substitute for the alleged infringing services, equipment or software, modifications satisfactory to Cybera, in its sole discretion, or at the Vendor's option and expense, obtain the right for Cybera to continue the use of such services equipment or software. If the use of such services equipment or software by Cybera shall be prevented by injunction, the Vendor agrees to take back the equipment or software or, discontinue the service and refund the total amount Cybera has paid to the Vendor, less one (1) percent of the total paid for each month of use by Cybera.

4.9 DOCUMENTATION REQUIREMENTS

Notification of updates and engineering changes including any informational services shall be provided to Cybera by the Vendor for the duration of the service contract.

If applicable, complete software documentation including operating systems, utilities and applications programs shall include:

- one complete set of clear readable documentation, including implementation instructions, the Service Level Agreement, and escalation and reporting procedures.
- same as above, but in electronic form
- same as the previous two requirements, but one set for each Transit Exchange in Attachment C as applicable.

4.10 SERVICE REPRESENTATIVE

The Vendor shall provide the names and phone numbers and email addresses of its fully trained and qualified service representatives who can be contacted by telephone and email by Cybera's personnel for assistance in trouble shooting any malfunctions of the service supplied. The Vendor's service representatives shall be fully trained and experienced individuals capable of quickly trouble shooting any malfunction of the system. The Vendor shall identify a service representative local to each Transit Exchange.

4.11 ROUTINE SERVICE

The Vendor shall provide emergency service promptly upon notification that the service is inoperative or malfunctioning. Telephone communication by a qualified service repair



person shall be accomplished within one (1) hour. If communication indicates that in house service is not possible and a service visit is required, then the Vendor shall have a qualified service person on site within four (4) hours. If the initial representative is unable to resolve the problem, a higher echelon service representative shall be on site within twenty-four (24) hours of notification.



ATTACHMENT A: GENERAL REQUIREMENTS

REQUEST FOR PROPOSAL NUMBER: **12212011**

OVERVIEW

A network design principle of Cybera is to provision multiple Internet Transit Provider services at each of its Transit Exchanges. Cybera has two Transit Exchanges in operation: Calgary and Edmonton. As this is our first year offering transit service to our Members, this RFP is to select Vendor(s) for the Calgary site only, with option for Edmonton.

Since this is a new offering, it's difficult to estimate what will be the aggregated Internet Transit 95th percentile load, as such, we are looking at purchasing 1 Gbps services from two different vendors with option for growth as demand increases. As such, services should be delivered on 10Gig physical interface or possibility of using multiple GigE for aggregations.

In addition, Cybera has peering with both CANARIE and BCNet to SiX/TorIX and NyIX.

IPv6 traffic volumes are negligible at this time, but are expected to grow significantly over the next few years.

An Internet Transit Service Provider is a well respected member of the Internet community and must have a proven track record of providing excellent service to Internet customers. The quality of the transit service is essential to the operation of each Transit Exchange. Cybera is responsible for the technical engineering and operational support of the Alberta ORAN, and as such, is issuing this Request for Proposal.

OBJECTIVES

The Internet Transit Provider will provide the following service for the Transit Exchanges listed in Attachment C.



- Must provide a high speed communications link or links at each Transit Exchange where service is being provided as follows:
 - If aggregated interfaces are proposed, specify the aggregation protocol and load balancing algorithm.
 - Specify the future expansion capabilities for all Transit Exchange sites where service is being proposed.
- A routing protocol, BGP4, for peering.
- Must provide full Internet IPv4 routing tables.
- Should provide full Internet IPv6 routing tables.
- Physical network access must be full duplex Ethernet.
- The Vendor may propose rate limiting as a feature on each link. Any policy for rate-limiting must be explicitly stated. Cybera gives preference to Proposals that do not include rate limiting.
- Access through telephone and email to a 24x7 Network Operations Centre. The Vendor must provide 1-800 telephone access and the location of the NOC.
- Regular reporting of traffic statistics should be available on demand and online, at no additional charge.
- Regular billing period with the invoicing to itemize all charges. Provide information on the billing and invoicing system. It is expected that Internet Transit Services provided by one Vendor at multiple sites will result in aggregated traffic volumes and one itemized invoice.



- The financial model presented may be one of two options, or a combination. One option is using the 95th percentile volume model, see Attachment B. The second option may be a flat rate model (Preferred). In either case, provide a clear description of the model and it is expected that any recurring access fees will be minimal.
If a volume usage model is proposed, provide a clear description of the procedure and calculations for monthly volume usage. It is preferable for the volume usage to be based on the 95th percentile bandwidth utilization (refer to Attachment B for a description).
- Provide contract terms for two years.
- Provide contract terms and pricing should Cybera wish to extend the contract for a third year.
- The Vendor must supply the delivery and installation date for service at each proposed site.
- Provide a transition plan to minimize any service disruptions. Also describe any costs incurred by such a transition.

BACKGROUND INFORMATION

Cybera is a not-for-profit organization that works to spur and support innovation, for the economic benefit of Alberta, through the use of cyberinfrastructure. Cybera's access to computing infrastructure, in-house cloud expertise, and a high-speed, high-bandwidth advanced network enables academic, industry and government groups to innovate in priority areas, including health, energy, the environment, and emerging technologies.

Cybera has offices in Calgary and Edmonton and provides cyberinfrastructure-related project management and consultation services in areas of cloud computing, web-enabled



collaboration platforms, high performance computing, and data management. Researchers and companies work with Cybera to investigate, develop, and test new technologies, or to launch their products in new and innovative ways.

Cybera also operates CyberaNet, a high-speed, high-bandwidth advanced network in Alberta, and is part of Canada's Advanced Network Alliance, a community of advanced networks offering high-speed, fibre optic connectivity linking researchers, educators and innovators to each other and to data and tools across the country and around the world.

For more information, visit Cybera's website: www.cybera.ca



ATTACHMENT B: VOLUME USAGE RATE CALCULATION

REQUEST FOR PROPOSAL NUMBER: 12212011

Calculation of 95th percentile Volume Rate

- One sample is taken every 5 minutes (288/day). A sample consists of a time stamp, cumulative octets or bytes output, and cumulative octets or bytes input.
- Choose a one month billing period.
- There are then 8640 utilization samples (12 five minute samples in one hour) x (24 hours per day) x (30 days per month).
- Remove the largest 5% of the samples. (5% of 8640 is 432).
- The 95% percentile Volume Rate is the maximum of the remaining utilization samples.

In the event of missing samples which may be due to the management system being unavailable, or maintenance of the router interface, samples will be skipped, resulting in a lower number of samples in the billing period.



ATTACHMENT C: TRANSIT EXCHANGE

PROPOSAL NUMBER: 12212011

Cybera operates Transit Exchanges in the province of Alberta. Internet Transit Services are required at each of these sites.

CalTX - Calgary Transit Exchange

2750 University Way N.W Calgary Alberta (Math Science building)



ATTACHMENT D: RECEIPT CONFIRMATION FORM

REQUEST FOR PROPOSAL NUMBER: 12212011

Please complete this form and email IMMEDIATELY to:

Cybera Administrator: RFP@cybera.ca

and

Jean-Francois Amiot, Technical Operation Manager: Jfamiot@cybera.ca

A Vendor may confirm the following business day by telephoning that Administration has received the inquiry. Cybera shall not be responsible for failure to receive or delay in receiving email for any reason or cause.

Failure to return this form may result in no further communication regarding this Request for Proposal.

COMPANY NAME:

ADDRESS:

CONTACT PERSON:

CONTACT EMAIL:

CONTACT TELEPHONE:

I have received a copy of the above noted Request for Proposal.

Yes, I will be responding to this Request. Therefore, I authorize the Cybera purchasing agent to send further correspondence that it deems to be of an urgent nature to us by email.

No, I will not be responding.



ATTACHMENT E: GENERAL TERMS AND CONDITIONS

1 Definitions

1.1 In this Agreement, and the Exhibits and Addenda attached, the following words or phrases have the meanings set out below:

"Acceptable Use Policy" means a document that sets out the rules and conditions for the use or the acceptable use of ORAN facilities (Addendum B to this document);

"Agreement" means this Cybera Services Agreement and any Exhibits or Addenda hereto;

"AUP" means Acceptable Use Policy (Addendum B to this document);

"Cybera Guidelines for Appropriate and Responsible Use" means the guidelines set out in Addendum A hereto;

"Cybera ORAN" means the Alberta Optical Regional Advanced Network, providing localized access/connectivity for member where they can obtain IP connection services including access to commodity Internet carriers and research networks commensurate with their needs and consistent with the terms set out in the Acceptable Use Policy (AUP);

"Business Hours" means 8:30 a.m. through 4:30 p.m. on non-holiday weekdays;

"Commodity Internet Transit Services" means services supplied to the Member's by telecommunications carriers in order to move Internet data packets over the wider commercial Internet. These services are differentiated from those that move Internet data packets over ORAN and/or National research networks;

"Effective Date" means the date upon which this Agreement shall come into effect, as specified on page 1 of this Agreement;

"Exhibit(s)" means any Exhibits to this Agreement and includes, as appropriate in the context, any Member Particulars Exhibit or Services Exhibit;

"Fees" means, in respect of any Services, the Periodic and/or Traffic Fees payable by Member to Cybera in respect of such Services as are described in each Services Exhibit at the rates set out from time to time in Cybera's Website (all Fees being subject to change in accordance with section 7.3 hereof);



"Fiscal Year" means April 1 through March 31;

"Incident Handling Exhibit" means the exhibit of network trouble incident handling procedures set out as an Exhibit to this Agreement;

"Internet Connection Services" means the related set of services described in the Member Particulars Exhibit to this Agreement;

"IP addressable" means capable of being reached and queried using Internet protocols;

"Installation Fee(s)" means, when applicable, the fee specified in the Services Exhibit associated with the installation of the Equipment or other communications equipment at the Transit Exchange as may be required to provide the Services to Members;

"LAN" means Member's Local Area Network;

"Maintenance Hours" means the period of time between 6:00 a.m. and 8:00 a.m. every day, excluding statutory holidays;

"Member" means a member of Cybera Networking membership as defined by the Cybera's By-Laws;

"Network Element" means the Member's Equipment and Member-owned hardware, and all sub-elements thereof, which are IP addressable and which are to be discreetly managed by Cybera,, as may be further described in a Member Particulars Exhibit and/or a Services Exhibit;

"Network Traffic" means any data or information transmitted via the Member's equipment or communications lines;

"Performance Objectives" means, in respect of each of the Services, the performance objectives set forth in section 5 and set forth for such Services in the Services Exhibit ;

"Research and Education Affiliate" means an Affiliate that falls within the definition of Research and Education Affiliate as defined from time to time by the Cybera Board of Directors;

"Service Effective Date" has the meaning set forth in section 4, unless otherwise specified in respect of a particular Service in a Services Exhibit;

"Services Exhibit" means, in respect of each of the Services provided pursuant to the terms of this Agreement, the Exhibit that is designated as the "Services Exhibit" and describes such Services and the Performance Objectives in respect of such Services;



"Services" shall mean the services to be supplied to Member in accordance with the terms of this Agreement, all as described in the Services Exhibits attached to this Agreement;

"Member's Communication System" means the Member's Equipment and all the Member-owned software and electronics used to provide services to Member;

"Member's Equipment" means the Member's equipment and hardware dedicated exclusively to the supply of Services to Member, and as may be described in a Services Exhibit;

"Member Services" means the various services provided by Cybera to its clients including without limitation internet services, transit exchange services, and Optical Regional Advanced Network services;

"Cybera Website" means www.cybera.ca

"Targeted Start Date" means a date specified by Cybera as the date upon which the Cybera anticipates that the Services will be available for use by Member as set out on the Member Particulars Exhibit, unless otherwise specified in respect of a particular Service in a Services Exhibit;

"Term" means the term of this Agreement as set out on the Member Particulars Exhibit, unless otherwise specified in respect of a particular Service in a Services Exhibit, and beginning on the Service Effective Date; and

"Traffic Fees" means the Fees payable by Member in respect of the volume of data sent or received by Member, whichever is larger, through the Member's Communication System as measured by reference to the Member's monthly traffic reports and as referred to in the relevant Services Exhibit;

"Transit Exchange" means a location of Cybera where access to commodity IP transit services, ORAN sites and the CANARIE supported national research network can be obtained in a free and open market place.



2 Services

2.1 Cybera agrees to supply the Services in accordance with and subject to the terms of this Agreement. Member subscribes to receive such Services from Cybera and agrees to comply with the terms and conditions contained in this Agreement.

2.2 Throughout the Term of this Agreement, Member may request in writing additional services, or that Services be made available at an additional Member Site, or that the original Services be relocated, or that additional access feeds be provided at an existing Member Site. To the extent Cybera can reasonably accommodate such requests, it shall provide a quote respecting the Fees applicable for such request and specify a Targeted Start Date to Member.

3 Installation

3.1 Notwithstanding cable provisioning as described in the relevant Services Exhibit, service providers shall be responsible for the installation and maintenance of cabling as required to provide Services to the legal boundary of property upon which the building containing Member Site is located. Member shall be responsible for obtaining all rights-of-way, permissions and/or third party consents required to install and maintain cabling from such legal boundary to the Member's Equipment and shall be responsible for all costs in connection with same. Further, Member shall ensure it has all rights-of-way, permissions or third party consents required in connection with installing and maintaining such interior cabling.

3.2 Member shall ensure that: (a) all work required to be done by it pursuant to section 3.1 shall be done in accordance with all applicable laws including, without limitation, all environmental regulations and in accordance with Cybera's specifications; and (b) all utilities, accesses and building alterations required to install and Member service equipment are provided and/or completed at Member's expense at least seven days prior to the Targeted Start Date.

4 Service Effective Date

4.1 Cybera shall use commercially reasonable efforts to ensure that the Services are available for use by Member on the Targeted Start Date. Member shall use all reasonable efforts to complete its obligations set out in section 3 in a timely manner in order that all Services can be delivered to Member on their respective applicable Targeted Start Date(s). The "Service Effective Date" shall be that date which is the later of:

- (i) the Targeted Start Date; and

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- (ii) the date upon which the Services are actually activated and available for use by Member.



5 Performance Objectives

5.1 Each of the Services has been designed for the Performance Objectives, including the Targeted Start Date, set out in the relevant Services Exhibit. The Performance Objectives do not apply during the Maintenance Hours.

5.2 In supplying the Services, Cybera shall use commercially reasonable efforts to achieve the Performance Objectives in respect of each Service. The Performance Objectives apply only to that portion of Services provided on the Member's Communication System and do not apply to any Services utilizing or interconnecting with facilities or services provided by other service carriers.

6 Maintenance and Service Level Obligations

6.1 Subject to being provided the access rights set forth in section 6.4, Cybera shall maintain the Member's Equipment including labour, parts and such other servicing as is necessary to keep the Member's Equipment in good operating condition at its expense provided that Cybera shall not be responsible for any repair or maintenance caused by:

6.1.1 such equipment being utilized other than for the purposes intended under the terms of this Agreement or being operated other than in accordance with Cybera's policies, as posted from time to time on Cybera's Website and as may be provided by Cybera from time to time to the Member's Prime Technical Contact (as set out on the Member Particulars Exhibit) or any other responsible agent or employee of Member;

6.1.2 catastrophe, accidents, loss or disruption of power, vandalism, theft or attempted theft, or the fault, negligence, misuse, improper or unauthorized use of such equipment by Member or third parties, any of the events listed in Section 14.5, or by any other cause or causes external to such equipment or otherwise beyond the control of Cybera; or

6.1.3 such equipment being moved from the locations authorized pursuant to this Agreement without Member first obtaining the written consent of Cybera; or

6.1.4 Member making or using additions, alterations or adaptations to such equipment without the prior written consent of Cybera, such consent not to be unreasonably withheld.

6.2 Cybera shall schedule regular system maintenance, including installation, system upgrades and the addition or re-configuration of Member's end-users,



during the Maintenance Hours. During the Maintenance Hours, the Performance Objectives may not be met or the Services may be disrupted or unavailable.

6.3 Cybera shall staff a Network Operations Centre which shall be available for trouble call reporting during normal business hours, and email after business hours. Network trouble incidents may be reported to the Network Operations Centre by telephone or by email to the phone number or email address set forth in the Incident Handling Exhibit. All network trouble incidents reported to the Network Operations Centre shall be handled in accordance with the procedures set forth in the Incident Handling Exhibit.

6.4 The Incident Handling Exhibit sets forth policy and targets of Cybera for handling network trouble incidents. Cybera reserves the right to amend its network trouble incident policy from time to time, and shall give notice of all such changes to the Member by delivering to the Member a revised Incident Handling Exhibit.

6.5 Cybera shall employ network monitoring data collection tools, which shall be designed to alert the Network Operations Centre to network trouble incidents. All such incidents shall be handled in accordance with the procedures set forth in the Incident Handling Exhibit.

6.6 Cybera will from time to time be required to make changes to network connectivity services which may cause temporary disruptions to the Services. Cybera will make such changes only after providing notice to the Member's Prime Service Contact 3 days prior to non-emergency changes, and 24 hours prior to emergency changes.

6.7 Cybera will maintain current Network Connectivity Service Bulletins available by telephone at such number as Cybera may make available for this purpose from time to time.

6.8 Cybera, its employees, contractors, and agents shall at all times enjoy reasonable access to any cabling or facilities which Cybera is obligated in any manner to maintain including Member's Equipment and shall be provided a safe environment in which to perform any installation, repair, maintenance or other work to be undertaken by Cybera in complying with its obligations under this Agreement. Member shall be responsible for ensuring timely access by Cybera to a Member's Site. In the event that Cybera is delayed in any manner in obtaining reasonable access to a Member contact person, the obligations of Cybera to Member, including the Performance Objectives, shall be waived by Member to the extent attributable to such delay. Further, Member agrees to reimburse Cybera at its labour rates in effect from time to time for travel or waiting time



incurred by Cybera's employees, contractors or agents which is attributable to such delay.

6.9 Member acknowledges that national and international connections to the Internet are dependent upon services and communications lines provided by other network providers. Member agrees that Cybera is not responsible for any failure to achieve the Performance Objectives caused by or attributable to equipment and communications lines of these other network providers and Member shall hold Cybera harmless from all claims relating to any loss of Services so attributable, including claims from the Member's customers,.

7 Fees

7.1 Member agrees to pay all Fees for the Services described in the Services Exhibit at the rates set out in the Member Particulars Exhibit, as amended from time to time in accordance with this section 7, on or before the relevant due date(s) stipulated in the Member Particulars Exhibit. Member further agrees to pay any Fees in respect of any additions or amendments to the Services or this Agreement as agreed upon by the Parties from time to time.

7.2 Monthly invoices will be sent each month to cover monthly Periodic Fees associated with the Services as defined in the Services Exhibit. For each month of Service, invoices will be sent at the beginning of that month, with payment due and payable upon receipt of the date thereof. In the first incomplete month of service, the monthly Periodic Fee will be pro-rated based on the number of days left in the month from and including the Service Effective Date. Periodic Fees are non-refundable once paid.

7.3 Cybera will adjust the rates for its Fees, as set out in the Member's Price Sheet from time to time with regard to the market for similar Services. This shall normally occur once per year in advance of the end of the then current Fiscal Year for implementation on the first day of the ensuing Fiscal Year. However, Cybera reserves the right, subject to section 7.3.1, to effect rate changes in its sole discretion as and when appropriate, acting reasonably. Member agrees to pay any increase in fees directly resulting from these rate adjustments. Member shall also benefit from any price reductions resulting from a rate adjustment as and from the effective date established by Cybera therefore.

7.3.1 Cybera agrees to provide Member with a written notice and explanation of any rate adjustment at least 30 days prior to the effective date thereof.



7.4 All invoice information shall be deemed acknowledged correct by Member if not disputed within 45 days of the invoice date, whether or not payment is made for charges stipulated in such invoice. All payments will be made by Member at Cybera Billing Address. Interest on overdue amounts shall accrue at the rate of 2% per month (26.8% per annum).

7.5 Without prejudice to any other rights or remedies of Cybera hereunder, and notwithstanding any past due or other delinquency notice which may be delivered by Cybera to Member, if payment in full is not received by Cybera within 60 days of the date on which the payment became due and payable, the Services may be terminated at the discretion of Cybera. Where reconnection is requested following termination for non-payment, standard Install Fees may be reapplied at the discretion of Cybera. Cybera shall not be obligated to respond to any requests for changes or modifications to the Services by Member including, but not limited to, change of connection speed, processing of domain name(s) and/or IP Address(es) and name server adjustments where Member is in default of the provisions of this section 7.

7.6 Subject to Section 11, 13.2 and 13.3, the obligation of Member to make all payments hereunder will be absolute and unconditional and will not be affected by any circumstance, including, without limitation, any right of set-off, counterclaim, recoupment, defense, or other right which Member may have against Cybera, or anyone else for any reason whatsoever, and also including any insolvency, bankruptcy, reorganization or similar proceedings by or against Member.

8 Member Obligations

8.1 Member shall maintain all Member Equipment under its jurisdiction on behalf of the Member. Member shall ensure that every item of equipment utilized by Member (if not Member-owned) meets Cybera's standards and guidelines and is technically and operationally compatible with Member's Equipment and Member's Communication System. The equipment must comply with all governmental rules and regulations. Cybera shall not be obligated to link any equipment that does not comply with these requirements. Member agrees that it shall not alter, modify, adapt, upgrade, replace or otherwise effect any change in any Member's Equipment, or to any Member software or procedures which will materially affect the functioning of Member's Communication System or Cybera Services, without the prior written approval of an authorized Member Service Engineer.



8.2 Member agrees to designate on the Member Particulars Exhibit an individual with administrative responsibility for this Agreement (the "Prime Billing Contact"), an individual to act as liaison with Cybera with respect to connection status, maintenance windows, and service interruptions (the "Prime Service Contact") and an individual with technical responsibility for the Member Site(s) and use of the Services (the "Prime Technical Contact").

8.3 It will be the responsibility of the Prime Service Contact to disseminate service level information to management, staff, and users in the Member organization as appropriate. The Member represents that the Prime Service Contact, or his or her designate from time to time, is the person authorized to report network problems to Cybera.

8.4 Member, in utilizing the Services, shall be responsible for ensuring that no such use adversely affects operation of Cybera Communication System.

8.5 Member agrees to cooperate and provide all necessary assistance to Cybera in investigating violations of the Cybera Guidelines for Appropriate and Responsible Use (See Addendum A).

8.6 Member agrees to abide by rules set out in the Acceptable Use Policy (AUP) (See Addendum B).

9 Limited Software License

9.1 The Member acknowledges and agrees that Cybera and/or any third-party licensors own all right, title and interest in and to any software programs (the "**Software**") forming part of Member's Equipment or Member's Communication System. Cybera grants to the Member a limited right and license to use the Software, only in accordance with the terms of this Agreement and in accordance with the terms of any end-user license which accompanies such Software. Member shall not modify, reverse-engineer, alter, change or copy such Software (except for archive copies marked to show ownership by Cybera or third-party licensor as appropriate), and shall not make the Software available to any employees, contractors, agents or third parties other than those who require same in order to receive the Services.

10 Renewal of Term

10.1 Prior to or after the end of the Term, Cybera may provide in writing to Member a notice (the "**Renewal Notice**") listing the terms upon which Cybera is prepared to renew this Agreement for a further period.



10.2 Provided Member is not otherwise in default under the terms of this Agreement, the Member shall have the right upon expiry of the Initial Contract Term, to renew the agreement upon the terms and conditions included in the Renewal Notice, for a further period (the "**Renewal Term**") as specified in the Member particulars exhibit. In the event the Member does not wish to renew the agreement, Member shall notify Cybera in writing 30 days prior to the expiry of the Initial Contract Term.

10.3 If Member fails to indicate its wish not to renew upon the terms in the Renewal Notice within the time specified, this Agreement shall be automatically renewed for a further period as set out in the Member's particulars exhibit or on the terms and conditions specified in the Renewal Notice.

11 Limitation of Liability

11.1 Member hereby agrees that in the event of any omissions, interruptions, delays, errors or defects in transmission or in the provision of the Services, or any failures or defects in Cybera's facilities, Cybera's liability shall be limited to a refund of Periodic Fees proportionate to the length of time the problem existed, commencing from the time Member notifies Cybera of the problem. Member agrees to provide written notice to Cybera of a claim for a refund of Periodic Fees within 15 days of the rectification of the problem giving rise to the claim. Member hereby waives its claim to any refund in respect of any problem where it has not provided 15 days written notice to Cybera within 15 days of the rectification of the problem. Notwithstanding anything to the contrary in this Agreement or any statute, Cybera will not be liable to Member for special or consequential damages or damages for loss of use or for economic loss arising directly or indirectly from any breach of this Agreement, fundamental or otherwise, or from any tortious acts or omissions of its employees or agents and in no event will the liability of Cybera exceed the value of this Agreement.

11.2 The remedies set out in section 11.1 and section 13.2 are in lieu of all other warranties, representations, conditions, guarantees and remedies regarding the Services and Member's Equipment, and the maintenance thereof, and all other warranties, representations, conditions, guarantees or remedies of any kind whatsoever, either expressed or implied by statute law or custom, including but not limited to those regarding merchantability, fitness for a particular purpose, design, condition or quality are hereby expressly excluded.

11.3 Without in any manner limiting the express limitations contained in this section 11, Cybera shall not be liable to Member or any of its servants, agents, contractors, representatives or any third parties for:



11.3.1 any act or omission of a telecommunications carrier whose facilities are used in establishing connections to points which Cybera does not directly serve;

11.3.2 defamation or infringement of intellectual property rights (including trade-mark and copyright infringement) arising from material transmitted or received over Cybera's facilities;

11.3.3 infringement of patents arising from combining or using Member-provided facilities with Cybera's Services or Member's Equipment; or

11.3.4 any damages, loss of profits, loss of earnings, loss of business opportunities, real or personal property damage, personal injury or other loss or special or consequential damages arising directly or indirectly out of or in connection with the subject matter of this Agreement, including, without limitation those arising from the acknowledged delays or interruptions in Service described in sections 6 and 11.1 above.

The foregoing limitations shall apply to all acts or omissions of Cybera whether negligent or otherwise which would, but for this section, give rise to a cause of action in contract and/or tort law.

11.4 Cybera does not assume any liability in connection with breach by Member of the foregoing obligations or for acts or omissions of Member which occasion direct, indirect, incidental or consequential damages to Cybera Communication System or to other third parties and Member shall indemnify and hold harmless Cybera from any claims whatsoever, including all legal costs incurred by Cybera (on a full indemnity basis) in respect of any and all such breaches, acts or omissions by Member or its users.

11.5 Member hereby agrees to indemnify, save harmless and reimburse Cybera for all costs, expenses, damages, claims and losses, including legal fees on a solicitor and own client basis, and including, but not limited to, Cybera's costs of collecting unpaid Fees, incurred by Cybera as direct or indirect result of a breach of the terms of this Agreement or a breach of the AUP or the Cybera Guidelines for Appropriate and Responsible Use by Member.

12 Network Traffic Monitoring

12.1 Member is aware and agrees that Network Traffic may be monitored by Cybera for operational purposes such as capacity planning, fault detection, and ensuring the integrity of Cybera facilities and services. Statistics and other data gathered for these purposes will be used solely for the purposes intended.



12.2 Member is aware and agrees that Network Traffic may be monitored by Cybera to aid in investigation of reported violations of the Cybera *Guidelines for Appropriate and Responsible Use* (see Addendum A). Information and data collected during monitoring will be considered confidential and used solely for the purposes stated in this section 12.

13 Termination and Suspension of Service

13.1 Cybera may terminate, restrict or suspend the provision of the Services to Member:

13.1.1 forthwith if any Fees payable hereunder are not paid when due,

13.1.2 if Member's use is not within the parameters set out in the Cybera *Guidelines for Appropriate and Responsible Use* (see Addendum A), or

13.1.3 if, upon 20 days written notice, Member fails to comply with any of its other obligations set forth under this Agreement

in addition to any other remedies available to Cybera for such breach or default. In the event of default or breach by Member, Cybera or its agent may enter Member's premises and remove all Member's Equipment in addition to exercising any and all remedies available to it as a result of such breach.

13.2 In the event that the Services fail to perform substantially in accordance with the Performance Objectives applicable to such Services and Member provides prompt written notice of such performance failure to Cybera, Cybera shall have thirty (30) days from receipt of such notification to rectify the problem. If, at the end of such thirty (30) day period, the affected Services still fail to meet the applicable Performance Objectives, Member may, within a further ten (10) day period, elect in writing to terminate such Services to the affected Member Sites. If Member does so, Cybera shall terminate Services between those points and no further Fees shall be applicable in connection with the discontinued service. Cybera shall thereupon be entitled to remove all Society Equipment located at Member Site. Performance Objectives shall not be construed as guarantees or warranties in any sense and the only remedy for failure to meet Performance Objectives shall be as provided for in section 11.1.

13.3 Member may terminate this Agreement prior to the end of the then current Term without further obligation to Cybera, other than the obligation to pay any amounts owing for Services provided up to the date of such early termination, under the following conditions:



13.3.1 by immediately paying to Cybera 60% of the remaining value of the aggregate Fees for the unexpired portion of the then current Term; and

13.3.2 by paying any cancellation charges incurred by Cybera and its third party suppliers as a result of Member's early termination.

13.4 All funds so payable by Member to Cybera upon early termination of this Agreement shall be deemed to be liquidated damages and a genuine pre-estimate of Cybera's damages and shall be held on account of, and not in lieu of Cybera's actual damages, if greater than the sum so payable by Member. Notwithstanding the provisions of clause 14.7 hereof, written notice of Member's intention to discontinue the Service must be sent by prepaid registered mail by Member's Prime Billing Contact as identified in the Member Particulars Exhibit, to Cybera Billing Address and shall not be effective until actually received by Cybera.

14 General

14.1 This Agreement, together with its Exhibits and Addenda, shall enure to the benefit of and be binding upon Cybera and Member, and their respective heirs, executors, administrators, successors and permitted assigns. Member may not assign this Agreement without Cybera's prior written consent, such consent not to be unreasonably withheld. Cybera may not assign this Agreement without Member's prior written consent, such consent not to be unreasonably withheld. Notwithstanding the above, either party may assign this Agreement to an affiliate (as that term is defined in the Canada Business Corporations Act) or to a purchaser of all or substantially all of that party's assets. A change in control shall not be considered an assignment of this Agreement.

14.2 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, other than the modifications imposed by any government or regulatory authority, shall not be valid unless reduced to writing and agreed to by all Parties. Each of the Parties hereby covenants and agrees to execute any further and other documents and instruments and to do any further and other things that may be necessary to implement and carry out the intent of this Agreement.

14.3 All rights and remedies hereunder are cumulative and not alternative and in particular Cybera shall be entitled to pursue all of its respective rights hereunder and at law either consecutively or concurrently and no rights or interests shall be extinguished or merged by the taking of judgment for all or any part of moneys which are or may become due and owing pursuant to this agreement or pursuant to any extension or subsequent agreement made between Cybera and Member. No condoning, excusing, overlooking or waiver by Cybera



of any default, breach, or non-observance by Member in respect of any covenant, agreement, proviso, or condition will operate as a waiver of Cybera's rights hereunder in respect of any continuing or subsequent default, breach, or non-observance or so as to defeat or affect in any way the rights of Cybera in respect of that continuing or subsequent default, breach, or non-observance and no waiver will be inferred from or implied by anything done or omitted to be done by Cybera unless by express waiver in writing.

14.4 Member shall pay in addition to the Fees specified herein, all taxes, assessments and government charges including but not limited to Provincial Sales Tax, Excise taxes, Goods and Services Tax and any other applicable tax now or hereafter imposed under the authority of a federal, provincial or municipal taxing jurisdiction, except taxes on the income of Cybera.

14.5 Notwithstanding any other term of this Agreement, neither Party shall be liable for any delay, interruption or fault in the performance of its obligations, other than the payment obligations hereunder, if caused by acts of God, war, declared or undeclared, terrorism, fire, flood, storm, slide, earthquake, power failure, inability to obtain equipment, supplies or other facilities not caused by failure to pay the then prevailing prices, labour disputes or any other similar event beyond the control of the Party affected which may prevent or delay such performance. If any such act or event occurs or is likely to occur the Party affected shall promptly notify the other Party, giving particulars of the event. The Party so affected shall use all reasonable efforts to eliminate or remedy the event, but shall not be obligated to take any action relating to a labour dispute.

14.6 Cybera reserves the right to refuse to carry out any work required herein which, in Cybera's opinion, would be hazardous. Cybera shall not be responsible in any way to Member for any such refusal. Cybera shall comply with all of Member's safety requirements where applicable, however, any protective clothing or any other equipment required as a result of Member's requirements shall be provided to Cybera at no cost.

14.7 The Parties hereto represent that they have full authority to enter into this Agreement and that no further act or approval is required to make this Agreement binding upon the respective Parties, other than signature by each Party's authorized signatory. Should any portion of this Agreement for any reason be held to be void in law, this Agreement shall be construed, so far as is possible, as if such portion had never been contained herein. This Agreement shall be construed and interpreted in accordance with the laws of the Province of British Columbia without regard to its conflicts of laws rules. Subject to clause 13.4 hereof, notice to be provided under this Agreement shall be effectively delivered if delivered by hand, sent by facsimile transmission, or forwarded by registered



mail to the business address of the other party, and to the attention of the Authorized Signatories hereto. Notice shall be deemed to be delivered on the date of delivery or the date following facsimile transmission or if sent by registered mail on the third day after mailing.

14.8 This Agreement may be executed in any number of counterparts, or by facsimile, each of which when delivered will be deemed to be an original, for all purposes and will constitute one and the same instrument, binding on the Parties, notwithstanding that all the Parties are not signatories of the same counterpart or facsimile.

14.9 The captions appearing in this Agreement have been inserted for reference and as a matter of convenience only and in no way define, limit, alter, or enlarge the scope or meaning of the provisions of this Agreement.

14.10 Words and phrases used herein that have acquired special meanings in the computer industry will be read and construed in accordance with the special meanings attaching to those words and phrases. Whenever the singular or masculine or neuter is used in this Agreement, the same will be construed as meaning the plural, feminine, body politic or body corporate and vice-versa where the context or the Parties hereto so require.

14.11 Member hereby acknowledges that it has been advised to seek independent legal advice as to the meaning and effect of this Agreement.

14.12 Time is of the essence of this Agreement.

14.13 The individual who executes this Agreement on behalf of Member hereby warrants that he/she has been duly authorized by Member to so execute this Agreement on behalf of Member.

14.14 In the event of any inconsistency between the Cybera Services Agreement, and the terms of any Exhibit or Addenda, the terms of the Cybera Services Agreement shall prevail.



INCIDENT HANDLING EXHIBIT

Incident Reporting

Network trouble incidents may be reported to the Network Operations Centre (NOC):

- email, at noc@cybera.ca

Incident Handling

Upon receiving a reported incident, NOC staff will assign a reference number for incident logging. Minor incidents may be resolved by NOC staff at this stage.

Incidents not resolved by NOC staff will be escalated for handling by Member Service Engineer(s) or management according to the impact level assigned, based on the target escalation times set forth in the incident severity grid below. Best efforts will be made to resolve the situation within the resolution target times set forth in the incident severity grid.

Best efforts will be made to escalate incidents as appropriate outside of Business Hours. With incidents of higher severity, efforts will be made to contact Member Service Engineer(s) or management as appropriate. Member Service Engineer(s) do not carry pagers and may not be available to assist with problem resolution.

All impact level 4 incidents will be escalated immediately to Member Service Engineer(s) and within one hour to the attention of NOC Managers and Network Engineering Managers. All impact level 5 incidents will be escalated immediately to Member Service Engineer(s) and to the attention of NOC Managers, Network Engineering Managers, and the Cybera President and CEO.

Impact Level	Impact	Escalation	Resolution Time (Business Hours)	Resolution Time (Outside of Business Hours)
5	Critical Critical Business Impact <i>E.g. Core Cybera network is</i>	Immediate	Within 4 hours	Within 12 hours



	<i>down</i>			
4	Extremely Urgent High Business Impact E.g. <i>Organization network connection is down</i>	Immediate	Within 8 hours	Within next business day
3	Urgent Moderate business impact E.g. <i>Degraded network connectivity</i>	Within 1 Hour	Within 12 hours	Within next business day
2	Medium Low business impact E.g. <i>Individual user</i>	Within next business day	Within next 2 business days	Within next 2 business days
1	Low No business impact E.g. <i>Network is functional, but assistance is required in the configuration or use of the network</i>	Within next business day	Within next 2 business days	Within next 3 business days



Addendum A

Guidelines for Appropriate and Responsible Use

Available on request.



Addendum B

Acceptable Use Policy (AUP)

Available on request.