

## EASTLINK CONSUMER TERMS OF SERVICE

These Terms of Service govern your use of the Services and Equipment provided by Eastlink. By using the Services and Equipment provided by Eastlink, you expressly agree that you have received and had the opportunity to review a copy of these Terms of Service and that you understand and agree to be bound by these Terms of Service, which along with any aspects of the Services are subject to change at any time upon 30 days notice where not prohibited by law. If you do not agree with the Terms of Service (or any changes to the Services or these Terms of Service), your sole and exclusive remedy is to terminate service according to the termination provision included herein and cease using the Services. Notwithstanding any other provision in these Terms of Service, we may accept or decline your order for services at our sole discretion. Customers can view Eastlink's Terms of Service, and any updates, on our website at [www.eastlink.ca](http://www.eastlink.ca). You may contact Eastlink at any time to obtain a printed copy of these Terms of Service. You are responsible for ensuring that the Services are used in accordance with these Terms of Service.

1. Definitions
2. Payment Options
3. Charges and payments
4. Eastlink-initiated suspension/termination of service
5. Eastlink facilities
6. Privacy
7. Your telephone number and identifiers
8. Your content
- 9. Limitations of liability**
10. Customer's liability
11. General
12. Contact us
13. Television
14. Internet
15. Wireline phone
16. Wireless phone
17. Applications

### **1. Definitions**

Us, we, our, Eastlink, the Company: means Eastlink

Service(s): means the Internet, wireline telephone, television services and wireless (cellular telephone), or other services that you subscribe to or receive from or through Eastlink.

Equipment: means any device, equipment or hardware used to access the Service(s) or used in conjunction with the Service(s).

Customer, you, your: means the customer

### **2. Payment options**

- 2.1 Customers can arrange to pay using pre-authorized payments; there is no charge for this service. Eastlink will automatically debit your bank account or charge a monthly payment to your AMEX®, VISA™ or MasterCard™ credit card on the due date of your monthly charge. In cases where the amount due is constant from month to month, no statement would be issued to customers using pre-authorized credit card payments as the credit card statement will include the amount.

- 2.2 If you choose to make pre-authorized payments, you authorize Eastlink to charge your credit card or debit your bank account to collect amounts due from you, including any late payment charges (as described below). You will promptly notify Eastlink of any changes to your credit card account, bank account, billing address or any other information that may prevent payment collection. If you do not pay the charges you owe us, you agree that we can charge any outstanding amount to your credit card or withdraw it from any authorized bank account. If you want to cancel pre-authorized credit card or bank account payments, you agree to notify us at least 15 days in advance.
- 2.3 In addition to pre-authorized payments, Customers can pay in the following ways:
- Online at [www.eastlink.ca](http://www.eastlink.ca)
  - At most chartered banks, trust companies, credit unions, ATM machines, and telephone or online banking services (bank service fees may apply)
  - By calling Eastlink at 1-888-345-1111 to make a one-time credit card payment
  - For wireless customers, by dialing \*611 from your cellphone to make a one-time credit card payment
  - At authorized Eastlink Payment Centres and retail locations
  - Or mail to: Eastlink, PO Box 8600, Halifax, NS B3K 5M3 (Mailed payments are credited on the date the payment is received by Eastlink)

### **3. Charges and payments**

- 3.1 Charges will commence on the date of the initial activation of the Service(s) or the Equipment, whichever is earlier (the "Activation Date").
- 3.2 Unless otherwise agreed to by you and us, we will bill you monthly. Regularly recurring charges are billed in advance and charges incurred on a per-use basis are billed in arrears. If we have failed to bill you, or under-billed you, for Equipment and services, we must correctly bill you within one (1) year of the date the charge was made. In all cases, payment is due on or before the due date specified on the bill. A Customer's failure to receive a bill does not relieve that Customer of the responsibility to make payment to Eastlink by the bill's due date. You may negotiate payment arrangements on disputed amounts, under reasonable circumstances.
- 3.3 You must bring invoice inquiries and disputes to Eastlink's attention within ninety (90) days of the bill date; otherwise, you will be deemed to have accepted the bill as accurate in all respects. Eastlink will review any disputed charge made within this period, provided you continue to pay the undisputed portion of the bill, and any subsequent bills. An adjustment will be made to your bill where Eastlink determines that your dispute is valid within 30 days of such determination.
- 3.4 A late payment charge equivalent to the amount shown on your monthly invoice will be applied to accounts that have not been paid in full by the payment due date printed on the invoice. Late payment charges will be applied until the date we **receive** full payment. The late payment charge will be reviewed and adjusted on an ongoing basis as appropriate. All payments are credited on the date the payment is received by Eastlink.
- 3.5 An administrative charge will be applied to your account each time a cheque is returned, or a pre-authorized withdrawal or a credit card payment is denied, for whatever reason. The administrative charge is subject to change from time to time.
- 3.6 We may require a security deposit from you at any time. Eastlink will determine at its discretion, how your deposit or other security will be allocated to satisfy outstanding amounts owed by you to Eastlink. Any security deposit held by Eastlink will bear interest at the rate determined by regulation, as determined from time to time, from the date we collect the security deposit until the date we return it to you. If your service is terminated, we will apply any deposits or other security against the outstanding final balance on your account.
- 3.7 We may impose a spending limit on your account at any time. We may also change your limit at any time.

- 3.8 In exceptional circumstances, prior to the normal billing date, we may request payment from you, on an interim basis, for the charges that have accrued, providing you with details regarding the services and charges in question. In such cases, the charges can be considered past due when the time period specified by Eastlink for such payment has lapsed.
- 3.9 We may request immediate payment in extreme situations, provided that a notice has been issued under 3.8, and the risk of loss has substantially increased since that notice was given.

#### **4. Term, suspension/termination of service**

- 4.1 These Terms of Service shall continue indefinitely until terminated in accordance with the provisions herein or applicable law.
- 4.2 You may terminate any or all of your Services at any time by contacting Eastlink at the appropriate points of contact specified herein. The termination shall take effect on the later of your requested termination date and the date Eastlink receives your notice of termination. You will be responsible for any charges incurred up to and including the termination effective date.
- 4.3 Eastlink may, at any time, upon at least fourteen (14) days' prior notice to the Customer or greater where required by regulation, cancel these Terms of Service or any Services and Equipment provided under these Terms of Service.
- 4.4 Notwithstanding 4.3, Eastlink may immediately restrict, block, suspend or terminate any or all of your Services if:
- (a) you fail to pay an account that is past due or fraudulently or improperly seek to avoid payment to us;
  - (b) you fail to provide or maintain a reasonable deposit or alternative when required to do so;
  - (c) you fail to comply with the terms of a deferred payment agreement;
  - (d) you fail to maintain Service usage within the prescribed credit limit;
  - (e) you become bankrupt or otherwise insolvent;
  - (f) you fail to provide Eastlink with reasonable entry and access, at reasonable hours to install, inspect, repair and remove its facilities and to perform necessary maintenance in cases of network-affecting disruptions involving Customer-provided facilities, where applicable;
  - (g) you use or permit others to use any of Eastlink's services so as to prevent fair and proportionate use by others;
  - (h) you use or permit others to use any of Eastlink's services for the purposes of making/sending annoying or offensive calls/messages, for cyberbullying or harassment of any person, or for a purpose or in a manner that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, provincial, federal or international law, or for the purposes of encouraging or assisting others to do any of the foregoing;
  - (i) you re-arrange, disconnect, remove, repair or otherwise interfere with Eastlink's Equipment or facilities (except in cases of emergency) or if termination or suspension is necessary to protect Eastlink's facilities, Equipment or network;
  - (j) you violate any provision of these Terms of Service, including the Eastlink Internet Acceptable Use Policy;
  - (k) you harass, threaten or otherwise act unreasonably towards Eastlink or its employees or agents;
  - (l) you engage in any conduct which Eastlink, in its sole discretion, considers to be unacceptable;
  - (m) you fail to provide payment when requested by Eastlink;
  - (n) we reasonably suspect or determine that any of your account, identifiers, Services or Equipment is the subject of fraudulent, unlawful or improper usage or usage that adversely affects our operations or the use of our services, facilities or networks by others;
  - (o) we need to install, maintain, inspect, test, repair, remove, replace, investigate, protect, modify, upgrade or improve the operation of the Services, the Equipment or our facilities or networks; or
  - (p) we reasonably believe that there is an emergency or extreme circumstance that would warrant such action.

- 4.5 Where you make a payment to prevent suspension or termination of your service, or to reconnect your service, and that payment is returned by the bank or declined, Eastlink may immediately, and without further notice, suspend or terminate your service.
- 4.6 Suspension or termination does not affect the Customer's obligation to pay any amount owed to Eastlink. Service charges will continue to accrue during any suspension of service and Customers will continue to pay the monthly recurring charges during the service suspension. Upon termination, any balance owing shall become due before the date specified in the final bill.
- 4.7 Subject to Eastlink's right to refuse service, we will restore service, without undue delay, where the grounds for suspension or termination no longer exist, or a payment or deferred payment agreement has been negotiated. Reconnection charges shall apply.
- 4.8 Subject to Eastlink's right to refuse service, where it becomes apparent that suspension or termination occurred in error or was otherwise improper, Eastlink will restore service by the close of business hours on the next business day, unless exceptional circumstances do not permit this, and no reconnection charges will apply.
- 4.9 If we restrict, suspend, block or terminate your Services, all features and services, including emergency 9-1-1 service, public alerts or special needs services, may also be restricted, suspended, blocked or terminated.
- 4.10 We cannot guarantee the availability or resumption of any previous telephone numbers following a termination of your service.
- 4.11 The Customer shall reimburse Eastlink for reasonable collection costs (including legal fees and expenses, collection agency fees or Court costs) and/or pick-up charges in the event that Eastlink finds it necessary to enforce collection and/or preserve and protect its rights under its Terms of Service.
- 4.12 You shall give Eastlink reasonable access to your premises to remove its Equipment and facilities, where applicable. Failure by Eastlink to remove its Equipment or facilities does not constitute abandonment of such Equipment or facilities. If Eastlink removes its Equipment or facilities it will not, nor is it required, to alter, repair or re-install wiring or other facilities.

## **5. Eastlink facilities and right to enter premises**

- 5.1 Eastlink's agents and employees may, at reasonable hours, enter premises on which service is or is to be provided to install, inspect, repair, replace, investigate, protect, modify, upgrade, improve and remove its facilities and to inspect and perform necessary maintenance in cases of network-affecting disruptions involving Customer-provided facilities, where applicable.
- 5.2 Except in cases of emergency, or where entry is pursuant to a court order, Eastlink will obtain permission from the Customer or other responsible person prior to entering the premises.
- 5.3 All Eastlink employees and authorized contractors carry an identification card bearing the Eastlink name and the employee's name and picture. Customers should refuse admittance to anyone claiming to be an employee of Eastlink who does not have this card. Upon request, Eastlink's employee or contractor will show valid Eastlink identification prior to entering the premises. Verification of scheduled work by an Eastlink employee or contractor can be obtained by calling Eastlink customer service at 1-888-345-1111.
- 5.4 Eastlink will bear the expense of maintenance and repairs required due to normal wear and tear to its facilities, except that Eastlink may charge for the additional expense incurred when you require maintenance and repair work to be performed outside of regularly scheduled working hours or relating to facilities not owned by Eastlink.

- 5.5 A Customer who has deliberately, or by virtue of a lack of reasonable care, caused loss or damage to Eastlink's facilities, may be charged the cost of restoration or replacement. In all cases, Customers are liable for damage caused to Eastlink's facilities by Customer-provided facilities.
- 5.6 For television, Internet and/or local phone equipment, fees may be charged to the Customer for the installation of the Services and/or Equipment and Eastlink may supply such Equipment for a monthly rental charge, free of charge, or for purchase by the customer. With the exception of television, Internet and telephone Equipment purchased and paid for by the Customer (which Equipment is neither returnable to nor refundable by Eastlink), all Equipment and facilities provided by Eastlink shall remain the exclusive property of Eastlink and must be returned to Eastlink upon termination of the Services to which the Equipment related. You understand that if Equipment should be lost, stolen, sold, leased, mortgaged, transferred, assigned, encumbered, destroyed, or damaged beyond normal wear or not returned upon termination of Service you shall be liable to Eastlink for the cost of the Equipment, plus applicable taxes and any costs incurred by us in seeking possession of such Equipment and you hereby authorize Eastlink to charge your credit card account or your preauthorized payment authorization in payment for all such charges and costs. You understand that the costs related to this Equipment are determined by Eastlink based on the cost of replacing the Equipment and the cost of recovery.
- 5.7 You agree that you will not open, tamper with, service or make any alterations to any Eastlink-owned Equipment. You shall not allow any person, other than authorized Eastlink personnel, to remove any Eastlink-owned Equipment from the premises designated herein and its point of initial installation, where applicable, nor shall you allow or encourage others in any way to service or deal with any portion of Eastlink's Equipment or materials.
- 5.8 You shall not sell, lease, mortgage, transfer, assign or encumber any Eastlink Equipment. If you become aware that any lien or encumbrance has been placed on the Equipment you are responsible to notify Eastlink immediately and to assist Eastlink in removing same.
- 5.9 You must immediately notify us, at any of the points of contact specified below, if your Equipment is lost, stolen or destroyed.

## **6. Privacy**

- 6.1 Unless you provide express consent, or disclosure is pursuant to a legal power, all information held by Eastlink regarding you (other than your name, address and listed telephone number) is confidential and will not be disclosed by Eastlink to anyone other than:
- (a) you; or a person you have authorized
  - (b) a person who, in our reasonable judgment, is seeking the information as your agent;
  - (c) another service provider, provided the information is required for the efficient and cost effective provision of telephone service and disclosure is made on a confidential basis with the information to be used only for that purpose;
  - (d) a company involved in supplying you 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;
  - (e) an agent we retain in the collection of your account, or to perform other administrative functions and to assist in providing your Services, provided the information is required for and is to be used only for that purpose;
  - (f) an agent we retain to evaluate your creditworthiness, provided the information is required for and is to be used only for that purpose;
  - (h) a public authority or agent of a public authority, if in the reasonable judgment of Eastlink, it appears that there is imminent danger to life or property which could be avoided or minimized by disclosure of the information; or

(i) an affiliate involved in supplying you with telecommunications and/or broadcasting 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.

6.2 Express consent may be taken to be given by a Customer where the Customer provides:

- (a) Written consent;
- (b) Oral confirmation verified by an independent third party;
- (c) Electronic confirmation through the use of a toll-free number;
- (d) Electronic confirmation via the Internet;
- (e) Oral consent, where an audio recording of the consent is retained by us; or
- (f) Consent through other methods, as long as an objective documented record of customer consent is created by the Customer or by an independent third party.

By using Eastlink's Service and, therefore, accepting these Terms of Service, the Customer hereby expressly consents that Eastlink obtains and uses credit history information and personal information therein contained and provides the same to credit reporting and collection agencies, if applicable.

6.3 You may request, in writing, that Eastlink provide any information in our possession regarding you. We will provide the information requested if: you have given the Company sufficient details of the information sought to allow us to comply with the request; and if you agree to reimburse the Company for costs if we would incur unusual expense to provide the information.

6.4 For further information regarding Eastlink's privacy policies and practices, please refer to Eastlink's Customer Privacy Policy and the Code of Fair Information Practices located on our website. You agree that those documents, as amended from time to time, shall apply to your use of the Services. You hereby consent to the collection, use and disclosure by Eastlink and its agents of your personal information collected in connection with provision and/or use of the Services, for the purposes identified in those documents and acknowledge that those purposes include the use of customer information to update our Customers on pricing and service offers from time to time.

6.5 In order to provide exceptional customer service, we coach our customer service representatives on an ongoing basis. As such, if you communicate with our representatives, we may monitor or record the communication for coaching and quality control purposes.

6.6 You authorize Eastlink to contact you to provide account information, including telemarketing messages related to your account, through messages delivered via automatic dialing devices that convey pre-recorded or synthesized voice messages, text message, email or other means, to you at the contact numbers and addresses listed on your account.

## **7. Your telephone numbers and identifiers**

7.1 You do not own any identifier (e.g. telephone, account, calling card or PIN number; email, IP or Web page address; access code, etc.) assigned to you, and we may change or remove any identifier at any time upon notice to you and we will in no way be required to compensate you for such changes. You are permitted to use (but not register with any organization) only those IP addresses we have provided to you.

7.2 If your Internet service is terminated, all email accounts provided to you by Eastlink will be terminated and you will no longer be able to send or receive emails from that address. All emails associated with the account will also be removed on termination.

7.3 If you ask to transfer a phone number currently assigned to you from your existing service provider to Eastlink, you represent and warrant that you have the right to make the request and you authorize Eastlink to make the transfer-in request to the other service provider on your behalf and to share your name, telephone number,

address and other personal information relevant to the transfer request with the other service provider. You agree to complete and sign a request form if necessary. The services of the other service provider, including any features, applications or content, IP address, or any Equipment cannot be transferred to Eastlink. You must pay all amounts owing on your account with the other service provider, including the early termination charges if applicable. Eastlink is not responsible, or liable to you in any way, for any interruption of services due to a number transfer.

- 7.4 If you want to transfer your phone number to another service provider, then, as long as your account and phone number are in current status and active, Eastlink will process a transfer-out request from your new service provider. You must pay any amounts due plus applicable taxes resulting from the termination of your Services. Eastlink may not transfer your services if your account is not in good standing. The Services, including any features, applications or content, IP address, or any Eastlink Equipment cannot be transferred to your new service provider.

## **8. Your content**

- 8.1 In addition to the limitations described in Section 4.4 which apply generally, you shall not upload, post or otherwise make available on Eastlink-hosted websites any material protected by copyright, trademark or other proprietary right without the express permission of the owner of the copyright, trademark or other proprietary right. You are wholly liable for such uploads, posts or other actions.
- 8.2 Eastlink shall have the right, but not the obligation, to monitor or investigate the content of the Service, including chat rooms and forums, or any content that is transmitted using the Services or the Equipment, to determine compliance with these Terms and all applicable laws and regulations. Eastlink shall have the right in its sole discretion to edit, refuse to post, move or remove any material submitted to or posted on [www.eastlink.ca](http://www.eastlink.ca), which without limiting the foregoing, in Eastlink's sole discretion, Eastlink finds to be in violation of the provisions hereof or otherwise objectionable. Eastlink may also access or preserve content or information to comply with legal process in Canada or foreign jurisdictions, operate the Services, ensure compliance with the Terms of Service or any Policies, or protect ourselves, our customers or the public. Eastlink may disclose any information to third parties as necessary to satisfy applicable laws and regulations.

## **9. Limitations of liability**

- 9.1 ALL PROVISIONS IN THIS PART 9 SHALL SURVIVE TERMINATION OF THESE TERMS OF SERVICE.
- 9.2 Eastlink does not guarantee uninterrupted operation of the Services or its Equipment, facilities or network. EASTLINK'S LIABILITY FOR: (A) NEGLIGENCE, BREACH OF CONTRACT, TORT OR ANY OTHER CAUSE OF ACTION; (B) ANY LOSS, OMISSIONS, DELAYS, ERRORS, DEFECTS OR FAILURES IN EASTLINK'S SERVICES, EQUIPMENT, NETWORK OR FACILITIES; AND (C) ANY OTHER ACTION OR INACTION OF EASTLINK, IS LIMITED TO A REFUND, UPON REQUEST, OF CHARGES FOR THE AFFECTED SERVICES, PROPORTIONATE TO THE LENGTH OF TIME THE PROBLEM EXISTED, TO A MAXIMUM OF THREE (3) MONTHS' SERVICE FEES.
- 9.3 Notwithstanding the above section, Eastlink is not liable for:
- (a) the denial, restriction, blocking, disruption, availability, reliability, timeliness, quality, coverage, uninterrupted use, security, pricing or operation of the Services, Equipment and facilities, including, without limitation, any disruption or unavailability of emergency 9-1-1 service, public alerts or special needs services, the performance, availability;
  - (b) any act or omission of any third party (including, without limitation, any other local telephone company, any connecting carrier or underlying carrier or other provider of connections, facilities, or service, or any directory publisher);
  - (c) the conduct, acts or omissions of Customers, or the operation or failure of Customers' Equipment or facilities;

- (d) any event beyond the reasonable control of Eastlink, including, but not limited to: (i) acts of God; (ii) inclement weather, including lightning; (iii) labour disputes; (iv) riots or civil disputes; (v) war or armed conflict; or (vi) any law, governmental order, decision or regulation, or order of any court of competent jurisdiction;
- (e) any claims or damages resulting directly or indirectly from any claim that the use, intended use or combination of the Services/Equipment or any material transmitted through the Services is defamatory or infringes the intellectual property, industrial, contractual, privacy or other rights of a third party;
- (f) infringement of patents arising from combining or using Customer-provided facilities with Eastlink's network, Equipment or facilities;
- (g) copyright or trademark infringement, passing off or acts of unfair competition arising from directory advertisements furnished by a Customer or a Customer's directory listing, provided such advertisements or the information contained in such listings were received in good faith in the ordinary course of business;
- (h) any defacement of, or damage to, the premises or location where the Services and Equipment are installed as a result of: (i) the attachment of any instruments, apparatus or associated wiring or Equipment, furnished by Eastlink, or (ii) the removal thereof, when such defacement or damage is not wholly caused by Eastlink's negligence;
- (i) Eastlink's failure, for any reason, to activate any service on the activation date requested.

These limits are in addition to any other limits on Eastlink's liability set out elsewhere in these Terms of Service and apply to any act or omission of Eastlink, whether or not the act or omission would otherwise be a cause of action in contract, tort or pursuant to any statute or other doctrine of law.

9.4 UNDER NO CIRCUMSTANCES SHALL EASTLINK, ITS PARTNERS OR ASSOCIATES OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SERVANTS OR AGENTS BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, ECONOMIC OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS OR REVENUE, FINANCIAL LOSS, LOSS OF BUSINESS OPPORTUNITIES, LOSS, DESTRUCTION OR ALTERATION OF DATA, FILES OR SOFTWARE, BREACH OF PRIVACY OR SECURITY, PROPERTY DAMAGE, PERSONAL INJURY, DEATH OR ANY OTHER FORESEEABLE OR UNFORESEEABLE LOSS, HOWEVER CAUSED) THAT RESULT FROM, OR RELATE DIRECTLY OR INDIRECTLY TO, IN ANY WAY THIS AGREEMENT, INCLUDING YOUR USE OF THE SERVICES, EQUIPMENT AND/OR SERVICE THEREOF, OR YOUR RELIANCE ON OR USE OF ANY INFORMATION, SERVICE, MERCHANDISE OR MATERIAL PROVIDED ON OR THROUGH USE OF THE SERVICES, OR THAT RESULT FROM FAILURE OF PERFORMANCE OF THE SERVICES, OR ANY ADVERTISEMENTS, PROMOTIONS OR STATEMENTS RELATING TO ANY OF THE FOREGOING, EVEN IF WE WERE NEGLIGENT OR WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.5 The Services and Equipment are provided "as is" and "as available" without warranties or conditions of any kind. Eastlink makes no warranty with respect to any failure or interruption of the Service or Equipment caused by or resulting from failure or replacement of transmission equipment or caused by or resulting from any circumstance beyond its control. Eastlink also assumes no responsibility whatsoever for the condition, maintenance or repair of any computer or other customer Equipment or facilities to or in which the cable modem or any other Eastlink Equipment or facilities are installed or for any damage therein. Without limiting the generality of the foregoing, we do not warrant the performance, availability, uninterrupted use of or operation of the Internet or other networks, your connection to the Internet or other networks, the Equipment or any feature of the Service. The entire risk as to the use, availability, reliability, timeliness, quality, security and performance of the Service is with you. Further, we do not warrant that any data or files sent by or to you (whether by e-mail or otherwise) will be transmitted, transmitted in uncorrupted form, or transmitted within a reasonable period of time. There are no express or implied representations, warranties or conditions whatsoever (including warranties of title or non-infringement, or implied warranties of merchantability, quality or fitness for a particular purpose) with regard to the Equipment, Service(s) or any merchandise, information or service available on the Internet or other networks otherwise through the Service, and all representations, warranties and conditions of any kind, express or implied are, to the extent permitted by law, hereby excluded.



- 9.6 You acknowledge and understand that the Services or access to the Services, including 9-1-1, public alerts or special needs services, may not function correctly, or at all, in the following circumstances:
- if your Equipment fails, is not configured correctly or does not meet Eastlink's requirements;
  - in the event of a network outage or extended power failure, or if your Equipment battery runs out of power;
  - if you tamper with or, in some cases, move the Equipment; or
  - following suspension or termination of your Services or account.
- 9.7 Neither Eastlink nor its affiliates, partners, licensors, dealers, representatives, suppliers and agents (and their respective employees, officers, directors, shareholders and representatives) are responsible or liable to you for any software, content or services provided to you or accessible by you through the Services, any charges incurred in connection with such software, content or services or anything that is or can be done with such software, content or services even if you are billed for such software, content or services. All such software, content or services is accessed or transmitted solely at your own risk. You acknowledge that there may be content that you may find offensive and you agree that your viewing and/or use of such content is at your own risk. Some programming and/or content may not be suitable for minors and you agree to supervise all minors whom you permit to view the programming and/or access the content through your Eastlink Services.

## **10. Customers' Liability**

10.1 You agree to hold harmless and indemnify Eastlink against all claims, losses, damages, costs and expenses (including reasonable legal fees and other litigation expenses) resulting from:

- (a) Your use (or the use by others) of your Eastlink service and/or your codes, facilities or Equipment, where such use causes damage or harm to another party or the property of another;
- (b) Violation or breach of any term, condition, representation or warranty of this Agreement or any applicable policy or guideline;
- (c) Use of or inability to use the Service;
- (d) Any content or software displayed, distributed or otherwise disseminated by you using Eastlink's service, network and facilities;
- (e) From damage to any property or person whatsoever, including but not limited to the Customer or any employee, agent, servant or independent contractor of or employed by the Customer or any guest or occupant of the Customer's premises, in any way caused by or arising from the use of the Service or the installation or use of any Eastlink-owned Equipment, including the cable modem or high Speed Wireless Internet antenna; or
- (f) Violation, alleged violation or misappropriation of any intellectual property, industrial, contractual, privacy or other rights of a third party or any alleged libel or slander by a third party against you.

10.2 The Customer agrees to promptly notify Eastlink after becoming aware of any unauthorized use of the Services or its account and shall take such reasonable measures as are necessary to prevent any reoccurrence of such event.

10.3 Eastlink reserves the right, in its sole discretion and at its own expense, to assume the exclusive defense and control of any matter otherwise subject to such indemnification. The Customer shall co-operate as fully as reasonably possible in the defense of any claim assumed by Eastlink in such a case.

10.4 If Eastlink's Equipment or facilities are presently located at, or to be installed on, property or premises that are occupied by a Customer, but not owned by the Customer, the Customer warrants that the Customer has the consent of the owner to install, inspect, service, maintain, remove or disconnect Eastlink's facilities or Equipment on the property or premises and agrees to save harmless and indemnify Eastlink against all actions, causes of action, claims, or demands arising or resulting from any lack of such consent.

10.5 Customers have absolutely no authority to use Eastlink's trademarks, trade name, logos or designs, nor to act on behalf of Eastlink.

10.6 Equipment and related software may have to meet certain minimum requirements and be maintained in certain ways and in certain locations in order to access the Services or for the proper operation of the Services. Such requirements may be changed from time to time at our sole discretion. Unless otherwise specified by us, you are solely responsible for updating or maintaining your Equipment and software as necessary to meet such requirements, and you may not be entitled to customer support from us if you fail to do so.

10.7 You are solely responsible for the following matters:

- any access to the Equipment;
- maintaining the security and privacy of your property and your transmissions using the Services, the Equipment or our facilities or networks; and
- protecting against any breaches of security or privacy or other risks involved in installing, using, maintaining or changing the Services or the Equipment.

## **11. General**

11.1 From time to time, we may establish policies, rules and limits (together, the “Policies”) concerning use of the Services, Equipment and any products, content, applications or services used in conjunction with the Services or Equipment. Your use of the Services is subject to these Policies, which are incorporated into these Terms of Service by reference.

11.2 These Terms of Service, as amended from time to time, constitute the entire agreement between you and Eastlink and supersede all prior agreements, written or oral, with respect to the same subject matter. These Terms of Service cannot be changed by you. No sales representative, dealer, agent, officer or employee of Eastlink has the authority to change or modify these Terms of Service, except pursuant to an official revised version of these Terms of Service, and you may not rely on any such change or modification. Neither the course of conduct between us nor trade practice modifies any provision of these Terms of Service. In areas where Eastlink operates as a small incumbent local exchange carrier, these Terms of Service supplement the relevant terms included in our tariffs, which are incorporated herein by reference. Where Eastlink provides special offers, promotions or other packages, additional terms and conditions, incorporated herein by reference, may apply to those promotions or packages.

11.3 You may not use the Services for anything other than your own personal use. You may not resell the Services, receive any charge or benefit for the use of the Services or provide Internet access or any other feature of the Services to any third party. You may not share or transfer your Services without our express consent.

11.4 These Terms of Service enure to the benefit of and are binding on you, your heirs and your legal personal representatives and on you and Eastlink’s respective successors and assigns. You may not assign or transfer this Agreement without our prior consent. We may assign or transfer the Terms of Service or any of our rights or obligations hereunder without your consent.

11.5 Eastlink is a federally-regulated undertaking and as such, these Terms of Service, including all matters relating to the validity, construction, performance and enforcement of the terms, shall be governed by applicable laws and regulations of Canada, and only those provincial laws and regulations applicable to Eastlink in the province in which your billing address is located. If your billing address is located outside of Canada, the Terms of Service shall be governed exclusively by the laws of the province of Nova Scotia and you submit to the exclusive jurisdiction of the courts of Nova Scotia and the federal laws of Canada applicable in Nova Scotia.

11.6 The failure of Eastlink to enforce any provision in these Terms of Service, for whatever reason, shall not be construed as a waiver of any right to do so at any time. The Customer agrees that if any portion of this Agreement is held invalid or unenforceable, the remaining portions will remain in full force and effect.

11.7 Upon termination of these Terms of Service, all accrued obligations or liabilities and the provisions which by their nature are intended to continue beyond such termination will remain in effect including, without limiting the foregoing, Part 9 hereof.

11.8 These Terms of Service have been drawn up in the English language at the express request of the parties. Les présentes modalités ont été rédigées en anglais à la demande expresse des parties.

## **12. Contact us**

12.1 To reach us by:

Web: [www.eastlink.ca](http://www.eastlink.ca)

Tel: 1-888-345-1111 or (902) 453-2800 (in the HRM) or by dialing \*611 on your Eastlink wireless device

To write to us on billing or account issues:

Eastlink

Attn: Customer Care

P.O. Box 8660, Stn "A"

Halifax, Nova Scotia, B3K 5M3

12.2 Our goal is to satisfy our Customers and we welcome opportunities to improve our service. If you are not satisfied after having dealt with us, you may write to the Canadian Radio-television and Telecommunications Commission (CRTC), an independent agency of the Government of Canada responsible for the regulation of activities of telecommunications companies under federal jurisdiction.

Their address is:

The Secretary General

Canadian Radio-television and Telecommunications Commission

Ottawa, Ontario, K1A 0N2

Or the CRTC Atlantic Regional Office

Metropolitan Place

99 Wyse Road, Suite 1410

Dartmouth, NS B3A 4S5

Tel: 902-426-7997

Fax: 902-426-2721

TDD: 902-426-6997

We would ask you to send a copy of your letter to us at the address above.

Or please contact CCTS:

CCTS is an agency independent of the telecommunications industry, whose mandate is to resolve complaints of individual and small business retail customers about their telecommunications services. If you have a complaint about your services, including local or long distance phone services, wireless telephone service, or Internet service, you must first try to resolve it directly with your service provider. If you have done so and have been unable to reach a satisfactory resolution, CCTS may be able to help you, free of charge. To learn more about CCTS, you may visit its website at [www.ccts-cprst.ca](http://www.ccts-cprst.ca) or call toll-free at 1-888-221-1687.

## **13. Additional terms applicable to television services**

13.1 You acknowledge and agree that the Service must include the minimum levels of programming required by Canadian government regulation and that such programming requirements may change from time to time without notice. You acknowledge that certain programming channels may be suspended from time to time or

cancelled permanently, and that individual programs may be blacked out in your local viewing area, due to restrictions imposed by the providers of such programming or the rights of Canadian programming services, and agree that Eastlink may at its discretion substitute alternative programming to replace the suspended, cancelled or blacked out programming.

13.2 You may use the Equipment only at the service address identified on your account.

#### **14. Additional terms applicable to Internet access services**

14.1 Eastlink's Internet service includes facilities and Equipment provided incidental to the provision of the Service.

14.2 You acknowledge and understand that when using home networking, there are certain inherent risks (e.g. other users may gain access to your system or your Services and accounts). Eastlink shall not be liable for any claims or damages relating to home networking, even if the home networking application or service is provided, installed, maintained or supported by Eastlink.

14.3 By using the Eastlink's High Speed Internet service, the Customer agrees not to use this Service in a manner that is contrary to applicable laws or regulations and Eastlink's Acceptable Use Policy ("AUP") which forms part of these Terms of Service and is incorporated herein by reference. If there is any conflict or inconsistency between the Terms and the AUP, any rules, policies or guidelines posted on the Eastlink website, these Terms will prevail. The current AUP is available at Eastlink's website at [eastlink.ca](http://eastlink.ca). If the Customer does not agree with the terms and conditions of the AUP, the Customer must immediately stop using Eastlink's HSI service and notify Eastlink's customer service that you are terminating this Service.

14.4 You are responsible for all use of your Services under any screen name or password by any person and for ensuring that all use of your Services complies fully with the provisions of these Terms, the AUP and all rules and all applicable laws and regulations. You are executing this agreement on behalf of all persons who use the Service through any devices connected to your Eastlink modem (including through Wi-Fi or other networks). You assume all liability for such use of the Service and are responsible for ensuring that all such users understand and comply with the terms and conditions of this agreement.

14.5 You shall be responsible for protecting the Confidentiality of your password(s).

14.6 Eastlink shall have the right at any time to change or discontinue any aspect or feature of Eastlink, including but not limited to content, hours of availability, bandwidth usage and Equipment needed for access or use, or to discontinue Eastlink entirely.

14.7 Your use of Eastlink High Speed Internet Services may be subject to a monthly usage plan. Usage plans and charges will vary by customer. Terms are subject to change at any time. If you exceed your monthly usage, you may be subject to additional usage charges. Some of our Services may be offered or described as being "unlimited" in nature. This is subject, at all times, to reasonable usage limits for personal use by an individual.

#### **15. Additional terms applicable to Eastlink's wireline telephone service**

15.1 Information about Eastlink's serving areas can be obtained from our website ([www.eastlink.ca](http://www.eastlink.ca)), or by contacting Eastlink Customer Care.

15.2 You may choose Eastlink as your long distance service provider. You may also choose your long distance service provider from those providers that have entered into interconnection arrangements with us. In this case, long distance charges will be billed separately by your long distance service provider. Eastlink may block long-distance calls to certain high cost areas based on the cost of call termination and other factors, and may set long distance rates based on these factors. These regions and rates are subject to change.

15.3 Call Management services such as Call Display, Call Return, Call Answer and Visual Call Waiting provide telephone number information to the called party. If you have concerns with these features or wish to deactivate them when placing calls, please contact our Customer Care Centre for information (service charges may apply).

15.4 Call Management features that are designed to help protect customers' privacy, and are offered by Eastlink include:

- (a) delivery of the privacy indicator when invoked by an end customer;
- (b) provision of automated universal per-call blocking of calling line identification;
- (c) provision of per line call display blocking to qualified end customers;
- (d) disallowance of Call Return to a blocked number;
- (e) enforcement of the CRTC's restriction on Automatic Dialing Announcing Devices, Automatic Dialing Devices and unsolicited facsimiles; and
- (f) provision of universal Call Trace.

15.5 In accordance with CRTC requirements, Eastlink makes Customers' names, addresses and telephone numbers available to publishers of paper and electronic directories and to providers of operator services. You can request that Eastlink submit only a community name to directory publishers, rather than your full address, by calling Customer Care. Your name, address and telephone number can be omitted from these directories/services by requesting, and paying for, a non-published telephone number. These directories or services, however, may receive or obtain your telephone numbers and address from a source other than us.

15.6 Your name, address and telephone numbers will be accessible by 9-1-1 service providers, even if you have requested, and paid for, a non-published number.

15.7 Eastlink is directly connected to the E-9-1-1 system in those provinces where it provides telephone service. When you dial 9-1-1 your call is automatically routed directly to the Public Service Answering Point. A regulated fee for this service appears on your telephone bill.

15.8 Eastlink provides Message Relay Service through a third party. This service is available for the hearing impaired and can be accessed by dialing 7-1-1. TDD users complete calls in the same way as they always have. Service is available 24 hours a day. TDD long distance calls are subject to usual long distance charges. To talk to a TDD representative from 8:30 am–5:00 pm Monday to Friday call 1-800-276-3105.

15.9 Eastlink provides IP Relay Service through a third party. The Service is a text based form of message relay service that uses the Internet and a compatible device to facilitate communication with hearing persons via an operator and can be accessed through the Internet via a compatible device and a secure web page. You are responsible for obtaining the applicable Internet access service and compatible device required to access the Service. Once a call is initiated by you, a specially trained operator will attempt to connect your call to the hearing person for whom the call is intended and once connected relay the conversation by voice. The Service is for individual use only. Any other use of the Service is strictly prohibited. Although the Service is intended to be available 24 hours a day, 7 days a week, technical or service interruptions may arise which can result in the Service being temporarily unavailable. Eastlink makes no warranty that the Service will be uninterrupted or error free or that defects to the Service will be corrected. Eastlink may deny or limit the use of the service for any lawful reason. The Service is not intended to be used for placing emergency calls.

15.10 Some of our Services may be offered or described as being "unlimited" in nature. This is subject, at all times, to reasonable usage limits for personal use by an individual.

15.11 The Customer is liable to Eastlink for charges for all calls originating at the Customer's telephone number, regardless of who may originate such calls, and for all calls received at the Customer's telephone number, the charges for which are accepted by any person receiving such calls, regardless of who may accept such charges.

The Customer is liable to Eastlink for all collect calls, 900/976 number calls, and pre-dial long distance calls accepted at the Customer's phone number.

Charges for collect calls will appear on the local telephone section of your Eastlink bill and the rates charged will be set by the phone company used by the person placing the call, and NOT by Eastlink. Eastlink simply passes through the charges billed by this phone company

## **16. Additional terms applicable to Eastlink's wireless service**

16.1 The wireless Service Agreement is incorporated herein by reference. Where the Terms of Service and the Service Agreement conflict, these Terms of Service will supersede the Service Agreement.

16.2 Services are available in Eastlink's and its roaming partners' coverage areas on compatible devices where technology permits. Eastlink and its roaming partners may (i) make changes to the network or other facilities (including changing technology, and, to provide a good experience for the majority of our customers and minimize capacity issues and degradation in network performance, we reserve the right to limit or restrict your usage or to terminate your subscription to either the feature or to the Service generally and to refuse to provide you Services thereafter); (ii) enlarge, reduce or change coverage areas; and (iii) change or end roaming partner relationships, all at our discretion, without notice. Eastlink and its roaming partners are not liable for any changes in your ability to use the Services or the device resulting from such changes.

16.3 The Customer expressly consents that it has no contractual relationship whatsoever with Eastlink's roaming partners, that the Customer is not a third-party beneficiary of any agreement between Eastlink and its roaming partners, and that Eastlink's roaming partners have no legal, equitable, or other liability of any kind to the Customer. During roaming, the storage, treatment and transfer of your personal data may be subject to regulation different from that of Canada.

16.4 When roaming off Eastlink's facilities or networks, you will be responsible for all applicable Eastlink charges and will be subject to the limitations or conditions of service of the service provider of such roaming services. When your device communicates, sends, accesses, browses, streams, downloads or uploads data, content or applications, you must pay additional data transport, roaming and long distance charges, and taxes where applicable.

16.5 Your billing and charges will be based on the local calling area of your wireless phone number, regardless of your billing address or service address. A different rate may apply or service may not be available if you move to another province.

16.6 Some of our Services may be offered or described as being "unlimited" in nature. This is subject, at all times, to reasonable usage limits for personal use by an individual.

16.7 Eastlink may restrict access to certain Services if you do not subscribe to a plan or package that includes those Services.

16.8 Eastlink's liability is not limited by 16.9 and 16.10, below, in cases of deliberate fault, gross negligence or anti-competitive conduct on the part of Eastlink or in cases of breach of contract where the breach results from gross negligence.

16.9 Except in cases where negligence on our part results in physical injury, death or damage to your property or premises, our liability for negligence related to the provision of 9-1-1 emergency services on a mandatory basis is limited to the greater of \$20 and three times the amount, if any, you would otherwise be entitled to receive as a refund for the provision of defective Service under the Terms of Service.

- 16.10 In respect of the provision of 9-1-1 emergency services available through the wireless Services on a mandatory basis, Eastlink is not liable for:
- (a) Libel, slander, defamation or the infringement of copyright arising from material or messages transmitted over our network from your property or premises or recorded by your Equipment or our Equipment;
  - (b) Damages arising out of your act, default, neglect or omission in the use or operation of Equipment provided by us;
  - (c) Damages arising out of the transmission of material or messages over our network on your behalf, which is any way found unlawful; or
  - (d) Any act, omission or negligence of other companies or telecommunications systems when their facilities are used in establishing connections to or from your facilities and Equipment

16.11 Your telephone number may be automatically transmitted to the person you call, other carriers, or to us. You may permanently block the display by telling us when you activate your service or on a per-call basis at any time. To block a call, dial #31# before you dial the desired phone number. If you've had your display permanently blocked, you can unblock on a per-call basis by dialing \*31# before you dial the desired phone number.

16.12 Unless otherwise expressed as part of your rate plan, feature or bundle, airtime and long distance usage are rounded up to the nearest minute, and data usage is rounded up to the nearest kilobyte. If you use part of a minute or kilobyte you will be billed and agree to pay for the entire minute or kilobyte. Rounding practices for voice and data roaming may vary, and may be determined by Eastlink's roaming partners. Airtime charges (and long distance charges, if applicable) apply:

- (a) For calls you made, from the time you press "send" or otherwise initiate the call, until you press "end" or the call is otherwise disconnected; and
- (b) For calls you receive, from the moment the call connects to our network, including ring time, until you press "end" or the call is otherwise disconnected.

16.13 Upon termination, where you have paid in advance for service, Eastlink will rebate the portion that was paid for service for the period after the termination date. Any such rebate will first be applied in payment of any amounts you owe to Eastlink. All balances remaining on your Eastlink prepaid wireless phone service are non-refundable.

16.14 The following terms and conditions apply to Eastlink's prepaid wireless service:

- (a) Top-ups to your account for Eastlink's prepaid wireless services are non-refundable, non-transferable between accounts, and will expire after a specified period of time as described at the time of activation. Further details available at [eastlink.ca](http://eastlink.ca);
- (b) You will not be sent a monthly bill or any detailed call usage records from Eastlink, though you can obtain balance information by dialing \*611 on your Eastlink wireless phone;
- (c) If you are entitled to a new activation credit to your account, the credit will be valid only for a certain specified period following the initial activation of such credit;
- (d) We will deduct a 9-1-1 emergency services fee for access to 9-1-1 service and any applicable 9-1-1 provincial government fee, once every 30 days from your account (there is no airtime charge for calls made from your wireless device to 9-1-1);
- (e) If your account balance remains at zero for ninety (90) days or if required payments towards your account are not made or are returned, for any reason, your wireless identifier (e.g., telephone number or PIN number) will be deactivated. If you reactivate, a re-activation fee may apply and you may be assigned a new phone number;
- (f) Certain prepaid features to which you subscribe require a positive balance in your prepaid account to remain active; and
- (g) If you use an Automatic Top-up program to top up your prepaid account, funds may take up to 48 hours to be deposited in your account.

- 16.15 You shall notify us immediately at the telephone numbers in section 12 of these Terms of Service if your device or SIM Card is lost, stolen or destroyed. You are responsible for all fees and charges incurred before you notify us, the cost of replacing the device, and/or any amounts that may apply if you choose to cancel your Services before you have paid off the balance of your tab.
- 16.16 SIM cards are provided to you only for your use of the Services. You may not use your SIM card for any other purpose. We retain ownership of SIM cards, which you must return to us or destroy, if and when we ask you to or upon termination of your Services with Eastlink. You may only use a SIM card provided by us or an authorized retailer specifically to you to access the Services and may not use a SIM card provided by any other person without our prior consent.
- 16.17 Your rates and some Services (including 911 services) may not be available on all devices (whether provided by Eastlink or not) into which you insert an Eastlink SIM card. You are responsible (a) to ensure your service plan is compatible with any device (whether provided by Eastlink or not), and (b) for charges that arise if you change the settings of your device or SIM card. Non-Eastlink SIM cards cannot be activated on Eastlink's network or Services. Wireless modems, wireless Internet sticks, and other data-only devices do not provide access to 911 services. Certain SIM cards will work only on the devices for which they are purchased.
- 16.18 You acknowledge and agree that we may transmit or remotely install software, firmware and other updates on your handset and Equipment from time to time in order to maintain, enhance or correct the Services, without notice or liability.
- 16.19 Certain services, including without limitation roaming, Internet access and messaging services will be subject to additional terms and conditions or will require you to use or download software which is subject to other terms and conditions. You agree to review and be bound by all such terms and conditions as a condition of your use of such Services or software.
- 16.20 Eastlink may block long-distance calls to certain high cost areas based on the cost of call termination and other factors, and may set long distance rates based on these factors. These regions and rates are subject to change.
- 16.21 Materials that you access on the Internet or that you otherwise download or retrieve from third parties through the Services are provided by others and do not form part of the Services. You agree that you are solely responsible for your access, downloading or retrieval of such materials and acknowledge that you may incur charges in doing so. Eastlink has no obligation or liability to you regarding such materials.

#### **Additional terms related to applications**

- 17.1 Any software, content (including, without limitation, ring tones, full music tracks, graphics, video clips, applications and games) and/or accompanying documentation that we provide or sell to you or that you receive or purchase through Eastlink or our partners is for your own personal, non-commercial use, may not be distributed, transferred or sold, and remains our property or that of our licensors or content providers, as applicable. You will take reasonable steps to protect such software, or content and/or documentation from theft, loss or damage.
- 17.2 You understand and agree that you download any software, content and/or accompanying documentation at your own risk, and that Eastlink is not responsible for any resulting changes or damage to your Equipment.
- 17.3 Such software or content may from time to time automatically, and, without notice to you, cause your Equipment to access the Internet incurring data usage and/or overage charges.
- 17.4 You must review and agree to any applicable end user licence agreement of Eastlink, our licensors or content providers. Unless otherwise provided in the applicable end use licence agreement, all end user licence agreements will terminate upon termination of the Service.