

PART A Definitions and General Terms**ITEM 102. General Rights and Obligations**

This Item sets out the basic rights and obligations (hereinafter referred to as the "Terms") of both **Eastlink** and Telecommunications Providers in connection with the interconnection services provided under this Tariff.

1. General

1. The offer of interconnection services by **Eastlink** to Telecommunications Providers under this Tariff is subject to the following:
 1. the general rights and obligations contained in these Terms;
 2. the rates, terms and conditions contained elsewhere in this Tariff, to the extent that they are not inconsistent with these Terms, unless any such rates, terms or conditions expressly override these Terms and have been approved by the CRTC;
 3. the rights, obligations, rates, terms and conditions contained in written agreements for the provision of interconnection services under this tariff, to the extent that they are not inconsistent with these Terms or this Tariff, unless any such rights, obligations, rates, terms or conditions expressly override these Terms or this Tariff and have been approved by the CRTC.

All of the above bind **Eastlink** and Telecommunications Providers.

2. Effective Date of Changes

1. Subject to Item 102.2.2, changes to these Terms or this Tariff, as approved by the CRTC, take effect on their effective date even though Telecommunications Providers have not been notified of them or have paid or been billed at the previously-approved rate.
2. Where interconnection services that were to be provided by a certain agreed-upon date were not provided, through no fault of the Telecommunications Provider and, in the meantime, a rate increase has gone into effect, the previously-approved non-recurring charges shall apply.

3. Obligation to Provide Service

1. Except as otherwise expressly specified elsewhere in this Tariff, and subject to Item 102.3.2 to 102.3.4 below, all of the interconnection services available to Telecommunications Providers under this Tariff are provided by **Eastlink** pursuant to an obligation to serve.

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2. Notwithstanding **Eastlink's** obligation to offer the services under this Tariff, **Eastlink** is not required to provide interconnection service to a Telecommunications Provider where:
 1. the Telecommunications Provider owes amounts to **Eastlink** that are past due, other than as a guarantor;
 2. the Telecommunications Provider does not provide to **Eastlink** a reasonable deposit or alternative required pursuant to these Terms; or
 3. the Telecommunications Provider refuses to pay the additional charge referred to in Item 102.3.3.
3. Where it is necessary for **Eastlink** to install special equipment or to incur unusual expense in order to meet a Telecommunications Provider's requirements, an additional charge may be assessed based upon the equipment to be installed or the expense to be incurred.
4. Where **Eastlink** does not provide service on an application by a Telecommunications Provider, it must provide written explanation upon request.

4. Eastlink's Facilities

1. Upon termination of service, the Telecommunications Provider must return any equipment provided by **Eastlink**.
2. **Eastlink** must 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 the Telecommunications Provider requires maintenance and repair work to be performed outside of regular working hours. This does not apply where otherwise stipulated in these Terms, the Tariffs, or by special agreement.
3. A Telecommunications Provider which 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, Telecommunications Providers are liable for damage caused to **Eastlink's** facilities by any facilities provided by the Telecommunications Provider or its customer.

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4. Where the Telecommunications Provider reports trouble in relation to the interconnection services to **Eastlink**, **Eastlink** must initiate trouble repair procedures at such time.

5. Eastlink's Right to Enter Premises

Unless otherwise expressly permitted in this Tariff, a written agreement, or under any guidelines applicable to **Eastlink** and the Telecommunications Provider and approved by the CRTC, **Eastlink**, its employees or agent, shall have no right to enter the premises of the Telecommunications Provider, including any premises on which service is currently or is to be provided to the Telecommunications Provider, unless **Eastlink** has first obtained express permission to do so from the Telecommunications Provider. Prior express permission shall not be required in cases of emergency or where entry is pursuant to a court order. In every case, valid **Eastlink** identification must be shown to the Telecommunications Provider, at the Telecommunications Provider's request, prior to entering the premises.

6. Deposits and Alternatives

1. **Eastlink** may require deposits from a Telecommunications Provider:
 1. which has no credit history with **Eastlink** and will not provide satisfactory credit information;
 2. which has an unsatisfactory credit rating with **Eastlink** due to previous payment practices with **Eastlink**; or
 3. where the provision of the interconnection services to the Telecommunications Provider clearly presents an abnormal risk of loss.
2. **Eastlink** must inform the Telecommunications Provider of the specific reason for requiring a deposit, and of the possibility of providing an alternative to a deposit, such as arranging for third party payment, a bank letter of credit or a written guarantee from a third person whose credit is established to the satisfaction of **Eastlink**.
3. A Telecommunications Provider may provide an alternative to a deposit, provided it is reasonable in the circumstances.
4. Deposits earn interest at the savings account rate of the Bank of Nova Scotia, calculated on the balance of the deposit plus interest accrued prior to the current billing period. The interest will be credited to the account annually or upon

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refund of the deposit, and will be reflected on **Eastlink's** next billing statement.

5. **Eastlink** will show the total principal amount of deposits held on each Telecommunications Provider's billing statement.
6. **Eastlink** must review the continued appropriateness of deposits and alternative arrangements at 6-month intervals. When service is terminated or the conditions which originally justified such arrangements are no longer present, **Eastlink** must promptly refund or credit the deposit, with interest, or return the guarantee or other written undertaking, retaining only any amount then owed to it by the Telecommunications Provider.
7. At no time may the amount of all deposits and alternatives provided exceed 3 months of charges for all interconnection services provided by **Eastlink** to the Telecommunications Provider under this Tariff.

7. Restrictions on Use of Services

1. A Telecommunications Provider may not use the interconnection services provided by **Eastlink** or allow the interconnection services to be used for a purpose or in a manner contrary to any applicable law or regulation.
2. Neither **Eastlink** nor the Telecommunications Provider may re-arrange, disconnect, repair, remove or otherwise interfere with the facilities of the other party, except in the following three circumstances:
 1. cases of emergency;
 2. where otherwise expressly permitted in **Eastlink's** Tariffs;or
 3. where otherwise expressly permitted by the provisions of an applicable interconnection agreement.

In all cases **Eastlink** or the Telecommunications Provider, as the case may be, must then be notified of the changes as soon as possible.

3. No payment may be exacted directly or indirectly from a Telecommunications Provider by any party other than **Eastlink** for use of any of **Eastlink's** interconnection services except where otherwise stipulated in **Eastlink's** Tariffs, or by the provisions of an applicable interconnection agreement.

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As a condition of **Eastlink** providing interconnection services to the Telecommunications Provider pursuant to this Tariff, the Telecommunications Provider agrees to protect **Eastlink's** confidential information as if it were a party to Schedule A of the MALI. **Eastlink** shall provide to the Telecommunications Provider a copy of Schedule A. For its part, **Eastlink** shall protect the Telecommunications Provider's confidential information to the same standard.

9. Refunds in Cases of Service Problems

Where there are omissions, interruptions, delays, errors or defects in transmission, or failures or defects in **Eastlink's** facilities, **Eastlink's** liability is limited to a refund of charges, on request, proportionate to the length of time that the problem existed. No request is necessary where a problem in service lasts 24 hours or more from the time **Eastlink** is advised of the problem. However, where the problem is occasioned by **Eastlink's** negligence, **Eastlink** is also liable for the amount calculated in accordance with Item 102.10.2.

10. Limitation of Eastlink's Liability

1. These Terms do not limit **Eastlink's** liability in cases of deliberate fault, gross negligence, anti-competitive conduct, breach of contract where the breach results from the gross negligence of **Eastlink**, or disclosure of confidential information contrary to Item 102.8.
2. Except with regard to physical injuries, death, or damage to a Telecommunications Provider's premises or other property, occasioned by its negligence, **Eastlink's** liability for negligence, and for breach of contract where the breach results from the negligence of **Eastlink**, is limited to three times the amounts refunded or cancelled in accordance with Item 102.9, as applicable.
3. **Eastlink** is not responsible for:
 1. libel, slander, defamation or the infringement of copyright or other unlawful activity arising from material or messages transmitted over **Eastlink's** facilities;
 2. the infringement of patents arising from the combining or using of the Telecommunications Provider's facilities with **Eastlink's** facilities; or

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3. damages arising out of the act, default, neglect or omission of the Telecommunications Provider in the use or operation of facilities provided by **Eastlink**.
4. When facilities of third parties are used in establishing connections to or from facilities under the control of a Telecommunications Provider, **Eastlink** is not liable for any act, omission or negligence of the third party.
5. In the provision of interconnection services, **Eastlink** is not responsible to the Telecommunications Provider's customer for end-to-end service.

11. Payment

1. Subject to Items 102.11.2 and 102.11.3, charges cannot be considered past due until the next billing statement has been generated or the time period for payment indicated on the previous billing statement has passed.
2. In exceptional circumstances, prior to the normal billing date, **Eastlink** may request payment from a Telecommunications Provider, on an interim basis, for non-recurring charges that have accrued, by providing notice to the Telecommunications Provider with details regarding the services and charges in question. In such cases, subject to Item 102.11.3, the charges can be considered past due 3 days after they are incurred, or 3 days after **Eastlink** demands payment, whichever comes later.
3. No charge disputed by a Telecommunications Provider can be considered past due unless **Eastlink** has reasonable grounds for believing that the purpose of the dispute is to evade or delay payment. The dispute procedure set out in Schedule E of the MALI shall be followed and the Telecommunications Provider must pay the undisputed portion of the billing statement. **Eastlink** shall provide to the Telecommunications Provider a copy of Schedule E.
4. **Eastlink** may request immediate payment in extreme situations, provided that a notice has been issued pursuant to Item 102.11.2, and the abnormal risk of loss has substantially increased since that notice was given, or **Eastlink** has reasonable grounds for believing that the Telecommunications Provider intends to defraud **Eastlink**.

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1. Telecommunications Providers are not responsible for paying a previously unbilled or underbilled charge for interconnection services provided under this Tariff except where:
 1. in the case of a recurring charge, it is correctly billed by **Eastlink** within a period of one year from the date it was incurred; or
 2. in the case of a non-recurring charge, it is correctly billed by **Eastlink** within a period of 150 days from the date it was incurred.
2. In the circumstances described in Item 102.12.1, **Eastlink** cannot charge a Telecommunications Provider interest on the amount of the correction. If the Telecommunications Provider is unable to promptly pay the full amount owing, **Eastlink** must attempt to negotiate a reasonable deferred payment agreement.
3. Items 102.12.1 and 102.12.2 above shall not apply in circumstances where there has been deception by the Telecommunications Provider with regard to a charge for interconnection services.

13. Liability for Charges that Should Not Have Been Billed and Those That Were Overbilled

1. In the case of a recurring charge that should not have been billed or that was overbilled, a Telecommunications Provider must be credited with the excess back to the date of the error, subject to applicable limitation periods provided by law. However, a Telecommunications Provider that does not dispute the charge within one year of the date of an itemized billing statement which shows that charge correctly, loses the right to have the excess credited for the period prior to that statement.
2. Non-recurring charges that should not have been billed or that were overbilled must be credited, provided that the Telecommunications Provider disputes them within 150 days of the date of the billing statement.
3. A Telecommunications Provider that is credited with any amount that should not have been billed or that was overbilled must also be credited with interest on that amount at the rate payable for interest on deposits that applied during the period in question.

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The minimum contract period for **Eastlink's** interconnection services is one month commencing from the date the interconnection services are provided, except where a longer minimum contract period is stipulated in either **Eastlink's** Tariffs or an agreement between **Eastlink** and the Telecommunications Provider.

15. Telecommunications Provider - Initiated Cancellation or Termination of Service

1. A Telecommunications Provider which cancels or delays a request for service before installation work has started cannot be charged by **Eastlink**. Installation work is considered to have started when the Telecommunications Provider has advised **Eastlink** to proceed, and **Eastlink** has incurred any related expense. A Telecommunications Provider which cancels or delays a request for service after installation work has started, but before service has started, will be charged the lesser of the full charge for the entire minimum contract period plus the installation charge or the estimated costs incurred in installation less estimated net salvage (referred to hereinafter as "cancellation charges"). The estimated installation costs include the cost of non-recoverable equipment and materials specifically provided or used plus the cost of installing, including engineering, supply expense, labour and supervision, and any other disbursements resulting from the installation and removal work.
2. A Telecommunications Provider which gives **Eastlink** reasonable advance notice may terminate service after expiration of the minimum contract period, in which case it must pay charges due for interconnection services which have been furnished.
3. Notwithstanding Item 102.15.1, **Eastlink** may waive its rights, in their entirety or in part, to claim cancellation charges in the case where the Telecommunications Provider wishes to replace the interconnection services by one or more of **Eastlink's** interconnection services of equal or greater value to the cancelled interconnection service.

16. Eastlink -Initiated Suspension or Termination of Service

1. For greater certainty, the phrase "reasonable advance notice" as used in this Item 102.16 will generally be at least 30 days.
2. **Eastlink** may suspend or terminate a Telecommunications Provider's service only where the Telecommunications Provider:

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1. fails to pay an amount owing by the Telecommunications Provider that is past due, provided that **Eastlink** has provided reasonable advance notice;
 2. fails to provide or maintain a reasonable deposit or alternative when required to do so pursuant to these Terms;
 3. fails to comply with the provisions of a deferred payment agreement;
 4. repeatedly fails to provide **Eastlink** with reasonable entry and access in conformity with Item 102.5.1;
 5. uses or permits others to use any of **Eastlink's** interconnection services so as to prevent fair and proportionate use by others;
 6. contravenes Item 102.7; or
 7. fails to provide payment when requested by **Eastlink** pursuant to Item 102.11.4.
3. **Eastlink** may not suspend or terminate service in the following circumstances:
1. where the Telecommunications Provider is prepared to enter into and honour a reasonable deferred payment agreement; or
 2. where there is a dispute regarding the basis of the proposed suspension or termination, provided payment is being made for undisputed outstanding amounts and **Eastlink** does not have reasonable grounds for believing that the purpose of that dispute is to evade or delay payment.
4. Prior to suspension or termination, **Eastlink** must provide the Telecommunications Provider with reasonable advance notice, stating:
1. the reason for the proposed suspension or termination and the amount owing, if any;
 2. the scheduled suspension or termination date; and
 3. subject to contrary provisions of this Tariff or as approved by the CRTC, that a reasonable deferred payment agreement can be entered into (where the reason for suspension or termination is failure to pay).
5. Where repeated efforts to contact the Telecommunications Provider have failed, **Eastlink** must, at a minimum, deliver the notice referred to in Item 102.16.4 to the billing address prior to delivering the notice referred to in Item 102.16.6.

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6. In addition to the notice required by Item 102.16.4, **Eastlink** must, at least 24 hours prior to suspension or termination, advise the Telecommunications Provider or another responsible person that suspension or termination is imminent, except where:
 1. repeated efforts to so advise have failed;
 2. immediate action must be taken to protect **Eastlink** from network harm resulting from facilities controlled or provided by the Telecommunications Provider; or
 3. the suspension or termination occurs by virtue of a failure to provide payment when requested by **Eastlink** pursuant to Item 102.11.4.
7. Except with the Telecommunications Provider's consent or in exceptional circumstances, suspension or termination may occur only on business days between 8 a.m. and 5 p.m., local time, unless the business day precedes a non-business day, in which case disconnection may not occur after 12 noon local time.
8. Suspension or termination does not affect the Telecommunications Provider's obligation to pay any amount owed to **Eastlink**.
9. In the case of interconnection services that have been suspended, unless suspension occurs during the minimum contract period, **Eastlink** must make a daily pro rata allowance based on the monthly charge for such interconnection services.
10. **Eastlink** must 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. Service charges may apply.
11. Where it becomes apparent that suspension or termination occurred in error or was otherwise improper, **Eastlink** must restore service the next day, at the latest, unless exceptional circumstances do not permit this, and no reconnection charges shall be levied.

17. Assignment

The Telecommunications Provider cannot assign its rights or obligations pursuant to this Tariff without having obtained the prior written consent of **Eastlink**, which consent shall not unreasonably be withheld.

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When a Telecommunications Provider offers services to tenants within a multi-tenant building, it must provide **Eastlink** with direct access, under reasonable terms and conditions, to tenants who choose to receive services to which a right of direct access has been mandated by the CRTC from **Eastlink** rather than, or in addition to, services from the Telecommunications Provider.