

1. Introduction of Services and Eastlink Network

1.1 These **Terms of Service ("ToS")** apply to your use of Eastlink's services, including TV, Internet, Data Circuits, Fibre, wireline telephone, wireless and any related services ("Services"), and any Eastlink owned equipment used with the Services ("Equipment"). In these ToS "Eastlink", "us", "we", "our", means Eastlink. "Customer", "you", "your" means the customer whose name is on the account, a firm, corporation, an employee whose services are paid for on their behalf by a corporation, or other entity that subscribes to or purchases business services from Eastlink;

1.2 **Amendment.** Provided the amendment does not during an existing Term adversely impact pricing, length of Term, or materially impact quality of service, Eastlink may amend, add or remove portions of the ToS, Service Schedule, and Service Level Agreement at any time and from time to time without notice and the then current version shall be posted at www.Eastlink.ca.

1.3 **Eastlink Facilities.** The Services will be provided to Customer and the Customer's clients, customers, their agents and end users (the "End Users") using Eastlink's telecommunications network, equipment and facilities (the "Eastlink Facilities") within the area that Eastlink provides the Services (which area may be enlarged or reduced in scope from time to time by Eastlink in its sole discretion). The Customer acknowledges that the geographic area within which Eastlink provides different Services may vary. Requests for changes to the quantity or type of Services ordered by the Customer remain subject to the ToS and conditions of this Agreement. Customer acknowledges and agrees that Eastlink may in its discretion and without notice to Customer make changes to any aspect of the Eastlink Facilities.

1.4 **Suspension of Service for Network Security.** In addition to Eastlink's rights set forth in Article 7 below, Eastlink shall have the right to suspend all or part of the Services or access to the Services immediately if Eastlink reasonably suspects or determines that there is a malfunction, abuse, incorrect configuration or use of the Devices, the Customer's System (as defined in Section 2.9), the Services, the Third Party Services (as defined in Section 2.8) or the Eastlink Facilities. Customer agrees that, to maintain or improve service, or for other business reasons, Eastlink may, at its sole discretion acting reasonably, modify or temporarily restrict or suspend all or part of the Services without notice. Notwithstanding the foregoing, and subject to the service level agreements, Eastlink will use its best efforts to provide Customer advance notice of any service outage.

1.5 **Transmission Limitations.** Customer acknowledges that the Services are subject to transmission limitations caused by atmospheric or topographical conditions or equipment failures beyond Eastlink's reasonable control. The Services may be temporarily refused, interrupted or curtailed due to regulation or lawful order, system capacity limitations or equipment modifications, upgrades, reallocations, repairs, maintenance and similar activities necessary for the proper operation of the Services.

1.6 **Response Time.** Eastlink shall use commercially reasonable efforts to maintain a four-hour response time for any on-net disruptions in the Network, subject to in-climate weather, safety conditions, and time of day travel availability.

1.7 **Fee Credits.** Where not otherwise provided for by Service Level Agreement, if an interruption in a Service continues for a period of more than four hours, Customer may request a credit against Service Fees of 1/720 of the monthly Service Fee for the affected end user and service for each period of an hour, accumulated to the nearest half hour that the interruption continues. No credit will be given for interruptions of less than four hours. The credits are non-cumulative, do not carry forward, and will not exceed the monthly Service Fee for the affected Service.

2. Payment

2.1 **Fees.** Customer agrees to pay all fees and charges specified in this Agreement and relating thereto, taxes extra, including, but not limited to, applicable charges in advance of or on the established due dates and to pay late payment charges at the rate which is the lesser of 2.5% or the rate set forth on the Customer's invoices on any overdue amounts (collectively, the "Charges"). Acceptance of late or partial payments (even if marked "Paid in Full") shall not waive any of Eastlink's rights to collect the full amount due under this Agreement.

2.2 **Billing.** Unless otherwise agreed to in writing, Eastlink will bill Customer monthly. Regularly recurring charges are billed in advance and charges incurred on a per-use basis are billed in arrears. Failure to bill, or under-billed amounts, for Equipment and Services, must be corrected by Eastlink within one year of the date the charge was made; however, this restriction does not apply if the error was the result of an action, inaction or representation on the part of the Customer. In all cases, payment is due on or before the due date specified on the bill. Customer's failure to receive a bill does not relieve Customer of the responsibility to make payment to Eastlink by the bill's due date.

2.3 **Cancellation of Order.** Customer may cancel or delay a request for service or for a particular Service after installation work has begun, but before service has started; however, Customer shall be liable for all reasonable installation charges incurred up to the date of cancellation, as well as for removal costs and termination charges where applicable.

2.4 **Activation of Charges.** Charges will commence on the date of the initial activation of the Service(s) or the Equipment, whichever is earlier (the "Activation Date").

2.5 **Disputed Amounts.** Customer must bring invoice inquiries and bona fide disputes to Eastlink's attention within 90 days of the bill date; otherwise, the bill will be deemed to be accurate in all respects. Eastlink will review any dispute made within this period, provided Customer continues to pay the undisputed portion of the bill and any subsequent bills. A credit adjustment will be made to Customer's bill where Eastlink determines the dispute is valid.

2.6 **Bank Charges.** Payments for the Services which are returned by banks or credit card companies for insufficient funds will result in a charge to Customer of \$25.00 or such higher amount as is charged by the applicable bank(s) relating to such returned payment.

2.7 **Early Termination Fees.** Customer shall pay an Early Termination Fee as liquidated damages and not as a penalty equal to the greater of the following:

- (i) 50% of remaining fees from date of termination to end of term. Where monthly charges are not fixed, for the purpose of this calculation the monthly fees shall be calculated by estimating the average monthly Fees paid by Customer over the three (3) months prior to notice of termination; and
- (ii) 100% of Eastlink's unrecovered capital in the project build plus 100% of off-net fees or charges paid to third parties in the supply of services under any terminated Service Order Form or Agreement plus 100% of any remaining installation of one time lump-sum charge or portion thereof set out under the Service Order Form or Agreement but not yet paid.

2.8 **Third Party Service Charges.** As between Eastlink and the Customer, Customer shall have total responsibility for its purchase and/or use of any applications, software, content, data query functions, Beyond Tech Support services, and other services produced, manufactured or performed by third parties

for installation on the Devices and/or for use in connection with the Services together with any maintenance and support relating thereto (collectively, "Third Party Services"), whether offered by such third parties, Eastlink or a separate third party. The parties acknowledge that in certain instances where Third Party Services are offered, directly or indirectly, by Eastlink, Eastlink may invoice Customer with respect to such Third Party Services. Subject to the service level agreements, Eastlink shall have no responsibility hereunder to correct or fix any problems or errors relating to or caused by the installation, configuration, modification or use of any Third Party Services or any components thereof and the installation and/or use of Third Party Services shall be at the sole risk of the Customer.

2.9 Make Ready, Materials and Equipment Charges. Where Customer is purchasing Services which require additional equipment, software and/or services, not expressly specified in the Service Order or Statement of Work, Customer acknowledges and agrees that it shall be Customer's sole responsibility to purchase, install, configure and maintain, at Customer's cost:

(i) all required equipment, software and services, including interconnections to the Eastlink Facilities' point of interconnection or meet me room (MMR) and network configurations (the "Customer's System") to enable Customer to purchase and receive the Services; and

(ii) any additional equipment, software, services, enhancements or upgrades ("Upgrades") that become available for use with the Services.

Eastlink shall have no responsibility hereunder to correct or fix any problems or errors relating to or caused by the installation, configuration or modification of the Customer's System or any components thereof.

2.10 Unauthorized Usage Charges. Customer shall be responsible for the payment of all charges, costs, damages, losses and liabilities suffered by Eastlink in respect of any of Eastlink Facilities as a direct or indirect result of the unauthorized use, misuse, or abuse by Customer or any of its employees, agents or End Users of the Devices, the Customer's System, the Services, the Third Party Services, the Eastlink Facilities and/or any software used in connection therewith.

2.11 Reactivation Fees. If Eastlink suspends or terminates the Services for non-payment or excessive balance, including unbilled usage and pending charges, fees and adjustments, Eastlink shall have the right to charge the Customer a fee for the reactivation or restoration of the Services. Reactivation of the Services will result in a reactivation charge payable by Customer as established by Eastlink. Service-restoration charges may be waived if the applicable Device is lost or stolen.

2.12 Lost, Stolen, or Damaged Equipment. The Customer shall notify Eastlink immediately if a Device or related SIM card, if any, of the Customer or End User is lost, stolen, destroyed, or transferred. The Customer will be required to replace the Device or SIM card and shall be responsible to pay Eastlink for all charges up to the time of notification. If the Device or SIM is not replaced, the Customer will pay Eastlink any applicable Early Termination Fees relating thereto. Where Customer has tampered with, or deliberately or from lack of reasonable care, caused loss or damage to Eastlink's Equipment and facilities, Eastlink will charge the Customer the cost of restoration or replacement. In all cases, Customer is liable for damage caused to Eastlink's facilities by Customer-provided facilities and equipment.

3. Customer Obligations

3.1 Customer's Obligations. In addition to the Customer's other obligations set forth in this Agreement, the Customer agrees and covenants: a) that the Customer and its End Users will not use the Services for

an illegal purpose, including but not limited to interfering with Eastlink's services to other customers; b) that the Customer and its End Users will not resell, transfer or share any of the Services; c) that the Customer and its End Users will not reproduce, change or tamper with the Identifiers on the Devices or to allow anyone else to do so. "Identifier" means the applicable electronic serial number (ESN), mobile identification number (MIN), International Mobile Equipment Identity (IMEI) number, International Mobile Subscriber Identity (IMSI) number and/or the Subscriber Identity Module (SIM) number, as the case may be; d) that the Customer and its End Users will use only Eastlink approved Devices and other hardware with the Services and will not use any SIM in a Device or other hardware which has not been approved by Eastlink.

3.2 Identifiers. Notwithstanding any other provision, Eastlink shall use reasonable efforts to accommodate Customer's written requests to maintain assigned Identifiers, phone numbers and/or Internet Protocol IP addresses. Customer and its End Users acknowledge none of the parties to this Agreement own or have any property right in any Identifiers or the phone numbers and/or Internet Protocol (IP) addresses assigned to Customer and its End Users in connection with the Services and Eastlink may change such phone numbers, IP addresses and Identifiers at such time or times as Eastlink, in its sole discretion, considers necessary without any liability. Eastlink does not assume liability for any risks associated with the change of phone numbers, IP addresses or Identifiers. The Customer acknowledges and agrees that dynamic IP addresses may be used with respect to the Devices which IP addresses shall change whenever a Device is disconnected from and then reconnected to the Eastlink Facilities. Customer is entitled to port their number to another wireless service provider upon termination of a Line in accordance with the requirements, if any, of the CRTC and by paying any Early Termination Fees that may be owing to Eastlink.

3.3 Customer Facility Requirements. Provision of service may be conditional, at Eastlink's discretion, on Eastlink's access to the following Customer-provided facilities and access:

- (i) Suitable entrance facilities (conduit) into the service location;
- (ii) Suitable wall or rack mounting space for any equipment required for provision of the Service;
- (iii) Suitable AC power sources (120V grounded AC supply);
- (iv) Interface to Customer's existing equipment and facilities; and
- (v) Contact person to assist with building access and permissions for site visits, installation and service.

3.4 Return of Eastlink Equipment. With the exception of any expressly purchased Equipment set out in the Service Order or Statement of Work, all Equipment and facilities provided by Eastlink shall remain the exclusive property of Eastlink. Customer shall give Eastlink reasonable access to its premises to remove 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.

4. Warranties, Indemnity and Limitations of Liability

4.1 FOR THE PURPOSES OF ARTICLE 4 ONLY, EASTLINK IS CONTRACTING ON ITS OWN BEHALF AND AS AGENT ON BEHALF OF ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS OR AGENTS) SHALL NOT BE LIABLE TO CUSTOMER, ANY END USER OR ANY OTHER PERSON whether claimed in contract, tort, statute or otherwise.

4.2 Service shall be delivered and provided in accordance with reasonable industry practice within the service territory or region and by qualified personnel in conformance with the service level criteria set out in any attached Service Level Agreement(s). Customer's sole and exclusive remedy and as Eastlink's sole and exclusive liability, absent gross negligence or wilful misconduct of Eastlink, shall be limited to fee credits only as set forth in the Service Level Agreement(s). For the avoidance of doubt, fee credits will not be available to Customer if the failure to meet Service levels is the result of any event of force majeure or Customer acts, errors or omissions. Customer shall notify Eastlink of all queries relating to the conformity of the Service with the Service Levels.

4.3 Neither party excludes or restricts in any way its liability for death or personal injury resulting from its own gross negligence or the gross negligence of its employees or agents acting in the course of their employment or agency or for fraudulent misrepresentation. SUBJECT TO THE FOREGOING, EXCEPT AS MAY BE RELATED TO ANY OBLIGATION OF CONFIDENTIALITY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY (INCLUDING ENDUSERS) FOR ANY ECONOMIC LOSS including without limitation any LOSS OF DATA, LOSSES RESULTING FROM A THIRD PARTY'S UNAUTHORISED ACCESS TO DATA, LOSS OF PROFIT, LOSS OF EARNINGS, FINANCIAL LOSS, LOSS OF BUSINESS OPPORTUNITY; OR FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES whether claimed in contract, tort, statute or otherwise.

4.4 Subject to any other limitations of liability that are set out in this Agreement, if a party is in breach of any obligations under this Agreement, or of any other liability however arising, whether deliberate or unintentional (including liability for negligence or breach of statutory duty), in connection with this Agreement, then, subject to paragraphs 4.2 and 4.3, such party's liability to the other party shall be limited to \$50,000 for all events (connected or unconnected) during the Term and any renewals of the Agreement; provided, however, that any remedies contained in any Service Level Agreement(s) shall be the sole and exclusive remedies for any failure to meet the performance obligations under that Service Level Agreement(s), absent the gross negligence or wilful misconduct of Eastlink.

4.5 Customer shall defend, indemnify and hold Eastlink harmless from and against all Customer, affiliate, end user, or other third-party claims, demands, actions, causes of action, judgements, costs and reasonable attorneys' fees and expenses of any kind or nature for any and all damages of any kind arising from or related to (a) any use of the Service or Services equipment, (b) any use of any Customer equipment or the connection of any such equipment to the Eastlink network, (c) any breach of any obligation of security, confidentiality, or tax under this Agreement by Customer or Customer affiliate or its or their personnel, or any end user, unless the claim is due to Eastlink's gross negligence or wilful misconduct.

4.6 Eastlink shall defend, indemnify and hold Customer harmless from and against all third-party Claims for any and all damages of any kind arising from or related to:

- (i) death or personal injury of any Eastlink personnel in relation to the performance of this Agreement, except to the extent caused by the gross negligence or wilful misconduct of Customer, Customer affiliate or end user or its or their personnel;
- (ii) death or personal injury of any other person to the extent arising as a result of the gross negligence or wilful misconduct of Eastlink or its personnel in relation to the performance of this Agreement;
- (iii) loss of or damage to any property to the extent arising as a result of the gross negligence or wilful misconduct of Eastlink or its personnel in relation to the performance of this Agreement; or
- (iv) any breach of any obligation of security, confidentiality, or tax under this Agreement by Eastlink or

its personnel, unless the Claim is due to (1) the negligence or wilful misconduct of Customer or any Customer affiliate or end user, (2) Customer's, Customer's affiliate or end user's failure to comply with applicable law, rule, or regulation, or to obtain proper permits for the Services, or (3) any act which Customer would otherwise be required to indemnify Eastlink for under this Agreement.

4.7 Customer shall be solely liable under the terms of this Agreement for each order form as of the order form effective date.

4.8 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE AND ACCESSES THE SAME AT ITS OWN RISK. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EASTLINK DOES NOT WARRANT THAT ANY DATA OR FILES SENT BY OR TO CUSTOMER (WHETHER BY E-MAIL OR OTHERWISE) WILL BE TRANSMITTED, TRANSMITTED IN UNCORRUPTED FORM, OR TRANSMITTED WITHIN A REASONABLE PERIOD OF TIME. EASTLINK EXPRESSLY DISCLAIMS ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, AND ANY SUCH CONDITIONS REPRESENTATIONS AND WARRANTIES ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY LINK, ITS SUPPLIERS AND LICENSORS.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EASTLINK SHALL HAVE NO LIABILITY WHATSOEVER TO CUSTOMER FOR:

(I) ANY INTERRUPTIONS OR DISRUPTIONS OF THE SERVICES, THE INTERNET OR THE THIRD PARTY SERVICES OR ANY OTHER DAMAGES SUFFERED BY CUSTOMER WHICH ARE CAUSED DIRECTLY OR INDIRECTLY BY ANY FAILURES OF THE DEVICES, OTHER EQUIPMENT, THE SERVICES, THE EASTLINK FACILITIES, THE INTERNET OR THE THIRD PARTY SERVICES;

(II) ANY POWER FAILURES;

(III) ANY ACTS OR OMISSIONS OF CUSTOMER OR ITS OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS INCLUDING, WITHOUT LIMITATION, DEFAMATION OR COPYRIGHT INFRINGEMENT;

(IV) ANY DISRUPTION OF ANY PART OF THE EQUIPMENT USED TO PROVIDE THE SERVICES BY PARTIES OTHER THAN EASTLINK;

(V) ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS ARISING FROM OR IN CONNECTION WITH CUSTOMER'S USE OF THE DEVICES, OTHER EQUIPMENT, THE SERVICES, OR THE THIRD PARTY SERVICES;

(VI) ANY EVENT OF FORCE MAJEURE; OR

(VII) ANY SUSPENSION OR TERMINATION OF THE SERVICES. FURTHER, TO THE EXTENT PERMITTED BY LAW, EASTLINK DOES NOT WARRANT THE PERFORMANCE, AVAILABILITY, UNINTERRUPTED USE OF OR OPERATION OF THE INTERNET OR CUSTOMER'S CONNECTION TO THE INTERNET.

4.9 Limits on Eastlink Liability for Emergency Services Provided on a Mandatory Basis. This section 4.8 applies only to the provision of emergency 9-1-1 services on a mandatory basis. For the purposes of this subsection "Customer" means the Customer and its End Users. In respect of the provision of emergency services on a mandatory basis, Eastlink is not liable for:

(i) the accuracy of any Customer Name and Address Information (CNAI), or successful upload into the Automatic Location Identification Database (the "ALI Database"), and the Customer is solely responsible for the accuracy of all such CNAI including any verification of its accuracy within the ALI Database;

(ii) libel, slander, defamation or the infringement of copyright arising from material or messages transmitted over Eastlink's network from Customer's property or premises or recorded by Customer's equipment or Eastlink's equipment;

(iii) damages arising out of Customer's act, default, neglect or omission in the use or operation of equipment provided by Eastlink;

(iv) damages arising out of the transmission of material or messages over Eastlink's network on Customer's behalf which is in any way unlawful;

(v) any act, omission or negligence of other companies or telecommunications systems when their facilities are used in establishing connections to or from Customer's facilities and equipment. Furthermore, except in cases where negligence on Eastlink's part results in physical injury, death or damage to Customer's property or premises, Eastlink's liability for negligence related to the provision of emergency services on a mandatory basis is limited to the greater of \$20 and three times the amount (if any) Customer would otherwise be entitled to receive as a fee credit for the provision of defective service under this Agreement. However, Eastlink's liability is not limited by this section 4.8 in cases of gross negligence on Eastlink's part or in cases of breach of contract where the breach results from Eastlink's gross negligence.

4.10 Limitations and Cap on Damages Integral to Rates and Pricing. The parties acknowledge and agree that the pricing of the Services inherently reflects the risk allocation between the parties as set out in part in the limitations of liability and cap on damages contained in these ToS and these limitations and cap are reasonable and fair and form part of the consideration of the Agreement and supply of Services. These limitations and cap on damages extend to Eastlink's directors, officers, employees, contractors, agents, successors and assigns.

5. Privacy

5.1 Confidentiality of Customer Information. Express consent for disclosure may be taken to be given by Customer to Eastlink where Customer provides:

(i) written consent;

(ii) oral confirmation by an independent third party;

(iii) electronic confirmation through the use of a toll-free number;

(iv) electronic confirmation via the Internet; or

(v) consent through other methods, as long as an objective documented record of Customer's consent is created by Customer or by and independent third party. Customer's account information may, from time to time, be disclosed to other members of the Eastlink organization and to Eastlink's agents and authorized dealers in order to service Customer's account, to respond to Customer's and End Users' questions and to promote additional products and services offered by Eastlink that may interest Customer and its End Users. If Customer or an end user does not wish to be marketed by related Eastlink companies please advise, in writing, Eastlink Customer Care at the following addresses: 6080 Young St., 8th Floor, P. O. Box 8660, Station A, Halifax, N.S. B3K 5M3.

6. Customer-Initiated Termination

6.1 Termination by Customer. Subject to early termination fees, Customer may terminate any or all Services at any time by written notice to Eastlink. For wireless services, and where otherwise required by regulation, such termination shall take effect on the later of Customer's requested termination date and

the date Eastlink receives written notice of termination. For all other services and regions, the termination will take effect on the later of the requested termination date and thirty days after the date Eastlink receives notice of termination. In addition to any additional termination fees outlined herein or in a Agreement, applicable charges continue to apply until the billing stop date indicated in the final invoice from Eastlink.

6.2 Early Termination. Notwithstanding any other provision herein, this Agreement may be terminated immediately and at any time by Customer as follows:

- (i) without any liability to Eastlink if Eastlink materially breaches a term of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of such breach;
- (ii) at any time during the Term of this Agreement, by providing Eastlink with thirty (30) days prior written notice and by paying any Early Termination Fees; or
- (iii) to the extent any regulatory or legislative change or governmental policy renders the provision of the Services in accordance with these ToS or Agreement illegal or unenforceable.

7. Eastlink-Initiated Termination or Suspension

7.1 Suspension/Reactivation. Notwithstanding any other provision, Eastlink acting reasonably may immediately restrict, block, suspend or terminate any or all of Customer's Services if:

- (i) Customer fails to pay an account that is past due or fraudulently or improperly seek to avoid payment to Eastlink;
- (ii) Customer becomes bankrupt or otherwise insolvent;
- (iii) Customer fails 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;
- (iv) Customer uses or permits others to use any of Eastlink's services so as to prevent fair and proportionate use by others;
- (v) Customer uses or permits others to use any of Eastlink's services for the purposes or in a manner that would constitute a criminal offense or otherwise violates any applicable local, provincial, federal or international law, or for the purposes of encouraging or assisting others to do any of the foregoing;
- (vi) Customer re-arranges, disconnects, removes, repairs or otherwise interferes 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;
- (vii) Customer violates any provision of the Agreement or the Eastlink Acceptable Use Policy;
- (ix) Customer fails to provide payment when requested by Eastlink;
- (x) Eastlink reasonably suspects or determines 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 services, facilities or networks;
- (xi) Eastlink needs to install, maintain, inspect, test, repair, remove, replace, investigate, protect, modify, upgrade or improve the operation of the Services, the Equipment, facilities or networks; or
- (xii) Eastlink reasonably believes that there is an emergency or extreme circumstance that would warrant such action.

7.2 Early Termination. Except to the extent expressly committed to under Term or renewal period, Eastlink may, at any time, upon at least 14 days' prior notice, cancel Services and Equipment. Notwithstanding any other provision herein, this Agreement may be terminated immediately and at any time by Eastlink, without any liability to Customer whatsoever, if:

- (i) any changes in any applicable law, regulation, requirement, rule, ruling, guideline, policy or directive prohibits Eastlink's ability to provide the Services or to fulfill its obligations hereunder;
- (ii) Customer materially breaches a term of this Agreement and fails to cure such breach within thirty (30) days of written notice of such breach; for greater certainty: a material breach on the part of the Customer shall include, without limitation: (A) fraudulent or other improper use of the Services or the Devices by Customer or any of its employees, agents or representatives or contractors; and (B) consistent late or non-payment by Customer of undisputed amounts owing to Eastlink;
- (iii) Eastlink decides to cease offering the Services;
- (iv) the Customer or the End Users use the Services or facilities in any way that adversely affects Eastlink's operations or the use of Eastlink's services by other customers; or
- (v) if proceedings are commenced for the liquidation, dissolution, winding-up or suspension of operations of the Customer or if the Customer becomes bankrupt or insolvent.

8. Customer Use of the Services

8.1 Acceptable Use Policy. Customer shall comply with Eastlink's Acceptable Use Policy available at <http://www.eastlink.ca/about/ToSandconditions.aspx>.

8.2 Data Monitoring. Eastlink has no obligation to monitor content or Customer's and End Users' use of Eastlink's network. However, Customer agrees that Eastlink has the right to monitor and investigate content and Customer's and End Users' use of Eastlink's network electronically from time to time and to disclose any information as necessary to: satisfy any law, regulation or other governmental request or to assist in the pursuit of any legal action against Customer or End Users; operate the Service(s) properly; ensure or enforce compliance with this Agreement; or protect Eastlink or Eastlink's customers.

9. General

9.1 Notice. All notices given under this Agreement shall be in writing and shall be deemed to have been duly delivered, effective upon receipt if faxed or hand delivered, or effective three business days after being deposited, postage prepaid, return receipt requested, in the mail and sent to the following addresses or facsimile numbers: If to Customer at the address or facsimile number set forth at the top of this Agreement. If to Eastlink at Bragg Communications Inc., 6080 Young St., 8th Floor, P. O. Box 8660, Station A, Halifax, N.S. B3K 5M3, Attention: VP, Business Sales, Facsimile: 902.405.3576; with a copy to: Attention: Legal Department, Facsimile: 902.446.1340 Any party may give notice in writing of any change of address and such address shall be deemed to be the address for the giving of notice hereunder.

9.2 Force Majeure. Other than with respect to the payment of Charges to Eastlink, in no event shall either party have any liability for failure to comply with this Agreement, if such failure results from the occurrence of any contingency beyond the reasonable control of the party including, without limitation, strike or other labour disturbance, riot, theft, flood, lightning, storm, any act of God, power failure, war, national emergency, interference by any government or governmental agency, embargo, seizure, or enactment of any law, statute, ordinance, rule, or regulation.

9.3 Arbitration. Any claim, dispute or controversy (whether in contract or tort, pursuant to statute or regulation, or otherwise, and whether pre-existing, present or future) arising out of or relating to:

(i) this Agreement;

(ii) the services or equipment provided to Customer by Eastlink;

(iii) oral or written statements, or advertisements or promotions relating to this Agreement or to the services or equipment; or

(iv) the relationships that result from this Agreement (collectively the "Claim") will be determined by arbitration to the exclusion of the courts.

Customer agrees to waive any right it may have to commence or participate in any class action against Eastlink related to any Claim and, where applicable, Customer also agrees to opt out of any class proceedings against Eastlink. Arbitration will be conducted by one arbitrator pursuant to the laws and rules relating to commercial arbitration in Nova Scotia.

9.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia without regard to conflict of laws provisions; and the parties irrevocably attorn to the courts in Halifax, Nova Scotia for matters outside the scope of arbitration.

9.5 Survival of Obligations. The provisions of Sections 1.4, 1.5, 2, 4, and 9 of these ToS shall survive termination or expiration of this Agreement.

9.6 Waiver of Default. Waiver by either party of any default by the other party shall not be deemed a continuing waiver of such default or a waiver of any other default.

9.7 Severability. If a provision of this Agreement is invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire agreement, but rather the entire agreement shall be construed as if not containing the invalid or unenforceable provision.

9.8 No Third Party Beneficiaries. Except as set out in Article 4, the provisions of this Agreement are for the benefit of the Customer and Eastlink and not for any other person.

9.9 Headings. Headings are for convenience only and do not form part of the terms of this Agreement.