



## BUSINESS TERMS OF SERVICE

The provision of EastLink services is subject to EastLink's Terms of Service ('Terms' or 'Agreement'). EastLink reserves the right to make changes to these Terms. Current updates of EastLink's Terms of Service will be posted on EastLink's website at [www.eastlink.ca](http://www.eastlink.ca). Accordingly, EastLink business customers should access the website to ensure that their activities conform to the most recent version. Questions regarding these Terms and complaints of violations of these Terms can be directed to [abuse@eastlink.ca](mailto:abuse@eastlink.ca) or by calling your local EastLink office. EastLink's provision of business services is subject to a **LIMITATION OF LIABILITY** as described herein.

Your use of the services constitutes your acknowledgement and agreement that you have read and that you understand these Terms. If you do not agree to comply with all of these Terms, your sole and exclusive remedy is to discontinue your use of the Service.

### 1. GENERAL

(a) For the purposes of these Terms of Service:

"Customer" means a person, firm, corporation or other entity that subscribes for or purchases business services from EastLink;

"EastLink" includes all businesses owned operated by Bragg Communications Inc. and its affiliated companies, operating under the business name "EastLink", including EastLink Cable, EastLink Telephone, and EastLink High Speed Internet;

"Network" means the EastLink telecommunications network;

"Services" means the business telecommunications services provided by EastLink to the Customer and includes facilities and equipment provided incidental to the provision of telecommunications services;

"Service Fee" means the fees for the provision of the Services as set out in the Service Agreement, or as amended by EastLink from time to time.

"Service Agreement" means the contract or service order form that sets out the services requested by the Customer.

(b) Services furnished by EastLink are subject to the terms and conditions contained in:

- i. these Terms of Service, and
- ii. any written agreement between EastLink and the Customer with respect to such Services (the "Service Agreement"),

which together constitute the entire agreement between the Customer and EastLink (the "Agreement"). Any prior negotiations or understandings as to the terms and conditions applicable to the Services, whether written or otherwise, that are inconsistent with the Agreement are superseded by this Agreement and do not bind either party.

- (c) All capitalized terms have the meanings ascribed to them in these Terms of Service or in the Service Agreement, unless the context requires otherwise.
- (d) These Terms of Service may be changed and updated from time to time by EastLink. EastLink will post updated Terms of Service on its website or will provide the Customer with notice of any such changes by letter or in your monthly bill. Continued use of the Services following such notice will constitute deemed acceptance of such changes by the Customer.
- (e) No waiver of any part of the Agreement shall be effective unless in writing and no such waiver shall be deemed a waiver of any other provision in the Agreement or a continuing waiver unless agreed to in writing by EastLink.
- (f) Any purchase order or similar document issued by the Customer or EastLink shall not supersede the terms of the Agreement, but shall be for invoicing and accounting purposes only.
- (g) This Agreement shall be governed by the laws of the province in which your billing address is located and all federal laws of Canada applicable therein, but if your billing address is outside of Canada, this Agreement shall be governed exclusively by the laws of the province of Nova Scotia and you submit to the jurisdiction of the courts of Nova Scotia, and the federal laws of Canada applicable in Nova Scotia.
- (h) Provision of the Services is conditional upon credit approval by EastLink. The Customer consents to EastLink conducting a credit check on the Customer and consents to the provision of Customer information by EastLink to credit grantors, credit bureaus and suppliers of services for the purpose of determining the creditworthiness of the Customer.
- (i) EastLink may assign its rights and duties at any time. The Customer may not assign his/her rights and duties to others without the written consent of EastLink.

## **2. RESPONSIBILITY FOR CHARGES**

- (a) The Customer is responsible for all charges for all Services and facilities (including equipment) furnished to the Customer by EastLink, including without limitation, all calls and Services:
  - originating with or passing through the Customer's account;
  - originating from or accepted at the Customer's terminal equipment or the terminal equipment of those to whom the Customer may provide such service;
  - made using any number, calling card number, authorization code, or domain name assigned to the Customer or to those to whom the Customer may provide such service;

- made using any facility used to provide access to EastLink's equipment from the terminal equipment of either the Customer or those to whom the Customer may provide such Service.

regardless of who made or accepted such calls or Services.

- (b) If EastLink fails to bill a Customer, or under-bills a Customer, EastLink must correctly bill the Customer within one year of the date the error 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.
- (c) The Customer is responsible for any applicable provincial and federal taxes or similar charges.
- (d) EastLink shall only recognize such person(s) as are listed on the most recent service authorization form provided to EastLink by the Customer as the sole person(s) authorized to accept, utilize, manage, modify or terminate services provided by EastLink.

### **3. BILLING AND FEES**

- (a) Service Fees (other than EastLink Long Distance toll charges and other toll telephone service charges) are billed in advance of service.
- (b) The Customer agrees to pay all amounts billed within 30 days from the date of invoice.
- (c) Amounts not paid within 30 days from the date of invoice shall be considered overdue and subject to a late payment charge of 2% per month (24% per annum). This rate may be revised by EastLink at any time upon 30 days written notice.
- (d) In exceptional circumstances, as determined by EastLink in its sole discretion (for example, and without limitation, where the Customer has incurred a significant amount of billable charges or presents an abnormal risk of loss to EastLink) EastLink may, prior to the normal billing date, request payment from the Customer on an interim basis for the non-recurring charges that have accrued, providing the Customer with details regarding the service and charges in question. In such cases, such charges shall be considered past due 3 days after EastLink demands payment.
- (e) If the Customer does not provide written notice to EastLink of a dispute with respect to EastLink's charges within 150 days the date the invoice was rendered, such invoice shall be deemed to be correct and binding on the Customer.

### **4. TERM, RENEWAL AND TERMINATION / SUSPENSION**

- (a) The initial term of this Agreement will be as specified in the Service Agreement.
- (b) At the end of the initial term, the services hereunder shall continue to be provided pursuant to these Terms until service is terminated by either EastLink or the Customer. EastLink may at any time modify the Service Fee or other charges upon thirty (30) days advance notice to the Customer.

- (c) On termination, all outstanding fees and other sums due hereunder to the date of termination are the responsibility of the Customer.
- (d) If Customer cancels or delays a request for service or a particular Service after installation work has begun, but before service has started, 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.
- (e) If, before the end of the term as specified in the Service Agreement, the Customer terminates service, or service is terminated by EastLink as a result of a breach by the Customer of any provision of these Terms or the Service Agreement, the Customer shall be liable to pay to EastLink in a single payment as liquidated damages for early termination of this Agreement and not as penalty, fifty percent (50%) of the monthly service fees times the remaining number of months in the term for the Services which are terminated ("Termination Charge") plus applicable taxes.
- (f) EastLink may suspend a Customer's Services immediately upon a breach by the Customer of any provision of these Terms or the Service Agreement, including failure to pay an account that is past due or failure to provide payment when requested to do so by EastLink.
- (g) EastLink may terminate the Agreement at any time upon 30 days prior written notice to the Customer, and immediately on breach of any term or condition hereof by the Customer which is not cured within 15 days of written notice to the Customer to do so.
- (h) EastLink may terminate the Services immediately without notice and without liability if, at the sole discretion of EastLink, the Customer misuses or permits others to misuse or abuse the Services for purposes that are contrary to law or to the Agreement and/or if EastLink is required to terminate Service in order to maintain the integrity of the Network or to comply with laws or tariffs.
- (i) Either EastLink or the Customer may terminate the Services immediately without penalty if any regulatory or legislative change or governmental policy renders the provision of the Services in accordance with the Agreement illegal or unenforceable.
- (j) Upon termination of the Agreement, EastLink may remove its equipment from the Customer's premises. Failure by EastLink to remove such equipment shall not be considered abandonment of the equipment.

## **5. ACCESS TO CUSTOMER PREMISES**

- (a) The Customer shall provide EastLink representatives access at reasonable times to the Customer's premises in order to inspect and maintain EastLink-owned equipment and to permit removal of the equipment upon termination of the Agreement.
- (b) In the event that the Customer fails to provide access to EastLink in accordance with the Agreement, EastLink will not be liable for any resulting service interruption and related damages, and the Customer shall pay all additional costs incurred by EastLink in order to restore the Services.

## **6. MAINTENANCE AND REPAIRS**

- (a) EastLink shall provide maintenance and repairs to its facilities to support the Services.
- (b) EastLink shall use its best efforts to maintain a maximum 4 hour response time with a 4 hour repair time for any disruptions in the Network, excluding disruptions resulting from equipment failure.
- (c) If an interruption in Service continues for a period of more than 4 hours, the Customer shall receive a credit against Service Fees of 1/720 of the monthly Service Fee 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 4 hours. The credit given for interruptions in any monthly billing period will not exceed the monthly Service Fee.
- (d) Notwithstanding any other provision in these Terms, EastLink shall not be responsible for outages resulting from technical or equipment problems occurring outside of the Network, planned outages intended for maintenance or repair, or any outages caused by circumstances beyond its control, including without limitation, Acts of God or work stoppages.

## **7. USE OF SERVICES**

- (a) The Customer shall use the Services for lawful purposes only.
- (b) The Customer shall not transmit through the Services any material which violates or infringes in any way upon the rights of others, which is unlawful, threatening, abusive, defamatory, invasive of privacy or publicity rights, vulgar, obscene, profane, pornographic, unlawfully promotes hatred or which is otherwise objectionable, or which encourages conduct that would constitute a criminal offense, gives rise to civil liability or otherwise violates any law. Without limiting the generality of the foregoing, the Customer shall not transmit on or through the Services any data or software which contains a virus, worm or other harmful component.
- (c) The products, technology and/or processes provided to the Customer may be the subject of intellectual property rights reserved by EastLink or other third parties. Nothing contained in the Agreement shall be construed as conferring to the Customer in any manner, whether by implication, estoppel or otherwise, any license, title or ownership of or to any intellectual property right of EastLink or any third party.
- (d) Title in all facilities or equipment provided by EastLink to the Customer in the course of providing the Services remains with EastLink. The Customer agrees to keep all EastLink facilities and equipment free and clear of any liens or encumbrances. In addition, the Customer agrees to notify EastLink immediately of any liens or encumbrances placed or attempted to be placed against title to EastLink facilities and equipment.

## 8. LIMITATION OF LIABILITY

- (a) EastLink does not guarantee uninterrupted operation of the Services, or of its equipment, facilities, connections or Network.
- (b) Except with regard to physical injuries, death and damage to premises/property, where such injury, death or damage is wholly caused by EastLink's own negligence, and subject to clause 6(c) above, EastLink's liability for:
- i. negligence, breach of contract, tort, or any other cause of action;
  - ii. any loss, omissions, delays, errors, defects or failures in EastLink's Services, equipment, Network, or facilities; and
  - iii. any other action or inaction of EastLink,
- is limited to a refund, upon request, of the applicable fees or charges for the affected Service(s), proportionate to the length of time the problem existed, to a maximum of one (1) month's Service Fees.
- (c) Under no circumstances shall EastLink be liable for any indirect, special, consequential, exemplary or punitive damages, whatsoever, including any interruption of business or lost profits, even if such damages were reasonably foreseeable.
- (d) Notwithstanding the foregoing, EastLink is not liable for:
- i. any disruption or unavailability of the Services (including, without limitation, any disruption or unavailability of emergency 9-1-1 service);
  - ii. any act or omission of a third party (including, without limitation, other local telephone companies, connecting carriers, underlying carriers, or providers of connections, facilities, or services);
  - iii. your conduct, acts or omissions;
  - iv. the operation or failure of your equipment or facilities;
  - v. 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;
  - vi. defamation or copyright infringement arising from material transmitted or received over EastLink's Network, Equipment or facilities;
  - vii. infringement of patents arising from combining or using customer-provided facilities with EastLink's Network, Equipment or facilities;
  - viii. copyright or trademark infringement, passing off, or acts of unfair competition arising from: (a) directory advertisements furnished by a customer, or (b) 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);
  - ix. EastLink's failure to activate any Service on the activation date you requested; or
  - x. any defacement of, or damage to, your premises as a result of: (i) the attachment of any instruments, apparatus or associated wiring or equipment, furnished by EastLink, on your premises, or (ii) the removal thereof, when such defacement or damage is not wholly caused by EastLink's negligence.

- (e) There is no express or implied warranty or condition, whether of merchantability, fitness for a particular purpose, or otherwise, with respect to any Services, product or equipment provided to you by EastLink.
- (f) In accordance with CRTC requirements, EastLink supplies the names, addresses and telephone numbers of listed telephone subscribers to various telephone directory publishers and local exchange carriers who provide directory assistance services. EastLink takes every precaution to ensure the accuracy of this information and neither EastLink, the directory publishers nor the local exchange carriers to whom EastLink provides this listing information assume any liability with respect to errors or omissions.

## **9. INDEMNIFICATION**

- (a) The Customer agrees to indemnify, defend and hold harmless EastLink, its affiliates, directors, employees, agents, licensors, and suppliers from and against all claims, losses, expenses, damages and costs, including reasonable legal fees, resulting from any breach of the Agreement by the Customer. The provisions of this clause shall survive the termination of the Agreement.

## **10. CUSTOMER PRIVACY**

- (a) Unless the Customer provides express consent or disclosure is pursuant to these Terms of Service or a legal power, Customer information held by EastLink (other than name, address and listed telephone number) is confidential and will not be disclosed by EastLink to anyone other than:
  - the Customer;
  - a person who, in our reasonable judgement, is seeking the information as an agent of the Customer;
  - another telephone company, 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;
  - a company involved in supplying the Customer with telephone or telephone directory related services, provided the information is required for that purpose and disclosure is made on a confidential basis with the information to be used only for that purpose;
  - an agent we retain in the collection of the Customer's account, provided the information is required for and is to be used only for, that purpose;
  - 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 information; or
  - an affiliate involved in supplying the Customer 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.

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

- written consent;
- oral confirmation by an independent third party;
- electronic confirmation through the use of a toll-free number; or
- electronic confirmation via the Internet.

- (b) The Customer agrees to provide EastLink with prior written notice of any changes to the Customer's billing information, including but not limited to changes in address and contact information.
- (c) The Customer may request that EastLink provide any information in our possession regarding his/her service. We will provide the information requested if: you have given the company sufficient advance notice and 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.
- (d) Personal information collected by EastLink may be stored and processed in Canada or another country. In either case, the information is protected with appropriate security safeguards, but may be available to government agencies under applicable law.

## **11. LOCAL TELEPHONE SERVICE - ADDITIONAL TERMS**

The following terms and conditions relate to Local Telephone Service only:

- (a) EastLink facilities shall be installed at the termination block in the main telephone room of the building in which the Network Service Location(s) is located, and the EastLink-owned network will be connected to the facilities in the building at the termination block.
- (b) EastLink shall provide and service any physical wiring, wire mold, or other required hardware between the EastLink Network operations center and the connection at the termination block in the main telephone room of the building.
- (c) Provision of Local Telephone Service is conditional on EastLink successfully establishing the following at each Network Service Location:
  - Suitable entrance facilities (conduit) into the main telephone room;
  - Suitable wall or rack mounting space for the telephone and related equipment;
  - Suitable AC power resources (120V grounded AC supply);
  - Interface to the Customer's existing termination block;
  - Contact person to assist with building access for site visitations, installation and service; and
  - Permission from the owner of the building in which the Network Service Location is located for EastLink to access and interconnect with existing facilities installed in the building.
- (d) Where re-sold telephone services are being provided by EastLink to the Customer, (1) maintenance for the Local Telephone Service may be provided by parties other than

EastLink, and (2) the provision of Local Telephone Service is subject to the terms and conditions imposed by the primary service provider (including applicable tariffs) with respect to the provision of the service. EastLink reserves the right to transfer re-sold services to EastLink Services upon 30 days' written notice to the Customer.

- (e) During the term of the Agreement, you agree to pay EastLink the applicable installation, administrative and monthly Service(s) Fees in each case as established by EastLink from time to time, together with all applicable taxes.

## **12. LONG DISTANCE TELEPHONE SERVICE – ADDITIONAL TERMS**

The following terms and conditions relate to long distance telephone service only:

- (a) Charges for long distance toll calls and other non-recurring charges will be billed on a monthly basis in arrears.
- (b) The Customer is responsible to pay the charges associated with all calls originating with, accepted at or passing through the Customer's telephones or account, regardless of who made or accepted such calls.
- (c) The Customer agrees to treat telephone cards and all access codes and passwords, where applicable, as confidential and non-transferable. The Customer is responsible for all charges incurred through the use of the Customer's telephone cards. EastLink reserves the right to deactivate EastLink telephone card codes without notice if, in EastLink's sole discretion, fraudulent use of the telephone cards is suspected.
- (d) If a Customer's telephone card is lost or stolen, it is the Customer's responsibility to contact EastLink at 902-431-5000 to facilitate the cancellation of the telephone card. The Customer is responsible for all charges incurred until such notice is received by EastLink.
- (e) The Customer acknowledges that EastLink may not have the ability to cancel and convert the Customer's long distance telephone service provider from EastLink Long Distance to an alternate long distance service provider. The Customer agrees that in the event that the Customer's long distance service provider is to be changed for any reason, the Customer is solely responsible for contacting an alternate long distance service provider to transfer the Customer's service. The Customer is responsible for all charges incurred with EastLink prior to the transfer of the long distance service.

## **13. HIGH SPEED INTERNET – ADDITIONAL TERMS**

The following terms and conditions relate to High Speed Internet Service (HSI) only:

The provision of HSI is subject to the Terms of this Agreement and to EastLink's policies regarding permitted and prohibited uses of HSI that may be posted by EastLink on EastLink's website from time to time ("Acceptable Use Policy" or "AUP"). Breach of this Agreement or the AUP may result in termination of HSI.

- (a) The Customer understands and acknowledges that due to the nature of the Internet, no guarantees can be made about the successful passage of traffic on the Internet itself.

- (b) The Customer shall be provided with an Internet connection for the Customer offices, located at the Network Service Location(s). The connection point between the Network and the Customer's equipment shall be the port on the modem or router (or other similar device) used as the Customer interface with the Network.
- (c) EastLink shall provide and service any physical wiring, wire mold, or other required hardware between the EastLink Network Management Center and the Network Service Location. The Customer shall provide and/or install, and shall maintain and have full responsibility for, at each Network Service Location:
- Suitable entrance facilities (conduit) into the Network Service Location;
  - A suitable conduit from the point of entry into the Network Service Location;
  - Suitable wall or rack mounting space for the interface and related equipment;
  - Suitable AC power resources (120V grounded AC supply);
  - A 10BaseT interface to the Customer's computer facilities; and
  - Appropriate personnel to assist with building access for site visitations, installation and service.
- (d) Due to the nature of computer technology, EastLink does not warrant or guarantee the successful operation of any firewall software or hardware or any other software or hardware that is provided by EastLink to the Customer.
- (e) The Customer expressly acknowledges and accepts the risks associated with the use of the High Speed Internet Service. Due to the inherent nature of the Internet, neither EastLink nor any of its directors, officers, agents, servants or employees warrant that the High Speed Internet Service will be uninterrupted or error free or that data sent by or to the Customer will be transmitted in uncorrupted form or at all or as to the results to be obtained from the use of the High Speed Internet Service or the Internet. The Customer acknowledges that data sent by or to the Customer via the Internet is not or may not be secure whether or not the Customer encrypts it.
- (f) The Customer shall be entitled to physically connect the computer facilities at the Network Service Location(s) to the Network.
- (g) EastLink shall have the right at any time to change or discontinue any aspect or feature of HSI, including but not limited to content, hours of availability, bandwidth usage and equipment needed for access or use, or to discontinue EastLink HSI entirely.
- (h) Ownership of Addresses. The customer acknowledges that EastLink owns all addresses provided to the Customer, including, but not limited to IP addresses, e-mail addresses and personal web page addresses, as applicable. We may modify, change or remove such addresses at any point in time and 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 you.

## **14. MONITORING**

EastLink shall have the right, but not the obligation, to monitor the content of the Service, including chat rooms and forums, 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 or remove any material submitted to or posted on EastLink, 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 disclose any information to third parties as necessary to satisfy applicable laws and regulations.

## **15. EQUIPMENT**

- (a) The Customer shall be responsible for obtaining and maintaining all computer hardware and other equipment needed for access to and use of EastLink, except if and to the extent that any other agreement between EastLink and the Customer specifically provides otherwise. In this Agreement any reference to "Cable Modem" is to the cable modem or modems rented from EastLink pursuant to these Terms.
- (b) Customer hereby acknowledges delivery and installation of a Cable Modem and any other property, tangible or intangible, delivered hereunder or pursuant to any subsequent order, which shall remain the exclusive property of EastLink and which must be returned to EastLink at time of disconnection. EastLink may at its sole option supply new or reconditioned equipment. Customer understands that each Cable Modem has a value of \$500.00 (plus taxes). If a Cable Modem or any other equipment provided by EastLink is lost, destroyed, or damaged beyond normal wear or not returned upon termination of service, you shall be liable to EastLink for the cost of this equipment plus applicable taxes.
- (c) Customer shall not open, tamper with, service or make any alterations to any EastLink-owned equipment. Customer 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, nor shall he/she allow or encourage others in any way to service or deal with any portion of EastLink's equipment or materials.

## **16. 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 telephone service, 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.