

# EXECULINK TELECOM TERMS OF SERVICE

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By using any of the Services provided by Execulink Telecom Inc. ("Execulink"), the Customer agrees to the following terms and conditions of Service (the "Terms of Service").

Services currently delivered to telephone Customers who live in the following areas: Burgessville (519-424), Woodstock Independent (519-456), Norwich Independent (519-468), Port Franks (519-243), and Thedford (519-296) are tariffed by the CRTC. Execulink may elect or be required to file with the CRTC or other appropriate regulatory agency, tariffs respecting the delivery of certain other Services. To the extent that terms contained in any of Execulink's tariffs are inconsistent with the terms contained in these Terms of Service, or any other provisions agreed to, the terms set forth in the applicable tariff shall govern Execulink's delivery of, and the Customer's consumption or use of, Execulink's Service.

These Terms of Service constitute the understanding between Execulink and the Customer subscribing to all or any of the Services. These Terms of Service govern (i) the Services provided to the Customer by Execulink, including Execulink's Equipment and Facilities and, without limitation, devices and software used in conjunction with the Services, and (ii) any equipment provided by the Customer for use with the Services.

Included as part of these Terms of Service are Acceptable Use Policies that govern the use of the Services and Execulink's Equipment and Facilities. In addition, Execulink's Privacy Policy or other conditions as may be required by statute or regulation govern Execulink's delivery of, and the Customer's use of, the Services.

By activating the Services, the Customer acknowledges reading, understanding and agreeing to Execulink's Terms of Services, including any applicable Acceptable Use Policies, and Execulink's Privacy Policy. If the Customer does not wish to be bound by these Terms of Services and Execulink's Privacy Policy or any modifications thereof, which may be made by Execulink from time to time (as described in the following paragraph), the Customer should (i) refrain from activating or using the Services or (ii) if the Services are already activated, immediately terminate the Service as specified in the Customer-Initiated Termination section of these Terms of Service.

Execulink may modify or remove portions of these Terms of Service, including the Acceptable Use Policies, when it feels it is necessary and appropriate. The Customer may determine when the content of these Terms of Service was last updated by referring to the date found at the bottom left hand corner of each page of these Terms of Service ("Revised - \_\_\_\_\_").

The Customer's non-termination or continued use of the Services after the effective date of any changes made constitutes the Customer's acceptance of these Terms of Service as modified by such changes. Termination is subject to the provisions contained in the Customer-Initiated Termination section of the Terms of Service.

Execulink recommends that the Customer print a copy of these Terms of Service. If the Customer is not an Internet service subscriber, a printed copy of these Terms of Service may be obtained by contacting an Execulink business office. Execulink Customers should consult these Terms of Service regularly to ensure that their usage of the Services conforms to the most recent version. In the event of conflict between any customer agreement, contract, subscription or addendum and these Terms of Service, the terms of these Terms of Service will govern unless expressly specified otherwise in the customer agreement, contract, subscription or addendum.

The Customer may obtain more information about the Services and these Terms of Service by contacting Execulink's Customer Service at the telephone number(s) shown on the invoice or on-line at Execulink's web site at [www.execulink.ca](http://www.execulink.ca). The Customer may also contact Execulink through Execulink's local offices listed in the Contact Us section on Execulink's web site at [www.execulink.ca](http://www.execulink.ca) or in the telephone directory.

If the Customer is not satisfied with the service that Execulink has provided, the Customer may escalate the dispute. Information on how to escalate a dispute is listed on the Legal & Regulatory section on Execulink's web site at [www.execulink.ca](http://www.execulink.ca) or by contacting Execulink's Customer Service.

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## **1 Definitions**

These definitions when used in these Terms of Service or in other documents such as agreements, contracts, subscriptions or addendums will be capitalized.

### ***Connection Notice***

A notice from Execulink that the Services ordered has been installed.

### ***Contracted Service***

Any Service with a specified Service Term or conditions set forth in a separate customer agreement, contract, subscription or addendum and agreed to by the Customer.

### ***Corporate Customer***

A business Customer whose average total telecommunications spend is more than \$2,500 per Month.

### ***Customer***

Any individual or business that has an account with Execulink and/or uses, has used, or applies to use Execulink's products and/or Services.

### ***Customer's Equipment***

Any property owned by the Customer and used in conjunction with Execulink's Services, including, but not limited to; facilities, terminal and other equipment, wires, lines, cables, ports, computers, modems, routers, switches, networks, set top boxes, telephones, Mobile Devices, home security and/or medical devices, fax machines, channel service units, data service units, cabinets, racks, private rooms and the like.

### ***Customer Order***

A request for Services submitted by the Customer in the form designated by Execulink.

### ***CRTC***

Canadian Radio-television and Telecommunications Commission

### ***Demarcation Point***

The point at which Execulink's Equipment and Facilities ends and connects with the Customer's Equipment and facilities at the Service Location.

### ***Mobile Device***

Any wireless communication device intended for use with the Services, including a mobile phone, smartphone, wireless modem, wireless Internet sticks or SIM (subscriber identity module) card.

### ***Early Termination***

Early Termination occurs when Services are cancelled by the Customer or when Services are terminated by Execulink due to a failure of the Customer to comply with these Terms of Service or the terms of any separate customer agreement, contract, subscription or addendum after the Service Commencement Date and prior to the end of the Service Term.

***Emergency Maintenance***

Unplanned events to install, inspect, repair, replace or modify the Services or Execulink's Equipment and Facilities in order to prevent an unplanned outage or damage to Execulink's Equipment and Facilities.

***Employee***

Any individual or contractor who works for, or provides labour to Execulink in exchange for wages, salary or compensation.

***Execulink***

Execulink Telecom Inc. (Execulink), and includes its partners, affiliates and associates, as they may exist from time to time.

***Execulink's Equipment and Facilities***

Any property owned or leased by Execulink and used to deliver Services, including, but not limited to; facilities, terminal and other equipment, wires, lines, cables, ports, routers, switches, networks, set top boxes, Mobile Devices, computers, channel service units, data service units, cabinets, racks, private rooms and the like.

***Execulink Dealers***

Brokers a Service offering between Execulink and the Customer.

***Execulink's Web Site***

All Web Sites maintained and controlled by Execulink.

***Grace Period***

The period after the date Execulink's invoice is created but before the amount invoiced will be considered Past Due. No Grace Period shall apply to deposits payable by the Customer.

***Home Mobile Network***

The geographic area where Roaming rates do not apply for a Mobile Device.

***Overage***

Usage in addition to allowable usage included with the Service.

***Month***

A period from a specified day in one month to the day numerically corresponding to that day in the following month, less one.

***Nomadic Service***

Services that do not have a fixed Service Location. The Service can be moved from place to place.

***Past Due***

Invoices are considered Past Due when the Grace Period elapses, unless expressly specified in a separate service agreement, contract, subscription or addendum.

***Personal Information***

Information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.

***Programming***

As the context requires, any or all of the Execulink programming, subscription programs, programming packages, pay per view Services, interactive Services, and any other related Services that Execulink provides from time to time, and for greater certainty includes video Programming provided on Execulink's video Services.

***Retail Rate***

The rate charged for Services that are not Contracted Services.

***Roaming***

The extension of connectivity of a Mobile Device to a location that is different from the Home Network.

***Scheduled Maintenance***

Planned events to install, inspect, repair, replace or modify Services or Execulink's Equipment and Facilities. Scheduled Maintenance can be viewed on-line at Execulink's web site at [www.execulink.ca](http://www.execulink.ca).

***Services***

Includes telephone, wireless, Internet, video services, mobility services and such other products, features, notifications and services as Execulink may provide from time to time.

***Service Area***

The geographic area within which Execulink offers a Service.

***Service Commencement Date***

The Service Commencement Date is the installation completion date and except for multiple Service Location contracts, the date invoicing for the Services will commence and the first day of a contract.

***Service Location***

The location or locations to which the Services are delivered.

***Service Term***

The duration of time (measured starting on the Service Commencement Date) for which the Services are ordered. The end of the Service Term may be specified in a separate service agreement, contract, subscription or addendum or by these Terms of Service or by an applicable tariff for the Services. The minimum Service Term is one (1) Month.

***Telephone Customer***

Any Execulink Customer who uses an Execulink telephone service.

***Third Party Provider***

Includes, but is not limited to, any other local telephone company, any connecting carrier or underlying carrier or other provider of connections, facilities, features or Services.

***Web Site User***

A user of Execulink's web site.

## **2. Violation of these Terms of Service**

- 2.1 Execulink prefers to advise customers of inappropriate behaviour and will resort to corrective action only if necessary. However, if the Customer uses the Services in a way which Execulink, in its sole discretion, believes violates these Terms of Service, Execulink may take any responsive actions it deems appropriate. Responsive actions may include, but are not limited to, the immediate suspension or termination of all or any portion of the Services. Execulink will not incur any liability for any such responsive actions. The responsive actions described above are not Execulink's exclusive remedies, and Execulink may take any other legal or technical action it deems appropriate.
- 2.2 Execulink reserves the right to investigate suspected violations of these Terms of Service, including the gathering of information from the Customer or other users involved and from the complaining party, if any, as well as examination of material on Execulink's servers and network. During an investigation, Execulink may suspend the Customer's account or accounts involved and/or remove from its Facilities and Equipment any material which potentially violates these Terms of Service
- 2.3 The Customer hereby authorizes Execulink to cooperate with (i) law enforcement authorities in the investigation of suspected criminal violations, and/or (ii) system administrators at other service providers or other network or computing facilities in order to enforce these Terms of Service. Such cooperation may include Execulink providing identifying information about a subscriber, in accordance with the guidelines set out in Execulink's Privacy Policy.
- 2.4 Execulink reserves the right at all times to disclose any information as the company, in its sole discretion, deems necessary to satisfy any applicable law, regulation, legal process or governmental request. Execulink further reserves the right at all times to edit, refuse to post or to remove any information or materials, in whole or in part, from its Facilities and Equipment, in its sole discretion.
- 2.5 The failure of Execulink to enforce these Terms of Service, for whatever reason, shall not be construed as a waiver of any right to do so at any time.
- 2.6 The Customer agrees that, if any portion of these Terms of Service is held invalid or unenforceable, that portion will be construed consistent with applicable laws as nearly as possible, and the remaining portions will remain in full force and effect.
- 2.7 Use of the Services for any activity that violates Local, Provincial, Federal or International law, order or regulation, is a violation of these Terms of Service.

### **3. Security**

- 3.1 The Customer is responsible for the security of any and all equipment or devices that the Customer connects to the Services or to Execulink's Equipment and Facilities.
- 3.2 The Customer is responsible for the security of any and all passwords the Customer uses to connect to the Services.
- 3.3 The Customer is responsible for any misuse of the Services that originates from the Customer's account, even if such misuse or other similar activities are committed by any friend, family, co-worker, employee, guest or any other person or business with access to the account. The Customer must ensure that others do not gain unauthorized access to the Services.
- 3.4 The Customer must ensure that others do not gain unauthorized access to the Services or Execulink's Equipment and Facilities and is responsible for all costs associated with such unauthorized access.
- 3.5 In the event that the Customer Equipment or Execulink Equipment and Facilities are lost or stolen it will be the Customer's responsibility to immediately notify Execulink.
- 3.6 When Execulink notifies the Customer of complaints received regarding alleged violation of these Terms of Service by the Customer or by third parties that have gained access to the Services through the Customer, the Customer agrees to promptly investigate and take all reasonable actions to remedy any violations. Execulink may identify to the complainant that the Customer is investigating the complaint and may provide the complainant with the necessary information to contact the Customer directly to resolve the complaint in accordance with Execulink's Privacy Policy.
- 3.7 Execulink reserves the right to install and use any appropriate devices to prevent violations of these Terms of Service, including devices designed to filter or terminate access to Services. Any such device which is required by law or appropriate regulatory authority to be installed at the Customer's Service Location shall be installed at the Customer's sole cost and expense.

## 4. Services

- 4.1 The Services may only be used in accordance with Execulink's Acceptable Use Policies applicable to such Services as described in the Acceptable Use section of these Terms of Service.
- 4.2 Services are only available in Execulink's Service Area where technology permits.
- 4.3 Execulink's Equipment and Facilities, technology and/or processes provided to the Customer may be subject to intellectual property rights reserved by Execulink or third parties.
- 4.4 Nothing contained in these Terms of Service shall grant to the Customer any right, license, title or ownership of, in or to any intellectual property rights of Execulink or any third party in or to Execulink's Equipment and Facilities, technology or processes.
- 4.4.a Under no circumstances whatsoever is the Customer permitted to resell, share, or otherwise distribute the Services or any portion thereof to any third party without the express written consent of Execulink and the payment of any applicable charges.
  - 4.4.b The Customer agrees not to exploit for commercial purposes any Services or engage in, or allow, any alteration, copying, reproduction of or tampering with electronic serial numbers or other identification, signaling or transmission functions or components of the Customer's Mobile Device or Execulink's Equipment and Facilities.
  - 4.4.c It is the Customer's responsibility to ensure that the Customer's Equipment meets the requirements set out by Execulink which are necessary to use the Services, as may be amended from time to time.
- 4.5 Execulink residential Services are designed for the Customer's personal use. Customers may not use Execulink's residential services to operate a commercial enterprise.

## 5. Content and Programming

5.1 Execulink does not warrant the condition or content of any Programming the Customer is able to view through use of any of Execulink's Services.

- 5.1.a. The Customer acknowledges that there may be Programming content or other content that the Customer may find offensive and agrees that viewing and/or use of such content is at the Customer's own risk. Some Programming and/or content may not be suitable for minors and the Customer agrees to supervise all minors whom the Customer permits to view the Programming and/or access the content through the Customer's account with Execulink.
- 5.1.b. The Customer agrees that it shall make no claim whatsoever against Execulink relating to the content or respecting any information, product, service or software ordered through or provided by virtue of Execulink's Services.
- 5.1.c. The materials on Execulink's web site, which may include text, images, audio clips, video clips, software and other materials (the Content), are provided by Execulink for informational purposes only. By accessing Execulink's web site or downloading any Content, the Customer agrees to be bound by the terms and conditions set out below. If the Customer does not agree to these terms and conditions, the Customer should not access Execulink's web site or download any Content.
- 5.1.d. Execulink attempts to ensure that the Content on Execulink's web site is accurate and reliable, however, since the Content has been compiled by Execulink from a variety of sources, it is provided to the Customer on an "as is" and "as available" basis.
- 5.1.e. Links available on Execulink's web site will allow the Customer to link to web sites not maintained or controlled by Execulink. Execulink provides these links for your convenience, and is not responsible for the contents of any linked site. Execulink uses reasonable efforts to ensure the accuracy of its Content on the site, but cannot and does not warrant the accuracy, completeness, non-infringement, merchantability or fitness for a particular purpose of any information available through these links, and makes no representation or endorsement whatsoever about any other web site which the Customer may access through Execulink's web site. It is the Customer's responsibility to ensure that any web site the Customer chooses to use is free of potentially destructive items such as viruses

5.2 All video Programming is provided on a “subject to availability” basis. Certain video Programming transmitted by Execulink, including sports events, may be “blacked out” from time to time at the request of the programmer for copyright or other reasons. If the Customer circumvents or attempts to circumvent any of these “blackouts”, the Customer may be subject to legal action. Programming may also be subject to temporary interruption due to natural phenomena or causes outside of Execulink’s control. Execulink will not refund charges or credit the Customer for the blackout period or for temporary interruptions.

5.2.a Execulink’s Residential Services Customers are permitted to exhibit video Programming solely in the Customer’s listed Service Location.

5.2.b Unless specified in a separate customer agreement, contract, subscription or addendum, any rights that Execulink affords the Customer to receive and view video Programming are exclusively for the Customer’s viewing at the Service Location, and the Customer will not receive or view, or attempt to receive or view, any of the video Programming outside of the Service Location. Additionally, the video Programming may not be rebroadcast, transmitted or performed in any form, and no admission charged, or any other consideration received, by or for the Customer’s benefit from any third party in return for allowing such third party to listen to or view any video Programming provided by Execulink.

5.2.c It is against the law to receive video Programming, or any portion of the Services, without payment to Execulink (unless expressly permitted to do so by Execulink). Doing so may result in civil or criminal penalty. Execulink also reserves the right to take any other action to prevent the reception of its video Programming without payment to, or authorization by, Execulink, including the right to modify or disable the software.

5.3 Unless otherwise indicated by Execulink at the time the Customer places an order for pay-per-view or video on demand Programming, all sales of pay-per-view or video on demand Programming are final. The Customer shall indemnify and hold harmless Execulink from any claims, liabilities, losses or damages resulting from the Customer’s use of pay-per-view or on demand video Programming in contravention of these Terms of Service.

## 6. Services Interruption and Monitoring

- 6.1 The Customer understands that Execulink may have to interrupt the Services in order to perform Planned or Emergency Maintenance or for other technical reasons.
- 6.2 Execulink may interrupt the Services or inspect Execulink's Equipment and Facilities at any time, for any duration of time, without notice or liability to the Customer in order to perform Emergency Maintenance. Execulink will use reasonable efforts to minimize disruption to the Services caused thereby.
- 6.3 Execulink may, at its discretion, and without notice to the Customer;
  - 6.3.a make changes to Execulink's Equipment and Facilities (including changing technology, and, in order to provide a good experience for the majority of our customers and minimize capacity issues and degradation in network performance, temporarily reducing data throughput for a subset of customers who use a disproportionate amount of bandwidth);
  - 6.3.b enlarge, reduce or change coverage areas; and
  - 6.3.c change or end partner relationships.
- 6.4 The Customer understands that the Services may not function in the event of a network outage or power failure, regardless of where the power failure or network outage arises. In addition, a power failure or network outage may require Execulink to reset or reconfigure Execulink's Equipment and Facilities to reactivate the Services.
- 6.5 The Customer understands and acknowledges that the Services or access to the Services, including 9-1-1 Emergency Access or special needs services may not function correctly, or at all, in the following circumstances:
  - 6.5.a if the Customer's equipment or device fails, is not configured correctly or does not meet Execulink' requirements;
  - 6.5.b in the event of a network outage or a power failure;
  - 6.5.c if individual at the service location tampers with or, in some cases, moves the equipment or device to a location other than the Service Location; or
  - 6.5.d following termination or suspension of the Customer's Services.
- 6.6 Execulink does not warrant uninterrupted use of the Services unless otherwise expressly stated in a separate customer agreement, contract, subscription or addendum.

- 6.7 Customer requested credits for service interruptions that exceed four (4) hours, unless expressly specified in a separate customer agreement, contract, subscription or addendum, will be issued based on the Monthly rate for the interrupted Services proportionate to the amount of downtime. Credits will be issued after an investigation as to the cause of the disruption. No credits will be issued if the underlying issues relate to the Customer's Equipment or other factors outside the control of Execulink.
- 6.8 Execulink has the right but not the obligation to access, monitor, investigate and preserve a record of any content transmission or other use of the Services. The Customer consents to any such activities that are undertaken to satisfy any law or to enhance operating efficiencies, improve service levels, assess client satisfaction, or protect Execulink or its customers from use of the Services contrary to these Terms of Service.
- 6.9 Execulink has no obligation to monitor Execulink's Internet mail service. However, Execulink reserves the right to review materials sent through its Internet mail service, and to remove any materials in its sole discretion. Execulink, in its sole discretion, may also terminate the Customer's access to Execulink's Internet mail service at any time, without notice.

## 7. Equipment, Installation and Maintenance

- 7.1 Execulink may install or cause to be installed Execulink's Equipment and Facilities in the Service Location, and will maintain Execulink's Equipment and Facilities in good working order.
- 7.2 Execulink may remotely update Execulink's Equipment and Facilities or Customer's Equipment. Customer acknowledges that updates may interfere with the Services.
- 7.3 Execulink's Equipment and Facilities is provided solely for the Customer's use of the Services and will at all times remain the property of Execulink. Execulink's Equipment and Facilities will not be used for any other purpose.
- 7.4 The Customer will not sell, lease, transfer or assign Execulink's Equipment and Facilities.
- 7.5 Except for Nomadic Services, the Customer may use Execulink's Equipment and Facilities only at the Service Location address the Customer has provided to Execulink at the time the Customer subscribes to the Services unless expressly specified otherwise in a separate customer agreement, contract, subscription or addendum. The Customer will not, and will not permit others to, rearrange, disconnect, remove, repair or otherwise interfere with Execulink's Equipment and Facilities nor will the Customer relocate Execulink's Equipment and Facilities to another address without Execulink's prior written consent.
- 7.6 Execulink's Equipment and Facilities provided to a Customer will be charged as part of the Monthly fee for the Services. Execulink may require the Customer to pay a deposit prior to providing Execulink's Equipment and Facilities to the Customer. The Customer agrees to keep all of Execulink's Equipment and Facilities free and clear of any lien or encumbrance of any kind whatsoever. If the Customer becomes aware that any lien or encumbrance has been placed on any of Execulink's Equipment and Facilities, the Customer is thereby responsible to notify Execulink immediately and, at the Customer's expense, assist Execulink in removing any lien or encumbrance.
- 7.7 The Customer will be responsible for providing and maintaining, at Customer's expense, the level of power, heating and air conditioning necessary to maintain the proper operating environment for Execulink's Equipment and Facilities in the Service Location. In the event the Customer fails to do so, the Customer shall reimburse Execulink for the actual and reasonable cost of repairing or replacing any of Execulink's Equipment and Facilities damaged or destroyed as a result of the Customer's failure. The Customer will provide a safe place to work and comply with all laws and regulations regarding the working conditions at the Service Location.

- 7.8 The Customer is responsible for the safekeeping of Execulink's Equipment and Facilities. If, while in the Customer's care, Execulink's Equipment and Facilities are damaged, lost or stolen, the Customer agrees to pay Execulink the full cost, including the costs incurred by Execulink to recover, repair and/or replace any of Execulink's Equipment and Facilities that are damaged, lost or stolen. The Customer hereby authorizes Execulink to charge the Customer's credit card account, preauthorized payment or other payment method, in payment for Execulink's Equipment and Facilities and/or repair/replacement/recovery charges associated with Execulink's Equipment and Facilities. Any unauthorized attachments to Execulink's Equipment and Facilities or interfering or tampering with Execulink's Equipment and Facilities or unauthorized use of Execulink's Equipment and Facilities is prohibited and may constitute theft under the Criminal Code of Canada.
- 7.9 None of the equipment or devices purchased from Execulink and paid for by the Customer are returnable to or refundable by Execulink. Execulink, at its discretion, may accept equipment and devices for return and refund less a restocking fee.
- 7.10 The Customer's equipment and devices shall be and remain the Customer's responsibility. The Customer is responsible to ensure that all the Customer's equipment and devices meet all applicable standards, codes and network specifications.
- 7.11 Unless expressly set forth in a separate customer agreement, contract, subscription or addendum, Execulink is not responsible for the operation, maintenance, configuration, management, performance or use of the Customer's equipment or device, including without limitation, the compatibility of the Customer's equipment or device with any of the Services or with Execulink's Equipment and Facilities.
- 7.12 The Customer is responsible to supply, at the Customer's own cost, all telephones required if the Customer subscribes to Execulink's telephone Services, including the supply of all wiring beyond the Demarcation Point at the Service Location, needed to connect to the Services unless expressly set forth in a separate customer agreement, contract, subscription or addendum. Execulink has no obligation to maintain or repair any facilities or equipment owned by the Customer.

## **8. Right of Entry**

- 8.1 The Customer agrees to provide Execulink with access to Execulink's Equipment and Facilities. This includes remote access as well as access to the Service Location as may be reasonably necessary under the circumstances. Execulink's employees will show identification upon request.
- 8.2 Planned maintenance events will be posted on Execulink's Web Site at least two (2) business days in advance. By their nature, it is not possible for Execulink to provide advance notification for Emergency Maintenance events.
- 8.3 If the Customer is not the owner of the Service Location, it is the Customer's responsibility to obtain and maintain access rights for the purpose of enabling Execulink employees and/or agents to install, maintain and provide the Services at the Service location.

## 9. Equipment Return Responsibilities

9.1 Upon the termination, Early Termination, expiration or cancellation of any Services in relation to which the Customer used Execulink's Equipment and Facilities, the Customer agrees:

- 9.1.a. to return Execulink's Equipment and Facilities at the Customer's expense to Execulink in good working order;
- 9.1.b. to return Execulink's Equipment and Facilities, which were supplied but not installed by Execulink, to an Execulink retail office. If, in such case, Execulink's Equipment and Facilities have not been returned to Execulink within one (1) Month, the Customer agrees to grant Execulink permission to access the Service Location to remove Execulink's Equipment and Facilities, at the Customer's expense or at the sole discretion of Execulink the customer will be invoiced for Execulink's Equipment and Facilities;
- 9.1.c. to be invoiced for Execulink's Equipment and Facilities if same is not returned within one (1) Month following cancellation, if returned in unsatisfactory condition, or is damaged or broken. Any of Execulink's Equipment and Facilities returned after the charge has been added will be subject to a restocking fee of 20% in addition to the refunded service charge;
- 9.1.d. to allow Execulink access to the Service Location to remove Execulink's Equipment and Facilities, which were supplied and installed by Execulink from the Service Location;
- 9.1.e. failure by Execulink to remove Execulink's Equipment and Facilities shall not be considered abandonment of Execulink's Equipment and Facilities; and
- 9.1.f. if Execulink removes its Equipment and Facilities, it will not, nor is it required, to alter, repair or re-install wiring or other facilities owned by the Customer.

## **10. Acceptable Use Policies**

- 10.1 The Acceptable Use Policies govern the Customer's use of the Services and any devices and/or Equipment and Facilities including, without limitation, devices and software used in conjunction with the Services provided to the Customer by Execulink, as well as any equipment or device provided by the Customer for use with the Services.
- 10.2 The Acceptable Use Policies will govern irrespective of separate customer agreements, contracts, subscriptions or addendums.
- 10.3 Acceptable Use Policies are part of these Terms of Service and are listed in Appendix A.

## **11. Payment Terms**

- 11.1 The Customer agrees to pay Execulink the total charges for use of the Services, including, without limitation: charges applicable to installation and activation; Execulink's Equipment and Facilities rental or deposits; processing charges; costs incurred by Execulink and interest charges, if the Customer's account is Past Due; diagnostic charges, service calls and repairs; Internet usage, toll free, long distance, airtime and mobile data usage; messaging charges, roaming charges and any additional charges imposed by Third Party Providers; calling cards; directory assistance usage; pay-per-view and video on demand usage; plus any applicable federal, provincial or regulatory taxes or surcharges, incurred in connection with the use of the Services (as all such charges may be changed from time to time).
- 11.2 All invoices from Execulink are payable when created. A one (1) Month Grace Period is extended to invoices before the amount will be considered Past Due. The Grace Period may be altered in a separate customer agreement, contract, subscription or addendum.
- 11.3 Execulink will invoice the Customer each Month in advance for the Services, except for charges that are one time, such as installation or activation charges, or charges that are dependent upon usage, which are invoiced in arrears. Invoicing for partial Month is prorated.
- 11.4 The Customer agrees to pay all amounts prior to the Past Due Date indicated on the Customer's invoice by using any of the payment methods accepted by Execulink.
- 11.5 The Customer agrees to pay for all Services, modifications or installations that are requested by the Customer, whether made verbally or in writing.
- 11.6 Invoicing for the Services will commence (Service Commencement Date) upon completion unless otherwise expressly set forth in a separate Customer agreement, contract, subscription or addendum.
- 11.7 The Service Commencement Date is the completion date stated in a Connection Notice, unless the Customer notifies Execulink that the Services are not functioning properly within seventy-two (72) hours of the Connection Notice, or the date the Customer begins using the Services, whichever comes first. If the Customer notifies Execulink that the Services are not functioning properly, the Service Commencement Date will be the date the Customer subsequently acknowledges that the Services are functioning properly, or the date the Customer begins using the Services, whichever comes first.

- 11.8 If there is a Service provided by a Third Party Provider and the Service Commencement Date for that Service will coincide with the install date of the Third Party Provider Service and be coterminous with the Services associated with the Third Party Provider contract.
- 11.9 In the case where multiple Service Locations are part of one agreement or contract, the first day of a contract will be the day all Services have been installed. The exceptions are Services provided by a Third Party Provider or when expressly set forth in a separate Customer agreement, contract, subscription or addendum. Invoicing, however, will commence for each Service once installed.
- 11.10 Unless otherwise expressly agreed, the Service Term shall continue on a Month-to-Month basis after expiration of the initial Service Term. The charges for Contracted Services will automatically increase to the Retail Rate, if there are Services under a Third Party Provider contract that auto-renews, the Customer's contract will also automatically renew for a term equal to the initial term.
- 11.11 The Customer agrees that Execulink may, in its sole discretion, determine whether the Services will be classified as residential or business for billing purposes.
- 11.12 Billing adjustments may be made retroactively to a maximum of 100% of the underbilled amount for the six (6) previous Months, unless the Customer knowingly deceived Execulink in which case the retroactive billing may apply to the Service Commencement Date.
- 11.13 Unless otherwise expressly set forth in a separate customer agreement, contract, subscription or addendum, any non-recurring charges shall be invoiced by Execulink to the Customer upon the Service Commencement Date. However, in the event such Services require Execulink to install additional infrastructure, cabling, electronics or other materials in the provision of the Services, such customer agreement, contract, subscription or addendum may include (as specified therein) non-recurring charges that are payable by the Customer in advance of the Service Commencement Date.
- 11.14 If the Customer requests and Execulink approves (in its sole discretion) any changes to the Customer Order or the Services after acceptance by Execulink, including, without limitation, the Service installation date or Service Commencement Date, additional non-recurring charges and/or Monthly recurring charges may apply.
- 11.15 If the Customer delays installation, Execulink may apply additional non-recurring charges.
- 11.16 In the event of any change in applicable law, regulation, decision, tariff, rule or order that increases the costs of Services to its Customers, Execulink may pass such increased costs through to the Customer.

- 11.17 All charges are net of applicable taxes. Except for taxes based on Execulink's net income, the Customer is responsible for all applicable taxes that arise in any jurisdiction, however designated, imposed on, incident to, or based upon the provision, sale or use of the Services. If the Customer is entitled to an exemption from any applicable tax, the Customer is responsible for presenting Execulink with a valid exemption certificate. From time to time, at the sole discretion of Execulink, the Customer may be required to provide an updated exemption certificate to maintain exemption. Execulink will give effect to any valid exemption certificate to the extent it applies to any Services billed by Execulink to the Customer following Execulink's receipt of such exemption certificate.
- 11.18 The Customer is responsible for all charges attributable to the Customer, even if the charges are incurred as the result of unauthorized use, fraud, or theft of Services, Execulink's Equipment and Facilities or the Customer's Equipment. The sole exception is the Customer shall not be responsible for fraudulent or unauthorized use by Execulink or its employees.
- 11.19 The Customer will notify Execulink immediately if Execulink's Equipment and Facilities or Customer's Equipment are lost, stolen or destroyed. The Customer is responsible for all fees and charges incurred before the Customer notifies Execulink as well as the cost of replacing Execulink's Equipment and Facilities.
- 11.20 Amounts owing that are Past Due are subject to a compounding late payment interest charge calculated on the outstanding amount of 1.5% Monthly (19.56% annually) until paid in full.
- 11.21 The Customer agrees to pay Execulink \$25.00 if the Customer's credit card or preauthorized payment is denied or cheque is dishonoured.
- 11.22 Past Due accounts are subject to termination or suspension of the Services by Execulink as specified in the Execulink-Initiated Termination or Suspension section of these Terms of Service. Payment of the full amount due will be required before the Services may be restored; however, Execulink is not under any obligation to restore the Services to any person who continues to fail to make timely payment of the amounts due or abuses the Acceptable Use Policy applicable to the Services.
- 11.23 Execulink requires that all new Execulink Residential Service Customer's use a preauthorized payment, Visa or MasterCard. If the Customer is unwilling or unable to use a preauthorized payment, Visa or MasterCard, Execulink may; in its sole discretion, allow other forms of payment for a Monthly fee.
- 11.24 Receipt of banking information authorizes Execulink to charge fees to the bank account or credit card provided by the Customer to Execulink.

- 11.25 The Customer is responsible to ensure that the billing information provided to Execulink is accurate. The Customer agrees to notify Execulink within five (5) calendar days of any changes to billing information.
- 11.26 The Customer is responsible for any costs, including legal fees and expenses, collection agency fees or payments and Court costs incurred by Execulink to collect any amounts owing under these Terms of Service.
- 11.27 A \$500.00 charge, or the outstanding balance plus collection and administrative charges, whichever is greater, will be assessed against any Customer that opens a new account while an outstanding balance exists from a previous account.
- 11.28 Refunds will not be issues unless requested by the Customer. An administrative charge for refund requests of \$25.00 will be assessed unless there is a credit resulting from an Execulink error.

## **12. Disputed Invoices**

- 12.1 The Customer must bring invoice questions and disputes to Execulink's attention within three (3) Months of the initial invoice date. The Customer's failure to contact Execulink regarding any invoice within the three (3) Month period will constitute the Customer's acceptance of the invoice.
- 12.2 If the Customer reasonably disputes any portion of an Execulink invoice, the Customer must pay the undisputed portion of the invoice and submit notice of the claim (in a form reasonably requested by Execulink) for the disputed amount.
- 12.3 No credits for issues related to the Services will be provided to the Customer until the underlying issues are identified and corrected.
- 12.4 Credits for overbilled Services will be issued to the Customer retroactively to a maximum of 100% of the overbilled amount for the six (6) previous months.
- 12.5 In the event that the dispute is resolved against the Customer, the Customer shall pay such amounts plus interest at the rate prescribed in Execulink's Payment Terms.

### **13. Credit Approval & Security Deposit**

- 13.1 Provisioning of the Services is conditional upon Execulink's completion of a satisfactory investigation of the Customer's creditworthiness.
- 13.2 The Customer's acceptance of the Services signifies the Customer's approval, authorization and acceptance of Execulink's initial and continuing credit review and approval.
- 13.3 By execution of an agreement, subscription, registration, acknowledgement or order in paper, online via the Internet or by other electronic means, the Customer will provide Execulink with credit information as requested and expressly authorizes Execulink and those acting on its behalf, from time to time, to release and retain any and all information necessary to investigate and complete a credit review to establish creditworthiness. The Customer also so authorizes Execulink to make current and ongoing inquiries about the Customer which are necessary to establish and maintain good credit with Execulink; and to receive and exchange information about the Customer with credit or consumer reporting agencies.
- 13.4 The Customer authorizes Execulink and credit and reporting agencies to release, share or exchange reports about the Customer to or with Execulink for the purpose of establishing the Customer's creditworthiness. The Customer's credit information will not be made public to any party other than the Customer and credit reporting agencies.
- 13.5 Execulink reserves the right to require a security deposit prior to the activation or continuation of any Services in circumstances of poor creditworthiness or where there is an abnormal risk of loss. For example, where the Customer has incurred a significant amount of long distance or other usage-based charges or in situations of suspected fraud. Determining abnormal risk of loss and the amount of the security deposit shall be at the sole discretion of Execulink.
- 13.6 Any deposit received by Execulink will be credited to the Customer's account after a minimum of six (6) consecutive Months in good standing on all accounts for Services unless expressly set forth in a separate customer agreement, contract, subscription or addendum. If the Customer's Services are cancelled, the deposit will be applied against the outstanding balance on the Customer's account, and any remaining balance will be refunded.

## 14. Provision of Services

- 14.1 In offering the Services to the Customer, Execulink offers no guarantee of service delivery date or warranty of merchantability on the service date requested. The Customer acknowledges that Execulink shall not be liable to the Customer for any delays in delivering the Services or attempting to deliver the Services. The Customer also acknowledges that there are limitations and restrictions on the Services and, accordingly, the Services will only be provided where technology permits and subject to the availability of the Services.
- 14.2 The Customer understands that Equipment and Services could have limited functionality and/or be interrupted in the event that Execulink or its Third Party Providers encounter disruption to their networks.
- 14.3 Upon receipt of a Customer Order for Services, Execulink will determine, in its sole discretion, whether to accept the Customer Order.
- 14.4 If for any reason, Execulink is unable to deliver all or a portion of the Services, Execulink reserves the right to:
- 14.4.a cancel or reduce the affected undeliverable Services for technical or other reasons;
  - 14.4.b adjust the pricing for the remainder of the Services that are delivered if only a portion of the Services are undeliverable and continue providing the remainder of the unaffected available Services;
  - 14.4.c install the Services and Execulink's Equipment and Facilities up to the Customer's demarcation point as are necessary to connect the Customer's Premises to permit the delivery and performance of the Services;
  - 14.4.d perform its obligations through affiliates, agents or subcontracts; or

## 15. When Moving

- 15.1 In the case that a Customer relocates within Execulink's Service Area, the Customer can request to migrate their Services to the new location, but the Customer is responsible for any new installation or system reconfiguration charges.
- 15.2 The Customer understands that limitations may apply when moving within Execulink's Service Area and that Execulink cannot guarantee availability, reliability or functionality of the Customer's current Services. Additional charges may apply.
- 15.3 The Customer is responsible to notify Execulink at least one (1) Month prior to the moving date unless expressly set forth in a separate customer agreement, contract, subscription or addendum
- 15.4 E9-1-1 will not function unless there is an accurate Service Location address in the 9-1-1 database. Under no circumstances is the Customer to move a telephone to a new location without notifying Execulink, unless the telephone Services is of a mobile nature and is expressly identified as such in a separate service agreement, contract, subscription or addendum.
- 15.5 The Monthly recurring charges for the moved Services are subject to change. Execulink will notify the Customer of installation, system reconfiguration and Monthly recurring charges related to the move request.
- 15.6 The ability to transfer a Service to a new location is dependent on the availability of the Service.
- 15.7 If the Customer relocates to a location that is outside of the Service Area, these Terms of Service shall be terminated and the Customer must return Execulink's Equipment and Facilities, at the Customer's expense, to Execulink and pay all applicable charges including Early Termination fees.

## 16. Customer-Initiated Termination

- 16.1 The Customer may terminate the Services by notifying Execulink. Execulink reserves the right to specify the method and form of notification. The Customer will remain responsible for all charges due and payable as of the date of termination including applicable Early Termination fees.
- 16.2 For Corporate Customers, unless otherwise specified by a regulatory agency or tribunal or expressly specified otherwise in a separate customer agreement, contract, subscription or addendum such termination shall take effect at the later of the requested termination date or two (2) Months from the notification date or, in Execulink's sole discretion, upon the expiration of the then current invoicing cycle.
- 16.3 The Customer understands and acknowledges that 9-1-1 emergency service will not work when Services are terminated.
- 16.4 Early Termination fees do not apply when prohibited by a regulatory agency or tribunal or when terminated by the Customer due to the installation of the Services being delayed for more than one (1) month beyond the date committed to the Customer for reasons which are within Execulink's control or as expressly specified in a separate customer agreement, contract, subscription or addendum.
- 16.5 The Customer agrees that if the Services are terminated for any reason, the Customer will:
- 16.5.a pay Execulink in full any amounts due and outstanding for use of the Services, and all rental, lease or financing that is remaining on account and return to Execulink, at the Customer's expense, Execulink's Equipment and Facilities;
  - 16.5.b agree to the Equipment Return Responsibilities (See: 9.1). and;
  - 16.5.c pay Execulink applicable Early Termination fees for any contract and/or promotion the Customer accepted if the Customer terminates service prior to the end of the Service Term. Early Termination fees are in addition to any other charges or fees the Customer may owe Execulink.

- 16.6 In the event that, following Execulink’s acceptance of the applicable Customer Order and prior to the Service Commencement Date, the Services are cancelled by the Customer or terminated by Execulink due to a failure of the Customer to comply with these Terms of Service or any Customer Order, the Early Termination Fee shall, unless otherwise prescribed by a regulatory agency or tribunal or expressly set forth in a separate customer agreement, contract, subscription or addendum, be defined as:
- 16.6.a any Third Party Provider cancellation/termination charges related to the installation and/or cancellation of Services;
  - 16.6.b in the case of collocation space, any costs incurred by Execulink in returning the physical collocation space to a condition prior to the Customer’s Order, suitable for use by third parties;
  - 16.6.c the non-recurring charges including any non-recurring charges that were waived by Execulink at the time of the Customer Order for the cancelled Services; and
  - 16.6.d three (3) Month’s recurring charges for the cancelled Services.
- 16.7 In the event that, after the Service Commencement Date and prior to the end of the Service Term, the Services are cancelled by the Customer, the Early Termination Fee shall, unless otherwise prescribed by a regulatory agency or tribunal or expressly set forth in the separate customer agreement, contract, subscription or addendum, be defined as:
- 16.7.a any Third Party Provider’s cancellation/termination charges related to the installation and/or cancellation of Services;
  - 16.7.b in the case of collocation space, any costs incurred by Execulink in returning the physical collocation space to a condition prior to the Customer’s Order, suitable for use by third parties;
  - 16.7.c the non-recurring charges (including any non-recurring charges that were waived by Execulink at the time of the Customer Order) for the cancelled Services if not already paid; and
  - 16.7.d the difference between the Monthly Retail Rate and the Monthly Contracted charges multiplied by the number of months since the Service Commencement Date.

## **17. Execulink-Initiated Termination or Suspension**

- 17.1 Execulink may restrict, block, suspend or terminate all or any part of the Services immediately where the Customer:
- 17.1.a fails to make timely or adequate payment for the Services;
  - 17.1.b makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief;
  - 17.1.c is forced into an involuntary petition in bankruptcy or other insolvency protection against the Customer which is filed and not dismissed within two (2) Months;
  - 17.1.d fails to provide Execulink with reasonable entry and access to install, inspect, repair, replace or to perform necessary maintenance on Execulink's Equipment and Facilities;
  - 17.1.e is in breach of any term or condition of these Terms of Service;
  - 17.1.f relocates, alters, abuses or disconnects Execulink's Equipment and Facilities;
  - 17.1.g increases use of usage-based Services resulting in an abnormal risk of loss for Execulink, unless within ten (10) business day's written notice thereof by Execulink, the Customer provides adequate security for payment for Service;
  - 17.1.h exceeds Overage; or
  - 17.1.i interferes with the operation or functionality of Execulink's network.
- 17.2 For the situations listed above, Execulink will attempt to notify the Customer stating the reason and date scheduled for the suspension or termination
- 17.3 Services which have been suspended as a result of the above will continue to be billable until such time as the Services are terminated or the customer cancels the Services.
- 17.4 The Customer understands and acknowledges that the 9-1-1 emergency service will not work when Services are terminated and may not work when Services are suspended.
- 17.5 Execulink may pursue any remedies under these Terms of Service, at law or in equity, including Early Termination charges.

- 17.6 Despite the above, Execulink will not provide the Customer notice of a proposed restriction, block, suspension or termination:
- 17.6.a. if immediate action must be taken to protect Execulink's Equipment and Facilities, or if suspension is required by legal requirement, court order, ordinance or regulatory authority;
  - 17.6.b. if Execulink believes that extreme circumstances exist, or that there is an abnormal risk of loss to Execulink involved in delaying the suspension or termination;
  - 17.6.c. if the Customer misuses or abuses or permits others to misuse or abuse the Services for purposes that are contrary to law or these Terms of Service; or
  - 17.6.d. in emergency circumstances.
- 17.7 If all or any part of the Customer's Services are restricted, blocked, suspended or terminated for situations listed above, Execulink is not obligated to restore the Services.
- 17.8 If Execulink agrees to restore the Customer's Services, a reconnection service charge may be applied. Promotional discounts will no longer apply.
- 17.9 Execulink cannot guarantee the availability or resumption of any Services unique to the Customer such as, but not limited to, telephone numbers, email address, emails and web sites following a suspension or termination of the Services.
- 17.10 Such restrictions, blockages, suspensions or terminations shall not be considered an interruption of service for purposes of any applicable Service Level Agreement, if such agreement exists.
- 17.11 Execulink reserves the right to discontinue any Services. Prior to a Service being discontinued, the Customer will be given at least one (1) Month notice of termination.

- 17.12 In the event that, after the Service Commencement Date and prior to the end of the Service Term, the Services are terminated by Execulink due to a failure of the Customer to comply with these Terms of Service or conditions set forth in a separate customer agreement, contract, subscription or addendum, the Early Termination Fee shall, unless otherwise prescribed by a regulatory agency or tribunal or expressly set forth in the separate customer agreement, contract, subscription or addendum, be defined as:
- 17.12.a. any Third Party Provider's cancellation/termination charges related to the installation and/or cancellation of Services;
  - 17.12.b. in the case of collocation space, any costs incurred by Execulink in returning the physical collocation space to a condition prior to the Customer's Order, suitable for use by third parties;
  - 17.12.c. the non-recurring charges (including any non-recurring charges that were waived by Execulink at the time of the Customer Order) for the cancelled Services if not already paid; and
  - 17.12.d. the difference between the Monthly Retail Rate and the Monthly Contracted charges times the number of months since the Service Commencement Date; and
  - 17.12.e. any fees as detailed in Equipment Return Responsibilities (See: 9.1).

## 18. Execulink's Liability

**18.1** Execulink shall not be liable to the Customer or any other person for:

- 18.1.a any interruption or unavailability of the Services, including, without limitation, any interruption or unavailability of emergency 9-1-1 service;
- 18.1.b any act or omission of any Third Party Provider;
- 18.1.c changes to Execulink's Service Area;
- 18.1.d any Services and features that may not be available or function correctly with Customer's Equipment;
- 18.1.e any additional charges that may apply as a result of signal propagation associated with mobile service; (For example: mobility calls are billed from the tower that receives the signal and not from the location of the Mobile Device);
- 18.1.f the Customer's conduct, acts or omissions;
- 18.1.g any event beyond the reasonable control of Execulink including acts of God, inclement weather (including lightning), power failures, labour disputes, riots or civil disputes, war or armed conflict, any law, governmental order, decision or regulation, or order of any court or regulatory agency or tribunal of competent jurisdiction;
- 18.1.h Execulink's failure, for any reason, to activate the Services on the activation date that the Customer requested or the date provided to the Customer by Execulink;
- 18.1.i any defacement of, or damage to, the Service Location resulting from the attachment of any instruments, apparatus or associated wiring and/or Execulink's Equipment and Facilities, or removal thereof, when such defacement or damage is not wholly caused by Execulink's negligence;
- 18.1.j any damages the Customer incurs as a result of the operation or failure of the Customer's equipment, facilities, wiring or other devices that the Customer uses with the Services, including without limitation the Customer's equipment, facilities, wiring or other devices, if any, that the Customer uses with the Services that are or later become incompatible with the Services or with Execulink's Equipment and Facilities;

- 18.1.k any interruption of the Services or for any other loss, cost or damage caused by or related to improper use or maintenance of Execulink's Equipment and Facilities by the Customer or any third party gaining access to Execulink's Equipment and Facilities, and the Customer shall reimburse Execulink for any damages incurred as a result thereof;

- 18.1.l any changes in the Customer's ability to use the Services or a Mobile Device resulting from changes in Execulink's Equipment and Facilities or changes in equipment or facilities of any Third Party Provider used by Execulink; and
  - 18.1.m limited or non-functionality of Services as a result of limitations of services or facilities of a Third Party Provider.
- 18.2** Furthermore, Execulink shall not be liable for any suit, claim or judgment howsoever arising out of any of the following;
- 18.2.a claims for libel, slander, infringement of copyright, trademark or other intellectual property rights or contractual rights of any third party or based on any other legal theory howsoever arising from the Services, or any material, data or other content associated with the Services;
  - 18.2.b any losses, damages, expenses or costs (including legal fees and court costs) arising out of or in connection with any claim, or other proceeding based on a contention that the use of the Services and/or Execulink's Equipment and Facilities by the Customer or a third party infringes any intellectual property rights or contractual rights of any third party;
  - 18.2.c claims by those to whom the Customer provides access to the Services and/or Execulink's Equipment and Facilities;
- 18.3** The Customer acknowledges that Execulink shall have no liability or responsibility for the content of any communications transmitted via the Services, and the Customer shall defend, indemnify and hold Execulink harmless from any and all claims (including claims by governmental entities seeking to impose penal sanctions) related to such content or for claims by third parties relating to the Customer's use of the Services.
- 18.4** Execulink assumes no responsibility to the Customer or to any third party for any errors or omissions of any kind in the Content, and disclaims all warranties and/or conditions, express or implied, as to the Content and to any matter relating to Execulink's web site, including, but not limited to, implied warranties and/or conditions of non-infringement, merchantability and fitness for a particular purpose.
- 18.5** In no event will Execulink be liable for any damages whatsoever, including special, indirect, incidental or consequential damages, arising out of or in connection with the use or performance of Execulink's web site or the Content available or referred to on Execulink's web site, or any other site the Customer may access through Execulink's web site, even if advised of the possibility of such damages.

## 19. Limitation of Liability and Indemnification

- 19.1 Execulink shall be liable to the Customer as expressly provided in these Terms of Service but shall have no other obligation, duty or liability whatsoever to the Customer.
- 19.2 The maximum aggregate liability of Execulink to the Customer shall be limited to direct damages in an amount not to exceed the charges paid in the three (3) Month period immediately preceding the date on which such claim first arose for the Services giving rise to such claim, even if the claim is a continuing one.
- 19.3 Under no circumstances shall Execulink be liable to the Customer or to any third party for any indirect, special, or consequential damages, including loss of profits and loss of business opportunities, that result in any way from these Terms of Service, including the Customer's use of the Services and/or Execulink's Equipment and Facilities, or the Customer's reliance on or use of any information, service, merchandise or material viewed or provided on or through use of the Services, or that result from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in reception or transmission, or failure of performance of the Services.
- 19.4 The Customer acknowledges and agrees that Execulink and its Employees will not be liable for any injury, death or damage to persons or property, arising directly or indirectly out of, or relating to the 9-1-1 service and the Customer agrees to indemnify and hold harmless Execulink and its Employees for any liabilities, claims, damages, losses and expenses, (including reasonable legal fees and expenses) which the Customer may suffer or incur, arising directly or indirectly out of or relating to the Customer's failure to obtain access to 9-1-1 service.
- 19.5 The Customer shall indemnify and save Execulink harmless from and against all suits, claims or judgments howsoever arising out of any of the following:
- 19.5.a. claims for libel, slander, infringement of copyright, trademark or other intellectual property rights or contractual rights of any third party or based on any other legal theory howsoever arising from the Services, or any material, data or other Content associated with the Services;
  - 19.5.b. any losses, damages, expenses or costs (including legal fees and court costs) arising out of or in connection with any claim, or other proceeding based on a contention that the use of the Services and/or Execulink's Equipment and Facilities by the Customer or a third party infringes any intellectual property rights or contractual rights of any third party; or
  - 19.5.c. claims by those to whom the Customer provides access to the Services and/or Execulink's Equipment and Facilities.

- 19.6 The limitations, exclusions and disclaimers in these Terms of Service shall apply irrespective of the nature of the cause of action, demand or action including breach of contract, damage to tangible property, acts and omissions, negligence, willful misconduct, tort, infringement of proprietary rights or otherwise and shall survive a fundamental breach or breaches of contract or the failure of the essential purpose of these Terms of Service or of an exclusive remedy.
- 19.7 Notwithstanding any other provision hereof except those expressly set forth in a separate customer agreement, contract, subscription or addendum, neither party shall be liable for any indirect, incidental, special, consequential, exemplary or punitive damages (including, without limitation, damages for lost profits, lost revenues or the cost of purchasing replacement Services) arising out of the performance or failure to perform.
- 19.8 Neither party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance of Execulink's Equipment and Facilities due to causes beyond such party's reasonable control ("force majeure event"). In the event Execulink is unable to deliver Services as a result of a force majeure event, the Customer shall not be obligated to pay Execulink for the affected Services for so long as Execulink is unable to deliver the affected Services.
- 19.9 For the purposes of this section, any reference to "Execulink" shall include Execulink, its partners or associates, or any of their respective directors, officers, employees, servants or agents.

## **20. Limited Warranty**

- 20.1 Execulink makes no warranties or representations express or implied, either in fact or by operation of law, statutory or otherwise, including warranties of merchantability or fitness for a particular use, except those expressly set forth in a separate customer agreement, contract, subscription or addendum.
- 20.2 All of the Services and Execulink's Equipment and Facilities are provided by Execulink on an "as is" and "as available" basis without warranties or conditions of any kind except those expressly set forth in a separate customer agreement, contract, subscription, addendum.
- 20.3 If Customer's Equipment is in need of repair, the customer agrees that Execulink may work on the customer's behalf; at the Customer's cost and upon the Customer's approval.
- 20.4 Execulink does not warrant uninterrupted use or operation of the Services and/or Execulink's Equipment and Facilities and/or Customer's Equipment.
- 20.5 Execulink does not warrant repair services, warranties or return policies offered independently by Execulink Dealers.
- 20.6 Execulink does not warrant that any data or communication sent by or to the Customer will be transmitted in uncorrupted form or within a reasonable period of time, or that any content or other material accessible on or from the Services are free of defect, error or viruses.
- 20.7 Execulink does not warrant the content including, without limitation, content of any programming and/or advertising that is accessible on or from the Services.
- 20.8 Equipment insurance purchased through Execulink is not a warranty.
- 20.9 All representations, warranties, and conditions of any kind, expressed or implied, including warranties of title or non-infringement, or any implied representations, warranties and conditions of fitness for a particular purpose and merchantable quality with regard to any merchandise, information, programming, advertising, content or service and those arising from a course of dealing or usage of trade, are hereby excluded.

## **21. Disputes and Governing Law**

- 21.1 Any disputes or claims (“claims”) whatsoever between Execulink and the Customer will be referred to and determined by arbitration to the exclusion of the courts. If the Customer has a claim, the Customer should give written notice to arbitrate to Execulink. Arbitration will be conducted by one arbitrator pursuant to the laws and rules relating to commercial arbitration in the province of Ontario that are in effect on the date of the notice.
- 21.2 The Customer agrees to waive any right the Customer may have to commence or participate in any class action against Execulink related to any claim where such waiver is permitted. Where applicable, the Customer also agrees to opt out of any class proceedings against Execulink.
- 21.3 If Execulink has a claim, Execulink will give the Customer notice to arbitrate at the Customer’s billing address. If the claim relates to a matter that falls within the jurisdiction and should properly be brought before the CRTC or other customer complaints body set up to address such matters, the Customer agrees that the CRTC or such body will resolve the claim.
- 21.4 Notwithstanding the arbitration provisions contained herein, Execulink reserves the right to utilize its normal collection processes, including but not limited to the courts, in relation to any and all unpaid and undisputed invoices.
- 21.5 These Terms of Service and any separate customer agreement, contract, subscription or addendum shall be governed by and construed in accordance with the laws of the Province of Ontario and the Customer hereby consents to the exclusive jurisdiction of the courts of such jurisdiction.
- 21.6 These Terms of Service and any separate customer agreement, contract, subscription or addendum that specifically reference these Terms of Service constitute the entire understanding with respect to the arrangement between the Customer and Execulink and supersede and replace any and all prior written or verbal understandings.

## 22. General

- 22.1 The Customer acknowledges executing these Terms of Service on behalf of all persons who use the Services. The Customer assumes all liability for such use of the Services and is responsible for ensuring that all such other users understand and comply with the terms and conditions of these Terms of Service.
- 22.2 Harassing or abusive language or actions, whether verbal, written or otherwise, of Execulink's Employees, suppliers, agents and representatives is strictly prohibited and will not be tolerated.
- 22.3 The Customer may not assign, resell or transfer any of its rights or obligations hereunder to any person or corporation without the prior written consent of Execulink and such consent shall not be unreasonably withheld.
- 22.4 These Terms of Service and any interrelated separate customer agreement, contract, subscription or addendum will ensure to the benefit of, and be binding upon, the Customer's respective heirs, executors, administrators, successors and permitted assignees and, for the purpose of Execulink, shall benefit any party that controls, is controlled by or is under common control with Execulink.
- 22.5 Notwithstanding the foregoing, the Customer, if a business, will be entitled to assign these Terms of Service and interrelated customer agreements, contracts, subscriptions or addendums in their entirety without Execulink's consent to a purchaser of all or substantially all of the Customer's assets provided: (i) the purchaser does not offer or market any service competitive with the Services; (ii) the Customer gives Execulink at least one (1) Month advance written notice of the assignment; and (iii) the purchaser agrees in writing with Execulink to assume and comply with these Terms of Service and interrelated customer agreements, contracts, subscriptions or addendums. Notwithstanding any assignment by the Customer, the Customer shall remain liable for the payment of all charges due.
- 22.6 Affiliates of the Customer may purchase Services under these Terms of Service and interrelated customer agreements, contracts, subscriptions or addendums; provided, however, any such affiliate of the Customer purchasing Services hereunder agrees that such Service is provided pursuant to and governed by these Terms of Service and interrelated customer agreements, contracts, subscriptions or addendums. The Customer shall be jointly and severally liable for all claims and liabilities arising related to Services ordered by any affiliate of the Customer, and any event of default by any affiliate of the Customer shall also be deemed an event of default by the Customer. Any reference to the Customer with respect to Services ordered by an affiliate of the Customer shall be deemed a reference to the applicable affiliate of the Customer.

- 22.7 Upon termination of the Services, all accrued obligations or liabilities and the provisions which by their nature are intended to continue beyond such termination, including the right to remove Execulink's Equipment and Facilities, will remain in effect and shall survive the expiration and/or earlier termination.
- 22.8 The failure of either party to insist upon strict interpretation of these Terms of Service or to exercise any options herein, shall not act as a waiver of any right or option, but the same shall continue to be in full force and effect. No waiver by either party of any breach shall be effective unless expressed in writing.
- 22.9 The Customer acknowledges and agrees from time to time to receive communications from Execulink of both a notifiational and informational nature utilizing email, postal mail and other means. Notifiational communications includes information such as; invoices, usage limit warnings, contract details, and technical announcements and warnings. Informational communications include material such as; planned network maintenance, product changes and marketing information. Customers can choose not to receive communications of an informational nature by contacting an Execulink business office.
- 22.10 The Customer acknowledges and agrees that Execulink's web sites, the Services and/or additional services offered by Execulink from time to time are protected by copyright, trademark, patent, or other proprietary rights.
- 22.11 Execulink does not grant the Customer any right to use Execulink's logos, trademarks or trade names in any manner, unless Execulink gives the Customer prior written consent and/or grants the Customer an appropriate license to use.
- 22.12 The Customer agrees not to defame or disparage Execulink, Execulink's logos, trademarks or trade names, as may be amended from time to time.
- 22.13 Nothing within the Services or any additional services offered by Execulink from time to time or accessed through Execulink's facilities shall be construed as conferring any license to use Execulink's or any third parties' intellectual property rights, whether by estoppel, implication, waiver, or otherwise.
- 22.14 The Customer understands that Execulink may use a Third Party Provider for all or part of the Service. The Customer agrees that the Customer has no contractual relationship whatsoever with the Third Party Provider and is not a third party beneficiary of any agreement between Execulink and the Third Party Provider. The Customer further agrees that the Third Party Provider shall have no legal, equitable, or other liability of any kind to the Customer.

## **23. Confidentiality**

- 23.1 Execulink may disclose any information, in accordance with the guidelines set out in Execulink's Privacy Policy, as is necessary to:
- 23.1.a satisfy any legal, regulatory or other governmental request;
  - 23.1.b operate the Services properly; or
  - 23.1.c protect Execulink, its Employees or its Customers.
- 23.2 The Customer may view Execulink's Privacy Policy at [www.execulink.ca](http://www.execulink.ca).

# Appendix A: Execulink Telecom Acceptable Use Policy

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This appendix is part of the Terms of Service and constitutes an agreement between Execulink Telecom Inc. (Execulink) and the Customer and shall be referred to as the Acceptable Use Policy. This Acceptable Use Policy governs the Customer's use of the Services and any devices and/or Equipment including, without limitation, devices and software used in conjunction with the Services provided to the Customer by Execulink, as well as any Customer Equipment used with the Services.

A.1 This Acceptable Use Policy governs irrespective of separate customer agreements, contracts, subscriptions or addendums.

A.2 Execulink provides a variety of services to residences and businesses. These Services may use resources that are obtained from other Third Party Providers and may be shared with many customers. Each user benefits by being able to share resources and to communicate almost effortlessly with other members of the user community. However, as with any community, the benefits and privileges available from the Services to the Customer must be balanced with duties and responsibilities designed to guarantee uniform access by all customers to the Services.

A.3 Activities or actions that risk other users' ability to use Execulink's Services, or create costs that are not normal in relation to the Services that are being provided are in violation of these Terms of Service. The Customer is responsible for ensuring that the use of all Services provided to the Customer complies with these Terms of Service.

A.4 The Customer will not, nor will it permit others to, tamper with, alter or rearrange the Services, Equipment or the facilities required to provide the Services, or otherwise abuse or fraudulently use the Services, including, without limitation, using the Services:

A.4.a in any manner which interferes with Execulink's facilities, network or equipment, or access thereto by others;

A.4.b contrary to reasonable instructions communicated to the Customer by Execulink;

A.4.c for any purpose or in any manner, directly or indirectly, in violation of applicable laws or in violation of any third party rights: or in a manner to avoid payment of charges.

A.5 The Customer shall not;

A.5.a commit, attempt to commit, or allow others to commit or attempt to commit, any fraud against Execulink, including fraudulently obtaining Services or Devices;

A.5.b transform outbound communications into incoming communications or otherwise attempt to avoid applicable charges, or

A.5.c otherwise abuse the Services or flat rate or unlimited use plans, or allow others to do any of the foregoing.

A.6 In addition to the general Acceptable Use Policies already stated, the Services listed below are subject to the following rules and guidelines.

## 1 Video Services

The Customer shall not:

- a. use these Services for anything other than the Customer's own personal use. The Customer may not resell or remarket the Services, receive any charge or benefit for the use of the Services, or transfer the Services;
- b. use the Services or permit the Services to be used for a purpose or in a manner that is contrary to law, for any illegal or abusive purpose, including criminal offences, intellectual property infringement or interference with network operation, Execulink's facilities or assets;
- c. use the Services or permit them to be used so as to prevent a fair and proportionate use by others;
- d. re-arrange, disconnect, remove, repair, modify or otherwise interfere with the Services, or with Execulink's Equipment and Facilities;
- e. attempt to receive the Services without paying the applicable fees and charges;
- f. use the Services in a manner which bypasses, or attempts to bypass, Execulink's network;
- g. adapt, translate, modify, decompile, disassemble, reverse engineer or otherwise interfere with or defeat any software, applications or programs used in connection with the Services; or
- h. modify, alter, or deface any of the trademarks, service marks, or other intellectual property made available through the Services, nor use any of the foregoing except for the purpose for which such intellectual property is made available to the Customer through the Service.

## 2 Internet Services

The Customer is prohibited from using the Internet Services for activities that include, but are not limited to:

- 1 Transmitting unsolicited messages which, in the sole judgment of Execulink, cause significant disruption or elicit complaints from other Internet users, restricting or inhibiting any other user from using or enjoying the Internet, impairing the operations or efficiency of the Services or creating an unusually large burden on our networks, or otherwise generating levels of Internet traffic sufficient to impede other users' ability to transmit or receive information.
- 2 Harassing users or groups in any way, including but not limited to defaming, abusing, stalking, threatening or otherwise violating the legal rights of others.
- 3 Impersonating other Execulink Internet subscribers or other Internet service providers' subscribers in any way.
- 4 Uploading or downloading, transmitting, posting, publishing, disseminating, receiving, retrieving, storing or otherwise reproducing, distributing or providing access to information, software, files or other material which:
  - a. are confidential or protected by copyright or other intellectual property rights, without prior authorization from the rights holder(s);
  - b. are defamatory, obscene, or contain or constitute child pornography or hate literature; or
  - c. constitute invasion of privacy, appropriation of personality, or unauthorized linking or framing.
5. Falsifying or deleting any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file or other data.
6. Transmitting, posting, publishing, disseminating, receiving, retrieving, storing or otherwise reproducing, distributing or providing access to any files, program or information designed to assist users in defeating copy-protection, registration and any other anti-theft mechanisms associated with commercial or shareware programs.
7. Transmitting, posting, receiving, retrieving, storing or otherwise reproducing, distributing or providing access to any program or information designed to assist in the fraudulent use of telecommunications services.

8. Using an Internet host's resources in a manner which is not authorized by its administrators. This includes mail relaying, transmitting chain letters, make-money-fast or pyramid style schemes of any sort.
9. Posting or transmitting any information or software which contains a virus, "trojan horse", "worm", "malware" or other harmful or disruptive component.
10. Transmitting, posting, receiving, retrieving, storing or otherwise reproducing, distributing or providing access to any program or information constituting or encouraging conduct that would constitute a criminal offence or give rise to civil liability.
11. Violating or breaching any applicable laws and/or regulations.

## **2.1 Electronic Mail Services**

The Customer agrees to use Internet-based electronic mail services only to send and receive message and material that are proper. In addition to the general terms set out above, and by way of example, and not as a limitation, the Customer agrees that when using Internet-based electronic mail services, not to:

- a. Use such services in connection with pyramid schemes, spamming or any unsolicited messages (commercial or otherwise);
- b. Restrict or inhibit any other user from using or enjoying such service;
- c. Create a false identity for the purpose of misleading others or forge the headers of your email messages in any way;
- d. Use, download or otherwise copy, or provide (whether or not for a fee) to a person or entity any directory of users of such services or other user or usage information or any portion thereof;
- e. Promote or facilitate the transmission of unsolicited email messages; and
- f. Send messages to disrupt or cause difficulties in receiving other email.

Execulink reserves the right, in its sole discretion, to remove emails from Execulink's Equipment and Facilities:

- a. Stored in folders labelled as Trash, Garbage, Deleted, Junk or similarly described;
- b. Older than six (6) Months and stored in mailboxes that have only been accessed via Post Office Protocol (POP) over the past one (1) Month; or
- c. Older than six (6) Months and stored in mailboxes that have not had emails read over the last six (6) Months.

In the event that the Customer maintains one or more bulk “opt-in” email lists, the Customer must have a method of confirmation of subscriptions and be able to provide such information when requested by Execulink. At the discretion of Execulink, if no such evidence is available, such bulk emailing may be considered as unsolicited. The Customer must also responsibly remove addresses from email lists if they are not deliverable.

Execulink reserves the right, in its sole discretion, to set an upper limit on the size of emails, the number of recipients of customer-initiated email, the number of subscribers on a Customer's bulk "opt-in" email lists, the number of messages a Customer may send or receive through Execulink Internet mail service, the rate at which messages are accepted into the system and the number of concurrent connections.

## **2.2 Addresses**

Execulink owns all addresses provided to the Customer, including but not limited to IP addresses, e-mail addresses and personal Web page addresses. Execulink may modify or change such addresses at any point in time and shall in no way be required to compensate the Customer for such changes.

## **2.3 Customer Web Pages**

Customers may create web pages on Execulink’s Web Server (the “Site”).

On the Site, the Customer can conceive, design, create, maintain, and publish texts, diagrams, illustrations, audio clips and related materials for access by a global audience.

The Customer warrants that the Content on the Site is suitable for publication, is not libelous or defamatory, does not breach the intellectual property rights (including, without limitation, copyright) of any third party, and complies with all laws, regulations, court orders and other legal requirements.

While it is the Customer’s responsibility to regulate and control all Content on the Site, Execulink may decide to suspend or delete web pages without consent if the Customer violates these Terms of Service. In addition, if Execulink determines that it is appropriate, Execulink may either;

- a. issue a warning;
- b. suspend access to some or all of the Services; or
- c. terminate the Services.

## 2.4 Newsgroups and Discussion Forums

When using any third party Newsgroup or Discussion Forums, the Customer is subject to the rules and policies published by the third party while interacting with their system. The Customer may be considered to be in violation of these Acceptable Use Policies if the Customer is in violation of the third party provider rules.

Execulink reserves the right to discontinue access to any newsgroup or discussion forum at any time and for any reason by any means necessary.

- a. Posting advertisements, commercial or unsolicited messages of any kind, unless expressly permitted by the charter or FAQ of the applicable newsgroup or discussion forum.
- b. Posting binary or excessively large files of any kind, unless expressly permitted by the charter or FAQ of the applicable newsgroup or discussion forum.
- c. Posting substantially identical messages to more than 10 news groups
- d. Attaching an excessively long signature to messages
- e. Forging the headers of postings in any way

## 2.5 Internet Relay Chat ("IRC") / Chat Services

While using IRC or any other Chat Services, the Customer must be in full compliance with the rules and regulations set out by the chat server administrator.

## 2.6 Network Security

In addition to the general terms set out above, the Customer is prohibited from using the Services for activities that include, but are not limited to:

- a. Sharing of Account User ID and password for any purpose, including for the purpose of concurrent login sessions from the same Account;
- b. Causing an Internet host to become unable to effectively service requests from other hosts;
- c. Analyzing or penetrating an Internet host's security mechanisms;

- d. transmitting a forged IP packet;
- e. Committing any act which may compromise the security of the Internet host in any way;
- f. Represent (in the sole judgment of Execulink) an unusually large burden on the network, such as, but not limited to, peer to peer file sharing programs, serving streaming video or audio, mail, http, ftp, irc, dhcp servers, and multi-user interactive forums; or
- g. Improperly restrict, disrupt, inhibit, degrade or impede Execulink's ability to deliver the Services and monitor the Services, backbone, network nodes, and/or other network services.

## **2.7 Traffic Management**

Execulink uses a variety of traffic management tools or network security, temporary traffic congestion and to ensure the best possible experience for all Execulink Customers.

Execulink manages the integrity of the network from attacks, viruses, spam, malware, denial of service attacks and other malicious activities. Currently residential Customers are denied outgoing port 25 connections, however where possible and when required, this can be modified on a Customer by Customer basis.

Execulink's traffic management will not affect real-time interactive activities such as online gaming, banking, e-mail or VoIP services. Execulink does not limit traffic associated with P2P file sharing protocols of any Services.

## **3 Voice Services**

### **3.1 Telephone Listings and Directories**

Execulink will make the Customer's name, address and telephone numbers available to publishers of paper and electronic telephone directories and to providers of operator services, in accordance with legal or regulatory requirements.

The Customer may opt to have the Customer's name, address and telephone number listing information omitted from these directories or services by requesting, and paying for, an unlisted telephone number.

Directories or services, however, may receive or obtain the Customer's telephone numbers and address from a source other than Execulink.

In the case of errors or omissions in the Customer's name, address and telephone number in the directory provided by Execulink, whether or not the error or omission is with regard to telephone numbers, addresses, individual names or business names, Execulink is only responsible to provide the Customer a refund or credit of any charges associated with the listings in question for the period during which the error or omission occurred.

### **3.2 9-1-1 Emergency Services**

The Customer's name, address and telephone numbers will be accessible by 9-1-1 service providers, even if an unlisted telephone number is requested and paid for.

#### **3.2.1 Access to 9-1-1 Emergency Service**

In addition to other limitations regarding 9-1-1 Emergency Service set out in these Terms of Service and other Execulink documentation, the following limitations apply to the provision of the 9-1-1 service:

The Services, including the 9-1-1 service, may not be available during network outages, including Planned and Emergency Maintenance, during power outages and could be affected by signal strength.

The Customer is responsible to inform all persons who may be present at the Service Location, including residents, guests, employees and other persons, of these and any other limitations or requirements associated with 9-1-1 Emergency Service.

The Customer is solely responsible for the supply of electrical power necessary for these Services.

### **3.2.2 Enhanced 9-1-1 Service**

Where Enhanced 9-1-1 (E9-1-1) is available in the Customer's serving area, E9-1-1 Service is provided if the Telephone Service is fixed (i.e. neither nomadic nor mobile) the Customer's telephone number must permanently correspond to the address and municipality of the Customer's Service Location.

When 9-1-1 is dialed, the call is automatically routed to the Public Safety Answering Point (PSAP) corresponding to the Customer's address and the emergency operator will have the Customer's telephone and address information. The caller may be required to verify the telephone number and address with the emergency operator.

E9-1-1 will not function properly unless there is an accurate Service Location address in the 9-1-1 database. That is why it is imperative for a Customer to immediately notify Execulink if they move to a new location unless the telephone Service is of a mobile nature and is expressly identified as such in a separate service agreement, contract, subscription or addendum.

### **3.2.3 Basic 9-1-1 Service**

Basic 9-1-1 Service is provided for nomadic telephone service or where the telephone service can be used from multiple locations or where E9-1-1 is not available. This information will be expressly set forth in a separate customer agreement, contract, subscription or addendum.

When 9-1-1 is dialed, the call is automatically routed to a specialized call centre that handles emergency calls. The call centre is different from the Public Safety Answering Point (PSAP) that would answer an E9-1-1 call. The caller will be required to provide his name, telephone number and address to the call centre operator. Upon confirmation of location the call center operator will then route the call to the appropriate PSAP based upon the location provided by the Customer.

### **3.2.4 Mobility 9-1-1 Service**

Mobility 9-1-1 Service is provided for Mobility telephone service.

When 9-1-1 is dialed, the call is automatically routed to the Public Safety Answering Point (PSAP) associated with the tower the Mobility Device is connected to. The caller will be required to provide his name, telephone number and address to the PSAP operator.

### **3.3 Automatic-Dialing Announcing Devices**

When informed of violations, Execulink enforces all CRTC rules relating to Automatic- Dialing Announcing Devices (“ADADs”) and unsolicited voice and facsimile calls made for the purposes of solicitation. The use of ADADs to make unsolicited calls for the purposes of solicitation, or used to place calls to emergency lines or healthcare facilities is strictly prohibited. If the Customer violates these restrictions or those posted by the CRTC, Execulink may terminate the Services immediately.

### **3.4 Telephone Numbers**

The Customer does not own the telephone number or other identifiers that Execulink has provided or assigned and Execulink reserves the right to change any of the telephone numbers or other identifiers if required. Execulink will notify the Customer in advance and Execulink will not be liable for any costs, damages or losses associated with this change.

### **3.5 Transferring Numbers**

When requesting to transfer a telephone number currently assigned from another service provider to Execulink, the Customer represents and warrants that the Customer has the right to make the request and to authorize Execulink to make the transfer-in request to the other service provider on the Customer’s behalf and to share the Customer’s name, telephone number, address and other personal information relevant to the transfer request with the other service provider. The Customer agrees to complete and sign a request form if necessary. The services of the other service provider, including any features, applications, content, or IP address cannot be transferred to Execulink. The Customer must pay all amounts owing to the other service provider, including Early Termination charges if applicable.

If the Customer wants to transfer the Customer’s telephone number to another service provider, then, provided that the Customer’s account and telephone number are active, Execulink will process a "transfer-out" request from the Customer’s new chosen service provider. The Services, including any features, applications, content or IP address cannot be transferred to the Customer’s new service provider. Execulink may need to contact the Customer in connection with a transfer-out request to make any adjustments to the Customer’s account, invoicing or services required due to the transfer-out request or termination of the Services, and the Customer consents to such contact.

## 4 Mobility Services

The Customer is responsible to prudently protect and safeguard the Mobile Device (including any SIM card) against loss, abuse, theft or damage, and for the use of the Services and the Mobile Device by the Customer and any other persons.

The Customer shall not use or allow others to use the Services or the Customer's Mobile Device if such use:

- a. is higher than average or consumes excessive network capacity in Execulink's reasonable opinion, or causes Execulink's network, or our ability to provide Services to others, to be adversely affected;
- b. is for multi-media streaming, continuous data transmission or broadcasts, automatic data feeds, automated machine to machine connections or peer-to-peer (P2P) file sharing, or any other application which uses excessive network capacity that is not made available to the Customer by Execulink;
- c. is to operate an email, web, server farm, news, chat or other service; or
- d. is for, or results in, any illegal, abusive, annoying or offensive activities, including making available offensive content, the commission or encouragement of a criminal offence, stalking, harassment, spamming, disrupting or interfering with the Internet, or with any network, computers or other devices, transmission of a virus or other harmful component, defamation, intellectual property infringement, or interference with other clients' service.

The Customer may view Execulink's Acceptable Use Policy at [www.execulink.ca](http://www.execulink.ca).