



## Everus Internet Service Agreement-Business

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This is a contract between you and Everus Communications Inc. ("EVERUS"). It spells out the terms and conditions which apply to your use of the Internet access and related services provided by EVERUS for the service plan that you have selected.

In addition, please note that your access to, use of or acceptance of a product, service or benefit through websites, web pages and web services operated by EVERUS, its affiliates or partners ("EVERUS WEBSITES") may be subject to additional terms, policies and rules contained within the EVERUS WEBSITES or otherwise made available to you.

By opening an EVERUS account under your name or by using EVERUS you are agreeing to be legally bound by and abide by the terms of this Agreement. IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT SUBSCRIBE FOR, ACCESS OR USE EVERUS AND YOU MUST IMMEDIATELY TERMINATE YOUR EVERUS ACCOUNT, IN WRITING.

### INDEX

1.	Amendments to this Agreement.....	2
2.	Your Account.....	2
3.	Customer Information .....	2
4.	Billing and Payment .....	2
5.	Service Level Agreement & Limitations .....	2
6.	General Practices and Limits .....	4
7.	Service Installation .....	4
8.	EVERUS Equipment .....	4
9.	Customer Equipment and Software.....	4
10.	Software Supplied by EVERUS.....	4
11.	Support.....	5
12.	Content Warning .....	5
13.	Acceptable use of EVERUS Services .....	5
14.	Proprietary Rights .....	6
15.	Compliance Measures .....	6
16.	Service Changes .....	6
17.	Disclaimers .....	6
18.	Limitation of liability .....	7
19.	Indemnity .....	7
20.	Term and termination .....	7
21.	General.....	8
22.	Pre-Authorized Debits .....	8

1. Amendments to this Agreement

1.1 EVERUS reserves the right to amend this Agreement at its sole discretion, at any time. EVERUS will notify you of any amendments to this Agreement by posting notice of the amendment on its member services website at <http://www.EVERUS.ca>, as may be updated from time to time, ("EVERUS WEBSITES") or by sending you notice of the amendment via e-mail to your primary EVERUS e-mail address. You agree to go to EVERUS WEBSITES regularly in order to be aware of any amendments posted on such site and your continued use of EVERUS following any amendment shall be deemed to be your acceptance of the amended Agreement. If you do not agree to any amendment, you must immediately terminate your EVERUS account, in writing.

2. Your Account

2.1 You represent and warrant that you have reached the age of majority (at least 18 years of age) in the province of Ontario and that you possess the legal right and ability to enter into this Agreement and use EVERUS in accordance with this Agreement.  
2.2 As an EVERUS account holder, you are responsible for your account and the maintenance of all passwords related to your account. You are solely responsible and liable for any and all activities that occur under your account including, without limitation, all activities of any sub-account holders. You are also responsible for maintaining the confidentiality of your account and all passwords related to your account. You agree to immediately notify EVERUS, by means, specified on our Website, of any unauthorized use of your: account; or any passwords related to your account; or of any other breach of security; and to provide assistance to EVERUS, as requested, to stop and/or remedy any breach of security and/or any unauthorized use of your account.

3. Customer Information

3.1 You acknowledge that you have read the EVERUS Privacy Policy at <http://www.EVERUS.ca>, as it may be updated from time to time (the "EVERUS PRIVACY COMMITMENT"). You hereby consent to the collection, use and disclosure by EVERUS and its agents of your personal information collected in connection with provision and/or use of EVERUS (whether previously collected or to be collected), solely for the purposes identified in the EVERUS PRIVACY COMMITMENT. Your private information will not be sold to any third party.  
3.2 You agree to provide true, current, accurate and complete customer information as prompted by EVERUS' registration processes or as otherwise requested by EVERUS or its agents and you agree to promptly notify EVERUS, by means specified on EVERUS WEBSITE, of any changes to this information as required to keep it current, complete and accurate.

4. Billing and Payment

4.1 You agree to pay all fees and charges (and applicable taxes) incurred which relate to the provision and/or use of EVERUS through your account, in accordance with the rates and billing policies established from time to time by EVERUS that are applicable to the service plan which you have selected. Such rates and policies will be posted on EVERUS' WEBSITE or otherwise made available to you by EVERUS. EVERUS shall begin charging you on the date that you subscribe for service, unless otherwise specified by EVERUS in writing.  
4.2 Rebates or service credits applicable to fixed term agreements, if available, are described on EVERUS' WEBSITE.  
4.3 Available billing and payment options may vary depending on your location (your "Customer Access Location") or service plan, and EVERUS reserves the right to modify the forms of payment it will accept, at any time, at its sole discretion. If charges are included on your EVERUS invoice, such charges are due on the due date shown on such invoice. If payment is not received by EVERUS by this due date, interest shall accrue on the outstanding amount at the rate shown on the invoice or, if no rate is shown on the invoice, at the interest rate of 2.00% per month (26.82% annually). If a pre-authorized bank account (or other financial institution) credit card, debit (a "Bank Account Debit"), where applicable, is returned unprocessed for whatever reason to EVERUS, we reserve the right to apply a returned payment fee of \$35.00, plus applicable taxes, to your account.  
4.4 Your right to use EVERUS is subject to any limits established by your credit card issuer or financial institution, if applicable. By using a credit card, Bank Account Debit, or other payment method you expressly authorize EVERUS or its agents to charge all fees and charges incurred by you under this Agreement to such card, account or other payment method and such authorization will survive termination of this Agreement until there are no charges owing by you under this Agreement. If you use a credit card, Bank Account Debit or other payment method and EVERUS does not receive payment from the card issuer or its agents, the financial institution or its agents, or through the other payment method, as applicable, you agree to pay all amounts due, upon demand by EVERUS.  
4.5 Any failure of EVERUS to make a bill or statement available to you pursuant to this Agreement does not affect your responsibility to pay any incurred charges. Unless you notify EVERUS of any errors, discrepancies or irregularities in any billing within 90 days after they first appear on your bill or statement, such bill or statement will be deemed accepted by you for all purposes. Without limiting anything else in this Agreement, you agree to release EVERUS from any and all liability and claims of loss resulting from any errors, discrepancies or irregularities that are not reported to EVERUS within 90 days of the publication date of the applicable bill or statement.  
You agree to pay all costs incurred by EVERUS in the collection of any delinquent charges due under this Agreement or in the enforcement of this Agreement including, without limitation, lawyers' fees.

5. Service Level Agreement & Limitations

5.1 The following are the maximum (Rated) speeds you can expect for each Business high speed internet packages:

Basic Package: up to 1.5 Mb/s	Prime Package: up to 3 Mb/s	Edge Package: up to 5 Mb/s
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5.2 The following are the maximum levels of traffic flow included with each Business high-speed internet package:

Basic: 20 gigabytes per month;  
Prime: 40 gigabytes per month;  
Edge: 60 gigabytes per month

Traffic flow is the sum of the upload and download traffic.

Note that the average Everus residential customer uses less than 5 gigabytes of traffic flow per month. Business customer usage varies meaning averages are not as useful, so residential averages are given for comparison purposes.

Once this maximum has been exceeded, there will be a charge of \$7.95 per gigabyte for each gigabyte (or part thereof) above the maximum.

Alternatively, by subscribing to an optional "GigaBucket" service, customers can pre-pay for the right to use more than the above maximums. GigaBuckets are \$115 per month plus applicable taxes. For each GigaBucket purchased, the customer has pre-paid to raise the maximum level of traffic flow by 30 gigabytes per month. GigaBuckets must be purchased in advance of the bandwidth consumption. The GigaBucket unused bandwidth does NOT carry over to the next month. If the EVERUS customer is on a term contract with Everus (must be one a 1,2 or 3 year contract ) and subscribes to the GigaBucket, there will be no admin fee and no minimum # months. If the customer is NOT on a term contract, they must subscribe for a minimum of 3 months of Bandwidth Bucket and a \$99.95 admin fee is charged to set up the GigaBucket.

- 5.3 EVERUS offers a variety of access speeds and service plans. All services are subject to the availability of suitable equipment and facilities and consequently all services are not available at all locations, at all times
- 5.4 Final confirmation of service availability cannot occur until EVERUS equipment is installed at your premises. When such equipment is installed by an EVERUS installer, you hereby authorize the installer to disclose to EVERUS the necessary information to confirm service availability for your premises.
- 5.5 It is your responsibility to ensure that your equipment and software meet the current minimum system requirements specified by EVERUS. EVERUS shall post such minimum system requirements on the EVERUS WEBSITE or otherwise notify you of such requirements. You acknowledge that such requirements may change from time to time, without notice, at EVERUS' sole discretion.
- 5.6 You are not permitted to operate an e-mail, web, news or other similar server through an EVERUS account, except where such use is expressly permitted under your service plan.
- 5.7 Reverse engineering of EVERUS service is not permitted. This means that you cannot have a higher upload than download speed.
- 5.8 We do not guarantee that we will interoperate with all equipment or software including, without limitation, all Internet applications and appliances.
- 5.9 EVERUS is not responsible for performance or outage issues and will incur no liability or issue any credits due to any causes beyond its reasonable control, including, but not limited to any act of nature (electrical storm, lighting, hurricane, tornado and other such events), terrorism, war or strike, or caused by individuals not directly employed by EVERUS. In the event of damage to any Everus equipment from any of the above-mentioned causes, unless you have purchased insurance from Everus, you shall be responsible for covering the costs of replacing such equipment, including, but not limited to, the replacement costs of the equipment and the labour for, at Everus' discretion, repairing or replacing the equipment.
- 5.10 EVERUS' connections are intended for 24x7 uptime, with over 99% availability.
- 5.11 Any Service Outage not resolved within 12 hours of an EVERUS technical support person receiving a call from the customer notifying EVERUS of a Service Outage will result in the customer receiving a credit to their account for the pro-rated value of a day's service. Any subsequent consecutive 12 hour period of outage will result in another day's credit, up to a maximum credit of the monthly fee.
- 5.12 The maximum cumulative liability of EVERUS Communications to the customer for any and all losses, claims, damages or liability of any kind shall be limited to the monthly amount actually paid by the customer to EVERUS communications. All monies owed EVERUS must be paid in full before a credit is applied. Credits must be requested within 30 days of Service Outage.
- 5.13 EVERUS will manage the connections to maintain the Rated throughput, subject to the customer-owned equipment operating properly and the environmental operating conditions falling within acceptable wireless conditions.
- 5.14 EVERUS is responsible for monitoring and maintaining the connection between the EVERUS network and the customer premises up to the demarcation point on the customer premises. EVERUS' point of demarcation at each end of the point-to-point connection will be the end of the cable coming from the radio. Any equipment or software beyond that point is the responsibility of the customer.
- 5.15 EVERUS will monitor and manage the uptime and throughput of the connection.
- 5.16 EVERUS is not responsible for performance or outage issues associated with the underlying customer protocols (VLAN) or the applications or operating systems deployed by the customer.
- 5.17 EVERUS is not responsible for performance or outage issues and will incur no liability or issue any credits due to any causes beyond its reasonable control, including, but not limited to any act of nature (electrical storm, lighting, hurricane and other such events), terrorism, war or strike or caused by individuals not directly employed by EVERUS. In the event of damage to any Everus equipment from any of the above-mentioned causes, unless you have purchased insurance from Everus, you shall be responsible for covering the costs of replacing such equipment, including, but not limited to, the replacement costs of the equipment and the labour for, at Everus' discretion, repairing or replacing the equipment.
- 5.18 A Service Outage is defined as a situation in which sustained speeds are less than 50% of the Rated throughput where the reduced speeds or lack of service availability is due to something within the Scope of EVERUS' Responsibility.
- 5.19 During business hours (9:00AM and 5:00PM Monday to Saturday) EVERUS will initiate remote diagnostics and remediation within 4 hours of an EVERUS technical support person receiving a call from the customer notifying EVERUS of a Service Outage, providing:
- the issue can be diagnosed to something within the Scope of EVERUS' Responsibility,
  - the customer can provide on-site any required replacement parts for the customer-owned equipment,
  - on-site diagnostic or technical work is required
- 5.20 An EVERUS technician will be on-site within 8 hours of the initial diagnostic– not including travel time from Waterloo. If it is determined that the network issue was not within the Scope of EVERUS' responsibility, customer will be charged for the Professional Services provided by EVERUS at a rate of \$150 per hour, including on-site and travel time.
- 5.21 During business hours of 9:00AM-5:00PM Mon through Sat, all Technical Support calls to EVERUS are to (519) 957-2401 ex 1

## 6. General Practices and Limits

- 6.1 You acknowledge that EVERUS may establish general practices and limits concerning use of EVERUS services including, without limitation, the maximum size of any e-mail message that may be sent from or received by an EVERUS account, the maximum disk space that will be allotted on EVERUS servers on your behalf, the maximum amount of data that may be sent from or received by an EVERUS account and the maximum number of days that e-mail messages will be stored on EVERUS servers. Such general practices and limits shall be posted on EVERUS WEBSITE or otherwise made available to you. You agree to comply with all such general practices and limits. You acknowledge that such general practices and limits may differ for different service offerings of EVERUS and may be set at different levels for different users based upon factors that may be determined at EVERUS' sole discretion. EVERUS reserves the right to change these general practices and limits at any time, at its sole discretion, with or without notice. You further agree that violating such practices or exceeding such limits may result in suspension, restriction or termination of your account, or the imposition of additional charges. The additional charges are specified on the EVERUS WEBSITE.

## 7. Service Installation

- 7.1 Installation options available for EVERUS service (e.g. customer self-installation, EVERUS installation without a network interface card ("NIC"), EVERUS installation with a NIC) will depend upon your Customer Access Location and your service plan. Not all installation options are available at all Customer Access Locations or with all service plans.
- 7.2 Extra charges shall apply to all services not included in EVERUS' standard installation options.
- 7.3 You authorize EVERUS, its employees, agents, contractors, and representatives, to enter your premises and access your equipment and software for the purpose of installing, maintaining, inspecting, repairing or removing any equipment or software as reasonably required for the provision of EVERUS services. Access to your premises will be at a time that is mutually convenient for you and EVERUS.
- 7.4 The standard installation configuration for EVERUS installation or self-installation of EVERUS only includes the installation of the high speed radio to one stand alone computer.
- 7.5 All site visits will involve a minimum charge as specified on the EVERUS WEBSITE for moves, changes, rearrangements or re-installations of a service, unless otherwise specified by EVERUS in writing.
- 7.6 You authorize EVERUS, its employees, agents, contractors, and representatives, to install equipment both interior and exterior to your premises as required to provide services. Installation practices will be agreed upon between the EVERUS installation personnel and you at the time of installation. In no event will EVERUS be responsible or liable for any claims, damages, or expenses arising from the installation of the equipment.
- 7.7 In no event will EVERUS be responsible or liable for any claims, damages, losses or expenses including, without limitation, lost wages or missed work, in the event that an installation appointment for EVERUS is missed, either by EVERUS or its authorized representatives.

## 8. EVERUS Equipment

- 8.1 The equipment along with any associated components is provided for your use as part of EVERUS service that you have signed up for. This equipment remains the property of EVERUS.

## 9. Customer Equipment and Software

- 9.1 EVERUS service must be connected through a suitable network interface card (NIC) installed at your premises. If you are supplying and installing the NIC yourself, you must install the NIC as appropriate prior to the installation of any EVERUS equipment. Alternatively, if you purchase the NIC along with installation of the NIC from EVERUS when ordering service from EVERUS, you must ensure that there is a suitable free NIC slot available in your computer prior to arrival of the EVERUS installer at your premises. EVERUS will not remove NICs from or rearrange NICs in your computer.
- 9.2 EVERUS point of demarcation is the end of the cable plugged into the Power Over Ethernet box (POE) from the EVERUS equipment mounted external to your house. EVERUS will maintain all equipment up to the demarcation point. Any equipment past this demarcation is the responsibility of the customer to maintain in proper working order. EVERUS does have technical support staff that for an additional charge can provide professional support services for equipment past the demarcation point.
- 9.3 You are required to show that your computer is functioning properly prior to EVERUS doing any work on your computer, where applicable.
- 9.4 You agree that EVERUS is not responsible for any damage to or loss of your data, equipment or software arising from installation or maintenance of an EVERUS service, or from other services provided by EVERUS at your premises. EVERUS recommends that you back-up all existing computer files by copying them to a different storage device prior to the installation or maintenance of any EVERUS services, equipment or software.
- 9.5 You acknowledge and agree that, except as otherwise explicitly stated in this Agreement, EVERUS is not responsible for the installation, operation, maintenance, or support of any equipment or software owned or used by you including, without limitation, any equipment, or software used in connection with EVERUS service.

## 10. Software Supplied by EVERUS

- 10.1 You agree that any and all software and documentation that forms part of your EVERUS service or that is supplied by EVERUS, its agents or representatives for use in connection with EVERUS services (the "Software") is protected by applicable intellectual property laws, remains the sole property of EVERUS or its suppliers and is supplied subject to the terms of this Agreement including, without limitation, the Disclaimers and Limitation of Liability herein, and the terms of any applicable Software license made available to you by EVERUS. Unless otherwise authorized by EVERUS or in the applicable Software license, you agree not to:

- Copy, modify, rent, lease, loan, sell, assign, sublicense, grant a security interest in or otherwise transfer any right or interest in the Software;
- Distribute, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover the source code, of the Software;
- Remove any proprietary notices or labels on or in the Software; or
- Allow any other person or entity to engage in any of the foregoing activities.

## 11. Support

11.1 EVERUS will provide telephone assistance on a reasonable efforts basis, via the telephone number and during the hours specified on the EVERUS WEBSITE. Assistance is limited to your problems using EVERUS and may exclude problems related to certain equipment and software, as specified by EVERUS, at its discretion. You acknowledge that charges may apply to certain support services, as specified by EVERUS. EVERUS cannot guarantee the resolution of any particular problem or interruption of service.

11.2 You acknowledge and agree that from time to time EVERUS may e-mail updates and notices regarding EVERUS to you. During the term of this Agreement, EVERUS will provide on-site support (including, at EVERUS' option, repair or replacement of equipment that is defective in material or workmanship) for all EVERUS-owned equipment.

## 12. Content Warning

12.1 You acknowledge that any service by EVERUS provide access to content, information and materials that are uncensored. You acknowledge that some of the content, information and material that is available through the Internet may be inaccurate, offensive, harmful or in violation of applicable laws. EVERUS recommends that minors using any service with access to the internet be supervised by an adult.

## 13. Acceptable use of EVERUS Services

13.1 EVERUS services may be used only for lawful purposes. You agree that you will not:

- "post, upload, reproduce, distribute or otherwise transmit unauthorized or unsolicited commercial e-mail, junk or bulk e-mail, chain letters or other "spam";
- maintain a relay service open to the general public;
- scan or probe another computer system;
- obstruct or bypass computer identification procedures;
- engage in unauthorized computer or network trespass;
- engage in denial of service attacks;
- post, upload, reproduce, distribute or otherwise transmit any data, information or software that constitutes a virus, trojan horse, worm or other harmful component;
- export equipment, software or data outside of Canada or the United States in contravention of applicable export control legislation;
- post, upload, reproduce, distribute or otherwise transmit information or materials where such activity gives rise to civil liability, or otherwise violate the rights or assist others to violate the rights of EVERUS or any third party; such violations include but are not limited to engaging in copyright infringement, trade-mark infringement, patent infringement, misappropriation of trade secrets and defamation;
- post, upload, reproduce, distribute, or otherwise transmit information or materials where such activity constitutes a criminal offence, or otherwise engage in or assist others to engage in any criminal offence; such offences include, but are not limited to, communicating hatred, pyramid selling, unauthorized use of a computer, mischief in relation to data, fraud, defamatory libel, obscenity, child pornography, harassment, stalking and uttering threats;
- engage in or assist others to engage in any activity that otherwise violates established or accepted network etiquette, violates applicable charters, FAQ's, policies, rules or guidelines of EVERUS or other parties, disrupts or threatens the integrity, operation or security of EVERUS or any computer or Internet system, elicits complaints from other Internet users, is contrary to any law or regulation or, in the sole judgment of EVERUS, is otherwise objectionable;
- enable or allow another user who is not living in or visiting your residence to connect to your service;
- otherwise violate EVERUS Acceptable Use Policy at <http://www.myEVERUS Communications.com/internet/nv/aup.do>, as it may be updated from time to time;
- use or register EVERUS' trade-marks, trade names, trade dress, or logos, including without limitation any such trade-marks, trade names, trade dress, or logos displayed on any website(s) operated by EVERUS, without EVERUS, expressed prior written permission;
- share, resell, reproduce, copy, distribute or redistribute any portion of, use of or access to, EVERUS or exploit the same for any commercial purposes, except where expressly authorized by EVERUS; or
- allow any other person or entity to engage in any of the foregoing activities while using your EVERUS Services account.

13.2 If at any time you become aware of any violation, by any person or entity, of the acceptable use rules set out in Section 13.1 above, which involves your account, you agree to immediately notify EVERUS and provide EVERUS with assistance, as requested, to stop and/or remedy such violation.

13.3 Without limiting any of EVERUS' rights to suspend, restrict, or terminate your EVERUS account as described elsewhere in this Agreement, EVERUS may suspend, restrict or terminate your EVERUS account without notice if, in EVERUS' sole and absolute discretion, you have violated any of the acceptable use rules set out in Section 13.1 above. You acknowledge and agree that EVERUS shall not be responsible or liable to you or any third party for any suspension, restriction, or termination of your account.

## 14. Proprietary Rights

- 14.1 You acknowledge that content including, but not limited to, text, software, music, sound, photographs, video, graphics or other material accessed through EVERUS or the Internet is protected by applicable copyrights, trade-marks, patents, trade secrets and/or other proprietary rights and laws. You further acknowledge that, except where expressly stated otherwise, all programs, services, processes, designs, technologies, materials and all other things comprising EVERUS are owned by EVERUS, its licensors or its suppliers and are protected by applicable copyrights, trade-marks, patents, trade secrets and/or other proprietary rights and laws.
- 14.2 EVERUS does not claim ownership of information, materials, software or other content (collectively, the "Content") that you post, upload, input, provide, submit or otherwise transmit to EVERUS or any third party, using EVERUS services. However, you agree that by posting, uploading, inputting, providing, submitting or otherwise transmitting the Content to EVERUS or any third party, using EVERUS services, you have thereby granted EVERUS a royalty-free, non-exclusive license to use, copy, distribute, transmit, display, edit, delete, publish and translate such content to the extent reasonably required by EVERUS to provide service to its customers or to ensure adherence to or enforce the terms of this Agreement.
- 14.3 You acknowledge that, except where otherwise specified by EVERUS, e-mail addresses, IP addresses and personal web page addresses assigned to you by EVERUS during the term of this Agreement remain the property of your service at all times.
- 14.4 You understand that the technical processing and transmission of data, including your content, materials or other information, may involve transmissions over various networks and changes to conform and adapt to technical requirements of connecting networks or devices. You further acknowledge that any content, materials or information that you may access through EVERUS may be subject to "caching" at intermediate locations on the Internet.

## 15. Compliance Measures

- 15.1 You acknowledge that EVERUS has no obligation to censor or monitor use of the services by you, any customer or any third party, including, without limitation, any obligation to censor or monitor any content, material or other information sent, received or accessible through EVERUS or the Internet. However, you agree that EVERUS has the right to, without notice, monitor use of your EVERUS account and monitor, review and retain such content, material or information if EVERUS believes in good faith that such activity is reasonably necessary to provide service to customers, ensure adherence to or enforce the terms of this Agreement, comply with any laws or regulations, respond to any allegation of illegal conduct or claimed violation of third party rights, or protect itself or others.
- 15.2 In the event that EVERUS receives a complaint relating to use of services by a customer, EVERUS may, in its sole and absolute discretion and without notice or liability, investigate the complaint, restrict, suspend, or terminate the account(s) involved and/or remove any content, information or materials from its servers.
- 15.3 You agree that EVERUS may, without notice or liability, disclose to third parties any customer information or any content, information or materials associated with an EVERUS account, if EVERUS believes in good faith that such activity is reasonably necessary to provide service to customers, ensure adherence to or enforce the terms of this Agreement, comply with any laws or regulations, respond to any allegation of illegal conduct, or claimed violation of third party rights, or protect itself or others.

## 16. Service Changes

- 16.1 You agree that, to maintain or improve service or for other business reasons, EVERUS may change service rates, service plan features, e-mail addresses, minimum equipment and software requirements and any other aspect of a service plan at any time, without notice or liability, at EVERUS' sole and absolute discretion. If you do not agree to such changes, your sole remedy will be to terminate your EVERUS Services account
- 16.2 Notwithstanding the foregoing, EVERUS will use reasonable efforts to notify you via e-mail to your primary EVERUS e-mail address, of any material increases in the recurring, regular EVERUS Services rates for your account.
- 16.3 You agree that the monthly allowed bandwidth usage per month is as specified in section 5 above (Service Level Agreement), and that an additional charge will occur if your EVERUS account is using an excess in bandwidth.

## 17. Disclaimers

- 17.1 You acknowledge and agree that:
- All use of services is at your own risk;
  - Services are provided on an "as is" and "as available" basis;
  - EVERUS does not guarantee error-free or uninterrupted operation of service plans;
  - Neither EVERUS nor its suppliers are responsible or liable for loss, deletion or alteration of any transmissions or data including, without limitation, any e-mail messages, for any material or data sent or received or not sent or received, or for any transactions entered into through or using EVERUS including, without limitation, domain name registrations, renewals and transfers;
  - EVERUS is not responsible or liable for any act or omission of any third party, including, but not limited to, any threatening, defamatory, obscene, offensive or illegal conduct or any infringement of another's rights, including without limitation intellectual property rights;
  - Neither EVERUS nor its suppliers are responsible for any content that is transmitted through the networks of EVERUS or others or that is sent, received or accessed using EVERUS communications, by you or any third party; and
  - EVERUS is not responsible or liable for loss or damage to your equipment, software or data arising directly or indirectly out of installation or maintenance of EVERUS communications.
- 17.2 EVERUS makes no conditions, warranties or representations about the suitability, reliability, usability, security, quality, capacity, performance, availability, timeliness or accuracy of services, any other products or services supplied under this agreement or the networks of third parties.

17.3 EVERUS expressly disclaims all conditions, warranties and representations, express, implied or statutory including, but not limited to, implied conditions or warranties of merchantability, fitness for a particular purpose, durability, title and non-infringement, whether arising by usage of trade, course of dealing, course of performance or otherwise.

17.4 The EVERUS website(s) which you may visit while using your service may contain links to other websites. These links are provided solely as a convenience to you and the inclusion of any such link does not imply endorsement, investigation or verification by EVERUS of such websites or the information contained therein. EVERUS is not responsible for the contents of any such websites and makes no representations, conditions or warranties regarding any other websites. If you decide to access other websites, you do so at your own risk.

## 18. Limitation of liability

18.1 In the event of any material breach of this agreement by EVERUS, your exclusive remedy shall be to receive payment from EVERUS for your actual and direct damages resulting from such breach, to a maximum amount equal to the lesser of one hundred dollars (\$100) or the total fees paid hereunder by you to EVERUS during the three (3) months immediately preceding the relevant breach.

18.2 Except as set out in section 17 above, in no event shall EVERUS, its parents, subsidiaries, affiliates and their respective officers, directors, agents, employees, suppliers, resellers and distributors (collectively, the "EVERUS Entities" and each, a "EVERUS Entity") be liable for any direct, indirect, special, incidental, consequential or punitive damages, or any other damages or losses whatsoever including, without limitation, damages for loss of profits, goodwill, opportunity, earnings, use or loss of data, arising directly or indirectly from or related to this agreement or EVERUS, regardless of the cause of action and even if one or more of the EVERUS Entities have been advised of the possibility of such damages or losses including, but not limited to, damages or losses arising from or in any way related to the following:

- The performance of the internet;
- The content or accuracy of any material, information or data (including without limitation any software) viewed, downloaded, accessed or transmitted over or through the internet or EVERUS including, without limitation, material which infringes the rights of others or otherwise violates laws or regulations;
- The viewing, downloading, transmitting, accessing, purchasing or by any other means acquiring any information, material, product or service accessible through the internet;
- Delays, errors, interruptions, mistakes, omissions, non-delivery, incorrect delivery, viruses or defects in the transmission of any information, material or data over or through EVERUS' systems or networks or the systems or networks of third parties; and
- Installation or maintenance of SERVICES, by you, EVERUS or third parties.

18.3 Some jurisdictions do not allow the disclaimer of certain warranties or conditions or the limitation of certain types of liability so some of the disclaimers and limitations in this agreement may not apply to you.

## 19. Indemnity

19.1 You agree to indemnify and hold harmless each of the EVERUS ENTITIES from all demands, claims, awards, actions, proceedings, damages, losses, costs, charges and expenses, including legal fees, incurred by or made against the applicable EVERUS Entity, which result from or relate to:

- access to or use, by you or any third party, of your EVERUS Services account; or
- any of your acts or omissions including, without limitation, breach or non-performance of this Agreement and any violation of third party rights.

## 20. Term and termination

20.1 EVERUS Services are available on a month to month basis or under a 1 year, 2 year or 3 year fixed term Agreement. Upon the expiry of a fixed term Agreement, this Agreement will automatically be renewed on a month to month basis, unless you notify EVERUS in writing at least 30 days prior to the expiry of the fixed term, of your intention to terminate your Agreement or enter into a new fixed term Agreement.

20.2 EVERUS may, in its sole discretion, suspend, restrict or terminate your EVERUS Services account, effective at any time, without notice to you, for any reason including, without limitation, because:

- The operation or efficiency of EVERUS are impaired by the use of services from your account;
- Any amount is past due from you to EVERUS;
- EVERUS has received a third party complaint which relates to the use or misuse of service from your account; or
- You have been or are in breach of any term or condition of this Agreement.

20.3 You may terminate your EVERUS Services account at any time by notifying EVERUS via the means set out on in this agreement. HOWEVER, IF YOU ARE UNDER A FIXED TERM AGREEMENT AND YOU TERMINATE YOUR EVERUS SERVICES ACCOUNT PRIOR TO THE END OF THE TERM, OR IF EVERUS TERMINATES YOUR ACCOUNT FOR ANY OF THE REASONS LISTED ABOVE, YOU WILL BE REQUIRED TO IMMEDIATELY PAY EVERUS A TERMINATION CHARGE, IN THE AMOUNT SPECIFIED IN THIS AGREEMENT. YOU ACKNOWLEDGE THAT THIS TERMINATION CHARGE IS A PRE-ESTIMATE OF DAMAGES SUFFERED BY EVERUS AS A RESULT OF SUCH EARLY TERMINATION AND IS NOT A PENALTY. EVERUS will process your termination request effective the date your request is received.

20.4 Unless EVERUS has terminated your EVERUS Services account for any of the reasons listed in Subsection above, EVERUS will refund you a pro-rata portion of your pre-paid monthly fee for the month of termination, based on the effective date of such termination, less the specified cancellation charges.

20.5 Termination of your EVERUS Services account by you or EVERUS automatically terminates this Agreement.

20.6 In the event that your EVERUS Services account is suspended, restricted or terminated, additional reconnection charges will apply.

20.7 EVERUS shall have no responsibility to notify any third party including, without limitation, any third party providers of services, merchandise or information, of any suspension, restriction or termination of your account. In the event your account is terminated, EVERUS shall have no obligation to forward any unread or unsent messages to you or any third party or to maintain any messages,

information or other content related to your account and you acknowledge that all such messages, information and content may be immediately deleted. Without limiting the generality of the foregoing, you acknowledge that upon termination of your account, all e-mail, voice mail, VoIP numbers and web page addresses related to your account may be immediately deleted and/or reassigned to other customers.

- 20.8 Any termination of your account shall not relieve you from any amounts owing or other liability accruing under this Agreement prior to the time that such termination becomes effective.
- 20.9 You agree to return any EVERUS-owned equipment and associated components to EVERUS within 14 days of termination of an EVERUS account, unless otherwise directed by EVERUS. If you do not return such equipment in accordance with the foregoing, if such equipment is returned damaged, or if you have assigned, encumbered, sold, transferred or leased such equipment, you agree to pay a \$1,500.00 charge, plus applicable taxes.
- 20.10 Early termination of a contract will result in an early cancellation charge being applied, this charge will equal the number of months remaining in the contract times 50% of the monthly service plan, fee and an administration charge of \$100.

## 21. General

- 21.1 This Agreement, including any and all documents, websites, rules, terms and policies referenced herein, constitutes the entire agreement between EVERUS and you with respect to the matters referred to in this Agreement and supersedes all prior and contemporaneous agreements and understandings, whether electronic, oral or written, between EVERUS and you with respect to such matters.
- 21.2 The failure of EVERUS to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between you and EVERUS nor trade practice shall act to modify any provision of this Agreement.
- 21.3 In the event that any portion of this Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intention of you and EVERUS, and the remainder of this Agreement shall remain in full force and effect.
- 21.4 This Agreement shall be governed by and construed in accordance with the federal laws of Canada and the laws of the province of Ontario. You hereby irrevocably consent to the exclusive jurisdiction of the courts of such province in connection with any matter arising under this Agreement and you agree that the venue for resolution of all such matters shall be in such province. Use of EVERUS in any jurisdiction that does not give effect to all provisions of this Agreement including, without limitation, this Section, is prohibited.
- 21.5 All references to EVERUS website addresses in this Agreement shall also include any successor or replacement websites containing substantially similar information as the referenced website(s).
- 21.6 EVERUS may at any time assign its rights and obligations under this Agreement, in whole or in part, without notice to you. You may not assign this Agreement.
- 21.7 This Agreement will endure to the benefit of and bind you and EVERUS and our respective personal and legal representatives, successors and permitted assigns.
- 21.8 All monetary amounts expressed in this Agreement are in Canadian dollars, unless otherwise expressly stated.
- 21.9 The rights, powers and remedies of EVERUS in this Agreement including, without limitation, the right to suspend, restrict or terminate any EVERUS Services account, are cumulative and in addition to and not in substitution for any right, power or remedy that may be available to EVERUS at law or in equity.
- 21.10 You agree that no joint venture, partnership, employment or agency relationship exists between EVERUS and you as a result of this Agreement or use of EVERUS SERVICES.
- 21.11 The section headings in this Agreement are for convenience only and have no legal or contractual effect.

## 22. Pre-Authorized Debits

- 22.1 I (We) acknowledge that this Authorization is provided for the benefit of EVERUS Communications Inc. and the named Financial Institution and is provided in consideration of the named Financial Institution agreeing to process debits against my account in accordance with the Rules of the Canadian Payments Association.
- 22.2 I (We) warrant and guarantee that all persons whose signatures are required to sign on this account have signed this agreement.
- 22.3 I (We) hereby authorize EVERUS Communications Inc. to draw on the Payor's account number or the named Financial Institution, for the following purpose: EVERUS SERVICES
- 22.4 This authorization may be cancelled at any time upon notice by the Payor. I (We) acknowledge that, in order to revoke this authorization, I (we) must provide notice of revocation to EVERUS.
- 22.5 I (We) acknowledge that provision and delivery of this authorization to EVERUS constitutes delivery by the Payor to the Financial Institution. Any delivery of this Authorization to you constitutes delivery by the Payor.
- 22.6 With respect to fixed amount pre-authorized debits, written notice from EVERUS of the amount to be debited and the due date of debiting, at least 10 calendar days before the due date of the first pre-authorized debit, and such notice shall be received every time there is a change in the amount or payment date.
- 22.7 The account that EVERUS is authorized to draw upon is indicated on the next page. A specimen cheque if available for this account has been marked "VOID" and attached to this authorization.
- 22.8 I (We) undertake to inform EVERUS, in writing, of any change in the account information provided in this authorization prior to the next due date of the pre-authorized debit.
- 22.9 I (We) acknowledge that the named Financial Institution is not required to verify that a pre-authorized debit has been issued in accordance with the particulars of the Payor's Authorization including, but not limited to, the amount.

- 22.10 I (We) acknowledge that the named Financial Institution is not required to verify that any purpose of payment for which the pre-authorized debit was issued has been fulfilled by EVERUS as a condition to honoring a pre-authorized debit issued or caused to be issued by EVERUS on the Payor account.
- 22.11 Revocation of this authorization does not terminate any contract for goods and services that exists between the Payor and EVERUS. The Payor's Authorization applies only to the method of payment and does not otherwise have any bearing on the contract for goods and services exchanged.
- 22.12 A pre-authorized debit may be disputed by a Payor under the following conditions:
- the pre-authorized debit was not drawn in accordance with the Payor's Authorization; OR
  - the authorization was revoked; OR
  - pre-notification was not received.
- 22.13 The Payor, in order to be reimbursed, acknowledges that a declaration to the effect that either 1,2 or 3 took place, must be completed and presented to the branch of the Processing Institution holding the Payor's account up to and including 90 calendar days
- 22.14 In the case of a personal household pre-authorized debit (or up to and including 10 business days in the case of a business pre-authorized debit), after the date on which the pre-authorized debit in dispute was posted to the Payor's account.
- 22.15 The Payor acknowledges that a claim on the basis that the Payor's Authorization was revoked, or any other reason, is a matter to be resolved solely between EVERUS and the Payor when disputing any pre-authorized debit after 90 calendar days in the case of a personal household pre-authorized debit, or after 10 business days in the case of a business pre-authorized debit.