



# TERMS OF SERVICE

## FOR RESELLERS OF ALLSTREAM SERVICES

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## **GENERAL TERMS AND CONDITIONS**

### **1. Subscription to and Provision of Services**

- (a) The Customer agrees to subscribe to each of the services (collectively the "**Services**," individually a "**Service**") offered by Allstream Business Inc. ("**Allstream**"), as set out in the attached service schedules and any additional service schedules executed from time to time by the Customer (collectively the "**Service Schedules**") in accordance with the terms and conditions set out and/or referenced in this Master Global Carrier Agreement (the "**Agreement**"), including these General Terms of Service and the Service Schedules.
- (b) If the Customer cancels a request for a Service after installation work has started, but before the Service is installed, the Customer shall be liable for any and all installation charges, removal costs and applicable termination fees incurred by Allstream (the "Cancellation Fees"). If the Customer delays a request for Service after installation work has started, but before the Service is installed, the Customer shall pay a one-time installation charge ("Installation Charge") to cover any additional costs Allstream incurs that are attributable to such delay and related to ordering facilities and installing such Service (including without limitation, third party costs or costs incurred by Allstream for special construction). Customer shall pay such Cancellation Fees or Installation Charges upon receipt of invoice in accordance with Section 2(b).
- (c) In the event that Allstream, at the request of the Customer, incurs unusual expense in the provision of a Service to the Customer, for example and without limitation, for securing rights of way or for special construction, the Customer shall be liable for such expenses which shall be payable in accordance with Section 2(b).
- (d) Allstream reserves the right to alter or cease to offer any Service. Allstream shall provide the Customer with thirty (30) days notice that such Service will be altered or terminated, as well as any pricing adjustments resulting from such change. The Customer shall have the right to terminate such altered Service in the event the change results in a pricing increase of more than 10%, with no penalty to either party. Customer must provide thirty (30) days notice if it wishes to terminate such altered Services. Such notice must be provided within thirty (30) days after receiving notice of the alteration.

### **2. Billing and Payment**

- (a) The Customer is responsible for all charges (without any right of set-off or deduction) for the Services.
- (b) Late Payments
  - (i) Recurring charges for the Services are payable monthly in advance. All other charges for the Services are payable when due, as indicated on the applicable invoice. Notwithstanding anything contained in Section 3, a late payment charge no greater than 3.5% per month will accrue on any amounts remaining unpaid forty-five (45) days after the date of invoice (the "**Interest Rate**"). Allstream reserves the right to modify the Interest Rate on thirty (30) days advance notice.
  - (ii) If the Customer fails to remit payment for any invoice within forty-five (45) days of the invoice date, Allstream shall have the option to temporarily or permanently suspend such Service to the Customer upon providing the Customer with three (3) days notice. Upon full payment by the Customer to Allstream, Allstream shall have the option to re-establish the Service. The re-established Service may result in Allstream invoicing both a non-recurring charge and an increase in the recurring fee, as agreed upon by the parties failing which the Service will not be re-established.

- (c) The Customer is responsible for any applicable provincial and federal taxes or similar charges.
- (d) Unless there has been wrong doing or deception by the Customer with regard to a charge, the Customer shall only be responsible for paying a previously unbilled or underbilled charge where it is correctly billed within a period of six (6) months from the date it was incurred. In the event of wrong doing or deception by the Customer with regard to a charge, any amount previously unbilled or underbilled may be charged at anytime.
- (e) Where Allstream has reasonable grounds for believing that the Customer intends to defraud Allstream, Allstream may demand immediate payment from the Customer.
- (f) The Customer shall be liable to Allstream for all costs and/or expenses incurred, including legal fees, in the collection or attempted collection of any unpaid charges and such amounts shall represent a debt owed by the Customer to Allstream.
- (g) The Customer shall be responsible for paying all charges related to a move, addition, change or termination of a Service or any portion thereof. Such charges are available on Allstream's website at [www.allstream.ca](http://www.allstream.ca), and are subject to change from time to time.
- (h) Charges for the Services are subject to change at anytime upon Allstream providing Customer thirty (30) days notice. The Customer shall have the right to terminate the related Service if the charge increases by more than 10%, with no penalty to either party. Customer must provide thirty (30) days notice if it wishes to terminate such Services. Such notice must be provided within thirty (30) days after receiving notice of the increase.
- (i) Charges for the Services are subject to change at anytime if third party charges connected with a Service are increased or newly charged to Allstream. Such third party charges may include, but are not limited to, Charges for services, changes, connections, disconnection or terminations of a Service or any component of a Service, including individual circuits, lines or features. Allstream may bill the Customer retro-actively.

### 3. **Disputes**

- (a) The Customer must bring all billing inquiries and disputes to Allstream's attention in writing within six (6) months of the invoice date. Failure to do so shall constitute acceptance of the accuracy of the entire contents of the invoice, and the Customer will have no further right to challenge the accuracy of any portion of the invoice.
- (b) The Customer agrees and acknowledges that the undisputed portion of any disputed invoice and all subsequent invoices shall be paid by the Customer on a timely basis pursuant to Section 2(b) or the Service(s) may be terminated by Allstream in accordance with Section 2(b)(ii) or Section 15.

### 4. **Credit Limit, Security and Deposits**

- (a) The Customer acknowledges that Services are provided by Allstream in accordance with the Customer's credit limit as set forth in the Credit Approval Rider to this Agreement (the "**Credit Limit**") a sample of which is attached as Exhibit "A". The Credit Limit is subject to periodic review and may be adjusted upon written notice to the Customer.
- (b) The Customer shall provide security or pay a deposit before Services are provided or continue to be provided.
- (c) If at any time during the term of this Agreement there is a material and adverse change in the Customer's financial position, business prospects or payment history, which shall be determined by Allstream in its sole and reasonable discretion, Allstream may demand that the Customer increase the amount of a security deposit as security for Customer's full and faithful

performance of the terms, conditions and covenants of this Agreement. In the event that the Customer does not respond to Allstream's request, Allstream reserves the right to suspend Services without further notice until Allstream's requirements are met. Customer acknowledges that all Agreements are subject to cancellation at Allstream's sole discretion if not approved by Allstream's credit department, in which case the Agreements will be considered null and void.

## 5. **Term and Amendments**

This Agreement will remain in effect until expiration or termination of the last applicable Service Schedule. The individual Services will be provided for the period and pursuant to the terms set out in the applicable Service Schedule(s).

These terms and conditions may be amended by Allstream from time to time upon thirty (30) days notice to the Customer. The amended terms and conditions will be available on Allstream's website at [www.allstream.com](http://www.allstream.com). The Customer shall be deemed to accept and be bound by such amended terms and conditions.

## 6. **Allstream Facilities**

- (a) Unless otherwise expressly provided in the Agreement, Allstream is the owner of all right, title and interest in all facilities, including equipment, provided by Allstream (the "**Allstream Facilities**") or has obtained the right to make the Allstream Facilities available for use by the Customer from a third party and the Customer shall have no rights therein.
- (b) The Customer shall not, without Allstream's prior written consent and then subject to such conditions as Allstream may require, make any alteration, addition or repair to the Allstream Facilities, connect any of the Customer-provided facilities (including equipment) (the "**Customer Facilities**") to the Allstream Facilities, or permit access to the Allstream Facilities by any person not approved by Allstream.
- (c) The Customer will:
  - (i) ensure at all times that the Allstream Facilities and third party provided equipment at each site where Services are provided is stored in a manner and in an environment which conform to the relevant equipment manufacturer's specifications and the specifications, if any, provided by Allstream and will provide all necessary infrastructure for such equipment; and
  - (ii) be responsible for the loss of and risk or damage to the Allstream Facilities except where caused by the negligence or wilful misconduct of Allstream.

## 7. **Changes in Numbers and Domain Names**

The Customer does not have property rights in dial numbers, and in some cases, "IP" numbers or domain names assigned to them. Allstream may change such numbers or domain names assigned to the Customer, provided that Allstream is requested to do so by a legal or regulatory authority, including without limitation, the Canadian Radio-television and Telecommunications Commission (CRTC), the Federal Communications Commission (FCC), the Number Administration and Service Centre (NASC) or a court order, and provided that Allstream promptly notifies the Customer of any such action by a legal or regulatory authority. Allstream shall provide the Customer with as much advance written notice as reasonably possible in the circumstances of such change, stating the reason and anticipated date of change. In cases of emergency, oral notice with subsequent written confirmation is sufficient.

## 8. **Maintenance, Inspections, Tests and Adjustments**

- (a) To the extent applicable in respect of a Service, it is the Customer's responsibility to provide, prepare and maintain Customer Facilities for the installation of the Allstream Facilities necessary for Allstream to provide the Service to the Customer. Such provision, preparation and maintenance shall comply with Allstream's specifications and shall be at the Customer's

expense. The Customer shall make available to Allstream such Customer Facilities (including by providing access to the Customer's premises) as may be required by Allstream.

- (b) In the event that the Customer fails to provide, prepare or maintain Customer Facilities for the installation of the Allstream Facilities in accordance with the above paragraph, or fails to do so in a timely manner as Allstream may deem necessary in the circumstances, Allstream shall not be liable for any resulting delay in commencing the Service or any Service interruption and related damages, and the Customer shall be liable for any additional costs incurred by Allstream in order to install or restore the Service.
- (c) Allstream may, upon providing reasonable notice to the Customer, access the Customer's premises and make such inspections, tests, and adjustments as it may deem necessary to investigate, modify, repair or maintain the installation or operation of the Allstream Facilities or Customer Facilities ("**Maintenance**").
- (d) In the event of an emergency (as determined by Allstream in its sole discretion, including without limitation, network-affecting disruptions involving Customer Facilities), potential harm to Allstream's network, or pursuant to a court order, Allstream may access the Customer's premises and perform Maintenance at any time and without notice.
- (e) Allstream shall bear the expense of maintenance and repairs required due to normal wear and tear to the Allstream Facilities. However, Allstream may charge for additional expenses incurred when the Customer requires maintenance and repair work to be performed on Customer Facilities or any equipment or facilities leased to the Customer at Allstream's standard prevailing rates.

9. **Restrictions on Use of Service**

- (a) The Service may be used by the Customer and any person having the Customer's permission to access same including the end users of the Service(s) ("**Permitted User**").
- (b) The Customer is solely responsible for the content of any transmissions using the Service, and any other use of the Service, by the Customer or any Permitted User.
- (c) The Customer shall not: (i) use the Service or allow Permitted Users to use the Service for illegal purposes (including illegal content); (ii) interfere with or disrupt other Allstream services, or other Allstream customers from using other Allstream's services; or (iii) interfere with or disrupt the Service itself ("**Prohibited Uses**").
- (d) The Customer shall not use the Services in a way that is not intended by Allstream. Allstream may provide notice to the Customer to cease using the Services in such unauthorized way. Should the Customer fail to cease such use of the Services within thirty (30) days of such notice, Allstream may terminate the Services upon two (2) days notice to the Customer and Customer shall be liable for any damages suffered by Allstream as a result of Customer's unauthorized use.

10. **Customer Obligations**

- (a) The Customer shall not use the trademarks, service marks, trade names, tag lines, slogans and/or any other right in and to Allstream's identity. The Customer shall not use, advertise or in any other way associate itself with any brand loyalty, affinity program, or use any unpermitted reference in conjunction with its services.
- (b) Upon reselling any of the Services, the Customer and not Allstream shall be solely liable for all matters associated with the resold Services for the end-user customer, including but not limited to, customer care and billing, unless otherwise set forth in a Service Schedule.

- (c) In the event of an adverse change in the Customer's financial position, the Customer shall provide to Allstream, upon request, financial information (including, without limitation, the Customer's financial statements, bank reports and trade references) within forty-eight (48) hours of such a request being made.
- (d) The Customer shall make available the following information, within a reasonable period of time, in Braille, large print or computer diskette or such other format as is mutually agreed upon by the Customer and the Permitted User:
- (i) upon request of Permitted Users who are blind:
    - billing statements;
    - bill inserts sent to Permitted Users about new services or changes in rates for existing services; and
    - any bill inserts that are mandated from time to time by the Canadian Radio-television and Telecommunications Commission; and
  - (ii) upon request of Permitted Users or potential Permitted Users who are blind, information setting out the rates, terms and conditions of the service.

In the case of a request for an excessively large volume of information, the Customer may limit the alternative format to computer diskette or any other electronic format mutually agreed upon by the Customer and the Permitted User.

- (e) Customer will comply with Allstream's "DNS Terms of Service" (governing the provision by Allstream of domain name and management Services ("DNS")). A copy of the DNS Terms of Service is available at <http://www.allstream.com/wp-content/uploads/2015/11/Managed-DNS-Services-End-User-Agreement.pdf>. The DNS Terms of Service are incorporated by reference and form an integral part of this Terms of Service.

## 11. **Warranty**

- (a) Allstream will use commercially reasonable efforts to provide the Services pursuant to the Service description in the relevant Service Schedule, if any. Unless otherwise agreed to by the parties in writing, Allstream's liability and the Customer's sole recourse in respect of any failure of Allstream to do so will be limited as provided herein.
- (b) ALLSTREAM MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES REGARDING ANY SERVICE, PRODUCT OR FACILITIES PROVIDED BY ALLSTREAM TO THE CUSTOMER (INCLUDING WITHOUT LIMITATION, THOSE RELATING TO: (i) NETWORK TRANSMISSION CAPACITY; (ii) WHETHER DATA WILL BE TRANSMITTED IN AN UNCORRUPTED FORM; (iii) THE SECURITY OF ANY TRANSACTION; (iv) THE FAULT TOLERANCE OF THE SERVICE OR THE SUITABILITY OF SAME FOR HIGH RISK ACTIVITIES; OR (v) THE RELIABILITY OR COMPATIBILITY OF THE FACILITIES (INCLUDING EQUIPMENT) OR SOFTWARE OF THIRD PARTIES WHICH MAY BE UTILIZED BY ALLSTREAM IN PROVIDING, OR BY THE CUSTOMER IN USING, THE SERVICE), WHETHER EXPRESS OR IMPLIED IN LAW OR IN FACT, OR IN WRITING, EXCEPT AS EXPRESSLY STATED IN THE AGREEMENT. THE CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION, WARRANTY, CONDITION OR GUARANTEE MADE BY ALLSTREAM.

## 12. **Limitation of Liability**

- (a) For the purposes of this Section 12 and Section 13, "Allstream" shall include Allstream, any affiliated or subsidiary companies of Allstream, and the directors, officers, employees, consultants and agents of all of them.
- (b) Except with regard to direct damages to real or tangible personal property, or for bodily injury or

death proximately caused by Allstream's negligence, Allstream's entire liability to the Customer or any third party in connection with the Services(s) and Allstream Facilities or the provision or non-provision thereof is limited to proven direct damages, such amount not to exceed per claim (or in the aggregate during any 12 month period) the amount paid by the Customer for one month of the affected Service(s) (such amount to be based on average monthly charges paid by the Customer over the 6 months prior to the month in which the damages was incurred or the

length of the contract, whichever is less).

- (c) Without limiting the generality of the foregoing, Allstream shall not be liable for:
- (i) defamation or copyright or trademark infringement or the violation of any third party rights arising from the use of the Services or material transmitted or received over Allstream's network;
  - (ii) infringement of patents arising from combining or using Customer or end-user equipment with the Services or Allstream Facilities;
  - (iii) any act or omission of any connecting carrier, underlying carrier, local exchange telephone company, local access provider, or acts or omissions of any other providers of connections, facilities (including equipment), or service other than Allstream, which are used by Allstream, the Customer or its end-users under this Agreement;
  - (iv) capacity shortages not directly caused by Allstream;
  - (v) any unauthorized use of the Services;
  - (vi) Service interruptions, errors, delays or defects in transmission or failure to transmit caused by power fluctuations or power failure at Customer or its end-user location(s);
  - (vii) Service interruptions, errors, delays or defects in transmission or failure to transmit caused by Allstream in performance of Maintenance under Section 8 hereof; or
  - (viii) Service interruptions, errors, delays or defects in transmission or failure to transmit caused by an act of God, fortuitous event, war, insurrection, riot, strike, walkout, lockout or other labour unrest affecting Allstream or its suppliers, storm, fire, flood, explosion, lightning, government restraint, delays in producing supplies, shortages of suitable labour, equipment or materials, power shortages or interruptions or any other event beyond the reasonable control of Allstream.
- (d) **UNDER NO CIRCUMSTANCES SHALL ALLSTREAM BE LIABLE FOR ANY LOSS, COST, CLAIM OR DAMAGE (INCLUDING, BUT NOT LIMITED TO, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, LOST SAVINGS, LOST PROFITS, DAMAGES FOR HARM TO BUSINESS, ANTICIPATED REVENUE OR LOST REVENUE OR THE LOSS OF ANY DATA/INFORMATION) SUFFERED OR INCURRED BY THE CUSTOMER OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO THE CUSTOMER'S END-USERS) ARISING OUT OF ANY FAULTS, INTERRUPTIONS OR DELAYS IN THE SERVICES OR OUT OF ANY INACCURACIES, ERRORS OR OMISSIONS IN THE INFORMATION CONTAINED IN THE SERVICES WHETHER OR NOT ALLSTREAM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
- (e) Allstream will not be liable for any damages arising out of or relating to: facilities, equipment, software, applications, Services or content provided by the Customer, Permitted Users or third parties; unauthorized access to or theft, alteration, loss or destruction of Customers, Permitted Users' or third parties' applications, content, data, programs, information, network or systems by any means (including without limitation viruses); or any act, omission or failure of the Customer or a Permitted User or failure of any Permitted Users equipment or connections provided by the Customer, its Permitted Users or third parties.
- (f) In no event shall Allstream be liable for the use of the Services by the Customer, its Permitted Users or any third party for unlawful or illegal purposes.
- (g) Allstream does not represent, warrant, covenant or guarantee that transmissions initiated by Customer or its Permitted Users in the course of using the Services cannot be received or intercepted by other person(s).
- (h) **UNDER NO CIRCUMSTANCES SHALL ALLSTREAM BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES, INCLUDING DAMAGES FOR HARM TO BUSINESS, LOST PROFITS, LOST SAVINGS OR LOST REVENUES, WHETHER OR NOT ALLSTREAM HAS BEEN ADVISED OF SUCH DAMAGES.**
- (i) These limitations of liability shall apply regardless of the form of action, whether in contract,



warranty, strict liability, or tort, including without limitation negligence of any kind, whether active or passive, or any combination thereof, and shall survive failure of an exclusive remedy.

13. **Liability of the Customer**

- (a) For the purposes of this Section 13 and Section 12, "Customer" shall include Customer and any affiliated or subsidiary companies of Customer.
- (b) The Customer shall be liable to Allstream for all damages caused to real or tangible personal property, or for bodily injury or death caused by the Customer.
- (c) UNDER NO CIRCUMSTANCES SHALL THE CUSTOMER BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES, INCLUDING DAMAGES FOR HARM TO BUSINESS, LOST PROFITS, LOST SAVINGS OR LOST REVENUES, WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF SUCH DAMAGES.

14. **Indemnity**

- (a) Except for indemnification obligations related to death, personal injury, or property damage caused as a result of the indemnifying party's negligence or willful misconduct, the indemnification obligations contained in this Section 14 are subject to the limitations of liability set forth above in Sections 12 and 13.
- (b) The Customer shall defend, indemnify and hold harmless Allstream from and against all damages, liabilities, obligations, losses, injuries, claims, demands, penalties, costs and expenses (including reasonable legal fees and disbursements) arising from any and all claims by any person, including without limitation any Permitted User, based on: the content of any transmissions by the Customer or any Permitted User using the Service; the use of the Service by the Customer or any Permitted User, including without limitation, the Prohibited Uses; the Customer Facilities or connections provided by the Customer; or the breach by the Customer or any Permitted User of any term or condition of the Agreement.
- (c) Each party hereby agrees to indemnify and hold harmless the other party (the "**Indemnified Party**"), and its officers, agents and employees, from and against any and all liability, loss, damage, cost and expense (including lawyers' fees) on account of any claim, suit or action made or brought against the indemnified party, or its officers, agents or employees, arising from or relating to the following:
  - (i) the negligent performance of obligations hereunder;
  - (ii) any breach of any representation, warranty, term or condition contained in this Agreement;
  - (iii) any misrepresentation, material breach, violation, deceit, misconduct, negligence or fraud on the part of any employee or agent while acting in the course of duty; and
  - (iv) any violation or infringement of any federal, provincial or local laws, rules or regulations applicable to the performance of this Agreement.

The indemnities given in this Section 14 shall not apply to the extent prohibited by law or to the extent that the said claim is caused by the wilful acts or negligence of the indemnitee or by the failure of the indemnitee to perform its responsibilities or obligations under this Agreement.

In the event of the occurrence of any event that either Allstream or Customer asserts is an indemnifiable event pursuant to this Section 14, it shall notify the other party immediately. The Indemnifying Party shall, at its option, have sole control over the defence, settlement, adjustment or compromise of such claim.

Neither Customer nor Allstream will be required to indemnify and save each other harmless pursuant to this Section 14 from and against any and all claims by a third party that are for any amount equal to or under the maximum amount awardable to a plaintiff by the Small Claims Court (Ontario).

- (d) The foregoing indemnities shall survive the termination or expiration of the Agreement.

**15. Termination**

- (a) Allstream may terminate any Service or the Agreement, at Allstream's sole discretion, immediately and without further obligation to the Customer in the event that the Customer or any Permitted User breaches any term or condition of the Agreement or the applicable Service Schedule (including failure to make full payment of an invoice pursuant to its terms) and such breach is not cured within fifteen (15) days of Allstream notifying the Customer of such breach.
- (b) Unless otherwise required by law, either party may terminate any Service or the Agreement, at such party's option and without further obligation to the other party, upon providing the other party with 24 hours written notice, in the event that:
  - (i) the other party becomes an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) or commits or threatens to commit any act of bankruptcy; or
  - (ii) any proceeding is commenced or any step is taken by or against the other party for the dissolution, liquidation or winding-up of a party or for any relief under the laws of any jurisdiction relating to bankruptcy, insolvency, reorganization, arrangement, compromise or winding-up, or for the appointment of one or more of a trustee, receiver, receiver and manager, custodian, liquidator or any other person with similar powers with respect to such party.
- (c) Unless otherwise required by law, Allstream may terminate or suspend any Service or the Agreement at Allstream's option and without further obligation to the Customer, upon providing the Customer with twenty-four (24) hours written notice, in the event that the Customer is reasonably suspected of using the Service for fraudulent or illegal purposes.
- (d) Unless otherwise required by law, Allstream may terminate or suspend Services to the Customer without further obligation to the Customer, upon providing twenty-four (24) hours written notice in the event that the Customer exceeds its Credit Limit. Notwithstanding the foregoing, Allstream will continue to provide Services to the Customer upon the satisfaction of the following conditions, as determined by Allstream, within the twenty-four (24) hour notice period:
  - (i) the Customer provides written confirmation of its intention to pay in full, the amount of monthly recurring charge and/or unbilled usage charges exceeding the Credit Limit or provide a security deposit for such amount pursuant to Section 4, and such payment or security deposit shall be received by Allstream within a further twenty-four (24) hours; and
  - (ii) in the case of unbilled usage charges, the Customer immediately reduces transit/voice traffic or any other unbilled usage to meet the Credit Limit until such time as the parties have reviewed the Customer's additional requirements and Allstream determines whether an increased Credit Limit is appropriate.
- (e) Notwithstanding the termination of any Service or the Agreement, the Customer shall be liable for all charges incurred up to the date of termination and any applicable termination fee or liquidated damages. The Customer acknowledges that the termination fee(s), if any, described in the Service Schedule(s) represent liquidated damages and not a penalty. The Customer acknowledges that the actual damages suffered as a result of termination would be extremely difficult to calculate, and that the fee(s) represent(s) a reasonable estimate of actual damages.
- (f) In the case of prepaid Service that has been terminated, unless suspension occurs during the minimum contract period, Allstream shall make a daily pro rata allowance based on the monthly charge for such Service.

**16. Confidential Information**

- (a) Unless the Customer consents in writing or disclosure is made pursuant to a legal requirement, all information, including personal information held by Allstream regarding the Customer other than the Customer's name, address, listed telephone number, domain name or "IP" number, will be kept confidential and will not be disclosed to anyone other than:

- (i) the Customer;
- (ii) a person who, in the reasonable opinion of Allstream, is seeking the information as the Customer's agent;
- (iii) another telephone company, provided the information is required for the efficient and cost-effective provision of telecommunications services and disclosure is made on a confidential basis with the information to be used only for that purpose;
- (iv) a company involved in supplying the Customer with communications or communications directory related services or Internet or Internet directory related services, provided the information is required for that purpose and disclosure is made on a confidential basis with the information to be used only for that purpose;
- (v) a person for the development, enhancement, marketing or provision of any of the products or services of Allstream or its affiliated companies;
- (vi) Allstream's agent or consultants retained in the collection of the Customer's account;
- (vii) credit grantors and reporting agencies;
- (viii) a company or a partnership affiliated with Allstream; or
- (ix) as may be otherwise necessary and sufficient to enable Allstream to provide the Customer with the Services.

For the purposes of this Section 16, "**personal information**" is information about an identifiable individual that is recorded in any form, but does not include aggregated information that cannot be associated with a specific individual.

- (b) Subject to Section 16(a), the parties shall maintain the confidentiality of all confidential information disclosed by the other party and shall not copy or use any such confidential information except as contemplated by the Agreement. The foregoing shall not apply to information which is or becomes publicly known otherwise than by reason of a breach of the Agreement or has been independently developed outside the scope of the Agreement. Where the receiving party is required by law to disclose confidential information, it shall use best efforts to minimise the extent of disclosure of the confidential information and to obtain an undertaking from the recipient to maintain the confidentiality thereof.
- (c) Notwithstanding any other provisions of the Agreement, these General Terms And Conditions or any applicable Service Schedule, Allstream may, at its sole discretion and without seeking the prior consent of the Customer, make public by way of the issuance of a news release, all or a portion of the following information with respect to the sale of Services: (i) name of Customer; (ii) type of Services sold to Customer; (iii) the total value of the Services sold to Customer; and (iv) the term of this Agreement and/or any Service Schedule issued thereunder.

#### 17. **Force Majeure**

Except for payment obligations, if the performance of this Agreement is interfered with, in whole or in part, by circumstances beyond the reasonable control of either party including, without limitation: fire, lightning, explosion, power failure, acts of God, war, revolution, civil commotion, acts of public enemies, law, order, regulation, ordinance or requirement of any government or its representative or legal body having jurisdiction, or labour unrest such as strikes, slowdowns picketing or boycotts, power shortages or interruptions the party affected will be excused from such performance on a day-by-day basis provided that the party so affected will use commercially reasonable efforts to expeditiously remove such causes of non-performance.

#### 18. **General Provisions**

- (a) **Assignment.** Neither party may assign this Agreement without the prior written consent of the other, except that Allstream may without the Customer's consent assign (i) its right to receive payment hereunder; (ii) this Agreement to an affiliate; or (iii) this Agreement in connection with the sale of all or substantially all of its assets.
- (b) **Entire Agreement.** This Agreement, including the Service Schedules, constitutes the entire agreement between the Customer and Allstream with respect to the subject-matter, merging and superseding all prior agreements, understandings and representations on the subject matter. It is expressly agreed that if the Customer issues a purchase order or other document for the Services, such instrument will be deemed to be for the Customer's internal use only and

any provisions contained therein will not amend or be used in interpreting this Agreement.

- (c) **Enurement.** This Agreement will be binding upon and enure to the benefit of Allstream and the Customer and their respective successors and permitted assigns.
- (d) **Governing Law.** This Agreement will be governed by and interpreted according to the laws in force in the Province of Ontario.
- (e) **Interpretation.** The headings in this Agreement are for convenience of reference only and will not affect its construction or interpretation.
- (f) **No Waiver.** No waiver of any term or provision or of any breach or default will be valid unless in writing and signed by the party giving such waiver, and no such waiver will be deemed a waiver of any other terms or provision of any subsequent breach or default of the same or similar nature.
- (g) **Amendment.** This Agreement may only be modified or supplemented by an instrument in writing executed by each party. Notwithstanding the foregoing, in the event Allstream is compelled to revise a term or condition of the Agreement as a result of an applicable statutory or regulatory rule, decision or order, the Customer agrees to be bound by such statutory rule, decision or order and both parties shall work together in good faith and in a timely manner to minimize any adverse impact to the Customer.
- (h) **Notice.** All notices required under this Agreement must be provided for in writing and transmitted by personal delivery or prepaid first class registered or certified mail (a) for the Customer, the address to which Allstream customarily sends the Customer's invoices and; (b) for Allstream, 200 Wellington Street West, Toronto, Ontario, Canada, M5V 3G2, Attention: Director of Law, with a copy to the Vice President, Sales – Global Carrier Solutions.
- (i) **Severability.** The invalidity, illegality or unenforceability of any one or more provisions of this Agreement will not affect or impair any other provisions of this Agreement.
- (j) **Language.** This Agreement has been drawn up in English at the request of the parties. Les parties ont convenu que la présente entente soit rédigée en anglais.
- (k) **Order of Precedence.** In the event of conflict between these General Terms and Conditions and any other Service Schedule, the following order of precedence will apply: the applicable Service Schedule, the General Terms and Conditions.

**EXHIBIT "A"**  
**SAMPLE CREDIT APPROVAL RIDER**

●, 20●

**CREDIT APPROVAL RIDER**

**CUSTOMER: ●**

This Credit Approval Rider shall be incorporated into the "Master Global Carrier Agreement for Resellers of Allstream Services" (the "**Agreement**").

1. Pursuant to Section 4(a), *Credit Limit, Security and Deposits* of the Agreement, Customer's Credit Limit shall be \$●
2. All other terms and conditions, provisions and schedules of the Agreement shall remain in full force and effect.