

## E-VERGENT.COM, LLC. TERMS AND CONDITIONS

The following terms and conditions shall apply to all users of Evergent Wireless. For purposes of the terms and conditions, the subscriber of services will be referred to as the "Customer" and Evergent Wireless will be referred to as "EVW".

- 1) **Billing:** Customer agrees to pay all charges to Customer's account, including applicable taxes, in accordance with billing terms in effect at the time the fee or charge becomes payable. The recurring monthly fee is due in accordance to the date of the Customer's monthly statement. If payment is not received on or before the 'Due Date', service may be suspended. Monthly fees are non-refundable. The activation and installation fees are non-refundable after the Connection becomes operational (the "Activation Date").
- 2) **Intended Use of The Services:** Customer agrees not to use the Services in a manner prohibited by any federal or state law or regulation. Customer further agrees to adhere to EVW's Acceptable Use Policy (AUP). Transmission of any material in violation of federal or state law regulation, or that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national, or international law or regulation, or material that is otherwise deemed to be proprietary or judged by EVW to be inappropriate or improper, such as transmitting bulk e-mail messages is prohibited. Customer cannot alter, modify, or tamper with the IP connection of any customer on the system.
- 3) **Restrictions:** EVW Residential Internet Customer agrees not to use any servers that provide any type of services to incoming Internet connections in conjunction with EVW, including but not limited to: peer-to-peer, electronic mail, DHCP and DNS Servers. In the event any EVW customer attempts to utilize a server on the network, EVW may, at its sole discretion, increase the fees associated with the services, or terminate the services. Any additional time or configuration will be billable. The connection is intended solely for use within the home, apartment, or office building in which it is originally installed. Client may not share or resell the connection with other locations, unrelated parties, other business entities or their employees. EVW Business Customer is permitted to operate a DNS, e-mail, or web server over the EVW connection. In addition, servers that are necessary for business functions are allowed for access by employees, consultants or agents of the business but not to the general public. Examples would include Windows Terminal Services or a Digital Video Recorder (DVR). Business customers are also allowed to operate an indoor WIFI access point to patrons. This can be a free WIFI hotspot or a fee-based hotspot.
- 4) **Inside Wiring and Installation:** Customer acknowledges that the inability of Customer or third party's facilities to access the Services or other operational impediments may preclude or delay delivery of Services. Customer acknowledges that the installation representative may require inside wiring to complete Services delivery at an additional hourly or other flat charge. Customer further acknowledges this charge will occur at the sole discretion of the installation representative. Installation is one subscriber module (SM) and one cable, which shall run from the SM into the customer location via 1 hole through an exterior wall of Client's structure. Install includes the subscriber module antenna, mounting bracket, AC adapter, and 100' of CAT-5 cable and associated connectors needed, mounting screws and bolts normally associated with attaching subscriber module to the structure. Client shall bear all risk of loss in respect to the EVW equipment and shall return the EVW equipment in good working order within ten (10) days of the date of any termination of this agreement.
- 5) **Disclaimer of liability:** EVW makes no warranty, express or implied, including but not limited to, that the connection is suitable for a particular purpose. EVW shall not be responsible for any loss of data resulting from delays, non-deliveries, mis-deliveries, or service interruption, however caused. EVW's network shall be at Client's own risk. EVW specifically disclaims any responsibility for the accuracy or quality of information obtained through the Connection.

EVW shall not be held liable for the workmanship of tasks performed by the Insured Third Party Professional Installer or its subcontractors. Further, EVW shall not be responsible or liable for any of the following:

- a. Any obstruction(s) that might be erected or grow between the antenna at Client's location and the POP which causes degradation or loss of service.
- b. Debris, ice, or snow on the antenna located at Client's location.
- c. Re-aiming the antenna located at Client's location more than 10 days after installation.
- d. Repair or restoration of any structure or surface altered or penetrated by EVW during the installation or removal of the antenna, mast, tripod, wiring, or any other EVW equipment located at client's location.

Client understands that wireless Internet connectivity requires direct radio line of sight, and those obstructions between the POP and the Client antenna may block the signal and cause the failure of the connection. In the event that foliage disrupts service, EVW will attempt to reconfigure the equipment to restore service. If Service cannot be restored within 15 days of Client's notice to EVW of a service interruption, either party may terminate this Agreement.

- 6) **Maintenance:** Routine maintenance & periodic system repairs, upgrades and reconfigurations, public emergency or necessity, force majeure, restrictions imposed by law, acts of God, labor disputes, and other situations, including mechanical or electronic breakdowns, may result in temporary impairment or interruption of service. As a result, EVW does not guarantee continuous or uninterrupted service and reserves the right, from time to time, to temporarily reduce or suspend service without notice. Client shall indemnify and hold EVW and its partners, directors, officers, employees, and agents harmless from any and all obligations, charges, claims, liabilities and fees incurred as the result of interruptions or omissions of service under this Agreement.
- 7) **Entire Agreement:** These Terms and Conditions contain the entire agreement and understanding concerning the Service and supersede all prior negotiations, proposed agreements, and all other agreements, whether electronic, written or oral. Without Prior Notice to Customer, these Terms and Conditions may be modified at any time by EVW. The latest version of the Terms and Conditions may be found at [www.e-vergent.com](http://www.e-vergent.com). A printed version of these Terms and Conditions and of any notice given in electronic form shall be admissible in judicial or administrative hearings based upon or relating to the Terms and Conditions to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

- 8) **Assignment and Successors in Interest:** All of the Terms and Conditions shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of Customer. Except as specifically stated herein, neither this Terms and Conditions nor any of the rights, interest or obligations of Customer or EVW may be assigned. Any unauthorized assignment or delegation shall be null and void. Notwithstanding the foregoing, EVW may assign or otherwise transfer its rights and obligations to any affiliate (whether by purchase of stock or assets, merger, operation of law, or otherwise) of that portion of its business related to the subject matter hereof.
- 9) **Venue/Choice of Law:** These Terms and Conditions shall be construed in accordance with the law of the State of Wisconsin and the United States of America. Any claims or causes of action related to the Internet service must be instituted within one year after the claim or cause of action has arisen or will be barred.
- 10) **Severability:** In the event that it is determined by a court of competent jurisdiction as a part of a final non-appealable judgment that any provision of these Terms and Conditions (or part thereof) is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly possible in accordance with the stated intention of the parties, while the remainder of the Terms and Conditions will remain in full force and effect.
- 11) **Indemnification:** Customer shall indemnify and hold EVW harmless against all claims, losses, damages, and liabilities, sustained by EVW resulting from, arising out of, or connected with any breach of, or non-fulfillment of any representation, warranty, covenant, or agreement made by or other obligations of Customer contained in these Terms and Conditions.
- 12) **Term/ Rate/ Termination:**
- a. The terms of this agreement will commence on the Service Activation Date shown on the Service Application and continue until terminated in the manner provided below.
  - b. Subscriber of Company may terminate the Agreement upon 30 days WRITTEN notice to the other. In such event, subscriber will pay all charges or sums and penalties for early termination then due.
  - c. Early termination fee is 50% of the regular monthly price, for the remaining months in the contract.
  - d. If the Service Order offers a 30-day money back guarantee, no early termination fees will apply within the first 30 days of service.
  - e. THIS AGREEMENT SHALL HAVE A MINIMUM MANDATORY TERM AS NOTED ON THE SERVICE ORDER WITH FULL BILLING MONTHS AFTER SERVICE ACTIVATION DATE (THE "MINIMUM SERVICE TERM"). FOLLOWING COMPLETION OF THE MINIMUM SERVICE TERM, THIS AGREEMENT SHALL BE RENEWED FOR SUCCESSIVE MONTHLY TERMS UNTIL TERMINATION AS PROVIDED IN (B) ABOVE. SUBSCRIBER ACKNOWLEDGES THAT THEY WILL BE CHARGED A SPECIAL RATE IN CONSIDERATION OF SUBSCRIBERS AGREEMENT TO SUBSCRIBE FOR THE MINIMUM SERVICE TERM. ANY ATTEMPTED TERMINATION OF THIS AGREEMENT BY SUBSCRIBER AFTER A MONEY BACK GUARANTEE PERIOD HAS ENDED AND PRIOR TO THE EXPIRATION OF THE MINIMUM SERVICE TERM SHALL BE A BREACH HERE OF. IN THE EVENT OF SUCH BREACH THE COMPANY SHALL HAVE THE OPTION OF (I) ACCEPTING THAT ATTEMPTED TERMINATION EFFECTIVE UPON SUBSCRIBERS PREPAYMENT OF A CANCELLATION FEE, OR (II) NOT ACCEPTING SUBSCRIBERS TERMINATION OF THE AGREEMENT AND SEEKING ALL DAMAGES AVAILABLE AT LAW OR EQUITY TO COMPANY AS A RESULT OF SUBSCRIBER'S BREACH OF THIS AGREEMENT.
  - f. Should subscriber default in the payment of any sum hereunder, breach any representation herein, fail to perform any of its obligations at the time and in the manner specified in this agreement or under any other agreement between Company and Subscriber, or fail to maintain any unit without damage or interference to company, business, or facilities, or should subscriber be the subject of any proceeding under the Bankruptcy Act or become insolvent, company shall have the right to discontinue service at any time without notice, and/or terminate this agreement. In any such case, subscriber shall remain liable for payment of all charges due company under this agreement which shall be immediately due and payable. Further, subscriber may be subject to a reactivation charge if service is subsequently reconnected. In the event of subscriber's default, subscriber will reimburse company for court costs, attorney's fees, costs of investigation or collection and similar expenses incurred by company in the enforcement of any or privileged hereunder. Time is of the essence and Company's failure at any time to require strict performance by subscriber of any of the provisions hereof shall not waive or diminish Company's right to thereafter demand strict compliance with any provision of this agreement.

13) **Permitting and Landlord Approval:**

It is the Client's responsibility to obtain any required permits or Landlord approval for the installation of EVW Equipment on property not owned by Client or subject to any restriction or building code provision requiring a building permit for such installation. Any fees relating to the termination of service relating to Landlord or building code disputes will be solely the responsibility of the Client.

Do you own the property at the Service Address?                      YES                      NO  
*If NO, please request and complete the landlord approval form*

**I, \_\_\_\_\_ have read and understand these terms and conditions and I accept them.**

Signature of Customer for Approval \_\_\_\_\_ Date: \_\_\_\_\_