

MTS TV



1. TERM. These terms and conditions shall apply as of the installation date of the MTS TV Package. The provision of the Service shall be on a month to month basis, and shall continue until either party terminates by providing at least thirty (30) days prior written notice.

2. CHARGES AND PAYMENT. The Customer agrees to pay all charges arising from the use of the Service including without limitation the monthly charges specified by MTS for the MTS TV Package (the "Monthly Charges") and any charges for optional services such as video-on-demand and interactive TV, together with all applicable taxes. Applicable taxes shall be itemized separately in MTS billing statements. The Monthly Charges are subject to change upon thirty (30) days prior written notice given by MTS to the Customer of the change. The Charges shall be billed to the Customer in MTS's monthly billing statements, which shall be due and payable within thirty (30) days after the date of the billing statement. All Charges not paid when due shall bear interest at the rate specified in MTS's billing statements from time to time. Upon termination of these terms and conditions, all Charges and any interest shall become immediately due and payable. The Customer shall agree not to deduct or set-off any amount from the Charges due to MTS under these terms and conditions.

3. INSTALLATION.

- (a) The Customer shall provide access to MTS or its agent, at a mutually agreeable time, for the purposes of installing, monitoring, modifying and upgrading the Equipment and Inside Wiring so as to facilitate the provision of the Service.
- (b) The Customer understands and agrees that MTS may remove any external DSL modem that the Customer already has for the purposes of the Customer's existing DSL Internet service and the Customer's DSL access will then be routed through the Home Gateway.
- (c) All facilities, electrical requirements and any other equipment or facilities required in connection with the Service shall meet the specifications and requirements prescribed by MTS, and shall be arranged or provided by the Customer at the Customer's own expense.
- (d) Should the Customer request MTS to relocate the MTS TV Package to a new service address, such relocation shall be performed by MTS at the Customer's expense at MTS's prevailing rates and terms including such service charges as may be applicable. MTS shall have no obligation to relocate the MTS TV Package to a service address outside Manitoba.

4. CUSTOMER RESPONSIBILITIES. The Customer represents, warrants and covenants to MTS that the Customer

- (a) shall not resell for profit or non-profit the MTS TV Package, except with MTS's written consent;
- (b) shall comply with all current and future policies of MTS related to the MTS TV Package. MTS may post notice of such policies at www.mts.ca, or may send the Customer notice of such policies via email or regular mail;
- (c) shall maintain or obtain, as the case may be, local telephone service from MTS; and
- (d) shall not, under any circumstance, open, alter or in any way tamper with the Home Gateway.

5. NO LIABILITY FOR THE OPERATION OF ANY PROGRAMMING OR CONTENT. The Customer understands that MTS does not operate, control or endorse any information, product or service delivered via the Service in any way. The MTS TV Package is provided "as is" and "as available" without warranties or conditions of any kind and the Customer acknowledges that MTS is not responsible for loss or damage that may result from use thereof. The Customer acknowledges that the MTS TV Package may be subject to unscheduled and unannounced outages and breakdowns that may not be rectified promptly. In addition, the Customer is aware that some content, products or services available with or through the Service may be offensive or, may not comply with applicable laws. The Customer understands that neither MTS nor any of its affiliates are under any obligation to censor or monitor any such content. The Customer assumes total responsibility and risk for access to or use of such content. MTS and its affiliates assume no liability whatsoever for any claims or losses arising from or otherwise related to access or use of such content. Without limiting the generality of the foregoing, neither MTS nor its affiliates warrant that any programming to you will be transmitted in uncorrupted form or within a reasonable period of time or, that such programming will not be intercepted. Any warranties, representations or guarantees not specifically herein contained are expressly disclaimed to the maximum extent allowed by law.

6. TITLE TO DSL MODEM AND EQUIPMENT. The DSL Modem and Equipment shall remain and be the sole and exclusive property of MTS at all times, and the Customer shall have no right of property therein except the right to use such DSL Modem and Equipment upon the terms and conditions herein. Accordingly, the Customer shall keep such DSL Modem and Equipment free of all levies, liens and encumbrances, and return same on demand. The Inside Wiring shall become the property of the Customer upon installation.

7. SOFTWARE AND DOCUMENTATION SUPPLIED. Any software or documentation supplied by MTS or its agents to the Customer to permit access to the Service shall remain the property of MTS or its agents, as applicable, and Customer shall not copy or modify such software or documentation. The Customer shall take appropriate steps to protect same against loss or damage. The use by the Customer of any such software and documentation shall be subject to such terms set out in the License Agreement included with the software and documentation.

8. TERMINATION. MTS, in its sole discretion, may suspend the Customer's access to some or all of the Service or terminate the provision thereof without notice and without incurring any liability in the event:

- (a) the Customer defaults in the payment of the Monthly Charges or any other amount due to MTS, and such default continues for a period of three (3) days after written notice to the Customer;
- (b) the Customer fails to carry out or perform any covenants, undertakings or obligations imposed on the Customer by these terms and conditions, as determined by MTS in its sole and absolute discretion;
- (c) the Customer makes an assignment for the benefit of creditors or take any other action for the benefit of creditors, become bankrupt or insolvent, or take the benefit of, or become subject to, any legislation in force relating to bankruptcy or insolvency;
- (d) MTS's equipment is destroyed or so substantially damaged by fire or other catastrophe that it is impracticable to continue to provide some or all of the Service; or
- (e) the operation or efficiency of the Service is affected by the Customer's use of the Service.

Either party may terminate the Customer's receipt of the Service upon providing thirty (30) days prior written notice to the other party. Termination shall not relieve the Customer from any liability, including amounts owing to MTS, accrued prior to or at the time that such termination becomes effective. Further, MTS shall be entitled to collect from the Customer the replacement cost of any Equipment not returned to MTS upon demand.

9. ACCESS AND MONITORING. MTS may limit in any way, or refuse, all or part of the Customer's access to the Service for any reason without notice or liability. MTS may exercise this discretion arbitrarily, unequally and unreasonably. Without restricting the generality of this discretion, MTS is not obligated to, but may monitor the Customer's use of the Service electronically from time to time, and may disclose any information obtained from such monitoring as necessary to satisfy any law, regulation or other governmental request, to operate the Service properly, or to protect itself or its customers.

10. INFORMATION. Customer hereby acknowledges that MTS may retain and use any information, comments or ideas conveyed by Customer relating to the Service (including any products and services made available on the Service). This information may be used by MTS to provide Customer with better service.

11. LIMITATION OF LIABILITY. MTS does not guarantee or warrant that the MTS TV Package will be error-free or uninterrupted, or that will perform in any particular manner. Any warranties, representations or guarantees not specifically

contained herein are expressly disclaimed by MTS, to the maximum extent allowed by law, as are any other warranties, representations or conditions of any nature whatsoever, either express or implied, including, without limitation, any warranty, representation or condition of fitness for a particular purpose or merchantable quality. Without limiting the generality of the foregoing, MTS will not be liable to the Customer or to any party claiming through or under the Customer, for or in respect of:

- (a) the performance or non-performance of the MTS TV Package;
- (b) the contents or accuracy of any programming, information or data carried, transmitted or delivered by, on, or through the MTS TV Package;
- (c) the use or inability to use any of the MTS TV Package;
- (d) any interruptions, errors or delays in the MTS TV Package;
- (e) any fault in the MTS TV Package provided by MTS;
- (f) any damage to any equipment, wiring, or other service charged to or in any way affected by, directly or indirectly, the MTS TV Package; and
- (g) any indirect, special, consequential, incidental, economic, punitive or other damages of any kind, including, without limitation, loss of data or programs, business interruption, loss of income, loss of profit, or failure to realize expected savings;

arising directly or indirectly from breach of contract (including fundamental breach or otherwise), negligence, any act or omission of MTS or its representatives, or under any other theory of law or equity, even if MTS has been advised of, had knowledge of, or reasonably could have foreseen, the possibility of such damages.

In no event shall the liability of MTS in respect of the MTS TV Package, other matter or claim whatsoever or howsoever arising, or in respect of any error, omission or delay in the provision of the Service, exceed the amount of the charges paid by the Customer in respect of the MTS TV Package, for the three months immediately preceding the incident.

12. INDEMNITY. The Customer shall ensure that all persons accessing the Service comply with the terms and conditions herein. The Customer shall be solely responsible and liable for, and shall indemnify and hold harmless MTS and its officers, directors, employees, agents and contractors, from and against all losses, damages, expense and costs, including reasonable attorney's fees, sustained by reason of the breach of any covenant, term or condition herein contained whether by the Customer or by any person accessing the Service with the Customer's permission (express or implied) including, without limitation, all losses, damages, expenses and costs incurred by MTS in attempting to enforce any provision hereof, or in recovering any charges or any damages for breach of any covenant, term or condition herein contained. All remedies conferred upon MTS shall be deemed to be cumulative and no one is exclusive of the other, or any other remedy conferred by law.

13. NOTICES. Any and all notices shall be sufficiently given if personally served or sent by mail or facsimile and sent or addressed as specified by the parties at the time the MTS TV Package is installed. Any such notices, if delivered personally, shall be deemed to have been received the same day; if sent by mail, shall be deemed to have been received three (3) business days after the date of mailing; or if sent by facsimile, shall be deemed to have been received on the next business day following the date of transmission.

14. PRIVACY. The Customer acknowledges that MTS collects, uses and discloses personal information for the purposes identified in the MTS Code for Fair Information Practices (the "MTS Privacy Code"). These purposes are: (a) to establish and maintain responsible relations with customers and to provide ongoing service; (b) to understand customer needs; (c) to develop, enhance, promote or provide products and services; (d) to manage and develop MTS's business and operations; and (e) to meet legal and regulatory requirements. The Customer hereby consents to MTS collecting, using and disclosing the Customer's personal information in accordance with the MTS Privacy Code. The entire MTS Privacy Code may be viewed on MTS's Web site at www.mts.ca, or will be provided upon request.

15. REGULATION. Should any competent regulatory authority determine that the Service must be regulated, then in such case, the parties shall observe the terms and conditions imposed by the regulatory authority, including any change to the rates set out herein. If, as a result of regulation, the rates set out herein are increased, you may terminate this Agreement without penalty or termination charge at any time following the effective date of such rate increase, upon giving 30 days notice of termination to MTS.

16. GENERAL PROVISIONS. The Customer shall not directly or indirectly assign the Customer's rights and obligations hereunder except with the prior written consent of MTS. MTS may assign all or part of its rights and obligations hereunder without the Customer's consent. These terms and conditions shall be binding upon, and shall enure to the benefit of, the parties and their respective successors and permitted assigns. These terms and conditions shall be governed by, and interpreted in accordance with, the laws of Manitoba and the laws of Canada applicable therein. MTS shall not be responsible for the performance of, or deemed to be in default of, any obligation or provision of these terms and conditions where delayed or hindered by labour disruptions, casualties, civil disturbances, acts of civil or military authorities, accidents, fires, acts of God, natural disasters or other catastrophes or events beyond MTS's control. Any provision herein that is unenforceable at law will be ineffective to the extent of such unenforceability without invalidating the remaining provisions herein. No failure by MTS to exercise any right under these terms and conditions or to insist upon full compliance by the Customer with the Customer's obligations hereunder will constitute a waiver of any provision of these terms and conditions. This Agreement cancels, replaces and supercedes all existing agreements and understandings, written or oral, between the parties relating to the Service. The headings and sub-headings given to portions of these terms and conditions are intended for reference only and shall not affect the construction or interpretation of this Agreement.

17. GLOSSARY. In addition to the terms given meanings within these terms and conditions, the following is a glossary of terms used herein:

"Customer" means the person who enters into this agreement with MTS and who is ultimately responsible for all activities with respect to use of the Service.

"DSL Modem" means the Digital Subscriber Line modem installed in the Customer's premises to facilitate the provision of the Service by MTS to the Customer.

"Equipment" means the Home Gateway, any remote control apparatus and any other free standing components provided by MTS to enable the Customer to use the Service.

"Inside Wiring" means the wiring installed in the Customer's premises in order to facilitate the provision of the Service.

"MTS TV Package" means the Service, the DSL Modem, the Equipment and the Inside Wiring.

"Personal Information" means information about an identifiable individual including, but not limited to, name, physical address, email address, birth date, gender and such other similar information as may be appropriate or required by specific circumstances. It does not include publicly available information or the name, title, business address or telephone number of an employee of an organization.

"Home Gateway" means the set-top box housing the DSL Modem and any other components contained therein, to facilitate the provision of the Service.

"Service" means the Digital Television (DTV) service which includes Video On Demand, interactive TV, the ability to activate MTS's Call Display feature on the Customer's television set, one Home Gateway, all necessary Equipment, Inside Wiring, and any installation thereof.