



**PRE-WIRE INSTALLATION AND MAINTENANCE AGREEMENT
(Access and Fibre)**

CUSTOMER NAME (Owner or Property Manager/Agent)	BUILDING/LAND ADDRESS	
	OR See Attached Appendix A	
ADDRESS (of Customer)	CITY	POSTAL CODE
CONTACT NAME (for Customer)	CONTACT TELEPHONE NO.	
FACSIMILE NO. (for Customer)	EFFECTIVE DATE Date the Agreement is signed by MTS Inc.	
MTS SALES CONSULTANT NAME	MTS SALES CONSULTANT TELEPHONE NO. (204)	

A. The Customer represents that it is the owner of the Building(s) or is the property manager and agent of the owner thereof and has been duly appointed and authorized by the owner to execute and perform this Agreement.

B. MTS Inc. ("MTS") and the Customer agree to enter into this Agreement pursuant to which MTS will provide pre-wire installation and maintenance services to each Unit, the Common Area and the Building in accordance with the specifications set out in Schedule A attached hereto.

For good and valuable consideration duly paid and acknowledged by the parties, MTS and the Customer agree to all of the terms and conditions set out above and below and on the following pages, and have executed this Agreement by their duly authorized officers.

THIS AGREEMENT CONTAINS ADDITIONAL PROVISIONS, WHICH ARE SET OUT ON THE REVERSE SIDE AND FORM PART OF THIS AGREEMENT.

MTS INC.
 PO Box 6666
 Room BW100R- 1730 McGillivray Boulevard
 Winnipeg, Manitoba R3C 3V6
 Attention: Cabling/Sales Consultant

Phone No: (204) 941-8488
 Facsimile No: (204) 941-5956

The undersigned affirms that he/she is duly authorized to execute this Agreement on behalf of the above named Customer

Per: _____

Name (print): _____

Title (print): _____

Date: _____

Per: _____

Name (print): _____

Title (print): _____

Date: _____



TERMS AND CONDITIONS

1. **DEFINITIONS** In this Agreement, the following terms shall have the meanings indicated below, unless such meanings are inconsistent with the subject matter or the context in which these terms are used:

“**Agreement**” means this agreement and any attached documents or drawings provided and all subsequent changes, modifications and amendments made to this Agreement

“**Business Day**” means a day other than a Saturday, Sunday and any other day on which the principal commercial banks in Manitoba are not open for business during normal banking hours.

“**Buildings**” means the multi-dwelling unit residential apartment and/or condominium building located or to be located on the Lands and “**Building**” means each of the Buildings.

“**Common Area**” means those areas in or around a Building which are outside the Units, and which includes, but is not limited to the main telephone area or other similar locations.

“**Effective Date**” means the date on which this Agreement comes into effect, which shall be the date specified above.

“**Facilities**” means equipment deemed necessary by MTS, in its sole discretion, for the pre-wire installation, operation and maintenance services and which are installed by MTS in the Common Area, or a designated location in the Unit, or installed outside the Building, Common Area or Unit. The installation of equipment may be used to terminate the outside wiring that enters the Building to the inside wiring that enters each Unit in the Building.

“**Land**” means the land municipally described above or in Appendix A attached hereto and forming a part hereof.

“**Notice**” means any notice, request, consent or other communication provided, required or permitted under this Agreement as contemplated in section 9 of this Agreement.

“**Pre-wire Installation**” means the installation of telecommunication wiring or installation of fibre risers required to provide MTS service(s) at locations within or outside the Building and Unit.

“**Resident**” means a person who occupies a Unit.

“**Unit**” means a condominium or rental unit in a Building or on the Land.

“**Unit Facilities**” means those of the Facilities that MTS will install in each Unit.

2. BUILDING ACCESS / INSTALLATION

- (a) The Customer shall provide to MTS, at no charge to MTS, obstacle-free and unobstructed access to, and space in or outside each Building, including but not limited to the Common Area, as required by MTS for the pre-installation, operation and, in some instances, maintenance of wiring and Facilities. If applicable, the Customer agrees that MTS may install and use a lockbox to access the Common Area door and the Customer agrees to provide MTS with a key to the Common Area for such purpose. In addition, the Customer shall assist MTS in making arrangements with a Resident in each occupied Unit for access to each Unit to install, operate and maintain the wiring required. Prior to disclosing any personal information about a Resident to MTS, the Customer shall obtain the necessary consent from the Resident to such disclosure.
- (b) MTS shall install, operate and, in some instances, maintain the wiring and Facilities required for the provision of MTS service(s). For clarity, MTS is not obligated to maintain existing copper wiring inside a Unit or copper risers from the main telephone room to a Unit. It is understood that the Customer will enter into a separate agreement or agreements with MTS in respect of the actual provision of any such services to the Buildings or, in the case of the provision of service to a Unit, the Resident of such Unit shall enter into a separate agreement or agreements with MTS for such services.
- (c) For greater certainty, any equipment, supplies, specifications, documents, materials or fibre (including but not limited to pathway access of fibre) that MTS uses or installs in the performance of this Agreement shall remain the sole and exclusive property of MTS and Customer shall have no right of property in or to the equipment, supplies, specifications, documents, materials or fibre. Customer shall not remove, deface or obscure any labels on any equipment or Facilities

which indicate that MTS is the owner thereof. Customer shall keep the equipment, wiring and Facilities free from all levies, liens and encumbrances. Customer agrees that no equipment, apparatus, circuits, devices or services not provided by MTS will be attached to, or used so as to operate with the MTS equipment, wiring and Facilities in any way, whether physical, by induction or otherwise, except as permitted by MTS.

- (d) Customer shall not, nor shall it permit others or assist others to, tamper with, alter or rearrange any part of the MTS equipment, wiring or Facilities, or otherwise fraudulently use the MTS equipment, wiring or Facilities, including, without limitation, using the MTS equipment, wiring or Facilities:
- (i) in any manner that interferes with the MTS equipment, wiring or Facilities or MTS's network or equipment, or access thereto by other persons;
 - (ii) contrary to the instructions communicated to the Customer by MTS; or
 - (iii) for any purpose or in any manner, directly or indirectly, in violation of applicable laws or in violation of any third party rights.

3. **CONFIDENTIALITY** The Customer at all times shall treat and maintain as confidential any information or data relating to this Agreement, including, but not limited to, pricing as well as technical and operating information pertaining to the Facilities, and the other terms of this Agreement, except where disclosure is required by a court of competent jurisdiction.

4. **NATURE OF RELATIONSHIP** This Agreement and the rights and obligations of the parties under this Agreement shall not constitute a partnership, joint venture or other similar relationship between the parties.

5. **MEDIA RELEASES** Notwithstanding any other provisions of this Agreement, MTS may, at its sole discretion and without seeking the prior consent of the Customer, make public by way of the issuance of a media release, all or a portion of the following information with respect to this Agreement: (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.

6. **TERMINATION** MTS may terminate this Agreement upon five (5) Business Days written notice to the Customer. Either party may terminate this Agreement at any time upon providing written notice in the event of the occurrence of any of the following:

- (a) upon failure of the other party to carry out or perform any of its obligations under this Agreement, provided that the non-defaulting party notifies the defaulting party in writing of the default and the defaulting party does not remedy the default within ten (10) Business Days after receipt of such written notice, or such extended period of time after receipt of such written notice as is necessary to cure the default if the defaulting party reasonably demonstrates that such default is not capable of being cured within ten (10) Business Days;
- (b) if the other party makes an assignment for the benefit of creditors or becomes bankrupt, or takes the benefit of, or becomes subject to, any legislation in force relating to bankruptcy or insolvency, it being understood that the appointment of a receiver, receiver/manager or trustee of the property and the assets of the party is conclusive evidence of insolvency.

Upon termination of this Agreement, MTS, at its option, shall have the right, without liability for seizure or entry, to access the outside and to enter each Building and to remove any equipment, supplies, specifications, documents, materials, fibre or installed Facilities without demand and wherever they are found, including in the Units,

and the Customer shall cooperate fully with MTS to facilitate such removal. MTS shall be under no obligation to remove the Facilities from the Buildings unless MTS determines, at its sole discretion, to remove the Facilities including the Unit Facilities. Upon the termination of this Agreement, MTS shall have no further obligation to the Customer or to any Resident.

7 LIMITATION OF LIABILITY

- (a) Unless caused by the willful or negligent acts of MTS or its officers, employees, agents or contractors, MTS shall not be liable to the Customer for any damages, claims, injuries, expenses, losses or costs, notwithstanding that MTS may receive notice thereof, arising out of, or caused by, the installation, operation or maintenance of the Facilities in or outside the Common Area, Unit or Building, or MTS's entry to, or presence at, the Common Area, Unit or Buildings in connection with this Agreement.
- (b) In no event shall either party be liable for:
 - (i) any damages arising under this Agreement, regardless of the cause and whether arising in contract (including fundamental breach), tort (but excluding negligence) or otherwise, even if the breaching party has been advised of the possibility of such damages, in excess of \$25,000; or
 - (ii) any special, incidental, exemplary, consequential or indirect damages of any kind whatsoever, regardless of the cause and whether arising in contract (including fundamental breach), tort (including negligence) or otherwise, even if the breaching party has been advised of the possibility of such damages.

8. FORCE MAJEURE Without limiting or restricting the applicability of the law governing frustration of contracts, in the event either party fails to meet any of its obligations under this Agreement within the time prescribed, and such failure shall be caused, or materially contributed to, by force majeure, such failure shall be deemed not to be a breach of the obligations of such party under this Agreement, and the time for the performance of such obligation shall be extended accordingly as may be appropriate under the circumstances. For the purpose of this Agreement, force majeure shall mean any acts of God, war, natural calamities, strikes, lockouts or other labour stoppages or disturbances, civil commotions or disruptions, riots, epidemics, acts of government or any competent authority having jurisdiction, or any other legitimate cause beyond the reasonable control of such party, and which, by the exercise of due diligence, such party could not have prevented, but lack of funds on the part of such party shall not be deemed to be a force majeure.

9. NOTICES Any notice, request, consent or other communication provided, required, or permitted under this Agreement (the "Notice") shall be sufficiently given if in writing and personally delivered, or sent by facsimile, email or registered mail (except in the case of matters relating to installation services or maintenance scheduling or other similar matters issued by MTS to the Customer, which may be sent by e-mail), and addressed or sent as specified below:

- (a) If to MTS:
the address or facsimile number specified on the first page of this Agreement

With a copy to:

Manitoba Telecom Services Inc.
Law Department
PO Box 6666
MP19A – 333 Main Street
Winnipeg, Manitoba R3C 3V6
Facsimile No.: (204) 786-4514

With a copy to: generalcounsel@mtsallstream.com

- (b) If to the Customer, at the address indicated on the front page of this Agreement.

10. WAIVER A failure by either party to exercise any right under this Agreement or to insist upon full compliance by the other party with its obligations under this Agreement will not constitute a waiver of any provision of this Agreement. A waiver shall not be effective unless it is made in writing by an authorized officer of the party.

11. ENTIRE AGREEMENT This Agreement cancels, replaces and supersedes as of its Effective Date all existing agreements and understandings, written or oral, between the parties relating to the subject matter of this Agreement. The whole contract between the parties is contained in this Agreement and no preliminary proposals, written or oral, form any part of this Agreement. This Agreement may not be amended or modified except by mutual agreement of the parties in writing.

12. ASSIGNMENT AND ENUREMENT This Agreement shall not be assigned, in whole or in part, without the prior written consent of MTS. This Agreement shall be binding upon, and shall enure to the benefit of, the parties to this Agreement and their respective successors and permitted assigns.

13. INTERPRETATION In the event any provision of this Agreement is invalid, illegal or unenforceable in any respect, it shall be considered separate and severable from the remaining provisions of this Agreement, and the validity, legality or enforceability of any of the remaining provisions of this Agreement shall not be affected or impaired by such provision in any way. Words importing the singular include the plural and vice versa, and words importing gender include all genders. This Agreement shall be construed in accordance with the laws of the province of Manitoba and the laws of Canada applicable therein, and shall be treated, in all respects, as a Manitoba contract. The headings contained in this Agreement are for convenience of reference only and, in no way, define, limit or enlarge the scope or meaning of any of the terms and conditions contained in this Agreement.

14. EXECUTION AND COUNTERPARTS This Agreement may be executed in counterparts and may be executed and delivered via electronic or facsimile transmission, including signatures, which counterparts and electronic or facsimile copies together shall constitute one and the same Agreement with the same effect as if originally executed and delivered.

15. FURTHER ASSURANCES The Customer shall do such acts and shall execute such further documents which are required to give full effect to the provisions of this Agreement.

Schedule A

Pre-Wire Installation and Maintenance Agreement

INSTALLATION SCHEDULE

Scheduled Start Date Est. Completion Date
Lockbox Required (Yes <input type="checkbox"/> or No <input type="checkbox"/>)
Lockbox location
Keys Provided (Yes <input type="checkbox"/> or No <input type="checkbox"/>) Key Fob Provided (Yes <input type="checkbox"/> or No <input type="checkbox"/>)

SCOPE OF SERVICES

Building Address	Description
	Installation of Facilities, including but not limited to:

APPENDIX A to Schedule A Pre-Wire Installation and Maintenance Agreement

LIST ADDRESS FOR BUILDING/LAND