

Domain Name Registration – Terms and Conditions

1. SERVICES

The Customer specified in the Domain Name Registration and Management Application, or in any amendments thereto (the “Application”) has requested, and MTS Inc. (“MTS”) has agreed, to provide the service(s) described in the Application (the “Services”) on the Terms and Conditions set out herein. The provision of some or all of the Services to a Customer is subject to availability and to these Terms and Conditions.

2. TERM

These Terms and Conditions shall come into effect on the date specified in the Application (the “Effective Date”) and, subject to the provisions of these Terms and Conditions, shall remain in effect for the term specified in the Application (the “Term”). Following the expiration of the Term, the Services shall be renewed automatically for a period equal to one (1) year, unless either party terminates the Services by providing at least thirty (30) days written notice prior to the end of the then current term. Where a Customer has transferred a domain name registration to MTS from another service provider, the term in respect of such a registration shall be the balance remaining in the existing term plus one year, pursuant to the ICANN Change in Registrar policy

3. CHARGES AND PAYMENT

Customer agrees to pay the charges specified in the Application (the “Charges”), together with all applicable taxes. All Charges shall be billed to the Customer in advance and 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 the Services, all Charges and any interest shall become immediately due and payable. The Customer agrees not to deduct or set-off any amount from the Charges due to MTS for the Services. Charges that recur on an annual or monthly basis are fixed for the first year of the term specified in the Application, but MTS reserves the right to adjust the Charges thereafter upon thirty (30) days prior written notice.

4. SERVICE ADDRESS

All facilities, electrical requirements and any other equipment or facilities required in connection with the Services shall meet the specifications and requirements prescribed by MTS, and shall be arranged or provided by the Customer at its own expense. Should the Customer request MTS to relocate the Services to a new service address, such relocation shall be subject to availability and 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 Services to a service address outside the Province of Manitoba.

5. TUCOWS CONTRACT REQUIREMENTS

MTS is a registration service provider for Tucows Inc. (“Tucows”) and has entered into an agreement with Tucows respecting all domain registrations (the “Service Provider Agreement”). MTS is required by the Service Provider Agreement to have the Customer agree to and be bound by Tucows’ TLD Registration Agreement attached as Exhibit A (the “Exhibit A Agreement”). By submitting the Application, the Customer acknowledges the Exhibit A Agreement, certifies to MTS that Customer has reviewed and understands Exhibit A Agreement, and agrees to be bound by the terms of the Exhibit A Agreement.

6. CUSTOMER’S REPRESENTATIONS AND WARRANTIES

The Customer represents and warrants to MTS that it:

(a) has provided current, complete and accurate information in the Application, shall continue to provide current, complete and accurate information to MTS in connection with the Services and shall maintain and update the information provided as needed to ensure MTS always has current, complete and accurate information;

(b) shall not allow any third party to use or operate any domain name registration registered in the name of the Customer and shall not apply to MTS to register any domain name as agent for, or on behalf of, any third party in any manner whatsoever, including without limiting the generality of the foregoing, for purposes of lending, leasing, licensing or otherwise granting rights in such domain name registration to any third party for monetary or non-monetary consideration unless such third party agrees to be bound by these Terms and Conditions and

(c) shall not use the Services for any purpose contrary to the laws of any government having jurisdiction over MTS or the Customer.

7. USERIDS AND CUSTOMER PASSWORDS

The Customer shall not make the UserIDs provided in connection with the Services or Customer passwords available to any third party and shall be solely responsible for maintaining the security of the UserIDs and Customer passwords. The Customer shall be responsible for all use of the Services by anyone using the UserIDs and/or Customer passwords. If the Customer shall become aware, or suspects that any unauthorized person has obtained or attempted access to the Customer's account, programs, or data, then the Customer shall forthwith notify MTS and change the Customer password(s). Customer acknowledges that the fees charged by MTS reflect the allocation of risk herein and the limited recourse to MTS provided for in this Agreement. MTS will not assume any responsibility for acts or omissions of Customer or of any individual who accesses the Services using Customer's passwords and UserIDs. In addition, Customer acknowledges that if it allows any person under the age of eighteen (18) to use the Services, Customer shall bear the sole responsibility and liability for, and shall indemnify MTS against, any claims, actions or losses that arise, directly or indirectly, from such use. As between MTS and Customer, Customer is better able to put in place physical and procedural impediments to the inappropriate use of and to supervise use of its account, UserIDs Customer passwords and the Services. Protection of the UserIDs and Customer passwords shall be the Customer's responsibility. Customer shall comply with all current and future policies of MTS related to the Services. MTS may post notice of such policies at www.mts.ca, or may send notice of such policies by e-mail or regular mail.

8. SOFTWARE AND DOCUMENTATION SUPPLIED

Any software or documentation supplied by MTS or its agents to Customer with respect to the Services shall remain the property of MTS or its agents, as applicable. Customer shall take appropriate steps to protect same against loss or damage. The use by 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.

9. TERMINATION

MTS, in its sole discretion, may suspend the Customer's access to some or all of the Services or terminate the Services without notice and without incurring any liability if:

(a) the Customer defaults in the payment of the 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 Customer by this Agreement, as determined by MTS in its sole and absolute discretion;

(c) the Customer makes an assignment for the benefit of creditors or takes any other action for the benefit of creditors, becomes bankrupt or insolvent, or takes the benefit of, or becomes subject to, any legislation in force relating to bankruptcy or insolvency;

(d) MTS's status as a Tucows registrar is revoked;

(e) the Customer's agreement with Tucows is suspended; or

(f) with respect to any one domain name registrations, ICANN ceases to operate the registry for any top level domains and MTS is unable to make suitable arrangements with the party operating such registry in ICANN's place.

In the event a domain name registration has been auto renewed, MTS may only suspend or delete the domain name during the 45 day grace period following the date the domain name auto-renewed (the "Auto Renew Grace Period"). Any such suspension shall only be in place during the Auto Renew Grace Period and shall be lifted at the end of this period. This suspension or deletion of the domain name cannot occur in the event the Customer is in default for payment of any other Service (including hosting). Notwithstanding the foregoing, MTS must delete a domain name during the Auto Renew Grace Period if requested by the registrant of the domain name.

The Customer may terminate all or any part of the Services upon providing thirty (30) days prior written notice to MTS, provided however that MTS shall not be required to refund the Charges paid by the Customer in the event of termination for any of the reasons stated in this section 10, nor in respect of any Charges in respect of domain registrations.

10. INFORMATION

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

11. LIMITATION OF LIABILITY

11.1 LIMITATION ON WARRANTIES AND CONDITIONS. MTS makes no representation, warranty or condition, whether oral or written, express or implied, statutory or otherwise with respect to the Services, including, without limitation, any warranty or condition of quality or fitness for a particular purpose or non-infringement, or with respect to functionality, merchantable quality, freedom from bugs or viruses, compatibility or interoperability of MTS's facilities.

11.2 USE OF DOMAIN NAMES. Customer agrees that MTS shall not be responsible for the use of or right to use any domain name and that MTS shall not be responsible in any way whatsoever for any conflict or dispute with or any claim against the Customer including one relating to a registered or unregistered trade-mark, a corporate, business or other trade name, rights relating to a name or other identifying indicium of an individual or any other intellectual property rights of a third party, or relating to defamation of or unlawful discrimination with respect to any other person. The Customer acknowledges and agrees that the registration of a domain name does not create any proprietary right for the Customer or any other person in any name used as a domain name or in any domain name registration, and the entry of a domain name in the "whois" database, or in any other registry shall not be construed as evidence of ownership of the registered domain name. The Customer shall not in any way transfer or purport to transfer a proprietary right in any domain name registration or grant or purport to grant as security or in any other manner encumber or purport to encumber any domain name registration provided hereunder.

11.3 LIMITATION OF LIABILITY. MTS's aggregate liability to the Customer, including for all breaches by MTS of this agreement, shall be limited to the amount of fees paid or payable to MTS under this Agreement, regardless of the form of action including breach of contract (including fundamental breach or otherwise), strict liability, tort, (including negligence), any act or omission of MTS or its representatives or under any other legal or equitable theory, even if MTS had knowledge of or could have foreseen the possibility of such damages.

11.4 ADDITIONAL LIMITATIONS OF LIABILITY. Without limiting the generality of section 11.3, in no event, whether as a result of breach of contract (including fundamental breach or otherwise), strict liability, tort (including negligence), any act or omission of MTS or its representatives or any other legal or equitable theory even if MTS had knowledge of or could have foreseen the possibility of damages, shall the Customer pursue any claim against MTS, and in no event shall MTS or its directors, officers, employees, agents and representatives be liable to the Customer or any other party for any loss, damage or expense (including, without limitation, any special, indirect, incidental, exemplary, punitive or consequential damages or for economic loss or damages resulting from loss of use, lost profits, lost business revenue or third party damages) arising directly or indirectly from these Terms and Conditions, the Services provided hereunder, the Customer's use or intended use of the Service, or in any way resulting from or connected with:

- (a) any access delay or access interruption;
- (b) any data non-delivery or data misdelivery;
- (c) any unauthorized use or misuse of the Customer number or password provided to the Customer by any registry authority;
- (d) any error, omission or misstatement in any information or service provided under these Terms and Conditions;
- (e) the deletion of or failure to store email messages;
- (f) a computer bug or virus or other system malfunction;
- (g) MTS's failure or refusal to register, renew, transfer, maintain, modify or cancel a domain name registration or MTS's registration, renewal, transfer, maintenance, modification or cancellation of a domain name registration;
- (h) the processing by MTS of any application for the registration of a domain name or any other application or request, MTS's processing of any authorized or unauthorized changes to the Customer's information;
- (i) the application of Tucows' dispute resolution procedures or policies or the compliance with any order, ruling, decision or judgment made thereunder or by any court, tribunal, board, administrative body, commission or arbitrator and any actions taken in consequence thereof; or
- (j) the use of any domain name in the "whois" database or any other registry and any conflict or dispute with or any claim against the Customer, including one relating to:
 - i. registered or unregistered trade-marks;
 - ii. business names, partnership names, corporate names and other trade names;
 - iii. names or indicia of individuals or groups or individuals;
 - iv. any other intellectual property rights;
 - v. defamation of any person; or
 - vi. unlawful discrimination with respect to any person.
- (k) any breach by MTS of its obligations under these Terms and Conditions or any other agreement between MTS and the Customer, or by MTS under the Service Provider Agreement;

regardless of the form of action including breach of contract (including fundamental breach or otherwise), strict liability, tort, (including negligence), any act or omission of MTS or its

representatives or under any other legal or equitable theory, even if MTS had knowledge of or could have foreseen the possibility of such damages.

12. INDEMNITY

The Customer shall be solely responsible and liable for, and agrees to indemnify and save MTS and its contractors, agents, employees, officers, directors, affiliates and assigns harmless from and against any and all damages, liabilities, obligations, losses, claims, demands, actions, causes of action, lawsuits, penalties, costs and expenses (including, without limitation, reasonable legal and other related costs) arising out of or in any way connected with:

(a) any breach of or non-fulfillment of any covenant or agreement on the part of the Customer under these Terms and Conditions; or

(b) any breach of or non-fulfillment of any covenant or agreement on the part of the Customer under the Customer's Agreement with Tucows or any other registry authority; or

(c) any incorrectness in or breach of any representation or warranty of the Customer;

(d) the violation by the Customer of any intellectual property or other right of any Person and any defamation of or unlawful discrimination against any Person or any violation of any of the rules and procedures relating to the Services provided; or

(e) the actions or omissions of the Customer;

including, without limitation, all losses, damages, expenses and costs incurred by MTS in attempting to enforce any provision of these Terms and Conditions, or in recovering any charges or any damages for breach of any covenant, term or condition of these Terms and Conditions. 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 to be provided by one party to the other shall be sufficiently given if personally served or sent by mail, e-mail or facsimile and with respect to the Customer sent or addressed as specified by the Customer on the Application and with respect to MTS, sent or addressed to P.O. Box 6666, 333 Main Street, Winnipeg, Manitoba, R3C 3V6, Attention: Internet Customer Service, Facsimile No. 204-784-6043 , E-mail: MTSInternetServices@mts.ca. Any such notices, if delivered personally, shall be deemed to have been received the same day; if sent by mail or e-mail, shall be deemed to have been received three (3) business days after the date of mailing; 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 Privacy Code](#). These purposes are:

a) to establish and maintain responsible commercial relations with Customers and to provide ongoing service;

b) to understand Customer needs;

c) to develop, enhance, market or provide products and services;

d) to manage and develop MTS's business and operations, including personnel and employment matters; and

e) to meet legal and regulatory requirements;

The Customer hereby consents to MTS collecting, using and disclosing Customer's Personal Information in accordance with the MTS Privacy Code and for the purposes set forth in section 7 of these Terms and Conditions. The entire MTS Privacy Code may be viewed on MTS's website at www.mts.ca/privacy or will be provided upon request.

15. DISCRETION

Any discretion, option, decision, or opinion by MTS shall be sufficiently exercised or formed if exercised or formed by or subsequently ratified by MTS's system administrator or any other person or persons designated by MTS's directors.

16. REGULATION

Should any competent regulatory authority determine that the Services 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, the Customer may terminate the Services without penalty or termination charge at any time following the effective date of such rate increase, upon giving thirty (30) days' notice of termination to MTS.

17. AMENDMENTS

MTS may amend these Terms and Conditions at any time by posting the amended Terms and Conditions on the [MTS Domain Name Registration Terms and Conditions](#) page. The amended Terms and Conditions are effective thirty (30) days from the date of posting. Customer's continued use of the Services after posting constitutes acceptance of the amended Terms and Conditions. MTS may, but shall not be obligated to, notify the Customer via email of the amended Terms and Conditions. In addition, MTS reserves the right to amend these Terms and Conditions immediately should such action be required due to an amendment of the Service Provider Agreement with Tucows.

18. ELECTRONIC NATURE OF TERMS AND CONDITIONS

By using the Services, Customer expressly consents to these Terms and Conditions applying to the Service without the need for a signature by either Customer or MTS. Both MTS and Customer agree that a printed version of these Terms and Conditions and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms and Conditions to the same extent and subject to the same conditions as other business documents and records generated and maintained in printed form by MTS.

19. 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 consent of the Customer. 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 of these Terms and Conditions that is unenforceable at law will be ineffective to the extent of such unenforceability without invalidating the remaining provisions of these Terms and Conditions. No failure by MTS to exercise any right under these Terms and Conditions or to insist upon full compliance by the Customer with its obligations under these Terms and Conditions will constitute a waiver of any provision of these Terms and Conditions. Subject to section 10 above, these Terms and Conditions cancel, replace and supercede as of the Effective Date all existing agreements and understandings, written or oral, between the parties relating to the Services. 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 these Terms and Conditions. If there is a conflict between the Terms and Conditions set forth in these Terms and Conditions, and Exhibit A, the provisions of these Terms and Conditions shall prevail as between MTS and the Customer, and the provisions of Exhibit A shall prevail as between the Customer and Tucows.

20. GLOSSARY

The following is a glossary of terms used in these Terms and Conditions:

“Application” means the Application for Domain Name Registration and Management Services submitted by the Customer to MTS.

“Customer” means the person who submitted the Application to MTS and who is ultimately responsible for all activities with respect to use of the Services.

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

“Exhibit A Agreement” means the Agreement between the Customer and Tucows set out in Exhibit A.

“Services” means the domain name registration and management services provided by MTS to the Customer pursuant to the Application and these Terms and Conditions.

“Service Provider Agreement” means the agreement between MTS and Tucows pursuant to which MTS is authorized to provide domain name registration services in respect of domain extensions.

“Terms and Conditions” means these Terms and Conditions and the attached Exhibit A as it may be amended from time to time by MTS or Tucows, as applicable.

“Tucows” means Tucows Inc. or any successor thereto, the company that provides Internet domain name registration services for second level domain names within the top level domains.