

CABLE BUSINESS CONTRACT

PLEASE READ THIS AGREEMENT CAREFULLY: IT CONTAINS THE TERMS AND CONDITIONS GOVERNING THE VIDEOTRON SERVICE PROVIDED TO VIDEOTRON BUSINESS CUSTOMERS. IN CASES WHERE SERVICES SUPPLIED BY VIDEOTRON ARE GOVERNED BY THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION (“**CRTC**”) AND THERE ARE DISCREPANCIES BETWEEN THE PROVISIONS HEREIN AND THE CRTC RULES, THE LATTER SHALL PREVAIL.

BY REQUESTING ACTIVATION OF VIDEOTRON'S CABLE BROADCASTING SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO BE BOUND BY ALL THE PROVISIONS HEREOF.

VIDEOTRON SUBSCRIPTION AND RENTAL AGREEMENT TERMS AND CONDITIONS

1. DEFINITIONS

For purposes of this agreement, the following definitions shall apply:

1.1 **Effective Date** – Commencement date of the Services supplied by Videotron to the customer, which corresponds to the activation date of the Services and, in the case of additional Services, the date on which Videotron activates such additional services.

1.2 **Equipment** – Refers to equipment rented or sold to the customer by Videotron or one of its authorized retailers, such as the digital terminal as well as their accessories such as remote controls.

1.3 **Minimum Charges** – Charges payable by the customer to subscribe to the Services for the minimum subscription period selected.

1.4 **Services** – The services offered to the customer by Videotron such as more fully described in subsections 2.1 to 2.3 of this agreement.

1.5 **Specifications** – The specifications related to the Services and Equipment required by the customer and supplied by Videotron, which specifications are detailed on the account statement sent to the customer by Videotron.

2. PURPOSE

2.1 **Services** – Subject to the terms and conditions of this agreement, Videotron G.P. or CF Cable TV inc. (individually, in accordance with their respective offerings, “Videotron”) agrees to provide the following Services to the customer:

2.1.1 cable distribution and interactive capability;

2.1.2 rental or, where applicable, sale of the Equipment.

2.2 **Additional Services** – Videotron also agrees to provide the customer with any other Service, rental or sale of additional equipment which, if required by the customer, shall be governed by the terms and conditions set out in this agreement (the “Additional Services”).

2.3 **Support Services** – Videotron also agrees to provide technical support, maintenance and repair service to allow the customer to enjoy the Services and use the Equipment supplied by Videotron (the “Support Services”). Any services related to the Equipment which are not covered by this agreement are specifically excluded from the Support Services.

2.4 **Installation Service** – Videotron agrees to supply the following installation services: connection, installation, reconnection following an interruption of the Services, installation of additional outlets and relocation of existing outlets (the “Installation Services”).

2.5 **Videotron's obligations** – The customer expressly acknowledges that, with respect to the Services, Videotron's obligations are limited to distributing the programs it receives or produces according to the category of cable distribution services outlined in the Specifications. However, Videotron shall not be responsible for the content of the programs it receives or produces, the whole as stipulated in subsection 8.2 of this agreement.

2.6 **Customer's account payment** – Payment by the customer of his or her account constitutes confirmation that the Specifications in the statement comply with the agreement between the customer and Videotron.

2.7 **Minimum Services** – Videotron reserves the right, as a condition of its provision of Services, to demand that the customer purchase and maintain a minimum level of Service, the content of which may be established from time to time by Videotron based on regulatory requirements and Videotron's policies.

3. PAYMENT OF SERVICES

3.1 **Payment of Services** – Starting on the Effective Date, in consideration of the provision of Services to the customer in accordance with the Specifications, the customer agrees to pay Videotron the amount representing the minimum charges and other applicable charges indicated on the account statement. The customer also agrees to pay Videotron any other charges related to additional Services required by the customer from time to time in accordance with subsection 2.2, the charges related to Support Services described in subsection 2.3 and the charges related to the Installation Services set out in subsection 2.4. These charges and rates may be modified by Videotron from time to time in accordance with subsection 3.7 below. The list of Videotron charges and rates currently in force is available by request to Business Customer Service.

3.2 **Taxes** – All applicable taxes are in addition to the charges and rates described in subsection 3.1.

3.3 **Billing** – Charges shall be payable on the due date indicated on the account statement sent to the customer (by mail or electronically), by authorized payment debited from the customer's account or by pre-authorized payment charged to the customer's credit card. If the charges remain unpaid following the due date, they shall bear interest at the rate of 1.5% per month (19.56% per annum) calculated and compounded daily as of the due date. As long as charges remain unpaid, Videotron shall issue an account statement on a monthly basis. Any partial payment made by the customer will first be applied to the accrued interest, then the unpaid capital, starting with the overdue amounts due the earliest with respect to the payment date.

3.4 **Minimum charges** – The minimum charges related to the Services shall be billed in advance for the Services to be provided to the customer, the whole in accordance with the Specifications. The charges payable for the provision of Services for a portion of a period shall be pro-rated to the number of days of availability of Services to the customer in proportion to the total number of days included in such period. Advance payment on a basis other than monthly is merely a method of payment and does not grant the customer any advantage whatsoever or protection against any rate increase applicable to any portion of the period for which the customer's last payment was received. However, this subsection does not apply to the charges, rates and terms of payment applicable during certain promotion periods.

3.5 **Additional charges** – Administration charges shall be billed to the customer for any cheque returned due to insufficient funds, for each pre-authorized payment refused by the customer's financial institution or for any debit from the customer's credit card not authorized by the issuing institution.

3.6 **Credit investigation** – The customer authorizes Videotron and any person acting on Videotron's behalf, to check before and during the term of this agreement, his or her credit record with the relevant institutions and authorizes financial institutions and other reporting agencies to communicate to Videotron and any person acting on Videotron's behalf the credit information obtained in his or her customer file. If, in Videotron's opinion, the customer represents a financial risk, Videotron may demand advance payment for certain Services or any other guarantee it considers reasonable. The customer has disclosed any material fact or information regarding his or her financial situation which might alter his or her ability to fulfil the commitments contracted under this agreement.

3.7 **Modifications** – Videotron may, upon at least thirty (30) days' prior notice to such effect sent by mail to the customer, modify the Services or any other provision of this agreement, including the charges and rates stipulated in subsection 3.1. However, no prior notice shall be required with regard to a modification of Services if Videotron's service offerings remain similar and have no impact on the charges payable by the customer. It is expressly understood that certain services, or their replacement by other similar services, are offered as part of a package deal and that changes to these services do not necessarily entail an adjustment of the charges and rates stipulated in subsection 3.1. By settling the statement of account accompanying any notice of modification to this agreement, the customer is irrevocably deemed to have accepted the modification. However, the customer may, within such thirty (30) days delay, cancel this agreement or request that it be modified in the manner provided in subsection 10.3 below, failing which the customer shall irrevocably be deemed to have accepted the modifications covered by the notice.

3.8 **Overdue account** – In the event (i) the account sent by Videotron to the customer falls overdue or (ii) the customer fails to comply with the provisions of this agreement, Videotron may refuse to provide the customer with any additional Service or support Service pending complete payment of the overdue account and interrupt the Services in accordance with the provisions of subsection 10.6 of this agreement.

3.9 **Overpayment** – Any overpayment by the customer shall be applied to the next account statement. In the event there remains an overpayment and Videotron ceases to provide Services to the customer and said customer does not owe Videotron any amount, Videotron shall reimburse the customer within forty-five (45) days of the termination of Services.

4. CUSTOMER'S OBLIGATIONS

4.1 **Equipment** – Following delivery of the Equipment, the customer agrees to notify Videotron promptly of any defect, failing which the customer shall be deemed to have received the Equipment in good repair and working condition. Furthermore, in the event the customer has not received the Equipment within ten (10) business days of the customer's order of the Equipment to Videotron, the customer agrees to notify Videotron accordingly.

4.2 **Use of Equipment** – The customer shall use the rented Equipment with care, caution and diligence. He or she also agrees to comply with the instruction manuals provided by Videotron, where applicable, and any instructions or requirements of Videotron regarding to the rented Equipment. Moreover, the customer may not modify or alter the rented Equipment.

4.4 **Prohibition** – The customer may not connect the Equipment to a number of TV sets or receivers greater than the number indicated in the Specifications or install additional outlets, failing which the customer shall be liable to civil and criminal sanctions. Except with the prior written consent of Videotron, the customer may not use Equipment unauthorized by Videotron for the purpose of using the Services. Furthermore, the Equipment may not be transported to a location other than that mentioned in the Specifications, without the prior written authorization of Videotron.

The law forbids receipt of services or partial services without having paid for them, except with the permission of Videotron. Any departure from the law may lead to civil or criminal sanctions.

4.5 **Access to customer's residence** – The customer agrees, to the extent reasonable, to allow free access to a duly authorized Videotron representative, during business hours, to the premises where the Services are provided to the customer and where the Equipment is located for the purpose of ensuring compliance with the customer's obligations under this agreement.

4.6 **Equipment owned by the customer** – The customer acknowledges being in possession of the entire video or audio system needed to meet the minimum requirements related to the use of the Services and rented Equipment. Thus, in the event Support Services are supplied by Videotron to the customer and are the result of a defect in the video system owned by the customer or the said video or audio system fails to meet the minimum necessary requirements, additional Support Services charges may be billed to the customer by Videotron.

5. CUSTOMER'S RESPONSIBILITIES

5.1 **Loss of Equipment** – In case of loss of the Equipment rented by the customer in accordance with the Specifications or breakage rendering the Equipment unusable, even if this loss or damage is the result of force majeure or a cause beyond the customer's control, the customer agrees to pay Videotron, as liquidated damages, one or more of the following amounts, plus applicable taxes:

Remote control: nineteen dollars and ninety-nine cents (\$19.99)

Standard digital terminal: forty-nine dollars (\$49.00)

High Definition Terminal: ninety-nine dollars (\$99.00)

HD Terminal New Generation: ninety-nine dollars (\$99.00)

Personal Video Recorder: one hundred and eighty-nine dollars (\$189.00)

High Definition Personal Video Recorder: two hundred and forty-nine dollars (\$249.00)

HD PVR Terminal New Generation: two hundred and forty-nine dollars (\$249.00)

Digital-analogue converter: Sixty-one dollars (\$61.00)

Remote - Digital-analogue converter: Eleven dollars fifty (\$11.50)

Power cable - Digital-analogue converter: Fifteen dollars (\$15.00)

6. EQUIPMENT OWNERSHIP

6.1 **Rented Equipment** – It is expressly understood by the parties that Videotron shall remain the owner of any rented Equipment and that such equipment shall remain the sole and complete property of Videotron.

6.2 **Sold Equipment** – Subject, where applicable, to the provisions of the Quebec *Consumer Protection Act*, any sale of Equipment to the customer by Videotron shall be final. No refund or exchange shall be made without Videotron's consent.

7. WARRANTY

7.1 Basic Warranty – Notwithstanding the foregoing, standard digital terminals sold by Videotron are warranted against any manufacturing defect for a period of 1 year for parts and labour. HD digital terminals sold by Videotron are warranted against any manufacturing defect for a period of 3 years for parts and labour. Any other Equipment sold is warranted for a period of 3 months, unless the manufacturer offers a longer warranty period. The warranty shall begin as of the activation date of the Equipment sold, if such activation takes place within 30 days following purchase. Failing this, the warranty shall begin on the date of purchase. Videotron shall repair or replace, at its sole discretion, any defective Equipment sold covered by this warranty with an identical piece of Equipment or with a refurbished or new model, provided that the Customer notifies Videotron of the defect within the warranty period. Notwithstanding the foregoing, once the Equipment is in the client's possession, the warranty shall not apply to any breakage or defect resulting from an accident or an event of force majeure, modifications to the Equipment sold without Videotron's authorization, or the improper or abusive use thereof. Should the Equipment sold be defective, the Customer undertakes to notify Videotron as soon as possible so that a duly authorized Videotron representative may make the necessary inspection. This warranty may not be assigned by the Customer.

7.2 Extended Warranty - The customer may choose to purchase the extended warranty offered by Videotron on the Equipment sold to the customer, as long as the extended warranty is offered by Videotron for such Equipment, as determined by Videotron. Such extended warranty shall cover any manufacturing defect for a period of two (2) additional years of the guarantee at point 7.1 for parts and labour. The warranty period shall be calculated from the Effective Date. Videotron shall replace the defective Equipment by identical equipment or another model in accordance with the terms of the extended warranty, provided the customer notifies Videotron of the defect within the warranty period. Notwithstanding the foregoing, the warranty does not apply to any breakage or defect resulting from accidents or force majeure, modifications to the Equipment without Videotron's authorization, misuse or abuse of the Equipment. In case of defective Equipment, the customer agrees to notify Videotron promptly so that a duly authorized representative of Videotron can make the necessary inspection.

7.3 No representation or warranty – Videotron makes no express or implied representation or warranty regarding the Services and Equipment, other than its obligations under this agreement. The Services and Equipment are supplied “as is”, contingent on availability.

7.4 Exclusions – Without limiting the generality of the foregoing, Videotron does not warrant i) the uninterrupted functioning of the Services or their hardware components; ii) that the Services meet the customer's needs; or iii) the performance, availability, use or uninterrupted functioning of the Service and, where applicable, that all functional problems can be resolved.

7.5 Other exclusions – Videotron makes no declaration concerning the Services and Equipment supplied under this agreement. All representations, warranties or conditions of any nature whatsoever, express or implied, are hereby excluded to the extent permitted by applicable law.

8. LIMITATION OF LIABILITY

8.1 Obligations of Videotron – Videotron shall fulfil its obligations under this agreement with diligence and to the best of its ability.

8.2 Exclusions – Except in cases of gross or deliberate fault on its part, Videotron shall not be liable to the customer or any other individual for damages it or persons under its control may cause, regardless of their nature. Without limiting the generality of the foregoing, Videotron shall not be liable for material loss resulting from the content, use, validity or quality of the programs it produces or distributes via the Services or for a breakdown of Services. Should Videotron nonetheless be found responsible for a loss or damage of any nature whatsoever, its liability shall be limited to crediting the customer an amount equal to the monthly charges payable by the customer for a maximum period of one month.

8.3 Interruption of Services – Notwithstanding subsection 8.2, in case of interruption of the Services attributable to any cause whatsoever other than the customer's fault, Videotron's liability shall be limited to crediting, upon written request by the customer, the minimum charges proportionally to the duration of the interruption in relation to the total period for which the customer must pay minimum charges, calculated on an hourly basis, provided the following conditions are met: i) the customer has notified Videotron in writing; ii) for Services other than pay-per-view, the interruption lasted for a period of at least forty-eight (48) consecutive hours after the notice and iii) the customer has sent a written request for credit to Videotron within fifteen (15) days following such notice.

8.4 Sales Promotion Services – Videotron may offer certain Services to existing or new customers free of charge for purposes of sales promotion (the “Sales Promotion Services”). In such an event, Videotron shall under no circumstance owe any amount whatsoever to its customers who do not enjoy the benefit of the Sales Promotion Services.

9. INDEMNIFICATION BY THE CUSTOMER

9.1 **Indemnification** – The customer agrees to indemnify Videotron and hold it harmless with respect to any claim, lawsuit, proceeding or formal notice, including judicial and extrajudicial fees, whether a case is well-founded or not (a “Claim”), by a third party against Videotron or its affiliates in which there is an allegation of facts that constitute or may constitute misconduct on the part of the customer or failure of the customer to comply with any of his or her obligations under the terms of this agreement, and the customer agrees to indemnify Videotron or its affiliates for damages caused by his or her misconduct or failure to meet his or her obligations. Videotron shall be entitled to take part in the defence against any Claim, at its expense, and to be represented by a lawyer of its choice.

10. TERM AND CANCELLATION

10.1 **Term** – Subject to the provisions set out below, this agreement shall come into force on the Effective Date and shall have a minimum term of thirty (30) days, which shall be automatically renewed for additional successive periods of thirty (30) days. The customer may at any time, upon at least thirty (30) days’ prior notice to Videotron, cancel this agreement or ask Videotron for a subscription to another category of Services.

When a subscription has a set commitment period, at the end of said commitment period, the subscription to the Services shall be automatically renewed at the rate then in effect for the said Services, for additional periods of twelve (12), twenty-four (24) or thirty-six (36) months, the whole in accordance with the initial subscription term, unless Videotron receives from the customer a non-renewal notice within thirty (30) days prior to the expiration of the Subscription Period or any renewal thereof. **Sales Promotion** – If the subscription is part of a sales promotion offered by Videotron whereby the customer enjoys lower rates than would have been the case without such sales promotion, the subscription shall be for the period covered by the sales promotion (the “Sales Promotion Period”) and may not be cancelled before such period ends. Upon expiry of the Sales Promotion Period, the subscription shall be automatically renewed under the same conditions or at the regular rate in effect for this type of subscription in accordance with the conditions of such sales promotion, unless Videotron receives a notice of non-renewal from the customer within ten (10) days preceding expiry of the Sales Promotion Period.

10.2 **Cancellation in the context of a sales promotion** – The subscriptions made under section 10.2 cannot be terminated before expiry of the Sales Promotion Period and the customer explicitly and unequivocally waives the application of articles 2125 and following of the *Civil Code of Québec*. Should the customer terminate his subscription to a subscription before the expiry of a Sales Promotion Period, the customer shall pay Videotron the following penalties as damages the customer shall pay Videotron the following penalties, as damages:

10.3.1 For cable distribution and interactive capability service: a penalty equal to 50% of the monthly payments remaining in the contract;

10.3.2 If the Equipment is rented: a penalty equal to 50% of the monthly payments remaining in the contract;

10.3.3 If the Equipment is purchased: a penalty equal to the rebate granted to the customer when the Equipment was purchased.

10.3 **Modification** – Where the provisions of subsection 3.7 apply, the customer may either cancel this agreement or ask Videotron to modify the customer’s Services or the duration of the customer’s subscription, effective on the date of transmission of the prior notice sent to the customer, provided the customer has sent Videotron written notice to such effect within thirty (30) days of receiving Videotron’s notice.

10.4 **Cancellation of Services** – Subject to the provisions of subsections 10.5, 10.6 and 10.7, Videotron may cancel this agreement at any time upon at least thirty (30) days’ prior notice to the customer.

10.5 **Default** – Videotron may cancel this agreement or interrupt the Services at any time without prior notice and without prejudice to any of its rights vis-à-vis the customer in the event the latter fails to comply with one or more of the provisions of this agreement.

10.6 **Interruption or cancellation due to overdue account** – Videotron may interrupt the Services or cancel this agreement if the customer fails to pay an account on its due date, upon prior written notice of at least five (5) business days to the customer indicating the reason and scheduled date of interruption of the Services, the amount due by the customer and, where applicable, the charges for restoring the Services, the charges for cancelling the agreement if payment is not made by the customer within such period of five (5) business days and any other charges payable to Videotron. Cancellation charges mean: i) the amount owed by the customer to Videotron in accordance with this agreement; and ii) any amount payable by the customer to Videotron under this agreement for the remaining period of this agreement. Following cancellation of the agreement, Videotron shall reimburse the customer, where applicable, the portion paid in excess of the customer’s monthly charges. The customer may contact Videotron’s Business Customer Service for any comment or information to such effect.

10.7 **Bankruptcy and insolvency** – This agreement shall be cancelled as of right without any notice being required where the customer becomes insolvent, makes a general assignment of his or her property for the benefit of his or her creditors or is declared bankrupt, if he or she is placed under receivership or in liquidation or if he or she attempts to rely upon any law governing insolvency, bankruptcy or arrangements with creditors.

10.8 **Effects of cancellation** – Upon cancellation of this agreement, all obligations of Videotron hereunder shall be extinguished.

10.9 **Equipment and recovery charges** – In the event this agreement is cancelled, the customer agrees to return any rented Equipment to Videotron promptly. The customer agrees to pay Videotron all charges incurred by the latter to locate the rented Equipment or obtain possession of same or to recover any amount due and unpaid under this agreement.

11. PERSONAL INFORMATION

11.1 **Customer's personal information** – The customer confirms that all personal information provided to Videotron is accurate and acknowledges that he or she has been informed i) that such personal information will be used for management of customer records (credit, billing, collection); ii) that the information contained in the customer record shall be accessible only if necessary in connection with the purpose of such record to employees or agents of Videotron in the performance of their duties; and iii) that the customer record shall be kept at Videotron's customer service, at the address indicated on the customer's statement, to which the customer shall send any request for access or correction to personal information. The customer agrees to inform Videotron promptly of any change of the personal information provided to Videotron.

Unless a customer provides express consent or disclosure is pursuant to a legal power, all information kept by Videotron regarding the customer, other than the customer's name, address and listed telephone number, is confidential, and may not be disclosed by Videotron to anyone other than:

- a) the customer;
- b) a person who, in the reasonable judgement of Videotron, is seeking the information as an agent of the customer;
- c) another telephone company, provided the information is required for the efficient and cost-effective provision of telephone service, the disclosure is made on a confidential basis with the information to be used only for that purpose;
- d) a company involved in supplying the customer with telephone or telephone 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;
- e) an agent retained by Videotron in the collection of the customer's account, provided the information is required for and is to be used only for that purpose;
- f) a public authority or agent of a public authority, for emergency public alerting purposes, if a public authority has determined that there is an imminent or unfolding danger that threatens the life, health or security of an individual and that the danger could be avoided or minimized by disclosure of information.

Express consent may be taken to be given by a customer where the customer provides:

- a) written consent;
- b) oral confirmation verified by an independent third-party;
- c) electronic confirmation through the use of a toll-free number;
- d) electronic confirmation via the Internet;
- e) oral consent, where an audio recording of the consent is retained by the carrier; or
- f) consent through other methods, as long as an objective documented record of customer consent is created by the customer or by an independent third party.

The customer acknowledges and agrees that the collection, use and communication of personal information about him/her may be done by Videotron's employees, representatives, subcontractors, services providers, consultants or any other Videotron's agents, to assist Videotron in its commercial and administrative operations.

11.2 **Credit record** – The customer authorizes Videotron to enter the credit information obtained according to paragraph 3.6, in his or her customer file.

11.3 **Name list** – The customer authorizes Videotron to include his or her name, address and telephone number(s) on its list of customers for business development or philanthropic purposes, and to forward such list to its affiliates for the same purposes, and the customer shall have the right to withdraw this authorization at any time, by means of a verbal or written request to such effect to Videotron's customer service, the address and telephone number of which are indicated on the customer's statement.

11.4 **Protection of personal information** – The personal information supplied by the customer to Videotron shall be treated in accordance with the *Code of Videotron with respect to the protection of personal information*, which is available upon request at Videotron's customer service by telephone or at serviceclient@videotron.ca, or at videotron.com/confidentiality.

12. GENERAL PROVISIONS

12.1 **Excerpts and headings** – When the provisions of this document or certain of these provisions appear on the back of a document other than this agreement, they constitute a reminder of these agreement conditions. Headings are included for ease of reference only and shall in no way affect the interpretation of the provisions of this agreement.

12.2 **Governing law** – This agreement shall be interpreted in accordance with the laws in force in the Province of Quebec and shall be subject to the jurisdiction of the courts of the District of Montreal.

12.3 **Customer service** – Any questions concerning the Services or the customer's account should be addressed to Videotron's customer service.

12.4 **Transfer** – The customer is not authorized to transfer this agreement or the Equipment without the prior written consent of Videotron. Any attempt by the customer to transfer this agreement or the Equipment without the prior consent of Videotron shall be null and void. Videotron is authorized to transfer its rights or obligations under this agreement or its interests herein.

12.5 **Use of Equipment and Services** – The customer shall not rent, transfer or lend the Equipment or permit use of the Services for personal gain or purposes of public representation. For greater certainty, the customer acknowledges that it might be subject to the *Copyright Act*, in particular but without limitation, (i) if it uses the Services, in the case of a television communication signal, to perform it live or registered on Personal Video Recorder (PVR) or High Definition Personal Video Recorder (HDPVR), in a place open to the public, on payment of an entrance fee, or (ii) if it uses the Services to reproduce, broadcast or otherwise perform, in a place open to the public, a television communication signal registered on ENP or ENPHD, the whole without the prior authorization of the broadcaster.

12.6 **Entire agreement** – This agreement sets out all the terms agreed upon between the customer and Videotron pertaining to the subject matter hereof, and takes precedence over all agreements, covenants, promises and representations relating thereto.

12.7 **Successors and assigns** – The provisions of this agreement shall be binding upon and enure to the benefit of Videotron and the customer as well as their respective successors and assigns.

12.8 **Effect of waivers** – No waiver of any provision or condition of this agreement or covering any breach or default thereof shall be effective unless it is set forth in writing and signed by the party making such waiver, and the latter shall not constitute a waiver of any provision or condition of the agreement or any subsequent breach or default of the same or a similar nature.

12.9 **Severability** – The invalidity, illegality or unenforceability of any of the provisions of this agreement shall not affect or invalidate any other provision hereof.