

## **EASTLINK TIVO MOBILE APP TERMS OF SERVICE**

IMPORTANT - PLEASE READ THE FOLLOWING TERMS AND CONDITIONS ("TERMS") CAREFULLY BEFORE PROCEEDING WITH THE DOWNLOADING, INSTALLATION AND/OR USE OF THE EASTLINK TIVO MOBILE APP. THIS DOCUMENT IS A LEGAL AGREEMENT BETWEEN YOU AND BRAGG COMMUNICATIONS INC. ("EASTLINK") AND CONTAINS VERY IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS THAT MAY APPLY TO YOU (INCLUDING PROVISIONS THAT LIMIT OUR LIABILITY AND SET NOVA SCOTIA AS THE JURISDICTION FOR DISPUTES).

### **1. Introduction**

The Eastlink TiVo mobile app (the "Software") is an application provided by Eastlink and its affiliates (collectively, "us", "we", "our" or "Eastlink") that allows Eastlink TV customers who subscribe to our TiVo DVR service to view the live feed of the television channels to which they subscribe, and to view, schedule and manage their DVR recordings (collectively, the "Content") via a tablet or mobile device ("Digital Device"). Please note that changes to your TV channel subscriptions may not be reflected until the next day. No other services or software, and no maintenance, technical support or other services are provided to you under these Terms.

By installing and using the Software you are acknowledging that you have read, understood and agree to be bound by these Terms and such other additional or alternative terms, conditions, rules and policies that are displayed or to which you may be directed by Eastlink in connection with the Software, as all of the same may be modified by Eastlink from time to time, all to the extent permitted by applicable law. If you do not agree to comply with these Terms, then you may not use the Software. This agreement shall be in effect from the time you install the Software, and shall remain in effect until these Terms are terminated as described herein.

In these Terms, "you" and "your" mean, as applicable, you and every person who uses the Software through your account.

### **2. Availability and Access**

Due to licensing restrictions, live TV viewing and the downloading of DVR recordings is only available while you are connected to the Wi-Fi network at your Eastlink service address.

Simultaneous viewing of content is limited to two streams per household.

You are responsible for ensuring that your tablet and/or mobile device meets the minimum technical requirements for the Software.

The latest version of the Software may be required for the full functionality of certain features.

### **3. Registration, Account and Password**

You must have an Eastlink username to use the Software. If you have not already done so, you can register [here](#).

You are solely responsible for: (a) maintaining the confidentiality of any username, password or other account identifiers; (b) controlling access to your Digital Device(s); and (c) any and all

activities or omissions that occur under your username, password or account whether through your actions (or inactions) or those of one or more persons utilizing your account. You further agree to immediately notify Eastlink of any unauthorized use, or suspected unauthorized use, of your username, password or account, or of any other breach of security known to you, and agree to take such reasonable steps as are necessary to prevent any reoccurrence of such event. Eastlink shall not be responsible or liable, directly or indirectly, in any way for any loss or damage of any kind incurred as a result of, or in connection with, your failure to comply with this section 3, the improper use of your username, password or account or improper access to your account by third parties, with or without the use of your password, and whether or not authorized. You may be held liable for any loss or damage incurred by Eastlink or any other user the Software or Content due to another party using your account or password.

You shall not access or use someone else's account at any time without the permission of the accountholder.

#### **4. Modifications**

To the extent permitted by applicable law, Eastlink may modify the Software (including the Content accessible thereby), and these Terms (or any other document that forms part thereof) at any time and from time to time, with or without your consent or authorization. To the extent required by applicable law, Eastlink shall provide you with advance notice of such modifications. The most recent version of these Terms will always be available on [www.eastlink.ca](http://www.eastlink.ca). Nothing in these Terms shall be construed as obligating you to use the Software after any amendment or change is made to the Software or these Terms; however, if you do not accept any such modification, then, to the extent permitted by applicable law, your sole remedy is to terminate this agreement by no longer using the Software. Should you continue to use the Software after such change is effective, to the extent permitted by applicable law, such use shall be deemed to be your acceptance thereto.

#### **5. Software updates, licence, restrictions and support**

By installing the Software on your Digital Device you expressly consent to the installation of updates to the Software on your Digital Device by Eastlink or its suppliers.

You further agree that:

**(a) Licence.** Eastlink grants to you a limited, non-exclusive, non-transferable, non-assignable, revocable licence to install and use one copy of the executable code of the Software on each of your Digital Devices for your own personal use. All other rights are reserved to Eastlink, its licensors or suppliers.

**(b) Restrictions.** You acknowledge and agree that you have been granted a licence and not a transfer of ownership in the Software. You may not:

- i. Rent, lease, resell, sublicense, assign, share, distribute or otherwise transfer any portion of the Software or use it for any purpose other than access the Content to which you have access under your TiVo TV subscription;
- ii. Reverse engineer, decompile or disassemble any portion of the Software, except and only to the extent that this limitation is expressly prohibited by applicable law;
- iii. Copy, modify, alter or tamper with the Software (including without limitation the removal of any copyright or other proprietary notices from the Software) or create any derivative works of the Software;

- iv. Attempt to derive the source code or the underlying ideas, algorithms, structure or organization form of the Software; or
- v. Attempt to defeat, avoid, by-pass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Software including, without limitation, any such mechanism used to restrict or control the functionality of the Software.

**(c) Data Maintenance, Support, and Software Updates/Changes.**

- i. Eastlink may elect to provide you with customer support and/or Software upgrades, enhancements or modifications (collectively, "Support"), in its sole discretion, and may terminate this Support at any time without notice to you. You expressly consent to any and all actions taken by Eastlink or its third party suppliers with respect to the provision of such updates including any actions that directly affect your hardware or software.
- ii. Eastlink or its suppliers may, without notice or liability, collect non-personal information regarding your Digital Device(s), hardware and software during the installation and/or use of the Software.
- iii. Eastlink may change, suspend or discontinue any aspect of the Software at any time, including the availability of any Software feature, database, or content.
- iv. Eastlink may impose limits on certain features and services or restrict your access to parts or all of the Software or Content without notice or liability.
- v. Eastlink, its licensors and other third party suppliers reserve the right to delete data from their servers, or prevent access to their servers or to change data categories for any reason that Eastlink or third parties deem sufficient in their sole discretion at any time, without notice.
- vi. Nothing in these Terms imposes upon Eastlink or Eastlink's licensors any obligation to provide you with new, enhanced or additional Support at any time.

You shall take appropriate steps to protect the Software against loss or damage. You agree that all risk associated with the use of, or reliance on, the Software rests with you. To the extent permitted by applicable law, Eastlink, including its suppliers, shall not be responsible or liable, directly or indirectly, in any way for any loss or damage of any kind incurred as a result of, or in connection with your use of, or reliance on, the Software, including the failure of such software to meet your needs, standards, expectations or desired specifications. We do not warrant that the Software will be compatible with other third party software nor do we warrant that operation of the Software will not damage or disrupt other software or hardware.

## **6. Ownership and Copyright**

You understand and acknowledge that your rights with respect to the Content and Software are limited by copyright law and other intellectual property laws.

Except for the limited rights explicitly granted to you under these Terms, all right, title, interest and intellectual property rights in and to the Software and the Content are the property of their respective owners and are protected by applicable trademark, copyright and/or other intellectual property laws and treaties.

Without limiting the generality of the foregoing, you do not acquire any ownership rights in the Content as a result of accessing it, nor are you granted any rights for sale, resale, reproduction, licensing, sub-licensing, distribution, publishing, broadcast, transmission, performance or promotional use, for commercial or non-commercial purposes with respect to the Content, other than for your own personal use and enjoyment. You agree to abide by all copyright notices, information and restrictions contained in or displayed with the Content. These Terms do not grant

you any licence or other rights in connection with any trademarks or logos appearing on the Software. You may not use any trademark or service mark appearing on the Software without the prior written consent of the rightful owner. You are hereby advised that Eastlink will aggressively enforce our intellectual property rights to the fullest extent permitted by law, and that owners of any other intellectual property rights may also do so against you personally.

## **7. Use of the Software and Content**

You agree that the Software and Content include security technology that limits your use of the Content and that, whether or not Content is limited by security technology, you shall use the Content in compliance with the applicable usage rules established by Eastlink and its licensors ("Usage Rules"), and that any other use of the Content may constitute a copyright infringement. Any security technology is an inseparable part of the Content. Eastlink reserves the right to modify the Usage Rules at any time. You agree not to violate, circumvent, reverse-engineer, decompile, disassemble, or otherwise tamper with any of the security technology related to such Usage Rules for any reason, or to attempt or assist another person to do so. Usage Rules may be controlled and monitored by Eastlink for compliance purposes, and Eastlink reserves the right to enforce the Usage Rules without notice to you.

You agree not to modify the Software in any manner or form, or to use modified versions of the Software, for any purposes including obtaining unauthorized access to the Content. Violations of system or network security may result in civil or criminal liability.

Additional Usage Rules:

- You will not use the Software or Content for any unlawful purpose.
- You may not use the Software or Content for commercial purposes. You agree not to reproduce, duplicate, copy, sell, distribute, resell or exploit any portion of the Software and/or Content or use the Software and/or Content for any other purpose other than your personal, private, non-commercial purposes.
- You agree that you will not use the Software and/or Content to defame, harass, abuse, threaten or stalk others or to collect or attempt to collect personal information about users or other third parties.
- You agree not to, intentionally or otherwise, damage, overburden, impair or disable the Software and/or Content or any user's enjoyment of it by any means, including but not limited to uploading or otherwise disseminating viruses, worms, adware or other malicious code.
- You agree not to remove, circumvent, disable, damage or otherwise interfere with any security related features of the Software and/or Content, or other features that prevent or restrict the use or reproduction of any content accessible through the Software.
- You agree that you will not attempt to gain unauthorized access to the Software and/or Content or any computer system or networks connected to the Software and/or Content, through hacking, password mining or any other means or interfere or attempt to interfere with the proper operation of the Software and/or Content.
- You agree not to use framing techniques to enclose trademarks, logos or other materials posted on the Software or use any of our meta tags or other "hidden text" on the Software or

contained in the Content without our express written permission.

- You agree not to make unsolicited offers, advertisements, spam and proposals to other users through the Software.
- You agree not to modify, adapt, translate or create derivative works based on the Software or any part thereof.

## **8. Responsibility for Minors**

The Software does not have a parental control feature. By installing and using the Software you accept all responsibility to monitor and control access thereto by minors.

If you have authorized a minor to use the Software, then you agree to be fully responsible for: (i) controlling the minor's access to and use of the Software or Content; and (ii) the consequences of any misuse by the minor. You acknowledge that some parts of the Software and some of the Content may include material that is inappropriate for minors.

## **9. Objectionable Material**

You understand that by using the Software, you may encounter material that you may deem to be offensive, indecent, or objectionable, and that such content may or may not be identified as having explicit material. Nevertheless, you agree to use the Software at your sole risk and Eastlink shall have no liability to you for material that may be found to be offensive, indecent, or objectionable. Content descriptions are provided for convenience and you agree that Eastlink does not guarantee their accuracy.

## **10. Suspension and Termination**

**By Eastlink.** Eastlink may, in its sole discretion, at any time and without notice or liability, restrict, block, suspend or terminate any or all of your use of the Software (or any portion thereof) or your account, including where: (a) you fail to comply in full with any of these Terms or any other terms, agreements, or policies that apply to the Software and the use thereof, or (b) if the operation or efficiency of the Software is impaired by your use thereof. Any such termination will not relieve you of any obligation to pay fees accrued prior to such termination.

The Software is only available to subscribers of Eastlink's TiVo television service. If your Eastlink television service is suspended or terminated for any reason, you will no longer be able to access the Software or Content. Additionally, if your subscription to any programming service is suspended or terminated for any reason, you will no longer be able to access the related content via the Software.

**Of the Software.** Eastlink may at any time, without notice or liability, suspend or discontinue the Software (or any portion thereof). Your right to use the Software will terminate automatically if the service with which the Software is used is terminated or expired. You must delete the Software upon termination of your right to use it for any reason.

**By You.** To the extent permitted by applicable law, if you are dissatisfied with the Software or Content, or any portion thereof, or with any terms, conditions, rules, policies, guidelines, or practices of Eastlink in relation to the Software, your sole and exclusive remedy is to discontinue using the Software.

## **11. Indemnification**

To the maximum extent permitted by applicable law, you will defend, indemnify and hold harmless Eastlink and its affiliates, licensors, suppliers and agents (and each of their respective directors, officers, employees, shareholders and representatives) (collectively, the "Eastlink Parties") from and against all claims, liability, losses, actions, proceedings, suits, damages, settlements, penalties, fines, costs and expenses, including all reasonable legal fees and other litigation expenses, arising out of: (i) your breach of any provision of these Terms; (ii) your use, misuse or inability to use the Software or Content; or (iii) your violation, alleged violation or misappropriation of any intellectual property right or non-proprietary right of a third party. Eastlink may, in its sole discretion and at its own expense, assume the exclusive defence and control of any matter otherwise subject to indemnification by you. You will co-operate as fully as reasonably required in the defence of any claim. Your indemnification shall survive any termination of your right to use the Software.

## **12. No Warranties**

The Software and Content, and any material, information or postings found on or accessed through the Software, is provided on an "as is" basis. To the maximum extent permitted by applicable law, the Eastlink Parties expressly disclaim any and all representations, warranties and conditions, express and implied, including, without limitation, any and all representations and warranties of title and non-infringement, and all implied warranties and conditions of merchantable quality, fitness for any particular purpose, suitability for any particular purpose, and any representations, warranties or conditions arising from any course of dealing or usage of trade, with respect to the Software or content contained in or accessed through the Software. To the maximum extent permitted by applicable law, none of the Eastlink Parties makes any representations or warranties as to the performance, availability, accuracy, timeliness, reliability, secure operation, truthfulness or completeness of the Software, Content or other content contained in or accessed through the Software, including, without limitation, the contents, transmission or delivery of any Content, information, material, or posting found on the Software, any services provided through the Software, or any links to other web sites made available on the Software or the content contained on such site(s), or, the operation of the Software or any feature of the Software. To the maximum extent permitted by applicable law, none of the Eastlink Parties makes any representations or warranties that the Software, or access to and use thereof, will be continuous, accurate, uninterrupted, error-free, or free from defects, viruses or other harmful codes or components. With respect to Software, to the maximum extent permitted by applicable law, all representations, warranties and conditions of any kind, express or implied, are hereby excluded including any related to completeness of response, results and workmanlike effort for the Software. You expressly agree that use of the Software is at your sole risk.

Information provided within the Software may contain references or cross-references to Eastlink products and services that are not available in your local area and Eastlink makes no representations or warranties as to the availability of such products and services in your local area and such references do not imply that Eastlink intends to provide such products or services in your local area. Eastlink recommends that you consult with Eastlink Customer Care for information regarding the products and services which may

be available to you in your local area.

### **13. Limitations of Liability**

**Under no circumstances, including but not limited to negligence by an Eastlink Party, shall the Eastlink Parties be liable to you or any third party for:**

- i. any damages (including loss of profit or revenue, financial loss, loss of business opportunities, loss, destruction, interception, misdelivery or alteration of data, files, software or other information, breach of privacy or security or property damage) or any loss that results from the Support for any Software, the use of, or the inability to use the Software or any Content, information, material, or postings on the Software, directly or indirectly, or the transmission of confidential or sensitive information over the Internet, even if the Eastlink Parties have been advised of the possibility of such damages. You specifically acknowledge and agree that none of the Eastlink Parties shall be liable for any defamatory, offensive or illegal conduct of any user, including you; and**
- ii. any losses, claims, damages, expenses, liabilities or costs (including, without limitation, reasonable legal fees and other litigation expenses) resulting directly or indirectly out of, or otherwise arising in connection with, any claim that the use or intended use of the Software infringes the copyright, patent, trade-mark, trade secret, confidentiality, privacy, or other industrial or intellectual property rights or contractual rights of any third party.**

### **14. Other Important Terms**

Eastlink is a federally-regulated undertaking and, as such, these Terms, including all matters relating to validity, construction, performance and enforcement, shall be governed by applicable federal laws and regulations of Canada and only those provincial laws and regulations that are applicable to these Terms. These Terms are subject to amendment, modification or termination if required by such laws or regulations. If any provision in these Terms is declared to be invalid or in conflict with any such law or regulation, that provision may be deleted or modified, without affecting the validity of the other provisions. Please note that your rights and remedies may vary by province. To the extent permitted by law, you expressly agree that exclusive jurisdiction for any claim or dispute with Eastlink relating in any way to your use of the Software resides in the courts of Nova Scotia.

The Eastlink Acceptable Use Policy, Eastlink Consumer Terms of Service, and privacy policies (all of which are available at [www.eastlink.ca](http://www.eastlink.ca)) are incorporated by reference herein. The aforementioned documents, as amended from time to time, any other documents referenced herein and any rules, policies, guidelines or other agreements posted on the Software by Eastlink constitute the entire agreement between Eastlink and you with respect to your use of the Software and supersede any prior agreements between you and Eastlink, all to the extent permitted by applicable law.

Eastlink's failure to insist upon or enforce strict performance of any right or provision of these Terms shall not constitute or be construed as a waiver of any right or provision. No waiver by Eastlink of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default.

If any provisions (or parts thereof) contained herein shall be determined to be void, invalid, or otherwise unenforceable by a court of competent jurisdiction, such determination shall not affect the remaining provisions (or parts thereof) contained herein. If any portion of these Terms is unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect Eastlink's original intentions and the remainder of the provisions shall remain in full force and effect.

Except as otherwise provided for in these Terms, no amendments or modifications may be made to these Terms except in writing signed by both parties.

These Terms are binding upon and shall enure to the benefit of both parties and their respective successors, heirs, executors, administrators, personal representatives and permitted assigns. You may not assign or transfer these Terms without our prior consent. We may assign or transfer these Terms or any of our rights or obligations hereunder without your consent.

The sections of these Terms regarding conditions of use, ownership, no warranties and disclaimers, limitations of liability, indemnification, effects of termination and any other provisions which by their nature survive the termination of these Terms, will survive any termination of these Terms for any reason.

The section headings used herein are for convenience of reference only and do not form part of these Terms, and no construction or inference shall be derived therefrom.

Neither party shall be liable for any performance failure, delay in performance, or lost data under these Terms (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are caused by any causes beyond that party's reasonable control, including, without limitation, failure of suppliers, subcontractors, and carriers.

These Terms have been drawn up in the English language at the express request of the parties. Les présentes modalités ont été rédigées en anglais à la demande expresse des parties.

## **15. Contact Information**

If you have any questions regarding the Software or these Terms, you may contact Eastlink at [www.eastlink.ca](http://www.eastlink.ca) or by calling 1-888-345-1111.

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