

CanadaSurfs™ Customer Agreement

CanadaSurfs™ may change the terms of this Agreement from time to time by providing notice to you of such changes. YOUR NON-TERMINATION OR CONTINUED USE OF THE SERVICES AFTER NOTICE OF THE CHANGES CONSTITUTES YOUR ACCEPTANCE OF THIS AGREEMENT AS MODIFIED BY THE POSTED CHANGES. If you do not agree with any of the amendments to this Agreement, you agree to stop using the Services and to provide notice to CanadaSurfs™ of your termination of this Agreement in accordance with the paragraph 18.

Statement of Cancellation is set out on page 3.

1. Definitions:

- a) **"Additional Services"** means any services other than the Internet Services ordered by you pursuant to a Service Addendum;
- b) **"Agreement"** means the terms and conditions of this Customer Agreement and all Service Addendums, all as they may be amended from time to time;
- c) **"CanadaSurfs™"** means Broadband Surfer Canada Inc., a corporation duly incorporated under the laws of the Province of Alberta, Canada, operating as CanadaSurfs™;
- d) **"Customer Information"** means your customer information including details of your payment method, mailing address and email address;
- e) **"Effective Date"** means, for any specific Service, the date that such Service is made available to you and the Equipment that is required has been installed on the Premises;
- f) **"Equipment"** means a Point to Multipoint Subscriber Module together with all component parts and any additional equipment required to be installed at the Premises to access the Services and all replacements of such equipment;
- g) **"Fees"** means all fees detailed on the Invoice and includes the fees for the Services, installation, maintenance, repair and Equipment;
- h) **"Internet Services"** means the CanadaSurfs™ wireless internet access services which enable high speed internet connection at the Premises and includes any related installation services;
- i) **"Invoice"** means the document marked 'Invoice' setting out the Equipment installed and the Services purchased and the amount of the Fees owed;
- j) **"PC"** means your personal computer and all other hardware and software (other than Equipment that CanadaSurfs™ has agreed to install) required at the Premises needed to access and use the Services;
- k) **"Premises"** means the place where the Equipment is located;
- l) **"Service Addendum"** means a service addendum signed by you which sets out the terms and conditions of any additional services to be provided to you.
- m) **"Service Level Commitment"** means the service level commitment set out in Schedule A.
- n) **"Services"** means the Internet Services and the Additional Services;
- o) **"Term"** means, in relation to each Service, twelve (12) months from the Effective Date (the "Initial Term") of that Service plus all Renewal Terms until termination in accordance with this Agreement.

2. **Services:** Subject to the terms and conditions of this Agreement, CanadaSurfs™ agrees to provide the Services to you. For each Service, CanadaSurfs™ will use reasonable commercial efforts to meet the Service Level Commitment but CanadaSurfs™ shall have no obligations or liability in the event that it fails to meet the Service Level Commitment other than to provide a service credit as set out in the Service Level Commitment.

3. **Internet Services:** The Internet Services will normally be available to you if the Premises are within the operating range of CanadaSurfs™ broadcasting equipment. For Premises that are close to the edge of the operating range or where transmission is otherwise obstructed or interfered with then CanadaSurfs™ will not be able to commit to the Service Level Commitment. In that case, CanadaSurfs™ will inform you of same, which may occur after the Effective Date. Voice-over-IP and related 911 services may not work through the Internet Services.

4. **Renewal:** At the end of the Initial Term or a then current Renewal Term, as the case may be this Agreement shall automatically renew and continue in force for an additional one year term (each such renewal, a "Renewal Term").

5. **Fees.** CanadaSurfs™ may change the Fees from time to time by providing at least 60 days notice of such change prior to the start of any Renewal Term.

6. **Payment:** You agree to pay CanadaSurfs™ the Fees as indicated on the Invoice, plus all federal, provincial and municipal taxes and other applicable excise taxes when due. All Fees are due and payable on the due date as set out on the Invoice. CanadaSurfs™ may, at its option, require all Fees to be payable in advance. The first and last month's fee for any monthly service may be pro-rated. Interest is chargeable on overdue accounts at 1.5% per month (approximately 19.56% per annum), calculated and compounded monthly, in advance, on any amount due and remaining unpaid after any due date.

7. **Equipment:** Customer understands and agrees that the Internet Services require certain Equipment. ALL EQUIPMENT IS AT ALL TIMES THE PROPERTY OF CANADASURFS™. CanadaSurfs™ may at its option, provide you with new or reconditioned Equipment. If Equipment is defective or stops working for any reason, you will contact CanadaSurfs™, and CanadaSurfs™ will make commercially reasonable efforts to maintain, repair or replace the Equipment, in its sole discretion. You will be charged for same if CanadaSurfs™ determines that the Equipment is not working due to any neglect or abuse. You may not sell, transfer, lease, encumber or assign any Equipment to any other person. You shall not move the Equipment or repair, adjust or otherwise tamper with the Equipment without the express written consent of CanadaSurfs™. You will be charged the replacement cost for any lost, stolen, unreturned, damaged, sold, transferred, encumbered, annexed to real property or assigned Equipment, together with any incidental costs incurred by CanadaSurfs™ relating to the replacement of Equipment. You hereby authorize CanadaSurfs™ to charge your credit card for same or CanadaSurfs™ may, at its option, require you to provide a deposit for security against damage or the failure to return the Equipment. If you sell the Premises you must first provide reasonable notice to CanadaSurfs™ so that we are able to remove the Equipment before the sale occurs. CanadaSurfs™ reserves the right to require a security deposit for the Equipment. CanadaSurfs™ may require that you purchase incidental Equipment such as reflectors and tripods. On termination of the Services, CanadaSurfs™ shall have the right to repurchase the same from you at your cost less depreciation (3 years, straight-line), the minimum being \$1.00. In the event CanadaSurfs™ attends to service a problem relating to your service and such problem is not caused by the Equipment or the Services then you will be charged for such service call. This would apply, for example, if the Equipment is installed during the winter and the foliage on trees starts to interfere with Service during the spring or summer.

8. **NO WARRANTY:** ALL EQUIPMENT AND SERVICES ARE PROVIDED BY CANADASURFS™ WITHOUT ANY WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FOR THE CIRCUMSTANCES TO WHICH THEY ARE SUBJECTED OR ANY WARRANTIES ARISING FROM THE COURSE OF DEALING, USAGE OR TRADE. CANADASURFS™ SPECIFICALLY DISCLAIMS ALL WARRANTIES AND CONDITIONS THAT ARE IMPLIED BY STATUTE.

9. **SERVICE INTERRUPTIONS.** THE SERVICES AND OPERATION OF THE EQUIPMENT ARE PROVIDED "AS IS" AND "AS AVAILABLE". IT IS EXPECTED THAT FROM TIME TO TIME THERE WILL BE INTERRUPTIONS IN THE SERVICES OR THE OPERATION OF THE EQUIPMENT. IF YOU REQUIRE UNINTERRUPTED SERVICE THEN DO NOT ORDER THE SERVICES. CANADASURFS™ DOES NOT WARRANT THAT THE SERVICE WILL BE ERROR FREE OR VIRUS FREE OR THAT ANY DATA OR FILES SENT BY OR TO YOU WILL BE UNCORRUPTED.

10. **MODIFICATIONS OF WARRANTIES.** NO ADVICE OR INFORMATION GIVEN BY CANADASURFS™, ITS AFFILIATES,

LICENSORS, CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE A WARRANTY OR MODIFY A WARRANTY. ALL CHANGES TO THESE WARRANTY PROVISIONS ARE NOT EFFECTIVE UNLESS REDUCED TO WRITING BY CANADASURFS™.

11. **Security and Viruses.** You acknowledge that access to the Internet is inherently insecure and that when accessing the Internet you are exposing yourself to the risk that others will gain unauthorized access to your PC, read your communication or read documents on your PC or that it may become infected with a virus, worm, Trojan horse or other harmful device. It is your sole responsibility to take appropriate precautions to protect your PC from damage to its software, files or data as a result of any unauthorized access, virus or other harmful activity, event or device.

12. **Confidentiality.** Information transmitted through the Internet is generally not confidential. CanadaSurfs™ cannot and does not guarantee your privacy as a result of your use or connection to the Internet through the Services. All communication over the Services are sent over the public airwaves and are unencrypted and may be intercepted and read by others. Any information, including sensitive or confidential information sent by you is sent at your sole risk, and CanadaSurfs™ shall have no liability whatsoever for any loss or damage arising out of same.

13. **Privacy:** CanadaSurfs™ may monitor your use of the Services and any material transmitted or received over the Services and may collect, analyze, use and disclose any other information as needed to satisfy any legal obligation and to ensure the proper operation of the Services, to ensure you are complying with the terms of this Agreement and to protect CanadaSurfs™ and its other customers. Specific information on privacy rights and obligations are set out in CanadaSurfs™ Privacy Policy. A link to it can be found at: <http://www.canadasurfs.com>.

14. **ACCESS TO THE PREMISES:** You agree to provide the employees, agents, contractors and representatives of CanadaSurfs™ access at all reasonable times to the Premises to install, maintain, inspect, repair and remove the Equipment. If you are not the owner of the Premises, upon request, you will supply CanadaSurfs™ with the owner's name and address and evidence that you are authorized to grant access to the Premises on the owner's behalf, or (if requested) written consent to access the Premises from the owner.

15. **Your PC:** It is your responsibility to ensure that your PC meets the requirements set out by CanadaSurfs™ needed to use the Equipment and the Services, as posted online at: <http://www.canadasurfs.com>.

16. **Your Obligations:**

a) **Customer Information:** You agree to provide true and complete Customer Information. You also agree that you will provide timely updates to CanadaSurfs™ of any change in your Customer Information. You agree to provide to CanadaSurfs™ a valid working email address and you agree to read any email sent to that email address in a timely fashion.

b) **End User Licenses:** You agree to comply with all license and other agreements accompanying any software or Equipment that is provided to you by CanadaSurfs™. All such licenses will terminate upon termination of this Agreement.

c) **Multiple Users:** You assume all liability for any use of the Equipment or Services by anyone at the Premises and you are responsible for ensuring that all such other users understand and comply with the terms of this Agreement.

d) **Acceptable Use:** You agree to comply with the policy (the "Acceptable Use Policy") of permitted and prohibited use of the Services. A link to the Acceptable Use Policy can be found at <http://www.canadasurfs.com>. CanadaSurfs™ may terminate this Agreement for any violation of the Acceptable Use Policy by you or anyone else using the Services or the Equipment.

17. **Limitation of Liability:** The limitations of subsections 17(a) and (b) apply even if CanadaSurfs™ has been advised of or ought to have reasonably foreseen the possibility of any damage or loss occurring.

a) **General:** UNDER NO CIRCUMSTANCES SHALL CANADASURFS™, ITS AFFILIATES, LICENSORS, CONTRACTORS OR AGENTS OR THEIR RESPECTIVE EMPLOYEES BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF REVENUE OR PROFIT, LOSS OF

BUSINESS OPPORTUNITY OR DAMAGE, LOSS OR DESTRUCTION OF ANY SOFTWARE, FILE OR DATA, THAT RESULT IN ANY WAY FROM THIS AGREEMENT, OR YOUR USE OF OR INABILITY TO USE THE EQUIPMENT OR THE SERVICES OR ACCESS TO THE INTERNET, OR YOUR RELIANCE ON THE SERVICES OR EQUIPMENT OR THAT RESULT IN ANY WAY FROM ANY MISTAKE, OMISSION, INTERRUPTION, MALFUNCTION, BREAKDOWN, DELETION OF FILES, ERRORS, DEFECTS, THEFT, DESTRUCTION, DELAYS IN PREPARATION OR TRANSMISSION, COMPUTER VIRUS OR ANY OTHER HARMFUL FEATURE OR FAILURE OF PERFORMANCE ON THE PART OF CANADASURFS™, THE EQUIPMENT OR THE SERVICES.

b) **Limitation:** IN THE EVENT OF ANY BREACH BY CANADASURFS™, ITS AFFILIATES, LICENSORS, CONTRACTORS OR AGENTS OR THEIR RESPECTIVE EMPLOYEES, INCLUDING ANY NEGLIGENCE (INCLUDING GROSS NEGLIGENCE) BY CANADASURFS™, YOUR EXCLUSIVE REMEDY SHALL BE TO RECEIVE FROM CANADASURFS™ PAYMENT FOR ACTUAL AND DIRECT DAMAGES TO A MAXIMUM AMOUNT EQUAL TO THE MONTHLY FEES PAID BY YOU TO CANADASURFS™ IN THE THREE MONTHS IMMEDIATELY PRECEDING THE BREACH.

c) **No Liability for Content:** Some content on the Internet may be offensive, unsuitable for minors or non-compliant with local laws. You agree to accept all risks of loss or damage arising from any information or merchandise obtained through the Services by anyone. You agree to supervise all usage of the Services by minors.

d) **Your Liability and Indemnity:** CANADASURFS™ SHALL NOT BE LIABLE FOR, AND YOU HEREBY AGREE TO INDEMNIFY AND SAVE CANADASURFS™ HARMLESS FROM AND AGAINST ALL SUITS, CLAIMS OR JUDGMENTS HOWSOEVER ARISING (INCLUDING CANADASURFS™ LEGAL FEES ON A SOLICITOR AND HIS OWN CLIENT BASIS) OUT OF EACH OF THE FOLLOWING:

i) RELATED TO ANY BREACH OF THE TERMS OF THIS AGREEMENT BY ANY USER OF YOUR PC, THE EQUIPMENT OR THE SERVICES; AND

ii) CLAIMS FOR LIBEL, SLANDER, INFRINGEMENT OF TRADE-MARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY OR BASED ON ANY OTHER LEGAL THEORY HOWSOEVER ARISING FROM THE MATERIAL, DATA OR OTHER CONTENT OR TRANSMISSIONS TO OR FROM YOU OR YOUR PC USING THE SERVICES OR EQUIPMENT, WHETHER AUTHORIZED BY YOU OR NOT; AND

iii) ANY LOSSES, DAMAGES, EXPENSES OR OTHER CLAIMS BY ANY OTHER PERSONS RELATING TO THEIR USE OF THE SERVICES PROVIDED TO YOU; AND

iv) ANY AND ALL THIRD PARTY ACTIONS, SUITS, DEMANDS, CLAIMS, PROCEEDINGS, JUDGMENTS, COSTS AND EXPENSES ARISING FROM OR INCIDENTAL TO THE FOREGOING.

18. **Termination:** Upon termination of this Agreement for any reason, you agree that you will grant CanadaSurfs™ access to the Premises to remove the Equipment or, at the request of CanadaSurfs™, you will deliver the Equipment to CanadaSurfs™ (at its address for notice provided herein), and in either event, you will promptly return to CanadaSurfs™ (at its address for notice provided herein) all copies of any software provided to you by CanadaSurfs™.

a) **Termination by CanadaSurfs™:**

i) **Termination Without Notice:** CanadaSurfs™ may immediately terminate this Agreement and the Services at any time without notice to you, (A) if CanadaSurfs™ is unable to obtain payment from you by the due date set out in the Invoice, (B) if you resell the Services, (C) if you make a false or misleading representation to CanadaSurfs™, (D) if you fail to allow access to the Premises in accordance with section 14 hereof, or (E) if you or any user who uses your Services or the Equipment breach any term of this Agreement. Upon such termination, you

will immediately pay CanadaSurfs™ a lump sum equal to the monthly fee for the Services multiplied by the number of months remaining in the Initial Term or the then current Renewal Term, as the case may be. At CanadaSurfs™ discretion, CanadaSurfs™ may waive the above fee, reinstate the Services and this Agreement provided you agree to pay all amounts due and a reactivation fee as determined by CanadaSurfs™.

- ii) **Termination with Notice:** CanadaSurfs™ may terminate this Agreement for any other reason, at any time, upon reasonable notice to you. Upon such termination, you will pay CanadaSurfs™ all fees incurred up to the date of termination.
- b) **Termination by you:** You may give written notice of your intention to terminate this Agreement at any time, for any reason. Upon such termination, you will immediately pay CanadaSurfs™ a lump sum equal to the monthly fee for the Services multiplied by the number of months remaining in the Initial Term or the then current Renewal Term, as the case may be, and such termination will be effective on the last day of the month following the month in which your termination notice is received by CanadaSurfs™. Notwithstanding the foregoing, you will only be obligated to pay the Fees up to the date of termination in the event that you give notice of termination and (a) written notice that you do not agree with an amendment to this Agreement within 14 days of the notice of the amendment or (b) written notice that you do not want the Service within 14 days of CanadaSurfs™ providing you notice that it is unable to commit to the Service Level Commitment.

19. **Disputes:** Any claim, dispute or controversy (whether in contract or tort, pursuant to statute or regulation, or otherwise, and whether pre-existing, present or future) arising out of or relating to: (a) this Agreement; (b) the Services or the Equipment; (c) oral or written statements, advertisements or promotions relating to this Agreement, the Services or the Equipment; or (d) the relationships which result from this Agreement or the Services (including relationships with third parties) (the "Dispute"), will be referred to and determined by a sole arbitrator (to the exclusion of the courts). Notice of a Dispute and a request to arbitrate shall be given and will initiate the arbitration process. Arbitration will occur at such location designated by CanadaSurfs™ within Alberta and within 100 km of the Premises. Arbitration of any Dispute will be in accordance with the laws then in effect in the Province of Alberta. You agree to waive any right you may have to commence or participate in any class action against CanadaSurfs™ related to any dispute and, where applicable, you also agree to opt out of any class proceedings against CanadaSurfs™.

20. **Notice:** Any notice required to be given to CanadaSurfs™ shall be in writing and delivered to: 1,27004 TWP Rd 514, Spruce Grove, Alberta, T7Y 1G5 or by Fax: 780-669-1002. Any notice required to be given to you pursuant to this Agreement may be given by sending you an email message or, at CanadaSurfs™ option, notice may be delivered to the address set out in the Customer Information. Any email notice sent to you at the email address in your Customer Information shall be deemed received the day following its sending.

21. **General:** The failure of either party to exercise any option herein or to insist upon the strict interpretation of this Agreement shall not be a waiver of any right or option, but the same shall continue to be in full force and effect. This Agreement is governed by and shall be construed in accordance with the laws of the Province of Alberta. This Agreement, the Invoice and the Acceptable Use Policy constitute the entire Agreement and understanding between the parties with respect to the subject matter of this Agreement and supersede and replace any and all prior written or verbal agreements. This Agreement, the Equipment and the Services may not be assigned, transferred, resold or sublicensed without CanadaSurfs™ prior written consent, which consent may be withheld by CanadaSurfs™ in its sole discretion. Any term, covenant or condition of this Agreement, or any portion thereof which is held to be invalid or unenforceable shall be severed and the remainder shall not be affected thereby.⁷⁶

22. **Survival of Terms:** The obligations described in sections 6, 7, 8, 9, 14, 17, 18, 19, 20 and 21 hereof and this section survive the expiration or earlier termination of this Agreement for any reason.

SCHEDULE A
SERVICE LEVEL COMMITMENT

"Service Level Commitment" shall mean that the particular Service is available 99.9% of the time in each month less Regular Maintenance and Unplanned Outages.

"Regular Maintenance" shall mean activities undertaken by CanadaSurfs™ to maintain and enhance the Services.

"Unplanned Outages" shall mean any delay, failure or outage that is not planned such as those caused by third party software or hardware or a third party service provider, including without limitation, Internet network infrastructure services or a *force majeure* including, but not limited to, government restrictions, labor strike, war, act of civil or military authority, sabotage, epidemic, flood, earthquake, fire, weather, lightning or other natural phenomenon.

1. CanadaSurfs™ shall use reasonable efforts, in the ordinary course of its business, to provide the Services in accordance with the Service Level Commitment. In the event the Service Level Commitment is not met, CanadaSurfs™ shall provide you with a credit off the fee for the following month's Service equal to the monthly fee for the particular Service multiplied by the difference between the Service Level Commitment and the percentage of time that the Service was available during the month.

CanadaSurfs™ shall be entitled to conduct Regular Maintenance. CanadaSurfs™ shall make all reasonable efforts to ensure that all Regular Maintenance is conducted at a time when all customers' use is at a minimum.

Buyer's Right to Cancel

You may cancel this contract from the day you enter into the contract until 10 days after you receive a copy of the contract. You do not need a reason to cancel. If you do not receive the goods or services within 30 days of the date stated in the contract, you may cancel this contract within one year of the contract date. You lose that right if you accept delivery after the 30 days. There are other grounds for extended cancellation. For more information, you may contact your provincial/territorial consumer affairs office. If you cancel this contract, the seller has 15 days to refund your money and any trade-in, or the cash value of the trade-in. You must then return the goods. To cancel, you must give notice of cancellation at the address in this contract. You must give notice of cancellation by a method that will allow you to prove that you gave notice, including registered mail, fax or by personal delivery.

Customer's Name_____

Customer's address and place contract entered_____

Date:_____

Price of equipment: _____

Total Price for one year: _____

Installation Date _____

Customer's Signature: _____

Supplier's Signature: _____

Representative's Name: _____