



Schedule 2 End User Service Agreement

This Agreement made as of the date in Schedule 1 and executed by the User is evidence of the following Agreement between *Andrews Wireless*, a division of James Andrews Ltd. (“Andrews”) and the End User described in Schedule 1 (the “User”) for the services (the “services”): and equipment (the “equipment”) described hereafter.

1. This Agreement:

- 1.1 The User described in Schedule 1 acknowledges that this agreement governs the provision for and payment for the services and the equipment described in this agreement and schedules.
- 1.2 This agreement is governed by the laws of the Province of Ontario.
- 1.3 This agreement may not be assigned by the User without the consent of Andrews. The User may not resell the service or any part thereof or any of the installed equipment without the written consent of Andrews. In the event that the User does execute any assignment, or resale, it shall not be effective, and in particular, the User shall continue to remain liable to Andrews for all the obligations of the User under this agreement and any extra costs that Andrews may incur to rectify the assignment or resale. Andrews may assign this agreement on notice to the User. Notice shall not be required if any assignment is part of normal financial security arrangements of Andrews.

2. Services Provided

- 2.1 **Services and Terms:** Andrews shall provide to the User the services for the term in Schedule 1. Andrews will make all reasonable best efforts to provide quality service to the extent that such service is within the control of Andrews. However, the User acknowledges that Andrews cannot guarantee the speed or reliability of any uploads or downloads, and that service may be dependant on factors beyond Andrews’ control, including, without limiting the foregoing, acts of God, weather, civil or military unrest or uncertainty, Bell Canada interruption, Internet traffic, or User’s equipment. User acknowledges that the service does not function in the event of power failure. A power failure or any other disruption may require you to reset or reconfigure the equipment, including your computer system, prior to utilizing or reutilizing the service. Until cancelled or terminated as provided in the service agreement, the term and the service agreement will continue. Following the expiry of any Initial Service Period, the Service Agreement will automatically renew for successive terms of a duration to be determined by Andrews, in its sole discretion, and communicated to the User in advance, at the then-applicable monthly rate until cancelled or terminated as provided herein.
- 2.2 **Changes in Service:** Andrews may change the service or fee at any time upon 30 days written notice to the User.
- 2.3 **Changes in Antenna:** The User acknowledges that any change in the service may require a realignment and/or relocation of any antenna at the sole expense of the User.
- 2.4 **User’s Equipment:** User acknowledges that Andrews has advised the User of the computer requirement for the proper use of the service and that use of any other equipment or software by the User may affect the quality of the service for which Andrews is not responsible, and that the User remains responsible for the User fees and also continues to be bound by the terms of this agreement. Andrews makes no representation, warranty or covenant that any future modifications to the service will be compatible with the equipment or any other equipment or software. From time to time, the minimum system requirements may change, and you will be duly notified of any such change by visiting www.andrewswireless.net, our Internet site. Accordingly, unless you update your equipment or software, or in some cases, purchase new or additional equipment or software, your current equipment or software may cease to be adequate to access and receive the service. In such event, your sole remedy will be to terminate the service agreement within 15 days notification to Andrews and upon verification of equipment incompatibility by Andrews.
- 2.5 **Service and Equipment:** Andrews will supply their own equipment, which will be installed by Andrews or its designated installers. Andrews may install IP addresses in your hardware or software for the duration of your service with Andrews. These addresses are NOT portable and remain the property of Andrews. Users may not use any address that is not explicitly issued by Andrews. Any User using unapproved addresses shall be in violation of Paragraph 3.3 of this document. Andrews is not responsible for any damage to or loss of data or software from your computer while installing, operating or maintaining Andrews’ services. Andrews does not guarantee universal compatibility of its equipment. Andrews will provide support only for the Andrews high-speed service components. Andrews will not provide support to components or software that Andrews did not provide to the User specifically for use in maintaining your connection to the Internet and the Andrews network. Users must supply a broadband router if necessary. If Andrews equipment becomes inoperable due to any factory defect or failure, Andrews will replace or repair their equipment in whole or in part at its sole discretion at no cost to the User. However, the User assumes full responsibility for the operation, maintenance, and protection of Andrews equipment. The agreed value of Andrews wireless equipment is five hundred dollars (\$500.00). The User agrees to pay this amount to Andrews on demand should the equipment be lost or destroyed for any reason. The User agrees to return the equipment to Andrews at the conclusion of the contract term in good operating and undamaged condition, or pay the above mentioned value of the equipment to Andrews.

3. Limits on Use of Service and on Andrews’ Liabilities:

- 3.1 **Excessive Bandwidth use by User:** Andrews uses the same fair access policy to treat the access, frequency and speed for all Users. To enforce this policy, Andrews reserves the right to monitor the User’s access, throttle back and/or charge any usage that Andrews in its unfettered discretion deems to be unfair to Andrews other Users. Residential accounts are permitted ten (10) GB for the 750 Kbps package, twenty (20) GB for the 1.2 Mbps package, and thirty (30) GB for the 3.0 Mbps package, of bandwidth monthly. For commercial accounts, forty (40) GB for the 1.2 Mbps package or fifty (50) GB for the 3.0 Mbps package, of bandwidth monthly.

permitted. Overage charges will apply for accounts exceeding these limits and will be automatically charged to your credit card account. Continual excessive monthly bandwidth usage may result in termination of the User's service. In the event Andrews fails to bill you or under bills you for a charge, you will not be responsible for paying the previously unbilled or under billed charge except where:

- i) in the case of recurring charge, you are correctly billed within a period of one (1) year from the date the charge was incurred; or
- ii) in the case of a non-recurring charge, you are correctly billed within a period of one hundred and fifty (150) days from the date the charge was incurred.

3.2 **Security:** The User is solely responsible for their account and the use of their email password. The User is responsible for all use of their account, by anyone. If you believe there has been unauthorized access to your account you must change your password and notify Andrews immediately. The User agrees that the Andrews service is not to be considered a secure communications medium and that no expectation of privacy is given to you or to any User of your account. The encryption of your wireless router is your sole responsibility and must be completed by you immediately upon purchase to comply with this contract. If you believe that there has been unauthorized access to your wireless router, you must change your encryption immediately. Should Andrews receive a complaint, Andrews will investigate the complaint and at its sole discretion may suspend or terminate the account(s) involved and/or may remove any material from its servers. Users will be notified if this is done. Andrews reserves the right to release User information to comply with an investigation into any activity that may violate these terms, and may report such activities to the appropriate authorities.

3.3 **Prohibited use of Service:** The User shall not use the service for any illegal or immoral purposes, including, without limiting the generality of the foregoing, for any illegal use of any intellectual property rights, or for any obscene, or criminal activities. Programs that generate excessive bandwidth traffic, including file sharing programs are not allowed (eg. Kazaa, Bit Torrent, Limewire, etc.) Andrews may in its own unfettered discretion terminate the User's services for any breach of this section of the agreement. Andrews prohibits the sending of mass emails or unsolicited commercial email (also known as SPAM) via its service. Andrews prohibits engaging in any predatory activity, including but not limited to the unauthorized accessing of the other Internet devices or appliances, the dissemination of predatory or damaging broadcasts such as viruses, Trojans, worms or other remotely activated software or hardware agents. Any Andrews' User engaging in this or other behavior that poses a threat to, or damages other Andrews' Users shall have their accounts terminated without notice and will forfeit any prepayments they have paid. Users terminated for the reasons described in this paragraph will be liable for any payments due for the remainder of their contract term, and/or any other costs payable under this agreement and/or costs incurred by Andrews due to the misuse of the service. Andrews reserves the right to monitor any and all communications and activity through or with the Andrews service to ensure adherence. In addition to the general terms set out above, while posting to newsgroups or any other discussion forum, you are prohibited from conducting activities that include, but are not limited to:

- i) Posting advertisements, commercial or unsolicited messages of any kind, unless expressly permitted by the charter or FAQ of the applicable newsgroup or discussion forum.
- ii) Posting binary or excessively large files of any kind, unless expressly permitted by the charter or FAQ of the applicable newsgroup or discussion forum.
- iii) Posting substantially identical messages to more than ten (10) newsgroups.
- iv) Attaching an excessively long signature to your messages.
- v) Forging the headers of your postings in any way.

3.4 **Software:** Andrews makes no warranties as to any software that may be used in any of the systems used to provide the service.

3.5 **Limit on Liabilities of Andrews:** User acknowledges that Andrews only installs the equipment for the service and arranges for the provision of the service for Internet downloads and uploads. Andrews is not liable in any way for any interruptions in the service due to acts or neglect of third parties or acts of God. Andrews is not responsible for any content that comes over the service, and, without limiting the generality of the foregoing, Andrews is not liable for any damages caused by any interruption, viruses, corrupted data, or for any damage caused by the service or the equipment or its installation whether arising directly or indirectly. Andrews is not responsible for damage in any way and no matter how caused to any equipment, software, and content, loss of files or data. In the event of any breach by Andrews, its affiliates, suppliers, or authorized contractors, including without limitation any breach of a fundamental term or any negligence, your exclusive remedy will be to receive from Andrews' payment for actual and direct damages to a maximum amount of one hundred dollars (\$100.00). Other than the foregoing remedy, under no circumstances will Andrews, its affiliates, suppliers or authorized contractors be liable to the User or any third party, whether in contract, tort or otherwise, and even if Andrews, or any of its affiliates, suppliers or authorized contractors, has been advised of the possibility of such liability, for:

- i) any direct, indirect, special, exemplary, punitive or consequential damages, including; without limitation, loss of profits and loss of business opportunities that result in any way from the service or the service agreement, including without limitation, the use, or unavailability for use, of the service, the equipment, software or services or access to the Internet, or any part thereof, by the User or any other person through your account, any loss, death, injury or damage whatsoever which may be caused by the design, manufacture, installation, operation or malfunction of any equipment, any breakdown or failure of any equipment, delays in the servicing of any equipment, inability to access the network or signal, or your reliance on or use of information, services or merchandise provided on or through the service, or that result from mistakes, omissions, interruptions, deletion or corruption of files, errors, defects, delays in preparations, or transmission, failure of performance, or
- ii) any losses, expenses (including without limitation legal fees) or other amounts arising out of, or in connection with the service or the service agreement, including without limitation, any allegation, claim, suit or other proceeding based upon a contention that the use of the service, the equipment or any software or services by the User or a third party through your account infringes the intellectual property rights or the contractual rights of any third party.

3.6 **No Liability for Content:** Be aware that some content, products or services available with or through the service may be offensive to the User or may not comply with applicable laws. The User understands, however, that any content may be subject to "caching" at intermediate locations on the Internet when being accessed through the service. The User assumes total responsibility and risk for access to or use of any such content and for use of the Internet. Andrews and its affiliates, suppliers, or authorized contractors assume no liability whatsoever for any claims or losses arising out of or otherwise relating to access to or use of such content.

3.7 **Termination and Suspension:** Andrews shall have no responsibility to notify any User of termination or suspension of their account. If Andrews finds it necessary to terminate or suspend your account due to non-payment, item 3.3 or if the service is requested to be suspended by the User, a fifteen dollar (\$15.00) reactivation charge will automatically be levied to your account.