

goZoom.ca

Terms of Service

GOZOOM.CA INC. IS PROVIDING HIGH SPEED INTERNET (THE "SERVICE") TO YOU ON THE TERMS SET OUT BELOW. **YOU MUST READ AND AGREE TO THESE TERMS OF SERVICE BEFORE USING THE SERVICE.**

1. **AGREEMENT:** These Terms of Service, your signed Service Agreement and Site Survey, our Acceptable Use Policy, and all other policies posted on our Web site at www.gozoom.ca/legal.htm constitute the entire agreement (the "Agreement") between you and goZoom.ca Inc. ("goZoom.ca", "goZoom.ca Inc." or "us" or "we") with respect to your use of the Service. By establishing an account or using the Service, you agree to be bound by and to use the Service in compliance with the Agreement. We may change, add or remove portions of the Agreement at any time. We will notify you of any changes to the Agreement by a posting on our web site, or by email, postal mail, or other means. Continued use of the Service following notice of the changes means that you agree to and accept the Agreement as amended. If you do not agree to the changes, your sole and exclusive remedy is to stop using the Service and notify us that you are terminating the Agreement.

2. **THE SERVICE:** The Service includes the services specified on your Service Agreement and any other services that we may provide to you from time-to-time. goZoom.ca Inc. provides the Service on a "reasonable effort" basis and does not guarantee upload or download speeds. Service speed can vary depending on location, weather, inside wiring, Internet traffic, and other factors beyond our control. We have established a Fair Access Queue to ensure equitable access for all goZoom.ca Inc. subscribers. To ensure this equity, customers may experience some temporary throughput limitations. This Queuing policy applies to all service plans.

3. **CHANGES TO SERVICE:** We reserve the right to change the Service, the monthly fees or administrative charges at any time upon 30 days notice. You understand that the wireless facilities used to provide the Service might change from time-to-time. Furthermore you agree that if there is a change in wireless facilities, you may be required to re-align and/or relocate your antenna at your own expense, or to permit goZoom.ca to do so for you, at our discretion, in order to continue to receive the Service.

4. **TERM:** This Agreement will begin upon the activation of the Service and will continue for 3 months as specified on your signed Service Agreement. You acknowledge that you will not cancel the Service during this period. This period may also be referred to as the 'initial term'. Upon expiry of the initial term, we will continue to provide the Service to you on the same Service plan (or on a similar Service plan if the same Service plan is no longer available) and in such an event the Agreement as outlined in section one (1) of these Terms of Service will be automatically renewed on a monthly basis beginning on the 1st of each month and until terminated in accordance with Section 12.

5. **FEES:** You agree to pay us the amount outline in the Service Agreement plus applicable taxes. You must provide us with accurate and complete billing information including your legal name, address, telephone number, and

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billing/payment information, and report all changes to this information to us within 30 days of the change.

6. **PAYMENT:** You authorize us to charge the Fees by pre-authorized payment plan that you specify when you purchase the Service. The automatic billing will be made on the first banking day of the monthly billing cycle in advance. We are not responsible for any fees for overdrawn accounts, exceeding credit card limits, or similar expenses resulting from automatic billing. Failure to pay in full prior to the 15th calendar day following the invoice date will constitute a delinquent account. Delinquent accounts may be suspended or canceled at our sole discretion. Should an account become delinquent for one (1) or more calendar months, goZoom.ca may then declare the account in breach and may exercise, at our discretion, unqualified termination of your account. Upon all account terminations goZoom.ca may then choose to exercise our right to reclaim our equipment ('The Equipment') in full, as originally installed on your premises, and as documented on your signed Service Agreement form. The Equipment or access to remove The Equipment must be provided to goZoom.ca within five (5) business days of account termination. The Equipment will be inspected for unreasonable 'wear and tear' or signs of neglect and, or, abuse and additional fees may be applied at our discretion, and paid by you, based upon the condition of The Equipment. Alternatively goZoom.ca may bill an additional charge to reinstate a suspended account prior to the removal of The Equipment. If you have questions regarding your account, you must contact us at 1-877-622-0093 GOZOOM.CA INC. All charges are considered valid unless disputed in writing within 60 days of the billing date. Adjustments will not be made for charges that are more than 60 days old.

7. **EARLY CANCELLATION:** You agree that if you terminate your subscription to the Service prior to the expiration of the initial term, we have the right, in addition to all other amounts due to us pursuant to these Terms of Service, as liquidated damages and not as a penalty, to retain in full the balance of the amount remaining on the initial term payment as detailed on your signed Service Agreement. Upon cancellation of service goZoom.ca retains the right to remove, or have removed, all equipment installed by goZoom.ca, it's representatives, contractors or service personnel as related to the Service.

8. **SOFTWARE LICENCE:** goZoom.ca Inc. grants you a limited, nonexclusive, non-transferable and non-assignable license to install and use any goZoom.ca Inc. software (including software from third-party vendors), associated documentation, and any updates ("Licensed Programs"). You will use the Licensed Programs solely in conjunction with the Service and for no other purpose. We may modify the Licensed Programs at any time, for any reason, without providing notice to you. The Licensed Programs are confidential and proprietary information of goZoom.ca Inc. and our licensors and embody trade secrets and intellectual property protected under Canadian copyright laws, other laws, and international treaty provisions. All right, title, and interest in the Licensed Programs, including associated intellectual property rights, are and will remain with goZoom.ca Inc. and our licensors. You will not translate, reverse-

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engineer, distribute, remarket, or otherwise dispose of the Licensed Programs or any part thereof.

9. **REQUIRED EQUIPMENT:** You acknowledge that we have informed you of the recommended minimum computer requirements for the efficient operation of the Service. If you install the Service on a computer that does not meet the recommended minimum computer requirements, you will not be entitled to receive customer support for any issues other than the quality of the signal delivered to your equipment. We do not represent or warrant that a non-recommended configuration will enable you to access, operate or use the Service, nor that any such installation will not cause damage to your computers, peripherals, software or data.

10. **WIRELESS INSTALLATION:** Because the goZoom.ca Inc. Wireless network is highly sophisticated, a professional goZoom.ca Inc. certified installation technician must install the Wireless equipment. You are responsible for all costs and scheduling associated with the installation. You are also responsible for all inside wiring necessary to install the Service and any additional hardware or parts required. Installation and use of the Equipment may result in service outages or potential damage to your computer. You are solely responsible for backing up all existing computer files. goZoom.ca Inc. and its employees, agents, contractors, and representatives shall have no liability whatsoever for any damage to or loss or destruction of any of your hardware, software, files, data, peripherals, buildings, windows, vehicles, or other electronic devices. You assume responsibility for impacts on or loss of any warranty associated with the opening of your computer for installation. **INSTALLATION DOES NOT INCLUDE LIGHTENING PROTECTION OR PROTECTION FROM ELECTRICAL SERVICE. THE CUSTOMER MUST SEEK OUT INDEPENDENT ADVICE AND HAVE PROFESSIONAL LIGHTENING AND ELECTRICAL PROTECTION INSTALLED. THE CUSTOMER WAIVES THE RIGHT TO HOLD GOZOOM.CA LIABLE FOR ANY ELECTRICAL OR LIGHTENING, OR OTHER DAMAGE CAUSED BY THE EQUIPMENT. GOZOOM.CA INC. IS ONLY THE SERVICE PROVIDER. GOZOOM.CA INC. DOES NOT REPRESENT, WARRANT, OR COVENANT THAT EQUIPMENT INSTALLATION WILL NOT CAUSE DAMAGE TO YOUR COMPUTER, DATA, SOFTWARE, FILES, PERIPHERALS, BUILDINGS, WINDOWS, VEHICLES, OR OTHER ELECTRONIC DEVICES. IN ADDITION, GOZOOM.CA INC. SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE, OR FOR THE FAILURE TO PROPERLY INSTALL, ACCESS, USE, OR OPERATE THE EQUIPMENT OR SERVICE THIS LIMITATION OF LIABILITY IS IN ADDITION TO AND IN NO WAY LIMITS ANY AND ALL LIMITATIONS OF LIABILITY SET FORTH ELSEWHERE IN THE AGREEMENT.**

11. **DISCLAIMER AND LIMITATION OF LIABILITY: THE SERVICE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. WE DO NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. FURTHER, WE DO NOT WARRANT THAT ANY DATA OR FILES SENT BY OR TO YOU**

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WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICE IS WITH YOU. WE MAKE NO EXPRESS WARRANTIES AND WAIVE ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE REGARDING THE SERVICE OR ANY MERCHANDISE, INFORMATION OR SERVICE PROVIDED THROUGH THE SERVICE OR THE INTERNET GENERALLY. NO ADVICE OR INFORMATION GIVEN BY OUR REPRESENTATIVES OR US SHALL CREATE A WARRANTY. GOZOOM.CA INC. AND ITS EMPLOYEES AND AGENTS ARE NOT LIABLE FOR ANY COSTS OR DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM YOUR USE OF THE SERVICE OR THE INTERNET INCLUDING ANY INDIRECT, INCIDENTAL, EXEMPLARY, MULTIPLE, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES. IN ANY EVENT, GOZOOM.CA INC.'S CUMULATIVE LIABILITY TO YOU FOR ANY AND ALL CLAIMS RELATING TO THE USE OF THE SERVICE SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY YOU DURING THE PREVIOUS THREE MONTH PERIOD. FURTHERMORE, GOZOOM.CA INC. SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS RESULTING FROM: OTHER USERS ACCESSING YOUR COMPUTER; SECURITY BREACHES; EAVESDROPPING; DENIAL OF SERVICE; ATTACKS; INTERCEPTION OF TRAFFIC SENT OR RECEIVED USING THE SERVICE; YOUR RELIANCE ON OR USE OF THE EQUIPMENT OR SERVICES, OR THE MISTAKES, OMISSION, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, TRANSMISSIONS, OR ANY FAILURE OF PERFORMANCE OF THE EQUIPMENT OR SERVICES; THE USE OF THE EQUIPMENT OR SERVICES BY YOU OR A THIRD PARTY THAT INFRINGES THE COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY, OR OTHER INDUSTRIAL OR INTELLECTUAL PROPERTY RIGHTS, PROPRIETARY RIGHTS OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY.

12. TERMINATION: Either you or we may terminate this Agreement at any time after the initial term as defined in Item 4 of this agreement upon written notice given to the other party. If you should fail to pay the Fees or to pay any other amount owed to us at the times and in the amounts specified, or otherwise breach these Terms of Service, we may terminate the Service without notice and without any liability whatsoever. Reactivation of the Service may result in a reactivation charge payable by you as established by us. If we are prevented from providing the Service by any law, regulation, requirement, notice or ruling issued in any form whatsoever by judicial or government authority, or decide to cease offering the Service, you acknowledge and agree that we may immediately cease providing the Service without any liability to you. Upon cancellation of service goZoom.ca retains the right to remove, or have removed, all equipment

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installed by goZoom.ca, it's representatives, contractors or service personnel as directly related to the Service.

13. GENERAL: The laws of the province in which you are using the Service exclusively govern this Agreement. We may sell, assign, or transfer your account to a third party without notice to you. You may not assign or transfer the Service without our written consent.

14. RULES OF USE: A user of the Service shall not, intentionally or unintentionally:

- 14.1 post, transmit or otherwise distribute material which is known, or ought to be known to be false, unlawful, harassing, libelous, defamatory, profane, invasive of another's privacy, abusive, threatening, harmful, vulgar, obscene, sexually explicit, hateful or otherwise objectionable;
- 14.2 post, transmit or otherwise distribute material which constitutes, or encourages conduct that would constitute, a criminal offense or give rise to civil liability, or otherwise use the Service in a manner which is contrary to law or would serve to restrict or inhibit any other user of the Service from using or enjoying the Service or the Internet;
- 14.3 post, transmit or otherwise distribute messages constituting "spam" including, without limitation, unsolicited e-mail messages, inappropriate postings to news groups, false commercial messages, mail bombing (i.e. sending mass amounts of e-mail to one system with the intent of impairing the function of such system) or any other abuse of e-mail or news group servers (and except as otherwise defined under applicable law, "unsolicited e-mail" does not include any message: (i) addressed to an individual with whom the sender has a pre-existing and ongoing business or personal relationship; or (ii) received from a non-commercial organization or entity of which the user is a pre-existing member;
- 14.4 post, transmit or otherwise distribute non-public information about companies, business entities or Government Entities;
- 14.5 post, transmit or otherwise distribute any software which contains a virus, bug, malicious code, "trojan horse", "worm" or other harmful or disruptive component;
- 14.6 upload or download, post, publish, retrieve, transmit, or otherwise reproduce, distribute or provide access to information, software or other material which: (i) is confidential or is protected by copyright or other intellectual property rights, without prior authorization from the rights holder(s); (ii) is defamatory, obscene, child pornography or hate literature; or (iii) constitutes invasion of privacy, appropriation of personality, or unauthorized linking or framing;
- 14.7 send unsolicited e-mail messages including, without limitation, junk mail, chain mail, commercial advertising and informational announcements;
- 14.8 post, transmit or otherwise distribute material substantially similar in content to ten (10) or more news groups, forums, automated e-mail lists or other similar groups or lists (each a "List"), or post, transmit or otherwise distribute material to any List that violates or is inconsistent with the terms of use or other owner-published description of such List;
- 14.9 breach, or attempt to breach (or "hack"), the security of any computer network;
- 14.10 access, or attempt to access, an account without the right to do so;
- 14.11 breach the terms of the agreement under which such user obtains the right to use the Service from the Customer, or breach the terms of the agreement under which Customer procures the Service from goZoom.ca Inc;
- 14.12 improperly restrict, inhibit, disrupt or degrade the use of the Service by any other party or improperly restrict, inhibit, disrupt or degrade our ability to deliver the Service;
- 14.13 perform or attempt to perform a malicious act which may reasonably result in harm or damage to the network, or to another party's hardware, software, privacy, use of the Service, or use of the Internet;

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- 14.14 install automated search and retrieve programs or similar automated and manual routines which generate excessive amounts of Internet traffic;
 - 14.15 provide access to our Services beyond the boundaries for which it was originally installed by us, through a dial-up connection, wireless, or similar means;
 - 14.16 provide a Web hosting service, FTP or other content serving application, or peer to peer applications including, but not limited to, Aimster, Audio-Galaxy, Bit Torrent, KaZaA, Morpheus, Napster;
 - 14.17 engage in any activity which violates generally accepted standards of Internet conduct and usage, including but not limited to, denial of service attacks, web page defacement, port and network scanning and unauthorized system penetrations;
15. **MONITORING:** goZoom.ca Inc. has no obligation to monitor the Service. However, in order to protect itself and its subscribers, goZoom.ca Inc. will be entitled to electronically monitor the Service from time to time and disclose any information concerning end users necessary to satisfy any law, regulation or lawful request. goZoom.ca Inc. will not intentionally monitor or disclose any private e-mail message unless required by law. goZoom.ca Inc. reserves the right to refuse to post, or to remove any information or materials, in whole or in part, that it determines, in its reasonable discretion, are unacceptable, undesirable, or in violation of this Policy.
16. **PRIVACY:** GOZOOM.CA INC. CANNOT GUARANTEE PRIVACY. YOUR MESSAGES MAY BE THE SUBJECT OF UNAUTHORIZED THIRD PARTY INTERCEPTION AND REVIEW. GOZOOM.CA INC. THEREFORE RECOMMENDS THAT THE SERVICE NOT BE USED FOR THE TRANSMISSION OF CONFIDENTIAL INFORMATION.
17. **SYSTEM AND NETWORK SECURITY:** Users are prohibited from violating any system or network security measures including but not limited to engaging in unauthorized access or use of goZoom.ca Inc.'s or a third party's network, data or information. Users are unauthorized to monitor goZoom.ca Inc. or third party's data, systems or network traffic. Users are prohibited from interfering with the provision of service to any user, host or network by any means.
18. **BLOCKED PORTS AND PROTOCOLS:** goZoom.ca Inc reserves the right to block, at its discretion, any TCP and or UDP Ports, as well as any other network protocols, to maintain the stability of the Service. Furthermore goZoom.ca may disconnect, or otherwise isolate any or all customers to maintain the stability of the Service. The duration of these measures, and their requirement and implementation shall be at the sole discretion of goZoom.ca Inc. **FURTHER GOZOOM.CA INC SHALL NOT BE LIABLE FOR ANY LOSS OF SERVICES OR RESTRICTED FUNCTIONALITY THAT MAY BE RELATED TO THESE ACTIONS.**
19. **INSTALLED EQUIPMENT:** goZoom.ca retains all ownership of any Fixed Wireless, or WiMax equipment installed. The customer is responsible for the full purchase price of all equipment should said equipment be lost, destroyed, or otherwise damaged through negligent or intentional act by the customer or any persons acting on their behalf or with their knowledge. Should equipment fail or require replacement in order to maintain the Service, for any reason other than fault of the customer, goZoom.ca shall make commercially reasonable effort to



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restore the service on an interim measure until such time as the equipment is replaced under warranty repair with said equipment's manufacturer or authorized repair depot. All warranty issues, interactions and concerns are between goZoom.ca and the manufacturer of the equipment. OUTAGES IN EXCESS OF 48 HOURS RESULTING FROM EQUIPMENT FAILURE MAY, SOLELY AT THE DISCRETION OF GOZOOM.CA INC, BE CREDITED TO THE FOLLOWING MONTH'S SERVICE CHARGE. NO REIMBURSEMENT IN FULL OR IN PART SHALL BE PROVIDED IN ANY MANNER OTHER THAN SERVICE CREDIT. ANY PENDING SERVICE CREDITS DO NOT SUPERSEDE CONTRACT BREACH AND TERMINATION AS OUTLINED IN SECTION 6. WHILE GOZOOM.CA INSTALLS ALL EQUIPMENT BASED ON THE MANUFACTURERS GUIDELINES IT IS THE CUSTOMERS SOLE RESPONSIBILITY AT THEIR EXPENSE TO ENSURE ALL WIRING IS PERFORMED TO APPLICABLE STANDARDS AND CODES. THE CUSTOMER IS RESPONSIBLE TO PROVIDE WIRING FOR THE EQUIPMENT AND DAMAGE THAT THE EQUIPMENT MAY CAUSE. THE CUSTOMER WAIVES THEIR RIGHT FOR ANY LEGAL ACTION AGAINST GOZOOM.CA INC. IN RELATION TO ANY EQUIPMENT INSTALLED BY GOZOOM.CA AND ANY DAMAGE THAT EQUIPMENT MAY CAUSE.

20. BREACH OF POLICY AND REMEDIATION: In the event that the Customer, a Subscriber or any user of the Service does not comply with this, or any other Policy as deemed necessary by us, then in addition to any other rights and remedies available to it, goZoom.ca Inc. may, after using reasonable commercial efforts to resolve the breach of the Policy with the Customer, and with as much notice to the Customer as is reasonable in the circumstances:

- (i). limit or discontinue the provision of Service to the Remote Terminal of a user who has contravened the foregoing prohibitions;
- (ii). block postings, transmissions or distributions which, in goZoom.ca Inc.'s sole reasonable discretion, violate this Policy, before such items are forwarded or otherwise sent to their intended recipients.

21. LIMITATION OF REMEDIAL ACTION: Nothing contained in this Policy shall be construed to limit any right or remedies otherwise available to goZoom.ca Inc. in law or equity. goZoom.ca Inc. reserves the right to take any and all lawful actions it deems appropriate to curtail any contravention of this Policy, including without limitation, investigating suspected contraventions, taking action to recover the costs and expenses caused by offenders.

22. YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO BE BOUND BY ALL TERMS AND CONDITIONS OUTLINED IN THIS TERMS OF SERVICE AGREEMENT AS WELL AS ANY ADDITIONAL AGREEMENTS OUTLINED IN SECTION 1 OF THIS AGREEMENT.

GOZOOM.CA INC
20APRIL2005
Updated 28JAN2010