

# BROADNET SERVICE AGREEMENT

## Conditional Use of the Service

Iristel Customers are solely responsible for all access to the Service through their Account. By accessing and using the Service or otherwise agreeing to be bound by the terms and conditions of the Service Agreement, the Customer agrees to the terms and conditions contained in this Service Agreement, including without limitation the provisions regarding fees, charges and expenses herein.

The Customer further agrees to comply with and use the Service in accordance with the Acceptable Use Policy attached to this Service Agreement, any anti-spam related documents and agreements provided to the Customer by Iristel, any such other policies, practices and agreements respecting the Service referenced herein or to which the Customer may be directed when registering for or using the Service, and all applicable laws.

The Customer agrees to indemnify and hold Iristel, its affiliates, agents and suppliers harmless from all liabilities and expenses related to any violation of this Service Agreement by the Customer or any user of the Customer's account, or in connection with the use of the Service.

The Customer may not sell, market, provision, resell, re-market, directly or indirectly transfer, distribute or in any way exploit any portion of the Service.

The Customer will not use the Service in a manner that is contrary to any applicable law or regulation, and will abide by Iristel's policies, including without limitation the Acceptable Use Policy, which sets forth additional rules that govern the Customer's activity in connection with the Service. Without limiting the foregoing, the Customer may not use the Service, or permit, assist or allow the Service to be used for any abusive purpose or in any way that damages Iristel's property or interferes with or disrupts the Service, Iristel's network or other users.

## Fees and Charges

The Customer agrees that the Service is provided subject to payment of the monthly service rates, any applicable usage charges, installation fees and/or activation fees, the Service Modem Fees (defined in Section 20), if any, and other fees and charges, if any, together with all applicable taxes and charges, identified to the Customer upon placement of the order for Service or as otherwise identified to the Customer by Iristel from time to time (collectively, the "**Service Fees**"). Service Fees may be amended by Iristel from time to time. For current rates and fees, go to <http://www.iristel.ca>. Please note that rates and fees posted on the above-mentioned website do not include applicable taxes or any long distance or other charges. Service fees and charges for partial months of Service use will be prorated, except upon cancellation of the Service by the Customer as provided in Section 4 of this Service Agreement.

In the event Iristel fails to bill or under bills the Customer for a charge, the Customer will not be responsible for paying the previously unbilled or under billed charge except where:

- i. in the case of a recurring charge, the Customer is 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, the Customer is correctly billed within a period of one hundred and fifty (150) days from the date the charge was incurred.

Invoices for the use of the Service are issued monthly and are available by accessing <https://accounts.iristel.net/Accounts/> with the Customer's username and password.

A late payment charge applies when payment has not been received twenty one (21) days after the date of the statement of account for Service. This charge is a monthly compound rate of 1.5%. An administrative fee will be charged for any payments returned for non-sufficient-funds ("NSF"). The Customer agrees to pay Iristel an administration fee of \$15.00 every time we are unable to withdraw the month's charges from the Customer's bank account due to NSF. No charge disputed by Customer can be considered past due unless Iristel, at its sole discretion, has reasonable grounds for believing that the purpose of the dispute is to evade or delay payment.

The Customer acknowledges that Iristel will not issue cheques for refunds for amounts lower than ten dollars (\$10.00). The Customer agrees that any refunds lower than ten dollars (\$10.00) will be credited against the Customer's account.

The Customer has the option to pay for the Service by credit card or by preauthorized payment acceptable to Iristel. By providing such information, the Customer expressly authorizes Iristel to charge his or her credit card (and any replacement credit card) or use the pre-authorized payment method to collect any outstanding amounts owing during the Term under the Service Agreement or under any other agreement, or otherwise owed to Iristel. It is the Customer's responsibility to ensure that the billing information provided to

Iristel, including address and credit card or bank account information, remains current at all times. The Customer agrees to notify Iristel of any changes to their billing information. If Iristel discovers that:

- i. a credit card is not valid or a bank account is closed;
- ii. the Customer has revoked Iristel's authorization to make withdrawals; or
- iii. Iristel cannot reach the Customer or access monetary funds to get paid for the Service provided, Iristel will be entitled to terminate the Agreement or suspend the Service, upon which termination or suspension the Customer will become liable for all applicable termination and other fees.

### **Cancellation or Termination of the Service**

The Customer's order for the Service will be confirmed and the Customer will have entered into a binding contract with Iristel when:

- (i) the Customer submits his or her online or door-to-door order, as applicable and it is received and confirmed by Iristel by email or other form; or
- (ii) the Customer's phone order is confirmed by email or other form; provided however that Iristel at its sole discretion may reject any order for the Service described in either of (i) or (ii) within ten (10) business days from the submission of the Customer's order for the Service. If subsequent to the confirmation the Customer cancels the order prior to activation of the Service, the Customer will still be charged for the shipping charges, in case the equipment has been sent prior to his cancellation request. To cancel an order, Customers must call 866-779-4747.

Once activated, the Service may be cancelled by the Customer by calling Iristel at the number listed in the preceding paragraph. If the subscription to the Service is not subject to an Initial Service Period (defined below) and the Customer cancels the Service, charges will not be pro-rated for the billing period in which the Customer cancels the Service, and the Customer's Account will be terminated once the equipments are returned to Iristel, or thirty (30) days from the date of notice of cancellation to Iristel in case no equipment is required in return. The Customer's Account will be charged the regular Service Fees until the end of the cancellation month and Non-Return Fee (defined in Section 20), if any, and other applicable fees and charges, plus all applicable taxes, for that 30-day termination period.

If the Customer's subscription to the Service is subject to an initial commitment period of 12 months or longer, within the Term, as selected by the Customer upon subscribing to the Service or from time to time thereafter (the "**Initial Service Period**"), charges will be applicable if the Customer cancels the Service during such Initial Service Period (the "**Termination Charges**"). The Customer will pay either the charges corresponding to the remaining months until the end of the contract, or the difference between the discounted price that the customer had for signing up for a longer period, and the regular prices, whichever charge is lower, to the extent permitted by applicable law, as the amount representing a reasonable estimate of damages suffered by Iristel as a result of early termination and not as a penalty.

Iristel may waive the Termination Charge if during the Initial Service Period the Customer migrates to another BroadNet Internet service offered by Iristel with monthly fees no lower than those associated with the Service originally subscribed to and for a duration at least as long as the Initial Service Period. If the Customer cancels the Service prior to the end of the Initial Service Period as a result of a material change in the Service, the Termination Charge will be waived by Iristel.

Until cancelled or terminated as provided in this Service Agreement, the Term and this Service Agreement will continue. Following the expiry of any Initial Service Period, the Service Agreement will automatically renew for successive terms equal to or less than the duration of the Initial Service Period, as determined by Iristel at its sole discretion and communicated to the Customer in advance, until cancelled or terminated as provided herein. The then-applicable rate will apply to such renewal terms.

### **Termination/Discontinuance of Service**

Iristel reserves the right to discontinue providing services generally, or to terminate the Customer's Service, at any time at its sole discretion. If Iristel discontinues providing services generally, or terminates a Customer's Service at its discretion without a stated reason, the Customer will only be responsible for charges accrued through the date of termination, including a pro-rated portion of the final month's charges. If a Customer's Service is terminated for any stated reason, including without limitation violation of this Agreement, or because of any improper use of Iristel's services (such as, but not limited to, attempts to hack, disrupt, or misuse Iristel's services), the Customer will be responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable.

For any Account Services that include also a voice package, the Customer will be charged a disconnect fee of \$39.99 per line upon any premature termination of Service (except when termination results from Iristel discontinuing services generally or terminating a Customer's Service at its discretion without a stated reason or when the Customer returns Iristel devices within thirty (30) days of the line activation (please see also 1h) as stated above). The disconnect fee will be billed directly to the Customer's credit card/bank account.

**Return of Iristel Devices:** Iristel devices may be returned to Iristel within thirty (30) days of the line activation provided that:

- (i) the Customer has retained proof of purchase and original packaging and
- (ii) (ii) the returned Iristel items are undamaged and in original condition, and iii) that all documentation and packaging materials are returned in good order. If a Customer receives Iristel cartons and/or devices that are visibly damaged, please note the damage on the carrier's freight bill or receipt and keep a copy of same. Keep the original carton, all packing materials and parts intact and contact Iristel's Customer Care department immediately.

Warranty coverage varies depending on the type of device that the Customer chooses. Please refer to the Iristel warranty materials included in the packaging of the Iristel device(s). After the thirty (30) day prescribed time limit, all disbursements for purchase of Iristel devices by the Customer will be non-refundable at time of termination of Iristel services by the user and/or Iristel.

The Customer acknowledges that, under no circumstance, should there be any refund for the shipping charges or the utilization fees based on a pro-rated period all of which immediately become due and payable when the Customer returns the said devices. It is clearly understood by the Customer that the Iristel devices are subsidized by Iristel and that the true value of the devices are \$400.00 per DSL unit. Iristel devices are subsidized by Iristel for its clients and are sold on the Iristel website at [www.iristel.ca](http://www.iristel.ca). The Customer understands that in the case of damage to a rented Iristel unit or in the case of non-payment of the Customer's Iristel account, the full amount of \$400.00 plus applicable taxes will be charged to the Customer's account to cover the cost of the Iristel subsidized hardware.

### **The Service**

The Service subscribed to is the particular Residential or Corporate Internet Service identified to the Customer upon placing an order with Iristel. The following is a general description of services provided by Iristel, which are subject to change in accordance with Section 10.

The **BroadNet Platinum** Internet service includes:

- i. a high speed Internet connection;
- ii. depending on the particular Service offering available to and selected by the customer:
  - (A) unlimited bandwidth usage; or
  - (B) bandwidth usage with a limit on the combined download (from the Internet to the Customer) and upload (from the Customer to the Internet) bandwidth activity.

In the case of (B), the limit is 100 gigabytes upload and 100 gigabytes download. Extra gigabytes are \$8/gigabyte up to a maximum of \$55. An additional charge will apply for bandwidth activity that exceeds this limit. It is the Customer's responsibility to monitor and manage their monthly download and upload bandwidth activity;

iii. Web mail access;

iv. One dynamic or one static IP address (depending on the selected service);

v. the BroadNet Internet service technical support package described below; and

vi. the e-mail package described below.

The **BroadNet Gold** service includes:

i. a high speed Internet connection;

ii. depending on the particular Service offering available to and selected by the Customer:

(A) unlimited bandwidth usage; or

(B) bandwidth usage with a limit on the combined download (from the Internet to the Customer) and upload (from the Customer to the Internet) bandwidth activity.

In the case of (B), the limit is 60 gigabytes upload and 60 gigabytes download. Extra gigabytes are \$8/gigabyte up to a maximum of \$55. An additional charge will apply for bandwidth activity that exceeds this limit. It is the Customer's responsibility to monitor and manage their monthly download and upload bandwidth activity.

iii. Web mail access;

iv. One dynamic or one static IP address (depending on the selected service);

v. the BroadNet Internet service technical support package described below; and

vi. the email package described below.

The **BroadNet Silver Internet service** includes:

i. an Internet connection;

ii. depending on the particular Service offering available to and selected by the Customer:

(A) unlimited bandwidth usage; or

(B) bandwidth usage with a limit on the combined download (from the Internet to the Customer) and upload (from the Customer to the Internet) bandwidth activity.

In the case of (B), the limit is 60 gigabytes upload and 60 gigabytes download. Extra gigabytes are \$8/gigabyte up to a maximum of \$55. An additional charge will apply for bandwidth activity that exceeds this limit. It is the Customer's responsibility to monitor and manage their monthly download and upload bandwidth activity.

iii. Web mail access;

iv. One dynamic or one static IP address (depending on the selected service);

v. the BroadNet Internet service technical support package described below; and

vi. the e-mail package described below.

The **BroadNet Bronze Internet service** includes:

i. an Internet connection;

ii. depending on the particular Service offering available to and selected by the Customer:

(A) unlimited bandwidth usage; or

(B) bandwidth usage with a limit on the combined download (from the Internet to the Customer) and upload (from the Customer to the Internet) bandwidth activity.

In the case of (B), the limit is 60 gigabytes upload and 60 gigabytes download. Extra gigabytes are \$8/gigabytes up to a maximum of \$55. An additional charge will apply for bandwidth activity that exceeds this limit. It is the Customer's responsibility to monitor and manage their monthly download and upload bandwidth activity.

iii. Web mail access;

iv. One dynamic or one static IP address (depending on the selected service);

v. the BroadNet Internet service technical support package described below; and

vi. the email package described below.

### **Email**

The Customer is provided with BroadNetMail, which includes up to 11 e-mail addresses (one parent address with 2 gigabytes of storage space and up to 10 additional addresses with 250 megabytes of storage space per address).

### **Included BroadNet Internet Service Technical Support:**

The Service will include general technical support, from Monday to Sunday, from 6 AM to 7 PM. For those support issues that cannot be resolved by Iristel's general technical support staff, additional and more specialized, technical support will be available.

Questions and problems arising from the installation, operation and use of software and hardware, other than in relation to the basic connectivity to the Service through supported browsers and supported email software on systems meeting the minimum system requirements, are outside the scope of BroadNet Internet Service Technical Support and any such out-of-scope support will be provided only in Iristel's sole discretion. From time to time, Iristel may refer the Customer to third parties and third party websites, including without limitation for training, support, maintenance, hardware and software. The Customer understands and agrees that all such references are provided as a courtesy only, are without guarantee, are used at the Customer's sole risk; and that Iristel, together with its affiliates, agents and suppliers, will not be liable for, and hereby disclaims all liability for, such referrals, third parties and their websites, products and services and any damages arising there from.

The Customer may be eligible to receive, at extra cost, additional telephone technical support in regards to additional applications not supported through the included BroadNet Internet Service Technical Support. Details of such additional support and of the terms and conditions thereof, are available from Iristel at 866-779-IRIS (4747).

### **Service Availability**

The Service is only available for use in Ontario and Quebec where technology permits and on Iristel telephone lines or on residential telephone lines supplied by other local exchange carriers which use local loop (telephone line) facilities. A maximum of two (2) Service connections per residential address is permitted. The Customer acknowledges and agrees that Iristel shall conduct a telephone number check upon placing an order, which will be used only as a preliminary check to determine if the Service is available in the Customer's geographical area. Due to the nature of the Service technology, Iristel reserves the right to deem the Service unavailable to the Customer up to, during, and

after the installation. Iristel assumes no liability whatsoever for any claims, damages, losses or expenses arising out of or otherwise relating to the unavailability of the Service in the Customer's geographical area, even where such unavailability occurs after installation of the Service.

### **Minimum System Requirements and Equipment**

It is the Customer's responsibility to ensure that his or her computer system meets the current minimum system requirements made available by Iristel and provided at [www.iristel.ca](http://www.iristel.ca), as being necessary to use the Service. From time to time, the minimum system requirements may change, and the Customer will be duly notified of any such change in accordance with this Service Agreement. Accordingly, unless the Customer updates his or her computer equipment, it may cease to be adequate to access the Service. In such event, the Customer's sole remedy will be to terminate this Service Agreement, in accordance with Section 4 hereof.

### **Proprietary Rights**

The Customer acknowledges and agrees that all content available on this website is protected by copyright, trademarks, service marks, patents, trade secrets, or other proprietary rights and laws. Except as expressly authorized by Iristel Inc., the Customer agrees not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit, or create derivative works from such materials or content. Notwithstanding the above, the Customer may print or download one copy of the materials or content on this website on any single computer for their personal, non-commercial use, provided the Customer keeps intact all copyright and other proprietary notices. Systematic retrieval of data or other content from this website to create or compile, directly or indirectly, a collection, compilation, database or directory without written permission from Iristel Inc. is prohibited. In addition, use of the content or materials for any purpose not expressly permitted in these Terms of Service is prohibited.

As noted above, reproduction, copying, or redistribution for commercial purposes of any materials or design elements on this website is strictly prohibited without the express written permission of Iristel Inc.

### **Change in Residential Telephone Service**

If a change in the Customer's local telephone service is requested from their local phone company – if local phone company is other than Iristel – it is the Customer's sole responsibility to advise Iristel of the changes. This includes moves, regardless of whether the phone number changes or not, changes to the Customer's phone number, and any other changes that may occur to the Customer's local telephone service. Any applicable cancellation and/or re-installation charges will be charged to the Customer's account.

### **Contact Information**

If the Customer has any questions regarding Iristel or the terms and conditions of this Service Agreement, they may contact Iristel, Customer Care, at 675 Cochrane Drive

East Tower, 6th Floor, Markham, ON L3R 0B8 OR by email to [customercare@iristel.ca](mailto:customercare@iristel.ca), telephone: 1-866-779-IRIS (4747), or by fax: 1-416-848-7921.

### **User Information/Other Information**

The Customer's messages may be the subject of unauthorized third party interception and review. An individual with Internet access can cause, among other things, damage, incur expenses and enter into contractual obligations while on the Internet. All such matters are the Customer's sole responsibility. Iristel is under no obligation to monitor the Service, any content or the Customer's use of Iristel's networks. However, the Customer agrees that Iristel reserves the right from time to time to monitor the Service electronically, monitor or investigate content or the Customer's use of Iristel's networks, including without limitation bandwidth consumption, and to disclose any information necessary to satisfy any laws, regulations or other governmental request from any applicable jurisdiction, or as necessary to operate the Service or to protect itself or others.

The Customer hereby acknowledges that Iristel, its affiliates, agents and suppliers may retain and use any information, comments or ideas conveyed by the Customer relating to the Service (including any products and services made available on the Service). This information may be used to provide the Customer with better service. Iristel may send the Customer service-related information on a regular basis via e-mail addressed to the Customer's BroadNet parent e-mail address or to another e-mail address provided by the Customer to Iristel (in which case it is the Customer's responsibility to ensure that such e-mail address remains current at all times). The Customers agree to review and to familiarize themselves with all such Service related information, and Iristel is not liable for any damage or detriment to the Customer or their property resulting from their failure to do so. The Customer's continued use of the Service following delivery of any such Service related information means that they accept and agree to comply with such information.

### **No Liability for Content**

Be aware that some content, products or services (the "**Content**") available with or through the Service may be offensive to the Customer or may not comply with applicable laws. The Customer understands that neither Iristel nor any of its affiliates attempt to censor or monitor any such Content. The Customer understands however, that such Content may be subject to "caching" at intermediate locations on the Internet when being accessed through the Service. The Customer assumes total responsibility and risk for access to or use of such Content and for use of the Internet. Iristel and its affiliates assume no liability whatsoever for any claims or losses arising out of or otherwise relating to access to or use of such Content.

### **The Customer Can Best Control the Risk and Therefore Is Responsible**

The rates and fees charged by Iristel reflect the allocation of risk herein and the limited recourse to Iristel provided for in this Service Agreement. Iristel will not assume any responsibility for Customer acts or omissions or those of any individual who uses the Customer's Account with or without their knowledge or consent, including without limitation responsibility for any charges incurred when making purchases or conducting

other transactions with the Service. As between Iristel and the Customer, the Customer is better able to put in place physical and procedural impediments to the inappropriate use of and to supervise their Account. Account and password protection shall be the Customer's responsibility. Any detriment that is caused to the network as a result of a failure to properly secure a Customer's computer system may result in the cancellation of the Service.

### **The Service Modem**

A DSL modem (the "**Service Modem**") is required for use of the Service. If a Service Modem is rented to the Customer by Iristel, separate and additional Service Modem fees, as described to the Customer prior to such rental, may apply (the "**Service Modem Fees**"). Iristel Devices may be returned to Iristel within thirty (30) days of the line activation provided that:

- (i) the Customer has retained proof of purchase and original packaging and
- (ii) Iristel items returned are undamaged and in original condition and
- (iii) that all documentation and packaging materials are returned in good order.

If a Customer receives Iristel cartons and/or devices that are visibly damaged, please note the damage on the carrier's freight bill or receipt and keep a copy of same. Keep the original carton, all packing materials and parts intact and contact Iristel's Customer Care department immediately. Warranty coverage varies depending on the type of device that Customer chooses. Please refer to the Iristel warranty materials included in the packaging of the Iristel device(s).

After this thirty (30) day prescribed time limit, all disbursements for purchase of Iristel devices by the Customer will be non-refundable at time of termination of Iristel services by the Customer and/or Iristel. The Customer acknowledges that, under no circumstance, should there be any refund for the shipping charges or the utilization fees based on a pro-rated period all of which immediately become due and payable when the said devices are returned.

If a Service modem has been provided to the Customer by Iristel, the Customer agrees to use and maintain such device, and all other hardware and software delivered to the Customer, in compliance with the applicable operating instructions provided by Iristel, its agents and/or suppliers. The Customer also agrees to return such materials, at their own risk, in good repair and working order. In the event that such materials are not in good repair and working order upon their return, subject to reasonable wear and tear, the Customer will be charged an amount equal to the cost incurred by Iristel in repairing or replacing such materials. Until returned to and received by Iristel, the Customer bears the entire risk of theft of, damage to or destruction of these materials. All of the Customer obligations in respect of the Service Modem, and all other hardware and software delivered to the Customer, will survive the expiration or termination of this Service Agreement to the extent required for their full observance and performance.

### **Limited Warranty**

To the extent permitted by applicable law, the Service, Service Modem and any software or other deliverables provided by Iristel, its agents and/or suppliers hereunder are provided "as is" and "as available" without warranties or conditions of any kind. The Customer is responsible for the use and compatibility of the Service with any

equipment, software, services and/or other materials not provided by Iristel (the “**Third Party Equipment and Services**”). Iristel disclaims all responsibility for determining compatibility between the Service and any third party equipment and services. To the extent permitted by applicable law, neither Iristel nor any of its affiliates, agents and/or suppliers warrants the performance, availability, uninterrupted or error free use of or operation of the Service or any deliverable provided under this Service Agreement. The entire risk as to the availability and performance of the Service or any deliverable provided under this Service Agreement is with the Customer. Further, neither Iristel nor its affiliates, agents and/or suppliers warrant that any data or files sent by or to the Customer will be transmitted, transmitted in uncorrupted form or transmitted within a reasonable period of time, that such data or files will not be intercepted, that other persons will not gain access to the Customer’s account, the Service, any of the Customer’s computer equipment, or that any content or other material accessible through the Service is free of viruses or other harmful components, or will not be subject to “caching” at intermediate locations on the Internet when being accessed through the Service.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, IRISTEL MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND WHATSOEVER, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR NON-INFRINGEMENT, OR IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE SERVICE, HARDWARE, SOFTWARE OR ANY OTHER SERVICES OR DELIVERABLES PROVIDED HEREUNDER, OR ANY MERCHANDISE, INFORMATION, CONTENT OR SERVICE PROVIDED ON THE INTERNET, AND ALL REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED ARE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, HEREBY EXCLUDED.

### **Limitation of Liability**

In the event of any breach by Iristel, its affiliates, suppliers, or agents, including any breach of a fundamental term or any negligence, the Customer’s exclusive remedy shall be to receive from Iristel payment for actual and direct damages to a maximum amount of one hundred dollars (\$100.00). Other than the foregoing remedy, under no circumstances shall Iristel, its affiliates or its agents be liable to the Customer or any third party 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 this Service Agreement, including the use of the Service or access to the Internet, or any part thereof, by the Customer or any other person through the Customer’s Account, or the Customer’s 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, or failure of performance, or

- ii. any losses or expenses (including legal fees) arising out of, or in connection with any allegation, claim, suit or other proceeding based upon a contention that the use of the Service by the Customer or a third party through their Account infringes the intellectual property rights or contractual rights of any third party.

Without limiting the generality of the foregoing, Iristel, its affiliates, suppliers or agents are not liable for:

- i. any act or omission of a telecommunications carrier whose facilities are used in establishing connections to points which Iristel does not directly serve;
- ii. defamation or copyright infringement arising from material transmitted or received over Iristel's or its affiliates' facilities; or
- iii. infringement of patents arising from combining or using customer provided facilities with Iristel's or its affiliates' facilities.

### **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable laws of Canada, without regard to its conflict of law provisions. The Customer and Iristel agree to submit to the personal and exclusive jurisdiction of the courts located within the Province of Ontario. The failure of Iristel to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. The Customer agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of Iristel's services or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

### **Miscellaneous**

This Service Agreement, together with the Acceptable Use Policy, any pre-authorized payment authorization form, any invoice terms, any order form or verification of order form, any Software License Agreement(s) for software provided to the Customer in connection with the Service, any additional terms and conditions applicable to the Value-Added Services ("**Value-Added Services Terms and Conditions**"), which may be provided to the Customer in connection with the Service or to which the Customer may be directed when registering for, installing or using the Service, each as they may be amended or provided to the Customer from time to time and any and all policies, practices and documents referenced herein or therein, or to which the Customer may be directed when registering for or using the Service, constitute the entire agreement and understanding between the Customer and Iristel with respect to the provision of the Service, and shall supersede and replace all prior agreements, understandings and representations, written or oral, regarding Iristel's BroadNet High Speed Internet Service.

Unless expressly stated otherwise, to the extent of any conflict or inconsistency between this Service Agreement and any other document forming part of the agreement between the Customer and Iristel, the terms of this Service Agreement shall supersede and prevail only for BroadNet related subject matter. With respect to the Value-Added Services, unless expressly stated otherwise, to the extent of any conflict or inconsistency between any Value-Added Services Terms and Conditions and any other document forming part of the agreement between the Customer and Iristel, the Value-

Added Services Terms and Conditions shall supersede and prevail. Iristel's failure to insist upon or enforce strict performance of any provision of this Service Agreement shall not be construed as a waiver of any provision or right.

Where any provision of this Service Agreement conflicts with an applicable tariff, the tariff shall supersede this Service Agreement only in respect of the conflicting provision.

Iristel may assign its rights and obligations under this Service Agreement to any affiliated entity without the Customer's prior written consent. The Customer may not assign or transfer this Service Agreement. In no event shall Iristel be liable for any failure to comply with this Service Agreement if such failure results from any condition or event beyond the reasonable control of Iristel, including, but not limited to, terrorism, hacking, security breach, fire, flood, earthquake, and any other elements of nature or acts of God, theft, riot, strike or other labor disturbance, power failure or war.

The parties have required that this Service Agreement and all documents relating thereto to be drawn up in English.

### **Iristel BroadNet Internet Services – Acceptable Use Policy Introduction**

Iristel is committed to being a responsible network citizen. To assist Iristel in protecting the usefulness and enjoyment of the Internet, the Customer agrees to abide by the terms of this Acceptable Use Policy (the "AUP"). Any violation of this AUP will constitute a violation of the terms of this Service Agreement and may result in the termination of such Service Agreement and/or suspension of the Customer's Service hereunder. To learn more about this AUP, contact Iristel via e-mail at [customercare@iristel.ca](mailto:customercare@iristel.ca).

For the purposes of this AUP, "Internet host" means any computer or electronic device connected to the Internet. Terms not otherwise defined in this AUP will have the meanings set out elsewhere in the Service Agreement.

### **General**

The Service is solely for the Customer's personal and commercial use; without limitation, the Customer may not use the Service or any equipment provided in connection with the Service for operation of an Internet Service Provider's business. Harassing or abusive language or actions, whether verbal, written or otherwise, of Iristel's employees, suppliers, agents and representatives is strictly prohibited and will not be tolerated. The Customer is prohibited from using the Service for activities that include, but are not limited to:

- Transmitting unsolicited messages which, in the sole judgment of Iristel, cause significant disruption or elicit complaints from other Internet users.
- Restricting or inhibiting any other user from using or enjoying the Internet, impairing the operations or efficiency of the Service or creating an unusually large burden on our networks, or otherwise generating levels of Internet traffic sufficient to impede other users' ability to transmit or receive information.
- Harassing users or groups in any way including but not limited to defaming, abusing, stalking, threatening or otherwise violating the legal rights of others.
- Impersonating other BroadNet subscribers or other Internet service providers' subscribers in any way.

- Uploading or downloading, transmitting, posting, publishing, disseminating, receiving, retrieving, storing or otherwise reproducing, distributing or providing access to information, software, files or other material which
  - (i) are confidential or protected by copyright or other intellectual property rights, without prior authorization from the rights holder(s);
  - (ii) are defamatory, obscene, child pornography or hate literature; or (iii) constitute invasion of privacy, appropriation of personality, or unauthorized linking or framing.
- Falsifying or deleting any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file or other data.
- Transmitting, posting, publishing, disseminating, receiving, retrieving, storing or otherwise reproducing, distributing or providing access to any files, program or information designed to assist users in defeating copyprotection, registration and any other anti-theft mechanisms associated with commercial or shareware programs.
- Transmitting, posting, receiving, retrieving, storing or otherwise reproducing, distributing or providing access to any program or information designed to assist in the fraudulent use of telecommunications services. Using an Internet host's resources in a manner which is not authorized by its administrators. This includes mail relaying, transmitting chain letters, make-money-fast or pyramid style schemes of any sort.
- Posting or transmitting any information or software which contains a virus, "cancelbot", "trojan horse", "worm" or other harmful or disruptive component.
- Transmitting, posting, receiving, retrieving, storing or otherwise reproducing, distributing or providing access to any program or information constituting or encouraging conduct that would constitute a criminal offence or give rise to civil liability.
- Violating or breaching any applicable laws and/or regulations.

### **Electronic Mail**

The BroadNet Mail service, as further described in the Service Agreement, is for the Customer's personal and commercial end-user use. The Customer may not sublicense, distribute, transfer, or sell the BroadNet Mail service or any portion thereof. The Customer agrees to use the BroadNet Mail service only to send and receive messages and material that are proper. In addition to the general terms set out above, and by way of example, and not as a limitation, the Customer agrees that when using the BroadNet Mail service, he or she will not:

- Use such service in connection with pyramid schemes, spamming or any unsolicited messages (commercial or otherwise)
- Restrict or inhibit any other user from using or enjoying such service
- Create a false identity for the purpose of misleading others or forge the headers of e-mail messages in any way
- Use, download or otherwise copy, or provide (whether or not for a fee) to a person or entity any directory of users of such service or other user or usage information or any portion thereof
- Promote or facilitate the transmission of unsolicited email messages
- Attach an excessively long signature to messages
- Send messages to disrupt or cause difficulties in receiving other email.

In the event that the customer maintains one or more bulk “opt-in” email lists, he or she must have a method of confirmation of subscriptions and be able to provide such information when requested by Iristel. At the discretion of Iristel, if no such evidence is available, such bulk mailings may be considered as unsolicited.

Iristel reserves the right, at its sole discretion, to set an upper limit on the number of recipients of customer initiated email, the number of subscribers on a customer’s bulk “opt-in” e-mail lists, and the number of messages a customer may send or receive through the BroadNet Mail service.

Neither Iristel nor any of its suppliers has any obligation to monitor the BroadNet Mail service. However, Iristel and its suppliers reserve the right to review materials sent through such service, and to remove any materials at its sole discretion. Iristel, at its sole discretion, may terminate the Customer’s access to the BroadNet Mail service at any time, without notice.

Iristel and its suppliers reserve the right at all times to disclose any information that they, at their sole discretion, deem necessary to satisfy any applicable law, regulation, legal process or governmental request. Iristel and its suppliers further reserve the right at all times to edit, refuse to post or to remove any information or materials, in whole or in part, at their sole discretion.

### **Newsgroups / Discussion Forums**

In addition to the general terms set out above, while posting to newsgroups or any other discussion forum, the Customer is prohibited from conducting activities that include, but are not limited to:

- Posting advertisements, commercial or unsolicited messages of any kind, unless expressly permitted by the charter or FAQ of the applicable newsgroup or discussion forum
- Posting binary or excessively large files of any kind, unless expressly permitted by the charter or FAQ of the applicable newsgroup or discussion forum
- Posting substantially identical messages to more than 10 newsgroups
- Attaching an excessively long signature to messages
- Forging the headers of postings in any way
- Newsgroup and forum postings must comply with each newsgroup’s or discussion forum’s respective charter or FAQ

### **Internet Relay Chat (“IRC”)/Chat**

In addition to the general terms set out above, while using IRC or any other chat service, the Customer is prohibited from conducting activities that include, but are not limited to:

- Sending messages that include advertisements or commercial content of any kind in an unsolicited matter
- Attempting a Denial of Service attack either automated via a bot or manually conducted

Additionally, while using an IRC Server or any other chat service, the Customer must be in full compliance with the rules and regulations set out by the server administrator.

## **Network / Security**

In addition to the general terms set out above, the Customer is prohibited from using the Service for activities that include, but are not limited to:

- Sharing of the Customer's Account User ID and password for any purpose, including for the purpose of concurrent login sessions from the same Account
- Causing an Internet host to become unable to effectively service requests from other hosts
- Running and/or hosting server applications including but not limited to HTTP, FTP, POP, SMTP, Proxy/SOCKS, and NNTP
- Analyzing or penetrating an Internet host's security mechanisms
- Forging any part of the TCP/IP packet headers in any way
- Committing any act which may compromise the security of the Customer's Internet host in any way

As further set out in this Service Agreement, the Customer is solely responsible for the security of his or her system and Account. Iristel will offer full co-operation with law enforcement agencies in connection with any investigation arising from a breach of this AUP.

In the event that numerous complaints are received by our staff in regards to any breaches of this AUP, at the discretion of Iristel, a processing fee per complaint received, in addition to an administration fee, may be applied to the Customer's Account.