



HIGH SPEED INTERNET SERVICE AGREEMENT (Residential)

READ CAREFULLY. THIS AGREEMENT IMPOSES OBLIGATIONS UPON YOU.

For more information visit us online at www.tbaytel.net or call us at 684-3278, or toll free at 1-800-478-0879.

1. General

TBayTel's **High Speed Internet** service provides you with access to the Internet (the "Service") and is provided as an option to our basic Internet access service.

If you subscribe to the Service you will receive a copy of the TBayTel **High Speed Internet** Access manager software and the TBayTel **High Speed Internet** Toolbar for Windows software. As outlined in Section 11 of this Service Agreement, your use of any such software supplied to you in connection with Service will be subject to the terms and conditions of an associated software license agreement ("Software License Agreement"). **A copy of the applicable Software License Agreement will be presented during the installation process for the relevant software.** Please take time to review the terms of the applicable Software License Agreement before installing or using the software.

If you subscribe to the Service, you will also receive along with the applicable software and associated Software License Agreement(s), confirmation copies of your subscription particulars, this Service Agreement and, if applicable, your Ethernet card.

This Service Agreement between TBayTel and you sets out duties and responsibilities associated with providing you with the Service through a designated account (the "Account"). By accessing the Service, you agree to the terms and conditions contained in this Service Agreement. If you do not wish to be bound by these terms and conditions, you may not access or use the Service.

2. Service Provider

TBayTel

3. Use Subject to Service Provider's Policies

You are solely responsible for all access to the Service through your Account. You agree to comply with and use the Service in accordance with TBayTel's policies respecting the Service as provided from time to time, including this Service Agreement and the Acceptable Use Policies, as well as any policies to which you are directed when registering for or using the Service, and with any applicable laws. You agree to hold TBayTel, its affiliates and its agents harmless from all liabilities and expenses related to any violation of this Service Agreement by you or any user of your Account, or in connection with your or their use of the Service. While using the Service, you may not post, transmit or otherwise distribute information constituting or encouraging 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 to TBayTel's policies or would serve to restrict or inhibit any other user from using or enjoying the Service or the Internet. Without limiting the foregoing, you agree not to use the Service or any equipment provided in connection with the Service, for operation of an Internet Service Provider's business nor for any other non-residential purpose.

4. Fees and Charges

The Service is provided in accordance with the monthly rates and installation fees, if any identified to you upon placing your order for the Service. Rates and fees do not include applicable taxes or any long distance charges. Separate and additional rates and fees may apply to the lease of the Service modem if required as specified by TBayTel. You agree to pay all such fees and charges, including applicable taxes, incurred in connection with the provision of and/or use of the Service in accordance with the rates and terms established by TBayTel for the Service or to which you are directed to review when using the Service. TBayTel reserves the right to alter its rates and terms upon reasonable notice, which may be provided to you in writing or to which you may be directed to review when using the Service.

Unless otherwise stated, any amount under this Service Agreement must be paid within 30 days after receipt of invoice. All invoices not paid when due will bear interest at the lesser of 1.25% per month or the maximum amount permitted by law. You have the option to pay for the Service by credit card or by pre-authorized payment.

5. Refund/Cancellation Policies

You may discontinue your Service at any time, subject to the cancellation fee for any non-returned Service modem as specified in Sections 22 and 23 of this Service Agreement, which will be charged as liquidated damages.

6. High Speed Internet Service

The Service is accessed through a designated Account which will be established for you by TBayTel. The Service includes:

- Unlimited Internet access
- DSL Modem, or Wireless Subscriber Module
- E-mail addresses
- Personal Web space
- 24/7 Live Local Help Desk support
- A minimum of 75 GB/month Internet connection traffic (65 GB/month down, 10 GB/month up), may vary by plan
- Ethernet card for desktop computers, if required (Residential only). Not provided for laptop computers.
- Access Manager software (if required)
- Browser reconfiguration instructions

7. Service Availability

The Service is available for use on TBayTel residential telephone lines with a maximum of one (1) Service connection per residential address (not applicable to wireless technology). You acknowledge and agree that the telephone number check you completed upon placing your order is only a preliminary geographical check to determine if the Service is available in your geographical area. Due to the nature of the Service technology, TBayTel reserves the right to deem the Service unavailable to you up to, including, and after the installation. TBayTel assumes no liability whatsoever for any claims, damages, losses or expenses arising out of or otherwise relating to the unavailability of the Service in your geographical area, even where such unavailability occurs after installation of the Service.

8. Minimum System Requirements for the Service.

Subject to Section 9, the following are the minimum system requirements for the Service:

- (i) Windows System Desktop or Laptop
Microsoft Windows NT 4.0/2000/ME/XP/Vista
Pentium-class Processor 233 MHz, or equivalent
XP Pentium-class Processor 300 MHz, or equivalent
Vista 800 MHz Pentium-class Processor
64 MB of memory (RAM)
XP 128 MB of Memory (RAM)
Vista 512 MB of Memory (RAM)
200 MB of free hard drive space
256 colours at 800x600 resolution
Ethernet card or free PCI slot *
CD-ROM drive (required)

* TBayTel does not provide or install PCI Ethernet cards for laptop computers

- (ii) Macintosh System
Power PC MAC OS 9 or higher
Intel MAC OS X 10.4 or higher
64 MB of memory (RAM)
OS X 256 MB of memory (RAM)
200 MB of free hard drive space
256 colours at 800x600 resolution
Ethernet card
Ethernet port
CD-ROM drive (required)

9. Your Equipment

It is your responsibility to ensure that your computer system meets the current minimum system requirements stated by TBayTel as being necessary to use the Service. From time to time, the computer equipment required to access and use the Service may change. Accordingly, your computer equipment may cease to be adequate to access the Service. In such event, your sole remedy will be to terminate this Service Agreement.

10. Ethernet Card (For Desktop Computers Only)

Upon installation, TBayTel will warrant the supplied Ethernet card, if any, for a period of 30 days in accordance with the warranty terms supplied with the card. If the supplied Ethernet card is found defective after a period of 30 days from the installation, it is your responsibility to deal directly with the card manufacturer. Should you choose to use an Ethernet card other than the one TBayTel supplies, the installation of the Ethernet card is solely your responsibility. TBayTel will not be held responsible for any claims related to the faulty installation or performance of your Ethernet card.

11. Software and Documentation Supplied

Any software or documentation supplied by TBayTel or its agents to you to access the Internet shall remain the property of TBayTel or its agents, as applicable. You shall take appropriate steps to protect it against loss or damage. The use by you of any such software and documentation in connection with the Service shall be subject to the terms and conditions of an associated Software License Agreement. A copy of the applicable Software License Agreements will either be included with the software or will be presented during the registration or installation process. It is your responsibility to ensure that you review and agree to the terms and conditions of the applicable Software License Agreements before installing or using the software or documentation.

12. Installation Appointments

In no event will TBayTel be responsible for any claims, damages, losses or expenses, including without limitation lost wages or missed work, in the event that an installation appointment for the Service is missed, either by TBayTel or by any third party installer. It is your responsibility to create data backups before the installation. TBayTel or its agents will not be held responsible for any loss of data.

13. Performance Levels

Speed is a function of the bottlenecks experienced upon the wider network architecture of the Internet itself. As such TBayTel does not guarantee the maximum Service performance (throughput speed) levels but will make every reasonable effort to ensure the highest possible quality of service is always delivered. You understand that any content that you may access through the Service may be subject to "caching" at intermediate locations on the Internet.

14. Customer Service Policies

TBayTel shall make support services available to you as follows:

- General technical support help desk hours are 24 hours a day, 7 days a week.
- Help desk hours for Service specific technical support are from 8 AM to Midnight, 7 days a week.
- Assistance will be provided for supported systems only as identified in Section 8 above.
- Responsibilities will cover installation and on-going technical support with the following qualifications:

(i) TBayTel will not debug hardware conflicts such as IRQ, RAM, and IO port assignment problems;

(ii) TBayTel will assist in configuring software at the network layer, including;

Control Panel, Network icon parameters (TCP/IP only), and Dial-up networking parameters;

(iii) TBayTel will not assist in supporting other protocols and solving LAN-related problems or multi-provider configurations;

iv) TBayTel will assist in configuring the Netscape Communications and/or Microsoft Internet Explorer browser software, mail and news reader; and

(v) TBayTel will not assist in configuring Plug-ins.

15. Security

TBayTel will not be responsible for any corrupted files or viruses, which affect the user of the Service. It is your responsibility to safeguard your system, through appropriate means (e.g. using commercially available software), from theft, unauthorized use or system corruption. Any detriment caused to the network as a result of your failure to properly secure your system may result in the immediate termination of your Service.

16. Service Bandwidth Resale Prohibited

Resale of bandwidth or any other part of the Service for any purpose is strictly forbidden. Failure to comply with this condition will result in immediate cancellation of the Service at TBayTel's discretion.

17. IP Address / Host Name

Any IP address assigned to you by TBayTel is the property of TBayTel at all times. IP addresses will change each time your Service modem or system is powered off or any time at the discretion of TBayTel without prior notice to you. TBayTel assumes no liability whatsoever for any claims, damages, losses or expenses arising out of or otherwise relating to any change in IP Addressing.

18. Member Services

If you have any questions regarding the terms and conditions of this Service Agreement, you may contact TBayTel by calling (807) 623-4400 or Toll Free 1-888-279-9988

19. User Information

Your messages may be the subject of unauthorized third party interception and review. An individual with Internet access can cause damage, incur expenses and enter into contractual obligations while on the Internet. All such matters are your responsibility. TBayTel has no obligation to monitor the Service. However, you agree that TBayTel reserves the right to monitor the Service electronically from time to time and to disclose any information necessary to satisfy any laws, regulations or other governmental request or as necessary to operate the Service or to protect itself or others.

20. No Liability for Content

Be aware that some content, products or services ("Content") available with or through the Service may be offensive to you or may not comply with applicable laws. You understand that neither TBayTel nor any of its affiliates attempt to censor or monitor any such Content. You understand, however, that such Content may be subject to "caching" at intermediate locations on the Internet when being accessed through the Service. You assume total responsibility and risk for access to or use of such Content and for use of the Internet. TBayTel 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.

21. You Can Best Control the Risk and Therefore Are Responsible

The fees charged by TBayTel reflect the allocation of risk herein and the limited recourse to TBayTel provided for in this Service Agreement. TBayTel will not assume any responsibility for your acts or omissions or those of any individual who uses your Account. As between TBayTel and you, you are better able to put in place physical and procedural impediments to the inappropriate use of and to supervise your Account. Account and password protection shall be your responsibility. Any detriment that is caused to the network as a result of a failure to properly secure your computer system may result in the termination of the Service.

22. The Service Modem (for wire-line customers only)

- a) As outlined in Section 4 of this Service Agreement, separate and additional charges may apply to the lease of the Service modem as may be specified by TBayTel from time to time. The Service modem will always remain the property of TBayTel. As such, if the Service is cancelled or terminated for any reason, arrangements to have the Service modem returned must be made by calling (807)623-4400 , or Toll Free 1-888-279-9988. If the modem is not received within 30 days, a cancellation fee will apply.
- b) You agree to use and maintain the Service modem, and all other hardware and software delivered to you, in compliance with the applicable operating instructions provided by TBayTel. You also agree to return such materials, at your own risk, in good repair and working order. Until returned to and received by TBayTel, you bear the entire risk of theft of, damage to or destruction of these materials. All of your obligations in respect of the Service modem, and all other hardware and software delivered to you, will survive the expiration or termination of this Service Agreement to the extent required for their full observance and performance.
- c) With respect to the Service modem, the following non-refundable cancellation fees will apply:
 - (i) if the Service modem is returned in accordance with paragraph (a) above, no cancellation fee will apply;
 - (ii) if the Service modem is not returned in accordance with paragraph (a) above, a cancellation fee of up to \$300.00 will apply.

23. Wireless Subscriber Modules and Related Equipment (for customers serviced with wireless technology)

- a) The wireless subscriber module and mast (if applicable) will always remain the property of TBayTel. As such, if the Service is cancelled or terminated for any reason, the wireless subscriber module and mast must remain in place as installed. TBayTel will require access to the property to remove the wireless subscriber module and mast. If the wireless subscriber module and mast is not left in place and if TBayTel is not allowed to remove it, a cancellation fee will apply.
- b) With respect to the wireless subscriber module, the following non-refundable cancellation fees will apply:
 - (i) if the wireless subscriber module and mast (if applicable) is removed in accordance with paragraph (a) above, no cancellation fee will apply;
 - (ii) if the wireless subscriber module and mast (if applicable) is not left in place, and cannot be removed by the TBayTel Technician, in accordance with paragraph (a) above, a cancellation fee of up to \$735.00 will apply.

24. Limited Warranty

The Service and any software or other deliverables provided by TBayTel and/or its agents are provided "as is" and "as available" without warranties or conditions of any kind. Neither TBayTel nor its affiliates warrant the uninterrupted use or operation of the Service or any deliverable provided under this Service Agreement. The entire risk as to the quality and performance of the Service is with you.

Further, neither TBayTel nor its affiliates warrant that any data or files sent by or to you will be transmitted in uncorrupted form or within a reasonable period of time, that such data or files will not be intercepted, that other users will not gain access to any of your 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.

TBAYTEL 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 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.

25. Limitation of Liability

In the event of any breach by TBayTel, its affiliates or its agents, including any breach of a fundamental term or any negligence, your exclusive remedy shall be to receive from TBayTel payment for actual and direct damages to a maximum amount equal to the fees paid hereunder by you to TBayTel during the last three months immediately preceding the relevant breach. Other than the foregoing remedy, under no circumstances shall TBayTel, its affiliates or its agents be liable to you or any third party for:

- (i) any direct, indirect, special, or consequential damages, including loss of profits and loss of business opportunities, that result in any way from this Service Agreement, including your use of the Service or access to the Internet, or any part thereof, 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, 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 you or a third party through your Account infringes the intellectual property rights or contractual rights of any third party.

In addition, TBayTel is not liable for:

- (i) any act or omission of a telecommunications carrier whose facilities are used in establishing connections to points which TBayTel does not directly serve;
- (ii) defamation or copyright infringement arising from material transmitted or received over TBayTel's or its affiliates facilities; or
- (iii) infringement of patents arising from combining or using customer-provided facilities with TBayTel's or its affiliates facilities.
- (iv) any direct, indirect, special, or consequential damages, including loss of profits and loss of business opportunities, that result in any way from the installation and or use of any or all of the services included in TBayTel's Enhanced Security Suite.

25. Limitation of Liability (cont.)

- (v) Any damages or losses where such damage or losses is as a result of Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity.

26. Termination and Account Suspension

You may terminate this Service Agreement upon notice to TBayTel. TBayTel may suspend or restrict the Service, at any time, or terminate this Service Agreement if:

- (i) the operations or efficiency of the Service is impaired by the use of your Account or the Service; or
- (ii) any amount is past due from you to TBayTel; or
- (iii) there has been or is any breach of any term or condition of this Service Agreement.

If there is or has been an inadvertent misuse of your Account which impairs the operations or efficiency of the Service, TBayTel reserves the right to suspend your Account until the problem has been corrected, without any reduction in your rate for the Service. If your Account is suspended and the outstanding problem has not been resolved within 30 days from your last bill date, the Service may be disconnected. If so, the applicable installation fee will apply if you wish to resume your subscription to the Service.

TBayTel shall have no responsibility to notify any third party providers of services, merchandise or information of such termination or suspension. Any termination of this Service Agreement shall not relieve you from any amounts owing or other liability accruing hereunder prior to the time that such termination becomes effective.

27. Amendment

TBayTel may modify this Service Agreement from time to time by reasonable notice to you, and your continued use of the Service following notice of such modification shall be deemed to be your acceptance of such modification. If you do not agree to any modification of this Service Agreement, you must immediately stop using the Service.

28. Information

You hereby acknowledge that TBayTel and its affiliates may retain and use any information, comments or ideas conveyed by you relating to the Service (including any products and services made available on the Service). This information may be used to provide you with better service. TBayTel will open and maintain a customer file, which will be kept at its office as indicated to you at the time of registration for the Service. You may access your customer file under the terms and conditions as detailed in the front of the TBayTel Telephone Directory or as listed on www.tbaytel.net. If any information contained in your customer file is inaccurate, you may make a written request for rectification, specifying the information to be rectified and explaining the inaccuracy to TBayTel - Attention Customer Service Manager, 1046 Lithium Drive, Thunder Bay Ontario, P7B 6G3.

29. Miscellaneous

This Service Agreement, including any and all documents and TBayTel's policies referenced herein, constitutes the entire agreement between TBayTel and you pertaining to the subject matter hereof. TBayTel'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. If any of the provisions contained in this Service Agreement are determined to be void, invalid or otherwise unenforceable by a court of competent jurisdiction, such determination shall not affect the remaining provisions contained herein. 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.

This Service Agreement shall be governed by and construed in accordance with the laws of the province or territory in which your designated billing address is located and the federal laws of Canada applicable therein. TBayTel may assign its rights and obligations under this Service Agreement to any affiliated entity without your prior written consent. The parties have required that this Service Agreement and all documents relating there to be drawn up in English.

Waiver (if applicable)

The following is a copy of the information contained in the Waiver that was signed during the installation process.
(TBayTel has retained the signed copy for our records)

1. You agree to provide TBayTel or it's designate with access to any such software and/or hardware as reasonably required.
2. You are required to show that your computer is functioning properly prior to TBayTel doing any work on your computer.
3. TBayTel is not responsible for any damage to or loss of data or software from your computer while installing or maintaining a TBayTel Internet High Speed service.
4. We recommend that you back-up all existing computer files by copying them to a different storage device prior to the installation or maintenance of any TBayTel High Speed hardware or software.
5. If TBayTel is providing the NIC, you must ensure that there is a suitable free card-slot available in your computer. (TBayTel will not rearrange cards in your computer or remove cards from your computer.)
6. TBayTel will provide support only for the TBayTel High Speed service components.
7. TBayTel will not provide support to components of your computer or network. The Ethernet NIC becomes your property.
8. TBayTel will provide on-site support for these components only for a maximum of 30 days after the date of installation. After the 30 day period, support for this equipment is your responsibility. All warranties or guarantees are the responsibility of the manufacturer.

In addition if you are a Residential Wireless Internet Customer you would have also selected a rate plan and billing option for the installation of a mast if required.