



## Terms and Conditions

Thank you for your purchase of the **iCoach** mobile Internet solution by Tech Electronic Services!

### Agreement

This agreement is between you the undersigned subscriber of the Service, and Tech Electronic Services (“TES”). By creating an account and using the Service, you agree to be bound by these Terms and Conditions and options selected on the Subscription Application. This agreement may be changed by TES at any time without providing prior notice to you. Prices are guaranteed for an initial 12 month period only. Any changes to this agreement will be posted on the iCoach website at [www.icoach.net](http://www.icoach.net) If you disagree with the changes you accept that your sole remedy is to stop using the Service and to notify TES that you are terminating the Agreement. Your continued use of the Service after changes to the agreement acknowledges your acceptance of the changed Agreement.

### Service

TES cannot guarantee upload or download speeds or geographical service coverage. The speed will vary depending on location, proximity to cellular towers, 1XRTT or EVDO footprint coverage, weather, internet traffic, content of a particular website, as well as overall performance and configuration of your computer.

### Term

This agreement is effective as of the date your account is created with TES and the Service is activated. The minimum initial term is 12 months, or 36 months if this extended term is selected. After which time has passed you will be renewed automatically on a month to month basis.

### Cancellation

If you would like to cancel before the initial term you will be charged an Early Termination Fee. For 12 month terms, the Early Termination Fee is the remainder of the Term (the monthly fee for your selected Service plan times the number of months remaining) or a \$450 Early Termination Fee, whichever is the lesser amount. For 36 month

terms, the Early Termination Fee is the remainder of the Term (the monthly fee for your selected Service plan times the number of months remaining) or a \$550 Early Termination Fee, whichever is the lesser amount. Requests for cancellation will not be processed unless the request is received by TES in writing. If you would like to cancel the Service after the initial 12 month or 36 month period you must notify TES in writing 30 days prior to deactivation. If these Terms and Conditions are not followed TES has the right to terminate the Service without notice and without liability whatsoever.

## Changes

Any changes you request to your Service are subject to a \$25.00 processing fee, including service level changes or seasonal hold and reconnect.

## Seasonal Hold

Requests for seasonal hold must be received by TES in writing and be requested once per calendar year of your contract. Requests are subject to a \$25 hold fee and a \$25 reactivation fee when the Service is restarted. Service will automatically be reactivated and billed six months after the hold request. Period of time service is on hold will be added to the contract end date to complete the minimum 12 month or 36 month contract term. A minimum of two business days is required to reactivate service. A monthly "hold" charge of \$7.70 plus applicable taxes will apply to cover the System Access Fee and Enhanced 911 service charges which cannot be suspended.

## Modems

iCoach USB modems are the sole property of Tech Electronic Services and are to be returned to TES via courier, arranged by the TES shipping department, upon termination of your iCoach contract or service.

## Service Description

This document details the wireless data service package you've selected and options detailed on the iCoach Subscription Application. You have either chosen to sign up for a Canada only service "iCoach Canada" or a combined USA and Canada service "iCoach CAN-USA" payable on a month by month basis at the rates noted on the Subscription Application, plus applicable fees and options.

### iCoach Canada

The iCoach Canada Service provides 1XRTT or EVDO service in the areas depicted in the coverage maps available for viewing online at [www.icoach.net](http://www.icoach.net). Service provided on a Roaming basis in the continental USA will be charged at \$3/MB or \$3,000/GB. It is **extremely important** that you avoid usage of the iCoach Canada service within the USA as Roaming costs are very expensive. You must upgrade your service to iCoach USA-CAN if you would like to use your iCoach system in the USA. Your base monthly charges are \$72.70 (plus tax) for 1 GB data on a 12 month term

or \$67.65 (plus tax) for 1 GB on a 36 month term. These figures include the iCoach System Access fee and 911 Emergency Service Access charge. Data usage beyond the 1 GB will be billed at \$6 for each increment of 500 MB. Optionally additional 1 GB data increments can be purchased in advance and added to your monthly base charge at a rate of \$10/GB. Please note that you will be charged a one-time \$45 account set-up fee.

### **iCoach CAN-USA**

The iCoach CAN-USA Service provides 1XRTT or EVDO service in the areas depicted in the coverage maps available for viewing online at [www.icoach.net](http://www.icoach.net). Your base monthly charges are \$106.70 (plus tax) for 3 GB data on a 12 month term or \$102.70 on a 36 month term. This amount already includes the iCoach System Access fee and the Emergency Service Access charge. Data usage beyond the 1 GB will be billed at \$6 for each increment of 500 MB. Optionally additional 1 GB data increments can be purchased in advance and added to your monthly base charge at a rate of \$10/GB. Please note that you will be charged a one-time \$45 account set-up fee.

### **Key Terms**

Your service period will commence upon TES' activation of the iCoach modem onto the Service selected on your Subscription Activation form. At the end of your service period, your Service will continue on a month to month basis, subject to the then applicable service terms and rates. During the service period, TES will not increase your monthly plan rate for the Service but other charges may change and additional charges may apply subject to thirty (30) days prior notice to you from TES. The Service Terms defined in this document express important legal rights, obligations and limitations, such as:

1. The service is provided on an "as is" and "as available" basis. The service may fail or be interrupted because of, amongst other things, environmental conditions, technical limitations, defects or failures, limitations of the systems of other telecommunications companies, emergency or public safety requirements, or causes beyond TES' reasonable control. Your use of the service is at your sole risk.
2. TES will not be liable to you or any other person for loss of profits, data, earnings, business opportunities, or any other loss caused by use or failure of the service or any device used with the service.
3. Disputes arising under this agreement, except with respect to the collection of any amount owed for the service, may only be referred to private mediation and then arbitration to the exclusion of formal court proceedings.

**1. THIS AGREEMENT:** Tech Electronic Services ("TES") agrees to provide you with wireless data services (the "service") within the iCoach coverage area on these terms and conditions. In these service terms, (i) "you" and "your" means the person accepting billing and payment responsibility for the service; and (ii) "iCoach" means all equipment (including router, amplifier, antennae and any other iCoach component) used in connection with the service. We will not have a binding agreement until TES has activated your iCoach modem on the service.

**2. CHARGES AND PAYMENT:** All service use and access fees and other charges, including taxes, are due and payable via credit card or direct bank withdrawal as specified on the iCoach Subscription Application on the first day of each month. A pro-rated amount may apply for the first payment that reflects the balance of days in the first month of service, deposit, plus fees and applicable taxes. Your service use, access fees and other charges will continue until the service is terminated. If your iCoach system or modem is lost, stolen or damaged, you must pay all monthly and other charges for the use of the service up to the time that TES is properly notified.

**4. DEPOSIT:** TES collects a security deposit equivalent to one full month of service from you. TES will return the deposit to you by applying the deposited amount to your TES account at the end of your service term. Otherwise, TES will refund the deposit to you (subject to paragraph 2 above) upon cancellation of your TES account, retaining only the amount then owed by you.

**5. USE OF THE SERVICE:** You will use the service in compliance with law and with service rules adopted by TES from time to time, including safe driving and health and safety guidelines. You will use the service for wireless Internet data purposes only. You will not use the service for: voice calls, multi-media streaming; voice over Internet protocol; or any other application which uses excessive network capacity or may otherwise adversely impact other users, that is not made available to you by TES. You will not resell the service to any other person. You will not use the service to operate an e-mail, web, news or other similar *server* service. You will not use the service to transmit or send any annoying, inappropriate, improper, excessive, threatening or obscene material or to otherwise harass, offend, threaten, embarrass, distress or invade the privacy of any individual or entity. You will not engage in any activity that could compromise the security of or disrupt or interfere with the service or any network or computers on the Internet or disrupt or interfere with the services of any Internet access provider. You will use only authorized equipment on the service. You will not (and will not permit anyone other than a TES authorized person to) reproduce, alter, adjust, repair or tamper with any signaling, identification (including the MIN, ESN, MEID, IMEI, IMSI, and other numbers) or transmission function or component of any modem used on the service. The service will use certain network and other facilities. The area in which TES provides the service may be enlarged or reduced in scope from time to time in TES' partners' sole discretion. You agree that, to maintain or improve the service, or for other business reasons, TES partners' can in their sole discretion, suspend, restrict, modify or terminate all or any part of the service or make changes to the network and other facilities without notice to you.

**6. NO WARRANTIES:** To the fullest extent permitted by law, the service is provided on an "as is" and "as available" basis. Your use of the service is at your sole risk. TES does not guarantee timely, secure, error-free or uninterrupted service or receipt of material or messages transmitted over or through TES' partners' wireless network or the networks of other companies or in respect of the Internet. The service may fail or be interrupted for reasons including, but not limited to, environmental conditions, technical limitations, defects or failures, limitations of the systems of other telecommunications companies, emergency or public safety requirements, or causes beyond TES' reasonable control. To the fullest extent permitted by law, TES disclaims all warranties and conditions (express, implied or statutory) relating to the service and any modem.

**7: LIMITATION OF LIABILITY:** To the fullest extent permitted by law, TES will not be liable to you or any other person for any damages (direct, indirect, consequential or other, including physical injury, death or damage to your property or premises), expenses, loss of profits, loss of earnings, loss of business opportunities, loss of data, or other similar loss, arising out of or in connection with the provision, use or failure of the service, or any modem used with the service, whether caused by negligence or otherwise, and whether claimed in contract, tort or otherwise. Notwithstanding the foregoing, the liability of TES for damages caused by negligence on the part of TES in the provision of mandatory emergency services, except in cases where such negligence results in physical injury, death or damage to your property or premises, or where such damages are caused by the deliberate fault, gross negligence or anti-competitive behaviour of TES, is limited to \$20. TES shall not be responsible for (a) libel, slander, defamation or the infringement of copyright arising from material or messages transmitted over the telecommunications network of TES partners' or recorded on the equipment of TES; (b) damages arising out of your act, default, neglect or omission in the use or operation of equipment activated on the telecommunications network of TES partners'; (c) damages arising out of the transmission of material or messages over the telecommunications network of TES partners' on your behalf, which is in any way unlawful; or (d) any act, omission or negligence of other companies or telecommunications systems in relation to the provision of the service to you, when the facilities of such other companies or telecommunications systems are used in establishing connections to or from facilities and equipment controlled by you; except in cases of deliberate fault, gross negligence or anti-competitive behaviour by TES in the provision of mandatory emergency service to you.

**8. INDEMNITY:** You will indemnify TES from all losses, expenses and all manner of actions, claims and judgments sustained by or made against TES in connection with your use or misuse of the service, any modem used with the service or violation of these terms and conditions.

**9. ROAMING:** When roaming outside of the TES iCoach service area, you are responsible for all applicable charges, and are subject to the terms and conditions of service (including limitations of liability) imposed by the wireless service provider providing the roaming services. When using iCoach in the Northwest Territories, and Northern British Columbia, coverage is to be provided by other telecommunication carriers and additional rates will apply.

**10. TERMINATION/SUSPENSION OF SERVICE:** Unless otherwise agreed, you may terminate your service at any time by providing TES with thirty (30) days' notice. TES may suspend or terminate the service and this agreement at any time, without any notice or liability: if you fail to pay any amount when due (including any required deposit); if you are in default under these terms and conditions or any other agreement between you and TES, a TES dealer or any assignee; or if TES reasonably apprehends the occurrence of any such events. If service is terminated for any reason you will remain liable for all accrued fees and charges.

**11. (1) CONFIDENTIALITY AND PRIVACY:** Unless you provide express consent or disclosure is pursuant to a legal power, all information kept by TES in respect of the service regarding you, other than your name and address, is confidential and may not be disclosed by TES to anyone other than:

- a) You or a person who in the reasonable judgement of TES is seeking the information as your agent
- b) Another telecommunications company or a person providing services to TES or another telecommunications company, but only if the information is to be used for the establishment of, or the efficient and cost effective provi-

sion of, telecommunications service and the disclosure is made on a confidential basis with the information to be used only for that purpose

c) An agent used by TES to evaluate your credit or collect outstanding balances owed to TES by you, if the agent requires the information and agrees to use the information only for that purpose

d) A public authority or its agent if TES reasonably believes that there is imminent danger to life or property that could be avoided or minimized by disclosure of the information

e) A law enforcement agency if TES reasonably believes that you or anyone using your phone is engaged in fraudulent or unlawful activities against TES

Express consent may be taken to be given by you where you provide: written consent; oral confirmation verified by an independent third party; electronic confirmation through the use of a toll-free number; electronic confirmation via the Internet; oral consent, where an audio recording of the consent is retained by TES; or consent through other methods, as long as an objective documented record of your consent is created by you or by an independent third party. TES' liability for disclosure of information contrary to these terms is not limited by the limitation of liability set out above. You may inspect any TES records related to the provision of your service, provided that you pay TES' related extraordinary costs. You may request that your name and address not be included on any list provided to any other person or used by TES.

**12. (2)** Subject to Section 12 (1) above, you agree that TES may continue to collect, use and disclose personal information about you for the purposes identified in the TES Privacy Commitment (as it may be amended from time to time), which can be viewed at [www..com](http://www..com). Those purposes are: 1. to establish and maintain a responsible commercial relationship with you and to provide ongoing service; 2. to understand your needs and preferences; 3. to develop, enhance, market or provide products and services; 4. to manage and develop our business and operation; and 5. to meet legal and regulatory requirements. You also agree that, for the purposes identified above, TES may share your personal information on a confidential basis with third party service providers. You acknowledge that if any such service provider is located in the US or other foreign country, that your personal information may be processed and stored in that country and may be accessed by the governments, courts, law enforcement or regulatory agencies of that country under its laws

**13. MONITORING:** TES and its partners have the right, but not the obligation, to monitor or log any TES Internet site or use of the service. You consent to any such monitoring and logging that is necessary to satisfy any law, regulation or other government request, or to enhance operating efficiencies, improve service levels, assess client satisfaction, or protect TES or its clients from unwanted use of certain services or applications. TES reserves the right to delete, remove or block access to any Internet capability, content, information or third party products or services available or transmitted through the service that TES, in its sole discretion, believes is unacceptable or in violation of these terms and conditions.

**15. GENERAL:** These terms and conditions shall be governed by and construed in accordance with the laws of the province in which you reside. You must not assign this agreement without TES' written consent in advance. If you are a business, corporation or other entity, then you and the individual user of the service shall be jointly responsible for all obligations in these terms and conditions, individually and together. If any part of this agreement is void, prohibited or unenforceable, the agreement shall be construed as if such part had never been part of the agreement. This agreement shall enure to the benefit of and bind the successors, assigns and personal representatives of you and TES.

**16. LANGUAGE:** The parties have required that these terms and conditions and all documents or notices resulting there from or ancillary thereto be drawn up in the English language. Les parties aux présentes ont demandé que ce contrat et tous les documents ou avis en résultant ou y étant assujettis soient rédigé en langue anglaise.

**17. CHANGES:** These service terms (including any rates and charges) may be changed unilaterally by TES from time to time on at least thirty (30) days notice to you, and such changes shall become effective once you use the service after such thirty (30) day period which use shall be deemed conclusively to indicate acceptance of such changes.

**19. LEGAL NAME:** Tech Electronic Service “TES” is a business name of Ontario Inc.

## **Authorization**

To Tech Electronic Services: I have read the terms set out on this form and agree to comply with them. I have consulted a iCoach Subscription Agreement and understand the rates and options within. Notwithstanding any different process described in the documentation included in the box that contains my iCoach system, I agree that any use or continued use of the TES iCoach service by myself or any person I allow to have access to my iCoach system will indicate my unconditional acceptance of the TES Service Terms.

---

Client Signature

---

Date