

INFOEX® SUBSCRIPTION AGREEMENT

DATED the _____.

BETWEEN:

CANADIAN AVALANCHE ASSOCIATION, a society duly incorporated pursuant to the laws of British Columbia, and having an office at 110 McKenzie Avenue, Box 2759, Revelstoke, B.C. Canada V0E 2S0 Phone: 250-837-2435 Fax: 866-366-2094

("CAA")

AND:

(the "Subscriber")

WHEREAS:

A. The CAA operates a service which permits the voluntary exchange of snow, weather and avalanche-related information amongst various subscribers, including professional private and public sector operators delivering avalanche protection programs for ski areas, commercial backcountry skiing and snowmobiling, highways, railways, resource industries, national and provincial parks, and other winter activities, to the InfoEx® system (the "**Infoex System**");

B. The CAA has also recently developed the Canadian Avalanche Information System (the "**CAIS**"), a master database and proprietary system containing avalanche-related information which includes data collected from the InfoEx System as well as other sources, to be used for the purposes of furthering avalanche safety on a national and worldwide basis;

C. CAA has spent considerable time, expense, effort and energy developing the Infoex System and the CAIS;

D. The parties wish to formalise the guiding principles set out under a status report entitled "InfoEx, Canadian Avalanche Information System Development, and Data Ownership, Security and Management Issues" prepared by the CAA and circulated to all subscribers to the Infoex System, under the terms and conditions of this Agreement.

NOW THEREFORE in consideration of the premises and of the mutual covenants herein set forth, and intending to be legally bound hereby, the parties have covenanted and agreed as follows:

1. **TERM:** The term of this Agreement shall be from the date of signing and so long thereafter as the Subscriber pays the Fees to CAA, unless sooner terminated as provided herein.

2. **FEES:** In consideration for the rights granted herein and while this Agreement is in effect, the Subscriber agrees to pay CAA the fees set out in Schedule "A" (the "**Fees**"). The CAA may amend or change the fees in Schedule "A" from time to time, provided that the CAA provides fifteen (15) days written notice of any such change to the Subscriber.
3. **ELIGIBILITY:** The Subscriber represents and warrants that:
 - (a) The Subscriber's avalanche program employs a Professional member in good standing of the Canadian Avalanche Association; and
 - (b) Each "operational decision node" or individual operations of the Subscriber has signed a separate subscription Agreement with CAA.
4. **OBLIGATIONS OF SUBSCRIBER:** The Subscriber agrees to:
 - (a) submit to CAA for inclusion in the Infoex System, on a "regular," (see Schedule "C" for definition) basis, various information and data (the "**Subscriber Data**") containing technical observations of weather, snowpack structure, avalanche activity and the evaluation of snow stability; and
 - (b) procure and maintain such types of insurance in reasonable amounts which is customary for a company in its line of business to acquire, with a reputable and financially secure insurance carrier. In the event that the Subscriber is a governmental body that is self-insured, this section 4(b) shall not apply.
5. **OBLIGATIONS OF CAA:** CAA agrees to:
 - (a) compile and provide to the Subscriber:
 - (i) a daily report (the "**Daily Report**") of western Canadian weather, snowpack structure, avalanche activity, evaluations of snow stability and any relevant news items, available on a secure internet site administered by CAA's staff, via email broadcast; and
 - (ii) a series of maps showing the location of subscribers and/or data reporting points that may be referenced in the Daily Report.
 - (iii) a then current version of the input software SnolInfo and all related configuration files
6. **TRADEMARKS LICENSE:** INFOEX and any logos associated with INFOEX are trade-marks owned by the CAA (the "**Trade-marks**"). CAA hereby grants to the Subscriber a non-exclusive, royalty-free license during the term of this Agreement to use the Trade-marks for the sole and restricted purpose of advertising that the Subscriber is a subscriber to the Infoex™ System. Except as specifically permitted herein, the Subscriber will not use any of the Trade-marks or make reference to CAA in any advertising or publicity whatsoever, without the prior written consent of CAA, except as required by applicable laws.
7. **ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS:** The Subscriber agrees to either Option 1, or Option 2, as indicated below:

- Option 1: Full Assignment of Subscriber Data Ownership and Rights.** In consideration for the discount in Fees received by the Subscriber under Section 2, the Subscriber hereby irrevocably assigns to CAA all rights, title and interest the Subscriber or its employees may have now or in the future to any and all Subscriber Data, whether classified as Non-Sensitive or Potentially Sensitive (as such terms are defined in Schedule "B"), including without limitation, any and all historical Subscriber Data that the Subscriber submitted to CAA and the Infoex System prior to the date of this Agreement (the "**Historical Data**"). The Subscriber waives its moral rights in the Subscriber Data and Historical Data, and shall cause its employees to waive their moral rights in and to all copyrights subsisting in the Subscriber Data and Historical Data.

OR

- Option 2: Partial Assignment of Subscriber Data Ownership and Rights.**

- (i) The Subscriber hereby irrevocably assigns to CAA all rights, title and interest the Subscriber or its employees may have now or in the future to all Non-Sensitive Subscriber Data, including any and all historical Non-Sensitive Subscriber Data that the Subscriber submitted to CAA and the Infoex System prior to the date of this Agreement. The Subscriber waives its moral rights in the Non-Sensitive Subscriber Data and Non-Sensitive Historical Data, and shall cause its employees to waive their moral rights in and to all copyrights subsisting in the Non-Sensitive Subscriber Data and Non-Sensitive Historical Data.
- (ii) The Subscriber retains full ownership and rights to the Potentially Sensitive Subscriber Data. The Subscriber hereby grants CAA and other subscribers to the Infoex System a license to use the Potentially Sensitive Subscriber Data for the limited purposes of CAA fulfilling its obligations hereunder within the Infoex System including without limitation,
- (A) Inclusion in the Daily Reports and sharing such data with other subscribers to the Infoex System;
- (B) Use by the CAA industry training programs and professional avalanche courses for educational purposes only; and
- (C) Use by Forecasters of the Canadian Avalanche Centre to assist in developing public avalanche bulletins, reports and warnings.

CAA shall not use the Potentially Sensitive Subscriber Data for any other purpose, except with the prior written consent of the Subscriber.

8. OWNERSHIP:

- (a) The Trademarks, the InfoEx System, the CAIS and any and all related documentation, knowledge, know-how and/or techniques, is and will remain the sole and absolute property of CAA. The Subscriber acknowledges that all

documentation, inventions, discoveries, improvements, software, copyright, know-how or other intellectual property, whether or not patentable or copyrightable, created by CAA prior to, during, or after the termination of, this agreement, pertaining to the marks, the InfoEx System, the CAIS are and will remain the sole and absolute property of CAA. The Subscriber will not contest in any jurisdiction such ownership rights of the CAA.

- (b) Notwithstanding the provisions of Section 7 (Assignment of Intellectual Property Rights), the parties acknowledge and agree that the Subscriber retains ownership and unrestricted rights to use the original data that is stored within the Subscriber's own database. Such ownership rights of the Subscriber shall not be construed to restrict or limit in any way the ownership and use by the CAA of all Subscriber Data and Historical Data as contemplated herein.

9. GRANT OF LICENCE AND RESTRICTIONS:

- (a) Subject to the terms of this Agreement, in consideration of payment of the Fees and the other covenants of the Subscriber contained herein, CAA grants to the Subscriber a perpetual, non-exclusive, non-transferable, non-sub licensable right, for the limited purposes of avalanche-forecasting, to:
 - (i) use and access the Infoex System; and
 - (ii) use and access data within the CAIS, to the extent that CAA has obtained rights to access such data from third parties.
- (b) The license granted in Section 9(a) includes access to Non-Sensitive and Potentially Sensitive Data submitted by all other subscribers to the InfoEx System during the term of this Agreement
- (c) The Subscriber will not, and will not authorize any third party to:
 - (i) use the Infoex System and CAIS for any purposes other than for avalanche forecasting within the Subscriber's area of operations;
 - (ii) modify, improve, further develop, adapt, decompile, disassemble, translate into another computer language, create derivative works, or otherwise reverse engineer the Infoex System and CAIS;
 - (iii) distribute, sell, lease, transfer, assign, trade, rent or publish the Infoex System and CAIS or any part thereof and/ or copies thereof, to others;
 - (iv) develop, build or duplicate any datasets, databases, software or systems that are similar to either the Infoex System or the CAIS, in a manner that is competitive with, or detrimental to, the CAA; and
 - (v) license or sublicense the use of the Infoex System and CAIS to others except as specifically permitted herein.
- (d) The Subscriber shall strictly safeguard the security of the Infoex System and CAIS and shall prevent the unauthorized use thereof and ensure that all users and employees authorised by the Subscriber to use the Infoex System and CAIS comply with the terms and conditions contained herein.

10. **ACCESS TO HISTORICAL SUBSCRIBER DATA:**
- (a) In consideration of a service fee payable by the Subscriber as may be established by the CAA from time to time, the Subscriber shall have unrestricted access to its own Historical Subscriber Data that in the InfoEx System.
 - (b) If the Subscriber wishes to use Historical Subscriber Data within the Infoex System that belongs to other subscribers, the Subscriber shall submit a written request to the CAA identifying the specific data requested and all intended uses. In consideration of a fee set by the CAA, the CAA will administer the process for acquiring and documenting all necessary consents from the other subscribers and provide to the Subscriber data for which consents have been obtained.
 - (c) If the Subscriber wishes to use data from the CAIS collected prior to the date of this Agreement, the Subscriber shall submit a written request to the CAA identifying the specific data requested and all intended uses. In consideration of a fee set by the CAA, and if the request is in accordance with the then-current data sharing policy of the CAA, the CAA will provide to the Subscriber the data that has been requested.
11. **LIMITATIONS OF LIABILITY:** The parties acknowledge and agree that:
- (a) Infoex™ is of a continuously developmental nature, and as such, variations in format, type, quality, quantity and frequency of information will occur;
 - (b) Infoex™ is in no way intended to replace the local snow stability evaluation, analysis, avalanche hazard forecasting or operational decision-making of the Subscriber;
 - (c) neither party represents or warrants the accuracy or sufficiency of any information, observations or analysis provided by either of them to the other pursuant to this Agreement;
 - (d) the Daily Reports and the Infoex System are not intended to provide nor do they comprise a guarantee of safety or the appropriateness of the Daily Reports any particular circumstance. CAA expressly disclaims any and all representations, warranties or conditions, whether statutory, express or implied, including, without limitation, any implied warranties of fitness for any particular purpose;
 - (e) **USE OF THE INFOEX SYSTEM IS AT THE RISK OF SUBSCRIBER. SUBSCRIBER AGREES THAT IT ACCEPTS SUCH RISK AND EXCEPT AS EXPRESSLY SET OUT HEREIN, WILL NOT HOLD CAA LIABLE FOR ANY LAWSUITS, COSTS, LOSSES, DAMAGES, ACTIONS OR CLAIMS ARISING OUT OF THE USE OF THE INFOEX SYSTEM BY THE SUBSCRIBER.**
 - (f) Except for the indemnities provided for herein, in no event shall either party be liable for any special, incidental, indirect, consequential or punitive damages, even if a party has been advised of the possibility thereof, including but not limited to lost profits or lost business revenue.
 - (g) CAA's total liability, whether under the express or implied terms of this Agreement, in tort (including negligence), or at common law, for any loss or damage suffered by the Subscriber, whether direct, indirect, special, or any other

similar or like damage that may arise or does arise from any breaches of this Agreement by CAA, its directors, officers, employees, or agents will be limited to the total amount of Fees actually paid by the Subscriber hereunder.

12. **TECHNICAL SUPPORT:** During each year of the term of this Agreement, the CAA will provide to the Subscriber up to one (1) hour of technical support free of charge. Additional technical support will be billed by the CAA to the Subscriber at the then-current hourly rates of CAA. Except as specifically set out herein, no customization, training, support or maintenance services are included under this Agreement.
13. **CONFIDENTIALITY:**
 - (a) “**Confidential Information**”: means any and all information, data, documentation, the terms and conditions of this Agreement, and any and all oral, written, electronic or other communications and other information disclosed or provided by one party to the other including any and all analyses or conclusions drawn or derived therefrom and information developed or disclosed hereunder, which is designated by either party as confidential whether orally or in writing, or which would be considered confidential by a reasonable person familiar with the parties’ industry and in the case of CAA, specifically includes all trade secrets and source code relating to the Infoex System and CAIS and in the case of the Subscriber, specifically includes the Potentially Sensitive Subscriber Data if the Subscriber has chosen Option 2.
 - (b) A party (the "**Receiving Party**") receiving Confidential Information belonging to the other party (the "**Disclosing Party**") will not use, either directly or indirectly, any Confidential Information for any purpose other than to fulfill its obligations hereunder and further the purposes of this Agreement without the Disclosing Party’s prior written consent. The Receiving Party shall use all reasonable efforts to keep the Confidential Information in strict confidence and will not, without the prior written consent of the Disclosing Party, disclose any Confidential Information to any person or entity, except those of the directors officers, employees, consultants and agents, who have a “need-to-know” such Confidential Information and in the case of the CAA, to third parties contemplated by Section 7(b)(ii).
 - (c) In the event that a Receiving Party is required by judicial or administrative process to disclose any or all of the Confidential Information, the Receiving Party will promptly notify the Disclosing Party and allow the Disclosing Party reasonable time to oppose such process before disclosing any Confidential Information.
 - (d) Notwithstanding any termination of this Agreement, the obligations created in this Section 13 will survive and be binding upon the parties for a period of five (5) years from the termination of this Agreement.
14. **INDEMNITY:** Each party (the "**Defaulting Party**") shall indemnify, hold harmless and defend the other party, its officers, directors, employees, agents, successors and assigns from and against, all damages, losses, costs, expenses, legal fees, awards and other liabilities incurred as a result of any claim, suit, action or proceeding brought against the other party arising out of a breach by the Defaulting Party of Section 6 (Trade-marks License), Section 8 (Ownership), Section 9 (Grant of License) or Section

13 (Confidentiality). The Subscriber also agrees to indemnify, hold harmless and defend any other subscriber to the Infoex System from and against, all damages, losses, costs, expenses, legal fees, awards and other liabilities incurred as a result of any claim, suit, action or proceeding brought against such other subscriber to the Infoex System arising out of a breach by the Subscriber of Section 13 (Confidentiality) and/or Section 9 (Grant of License). Notwithstanding any termination of this Agreement, the obligations created in this Section 14 will survive and be binding upon the parties.

15. In the event of a breach of a Defaulting Party of Section 13 (Confidentiality) or Section 9 (Grant of License), in addition to all other remedies available to the other party at law or in equity, the other party shall be entitled to such relief by way of restraining order, injunction, decree, declaration or otherwise as may be appropriate to ensure compliance with the provisions of this Agreement as may be granted by a court of competent jurisdiction. Furthermore, the parties acknowledge that granting such relief is fair and reasonable in the circumstances.

16. **TERMINATION:**

(a) This Agreement shall terminate at the option of either party if the other party materially defaults in the performance or observance of any of its obligations hereunder and fails to remedy the default within thirty (30) days after receiving written demand therefor.

(b) Each party has the right to immediately terminate this Agreement upon written notice to the other party, in the event of a breach of either Section 8 (Ownership), Section 9 (Grant of License) or Section 13 (Confidentiality) by the other party hereto.

(c) CAA may immediately terminate this agreement upon written notice to the Subscriber, in the event that the Subscriber has failed to make any payment of Fees due hereunder within fifteen (15) days that any such payment becomes due and outstanding to CAA.

(d) Within 30 days of any termination of this Agreement, the Subscriber will:

(i) cease to use the Infoex System and CAIS in any manner whatsoever;
and

(ii) deliver or cause to be delivered to CAA any Confidential Information belonging to CAA.

17. **GENERAL:**

(a) Each party will comply with all laws, regulations and ordinances, whether federal, provincial, municipal or otherwise with respect to the use of the Infoex System and/or this Agreement.

(b) The Subscriber shall not directly or indirectly sell, assign, transfer, or otherwise convey any of its rights and obligations hereunder, without the prior written consent of CAA.

(c) This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia without regard to its conflict of law rules.

Each party attorns to the exclusive jurisdiction of the Courts of the Province of British Columbia.

- (d) Time will be of the essence of this Agreement.
- (e) This Agreement will enure to the benefit of and be binding upon the parties, and their respective successors and permitted assigns.
- (f) The parties acknowledge that the law firm of Richards Buell Sutton LLP has acted solely for CAA in connection with this Agreement and that the Subscriber has been advised to seek independent legal advice.
- (g) This Agreement sets forth the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties (including without limitation any mutual releases of liability set out in prior subscription agreements between the parties, which shall have no further force and effect), and no modifications hereof will be binding unless executed in writing by the parties.

IN WITNESS WHEREOF the parties have executed this Agreement on the _____(Date),

SIGNED FOR AND ON BEHALF of)
CANADIAN AVALANCE ASSOCIATION)
 by its authorized signatory:)
)
 _____)
 Authorized Signatory)

SIGNED FOR AND ON BEHALF of)
)
)
 by its authorized signatory:)
)
 _____)
 Authorized Signatory)

SCHEDULE "A"

FEES

The Subscriber agrees to pay CAA fees as outlined below;

Definition of Options

- **Option 1:** Full Assignment of Subscriber Data Ownership and Rights. The Subscriber assigns to CAA all rights, title and interest, whether classified as Non-Sensitive or Potentially Sensitive.
- **Option 2:** Partial Assignment of Subscriber Data Ownership and Rights. The Subscriber retains full ownership and rights to the Potentially Sensitive Subscriber Data.

Please see above agreement contract for a detailed definition

Classification of Decision Nodes

A decision node is defined as a distinct geographic location with a distinct avalanche management program. Please contact the CAA if you would like further clarification.

- **Class A Node:** few avalanche workers (1-2), small client base and small tenure area. (e.g. non-mechanized backcountry lodge, small ski area with very small avalanche control program, independent guide, etc.)
- **Class B Node:** some avalanche workers (2-5), small to medium client base (e.g. mechanized backcountry skiing operation, typical ski area with control program, highways program, etc.)
- **Class C Node:** many avalanche workers (>5), medium to large client base (e.g. large heli-skiing organization with numerous machines out of a single base area).

Subscription Rates

The following table defines base rates for Option 1 Subscriptions. Option 2 subscribers are charged a 25% surcharge for the additional overhead related to the increased handling costs associated with Option 2 data security requirements.

Class	Base Rate
Class A	\$515
Class B	\$1,100
Class C	\$2,755

3rd Party System Integration with InfoEx

The InfoEx system has been built with the capabilities of integrating 3rd party data management systems directly into the exchange. There are a variety of services available to subscribers to facilitate this integration. The CAA offers a variety of Application Programming Interfaces (API's). Those subscribers who wish to integrate a 3rd party system into InfoEx are encouraged to contact the CAA. The CAA charges a nominal \$500/season/data management system to help offset the costs of ongoing maintenance and development of the API code set for 3rd party integration.

*Discounts

- **CAA Member Discount:** 10% off InfoEx for Associate Members

The above amounts are exclusive of applicable taxes including without limitation GST and PST, where applicable, which shall be paid by the Subscriber concurrently with the fees.

The CAA may amend or change the fees in this Schedule "A" from time to time, provided that the CAA provides fifteen (15) days written notice of any such change to the Subscriber.

SCHEDULE "B"

Definitions of Non-Sensitive and Potentially Sensitive

"Non-Sensitive" means any Subscriber Data or Historical Data that is not Potentially Sensitive.

"Potentially Sensitive" means the following types of Subscriber Data or Historical Data:

(a) All attachments. These include, but are not limited to snow profiles, photos, data not part of normal Infoex inputs and submitted as an attachment, diagrams and sketches.

(b) All text or data entered in the comments or remarks field associated with snowpack structure.

(c) All text or data entered in the comments or remarks fields associated with stability ratings for the alpine, treeline and below treeline elevation zones.

(d) All text or data entered in the comments or remarks fields associated with avalanche observations. This includes but is not limited to information on the number of people in the party, number caught only, number partly buried (non-critical or critical), number buried, number injured, number of fatalities and any description, discussion, commentary, analysis or speculation on the events or snowpack and weather conditions leading up to the avalanche, chronology of events, mechanisms of injury or fatality, accident response.

SCHEDULE "C"

Submission Frequency: Definitions of "Regular and Field"

Contractual submission requirements state: "The Subscriber agrees to: submit to CAA for inclusion in the InfoEx System, on a regular basis, various information and data..."

Definition of contractual requirements is: "Regular" means you are expected to report every day you are operating in the field unless there are extenuating circumstances. "Field" is defined as observations taken during your normal course of work, including observations made from roadside or helicopter.

During registration, subscribers will provide an estimate of the number of days they are expecting to submit.

If a subscriber is falling significantly short of their expected number of submissions, they will be contacted by the CAA to discuss the reasons for this e.g. technical difficulties, changes to expected work patterns etc. The CAA will assist the subscriber as far as possible to enable submissions to be made.

At season end, subscribers who the IAG and CAA believe may have unreasonably low rates of submissions (taking into account their estimated number of submissions, the nature of their avalanche work and number of days operating in the field), will be asked to participate in a review. During this review there may be discussion about the subscriber's eligibility to participate in InfoEx in future years.