

## **SURGE1 END USER SOFTWARE LICENSE AGREEMENT**

This is *SURGEONE CORP*'s (the "Provider") full Subscriber Agreement (the "Agreement"). You may wish to print this Agreement for your reference. A link to this Agreement is provided in the billing module on the Provider Web site on any of the URLs ("URLs") so this Agreement may be reviewed at any time.

This Agreement sets forth the terms and conditions for your use of the Provider Web site. By clicking "I Agree" you agree to be bound by the terms and conditions contained in this Agreement.

### **1. DEFINITIONS**

A. "URLs" means any uniform resource locator associated with surge1.com or part of/ending with surge1.com (example: app.surge1.com, test.surge1.com).

B. "Licensee and/or you" means you the user and the individual executing this Agreement. It also means authorized users under the license of the subscriber.

C. "Product" means Content and Software on the Provider Web site and any portion thereof, which is accessible on the Internet at the "URLs" or another uniform resource locator that the Provider might designate.

D. "Content" means all indexes, scans (including, but not limited to, scans of works in the public domain, and derivative works therefrom), text (including, but not limited to, typed text of work in the public domain and derivative works there from), graphics, photographs, animations, scripts, icons, audio, data, and all other nonSoftware components of the Product.

E. "Use" means access to the Product, and to reproduce copies, display, or perform the Product.

F. "Software" means all computer code (both source and object), applets, interfaces, commands, syntax, and expressions of ideas that operate, cause, create, direct, manipulate, access, or otherwise affect the Content in the Product, whether created by Provider or licensed from third parties.

G. "Provider Web site" shall mean the Web site, and all subsequent pages made available by the Provider server located at the "URLs"

## 2. LICENSE AND PERMITTED USE

A. Notwithstanding the protectability of the Product under any law, or lack thereof, access to and Use of the Product shall be governed exclusively by the terms of this Agreement.

B. The Product is comprised of original works of authorship (including, but not limited to, derivative works based on graphical scans or typed text of public domain materials) that are both proprietary and intellectual properties of Provider or its suppliers and are protected by both the terms of this Agreement as well as domestic and foreign contractual and intellectual property laws including but not limited to copyright, trademark, patent, and trade secret laws.

C. To the extent that you receive Software from Provider, such Software is deemed part of the Product.

D. Provider grants to you a nonexclusive and nontransferable license to:

(i) use the Product as provided herein, until your subscription is terminated as provided for in this Agreement;

(ii) access, load, store, and operate the Product with browser Software;

(iii) access the Product, including the Content, via the Internet; and

(iv) display, download, and print such portions thereof on an ad hoc basis for your own education and enjoyment subject to the limitations in this Section.

(v) Allow the number of users paid for by your license to utilize the Product as provided herein after agreeing to this subscriber agreement.

E. Notwithstanding the above, you shall **NOT**, without the prior written consent of Provider:

(i) decompile, reverse-engineer, disassemble, or create derivative works from the Product;

(ii) remove or obscure any proprietary notices including, but not limited to, any and all copyright, trademark, and patent designations contained in the Product;

(iii) upload, post, e-mail, transmit, publish, republish, distribute, display, or otherwise make available the Product to any third parties;

(iv) use the Product for any commercial, financial, or other beneficial purpose, including, but not limited to, advertising, the exploitation, rental, lease, sale, or resale of the Product;

(v) cache or otherwise temporarily store the Product or component thereof, on any server or other device used to communicate with individual personal computers or personal devices. Such limitation does not include cache, which is automatically stored by an individual personal browser application;

(vi) store the accessed, used, or downloaded Product in any electronic, magnetic, optical, or other format now known or hereinafter created for more than 5 days;

(vii) assign, rent, lend, lease, sell, sublicense, transfer, export from the United States, copy, reproduce, modify, adapt, translate, reverse engineer, decompile, disassemble, extract components, or create derivative works of the Product; or

(viii) remove, modify, hide, or otherwise make unreadable or nonviewable any notice, legend, advice, watermark, or other designation contained on the Product, component thereof or output there from.

The above provisions indicate what a user/customer can and cannot do with the information/content provided on the site. Basically, the customer can access the information but cannot change, reverse-engineer, remove or electronically store the information in any way.

F. You shall not interrupt, or attempt to interrupt, the operation of the Provider Web site in any way.

G. The Provider Web site may include technological protection measures that effectively control access, reproduction, or distribution of the Product. Any attempt to tamper or dismantle these protections is a breach of this Agreement and may be a violation of the Digital Millennium Copyright Act of 1998, and will subject the violator to civil and criminal penalties.

H. Provider reserves the right to log off subscribers that are inactive for an extended period of time and/or log off subscribers that violate any provision of this Agreement.

I. All downloading, printing, or other Use in excess of that provided herein requires PRIOR written permission from an executive officer of Provider, by

contacting Provider at e-mail: dwood@surge1.com [*e-mail address of provider*].

J. Provider Content Used or referenced in any print or electronic media must be done in accordance with scholarly standards, and must provide for proper attribution to Provider.

K. You may provide links to the Provider Web site from locations outside the Provider Web site provided:

- (i) you link only to the Provider home page located at the "URLs";
- (ii) you do not remove or obscure, by framing or otherwise, advertisements, the copyright notice, or other proprietary notices in the Provider Web site;
- (iii) you give Provider notice of such link by sending an e-mail message to dwood@surge1.com [*e-mail address of provider*]; and
- (iv) you agree to immediately discontinue providing links to the Provider Web site if requested to do so by Provider.

L. If the Provider Web site is accessed by the U.S. Government or on its behalf the Provider Web site is furnished with restricted rights, use, duplication, or disclosure of the Software included in the Provider Web site by the U.S. Government and parties acting on its behalf is governed by, and subject to the restrictions set forth in, Rights in Technical Data and Computer Software Act.

M. Provider may refuse to grant you a user name that impersonates someone else, is protected by trademark or other proprietary right law, or is vulgar or otherwise offensive as determined by the Provider.

### **3. MODIFICATIONS**

A. *To the Agreement.* Provider has the right to modify this Agreement and any policies affecting the Provider Web site. Any modification is effective immediately upon posting to the Provider Web site or distribution via electronic mail or conventional mail. Your continued Use of the Provider Web site following notice of any modification(s) to this Agreement shall be conclusively deemed an acceptance of all such modification(s). Your only right with respect to any dissatisfaction with any modifications made pursuant to this provision, or any policies or practices of Provider in providing the Provider Web site, including, but not limited to: (i) any change in the Content; or (ii) any change in the amount or type of fees associated with the Product is to

terminate your subscription in accordance with the provisions of this Agreement.

*B. To the Provider Web site.* Provider has the right to modify, suspend, or discontinue the Provider Web site or any portion thereof at any time, including the availability of any area of the Provider Web site, including, but not limited to, the availability of the Product. Provider may also impose limits on certain features and services or restrict your access to parts or all of the Provider Web site without notice or liability.

#### **4. PRIVACY POLICY**

Provider's Privacy Policy. Provider may release any information as required by law in response to subpoena or other legal process or to law enforcement officials. Provider shall not share information between Subscribers. Provider may provide information regarding Subscriber and Subscriber's sub-contractors to the Vendor subscriber is using the website to schedule jobs (i.e. Lowe's) unless Subscriber notifies Provider in writing not to provide this information. Provider will not sell or release Subscriber's information to third parties for marketing purposes.

Provider will use performance data, including performance statistics, bug fixes and other similar data ("Performance Data") uploaded to our Websites. Provider may use such Performance Data in any way, including, but not limited to, using, editing, altering, reproducing, publishing and/or distributing the Performance Data for any purpose, commercial or otherwise, provided that such Performance Data is stripped of all personally identifiable information.

Provider uses personal information to allow Provider to process your service requests, provide access to privileged areas of the Website, and customize the website for Subscribers and their installers.

Cookies are small data files that a website you visit may save on your computer or handheld device that usually includes an anonymous unique identifier. Provider's websites may use cookies for user authentication, keeping track of your preferences, tracking , measuring traffic patterns, and in certain other cases. You consent to Provider's use of cookies.

## **5. YOUR REPRESENTATIONS AND WARRANTIES**

You represent, warrant, and covenant that:

- A. You will use the Provider Web site in accordance with this Agreement.
- B. The information that you have provided to Provider is true and accurate.
- C. You shall at all times comply with all applicable laws, rules, and regulations with respect to your Use of the Provider Web site.
- D. You shall not Use the Provider Web site to infringe, misappropriate, or violate the rights of Provider or third parties.
- E. You shall not knowingly or otherwise introduce to or through the Provider Web site any viruses or other items of a destructive nature.
- F. You shall comply at all times with this Agreement, including any modifications to this Agreement in accordance with this Agreement.

## **6. DISCLAIMER OF WARRANTIES**

THE PRODUCT, INCLUDING ALL CONTENT, SOFTWARE, AND INFORMATION MADE AVAILABLE THEREON OR ACCESSED BY MEANS THEREOF, IS DISTRIBUTED ON AN "AS IS" BASIS. THERE ARE NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, COMPATIBILITY, SECURITY, ACCURACY, OR NONINFRINGEMENT; (A) THAT THE FUNCTIONS CONTAINED IN THE PROVIDER WEB SITE OR THE PRODUCT SHALL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (B) THAT THE PRODUCT WILL MEET YOUR REQUIREMENTS, (C) THAT THE PRODUCT DEFECTS SHALL BE CORRECTED, (D) THAT THE PROVIDER WEB SITE OR PRODUCT SHALL MEET ANY PARTICULAR CRITERIA OF PERFORMANCE OR QUALITY, OR (E) THAT THE PROVIDER Web site OR PRODUCT, INCLUDING (FORUMS) OR THE SERVERS ON WHICH THE PROVIDER Web site IS OPERATED, ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. TO THE MAXIMUM EXTENT PERMITTED UNDER LAW THE UNIFORM COMMERCIAL CODE AND THE

UNIFORM COMPUTER INFORMATION TRANSACTION ACT SHALL NOT APPLY TO THIS AGREEMENT.

## **7. LIMITATIONS ON LIABILITY**

A. USE OF THE PRODUCT IS AT YOUR SOLE RISK. YOU ASSUME FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM YOUR USE AND/OR DOWNLOADING THE PRODUCT, ACCESSED THROUGH OR OBTAINED BY MEANS OF THE PROVIDER Web site. THE PROVIDER AND ITS AFFILIATES, AGENTS, LICENSORS, AND ANY PROVIDER OF TELECOMMUNICATIONS OR NETWORK SERVICES FOR PROVIDER SHALL *NOT* BE LIABLE TO YOU OR ANYONE ELSE FOR ANY DAMAGES INCLUDING, BUT NOT LIMITED TO, PUNITIVE, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, DIRECT, INDIRECT, ATTORNEY'S FEES, DAMAGES FOR LOSS OF PROFITS, GOOD WILL, OR OTHER INTANGIBLE LOSSES OR SIMILAR DAMAGES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

B. Provider's Web site includes facts, views, opinions, and recommendations of individuals and organizations deemed to be of interest. Provider does not guarantee the accuracy, reliability, completeness, or timeliness of, or otherwise endorse, these views, opinions, or recommendations. You acknowledge that any reliance upon any such opinion, advice, statement, memorandum, or information shall be at your own risk.

The Provider Web site may contain links and pointers to other sites on the Internet which may be maintained by third parties. Such links do not constitute an endorsement by Provider of any third-party site or any materials contained therein. Provider does not control and is not responsible for the availability, accuracy, privacy policy, or currency of such third-party sites or any information, content, products, or services accessible from such third-party sites.

## **8. LIMITATION OF DAMAGES**

THE LIABILITY OF PROVIDER, ITS AFFILIATES, AGENTS, LICENSORS, AND ANY PROVIDER OF TELECOMMUNICATIONS OR NETWORK SERVICES FOR PROVIDER, IF ANY ARISING OUT OF ANY KIND OF LEGAL CLAIM, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IN ANY WAY CONNECTED WITH THE PROVIDER WEB SITE, THE PRODUCT OR SURGE ONE CORP IS LIMITED TO THE MINIMUM AMOUNT ALLOWABLE BY LAW AND IN NO EVENT SHALL IT EXCEED ONE DOLLAR (\$1).

## **9. REGISTRATION AND SECURITY**

A. As part of the registration process, you shall select a password and a subscriber ID. You shall provide Provider with certain registration information, all of which must be accurate and updated as appropriate.

B. You may not (i) select or use a subscriber ID of another person with the intent to impersonate that person; (ii) use a subscriber ID in which another person has rights without such person's authorization; or (iii) use a subscriber ID that Provider, in its sole discretion, deems offensive. Failure to comply with the foregoing shall constitute a breach of this Agreement, which may result in immediate termination of your subscription.

C. You shall be responsible for maintaining the confidentiality of your password.

D. You shall immediately notify Provider of any known or suspected unauthorized Use(s) of your subscription, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure of your password.

E. You are responsible for all usage or activity with your subscription, including, but not limited to, Use of your subscription by any third party authorized by you to Use your subscription, subscriber ID, and password. You are also responsible for any and all unauthorized use of your subscription. Any fraudulent, abusive, or otherwise illegal activity may be grounds for termination of your subscription, at Provider's sole discretion, and Provider may refer you to appropriate law-enforcement agencies.

## **10. TERM AND TERMINATION**



A. Your subscription shall continue until terminated by Provider or until you notify Provider in writing, either via mail, e-mail, or fax, of your decision to terminate your subscription. Your subscription will be terminated upon non-payment of any subscription fees due Provider.

B. Termination shall take effect within 48 hours of receipt of your request and Provider shall send you written confirmation thereof. Such confirmation may be via e-mail.

**C. IF ANY OF THESE RULES OR ANY FUTURE CHANGES ARE UNACCEPTABLE TO YOU, YOU MAY TERMINATE YOUR SUBSCRIPTION IN WRITING EITHER VIA E-MAIL, FACSIMILE, OR REGULAR MAIL. YOUR CONTINUED USE OF THE PRODUCT NOW, OR FOLLOWING THE POSTING OF NOTICE OF ANY CHANGES IN THIS AGREEMENT, SHALL INDICATE ACCEPTANCE BY YOU OF SUCH RULES, CHANGES, OR MODIFICATIONS.**

D. Either You or Provider may terminate Your SUBSCRIPTION at any time. You understand and agree that termination of Your subscription is Your sole right and remedy with respect to any dispute with Provider. This includes, but is not limited to, any dispute related to, or arising out of: (i) any term of this Agreement or Provider's enforcement or application of this Agreement; (ii) any policy or practice of Provider, including enforcement or application of these policies; (iii) the content available through Provider or any change in content provided through Provider; and (iv) Your ability to access and/or Use the Provider Web site.

E. If Provider terminates this Agreement, Provider reserves the right to refuse to provide a subscription or any Product to You in the future.

## **11. PUBLIC REFERENCE**

You shall not use or refer to any trademarks, service marks, logos, or other identifiers of Provider, or properties owned, controlled, licensed, or otherwise proprietary to Provider without the prior written consent of Provider. Any such permitted use of any trademarks, service marks, logos, or other identifiers shall inure to the benefit of Provider.

## **12. EXPORT CONTROL LAWS**

Software available on the Provider Web site or as part of the Product may contain technology that is subject to export controls. You agree not to transfer or export such Software from the United States, including providing such Software to any foreign person or entity in the United States.

### **13. ASSIGNMENT**

You shall not assign your rights, duties, or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law, or otherwise, without the prior written consent of Provider and any attempt to do so shall be deemed null and void, and of no effect.

### **14. SEVERABILITY**

If any provision of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this Agreement, and all provisions not affected by such invalidity shall remain in full force and effect.

### **15. WAIVER**

The waiver by either party of a breach or default in any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power, or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

### **16. NOTICE**

Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given (A) if by hand delivery, upon receipt thereof, (B) if by mail, 10 days after deposit in the United States mails, postage prepaid, certified mail, return receipt requested, (C) if by facsimile

transmission, upon electronic confirmation thereof, or (D) if by next-day delivery service, upon such delivery.

## **17. INDEPENDENT CONTRACTOR**

No party shall have the power to bind the other party, nor shall any party make any such representation to third parties. The parties' relation to the other shall be that of an independent contractor solely responsible for the manner and means by which the duties hereunder are carried out. No party shall be construed for any purpose to be an employee subject to the control and direction of the other party.

## **18. FORCE MAJEURE**

If the performance of any part of this Agreement by the parties is prevented, hindered, delayed, or otherwise made impracticable by reason of any flood, riot, terrorism, earthquake, fire, judicial or governmental action, labor disputes, act of God, or any other causes beyond the control of either party, that party shall be excused from such to the extent that it is prevented, hindered, or delayed by such causes, provided, however, that if such period of force majeure last more than thirty (30) days, then the other party hereto may terminate this Agreement.

## **19. CHOICE OF LAW**

This Agreement shall be governed by the internal laws of the State of Tennessee without regard to the principles of conflicts of laws.

## **20. JURISDICTION AND VENUE**

Any controversies or claims arising out of or relating in any way to this Agreement or a breach thereof, shall be adjudicated in the courts of the state of Tennessee, County of Davidson.

## **21. HEADINGS**

The section headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

## **22. ENTIRE AGREEMENT**

This Agreement and the attachments to it constitute the entire agreement between the parties with respect to the subject matter of the Agreement, and supersedes all prior agreements between the parties, whether written or oral, relating to the same subject matter.

By clicking “I Agree” You agree that you have read and understand this subscriber agreement and agree to be bound by the terms and conditions contained in this Agreement.

I AGREE

By clicking “I Do Not Agree” you will not have access to the provider Web site.

I DO NOT AGREE

PrintAgree