

Terms and Conditions for SurfRay Partner Agreement

Any Partner Agreement with SurfRay consists collectively of the following documents:

- A Partner Agreement Specification (PAS), which is signed by both parties
- This document which is considered an integrated part of the Agreement
- The Partner Discount Schedule, which is considered an integrated part of the Agreement

Definitions:

- Partner: Organization that through this agreement will be authorized to resell selected or all SurfRay's products, specified in the PAS
- Territory: A specified geographical region
- Software, Product(s): The SurfRay products that the Partner is authorized to resell, specified in the PAS
- SurfRay: SurfRay Inc. for partnerships in USA, Canada, Australia and New Zealand or SurfRay 2009 A/S for partners in other countries
- Support and Maintenance: The agreement by end-users to pay for access to technical support and future patches and releases of the Software. First year is mandatory with the purchase of any licenses and following years are renewed and paid yearly unless other is agreed.
- End User: The organization that the Partner resells software to. The End-user uses the software internally and are not allowed to resell the software
- Discount, Discount Program: A percentage discount on SurfRay's list prices that the Partner is entitled to, specified in the PAS
- Third Party Software: Software that is not produced or sold by SurfRay

WHEREAS, SurfRay desires for Partner to resell and distribute its proprietary computer programs within a specified geographical region ("Territory"); and WHEREAS, Partner desires to resell and distribute such computer programs within the Territory accordance with the terms and conditions herein; NOW THEREFORE, for and in consideration of the clauses set forth below, the parties agree as follows:

1. GRANT OF RIGHTS

1.1. License to Software and Documentation

Subject to the terms and conditions of this Agreement, SurfRay hereby grants to Partner a non-transferable, non-exclusive license for the Term of this Agreement to distribute within the Territory the SurfRay software (the "Software") and any documentation provided by SurfRay from time to time supporting the Software (the "Documentation") solely to end users (the "End Users") to whom Partner licenses the Software for internal use and not for further resale by the End User.

The license given to an end user of the Software (an "End User") may be divided in a number of Server Licenses and a number of User Licenses. The deployment of the software to the End User requires a unique License File obtained from SurfRay covering the number of Server Licenses and User Licenses needed.

The Partners license to distribute the Software includes the mandatory first years Support and Maintenance not the following years. This means that renewal of Maintenance and Support for the second year and beyond is not eligible for discounts and is invoiced directly from SurfRay to the End-User, unless other is explicitly agreed in writing.

The Partners Territory is defined as:

- For partners headquartered in USA and Canada the Territory is USA and Canada
- For partners headquartered in the EU the Territory is the EU
- For partner headquartered in other countries the Territory is the country where their headquarter is located

1.2. License to Trademarks

SurfRay hereby grants to Partner a non-transferable, non-exclusive license for the Term of this Agreement to use and reproduce within the Territory SurfRay's Trademarks in connection with Partner's marketing, advertising, promotion and distribution of the Software in accordance with the Agreement.

2. DISTRIBUTION

2.1. Communication

Both the Partner and SurfRay will facilitate and encourage communication directly between the Partners sales people that market and sell SurfRay's product and SurfRay's channel sales organization to ensure that the Partners sales people are as updated as possible. In addition to this the Partner can appoint a primary contact person for the partnership.

2.2. Partner Level Tiers

Partners qualify among other through product certification and order volume for various Partner Tiers, which will entitle the Partner to various services and discount rates dependent on the specific Partner Tier.

The rules regulating qualification to the various Partner Tiers as well as what services are available to various Partner Tiers are described in the Partner Discount Schedule which are updated from time to time without further notice.

2.3. EULA

All Software distributed by Partner shall be distributed on the terms and conditions of SurfRay's End User License Agreement ("EULA"), as amended by SurfRay from time to time. Partner shall not distribute any Software to any End User unless the End User has accepted the current terms and conditions of SurfRay's EULA.

2.4. Joint Marketing

Both the Partner and SurfRay shall list each other on their respective web sites as partners in the appropriate section on the web sites and provide a link to the other party's web site. The use of partner level designation, logo and the profile wording text is subject to approval by SurfRay. The profile text about the Partner on SurfRay's web site is based on text submitted by the Partner. As a placeholder SurfRay may at the effective date of this agreement construct and publish a profile based on content on the Partner's public web site

The Partner will be listed on SurfRay's web site in the section that corresponds to the Partner Level Tier that the Partner has qualified for.

Partner shall not make any representations or warranties other than those contained in the Product Documentation and this agreement and shall not make any other representations or warranties whatsoever on SurfRay's behalf.

2.5. Sales Opportunity Registration

As part of SurfRay's partner program the Partner may at their discretion register a sales opportunity in order to get pre-sales support and sales process coordination with SurfRay's sales team. This includes that SurfRay will exercise reasonable efforts to resolve any channel conflicts. Registration of sales opportunities are subject to the following terms and conditions:

Opportunity registration is done in the Partner Portal on www.surfray.com. A registration has not taken effect before is validated by and an email confirmation of registration has been sent back to the Partner.

In order for the Partner to register a sales opportunity the End-user must be identified and the prospect needs to have done a trial implementation within 60 days of registration and be quoted by the Partner. For existing customers it only needs to be quoted. A registration covers a specific sale of SurfRay products, typically for a specific project.

The Partner can have a maximum of 15 opportunities registered at any one time and a registration is valid for 6 months while it's on the registration list and the Partner is a member of SurfRay's partner program.

A registration of an opportunity will merit the Partner with presales and technical support in the form a joint customer demonstration, assisted trial implementation services, proactive trial follow-up from SurfRay, limited professional services or any other support SurfRay can provide during the sales process. Also the Partner will enjoy preferred status in the sales process which means that no other Partner will be invited to join the sales process. Provision of support is based on a first come first serve basis.

A registration does not provide the Partner with any exclusivity or similar provisions. SurfRay has the right to sell to the winning partner in a multiple bid scenario, even in cases where an opportunity is registered to the Partner.

The Partner can register an Opportunity selling to second partner provided that the second partner has joined SurfRay's partner program and that the end-user is identified.

A registered opportunity will have a dedicated SurfRay's and Partner sales contact person which shall act as the mutual primary point of contact related to the opportunity.

The Partners sales persons that are responsible for registered sales opportunities must on request make reasonable efforts to provide status updates on a registered opportunity from time to time via phone/Skype type of communication.

2.6. Support for Software

SurfRay will provide support to the Partner, on the Partner's internal usage of the products as well as pre-sales support based on availability.

Support provided by SurfRay to the Partner customer irrespective is it is provided to the Partner or directly to an End User requires that the licenses that are in use with the End User are on an active and paid maintenance and support agreement with SurfRay. Any support request submitted by the Partner must include the full identify of the End-User as well as identification of the Software license associated with the support request.

The Partner shall not compete with SurfRay's Support and Maintenance services by selling services that can be perceived as a substitute.

Any support provided by SurfRay is subject to SurfRay's standard business terms and conditions available at www.surfray.com.

2.7. Compliance with Applicable Laws

Partner shall comply with all laws and regulations applicable to Partner's marketing and distribution of the Software hereunder. Without limiting the generality of the foregoing, Partner shall, at its own expense, make, obtain, and maintain in force at all times during the term of this Agreement, all filings, registrations, licenses, permits and authorizations required for Partner to perform its obligations under this Agreement.

2.8. Protection of Proprietary Rights

Partner shall reasonably cooperate without charge (provided that SurfRay will reimburse out-of-pocket expenses as agreed in advance in writing), in SurfRay's efforts to protect SurfRay's rights in the Property. Partner shall promptly notify SurfRay of any alleged infringements of SurfRay's Property Rights that come to Partner's attention. SurfRay shall have the exclusive right to institute infringement or other appropriate legal action against alleged infringers of its Property Rights. SurfRay shall incur all expenses in connection therewith and shall retain all monetary recoveries received there from.

2.9. Fulfilment of Partner's Obligations

Partner shall fulfil all of its contractual and legal obligations to the End Users. In particular, Partner warrants that it will:

If the Partner have sold a customized solution where SurfRay's products are a part of provide first level support on the solution the Partner have sold to End Users

promptly, courteously and appropriately respond to the End Users questions, concerns and complaints; and

deal with the End Users in a professional manner that shall add to the good reputation of Partner and SurfRay

To the extent that SurfRay provides written notice to Partner of Partner's failure to fulfil its obligations towards the End Users pursuant to this Agreement, and such failure is not cured by Partner within a reasonable period of time not to exceed fourteen (14) days, this agreement is subject to immediate termination.

2.10. Distribution to other Partners

This agreement grants the Partner a license to reseller SurfRay's products solely to End-Users.

The Partner may earn compensation by referral of SurfRay's products to another Partner provided the following:

- The other Partner is not a member of SurfRay's partner program and have not prior bought products from SurfRay
- The other Partner becomes a member of SurfRay's partner program as part of the first order
- The Partner that distributes to another Partner is compensated according to the Partner Discount Schedule, typically by a referral fee and on the first order only from the other Partner

3. PRICE AND PAYMENT; SHIPMENT AND DELIVERY

3.1. Pricing

Pricing for the Products are listed in the Partner Portal on www.surfray.com or available upon request from SurfRay's sales organization and may change from time to time without further notice.

License Files must be obtained by Partner from SurfRay in order for the End User to activate and use the Software (the "License Files"). For every License File ordered by Partner, Partner shall pay a fee in accordance with SurfRay's list prices applicable at the time the order is placed. A License File covers either a license for the End User to use the Software on a number of servers ("Server License") and a license for a number of the End Users to use the Software on an End User Device ("Client Access *License (CAL)"). In this respect, a "Device" means a personal computer, a workstation, a telephone, a Personal Digital Assistant ("PDA"), or other electronic device.

Once a License File has been ordered by the Partner and delivered to the Partner the license is irrevocable and the license fee including any associated maintenance fees are non-refundable.

Partner may from time to time obtain a quote from SurfRay by direct contact with SurfRay's Channel Sales organization by request sent to sales@surfray.com.

3.2. Compensation

The Partner may be eligible to a discount or a commission in accordance with what they are entitled to based on their Partner Tier status. SurfRay reserves the right to amend the Partner Discount Schedule from time to time.

The Partner Discount Schedule describes the discounts the various Partner Tiers and special campaigns entitle

the Partner to and are available to partners on request and may change from time to time as new products, service and requirement are introduced without further notice. If a change to the Discount Schedule is made a Partner may chose on request for sixty (60) days after such a change to get the discount they were eligible for on the previous Discount Schedule.

The Partners purchase price for the Products is calculated as the list price "at the time of order" minus the discount the partner is eligible for.

3.3. Payment

All payments to SurfRay shall be made within thirty (30) days after the receipt by Partner of SurfRay's invoice. Partner shall pay SurfRay a late charge on outstanding amounts due equal to one and one-half percent (1.50%) per month or the maximum amount allowed by law, whichever is less.

All payments shall be made in the currency in which the prices are quoted by SurfRay or as otherwise agreed by the parties, free of any withholding tax and of any currency control or other restrictions to SurfRay.

If Partner fails to make payments when due that is not cured by Partner within fourteen (14) days of an invoice due date, SurfRay shall be entitled to, in its sole discretion:

- Place Partner on credit hold, in which case, SurfRay may cease to fulfil Partner's orders to any End Users after such notice; and/or
- Rescind Partner's right to sell or distribute any additional Software or Documentation hereunder and/or
- Terminate this agreement without further notice

Payments to the Partner, typically referral fees are paid against an invoice issued against PO issued to the Partner by SurfRay when the payment for the order is received by SurfRay. SurfRay's payment terms are 30 days net.

3.4. Taxes

All prices do not include any national or local sales, use, value added taxes or similar transactional taxes or duties. Should any tax or levy be made, Partner agrees to pay such tax or levy and indemnify SurfRay against any claim for such tax or levy. Upon request from SurfRay, Partner shall provide any and all information and documentation necessary to mitigate any tax impact of any transactions under this Agreement.

3.5. Shipment and Delivery

All Software is available for Partner to download from SurfRay's website or upon request and SurfRay shall electronically deliver all relevant License Files for the Software to Partner upon payment of due amounts.

SurfRay shall use commercially reasonable efforts to meet delivery dates requested by Partner, but in no event shall SurfRay be liable for its failure to meet such dates. In the event that SurfRay shall be unable to meet Partner's requested ship dates, SurfRay shall advise Partner of the change in or actual delivery schedule.

3.6. End User Identity and End User service

As part of the activation process for the Software the identity of the End User is revealed to SurfRay. Should Partner cease to perform services to End User, SurfRay

is entitled to direct or indirectly contact the End User to assure continued service to the End User.

4. INTELLECTUAL PROPERTY RIGHTS

4.1. Intellectual Property Rights

SurfRay owns and shall retain all right, title, and interest in and to all Software and Documentation; all trademarks, service marks or trade names associated with the Software or Documentation (the "Trademarks"); all copyrights, patents, trade secret rights, and other intellectual property rights therein (collectively, together with the Software, Documentation, and Trademarks, the "Property"). No transfer of rights in the Property is intended under this Agreement. Subject to Section 1, SurfRay does not grant to Partner any right or license, either express or implied, in the Software, Documentation or Property. Partner shall not reverse engineer, disassemble, de-compile, or otherwise attempt to derive source code from the Software.

4.2. Partner's use of Trademarks

Partner's use of the Trademarks shall not create any right, title or interest therein. Partner shall use the Trademarks only in a manner that in all material aspects, respects the Trademarks of SurfRay and all such use shall be for SurfRay's benefit. Partner shall not remove, obscure or alter SurfRay's copyright notice or the Trademarks from the Software or Documentation. Partner shall not adopt, use, or register, whether as a corporate name, trademark, service mark or other indication of origin, any of the Trademarks, or any word or mark confusingly similar to the Trademarks in any jurisdiction.

4.3. Partner's use of Software or Documentation

Partner shall have no right to reproduce the Software or Documentation, or any part thereof except for backup or archiving purposes.

5. WARRANTY, LIMITATION OF LIABILITY AND INDEMNIFICATION

5.1. Limited Warranty

The Parties represent and warrant to each other that this Agreement is executed by duly authorized representatives of each Party.

SurfRay warrants that for a period of thirty (30) days following delivery of the License Files to Partner that: (i) the Software will substantially conform to its Documentation; (ii) the Software does not infringe any intellectual property right of any third party. To the extent permitted by applicable law, this shall be Partner's sole and exclusive remedy with respect to any defects.

5.2. Limitation of Liability

To the extent permitted by applicable law, the parties shall only be liable towards each other in accordance with the Agreement. Except with respect to an infringement claim hereunder, in no event shall Partner's, SurfRay's or its licensors' liability to each other or any third party arising out of this agreement exceed the total amount actually received by SurfRay hereunder during the six (6) months prior to the act or omission giving rise to such liability. In no event shall any party or SurfRay's licensors be liable to another

party or any third party for loss of data, costs of procurements of substitute goods or services or any indirect, incidental, special, or consequential damages under any cause of action, even if such party has been advised of the possibility of such damages. This limitation shall apply notwithstanding any failure of an essential purpose of any limited remedy provided herein.

SurfRay shall only be liable for SurfRay's own Software and not for any other matter attributable in whole or in part to Partner and/or any third party. SurfRay undertakes no liability concerning faults, mistakes, delays, defects, business interruptions or for any non-fulfilment of this Agreement, to the extent that such is caused by (i) Partner's breach of this Agreement; (ii) Partner's acts or omissions; (iii) breach of contractual obligations by any of Partner's other suppliers or vendors; (iv) viruses received from any other party than SurfRay; (v) any losses or damages covered by an insurance taken out by Partner; (vi) faults, delays or defects related to the Software, services, data, information etc. provided by Partner, (vii) Partner's or End User's use of or inability to use the Software and/or the Documentation; (viii) faults or defects in data or information entered or provided by Partner, Partner's suppliers or vendors, or any other third party (ix) any changes, modifications or alterations to the Software and/or the Documentation made by Partner or any third party and/or (x) for any such incidental events for which Partner bears the risk. In the event that SurfRay claims that any of the aforesaid circumstances has resulted in faults, delays, defects or otherwise in non-fulfilment of this Agreement, Partner has the burden of proof that this is not the case.

Additionally SurfRay assumes no liability for the use of any services offered to the Partner and the Partners existing or potential customers under this Partner Program. All services including access to the online Partner Portal, technical support, marketing services are offered on a "use as available" basis and SurfRay does not guarantee the availability of these services. The services are subject to a limited capacity and are made available to Partners at SurfRay's discretion. Also SurfRay does not in any way promise or guarantee the effect of these services.

5.3. Indemnification

Each party shall indemnify and hold the other party harmless from and against any and all damages, liabilities, costs, claims, proceedings, losses and expenses (including, without limitation, reasonable attorney's fees) which the other party incurs as a result of any claim based on any breach of any intellectual property rights of the other party, any breach of Section 7.1 on confidentiality or ; provided:

- that the indemnified party gives written notice of any claim to the indemnifying party within ten (10) days for receipt of any such claim;
- the indemnified party provides reasonable assistance which the indemnifying party may reasonably request for the defence of the claim; and
- the indemnifying party has the right to control the defence or settlement of the claim, provided, however, that the indemnified party shall have the right to participate in, but not control, any litigation for which indemnification is sought with counsel of its own choosing, at its own expense;

except where such damages, liabilities, costs, claims, proceedings, losses and expenses are finally

determined by a court of competent jurisdiction to arise from a default of the Agreement by the indemnified party.

For avoidance of doubts, SurfRay's indemnification of Partner under this Section 5.3 will not apply to the extent infringement or breach is based upon (a) Partner's modification of the Software or Documentation, or (b) combination of the Software with programs not furnished, approved, recommended or specified by SurfRay.

Partner shall indemnify SurfRay in accordance with this Section 5.3 for any breach of Partner's obligations and warranties under Section 2.9.

This Section 5.3 is SurfRay's sole and exclusive obligation to Partner and Partner's sole remedy regarding any claim of intellectual property infringement.

6. TERM AND TERMINATION

6.1. Term of Agreement

This Agreement shall commence on the Effective Date and continue for 12 months unless terminated in accordance with this Section 6 (the "Term").

After 12 months the agreement shall automatically renew for subsequent periods of 12 months provided the Partner fulfils the requirements for such renewal.

If the Partner does not wish to renew the agreement the Partner must provide a written cancellation thirty (30) prior to the birth date of the agreement.

6.2. Termination of Agreement

Either party may terminate this Agreement for convenience by giving at least thirty (30) days written notice of termination to Partner. This Agreement may be terminated by either party in the event of a material breach of this Agreement by the other party that is not cured within thirty (30) days of the other party's receipt of written notice of such breach. This Agreement shall terminate automatically without notice and without further action by the other party in the event that the other party becomes insolvent, subject to bankruptcy, liquidation etc.

6.3. Effect of Termination

Upon the expiration or termination of this Agreement:

Partner shall, within thirty (30) days, pay to SurfRay all amounts due hereunder, return to SurfRay all products and demonstration copies received from SurfRay, erase any and all of the foregoing from all computer memories and storage devices within Partner's possession or control. All rights and licenses granted by SurfRay hereunder shall terminate, provided such termination shall not result in the termination of End User License Files for copies of the Software which already have been purchased by End Users in accordance with the provisions of this Agreement.

The following shall survive termination of this Agreement: Section 4.3, the last sentence of Section 4.2, Sections 2.7 and 2.9, Section 5, this Section 6 and Section 7.

6.4. Limitation of Liability upon Termination

In the event of termination in accordance with Section 6.2, Either party shall not be liable to the other because of such termination for compensation,

reimbursement or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, inventory, investments, leases or commitments in connection with the business or goodwill of Partner.

7. GENERAL PROVISIONS

7.1. Confidentiality

By virtue of this Agreement, each party may have access to information that is confidential to the other ("Confidential Information"). Confidential Information shall include, but not be limited to, any software, documentation, formulas, methods, know how, processes, designs, new products, developmental work, marketing requirements, marketing plans, customer names, prospective customer names, the terms and pricing under the Agreement, and any information clearly identified in writing at the time of disclosure as confidential.

A party's Confidential Information shall not include information that

- is or becomes a part of the public domain through no act or omission of the other party; or
- is independently developed by the other party without use of or reference to the first party's Confidential Information.

In the event, Confidential Information is required to be disclosed by law or other governmental authority, a party hereunder shall not be prohibited from disclosing such information by this Section provided that the responding party shall first have given prompt notice to the other party hereto and shall have made a reasonable effort to obtain a protective order restricting or limiting the disclosure of the Confidential Information to the extent possible.

7.2. Notices

Any notice or other communication which are required in accordance with this Agreement or which are otherwise of significance to the parties' relationship shall be in writing and shall be sent by mail to the other party at its address set out on the cover page of the Agreement or such other address as that the party may specify.

7.3. Assignment

Partner may not assign or otherwise transfer any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without SurfRay's prior written consent. Notwithstanding the foregoing, Partner may assign its rights hereunder without SurfRay's written consent in the event of a merger, consolidation, or sale of all or substantially all of Partner's assets and/or voting stock, so long Partner

provides SurfRay with written notice of such assignment, and the assignee agrees to uphold all of Partner's obligations hereunder. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective heirs, successors and permitted assigns.

7.4. Force Majeure

Neither party will incur any liability to the other party or any other third party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement (except for payment obligations) to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control, and without the negligence of, the parties. Such events, occurrences, or causes include, without limitation, acts of God telecommunications outages, Internet outages, power outages, strikes, lockouts, riots, acts of war, floods, earthquakes, fires, and explosions.

7.5. Severability

If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect.

7.6. Relationship of the parties

Partner is an independent contractor, and nothing herein shall be construed to create an employer-employee, partnership, joint venture, or agency relationship between the parties. Partner shall have no authority, right or power to create any obligation or responsibility on behalf of SurfRay.

7.7. Choice of law and venue

Any dispute between the Parties will be settled in accordance with the following laws and venues

The Partners Territory is defined as:

- For partners headquartered in USA and Canada the State of New York laws
- For partners not headquartered USA and Canada the Maritime and Commercial Court in Copenhagen shall be venue and where disputes cannot be brought before the Maritime and Commercial Court, disputes shall be settled by the City Court of Copenhagen

Any disputes should as far as possible be settled between the Parties amicably.