

## **NMSURF VOIP Terms of Service:**

These Terms and Conditions of Service (the "Agreement") are entered into by and between the subscriber ("you," "your" or "Subscriber") and NMSurf ("NMSurf", "us", or "we"). Please be aware that, any of the following actions, without limitation or qualification, constitutes your acceptance and agreement to be bound by and to comply with all of the terms and conditions of service of this Agreement: (a) your submission of an order; (b) your accepting the terms and conditions electronically during the ordering process; or (c) your use of the Service (as defined herein). Initial charges, including first month service and shipping and handling charges are non-refundable immediately upon submission of an order. This Agreement includes the terms set forth herein, the Acceptable Use Policy, the Privacy Policy, and all other materials specifically referred to in this Agreement, all of which are incorporated herein by reference. This Agreement sets forth the terms and conditions under which you agree to use the Service and covers all or NMSurf's plans. If you do not or are not willing to be bound in its entirety by these terms and conditions of service, do not proceed. Copyright and Licenses: The entire contents of this Agreement, the Services and NMSurf's website are protected under the United States copyright laws. The copyright notices and other proprietary legends shall not be removed from the Services and no right to use any trademark is granted under this Agreement.

PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THIS AGREEMENT LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

### **1. EMERGENCY SERVICES - 911 DIALING**

#### **1.1 911 Dialing.**

NMSurf uses the same national 911 network that all traditional telephone companies use. Be aware that 911 Dialing does not function in the event of a power failure or disruption. If there is an interruption in the power supply, the Service, including 911 Dialing, will not function until power is restored. Following a power failure or disruption, you may need to reset or reconfigure the Device prior to utilizing the Service, including 911 Dialing. Service outages or suspensions or disconnections of service by your broadband provider or ISP will prevent all Service, including 911 Dialing, from functioning. Disconnection of your account will prevent all Service, including 911 Dialing, from functioning. Your ISP, broadband provider or other third party may intentionally or inadvertently block the ports over which the Service is provided or otherwise impede the usage of the Service. If you suspect this has happened to you, you should alert us to this situation and we will work with you to attempt to resolve the issue. During the period that the ports are being blocked or your Service is impeded, your Service, including 911 Dialing, may not function. You acknowledge that NMSurf is not responsible for the blocking of ports by any third party or any other impediment to your usage of the Service, and any loss of Service, including 911 Dialing, which may result. In the event you lose service as a result of blocking of ports or any other impediment to your usage of the Service, you will continue to be responsible for payment of the Service charges unless and

until you disconnect the Service in accordance with this Agreement. If there is a Service outage for any reason, such outage will prevent all Service, including 911 Dialing, from functioning. Such outages may occur for a variety of reasons, including, but not limited to, those reasons described elsewhere in this Agreement.

You authorize us to disclose your name and address to third-parties involved with providing 911 Dialing to you, including, by way of illustration but not limitation, call routers, call centers and local emergency centers.

**1.2 Registration of Physical Location Required.** For each phone line that you utilize with the Service, you must register the physical location where you will be using the Service with us. Your initial location will be registered as a part of subscribing to the Service. It is incumbent on you to confirm the accuracy of your physical address through your online account and update it if you have any changes, additions or transfers of phone numbers. When you move the Device to another location, you must update your location. If you do not update your location, 911 calls you make may be sent to an emergency center near your old address. You may update a location by logging on to your online account. For purposes of 911 Dialing, you may only register one location at a time for each phone line.

**1.3 Alternate 911 Arrangements.** If you are not comfortable with the limitations of the 911 Dialing service, you should make arrangements for an alternate means of accessing traditional 911 or E911 services or disconnecting the Service. You understand that additional arrangements should be made to access emergency services. To access emergency services, you acknowledge and accept that it is your sole responsibility to purchase, with a third-party separately from NMSurf, traditional wireless or wireline telephone service that offers access to emergency services. You further recognize that NMSurf is not a replacement for your primary telephone service and you are hereby advised to maintain a traditional wireline or wire-based telephone service at all times. By agreeing to these terms of service and by your use of the Device, you acknowledge and accept that the Device may not support or provide emergency service at all times. You represent and warrant to NMSurf that you already have made additional arrangements with a third party to access emergency services.

**1.4 Network Congestion.** Reduced Speed for Routing or Answering 911 Dialing Calls. There may be a greater possibility of network congestion and/or reduced speed in the routing of a 911 Dialing call made utilizing the Service as compared to traditional 911 dialing over traditional public telephone networks.

**1.5 Disclaimer of Liability and Indemnification.** We do not have any control over whether, or the manner in which, calls using our 911 Dialing service are answered or addressed by any local emergency response center. We expressly disclaim any and all responsibility for the conduct of such local emergency response centers and the national emergency calling center. We rely on third parties to assist us in routing 911 Dialing calls to local emergency response centers and to a national emergency calling center. We disclaim any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. Neither NMSurf nor any of its officers, directors, members or employees may be held liable for any claim, damage, or loss, and you hereby waive any and all such claims or causes of action, arising from or relating to our 911 Dialing service unless such claims or causes of action arise from our gross

negligence, recklessness or willful misconduct. You shall defend, indemnify, and hold harmless NMSurf, its officers, directors, members, employees, affiliates and agents and any other service provider who furnishes services to you in connection the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorney's fees) by, or on behalf of, you or any third party relating to the absence, failure or outage of the Service, including 911 Dialing, incorrectly routed 911 Dialing calls, and/or the inability of any user of the Service to be able to use 911 Dialing or access emergency service personnel.

**1.6 Notify All Users.** You should inform all household residents, guests and other third persons who may be present at the physical location where you utilize the Service of the important differences in and limitations of 911 Dialing as compared with basic 911 or E911. The documentation that accompanies each Device will include a sticker concerning the potential non-availability of basic 911 or E911 (the "911 Sticker"). It is your responsibility, in accordance with the instructions that accompany each Device, to place the 911 Sticker on each Device that you use with the Service. If you did not receive a 911 Sticker with your Device, or you require additional 911 Stickers, please contact our customer care department.

**1.7 Outages due to Electrical, Internet or other General Failures.** End-User acknowledges that the Services will not function in the absence of electrical power, access to the Internet or other general failures associated with the VOIP network. End-User acknowledges that the Services will not function if there is an interruption of End-User's broadband or high-speed Internet access service.

**1.8 Non-Voice Systems.** End-User acknowledges that the Services are not set up to function with out-dialing systems including home security systems, medical monitoring equipment, satellite television systems and some facsimile systems. By consenting to these terms and conditions, End-User waives any claim against Provider for interruption or disruption of such systems by the Services.

**2. SERVICE.** NMSurf will provide you with digital phone service, subject to the terms and conditions set forth herein (the "Service"). We recommend waiting until the Service is installed and tested for a few weeks before assuming that the Service will be available and of good quality.

**3. SUBSCRIBER INFORMATION.** You acknowledge that you are eighteen (18) years of age or older, and you agree that you have the legal authority to enter into this Agreement and affirm that the information you supply to us is correct and complete. You understand that NMSurf relies on the information you supply and that providing false or incorrect information may result in Service delays or the suspension or termination of your Service. You agree to promptly notify NMSurf whenever your personal or billing information changes, including without limitation, your name, address, telephone number, and credit card number and expiration date, if applicable.

**4. GENERAL PRICING AND FEES.** NMSurf prices are shown in the Pricing Schedule and you will be charged based on the Plan and Options you select during the ordering process. A Subscriber who selects a "Month to Month" Plan (a "Monthly Subscriber") will pay the monthly price(s) listed on the Pricing Schedule corresponding to the Plan and Options chosen by such

Monthly Subscriber at the time of order. However, such monthly prices are subject at any time to increase to NMSurf then current prices. A Subscriber who selects a "1 Year Contract" Plan (a "Contract Subscriber") will pay the monthly price(s) listed on the Pricing Schedule corresponding to the Plan and Options chosen by such Contract Subscriber at the time of order. Such monthly prices for Contract Subscribers are guaranteed for the initial twelve (12) month Term. Following the initial twelve (12) month Term, a Contract Subscriber will automatically become a Monthly Subscriber and will pay NMSurf then current prices, subject to increase as described above, unless such Subscriber registers for a new "1 Year Contract" Plan at such time, to the extent available. A Subscriber who selects a "Prepaid" Plan (a "Prepaid Subscriber") will pay the full amount listed on the Pricing Schedule corresponding to the Plan and Options chosen by such Prepaid Subscriber at the time of order. Following the initial prepaid Term, as defined by the Plan and Options selected, a Prepaid Subscriber will automatically become a Monthly Subscriber and will pay NMSurf then current prices, subject to increase as described above, unless such Subscriber registers for a new "Prepaid" Plan at such time, to the extent available. From time to time NMSurf may offer promotional packages to entice new customers to join. Unless otherwise stated, these promotional packages are not valid for existing customers. In addition to regular fees set forth in the Pricing Schedule, you agree to pay all other charges, including but not limited to network usage, applicable taxes, fees and surcharges, including charges imposed against NMSurf by third party providers that it passes on to you. The taxes and surcharges may vary on a monthly basis and may change at any time without notice; any variations will be reflected in your monthly charge. The current Regulatory Recovery Fee is two dollars (\$2) for all clients. E911 Recovery Fee is ninety-nine cents (\$1) for all clients in the US. NMSurf collects State and Local Services (SLS) Recovery fee for most voice services. This fee is a percentage of billable service, and covers a variety of taxes, surcharges and fees billed by federal, regional and local agencies. The current rate is 11.64%, and is subject to change without notice. When possible, NMSurf will break out such charges on the monthly invoice.

**5. PAYMENT, LATE FEES AND OTHER CHARGES.** There is no money back guarantee for any Services unless specifically written in a special one-time promotion. There are no pro-rated refunds for unused time. All services will be charged via automatic credit card withdrawal. Unless otherwise stated in the Pricing Schedule, NMSurf will invoice and charge Subscribers monthly. Subscribers are responsible for paying monthly subscription fees while Services are suspended due to non-payment. All disconnected accounts and all accounts suspended for non-payment are subject to a fifteen dollar (\$15.00) reconnection fee. Any requests for a change in telephone number are subject to a fifteen dollar (\$15.00) change fee. Subscribers are responsible for any disputed charges beyond sixty (60) days from the date of the charge. Any account which goes into collection status will be transferred to a collection agency and incur a twenty-five dollar (\$25.00) processing fee and all other applicable fees and charges. Subscribers must pay a twenty-five dollar (\$25.00) service charge on disputed credit cards and credit card chargebacks. Past due accounts will accrue a monthly charge of one and one-half percent (1.5%) of the past due balance or one dollar (\$1.00), whichever is greater.

You are responsible for all charges attributable to your account incurred with respect to the Services. You agree to notify NMSurf immediately, in writing or by calling the NMSurf if you become aware at any time that Services are being stolen or fraudulently used. You are responsible for all usage charges attributable to your account, even if incurred as the result of

fraudulent or unauthorized use by third parties, until you report the theft or fraudulent use of the Services. You are solely responsible for securing all passwords and access numbers to guard against and prevent unauthorized access to Services by third parties. NMSurf, may, but is not obligated to, detect or report unauthorized use or fraudulent use of Services. You agree to save, defend, indemnify and hold NMSurf harmless from all claims, costs, liabilities and damages arising out of such fraudulent use.

**6. TERM.** This Agreement is effective upon Subscriber's acceptance as provided above and shall continue until terminated by Subscriber or NMSurf pursuant to this Agreement.

**7.1 Monthly Subscribers.** Each Monthly Subscriber is on automatically renewing monthly terms billed on the anniversary of their service commencement.

**6.2 Prepay Subscribers.** A Prepay Subscriber pays upfront for a specified term ("Service Term"), including initial taxes and fees. The length of the Service Term is determined by the service package selected by the Subscriber during the sign-up or renewal process. If the Service Term is longer than twelve (12) months, additional taxes and fees will be charged after the initial twelve (12) months have passed. Following the initial Service Term, a Prepay Subscriber will automatically become a Monthly Subscriber.

**6.3 Contract Subscribers.** A Contract Subscriber is on either a twelve (12) month term or twenty-four (24) month term ("Contract Term") beginning on the day such Subscriber accepts the terms of this Agreement as provided above. The length of the Contract Term is determined by the service package selected by the Subscriber during the sign-up or renewal process. NMSurf provides a 30-day grace period during which penalties will not be assessed for terminating a new contract. Any Contract Subscriber who wishes to change or cancel their service plan during their Contract Term will be assessed a Contract Termination Fee of \$99 per line or the remainder of your contract amount, whichever is less. Following the initial Contract Term, a Contract Subscriber will automatically become a Monthly Subscriber.

**7. TERMINATION BY SUBSCRIBER.** Subscriber may terminate this Agreement at any time for any reason by providing NMSurf with a thirty (30) day written notice in the form of a valid written termination request and paying all fees and other charges accrued or otherwise payable under the terms of this Agreement. Initial charges, including first month service and shipping and handling charges are non-refundable immediately upon submission of an order. Such thirty (30) day period begins on the date on which NMSurf receives Subscriber's valid written termination request. A Monthly Subscriber's termination will be effective on the later of (a) the end of last day of the calendar month during which such thirty (30) day period ends (e.g., a valid written termination request received by NMSurf any time during January will result in termination effective at the end of February) or (b) the end of last day of the calendar month requested by the Monthly Subscriber. A Contract Subscriber's termination, if received by NMSurf at least thirty (30) days prior to the end of their Contract Term, will be effective at the end of such Contract Term, unless such Contract Subscriber requests an earlier date. Notwithstanding the foregoing provisions of this section 8, if NMSurf receives a written termination request from a Subscriber, NMSurf may, in its sole discretion, terminate this Agreement on a date earlier than the date otherwise prescribed by this section 8. If this Agreement is terminated prior to the end of a Contract Subscriber's Contract Term, such Contract Subscriber must pay, in addition to all fees

and other charges accrued or otherwise payable under the terms of this Agreement, an early termination fee in the amount of ninety-nine dollars (\$99.00) per line ("Early Termination Fee") or the remainder of the contract amount, whichever is less. In the event a Contract Subscriber terminates this Agreement prior to the end of their Contract Term because of a service-related problem not caused by the Subscriber that NMSurf has failed to cure after what NMSurf determines in its sole discretion to be a reasonable amount of time based on the circumstances, the Subscriber is entitled to a waiver of the Early Termination Fee. For such waiver to apply, the reason for the waiver stated above must have occurred before termination and the Subscriber must report such reason for termination to NMSurf in the Subscriber's valid written termination request. NMSurf must in turn be given the opportunity to resolve the problem and the Subscriber must be willing and able to troubleshoot with NMSurf. NMSurf does not monitor Subscriber accounts for activity, and absence of activity or cancellation of a Subscriber's Internet service will never constitute a termination request. A written termination request is valid only if it includes your VOIP phone number, main user-name, date you wish the service to be canceled and is submitted using one of the following approved methods:

- Via email to:  
billing@nmsurf.com
- Via mail to:  
NMSurf  
1308 Apache Ave  
Santa Fe, New Mexico 87505

**8. TERMINATION BY NMSurf.** If, in NMSurf sole and absolute discretion, (a) a Subscriber is in breach of any of the terms of this Agreement (including but not limited to the Acceptable Use Policy); (b) a Subscriber's use of the Service is prohibited by law or is disruptive to, adversely impacts or causes a malfunction to the Service, NMSurf's servers or other equipment, or the use and enjoyment of other users; (c) a Subscriber acts in an abusive or menacing manner when dealing with NMSurf's technical support staff, customer service staff or any other NMSurf employees or representatives; (d) NMSurf receives an order from a court of competent jurisdiction to terminate a Subscriber's Service; or (e) NMSurf for any reason ceases to offer the Service, then NMSurf at its sole election may terminate or suspend such Subscriber's Service immediately without notice. For a termination in accordance with this paragraph, Subscriber remains liable for all unpaid fees and other charges accrued or otherwise payable under the terms of this Agreement, including without limitation the equipment charges set forth herein, if applicable.

**9. TERMINATED SUBSCRIBER.** NMSurf, in its sole and absolute discretion may refuse to accept a Subscriber's application for renewal or re-subscription following a termination or suspension of such Subscriber's use of the Service. If a Subscriber's Service is terminated for any reason, such Subscriber, upon approval by NMSurf, may enter into a new Agreement and must pay a new setup or activation fee as provided above. Upon the termination of a Subscriber's use of the Service, NMSurf has the right to immediately delete all data, files and other information stored in or for the Subscriber's account without further notice to the Subscriber.

**10. TECHNICAL SUPPORT.** NMSurf assumes that all Subscribers possess a basic understanding of their computers and their limitations. NMSurf will not train you in basic computer skills (e.g., deleting files or creating directories). Technical support is intended to facilitate the setup of your properly functioning computer system for access to our services. Your computer must have an active working connection to the Internet before any technical support will be dispensed. If you are having problems connecting to the Internet, you will need to contact your Internet Service Provider (ISP) for assistance getting connected first. Our technical support staff is not trained to, has no obligation to, and will not assist you in installing and/or troubleshooting modems, network cards, routers, complex network configurations or telephone lines, neither will they provide any technical assistance or support for any third party Software. The scope of support is limited to a single line analog telephone connected directly to our device. NMSurf is not responsible for connection problems due to a computer that is infected with viruses, spyware or malware. It is the Subscriber's responsibility to initiate and be available for technical support during NMSurf 's hours of operation. If a Subscriber wishes to utilize NMSurf 's technical support, the Subscriber must be available at the same location as the hardware to help troubleshoot the connection or computer setup. NMSurf assumes no obligation to provide support services for any third party products or services, including but not limited to the quality of the connection provided by the Internet Service Provider (ISP) or for problems with our service caused by third party products or services. It is the responsibility of the subscriber to troubleshoot any issues with third party products or services with the provider of that service. NMSurf does not provide on-site technical support.

#### **10.1 Incompatibility With Other Services**

- (a) Non-Voice Equipment Limitations. You acknowledge that our service may not be compatible with all non-voice communications equipment, including but not limited to home security systems, TTY, medical monitoring equipment, TIVO, satellite television systems, PBX, Centrex, other private telephone networks, and dial-up modems. You waive any claim against NMSurf for interference with or disruption of these services and equipment, as well as any claim that NMSurf is responsible for any disruption to your business, if applicable.
- (b) Hardware Compatibility Issues. There may be other internet services or hardware with which our service may be incompatible, including but not limited to: Fixed Wireless, Satellite, and Power over Ethernet connections. Some providers of broadband service may provide modems that prevent the transmission of communications using our service. We do not warrant that our services will be compatible with all broadband services and expressly disclaim any express or implied warranties regarding the compatibility of our service with any particular broadband service.

**11. WARRANTIES AND LIMITATIONS OF LIABILITY.** YOU ACKNOWLEDGE AND AGREE THAT THE SERVICE, EQUIPMENT AND SOFTWARE SUPPLIED HEREUNDER ARE PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITH ALL FAULTS. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT AND AS

OTHERWISE SPECIFICALLY SET FORTH IN ANY MANUFACTURER WARRANTY FOR ANY SOFTWARE OR EQUIPMENT PROVIDED BY NMSurf (BUT ONLY IF SUCH WARRANTY IS INCLUDED WITH SUCH SOFTWARE OR EQUIPMENT). NMSurf (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS DISCLAIM ANY AND ALL WARRANTIES FOR THE SERVICE, SOFTWARE AND EQUIPMENT WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INFRINGEMENT, NON-INTERFERENCE, TITLE, COMPATIBILITY OF COMPUTER SYSTEMS, INTEGRATION, AND THOSE ARISING FROM COURSE OF DEALING, COURSE OF TRADE, OR ARISING UNDER STATUTE. NO ADVICE OR INFORMATION GIVEN BY NMSurf OR ITS REPRESENTATIVES SHALL CREATE A WARRANTY. USE OF NMSurf TECHNICAL SUPPORT IS AT YOUR OWN RISK AND IS NOT WARRANTED.

NMSurf DOES NOT WARRANT OR GUARANTEE THAT VOIP SERVICE CAN BE PROVISIONED TO YOUR LOCATION, OR THAT PROVISIONING WILL OCCUR ACCORDING TO A SPECIFIED SCHEDULE, EVEN IF NMSurf HAS ACCEPTED YOUR ORDER FOR VOIP SERVICE. THE PROVISIONING OF VOIP SERVICE IS SUBJECT TO CIRCUIT AVAILABILITY AND OTHER FACTORS. IN THE EVENT YOUR LINE IS NOT PROVISIONED FOR ANY REASON, NEITHER YOU NOR NMSurf SHALL HAVE ANY DUTIES OR OBLIGATIONS UNDER THIS AGREEMENT (OTHER THAN YOUR OBLIGATION TO RETURN ANY PROVIDED EQUIPMENT, PURSUANT TO THE TERMS OF THIS AGREEMENT).

NMSurf DOES NOT WARRANT THAT THE SERVICE, SOFTWARE OR EQUIPMENT PROVIDED BY NMSurf WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR DATA THROUGHPUT RATE, OR WILL BE UNINTERRUPTED OR ERROR-FREE. NMSurf SHALL NOT BE LIABLE FOR LOSS OF YOUR DATA, OR IF CHANGES IN OPERATION, PROCEDURES, OR SERVICES REQUIRE MODIFICATION OR ALTERATION OF YOUR EQUIPMENT, RENDER THE SAME OBSOLETE OR OTHERWISE AFFECT ITS PERFORMANCE. NMSurf MAKES NO WARRANTY REGARDING ANY TRANSACTIONS EXECUTED USING THE SERVICE, THE SOFTWARE, THE EQUIPMENT OR THE INTERNET. YOU EXPRESSLY ASSUME ALL RISK AND RESPONSIBILITY FOR USE OF THE SERVICE, THE SOFTWARE, THE EQUIPMENT AND THE INTERNET GENERALLY. YOU AGREE NOT TO USE THE SERVICE, THE SOFTWARE OR THE EQUIPMENT IN ANY HIGH RISK ACTIVITIES WHERE DAMAGE OR INJURY TO PERSON, PROPERTY, ENVIRONMENT, OR BUSINESS MAY RESULT IF AN ERROR OCCURS.

IN NO EVENT SHALL NMSurf (OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, MEMBERS, PARENT, SUBSIDIARIES, OR AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS OR SUPPLIERS BE LIABLE FOR: (A) ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOSS OF REVENUE OR DAMAGE TO DATA ARISING OUT OF THE USE, PARTIAL USE OR INABILITY TO USE THE SERVICE, THE SOFTWARE OR THE EQUIPMENT, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION, THOSE ARISING UNDER



CONTRACT, TORT, NEGLIGENCE OR STRICT LIABILITY, EVEN IF NMSurf HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES, OR (B) ANY CLAIMS AGAINST YOU BY ANY OTHER PARTY.

ALL LIMITATIONS AND DISCLAIMERS STATED IN THIS SECTION 12 ALSO APPLY TO NMSurf 'S THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS AS THIRD PARTY BENEFICIARIES OF THIS AGREEMENT.

ANY RIGHTS OR LIMITS STATED HEREIN ARE THE MAXIMUM FOR WHICH NMSurf (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES), NMSurf'S THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS ARE COLLECTIVELY RESPONSIBLE.

THE REMEDIES EXPRESSLY SET FORTH IN THIS AGREEMENT ARE YOUR SOLE AND EXCLUSIVE REMEDIES. YOU MAY HAVE ADDITIONAL RIGHTS UNDER CERTAIN LAWS (SUCH AS CONSUMER LAWS), WHICH DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY, OUR EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

NMSurf RESERVES THE RIGHT TO PURSUE ANY AND ALL LEGAL AND EQUITABLE CLAIMS AGAINST YOU PERTAINING TO YOUR USE OR MISUSE OF THE SERVICE, THE SOFTWARE OR THE EQUIPMENT, OR FOR YOUR BREACH OF THE AGREEMENT (INCLUDING ANY POLICIES RELATING TO THE SERVICE.)

WITHOUT (A) INCREASING ANY OF THE LIABILITIES OR OTHER OBLIGATIONS NMSurf (OR ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES OR AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS OR SUPPLIERS ARE OTHERWISE SUBJECT TO PURSUANT TO THIS AGREEMENT OR SUBJECTING NMSurf (OR ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES OR AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS OR SUPPLIERS TO ANY ADDITIONAL LIABILITIES OR OTHER OBLIGATIONS OR (B) INCREASING ANY OF THE RIGHTS YOU ARE OTHERWISE ENTITLED TO PURSUANT TO THIS AGREEMENT OR PROVIDING YOU WITH ANY ADDITIONAL RIGHTS, THE MAXIMUM AGGREGATE LIABILITY OF NMSurf (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES AND AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS FOR DAMAGES HEREUNDER SHALL NOT EXCEED THE UNUSED PORTION OF YOUR PREPAID FEES, IF ANY.

**12. INDEMNIFICATION.** You agree to defend, indemnify and hold harmless NMSurf and its officers, directors, members and employees from and against all liabilities, costs and expenses, including reasonable attorney's fees, related to or arising from: (a) any violation of applicable laws, regulations or this Agreement by you (or any parties who use your account, with or without your permission, to access the Service); (b) the use of the Service, the Software, the Equipment or the Internet or the placement or transmission of any message, information, software or other materials on the Internet by you (or any parties who use your account, with or without your

permission, to access the Service); (c) negligent acts, errors, or omissions by you (or any parties who use your account, with or without your permission, to access the Service); (d) injuries to or death of any person and for damages to or loss of any property, which may in any way arise out of or result from or in connection with this Agreement, except to the extent that such liabilities arise from the active negligence or willful misconduct of the other party; or (e) claims for infringement of any intellectual property rights arising from the use of the Service, the Software, the Equipment or the Internet.

**13. REVISIONS.** NMSurf may revise the terms and conditions of this Agreement from time to time (including any of the policies which may be applicable to usage of the Service) by posting such revisions to our website at [www.nmsurf.com](http://www.nmsurf.com). You agree to visit this page and the links therein periodically to be aware of and review any such revisions. Increases to the monthly price of the Service for Monthly Subscribers shall be effective beginning with the calendar month following the calendar month in which such increases are posted. Revisions to any other terms and conditions shall be effective upon posting. By continuing to use the Service after revisions are in effect, a Subscriber accepts and agrees to the revisions and to abide by them. Any Subscriber who does not agree to the revision(s) must terminate their Service immediately.

**14. ASSIGNMENT.** You agree not to assign or otherwise transfer, this Agreement in whole or in part, including the Software or your rights or obligations under it. Any attempt to do so shall be void. NMSurf may assign all or any part of this Agreement without notice and you agree to make all subsequent payments as directed.

**15. CHOICE OF LAW.** You and NMSurf agree that the laws and venue of the state of New Mexico applies except to the extent such law is preempted for inconsistent with Federal law, will be applied to govern, construe and enforce all of the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement. In the event of a dispute between us, the laws of the state of New Mexico at the time of the dispute is commenced, whether in litigation or arbitration, shall govern except to the extent that such law is preempted by or inconsistent with applicable Federal law. To the fullest extent permitted by law, you and NMSurf agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

**16. COMPLIANCE.** NMSurf 's failure at any time to insist upon strict compliance with any of the provisions of this Agreement in any instance shall not be construed to be a waiver of such terms in the future. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the unenforceable portion shall be construed as nearly as possible to reflect the original intentions of the parties. The foregoing does not apply to the prohibition against class or representative actions that is part of the arbitration clause; if that provision is found to be unenforceable, the arbitration clause (but only the arbitration clause) shall be null and void.

**17. THINGS BEYOND NMSurf 'S CONTROL.** NMSurf will not be liable for delays, damages or failures in performance due to causes beyond its reasonable control, including, but

not limited to, acts of a governmental body, acts of God, acts of third parties, fires, floods, strikes or other labor-related disputes, of other things we do not control, or an inability to obtain necessary equipment or services.

**18. ENTIRE AGREEMENT.** This Agreement, including all policies posted on NMSurf 's website, which are fully incorporated into this Agreement by reference, constitutes the entire agreement between you and NMSurf with respect to the subject matter hereto and supersedes any and all prior or contemporaneous agreements whether written or oral. Any changes by you to this Agreement, or any additional or different terms in your purchase orders, acknowledgements or other documents, written or electronic, are void. The terms and conditions of this Agreement constitute the entire agreement with regard to this sale and expressly supersede and replace any prior or contemporaneous agreements, written or oral, relating to the Services. This agreement shall be binding upon the heirs, successors, and assigns of Provider and End-User.

**19. NOTICE.** Notices by NMSurf to you shall be deemed given: (a) when sent to your primary contact email address, (b) when deposited in the United States mail addressed to you at the address you have specified in your account options or (c) when hand delivered to your home, as applicable.

**20. GOVERNING LAW.**

The Agreement and the relationship between you and Provider shall be governed by the laws of the State of New Mexico without regard to its conflict of law provisions. End-User and Provider agree to submit to the exclusive jurisdiction of the courts located within the state of Mexico for purposes of entering any arbitration award hereunder or for any other litigation hereunder. The failure of Provider to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect. End-User agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

**21. ACCEPTABLE USE.** Subscriber agrees to use the VOIP Service in accordance with NMSurf 's acceptable use policy ("Acceptable Use Policy"), published at [www.nmsurf.com](http://www.nmsurf.com). NMSurf reserves the right to make changes to the Acceptable Use Policy without notice.

**22. PRIVACY POLICY.** NMSurf will treat each Subscriber's personal information in accordance with NMSurf's privacy policy ("Privacy Policy") published at [www.nmsurf.com](http://www.nmsurf.com). Subscriber agrees to the terms of the Privacy Policy. NMSurf reserves the right to make changes to the Privacy Policy without notice.

**23. SURVIVAL.** All obligations of the parties under this Agreement, which, by their nature, would continue beyond the termination, cancellation or expiration of this Agreement, including without limitation, those provisions relating to Warranties and Limitation of Liability and Indemnification, shall survive such termination, cancellation or expiration.

**24. PHONE NUMBER CHANGES.** Phone number changes will incur a one-time fifteen dollar (\$15) processing fee.

**25. TRANSFERRING NUMBERS.** NMSurf gives customers the option of transferring telephone numbers to or from our service. If transferring a number away from NMSurf, it is the customer's responsibility to cancel their service after the number has successfully transferred. Disconnected telephone numbers are not eligible for transfer to or from our service. Canceling an order to transfer a telephone number to NMSurf will require a \$100 expedite fee to cancel.

**26. DISCLAIMER OF CONSEQUENTIAL DAMAGES.**

In no event shall Provider or its vendors be liable for any special, incidental, indirect, punitive or consequential damages or for any damages, including but not limited to loss of data, loss of revenue or profits, or arising out of or in connection with the use or inability to use services or products provided hereunder whether due to a breach of contract, breach of warranty, the negligence of Provider or its vendors or otherwise.

**27. CALLER ID SERVICE.** NMSurf sends current Caller ID information with every call placed. For residential customers, Caller ID information is "Last Name, First Name", with a maximum of 15 characters. For business customers, Caller ID information is the business name, with a maximum of 15 characters. Caller ID information is not customizable. NMSurf has no control over the information that any terminating telephone company chooses to display. All telephone carriers update their Caller ID information periodically, but many companies do not update as often as NMSurf sends updated data. If a disparity is found between the information that NMSurf is sending and the information that a terminating telephone company is displaying, it is the Subscriber's responsibility to contact the terminating telephone company and request that they display the correct data. NMSurf is not responsible for errors involving spelling, punctuation, or capitalization of Caller ID information.

**28. EXPEDITE FEE.** Any modifications made to an order prior to the port date will incur an expedite fee of \$100.

**29. ELECTRONIC COMMUNICATIONS.** When you visit NMSurf, sign up for service with us, or send e-mails to us, you are communicating with us electronically. By doing so, you consent to receive communications from us electronically in return. It is the responsibility of the subscriber to maintain and update a valid email address with NMSurf at all times. NMSurf will not be held responsible for interruptions in service or cancellation of service for non-payment due to an email not being received by the subscriber or filtered out by the email provider being utilized by the subscriber. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. NMSurf sends regular account notifications, balance notifications, and subscription renewal emails, these emails cannot be opted out of. Periodic newsletters and feature update announcements can be opted out of by the subscriber by clicking a link at the bottom of all optional email correspondence.

**30. ACCOUNT USERNAME.** The primary username on a customer account may not be changed after the account has been created.

**31. EQUIPMENT.**

In offering the Services, Provider may supply Equipment to End-User. The Provider shall maintain ownership of all provided equipment. End-User shall be required to obtain authorization from Provider to return any Equipment. Provider will replace Equipment only if the Equipment is deemed to be defective and covered under the warranty. Provider will not cover replacement for lost, stolen, mistreated or modified equipment. Equipment returned by End-User that is not covered under warranty may be refused by Provider, and End-User will be responsible to pay return shipping charges. A fee of \$50 per VOIP adapter will be charged to any End-User who damages Equipment or does not return the Equipment in good working order upon account termination.

**Customer Agreement Checklist**

**Customer agrees to the following conditions:**

**EQUIPMENT.** I am aware that all equipment provided by NMSurf shall remain the property of NMSurf and shall be returned upon termination of my account.

**DATA CALLS.** I am aware that VOIP service is not guaranteed to work without-dialing equipment (Satellite receivers, Fax machines, Alarm systems, etc.)

**ADDITIONAL CHARGES.** I agree to pay all taxes and fees that I incur by using Directory Assistance, Operator Assistance, international long distance, and any other toll-based call that is outside of my “Unlimited” plan, defined in Section 10 — “UNLIMITED USAGE MINUTE PLANS”.

**CANCELLATION.** I agree to provide 30 days advance notice for account termination. I also agree to keep my account active and in good standing for the duration of any porting process to another provider. I am aware that if I cancel my VoIP service before porting my number to my new provider, I will not be able to transfer the number.

**I agree to be bound to the above terms and conditions as outlined in this document.**