



## SURF Internet AGREEMENT FOR RESIDENTIAL SERVICES

ABOUT THIS AGREEMENT, OUR SERVICES, AND YOUR RIGHTS THE Service(s) will be provided to you (“you,” “your,” or “Customer”) on the terms and conditions set forth in this Agreement for Residential Services (the “Agreement”) and applicable law by the operating company or subsidiary of Surf Internet, a division of Surf Air Wireless, LLC (“Surf Internet,” “we,” “us,” or “our”). For purposes of this Agreement, “affiliate” means any entity that controls, is controlled by or is under common control with Surf Internet. Service(s) may include, but are not limited to, High-Speed Internet service (“HSI”) or other services that may be offered by Surf Internet (each a “Service” and collectively the “Services”). The Service(s) do not include Surf Internet owned or controlled websites such as those listed in Appendix A. We may change our prices, fees, the Service(s) and/or the terms and conditions of this Agreement in the future. Unless this Agreement or applicable law specifies otherwise, we will provide you thirty (30) days prior notice of any significant change to this Agreement as provided below. If you find the change unacceptable, you have the right to cancel your Service(s). However, if you continue to receive or use Service(s) after the end of the notice period (the “Effective Date”) of the change, you will be considered to have accepted the changes. You may not modify this Agreement by making any typed, handwritten, or any other changes to it for any purpose. Any purchase order or similar document, which may be issued by Customer in connection with this Agreement does not modify this Agreement. Note: This Agreement contains a binding arbitration provision in Section 13 that affects your rights under this Agreement with respect to all Service(s). These terms and conditions are subject to applicable tariffs and service guides.

### GENERAL TERMS AND CONDITIONS

#### 1. ACCEPTANCE OF THIS AGREEMENT

You will have accepted this Agreement and be bound by its terms by signing the Surf Internet Service Authorization Form, if you use the Service(s) or otherwise indicate your affirmative acceptance of such terms.

#### 2. CHARGES AND BILLINGS

**a. Charges, Fees, and Taxes You Must Pay.** You agree to pay all charges associated with the Service(s), including, but not limited to, installation/service call charges, monthly service charges, Equipment (as defined below) charges, applicable federal, state, and local taxes and fees (however designated), regulatory recovery fees for municipal, state and federal government fees or assessments imposed on Surf Internet, permitted fees and cost recovery charges, or any programs in which Surf Internet may participate, including, but not limited to, public, educational, and governmental access, universal service, telecom relay services for the visually/hearing impaired, rights-of-way access, and programs supporting the 911/E911 system and any fees or payment obligations imposed by governmental or quasi-governmental bodies for the sale, installation, use, or provision of the Service(s). **YOU WILL BE RESPONSIBLE FOR PAYING ANY GOVERNMENT IMPOSED FEES AND TAXES THAT BECOME APPLICABLE RETROACTIVELY.** We will provide you with notice and an effective date of any change in our prices or fees, unless the change in price is related to a change in governmental or quasi-governmental taxes, fees, or assessments, in which case we may elect not to provide notice except where required by applicable law. Not all fees apply to all Service(s).

- **For HSI Customers.** HSI price information is available at [www.Surfinternet.com](http://www.Surfinternet.com) (or an alternative site if we notify you), and is incorporated herein.

- **For Customers of Other Services.** Other Service price information is available at [www.Surfinternet.com](http://www.Surfinternet.com) (or an alternative site if we notify you) , and is incorporated herein.

**b. How We Will Bill You.** Service(s) are provided to you on a month-to-month basis. If you are receiving Service(s) at a trial or introductory rate, you may cancel your Service(s) at the end of the trial or introductory period by calling your local Surf Internet customer service center. You will generally be billed monthly, in advance, for recurring service charges, equipment charges, and fees. **YOU MUST PAY, ON OR BEFORE THE DAY WE INSTALL ANY OR ALL OF THE SERVICE(S), THE FIRST MONTH'S SERVICE CHARGES, THE EQUIPMENT CHARGES, AND ANY INSTALLATION CHARGES.** Your first bill may include prorated charges from the date you first begin receiving Service(s), as well as monthly recurring charges for the next month and charges for non-recurring services you have received. You may be billed for some Service(s) individually after they have been provided to you. If you receive Service(s) under a promotion, after the promotional period ends, regular charges for the Service(s) will apply. We do not waive our rights to collect the full balance owed to us by accepting partial payment. We will apply the partial payment to the outstanding charges in the amounts and proportions that we determine.

**c. Third-Party Charges That Are Your Responsibility.** You acknowledge that you may incur charges with third-party service providers such as accessing on-line services, or purchasing or subscribing to other offerings via the Internet that are separate and apart from the amounts charged by us. You may be subject to additional terms and conditions imposed by such third-party service providers. You are solely responsible for all such charges payable to third parties, including all applicable taxes. In addition, you are solely responsible for protecting the security of credit card and other personal information provided to others in connection with such transactions.

**d. Lost Or Stolen Customer Equipment.** You are responsible for any loss or theft of Customer Equipment, and you must report the Customer Equipment as lost or stolen immediately so that we may investigate your claim. You agree to cooperate with our investigation and to submit any relevant documentation that you have such as a police report or a sworn statement. You will not be required to pay any disputed charges while we investigate.

**e. Payment by Credit Card or Check.** If you use a credit card to pay for the Service(s), use of the card is governed by the card issuer agreement, and you must refer to that agreement for your rights and liabilities as a cardholder. If Surf Internet does not receive payment from your credit card issuer or its agents, you agree to pay all amounts due upon demand. If you make payment by check, you authorize Surf Internet to collect your check electronically. You agree that you may not amend or modify this Agreement with any restrictive endorsements (such as "paid in full"), or other statements or releases on or accompanying checks or other payments accepted by Surf Internet and any such notations shall have no legal effect.

**f. Our Remedies if You Pay Late or Fail to Pay**

**1. Late or Non-Payments:** You may be billed fees, charges, and assessments related to late or non-payments if for any reason (a) Surf Internet does not receive payment for the Service(s) by the payment due date or (b) you pay less than the full amount due for the Service(s). **YOU WILL BE ASSESSED A LATE FEE OF \$5 OR 1.5% (OR THE HIGHEST RATE PERMITTED BY APPLICABLE**

**LAW, WHICHEVER IS LESS), OF THE BALANCE IF FULL PAYMENT IS NOT RECEIVED BY THE DUE DATE. IN THE EVENT YOUR ACCOUNT IS SUSPENDED OR TERMINATED FOR NON- PAYMENT A \$10 RECONNECTION FEE WILL BE IMMEDIATELY DUE UPON REACTIVATION.**

**2. Fees Not Considered Interest or Penalties:** Surf Internet does not anticipate that you will fail to pay for the Service(s) on a timely basis, and we do not extend credit to customers. Any fees, charges, and assessments due to late payment or nonpayment are liquidated damages, and not a penalty, intended to be a reasonable advance estimate of our costs resulting from late payments and non-payments. These costs will be difficult to calculate or to predict when we set such fees, charges, and assessments, because we cannot know in advance: (a) whether you will pay for the Service(s) on a timely basis, if ever; (b) if you do pay late, when you will actually pay; and (c) what costs we will incur because of your late payment or non-payment.

**3. Collection Costs:** If we use a collection agency or attorney to collect money owed by you, you agree to pay the costs of collection. These costs include, but are not limited to, any collection agency's fees, attorneys' fees, and arbitration or court costs.

**4. Suspension/Disconnect:** If you fail to pay the full amount due for any or all of the Service(s) then Surf Internet, at its sole discretion in accordance with and subject to applicable law, may suspend or disconnect any or all the Service(s) you receive.

**g. Reconnection Fees and Related Charges.** If you resume Service(s) after any suspension, we may require you to pay a reconnection fee. If you reinstate any or all Service(s) after disconnection, we may require you to pay an installation fee and/or service activation fee. These fees are in addition to all past due charges and other fees. Reconnection of the Service(s) is subject to our credit policies, this Agreement and applicable law.

**h. Our Right to Make Credit Inquiries. YOU AUTHORIZE SURF INTERNET TO MAKE INQUIRIES AND TO RECEIVE INFORMATION ABOUT YOUR CREDIT EXPERIENCE FROM OTHERS, TO ENTER THIS INFORMATION IN YOUR FILE, AND TO DISCLOSE THIS INFORMATION CONCERNING YOU TO APPROPRIATE THIRD PARTIES FOR REASONABLE BUSINESS PURPOSES.** Surf Internet will not discriminate in the application of its credit inquiries and deposit policy on the basis of race, color, sex, creed, religion, nationality, sexual orientation, or marital status. Any risk assessments conducted by either Surf Internet or its third party credit bureau will be done in conformance with the requirements of all applicable state or federal laws. i. Your Responsibilities Concerning Billing Questions. Subject to applicable law, if you intend to dispute a charge or request a billing credit, you must contact Surf Internet within sixty (60) days of the date on the bill. You waive any disputes or credits that you do not report within sixty (60) days. 3. Intentionally Omitted

#### **4. CHANGES TO SERVICES**

Subject to applicable law, we have the right to change our Service(s), Equipment and rates or charges, at any time, with or without notice. We also may rearrange, delete, add to, or otherwise change features or offerings contained in the Service(s), including, but not limited to, content, functionality, hours of availability, customer equipment requirements, speed, and upstream and downstream rate limitations. If we do give you notice, it may be provided on your monthly bill, as a bill insert, e-mail, in a newspaper, or other communication permitted under applicable law. If you find a change in the Service(s) unacceptable, you have the right to cancel your Service(s). However, if you continue to receive or use Service(s) after the change, this will constitute your acceptance of the change.

## 5. ACCESS TO YOUR PREMISES AND CUSTOMER EQUIPMENT

**a. Premises.** You agree to allow us and our agents the right to enter your property at which the Service(s) and/or Equipment will be provided (the “Premises”) at reasonable times, for purposes of installing, configuring, maintaining, inspecting, upgrading, updating, repairing, replacing, and removing the Service(s) and/or Equipment used to receive any of the Service(s). You warrant that you are either the owner of the Premises or that you have the authority to give us access to the Premises. If you are not the owner of the Premises, you are responsible for obtaining any necessary approval from the owner to allow us and our agents into the Premises to perform the activities specified above. In addition, you agree to supply us or our agent, if we ask, the owner’s name, address, and phone number and/or evidence that the owner has authorized you to grant access to us and our agents to the Premises.

**b. Customer Equipment.** “Customer Equipment” means software, hardware or services that you elect to use in connection with the Service(s) or Equipment. You agree to allow us and our agents the rights to upgrade, modify or change hardware connected to or used in association with the Equipment, send software and/or “downloads” to the Equipment and install, configure, maintain, inspect, and upgrade the Equipment. You warrant you are either the owner of the Customer Equipment or that you have the authority to give us access to the Customer Equipment. If you are not the owner of the Customer Equipment, you are responsible for obtaining any necessary approval from the owner to allow us and our agents access to the Customer Equipment to perform the activities specified above. In addition, you agree to supply us or our agents, if we ask, the owner’s name, address and phone number and/or evidence that the owner has authorized you to grant access to us and our agents to the Customer Equipment to perform the activities specified above.

## 6. MAINTENANCE AND OWNERSHIP OF EQUIPMENT

**a. Equipment.** You agree that except for the wiring installed inside the Premises (“Inside Wiring”), or equipment purchased by you from Surf Internet, all Equipment belongs to us or other third parties and will not be deemed fixtures or in any way part of the Premises. “Equipment” means all software or “downloads” to Customer Equipment or Equipment and all new or reconditioned equipment installed, provided or leased to you by us or our agents, including, but not limited to, cabling or wiring and related electronic devices, modems, voice-capable modems, wireless gateway/routers, radios and any other hardware excluding equipment purchased by you from Surf Internet.. You agree to use Equipment only for the Service(s) pursuant to this Agreement. We may remove or change the Equipment at our discretion at any time the Service(s) are active or following the termination of your Service(s). You agree that our addition or removal of or change to the Equipment may interrupt your Service(s). You may not sell, lease or sublease, assign, pledge, transfer, abandon, or give away the Equipment, permit to exist any security interest, lien or encumbrance with respect to any of the Equipment, or permit any other provider of high speed data or other services to use the Equipment. The Equipment may only be used in the Premises. At your request, we may relocate the Equipment in the Premises for an additional charge, at a time agreeable to you and us. **YOU UNDERSTAND AND ACKNOWLEDGE THAT IF YOU ATTEMPT TO INSTALL OR USE THE EQUIPMENT OR SERVICE(S) AT A LOCATION OTHER THAN THE PREMISES, THE SERVICE(S) MAY FAIL TO FUNCTION OR MAY FUNCTION IMPROPERLY.** You agree that you will not allow anyone other than Surf Broadband Solutions or its agents to service, maintain, make changes or modifications to the Equipment. We suggest that the Equipment in your possession be covered by your homeowners, renters, or other insurance. You will be directly responsible for loss, repair, replacement and other costs, damages, fees, and charges if you do not return the Equipment to us in an undamaged condition.

**1. Responsibility:** Surf Internet has no responsibility for the operation or support, maintenance, or repair of any Customer Equipment including, but not limited to, Customer Equipment to which Surf Internet or a third party has sent software or “downloads.”

- **For HSI Customers and Other Service Customers.** You agree by using the Service(s), you are enabling and authorizing Surf Internet, its authorized agents and equipment manufacturers to send code updates to the Equipment and Customer Equipment, including, but not limited to, modems, radios, and other devices at any time it is determined necessary to do so as part of the Service(s). Such code updates may change, add or remove features or functionality of any such equipment or the Service(s).

- **For HSI Customers.** You can find Surf Internet current minimum technical and other requirements for HSI customers listed in Appendix B. An updated list of requirements may be posted on [www.surfinet.com](http://www.surfinet.com). These requirements may be located at an alternative site if we so notify you. Whether a modem, gateway/router, voice-capable modem or other device is owned by you or us, we have the unrestricted right, but not the obligation, to upgrade or change the firmware in these devices remotely or on the Premises at any time that we determine it necessary or desirable in order to provide Service(s) to you in accordance with our specifications and requirements. IF THERE IS AN ELECTRICAL POWER OUTAGE TO THE SURF INTERNET NETWORK IN YOUR AREA, YOUR SERVICE(S) WILL CEASE TO FUNCTION DURING THE OUTAGE. SOME OF THESE OUTAGES ARE BEYOND THE CONTROL OF SURF INTERNET. SURF INTERNET HAS NO RESPONSIBILITY TO REFUND OR REBATE ANY FEES PAID FOR SERVICE(S) WHICH CANNOT BE DELIVERED DUE TO ELECTRICAL GRID OUTAGES or other causes beyond the control of Surf Internet. Such causes shall include, but not be limited to, acts of God, atmospheric or topographical conditions, system capacity limitations, civil or military authority, civil disturbances, acts of war or terrorists, strikes, fires, floods, or other catastrophes.

**2. Non-Recommended Configurations:** Customer Equipment that does not meet Surf Internet minimum technical or other specifications constitutes a “Non-Recommended Configuration.” NEITHER SURF INTERNET NOR ANY OF ITS AFFILIATES, SUPPLIERS OR AGENTS WARRANT THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE YOU TO SUCCESSFULLY INSTALL, ACCESS, OPERATE, OR USE THE SERVICE(S). YOU ACKNOWLEDGE THAT ANY SUCH INSTALLATION, ACCESS, OPERATION, OR USE COULD CAUSE CUSTOMER EQUIPMENT TO FAIL TO OPERATE OR CAUSE DAMAGE TO CUSTOMER EQUIPMENT, YOU, YOUR PREMISES OR THE EQUIPMENT. NEITHER SURF INTERNET NOR ANY OF ITS AFFILIATES, SUPPLIERS OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE. Surf Internet reserves the right to deny you customer support for the Service(s) and/or terminate Service(s) if you use a Non-Recommended Configuration.

**3. No Unauthorized Devices or Tampering:** You agree not to attach or assist any person to attach, any unauthorized device to the Surf Internet network, Equipment or the Service(s). If you make or assist any person to make any unauthorized connection or modification to Equipment or the Service(s) or any other part of our network, we may terminate your Service(s) and recover such damages as may result from your actions. You also agree that you will not attach anything to the Inside Wiring, Equipment, or Customer Equipment, whether installed by you or us, which singly or together impairs the integrity of our network or degrades our network’s signal quality or strength or creates signal disruption, we may terminate your Service(s) and recover such damages as may result from your actions. You also agree that we may recover damages from you for tampering with any Equipment or any other part of our network or for receiving unauthorized Service(s). You agree that it would

be difficult, if not impossible, to calculate precisely the lost revenue resulting from your receipt of unauthorized Service(s) or the tampering with Equipment or our network. You therefore agree to pay us as liquidated damages, and not as a penalty, the sum of \$500.00 per device used to receive the unauthorized Service(s) in addition to our cost to replace any altered, damaged, or unreturned Equipment or other equipment owned by Surf Internet, including any incidental costs. The unauthorized reception of the Service(s) may also result in criminal fines and/or imprisonment. c. Inside Wiring. You may install Inside Wiring, such as additional wiring and outlets, provided it does not interfere with the normal operations of our network. If you have us install Inside Wiring, we will charge you for that service. Regardless of who installed it, we consider the Inside Wiring your property or the property of whomever owns the Premises. Accordingly, you are responsible for the repair and maintenance of the Inside Wiring, unless you and Surf Internet have agreed otherwise in writing. (If you do not own the Premises, contact your landlord or building manager about the repair or maintenance of Inside Wiring.) If you have us repair or maintain the Inside Wiring, we will charge you for that service

## 7. USE OF SERVICES

You agree that the Service(s) and the Equipment will be used only for personal, residential, non-commercial purposes, unless otherwise specifically authorized by us in writing. You will not use the Equipment at any time at an address other than the Premises without our prior written authorization. You agree and represent that you will not resell or permit another to resell the Service(s) in whole or in part. You will not use or permit another to use the Equipment or the Service(s), directly or indirectly, for any unlawful purpose, including, but not limited to, in violation of any posted Surf Internet policy applicable to the Service(s) including, but not limited to, the AUP (as defined below) and privacy policies. Use of the Equipment or Service(s) for transmission, communication or storage of any information, data or material in violation of any U.S. federal, state or local regulation or law is prohibited. You acknowledge that you are accepting this Agreement on behalf of all persons who use the Equipment and/or Service(s) at the Premises and that you shall have sole responsibility for ensuring that all other users understand and comply with the terms and conditions of this Agreement and any applicable Surf Internet policies including, but not limited to, acceptable use and privacy policies. You further acknowledge and agree that you shall be solely responsible for any transactions, including, without limitation, purchases made through or in connection with the Service(s). You agree to indemnify, defend and hold harmless Surf Internet and its affiliates, suppliers, contractors, distributors, licensors, business partners and agents and their respective officers, directors, members, employees, shareholders, successors, representatives, and assigns (collectively, the "Surf Internet Parties") against all claims and expenses (including reasonable attorneys' fees) arising, directly or indirectly, out of the use of the Service(s) (including, but not limited to, vehicular damage and personal injury), the Equipment and/or the Customer Equipment or the breach of this Agreement or any of the applicable Surf Internet Policies by you or any other user of the Service(s) at the Premises.

- For HSI Customers. The Surf Internet Acceptable Use Policy ("AUP") and other policies concerning HSI are posted at [www.surfinternet.com](http://www.surfinternet.com) (or an alternative website if we notify you) (collectively, the "Surf Internet policies"). You further agree that Surf Internet Wireless may modify the Surf Internet Policies from time to time. Notwithstanding anything to the contrary in this Agreement, YOU ACKNOWLEDGE AND AGREE THAT THE TERMS OF THE SURF Internet POLICIES MAY BE PUT INTO EFFECT OR REVISED FROM TIME TO TIME WITH OR WITHOUT NOTICE BY POSTING A NEW VERSION OF THE AUP OR POLICY AS SET FORTH ABOVE. YOU AND OTHER USERS OF THE SERVICE(S) SHOULD CONSULT THE AUP AND ALL POSTED

POLICIES REGULARLY TO CONFORM TO THE MOST RECENT VERSION. IF YOU CONTINUE TO USE OR RECEIVE SERVICE(S) AFTER THE CHANGE, THIS WILL CONSTITUTE YOUR ACCEPTANCE OF ANY SUCH REVISIONS.

## 8. ASSIGNABILITY

This Agreement and the Service(s) furnished hereunder may not be assigned by you. You agree to notify us immediately of any changes of ownership or occupancy of the Premises. We may freely assign this Agreement, and our rights and obligations thereunder with or without notice to you.

## 9. TERMINATION OF THIS AGREEMENT

**a. Term.** This Agreement will be in effect from the time that the Service(s) are activated until (1) it is terminated as provided for by this Agreement or (2) it is replaced by a revised Agreement.

**b. Termination by You.** You may terminate this Agreement for any reason at any time by notifying Surf Internet in one of three ways: (1) send a written notice to the postal address of your local Surf Internet business office; (2) send an electronic notice to the e-mail address specified on [www.Surfinternet.com](http://www.Surfinternet.com); or (3) call our customer service line during normal business hours. Subject to applicable law or the terms of any agreements with governmental authorities, all applicable fees and charges for the Service(s) will accrue until this Agreement has terminated, the Service(s) have been disconnected, and all Equipment has been returned. We will refund all prepaid monthly service fees charged for Service(s) on a prorated basis after the date of termination (less any outstanding amounts due Surf Internet for the Service(s), affiliate services, Equipment, or other applicable fees and charges).

**c. Suspension and Termination by Surf Internet.** Under the conditions listed below, Surf Internet reserves the right, subject to applicable law, to act immediately and without notice to terminate or suspend this Agreement or the Service(s) and/or to remove from the Service(s) any information transmitted by or to any authorized users (e.g., email). Surf Internet may take these actions if it: (1) determines that your use of the Service(s) does not conform with the requirements set forth in this Agreement, (2) determines that your use of the Service(s) interferes with Surf Internet's ability to provide the Service(s) to you or others, (3) reasonably believes that your use of the Service(s) may violate any laws, regulations, the Surf Internet Policies or written and electronic instructions for use, (4) reasonably believes that your use of the Service(s) interferes with or endangers the health and/or safety of our personnel or third parties, or (5) if you are in breach of any provision of this Agreement or fail to perform any obligations of this Agreement. In addition, Surf Internet May terminate this Agreement at any time without notice if we cease to provide Service in the area where you receive the service from us. Surf Internet' action or inaction under this Section shall not constitute review or approval of your or any other users' use of the Service(s) or information transmitted by or to you or users.

**d. Your Obligations Upon Termination.** You agree that upon termination of this Agreement you will do the following: 1. You will immediately cease all use of the Service(s) and all Equipment; 2. You will pay in full for your use of the Service(s) up to the date that this Agreement has been terminated and the Service(s) are disconnected; and 3. Within ten (10) days of the date on which Service(s) are disconnected, you will return all Equipment to us at our local business office or to our designee in working order, normal wear and tear excepted. Otherwise, you will be charged the amount set forth in the current pricing lists for such Equipment, or the revised amount for which you may receive notice; if no amount has been specified for the particular

model of Equipment, you will be charged the retail price for a new replacement. You may also be charged costs that we incur in replacing the Equipment. Upon our request during regular business hours, you will permit us and/or our employees, agents, contractors, and representatives to access the Premises with or without notice, legal process, prior judicial hearing or liability for trespass or any other damage, which rights Customer hereby voluntarily, intelligently and knowingly waives, and for this purpose, to remove all Equipment and other material provided by Surf Internet. You shall indemnify the Surf Internet Parties from losses, claims, damages suits and expenses claimed by any third party by reason of such access and removal and without liability for suit, action or other proceeding by Customer, any damages occasioned by such repossession being hereby expressly waived by Customer.

## 10. LIMITED WARRANTY

THE EQUIPMENT AND THE SERVICE(S) ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. THE SURF INTERNET PARTIES DO NOT WARRANT THAT THE EQUIPMENT OR THE SERVICE(S) WILL MEET YOUR REQUIREMENTS, PROVIDE UNINTERRUPTED SERVICE OR USE, OR OPERATE AS REQUIRED, WITHOUT DELAY, OR WITHOUT ERROR. THE SURF INTERNET PARTIES DO NOT WARRANT THAT ANY COMMUNICATIONS WILL BE TRANSMITTED IN UNCORRUPTED FORM. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF PERFORMANCE, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, SUITABILITY, ACCURACY, SECURITY, OR PERFORMANCE REGARDING ANY SERVICES, SOFTWARE OR GOODS, AND ANY IMPLIED WARRANTIES OR OTHER OBLIGATIONS ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE ARE HEREBY DISCLAIMED AND EXCLUDED UNLESS OTHERWISE PROHIBITED OR RESTRICTED BY APPLICABLE LAW. WE CANNOT ASSURE YOU THAT IF YOU PLACE A 911/E911 CALL YOU WILL BE FOUND.

## 11. LIMITATION OF SURF INTERNETS' LIABILITY

**a. Application.** The limitations of liability set forth in this Section apply to any acts, omissions, and negligence of the Surf Internet Parties which, but for that provision, would give rise to a cause of action in contract, tort or under any other legal doctrine.

**b. Customer Equipment.** EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE SURF INTERNET PARTIES SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE, LOSS, OR DESTRUCTION TO THE CUSTOMER EQUIPMENT OR SERVICE OUTAGE, INCLUDING, WITHOUT LIMITATION, AS A RESULT OF THE INSTALLATION, SELF-INSTALLATION, USE, INSPECTION, MAINTENANCE, UPDATING, REPAIR, AND REMOVAL OF THE EQUIPMENT, CUSTOMER EQUIPMENT AND/OR THE SERVICE(S). IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY SURF INTERNET, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS WE SHALL PAY AT OUR SOLE DISCRETION FOR THE REPAIR OR REPLACEMENT OF THE DAMAGED CUSTOMER EQUIPMENT UP TO A MAXIMUM OF \$500. THIS SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY RELATING TO SUCH ACTIVITY.

**c. For HSI Customers.** YOU UNDERSTAND THAT YOUR COMPUTER OR OTHER DEVICES MAY NEED TO BE OPENED, UPDATED, ACCESSED OR USED EITHER BY YOU OR BY US OR OUR AGENTS, IN CONNECTION WITH THE INSTALLATION, UPDATING OR REPAIR OF THE SERVICES OR OTHER

SERVICE(S). THE OPENING, ACCESSING OR USE OF YOUR COMPUTER, OTHER DEVICES USED IN CONNECTION WITH HSI OR OTHER SERVICE(S) MAY VOID WARRANTIES PROVIDED BY THE COMPUTER OR OTHER DEVICE MANUFACTURER OR OTHER PARTIES RELATING TO THE COMPUTER'S OR DEVICE'S HARDWARE OR SOFTWARE. NEITHER SURF INTERNET NOR ANY OF ITS AFFILIATES, SUPPLIERS, OR AGENTS, SHALL HAVE ANY LIABILITY WHATSOEVER AS THE RESULT OF THE VOIDING OF ANY SUCH WARRANTIES.

**c. Other Services or Equipment.** BY ACCEPTING THIS AGREEMENT, YOU WAIVE ALL CLAIMS AGAINST SURF INTERNET FOR INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY BETWEEN THE EQUIPMENT OR THE SERVICE(S) AND ANY OTHER SERVICE, SYSTEMS, OR EQUIPMENT. IN THE EVENT OF SUCH INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY, YOUR SOLE REMEDY SHALL BE TO TERMINATE THE SERVICE(S) IN ACCORDANCE WITH SECTION 9.

**d. Software.** When you use certain features of the Service(s), such as online features (where available), you may require special software, applications, and/or access to the Internet. Surf Internet Makes no representation or warranty that any software or application installed on Customer Equipment, downloaded to Customer Equipment, or available through the Internet does not contain a virus, Trojan horses, worms, or other harmful feature (collectively, "Virus(es)"). It is your sole responsibility to take appropriate precautions to protect any Customer Equipment from damage to its software, files, and data as a result of any such Viruses. We may, but are not required to, terminate all or any portion of the installation or operation of the Service(s) if a Virus or software is found to be present on your Customer Equipment. We are not required to provide you with any assistance in removal of Viruses. If we decide, in our sole discretion, to install or run virus check software on your Customer Equipment, we make no representation or warranty that the virus check software will detect or correct any or all Viruses. You acknowledge that you may incur additional charges for any service call made or required on account of any problem related to a Virus detected on your Customer Equipment. NEITHER SURF INTERNET NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY HARDWARE, SOFTWARE, FILES, OR DATA RESULTING FROM A VIRUS OR FROM ANY ATTEMPT TO REMOVE IT. In addition, as part of the installation process for the software and other components of the Service(s), system files on your Customer Equipment may be modified. Surf Internet does not represent, warrant or covenant that these modifications will not disrupt the normal operations of any Customer Equipment including without limitation your computer(s), or cause the loss of files or data. Surf Internet does not represent, warrant, or covenant that the installation of the special software or applications or access to our Web portal(s) will not cause the loss of files or data or disrupt the normal operations of any Customer Equipment, including, but not limited to, your computer(s). FOR THESE AND OTHER REASONS, YOU ACKNOWLEDGE AND UNDERSTAND THE IMPORTANCE OF BACKING UP ALL FILES TO ANOTHER STORAGE MECHANISM PRIOR TO SUCH ACTIVITIES. YOU UNDERSTAND AND ACCEPT THE RISKS IF YOU DECIDE NOT TO BACK UP FILES. THE SURF INTERNET PARTIES SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY SOFTWARE, FILES, OR DATA.

**e. Disruption of Services.** The Service(s) are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Service(s) could lead to severe injury to business, persons, property, or environment including, but not limited to, the direct control of: nuclear facilities, mass transit systems, aircraft navigation or communication systems, Air traffic control, weapon systems and life support machines (“High Risk Activities”). These High Risk Activities may include, without limitation, vital business, or personal communications, or activities where absolutely accurate data or information is required. You expressly assume the risks of any damages resulting from High Risk Activities. We shall not be liable for any inconvenience, loss, liability, or damage resulting from any interruption of the Service(s), directly or indirectly caused by, or proximately resulting from, any circumstances beyond our control, including, but not limited to, causes attributable to you or your property; inability to obtain access to the Premises; failure of any signal; failure of a communications device; loss of use of towers, or other utility facilities; strike; labor dispute; riot or insurrection; war; explosion; malicious mischief; fire, flood, lightning, earthquake, wind, ice, extreme weather conditions, or other acts of God; failure or reduction of power; or any court order, law, act or order of government restricting or prohibiting the operation or delivery of the Service(s). In all other cases of an interruption of the Service(s), you shall be entitled upon a request made within sixty (60) days of such interruption, to a pro rata credit (in 24 hour increments) for any Service(s) interruption exceeding twenty-four consecutive hours after such interruption is reported to us, or such other period of time as may be specifically provided by law. Unless specifically provided by law, such credit shall not exceed the fixed monthly charges for the month of such Service(s) interruption and excludes all non recurring charges, one-time charges, regulatory fees and surcharges, taxes and other governmental and quasi-governmental fees. EXCEPT AND UNLESS SPECIFICALLY PROHIBITED BY LAW, SUCH CREDIT SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY FOR AN INTERRUPTION OF SERVICE(S). Any credits provided by Surf Internet are at our sole discretion and in no event shall constitute or be construed as a course of conduct by Surf Internet.

**f. Intentionally Omitted**

**g. Third Parties.** Notwithstanding anything to the contrary in this Agreement, you acknowledge and understand that we may use third parties to provide components of the Service(s), including without limitation, their services, equipment, infrastructure, or content. Surf Internet is not responsible for the performance (or non-performance) of third-party services, equipment, infrastructure, or content, whether or not they constitute components of the Service(s). Surf Internet shall not be bound by any undertaking, representation or warranty made by an agent, or employee of Surf Internet or of our underlying third-party providers and suppliers in connection with the installation, maintenance, or provision of the Service(s), if that undertaking, representation, or warranty is inconsistent with the terms of this Agreement. In addition, you understand that you will have access to the services and content of third parties through the Service(s), including without limitation that of content providers [whether or not accessible directly from the Service(s)]. Surf Internet is not responsible for any services, equipment, infrastructure, and content that are not provided by us [even if they are components of the Service(s)], and we shall have no liability with respect to such services, equipment, infrastructure, and content. You should address questions or concerns relating to such services, equipment, infrastructure, and content to the providers of such services, equipment, infrastructure, and content. We do not endorse or warrant any third-party products, services, or content that are distributed or advertised over the Service(s).

**h. Damages.** EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, THE SURF INTERNET PARTIES SHALL NOT UNDER ANY CIRCUMSTANCES OR UNDER ANY LEGAL THEORY (INCLUDING, BUT NOT LIMITED TO, TORT OR CONTRACT) HAVE ANY LIABILITY TO THE CUSTOMER OR TO ANY OTHER PERSON OR ENTITY FOR THE FOLLOWING LOSSES, DAMAGES, OR COSTS: (1) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, TREBLE, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES, PERSONAL INJURIES, OR DEATH) THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH (a) YOUR RELIANCE ON OR USE OF THE EQUIPMENT OR THE SERVICE(S) OR (b) THE INSTALLATION, SELF-INSTALLATION, MAINTENANCE, FAILURE, OR REMOVAL OF THE SERVICE(S) (INCLUDING, BUT NOT LIMITED TO, ANY MISTAKES, OMISSIONS, INTERRUPTIONS, COMPUTER OR OTHER HARDWARE OR SOFTWARE BREACH, FAILURES OR MALFUNCTIONS, DELETION OR CORRUPTION OF FILES, WORK STOPPAGE, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION, OR FAILURE OF PERFORMANCE OF THE SERVICE(S), THE EQUIPMENT, OR THE CUSTOMER EQUIPMENT, OR ANY OTHER MISTAKES, OMISSIONS, LOSS OF CALL DETAIL, E-MAIL, VOICEMAIL, OR OTHER INFORMATION OR DATA); OR (2) ANY LOSSES, CLAIMS, DAMAGES, EXPENSES, LIABILITIES, LEGAL FEES, OR OTHER COSTS THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH ANY ALLEGATION, CLAIM, SUIT, OR OTHER PROCEEDING BASED UPON A CONTENTION THAT THE USE OF THE EQUIPMENT OR THE SERVICE(S) BY YOU OR ANY OTHER PERSON OR ENTITY INFRINGES UPON THE CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

**i. Customer's Sole Remedies.** Your sole and exclusive remedies under this Agreement are as expressly set forth in this Agreement. Certain of the above limitations may not apply if your state does not allow the exclusion or limitation of implied warranties or does not allow the limitation or exclusion of incidental or consequential damages. In those states, the liability of Surf Internet and its employees, affiliates, suppliers, agents, contractors, distributors, licensors and business partners is limited to the maximum extent permitted by law.

**j. Survival of Limitations.** All representations, warranties, indemnifications, and limitations of liability contained in this Agreement shall survive the termination of this Agreement; any other obligations of the parties hereunder shall also survive, if they relate to the period before termination or if, by their terms, they would be expected to survive such termination.

## 12. INDEMNIFICATION AND LIABILITY OF CUSTOMER

YOU AGREE THAT YOU SHALL BE RESPONSIBLE FOR AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS SURF INTERNET PARTIES FOR ANY DAMAGES, LOSSES OR EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS) INCURRED BY US IN CONNECTION WITH ANY CLAIMS, SUITS, JUDGMENTS, AND CAUSES OF ACTION ARISING OUT OF (a) YOUR USE OF THE SERVICE(S) OR THE EQUIPMENT; (b) VIOLATION OR INFRINGEMENT OF CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS ARISING FROM YOUR USE OF THE SERVICE(S) OR ANY UNAUTHORIZED APPARATUS OR SYSTEM; (c) ANY CLAIMS OR DAMAGES ARISING OUT OF THE LACK OF 911/E911 OR DIALING ASSOCIATED WITH A HOME SECURITY, HOME DETENTION, OR MEDICAL MONITORING SYSTEM; AND (d) YOUR BREACH OF ANY PROVISION OF THIS AGREEMENT.

## 13. BINDING ARBITRATION

**a. Purpose.** The parties agree that any and all Disputes (as defined below) arising out of or relating to This Agreement that cannot be resolved through an informal dispute resolution with Surf Internet shall be submitted to final and binding arbitration in accordance with the terms of this Arbitration Provision to be conducted in Indiana.

**b. Definitions.** The term "Dispute" means any dispute, claim, or controversy between you and Surf Internet regarding any aspect of your relationship with Surf Internet, whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent inducement, negligence, or any other intentional tort), or any other legal or equitable theory, and includes the validity, enforceability or scope of this Arbitration Provision. "Dispute" is to be given the broadest possible meaning that will be enforced. As used in this Arbitration Provision, "Surf Internet" means Surf Internet and its parents, subsidiaries and affiliated companies and each of their respective officers, directors, employees and agents.

**c. Intentionally Omitted.**

**d. Initiation of Arbitration Proceeding/Selection of Arbitrator.** The party initiating the arbitration proceeding may open a case with the American Arbitration Association - Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043, 877-493-4185, [www.adr.org](http://www.adr.org) under the Commercial Arbitration Rules of the American Arbitration Association "AAA."

**e. Arbitration Procedures.** Because the Service(s) provided to you by Surf Internet may concern interstate commerce, the Federal Arbitration Act ("FAA"), not state arbitration law, shall govern the arbitrability of all Disputes. No state statute pertaining to arbitration shall be applicable under this Arbitration Provision. If there is a conflict between this Arbitration Provision and the rules of the arbitration organization, this Arbitration Provision shall govern. If the AAA will not enforce this Arbitration Provision as written, it cannot serve as the arbitration organization to resolve your dispute with Surf Internet. If this situation arises, the parties shall agree on a substitute arbitration organization. If the parties are unable to agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will enforce this Arbitration Provision as written. If there is a conflict between this Arbitration Provision and the rest of this Agreement, this

Arbitration Provision shall govern. A single arbitrator will resolve the Dispute. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect customer account information and other confidential or proprietary information. The Federal Rules of Evidence shall apply to any arbitration. The authority of the arbitrator to award damages in any event is and shall be limited in the aggregate to the amounts specified in Section 11. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. An award rendered by the arbitrator may be entered in any court having jurisdiction over the parties for purposes of enforcement. If an award granted by the arbitrator exceeds \$75,000, either party can appeal that award to a three- arbitrator panel administered by the same arbitration organization by a written notice of appeal filed within thirty (30) days from the date of entry of the written arbitration award. The members of the three-arbitrator panel will be selected according to the rules of the arbitration organization. The arbitration organization will then notify the other party that the award has been appealed. The three-arbitrator panel will issue its decision within one hundred and twenty (120) days of the date of the appealing party's notice of appeal. The decision of the three-arbitrator panel shall be final and binding, except for any appellate right which exists under the FAA.

**f. Restrictions:**

1. YOU MUST CONTACT US WITHIN ONE (1) YEAR OF THE DATE OF THE OCCURRENCE OF THE EVENT OR FACTS GIVING RISE TO A DISPUTE (EXCEPT FOR BILLING DISPUTES, ABOUT WHICH YOU MUST CONTACT SURF INTERNET WITHIN SIXTY (60) DAYS AS PROVIDED IN SECTION 2 OF THIS AGREEMENT), OR YOU WAIVE THE RIGHT TO PURSUE ANY CLAIM BASED UPON SUCH EVENT, FACTS, OR DISPUTE.

2. ALL PARTIES TO THE ARBITRATION MUST BE INDIVIDUALLY NAMED. THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER SUBSCRIBERS, OR OTHER PERSONS.

**g. Location of Arbitration.** The arbitration will take place at a location convenient to you in the area where you receive the service from us.

**h. Payment of Arbitration Fees and Costs.** SURF INTERNET WILL ADVANCE ALL ARBITRATION FILING FEES AND ARBITRATOR'S COSTS AND EXPENSES UPON YOUR WRITTEN REQUEST GIVEN PRIOR TO THE COMMENCEMENT OF THE ARBITRATION. YOU ARE RESPONSIBLE FOR ALL ADDITIONAL COSTS THAT YOU INCUR IN THE ARBITRATION, INCLUDING, BUT NOT LIMITED TO, FEES FOR ATTORNEYS OR EXPERT WITNESSES. IF THE ARBITRATION PROCEEDING IS DECIDED IN SURF INTERNET FAVOR, YOU SHALL REIMBURSE SURF INTERNET FOR THE FEES AND COSTS ADVANCED TO YOU ONLY UP TO THE EXTENT AWARDABLE IN A JUDICIAL PROCEEDING. IF THE ARBITRATION PROCEEDING IS DETERMINED IN YOUR FAVOR, YOU WILL NOT BE REQUIRED TO REIMBURSE SURF INTERNET FOR ANY OF THE FEES AND COSTS ADVANCED BY SURF INTERNET. IF A PARTY ELECTS TO APPEAL AN AWARD TO A THREE-ARBITRATOR PANEL, THE PREVAILING PARTY IN THE APPEAL SHALL BE ENTITLED TO RECOVER ALL REASONABLE ATTORNEYS' FEES AND COSTS INCURRED IN THAT APPEAL. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ARBITRATION PROVISION, SURF INTERNET WILL PAY ALL FEES AND COSTS THAT IT IS REQUIRED BY LAW TO PAY.

**i. Severability.** If any clause within this Arbitration Provision is found to be illegal or unenforceable, that clause will be severed from this Arbitration Provision, and the remainder of this Arbitration Provision will be given full force and effect. If the class action waiver clause is found to be illegal or unenforceable, the entire Arbitration Provision will be unenforceable, and the dispute will be decided by a court. In the event this entire Arbitration Provision is determined to be illegal or unenforceable for any reason, or if a claim is brought in a Dispute that is found by a court to be excluded from the scope of this Arbitration Provision, you and Surf Internet have each agreed to waive, to the fullest extent allowed by law, any trial by jury.

**j. Exclusions from Arbitration.** YOU AND SURF INTERNET AGREE THAT THE FOLLOWING WILL NOT BE SUBJECT TO ARBITRATION: (1) ANY CLAIM FILED BY YOU OR BY SURF INTERNET THAT IS NOT AGGREGATED WITH THE CLAIM OF ANY OTHER SUBSCRIBER AND WHOSE AMOUNT IN CONTROVERSY IS PROPERLY WITHIN THE JURISDICTION OF A COURT THAT IS LIMITED TO ADJUDICATING SMALL CLAIMS; (2) ANY DISPUTE OVER A PARTY'S INTELLECTUAL PROPERTY RIGHTS; (3) ANY DISPUTE RELATED TO OR ARISING FROM ALLEGATIONS ASSOCIATED WITH UNAUTHORIZED USE OR RECEIPT OF SERVICE; AND (4) ANY DISPUTE THAT ARISES BETWEEN SURF INTERNET AND ANY STATE OR LOCAL REGULATORY AUTHORITY OR AGENCY THAT IS EMPOWERED BY FEDERAL, STATE, OR LOCAL LAW.

**k. Continuation.** This Arbitration Provision shall survive the termination of your Service(s) with Surf Internet.

#### 14. INTENTIONALLY OMITTED

#### 15. GENERAL

**a. Entire Agreement.** This Agreement and any other documents incorporated by reference constitute the entire agreement and understanding between you and Surf Internet with respect to the subject matter of this Agreement, and replace any and all prior written or verbal agreements. If any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of the provisions shall remain in full force and effect. Surf Internet does not waive any provision or right or excuse any breach if it fails to insist upon or enforce strict performance of any provision of this Agreement. Neither the course of conduct between you and Surf Internet nor trade practice shall act to modify any provision of this Agreement.

**b. Additional Representations and Warranties.** In addition to representations and warranties you make elsewhere in this Agreement, you also represent and warrant that:

i. Age: You are at least 18 years of age.

ii. Customer Information: During the term of this Agreement, you have provided and will provide to Surf Internet information that is accurate, complete and current, including without limitation your legal name, address, telephone number(s), the number of devices on which or through the Service(s) is being used, and payment data (including without limitation information provided when authorizing recurring payments). You agree to notify us promptly, in accordance with the terms of this Agreement, if there is any change in the information that you have provided to us. Failure to provide and maintain accurate information is a breach of this Agreement.

**c. Information Provided to Third Parties.** Surf Internet is not responsible for any information provided by you to third parties, and this information is not subject to the privacy provisions of this Agreement or the privacy notice for the Service(s). You assume all privacy, security, and other risks associated with providing any information, including personally identifiable information, to third parties via the Service(s). For a description of the privacy protections associated with providing information to third parties, you should refer to the privacy policies, if any, provided by those third parties.

**d. Revocable License.** The Service(s) and Equipment, including, but not limited to, any firmware or software embedded in the Equipment or used to provide the Service(s), may be protected by trademark, copyright, patent and/or other intellectual property laws and international treaty provisions. You are granted a non-exclusive, limited, personal, revocable license to use such firmware and software in object code form (without making any modification thereto) strictly in accordance with this Agreement. You acknowledge and understand that you are not granted any other license to use the firmware or software embedded in the Equipment or used to provide the Service(s). You expressly agree that you will use the Equipment exclusively in connection with the Service(s). You shall not take any action nor allow anyone else to take any action that will reverse compile, disassemble, reverse engineer, or otherwise attempt to derive the source code from the binary code of the firmware or software.

**e. Protection of Surf Internets' Information and Marks.** All Service(s), content, information, documents, and materials on our websites are protected by trademark, copyright or other intellectual property laws, and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos, and domain names (collectively "marks") of Surf Internet and its affiliates are and shall remain the exclusive property of Surf Internet. Nothing in this Agreement shall grant you the right or license to use any of the marks.

**f. Export Laws.** You expressly agree to comply with all applicable export and re-export laws, including, but not limited to, the Export Administration Act, the Arms Export Control Act, and their implementing regulations. You further expressly agree not to use the Service(s) in any way that violates any provision of such laws or their implementing regulations.

**g. Retention of Rights.** Nothing contained in this Agreement shall be construed to limit Surf Internets' rights and remedies available at law or in equity. Upon termination of this Agreement for any reason, Surf Internet and its suppliers reserve the right to delete all your data, files, electronic messages or other Customer information that is stored on Surf Internets' or its suppliers' servers or systems. In addition, you may forfeit your account user name and all email, IP and Web space addresses, and voicemail. We shall have no liability whatsoever as the result of the loss of any such data, names, addresses, or numbers.

**h. Governing Law, Jurisdiction and Venue.** This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of, the State of Indiana. The parties agree that any action or proceeding arising out of or related to this Agreement shall be brought exclusively in a federal or state court located in the State of Indiana, and the parties hereby consent to such venue and to the jurisdiction of such courts over such proceeding and themselves.

## 16. NOTICE METHOD FOR CHANGES TO THIS AGREEMENT

We will provide you notice of changes to this Agreement consistent with applicable law. The notice may be provided on your monthly bill, as a bill insert, in a newspaper, by email, or by other permitted communication. If you find the change unacceptable, you have the right to cancel your Service(s). However, if you continue to receive the Service(s) after the change, we will consider this your acceptance of the change.

**ADDITIONAL PROVISIONS APPLICABLE TO HIGH-SPEED INTERNET SERVICE** In addition to the provisions above that are applicable, the following are specifically applicable to HSI Customers, including the Approved Use Policy referenced in this Agreement.

### 1. INTELLECTUAL PROPERTY RIGHTS

**a. End User Licenses.** You agree to comply with the terms and conditions of all end user license agreements accompanying any software or plug-ins to such software distributed or used in connection with HSI as these agreements may be amended from time to time. All such agreements are incorporated in this Agreement by reference. When this Agreement terminates, all end user licenses also terminate; you agree to destroy at that time all versions and copies of all software received by you in connection with HSI.

**b. Ownership of Addresses.** You acknowledge that use of HSI does not give you any ownership or other rights in any Internet/on-line addresses provided to you, including, but not limited to, Internet Protocol ("IP") addresses, e-mail addresses, and Web addresses. We may modify or change these addresses at any time without notice and shall in no way be required to compensate you for these changes. Upon termination of an HSI account, we reserve the right permanently to delete or remove any or all addresses associated with the account.

**c. Authorization.** Surf Internet does not claim any ownership of any material that you publish, transmit or distribute using HSI. By using HSI to publish, transmit, or distribute material or content, you (1) warrant that the material or content complies with the provisions of this Agreement, (2) consent to and authorize Surf Internet, its agents, suppliers, and affiliates to reproduce, publish, distribute, and display the content worldwide and (3) warrant that you have the right to provide this authorization. You acknowledge that material posted or transmitted using HSI may be copied, republished or distributed by third parties, and you agree to indemnify, defend, and hold harmless the Surf Internet Parties for any harm resulting from these actions.

#### **d. Intentionally Omitted**

**e. Material Downloaded Through HSI.** In addition to any content that may be provided by us, you may access material through HSI that is not owned by Surf Internet. Specific terms and conditions may apply to your use of any content or material made available through HSI that is not owned by Surf Internet. You should read those terms and conditions to learn how they apply to you and your use of any non-Surf Internet Wireless content.

## 2. ADDITIONAL LIMITATIONS ON SURF Internet 'LIABILITY FOR HSI

**a. Responsibility for Content.** You acknowledge that there is some content and material on the Internet or otherwise available through HSI that may be offensive to some individuals, may be unsuitable for children, may violate federal, state or local laws, rules or regulations, or may violate your protected rights or those of others. We assume no responsibility for this content or material. Anyone who accesses such content and material does so at his or her own risk. NEITHER SURF INTERNET NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS OR BUSINESS PARTNERS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS ARISING OUT OF OR OTHERWISE RELATING TO ACCESS TO SUCH CONTENT OR MATERIAL BY YOU OR OTHERS. Questions or complaints regarding content or material should be addressed to the content or material provider. You acknowledge that software programs are commercially available that claim to be able to restrict access to sexually explicit or other objectionable material on the Internet. We make no representation or warranty regarding the effectiveness of such programs.

**b. Eavesdropping.** The public Internet is used by numerous persons or entities including, without limitation, other subscribers to HSI. As is the case with all shared networks like the public Internet, there is a risk that you could be subject to "eavesdropping." This means that other persons or entities may be able to access and/or monitor your use of HSI. If you post, store, transmit, or disseminate any sensitive or confidential information, you do so at your sole risk. THE SURF INTERNET PARTIES SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS ARISING OUT OF OR OTHERWISE RELATING TO SUCH ACTIONS BY YOU. You acknowledge that software programs are commercially available that claim to be capable of encryption or anonymization. We make no representation or warranty regarding the effectiveness of these programs.

**c. FTP/HTTP Service Setup.** You acknowledge that when using HSI there are certain applications such as FTP (File Transfer Protocol) or HTTP (HyperText Protocol) that may be used by other persons or entities to gain access to your Customer Equipment. You are solely responsible for the security of your Customer Equipment or any other equipment you choose to use in connection with the Service(s), including without limitation any data stored on such equipment. THE SURF INTERNET PARTIES SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS OR PROCEEDINGS RESULTING FROM, ARISING OUT OF, OR OTHERWISE RELATING TO THE USE OF SUCH APPLICATIONS BY YOU, OR THE ACCESS BY OTHERS TO YOUR CUSTOMER EQUIPMENT OR OTHER EQUIPMENT OF YOURS.

**d. Facilities Allocation.** Surf Internet reserves the right to determine, in its discretion, and on an ongoing basis, the nature and extent of its facilities allocated to support HSI, including, but not limited to, the amount of bandwidth to be utilized and delivered in conjunction with HSI.

## Appendix A

[www.surfbroadband.com](http://www.surfbroadband.com)

[www.surfboadband.net](http://www.surfboadband.net)

[www.airbaud.net](http://www.airbaud.net)

[www.surfairwireless.tv](http://www.surfairwireless.tv)

[www.surfairwireless.biz](http://www.surfairwireless.biz)

[www.surfairwireless.us](http://www.surfairwireless.us)

[www.surfairwireless.mobi](http://www.surfairwireless.mobi)

[www.surfairwireless.org](http://www.surfairwireless.org)

[www.surfairwireless.me](http://www.surfairwireless.me)

[www.surfairwireless.info](http://www.surfairwireless.info)

[www.surfairwireless.co](http://www.surfairwireless.co)

[www.surfinternet.com](http://www.surfinternet.com)

## Appendix B

### Minimum Technical Requirements

Customer PC, Laptop, or other machine used in connection with the Service must be either the most recent version of hardware running the most current versions of all software or be no greater than three years old.