



## NYMBLE™ INTERNET SERVICE TERMS & CONDITIONS

These Terms & Conditions are between Nymble Internet Service ("Nymble" or "we") and you as our customer and User. This Agreement states the terms and conditions under which we agree to provide you with High Speed Internet Service ("Service"), and you agree to use the Service in compliance with these terms and conditions of receiving the Service, as well as any other terms and conditions which are incorporated herein by reference or to which you have otherwise agreed govern the Service.

THIS AGREEMENT IS A CONTRACT. PLEASE READ IT CAREFULLY. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS OF SERVICE, THEN YOU MAY NOT USE THE SERVICE AND MUST CONTACT US IMMEDIATELY TO TERMINATE THE SERVICE.

### 1. Length of Agreement; Acceptance of Agreement; Agreement Terms Generally Included

Nymble provides affordable Internet access, metered by the amount of data purchased and consumed. The length of this Agreement will be determined by how much data you purchase and consume, and the terms of this Agreement will apply for however long you continue to have access to the Service. Your acceptance of this Agreement occurs upon the earlier of: **(a)** the date you of your written or electronic acceptance of this Agreement, or **(b)** the date you first access or use the Service, or **(c)** the date you purchase access to the Service. This Agreement consists of the terms below, plus: **(a)** the specific elements of your High Speed Internet Residential Product (including the product's pricing as described in the information made available to you when placing and confirming your order); **(b)** the Nymble Acceptable Use Policy; **(c)** the Nymble Privacy Policy; **(d)** Internet Access Service Disclosure; **(e)** Nymble's Product Definition; **(f)** Nymble's Minimum Equipment Requirements; **(g)** any other Nymble policy referred to in this Agreement; and **(i)** any other terms and conditions to which you and Nymble mutually agree; all of which are incorporated herein by reference and made a part of this Agreement. A current version of this Agreement and related policies and disclosures are posted online at: [www.buckeyebroadband.com/legal](http://www.buckeyebroadband.com/legal). You can also receive a paper copy of this Agreement and any of Nymble's policies and disclosures by sending a written request to:

**Nymble Internet Service**  
Attention: Customer Support  
2700 Oregon Road  
Northwood Ohio 43619

### 2. Definitions

- a. "Nymble Website(s)" means various web pages, tools, information, software, content, and features operated by Nymble, including without limitation the sites located at [www.buckeyebroadband.com/nymble](http://www.buckeyebroadband.com/nymble).
- b. "Content" means content provided by Nymble or any third party licensors or suppliers, and accessible on the Service, including without limitation images, photographs, animations, video, audio, music, and text in any format.
- c. "Dispute(s)" means any dispute, claim, or controversy between you and Nymble regarding any aspect of your relationship with Nymble, including without limitation those based on events that occurred prior to the date of this Agreement or after its expiration or termination.
- d. "Equipment" means any modem, router and/or other equipment provided by or through Nymble for use with the Service, which may be provided upon customer request and/or as needed to provide a Service connection which may be subject to a specific charge from Nymble.

- e. "Primary Email Address" means the email address that you provide to Nymble when Service is installed or otherwise initiated, and any subsequent email address you provide to Nymble and request be designated as the email address at which we contact you or otherwise send you notice.
- f. "Service" means Internet access provided to you through or by Nymble, including without limitation dial-up, high speed, wireless and Wi-Fi services, together with the all software, Equipment, content, technical support, domain name server ("DNS") and related services, Nymble Websites and other products and services.

### 3. Revisions to This Agreement

From time to time, Nymble will make revisions to the terms, conditions, and policies governing your Service, including without limitation revisions to the provisions that govern the way that you and Nymble resolve disputes. Notice of those revisions shall be deemed to have been given when provided pursuant to the terms of this Agreement, including without limitation when: (a) transmitted to your Primary Email Address; or (b) mailed via the US mail or hand-delivered to your address on file with us (including through a bill message or bill insert); or (c) seven (7) days after they are posted on the Website, subject to distribution to you of notification of such posting via a service or an electronic message system (for example, "Perftech Message") or (d) thirty (30) days after publication in the Toledo Blade or in the newspaper with the largest daily circulation in the relevant service area. As a condition to Service, you agree to visit the Website periodically and to check your email box to review revisions (if any) to the terms and conditions of Service, and you agree to notify Nymble immediately of any changes in your mailing address or Primary Email Address. If any revision to the terms and conditions is unacceptable to you, you may terminate your Service pursuant to the applicable terms and conditions. Unless otherwise specifically described herein or as required as a matter of law, there is no refund for prepaid services. If you do not terminate the Service, or if you continue to use the Service after the revisions are effective, you accept the revisions and agree to abide by them by.

### 4. Authorized User, Account Use, and Responsibilities

- a. You acknowledge that you are eighteen (18) years of age or older, that you have the legal authority to enter into this Agreement, and that you are legally empowered to authorize Nymble to enter upon any property to which you will seek Nymble service, for the purpose of: (1) placing any exterior transmission lines necessary to provide the service, including, if necessary, an above-ground pedestal in the easement; (2) attaching wiring and equipment to the structure; (3) installing a cable modem, wireless router, and software in the designated personal computer; and (4) providing any necessary maintenance and repair services you purchase or to which you are otherwise entitled.
- b. You are responsible for all use of your Service, whether by you or someone using your access, including all secondary or sub-accounts associated with your primary account, and to pay for all activity associated with such Service use. You agree to comply with all applicable laws, regulations and rules regarding your use of the Service and to only use the Service within the United States (unless otherwise permitted by this Agreement).
- c. The Service is a consumer-grade service, is not designed for or intended to be used for any commercial purpose, and may not be used for any such purpose. You are not authorized or permitted to resell, re-provision, or rent the Service (either for a fee or without charge), or allow third parties to use the Service via wired, wireless or other means. For example, you may not provide Internet access to third parties through a wired or wireless connection or use the Service to facilitate public Internet access (such as through a Wi-Fi hotspot); use it to generate or distribute automatic mailings, mass-mailings, or "spam"; or engage in similar activities that constitute such use (whether commercial or non-commercial). You may connect multiple computers/devices within a single home to your modem and/or router to access the Service, but only through a Nymble-issued IP address. You also may not use the Service to host any type of server, and exceeding the data allowances provided for in your Service plan may lead to additional charges or suspension of service. Violation of this section may result in bandwidth restrictions on your Service, additional costs, and/or suspension or termination of your Service.

- d. Your Service may log off automatically and without notice if your session is idle for an extended time. A session may be deemed to be idle if there appears to be no interactive, human-generated data received from your computer system within a prescribed amount of time. Use of automatic re-dialer, script or other programs for the purpose of avoiding inactivity disconnects is a violation of this Agreement. You may only use your account for one log-on session per connection type at a time and you may not use more than one IP address for each log-on session.

## **5. Privacy Policy; Legal Compliance**

Nymble collects certain information about you. The collection and preservation of this information is governed by our Privacy Policy, which is available online at [www.buckeyebroadband.com/legal](http://www.buckeyebroadband.com/legal) and is subject to change from time to time. Nymble reserves the right to disclose account and user information, including email and personally identifying information, consistent with the terms and conditions of Service and applicable law, and to fully cooperate with law enforcement authorities in the investigation of any criminal or civil matter. Such cooperation may include without limitation monitoring of the Nymble network consistent with applicable law. In addition, Nymble is required by law to report any facts or circumstances reported to us, or that we discover, from which it appears there may be a violation of certain laws, including without limitation the child pornography laws; and Nymble reserves the right to report any such information to law enforcement and other government officials, including the identity of users, account information, images and other facts.

## **6. Availability of and Changes to Service**

- a. Nymble provisions your modem and engineers its network so that you can enjoy the speeds to which you subscribe. However, even where the network is optimally engineered, conditions outside Nymble's control affect service speed. Except in the case of a dedicated Internet connection, no Internet service provider can guarantee a particular speed at all times to its customers, and Nymble cannot and does not guarantee Service will at all times and under all conditions achieve the specific speeds. However, the Nymble system is engineered to deliver speeds that exceed the speed advertised, so the advertised speeds reasonably describe the upload and download speeds that you are likely to experience under real-world conditions, but may not represent the speed you will achieve at all times.
- b. The bandwidth available to a device connected to via Nymble will vary depending on the number, type, and configuration of devices using the Service, and the type of use (e.g., streaming media), among other factors. Service speed will vary based on the condition of the relevant network infrastructure, your computer configuration, overall load on your internal network system, the condition of your cable lines and the wiring inside your location, and other factors that may be outside Nymble control. Nymble reserves the right, at any time and with or without prior notice to you, to restrict or suspend the Service to perform maintenance activities and to maintain session control as necessary to maintain and improve appropriate customer service.
- c. Nymble reserves the right to change any of the features, content or applications of the Service, including the maximum speeds of the Service, rates and charges, required equipment, and upstream/downstream limitations, from time to time and with or without notice to you. If notice is provided, it will be provided pursuant to these Terms and Conditions or in any manner otherwise reasonably calculated to provide you notice.

- d. If the Nymble equipment includes the ability to transmit internet signals wirelessly, also known as Wi-Fi, Nymble will use reasonable efforts to provide useful and reliable Wi-Fi service to you within the otherwise applicable terms of your Service, but you acknowledge that Wi-Fi utilizes public, unlicensed radio frequency spectrum and, as a consequence is subject to many external interferences, environmental influences, and other factors and variables beyond Nymble's control. Performance and availability of Wi-Fi will vary depending on a number of factors, including but not limited to: **(1)** transmission and download speed and accuracy; **(2)** overall network usage patterns; **(3)** performance, configuration, and functionality of your Wi-Fi devices and wireless cards (including, but not limited to, memory, storage and other limitations); **(4)** physical obstructions and distances between your Wi-Fi device and the Nymble network; **(5)** availability of electric power; **(6)** collocation failures; **(7)** transmission and equipment limitations, failures, maintenance or repair; and **(8)** user error.
- e. Network speed is an estimate and is no indication of the speed at which your Wi-Fi device or Nymble will operate. Actual network speed and other performance will vary. Nymble is not responsible for data lost or misdirected due service outages, interruptions, slowdowns, or lost signals.
- f. Nymble will attempt to correct any service problems caused by our Equipment, Software, or network; however, under no circumstance are we required to install service or replace equipment or software that we do not own or otherwise do not control. Depending on the circumstances, we may charge you for service calls. Specifically, if the issue cannot be diagnosed and solved remotely, and it is necessary to provide technical support in the field, you will be required to pre-pay for a Nymble service call; if it is determined based on that visit that the issue was caused by Nymble Equipment or Software, you will be reimbursed for the service call. For more information, please contact Nymble customer service in person, by phone, or online.
- g. Nymble has no liability for service interruptions; however, if you lose all access to Service for more than 24 consecutive hours and the cause of the outage was within our reasonable control, Nymble will credit you for that period if you request. All credit requests must be made in writing and received by Nymble within 45 days of the outage or service issue.
- h. Notwithstanding anything else in these terms and conditions, Nymble has no obligation to compensate or credit you for service problems that are beyond our reasonable control. Without limitation, examples of such problems include those caused by storms and other natural disasters, vandalism, terrorism, regulations or governmental acts, fires, civil disturbances, electrical power outages, computer viruses, or labor disputes.
- i. Local law may impose other outage credit requirements with respect to some or all of the Services. If this is the case in your area, we will follow the local law.
- j. Equipment purchased from Nymble will be pre-provisioned to provide immediate Internet access following successful installation. Equipment not purchased through Nymble will need to go through a provisioning process, and it is necessary to contact Nymble to register and provision the Equipment prior to installation. Notwithstanding the foregoing, Services may network with equipment, software or services that we did not provide to you and you understand and agree that Nymble has no liability for this.

## **7. Software Licenses and Third Party Services**

- a. For a fee or at no charge, Nymble may offer or otherwise provide software which is owned by Nymble or its third party licensors, providers and suppliers ("Software") for use in connection with the Service. You acknowledge and agree that this Software may not be supported by Nymble, and it is your responsibility to obtain support, updates, and upgrades directly from the Software vendor, and you acknowledge and agree to be responsible for any charges may apply. You agree that Nymble will have no liability to you or to anyone else for any claims relating to or arising from your use of the Software, and that you will use such Software only in connection with the Service and for no other purpose.

- b. Certain Software may be accompanied by an end user license agreement (“EULA”) from Nymble or a third party. Your use of the Software is governed by the terms of that EULA and by this Agreement, where applicable. You acknowledge and agree that you will not install or use any Software that is accompanied by or includes a EULA unless you first agree to the terms of the EULA.
- c. For Software not accompanied by a EULA, you are hereby granted a revocable, non-exclusive, non-transferable license by Nymble or its applicable third party licensor(s) to use the Software (and any corrections, updates and upgrades thereto). You agree that the Software is confidential information of Nymble or its third party licensors and that you will not disclose or use the Software except as expressly permitted herein, and that you will not make any copies of the Software. The Software contains copyrighted material, trade secrets, patents, and proprietary information owned by Nymble and/or its third party licensors, and you may not de-compile, reverse engineer, disassemble, attempt to discover any source code or underlying ideas or algorithms of the Software, otherwise reduce the Software to a human readable form, modify, rent, lease, loan, use for timesharing or service bureau purposes, reproduce, sublicense or distribute copies of the Software, or transfer the Software to any third party. You may not remove or alter any trademark, trade name, copyright or other proprietary notices, legends, symbols, or labels appearing on or in copies of the Software.
- d. Notwithstanding any other term in this Agreement, you are not granted any title or rights of ownership in the Software. You acknowledge and agree that any license is solely for your individual use in connection with the Service and is not a sale of intellectual property, and that Nymble or its third party licensors continue to own all right, title and interest, including but not limited to all copyright, patent, trademark, trade secret, and moral rights, to the Software and related documentation, as well as any corrections, updates and upgrades to it. The Software may be used in the United States only, and any export of the Software is strictly prohibited.
- e. Your license to use the Software or any Additional Services will remain in effect until terminated by Nymble or its third party licensors, or until your access to the Service terminates. Upon termination of your access to the Service, you must cease all use of and immediately delete the Software from your computer or other device.
- f. If you subscribe to or otherwise use any third party services offered by Nymble, your use of such services is subject to the EULA of that third party provider, and any violation of those terms may result in the termination of your access to the Service in our sole and unlimited discretion.
- g. All title and intellectual property rights (including without limitation, copyrights, patents, trademarks and trade secrets) in and to Nymble’s websites (including but not limited to, related software, images, photographs, animations, video, audio, music, text, and content), are owned by Nymble, its affiliates, associated companies, or licensors. All title and intellectual property rights in and to the information and content which may be accessed through use of the Websites are the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. Nothing in this Agreement or otherwise provides you with any rights to use such content, nor does it grant you any rights to the Websites, other than the right to use the Websites according to the terms of the Agreement.

## **8. Pricing, Billing, Changes to Service Plans and Payment**

- a. You agree to pre-pay the fees applicable to your Service, which amounts include without limitation: **(1)** applicable taxes, **(2)** surcharges, **(3)** recovery fees, **(4)** other government fees or charges, **(5)** activation fees, **(6)** installation fees, **(7)** setup fees, **(8)** equipment charges, and, **(9)** late payment fees, **(10)** all other recurring and nonrecurring charges associated with the Service plan you have selected, and **(11)** any other fees or charges applicable under the terms and conditions of your service. Surcharges and fees are not taxes and are not required by law, but are set by Nymble. Fees applicable to Service, and payable by you, are subject to increase; provided, however, that you will be notified of any such increase and have the opportunity to decline continuing Service.

- b. An installation fee (if you are having professional installation) and first month's Service charges are due at the time of service initiation.
- c. Nymble may provide notices through your browser (which may interrupt your browsing session) or through other means, alerting you or any user that the Service may be suspended or that there are other issues with your service, and informing you to contact customer service. Such notices may be viewable by anyone connected to the network through your account. If your Service is terminated, a reconnection charge may apply if you wish to renew Service.
- d. You acknowledge and agree that you may also incur data charges or fees from a wireless or Internet service provider for accessing online services or purchasing products and services through interactive options available through the Service. You are solely responsible for all charges or fees, whether payable to Nymble or third parties, including all applicable taxes, and you are responsible for protecting the security of credit card and other personal information provided in connection with such transactions.
- e. You may only take advantage of one special pricing promotion during any consecutive twelve (12) month period. Eligibility for promotional offers may be contingent upon payment of all outstanding charges. We may restrict and limit special pricing promotions on a per household basis no matter which household member seeks to be the named User.
- f. You agree promptly to notify Nymble of any changes to your relevant personal or contact information.

## 9. Service Alteration

- a. Nymble reserves in its sole and unlimited discretion the right to change, limit, terminate, modify, or temporarily or permanently cease providing the Service or any part of it, subject to reasonable notice. Nymble, in its sole and unlimited discretion, may immediately and without notice change, limit, terminate, modify, or cease providing the Service if you violate the terms of this Agreement or any other terms and conditions of service
- b. Upon termination of this Agreement for any reason and by either party, you are not entitled to refund of any installation, activation, and setup fees paid at the initiation of your Service or at any other point in Service. Except as required by law, or at Nymble's sole and unlimited discretion, there will be no refund for any prepaid service.

## 10. Installation

- a. Should you choose professional installation of Service, or request other service, you must be present during that installation or service. If software is installed, system files may be modified, and you accept any risk that arises from installation and expressly and to the fullest extent permissible under law waive any claim against Nymble that may arise or result from the installation. Nymble strongly recommends that you back up all files prior to installation or service.
- b. If a network interface card must be installed, you must have the network interface card installed prior to any Nymble installation of or work on the Service. You consent to the opening of the device for installation, maintenance, repair, or removal of the network interface card as a condition of having asked Nymble to commence the work and install the network interface card, and you acknowledge, accept. You understand and accept that opening the device may void existing warranties of the computer manufacturer or other parties, and you expressly and to the fullest extent permissible under the law waive any claim against Nymble that may arise or result from opening the device.
- c. Should you request professional installation or other service from Nymble, you must provide Nymble and its authorized representatives with reasonable access to the premises to do such work.
- d. Nymble is not responsible in any way for any damages of any kind whatsoever that may result from the installation, use, maintenance, or removal of the Service, except for instances of gross negligence by Nymble. In no event will Nymble's liability exceed the amount specified in paragraph 14, Warranties and Limitations of Liability.



## 11. Management of Your Data, Computer, and other Devices

- a. You are solely responsible for obtaining, maintaining and updating all equipment and software necessary to use the Service, and for management of your information, including but not limited to backup and restoration of your data. YOU AGREE THAT NYMBLE IS NOT RESPONSIBLE FOR THE LOSS OF YOUR DATA OR FOR THE BACKUP OR RESTORATION OF YOUR DATA REGARDLESS OF WHETHER THIS DATA IS MAINTAINED ON OUR SERVERS OR YOUR DEVICE(S) AND REGARDLESS OF WHETHER YOU HAVE ADVISED NYMBLE ABOUT THE DATA OR ITS IMPORTANCE TO YOU. ALWAYS BACK UP ANY IMPORTANT INFORMATION SEPARATELY FROM DATA STORED ON NYMBLE'S OR ANY THIRD PARTY'S SERVERS.
- b. We reserve the right, but have no obligation, to: **(1)** use, copy, display, store, transmit and reformat data transmitted over our network and to distribute such content to multiple Nymble servers for backup and maintenance purposes; and **(2)** block or remove any unlawful content you store on or transmit to or from any Nymble server. We do not guarantee the protection of your content or data located on our servers or transmitted across our network (or other networks) against loss, alteration or improper access.
- c. You agree that you are solely responsible for maintaining the security of your computer(s), device(s) and data, including without limitation, encryption of data and protection of your User ID, password and personal and other data. If you believe your login credentials have been lost or stolen, or that someone has gained access to your account or login credentials without your permission, call us immediately. WE STRONGLY RECOMMEND THE USE (AND APPROPRIATE UPDATING) OF COMMERCIAL ANTI-VIRUS, ANTI-SPYWARE AND FIREWALL SOFTWARE.
- d. Nymble automatically measures and monitors network performance and the performance of your Internet connection and our network. We also access and record information about your computer and Equipment's profile and settings and the installation of Software we provide. You agree to permit us to access your computer and Equipment and to monitor, adjust and record such data, profiles and settings for the purpose of providing the Service; and you consent to Nymble monitoring your Internet connection and network performance, and to accessing and adjusting your computer and Equipment settings as they relate to the Service, Software, or other services which we may offer from time to time. Your personally identifiable information collected for the purpose of network or computer performance monitoring or for providing customized technical support is not shared outside of Nymble, its related companies, and its authorized vendors, contractors and agents. Nymble reserves the right (but does not have the obligation) to modify the password(s) for the router(s) used with the Service in order to safeguard Internet security or the security and privacy of Subscriber information; where required by law; or where reasonably appropriate to provide, upgrade and maintain the Service or protect the network other users of the Internet, or our Subscribers. Should Nymble change such password(s), we will use reasonable means to notify you pursuant to the terms and conditions of Service.
- e. Upon termination of this Agreement or your access to the Service, Nymble is authorized (but has no obligation) to delete all files, programs, data, email messages, and other materials associated with your use of the Service.

## 12. Use of the Service, Limitations on Use of the Service

- a. You acknowledge that the Service provides access to content on the Internet that may be offensive or inappropriate for certain people, including information which may be sexually explicit, obscene, violent, or offensive to, or otherwise inappropriate for, you or others using your account. You assume all responsibility for use of the Service by you or by other persons, and you agree to provide appropriate adult supervision for persons using the Service who are under 18 years of age. Nymble is not responsible for **(1)** access by you or any other users to objectionable or offensive content, or **(2)** the effectiveness or failure of any blocking and filtering software (regardless of the source of that software) that is designed to restrict access to objectionable or inappropriate material or to protect against disclosure of personal or other information. You agree that the Service may not be used by any person to violate any law.

- b. You acknowledge and agree that Nymble: **(1)** is not responsible for invalid destinations, transmission errors, or the corruption of your data; **(2)** does not guarantee your ability to access all websites, servers or other facilities; and **(3)** does not guarantee that the Service is secure or will meet your needs.
- c. The Service may incorporate software that responds to incorrect or non-existent domain names entered into a browser address bar. The software will direct you to a page selected by Nymble, which may offer similar search results and additional destination options generated by the software, and advertising or other information selected by Nymble. You may opt out of this service feature by clicking the "Opt Out of this Service" link at the bottom of the resulting web page.
- d. The Service includes limits on the total volume of data (aggregate for both sending and receiving, measured in "bytes") you can transfer in a billing month. You will not be able to use the Service beyond the amount of data you have purchased and for which you have pre-paid. For purposes of calculating the data used, Service usage is aggregated across all Nymble products on an individual account and used on a given modem.
- e. You agree that your use of the Service is subject to Nymble's network management practices. Nymble's current network management techniques are detailed in its Internet Access Service Disclosure document, available at [www.buckeyebroadband.com/legal](http://www.buckeyebroadband.com/legal). Overall, Nymble routinely monitors its network and traffic patterns and makes changes as we deem necessary to manage and improve overall network performance. We use reasonable, nondiscriminatory, network management techniques to improve overall network performance to ensure a high-quality online experience for all users, and we use various tools and techniques to manage our network, deliver our service, and ensure compliance with our policies (including without limitation our Acceptable Use Policy). Among other activities, our network management activities may include identifying "spam" and preventing delivery to customer email accounts; detecting malicious traffic; preventing distribution of viruses or other harmful code or content; and using tools and techniques in order to meet our goal of delivering the best possible Internet experience to our customers. Such network management practices do not target any specific content, application, service or device, but as network management issues arise and as technology develops, Nymble reserves the right to employ reasonable additional techniques or network management practices as necessary or desirable.
- f. Nymble is not responsible for the accuracy, integrity, quality, completeness, usefulness, or value of any content, advice or opinions found on any website or in any emails, message boards, chat rooms or community services, the Website, or in any other public services or social networks. Nymble does not endorse any advice or opinion contained therein, whether or not Nymble provides such service(s). Nymble does not monitor or control such services, although we reserve the right to do so.
- g. You represent that when you transmit, upload, download, post or submit any content, images or data using the Service, you have the legal right to do so and that your use of such content, images or data does not violate the copyright or trademark laws or any other third party rights.
- h. Websites linked to or from the Service are not reviewed, controlled, or examined by Nymble, and you acknowledge and agree that in no case will Nymble be responsible for losses incurred, or claim you may have, resulting from your access to such websites. The inclusion of any linked websites or content from the Service, including websites or content advertised on the Service, does not imply endorsement of them by Nymble.
- i. You expressly agree to use the Nymble Service only within the United States; in any case, you are solely responsible for compliance with all applicable local use controls, laws and regulations, including those relating to the transmission of technical data exported from or imported to the United States or your country of residence. Nymble makes no representation that materials on the Website are appropriate or available for use in specific locations, whether inside or outside the United States, and accessing them from territories where their contents are illegal is prohibited.



### 13. Ownership and Use of Equipment

- a. For the most up-to-date information as any equipment or devices to access Service, please contact Nymble Customer Support. Any device (including without limitation personal computers, desktops, laptops, tablets, iPods, iPhones, smartphones or other similar device) connecting to Nymble Service must be capable of utilizing an Internet browser. Factors such as computer age, memory capacity and number and size of CPUs (central processing units) will impact your ability to utilize Nymble Service, as well as the nature of your experience. Nymble makes no representation or recommendation regarding device characteristics; however, for the best customer experience, the following popular browsers may be useful:
  - i. Internet Explorer 8.0 or higher
  - ii. Apple's Safari 4.0 or higher
  - iii. Google's Chrome 4.0 or higher
  - iv. Mozilla's Firefox 3.5 or higher
- b. The device should support both IPV4 and IPV6 Internet Protocol Addressing.
- c. If you request Nymble to move any Equipment from its original installed location during installation, a service charge may be assessed.
- d. You are prohibited from attaching any device that permits access to Services or service levels in violation of this Agreement or your applicable Service package, or which is otherwise unlawful to use pursuant to local, state, or federal laws.
- e. You may not modify, or attempt to modify, the equipment or Service in any manner (for example, altering the speeds at which your cable modem operates), or attempt to circumvent controls on any aspect of the Service (for example, exceeding the limit on the allowed traffic to and from newsgroup services provided by Nymble, or sending an excessively high volume of email messages). Such actions violate the terms and conditions of Service and may violate criminal law.
- f. The following are and remain Nymble property unless abandoned according to law: **(1)** with the exception of the network interface card and any equipment specifically purchased by you, all Equipment installed by Nymble; and **(2)** the cable and other non-electrical equipment installed on the premises between the pole, pedestal, and ground block. The cable and other non-electrical equipment installed between the ground block and the personal computer becomes a fixture on the property and will remain in place upon termination of the Service unless the Customer requests removal. If the Customer requests removal, a reasonable removal charge may apply.
- g. Nymble reserves the right to seek and obtain reimbursement from you for any damage or injury to the Equipment, the Nymble System, or to Nymble's business, whether temporary or permanent, which is caused by you or by persons using your Service. Violations of the law will be referred to the appropriate authorities.

#### 14. Warranties and Limitations of Liability

- a. YOU ACKNOWLEDGE AND AGREE THAT THE SERVICE SUPPLIED HEREUNDER IS 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 EQUIPMENT PROVIDED BY NYMBLE (BUT ONLY IF SUCH WARRANTY IS INCLUDED WITH SUCH EQUIPMENT), NYMBLE (AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, PARENT, SUBSIDIARIES, AND AFFILIATES) (COLLECTIVELY THE "NYMBLE PARTIES"), ITS THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS DISCLAIM ANY AND ALL WARRANTIES AND CONDITIONS FOR THE SERVICE, 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, COMPATIBILITY OF SOFTWARE PROGRAMS, INTEGRATION, AND THOSE ARISING FROM COURSE OF DEALING, COURSE OF TRADE, OR ARISING UNDER STATUTE. IN ADDITION, THERE IS NO WARRANTY OF WORKMANLIKE EFFORT OR LACK OF NEGLIGENCE. NO ADVICE OR INFORMATION GIVEN BY THE NYMBLE PARTIES SHALL CREATE A WARRANTY WITH RESPECT TO ADVICE PROVIDED.
- b. YOU ASSUME ALL RISK, RESPONSIBILITY, AND LIABILITY FOR USE OF THE SERVICE TO CONNECT TO, AND ACCESS CONTENT ON, THE INTERNET. SUCH CONTENT MAY INCLUDE INFORMATION OR PROGRAMS OF AN UNLAWFUL, INFRINGING, ABUSIVE, PROFANE, OR SEXUALLY OFFENSIVE NATURE. THE NYMBLE PARTIES HAVE NO LIABILITY FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS ARISING OUT OF OR OTHERWISE RELATING TO SUCH CONTENT OR FROM USE OR RELIANCE UPON INFORMATION, SERVICES, OR MERCHANDISE ACCESSED ON THE INTERNET THROUGH THE SERVICE.
- c. THE NYMBLE PARTIES MAKE NO REPRESENTATION OR WARRANTY THAT ANY SOFTWARE INSTALLED ON THE PERSONAL COMPUTER OR THAT YOU MAY DOWNLOAD FROM THE INTERNET, ONLINE SERVICE PROVIDER, OR OTHER INFORMATION PROVIDER DOES NOT CONTAIN ANY VIRUS OR OTHER DAMAGING OR DESTRUCTIVE ATTRIBUTE. THE NYMBLE PARTIES HAVE NO RESPONSIBILITY AND ASSUME NO LIABILITY FOR SUCH ACTS OR OCCURRENCES.
- d. THE NYMBLE PARTIES DO NOT WARRANT THAT THE SERVICE OR EQUIPMENT PROVIDED BY NYMBLE WILL ALWAYS PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR DATA THROUGHPUT RATE, OR WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE OF VIRUSES, WORMS, DISABLING CODE OR CONDITIONS, OR THE LIKE. THE NYMBLE PARTIES 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.

- e. IF THE EQUIPMENT PROVIDED HAS THE ABILITY TO TRANSMIT INTERNET SIGNALS WIRELESSLY, IT IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT EXPRESSED OR IMPLIED WARRANTIES OF ANY KIND WHATSOEVER (INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE), OTHER THAN THOSE WARRANTIES THAT ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION, OR MODIFICATION UNDER THE LAWS APPLICABLE TO THESE TERMS OF SERVICE. WE MAKE NO WARRANTIES THAT WIRELESS INTERNET SERVICE WILL BE UNINTERRUPTED OR ERROR FREE, SECURE, OR FREE OF VIRUSES, WORMS, DISABLING CODE OR CONDITIONS, OR THE LIKE, OR THAT THE WI-FI SERVICE WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR THROUGHPUT RATE. WIRELESS INTERNET SERVICE SHOULD NOT BE RELIED ON FOR CRITICAL USES. THE WIRELESS INTERNET SERVICE USES RADIO TRANSMISSIONS, SO YOU MAY NOT BE ABLE TO USE THE WIRELESS INTERNET SERVICE BASED ON A VARIETY OF CRITERIA BEYOND NYMBLE'S CONTROL. THERE ARE MANY FACTORS THAT MAY IMPACT AVAILABILITY AND QUALITY OF THE WIRELESS INTERNET SERVICE, INCLUDING NETWORK CAPACITY, TERRAIN, TREES, PLACEMENT OF BUILDINGS, THE CHARACTERISTICS OF YOUR RESIDENCE, AND THE CHARACTERISTICS OF YOUR WIRELESS DEVICE AND ANY DEVICE TO WHICH IT IS ATTACHED. DATA DELAYS AND OMISSIONS MAY OCCUR.
- f. EXCEPT FOR THE SERVICE INTERRUPTION CREDIT DESCRIBED IN SECTION 6, ABOVE, AND THE INSTALLATION DAMAGES PROVISIONS DESCRIBED IN SECTION 10, ABOVE, NYMBLE WILL NOT BE LIABLE TO YOU FOR ANY LOSSES OR DAMAGES OF ANY KIND BASED ON BREACHES OF THIS AGREEMENT OR ARISING FROM YOUR RELATIONSHIP WITH US, REGARDLESS OF THE BASIS OF ANY CLAIM OR THE THEORY OF LIABILITY. THIS WAIVER INCLUDES WITHOUT LIMITATION CLAIMS BASED IN CONTRACT, TORT, NEGLIGENCE STRICT LIABILITY OR STATUTE. IN NO EVENT SHALL THE NYMBLE PARTIES BE LIABLE FOR: (1) ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES OR ATTORNEYS' FEES, OF ANY KIND OR CHARACTER, INCLUDING WITHOUT LIMITATION, PERSONAL INJURY, DAMAGE TO EQUIPMENT OR SURROUNDINGS, DELAYS IN OPERATION, OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, BUSINESS INTERRUPTION, LOST PROFITS, OR LOSS OF REVENUE, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, LOSS OF PROGRAMS OR INFORMATION OR DAMAGE TO DATA ARISING OUT OF THE USE OR PARTIAL USE OF, OR INABILITY TO USE, THE SERVICE, OR RELIANCE ON OR PERFORMANCE OF THE SERVICE, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION, THOSE ARISING UNDER CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR STATUTE, EVEN IF NYMBLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES, OR (2) ANY CLAIMS AGAINST YOU BY ANY OTHER PARTY.

## 15. Indemnification

You agree to defend, indemnify, and hold harmless Nymble from and against all liabilities, costs, and expenses, including reasonable attorneys' fees and experts' fees, related to or arising from your use of the Service (or the use of your Service by anyone else): (a) In violation of applicable laws, regulations or this Agreement; (b) for the placement or transmission of any message, information, software or other materials through the Service; (c) in any manner that harms any person or results in the personal injury or death of any person or in damage to or loss of any tangible or intangible (including data) property; and (d) claims for infringement of patents, copyrights, or other intellectual property rights, or breach of contract or any other claim arising from the use of the Service.

## 16. General Provisions

- a. All obligations of the parties under this Agreement, which, by their nature, would continue beyond the termination of this Agreement, including without limitation, those relating to Limitation of Liability and Indemnification, shall survive such termination.
- b. You may not assign or otherwise transfer this Agreement, or your rights or obligations under it, in whole or in part, to any other person. Any attempt to do so shall be void. Nymble may freely assign all or any part of this Agreement with or without notice and you agree to make all subsequent payments as directed.
- c. This Agreement is governed by and construed in accordance with the laws of the State of Ohio.
- d. Nymble's failure at any time to insist upon strict compliance with any of the provisions of this Agreement 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 remaining provisions of this Agreement shall remain in full force and effect and the unenforceable portion shall be construed as nearly as possible to reflect the original intentions of the parties.
- e. This Agreement, including all Policies referred to herein and posted on the Website, constitutes the entire agreement between you and Nymble with respect to the subject matter hereto and supersedes any and all prior or contemporaneous agreements whether written or oral. No changes by you to this Agreement shall be effective unless agreed to in a writing signed by an authorized person at Nymble.

## 17. Notices

- a. Notice by Nymble to you (including notice of revisions to this Agreement) shall be deemed given when provided pursuant to the terms of this Agreement, including without limitation when: **(1)** Transmitted to your Primary Email Address; or **(2)** Mailed via the US mail or hand-delivered to your address on file with us (including through a bill message or bill insert); **(3)** seven (7) days after they are posted on the Website, subject to notification of this posting via a Perftech or other automated message system; **(4)** Thirty (30) days after publication in the Toledo Blade or in the newspaper with the largest daily circulation in the relevant service area; or **(5)** When provided in any manner reasonably calculated to provide you with adequate notice. As a Subscriber to the Service, you agree to visit the Website periodically and to check your email box to review any revisions to this Agreement.
- b. Notice by you to Nymble will be deemed given when: **(1)** Transmitted from your Primary Email Address to an email address designated by Nymble for receipt of such notices; or **(2)** When mailed via the US mail or hand-delivered to:

**Nymble Internet Service**  
Attention: Customer Support  
2700 Oregon Road  
Northwood, Ohio 43619

Or, if you receive Service from our Erie County location:

**Nymble Internet Service**  
Attention: Customer Support  
409 East Market Street  
Sandusky, Ohio 44870

You agree that the User ID and/or alias contained in any email sent from your Primary Email Address email shall be deemed legally sufficient to verify you as the sender and the authenticity of the communication, and that Nymble may rely on this.

## **18. Dispute Resolution; Arbitration; Class Action Waiver**

YOU HAVE THE RIGHT TO OPT OUT OF THIS DISPUTE RESOLUTION PROVISION (EXCEPT ITS JURY TRIAL WAIVER) WITHIN 30 DAYS OF RECEIPT OF THIS AGREEMENT, IF YOU FOLLOW THE PROCEDURES SET FORTH BELOW. IF YOU SO OPT OUT, THE SOLE VENUE FOR ANY ACTION UNDER THIS AGREEMENT OR ANY CLAIM ARISING, DIRECTLY OR INDIRECTLY, OUT OF THIS AGREEMENT OR THE SERVICES AT ISSUE ARE IN THE STATE OR FEDERAL COURTS LOCATED IN LUCAS COUNTY, OHIO, AND THE PARTIES EXPRESSLY AGREE TO THE EXERCISE OF PERSONAL JURISDICTION IN THOSE COURTS. OTHERWISE, YOU WILL BE BOUND TO SETTLE ANY DISPUTES YOU MAY HAVE WITH NYMBLE THROUGH THE FOLLOWING DISPUTE RESOLUTION PROCEDURES.

- a. You and Nymble agree to arbitrate rather than litigate in court any and all claims or disputes between us (including any parents, subsidiaries, affiliates, related companies, officers, directors, employees, or agents of Nymble) that arise out of or in any way relate to: **(1)** this Agreement; **(2)** Services that Nymble provides to you; **(3)** Equipment or Software that Nymble makes available to you or that is used to access the Service; **(4)** amounts that Nymble charges you; and **(5)** any services or goods that Nymble or any of its affiliated entities provide to you, including claims that Nymble damaged persons or property in the delivery of goods or services. The arbitration between you and Nymble will be binding and judgment on the award rendered in the arbitration may be entered in any court having jurisdiction thereof. In no event shall this provision prevent you from filing or joining a complaint with the Federal Communications Commission or any state public service commission or public utility commission that has jurisdiction to hear such complaint, or any federal, state, or local government agency that is authorized by law to seek relief against Nymble on your behalf.
- b. In arbitration, there is no judge and no jury, and review of arbitration decisions in the courts is very limited. Instead, our disputes will be resolved by an arbitrator, whose authority is governed by the terms of this Agreement. You and Nymble agree that an arbitrator may only award such relief as a court of competent jurisdiction could award, limited to the same extent as a court would limit relief pursuant to the terms of this Agreement. An arbitrator may award attorneys' fees and costs only if a court would be authorized to do so, and may issue injunctive or declaratory relief if that relief is required or authorized by the applicable law, but that injunctive or declaratory relief may not extend beyond you and your dealings with Nymble. Discovery may be limited in arbitration, and procedures are more streamlined than in court. Notwithstanding this arbitration agreement, you and Nymble may bring appropriate claims against each other in small claims court, if the claims fall within the small claims court's jurisdiction, or before the Federal Communications Commission, the relevant state public utilities commission, or any other federal, state, or local government agency (other than local, state, or federal courts) authorized by law to hear the claims.
- c. **Class Action Waiver:** You and Nymble agree that that there will be no class, representative, or consolidated actions, and all claims or disputes between you and Nymble will be arbitrated (or as applicable litigated) individually. If you or Nymble brings a court claim, the class action waiver will apply, and neither of us can bring a claim on a class or representative basis. Furthermore, neither you nor Nymble may participate in a class or representative action as a class member if the class action asserts claims that would fall within the scope of this provision if they were directly asserted by you or Nymble.
- d. Notwithstanding the foregoing, this arbitration agreement shall not prohibit you or Nymble from participating in any judgment or settlement in any litigation brought by a federal, state, or local government on behalf of you or us, excluding litigation brought by any relator or party in its capacity as a private attorney general. Both parties agree that this class action waiver is an essential part of our arbitration agreement and that if this class action waiver is found to be unenforceable by any court or arbitrator then the entire arbitration agreement set forth in this Section will not apply to any claim or dispute between you and Nymble, except for the provisions of this Section waiving the right to jury trial. This class action waiver may not be severed from our arbitration agreement.



- e. Informal Dispute Resolution: You and Nymble agree that we will try to resolve disputes informally before resorting to arbitration. If the dispute cannot be resolved by telephone, you agree to notify Nymble of the dispute by sending a written description of your claim to:

**Nymble Internet Service**  
Attention: Customer Support  
2700 Oregon Road  
Northwood, Ohio 43619

so that Nymble can attempt to resolve it with you. If Nymble does not satisfactorily resolve your claim within thirty (30) calendar days of receiving notice of it, then you may pursue the claim in arbitration. Neither you nor Nymble may initiate arbitration without first providing the other notice of the claim and following the informal dispute resolution procedure provided in this paragraph.

- f. Arbitration Procedures: You and Nymble agree that this Agreement affects interstate commerce and that the Federal Arbitration Act applies. All arbitrations shall be conducted by the American Arbitration Association ("AAA"). The AAA's rules are available on its website at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. If the claim asserted in arbitration is for less than \$75,000, the AAA's Supplementary Procedures for Consumer-Related Disputes will apply. If the claim asserted is for \$75,000 or more, the Commercial Arbitration Rules will apply. If there is a conflict between the AAA's rules and this dispute resolution agreement, this dispute resolution agreement shall control. To initiate arbitration, you must send a letter requesting arbitration and describing your claims to:

**Nymble Internet Service**  
Office of the President  
2700 Oregon Road  
Northwood, Ohio 43619

You must also comply with the AAA's rules regarding initiation of arbitration. Nymble will pay all filing fees and costs for commencement of arbitration, but you will be responsible for your own attorneys' fees and costs unless otherwise determined by the arbitrator pursuant to the terms of this Agreement or applicable law. Nymble will not seek to recover its fees and costs from you in the arbitration unless your claim has been determined to be frivolous. If you obtain an award from the arbitrator greater than Nymble's last written settlement offer, we will pay you \$1,000 in addition to what you have been awarded in the arbitration. The arbitration will be held in a mutually convenient location. If you seek less than \$10,000, then you may choose to hold the arbitration in person, via phone, or to have it decided based on written submissions.

- g. Jury Trial Waiver: If for any reason this arbitration agreement is found to be unenforceable, including without limitation, that the class waiver is found unenforceable, or if you opt out of this dispute resolution agreement, you and Nymble expressly and knowingly WAIVE THE RIGHT TO TRIAL BY JURY. This means that a judge rather than a jury will decide disputes between you and Nymble if, for any reason, the arbitration agreement is not enforced.

- h. Opt Out: You may opt out of this dispute resolution provision (except for the jury trial waiver above) by notifying Nymble, in writing, of that intent within thirty (30) days of the date of this Agreement. You may opt out by sending a letter stating your intent to:

**Nymble Internet Service**

Office of the President  
2700 Oregon Road  
Northwood, Ohio 43619

Notice must include your name, address, and modem serial number on the communication. Exercising this right, should you choose to do so, will not affect any of the other terms of this Agreement or other contracts with Nymble and you may remain a Nymble customer. If you opt out of the dispute resolution provision, you will not be required to do so again if Nymble modifies this section in the future or you agree to a new term of service. **IF YOU ELECT TO OPT OUT OF THIS DISPUTE RESOLUTION PROVISION, YOU MUST MAKE THAT ELECTION AT THE INITIAL PROVISION OF SERVICE AND YOU MAY NOT OPT OUT LATER UPON CHANGES TO THE SERVICE OR CHANGES TO THIS AGREEMENT.**

- i. Survival: This dispute resolution provision survives the termination of this Agreement. If you bring a claim against Nymble after termination of this Agreement that is based in whole or in part on events or omissions that occurred while you were a Nymble customer, this dispute resolution provision shall apply.
- j. Nothing contained herein shall limit your ability to seek redress at the Federal Communications Commission under applicable rules and regulations.

### **19. Email and Email Messaging Services**

Nymble reserves the right to provide the level of security we deem appropriate in our sole, exclusive, and unlimited discretion to safeguard our network and customers, and other Internet users, against Internet threats or abuses. These security measures may include but are not limited to the use of firewalls and block lists to block potentially harmful or abusive emails or attachments, anti-spam filters, anti-virus and anti-spyware software, and blocking selected ports. Such activities may result in the blocking, filtering or non-delivery of legitimate and non-legitimate email sent to or from your device. By using Nymble service, you agree that delivery and receipt of email and other communications is not guaranteed and to Nymble's use of such Internet security measures as we, in our sole discretion, deem appropriate.

### **20. Technical Support**

- a. Telephone and on-site support will be provided for the Service, Equipment and Software supplied by Nymble. Nymble is not obligated to correct or repair hardware, software, or equipment that we do not supply, and we may charge a fee for telephone or on-site support, which fee must be pre-paid prior to service.
- b. You are prohibited from tampering with, attempting to repair, or altering equipment you do not own; any property of Nymble; or any connection to Nymble's network. You are prohibited from altering or increasing the speed of your connection to the Nymble network, or attempting to do so. If your use or modification of hardware, software, or Equipment requires a visit to your residence where we provide Service for repair or correction, a charge may apply. You are responsible for all costs incurred by Nymble arising from a violation of the terms and conditions of Service by you or by anyone who uses the Service supplied to you.