

NIMBELINK TERMS AND CONDITIONS OF DATA PLAN SERVICES

1. Applicability. These Terms and Conditions of Data Plan Services (the “Terms”) apply to and govern all sales of rights of access to and use of data plans on the Verizon Wireless (“Verizon”) network (the “Plan Services”) offered by NimbeLink Corp. (“NimbeLink”) to customers placing orders for Plan Services that are accepted by NimbeLink as provided in these Terms. (“Customer”). NimbeLink and Customer are each a “Party” and are referred to collectively as the “Parties” in these Terms.
2. Orders. Customers may order Plan Services by issuing purchase orders in conformity with quotations issued by NimbeLink or through on-line ordering processes established by NimbeLink (“Orders”). Orders will be binding upon NimbeLink only if accepted by NimbeLink, which may be communicated through written confirmation or by provisioning of Plan Services. The agreement between the Parties for any Order (the “Agreement”) consists of: (i) these Terms; (ii) the data plan access prices, quantities, and payment terms incorporated in the Order; and (iii) any modifications or additions to these Terms accepted in writing by an officer of NimbeLink; no provision of any Customer purchase order will be binding upon NimbeLink unless expressly accepted by NimbeLink in that manner.
3. Modification of Orders. All Orders are fixed commitments of Customer once accepted by NimbeLink and may not be modified or withdrawn after acceptance except by mutual written agreement of the Parties.
4. Prices; Taxes and Associated Charges. All prices quoted by NimbeLink are valid only for Orders placed within the period of validity set forth in the NimbeLink quotation and are otherwise subject to change at any time. Prices are subject to correction for clerical and typographical errors. All prices quoted by NimbeLink are quoted exclusive of: duties, fees, tariffs or other governmental charges, all as they may apply to any Order; all such amounts are payable by Customer and will be reimbursed to NimbeLink at its cost if paid by NimbeLink. If the Plan Services are or become subject to sales, use, value added, excise or other taxes and unless Customer provides NimbeLink with a valid exemption certificate from any such taxes, NimbeLink shall include any such taxes as a separate line item on the invoice for the Order and Customer shall pay such amounts when due.
5. Permitted Use of Plans. Customer may use the Plan Services solely in connection with the operation of equipment sold by NimbeLink to Customer and applied to machine-to-machine (“M2M”) communication systems with such devices (“Supported Devices”) installed within the Verizon service area (“Permitted Use”); Supported Devices on mobile data plans may use the roaming services of Verizon’s roaming partners but may not be permanently located in roaming areas. Customer may not use the Plan Services for remote medical patient monitoring applications. Customer may allow its customers of an M2M solution, if any, (“End Users”) to make use of the Plan Services but only in connection with the Permitted Use and Customer shall be fully responsible for the use of the Plan Services by End Users as fully as if such use were made by Customer directly.
6. Provisioning and Support Services. Upon its acceptance of an Order, NimbeLink take steps required to provision the Plan Services and will notify Customer when Plan Service is available and provide direction to Customer in establishing access. NimbeLink will provide support for Customer use of the Plans including technical support helpline services and billing services as set forth in NimbeLink Support Service descriptions posted on the NimbeLink web-site (“Support Services”). The manner of delivery of Support Service may be adjusted by NimbeLink from time-to-time. NimbeLink shall have no obligation to provide any Support Services to End Users.
7. Service Level and Dependencies. Nimbelink shall provide Plan Services and Support Services applying its diligent, commercially reasonable efforts. NimbeLink is authorized to provide Plan Services by Verizon, but Plan Services remain dependent upon Verizon continuing to provide and support its network and that authorization. Customer acknowledges that Plan Service is subject to interruption due to interruption of the Verizon network and is available only within the applicable plan coverage areas, within operating range of wireless systems and with Equipment authorized by Verizon to operate on its network. Further, the performance of each Party under this Agreement will be excused only for the duration of any condition or event outside of its reasonable control making performance commercially impractical such as disruptions due to natural disasters, acts of war, riots, strikes or supply chain shortages or delays.
8. Disclaimer of Warranties: TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NIMBELINK HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE PLAN SERVICES WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

9. Limitations of Damages and Remedies. THE LIABILITY OF NIMBELINK FOR ANY CLAIMS, WHETHER BASED IN CONTRACT, WARRANTY, TORT OR OTHERWISE, ARISING FROM OR RELATING TO THE AGREEMENT OR THE PLAN SERVICES ARE LIMITED TO DIRECT DAMAGES INCURRED BY CUSTOMER NOT EXCEEDING THE PURCHASE PRICE PAID FOR THE PLAN SERVICES INVOLVED IN SUCH CLAIM. IN NO EVENT WILL NIMBELINK BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, AND THE PRICES OF THE PLAN SERVICES ARE SET AS A CONSIDERATION FOR THESE LIMITS.

IN ADDITION TO THE PRECEDING LIMITS, NIMBELINK FULLY DISCLAIMS ANY LIABILITY OF ANY TYPE, WHETHER EXPRESS OR IMPLIED, ARISING FROM OR RELATING TO THE USE OF THE PLAN SERVICES IN APPLICATIONS WHERE DISRUPTION OR FAILURE OF THE PLAN SERVICES COULD RESULT IN LOSS OF LIFE, INCLUDING, BUT NOT LIMITED TO MEDICAL DEVICES, LIFE SAFETY APPLICATIONS, CONTROLS IN NUCLEAR FACILITIES, AND AIR TRAFFIC CONTROL APPLICATIONS; THE PLAN SERVICES ARE NOT INTENDED FOR USE IN SUCH APPLICATIONS.

10. Exclusion of Liability of Verizon Wireless. CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT IT HAS NO CONTRACTUAL RELATIONSHIP WHATSOEVER WITH THE UNDERLYING WIRELESS SERVICE PROVIDER OR ITS AFFILIATES OR CONTRACTORS AND THAT CUSTOMER IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN NIMBELINK AND THE UNDERLYING CARRIER, IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE UNDERLYING CARRIER AND ITS AFFILIATES AND CONTRACTORS SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO CUSTOMER AND CUSTOMER HEREBY WAIVES ANY AND ALL CLAIMS OR DEMANDS THEREFOR.
11. Compliance. Each Party confirms and agrees to maintain compliance with all laws and regulations applicable to it in any way related to the Services. Customer agrees to supply to NimbeLink such information regarding the usage of the Plan Services by Customer and any End Users as Verizon may legally require of NimbeLink.
12. Authorized Disclosures. NimbeLink disclosures to Verizon and government authorities of information related to use of the Plan Services by Customer and End Users as legally required of NimbeLink are hereby authorized by Customer.
13. Term and Termination:
- a. Term. The Term of this Agreement commences the date NimbeLink accepts the initial Customer Order (the "Acceptance Date") and continues for so long as any Order remains outstanding, unless sooner terminated as provided in this Section. The term of each Order shall be as set forth in that accepted Order.
 - b. Termination. The Agreement may be terminated:
 - i. Upon written notice from the non-breaching Party to the other Party if that other Party materially breaches the terms of the Agreement or any Order and has failed to cure such breach in all material respects within twenty (20) days after receipt of written notice from the non-breaching Party identifying that default; such right of termination is optional and an addition to any other rights not inconsistent with termination;
 - ii. By a Party immediately upon written notice to the other Party, in following events (i) the other Party becomes or applies for insolvency, bankruptcy, reorganization or liquidation, (ii) a receiver is appointed for its business or assets or applied for by the other party, (iii) a third party files, or has filed an action under (i) or (ii) above against the other Party, (iv) an order for relief under the applicable bankruptcy or insolvency law has been issued or applied for by other Party.
 - c. Effect of Termination. Termination of this Agreement shall terminate the obligations of the Parties under any Orders outstanding as of the termination date. Upon termination of the Agreement, Customer shall cease using the Plan Services and each Party shall cease using the Confidential Information of the other Party except as required to enforce its rights under this Agreement. Upon termination of this Agreement for any reason Customer shall pay NimbeLink for Plan Services provided, equitably prorating the Charges for any period of time in which the termination date occurs. NimbeLink shall not be obligated to provide Plan Services or perform any Support Services following termination.

14. Intellectual Property. Except as expressly provided in these Terms or other provisions of the Agreement, the sale of Plan Services does not constitute a grant of any license in or other right to use any patent, copyright, trademark or other proprietary right (“IP”) of NimbeLink or its suppliers. All rights associated with the IP are expressly reserved by NimbeLink. Customer shall not remove or alter any trademark, copyright notice or other designation of IP interest contain in or on the documentation or other material supplied by NimbeLink to Customer.
 15. Indemnities. Customer hereby indemnifies and agrees to hold NimbeLink, its shareholders, employees, officers, directors, agents, affiliates and suppliers harmless from any claims and resulting costs, expenses, loss of damage related to the use of the Plan Services in any manner inconsistent with the Agreement or an Order or resulting from any failure of Customer or its End Users to comply with applicable laws, regulations or industry standards applicable to their use of the Plan Services.
 16. Resolution of Disputes; Controlling Law. If either Party asserts the other has failed to perform its obligations under the Agreement, or asserts any other claim arising from or relating to the Products (a “Claim”) it may provide written notice to the other Party specifying the basis for that Claim; if such circumstances are not fully corrected within twenty (20) days after delivery of that notice, the claiming Party may commence proceedings to resolve that Claim as provided in this Section. All Claims shall be governed by the laws of the State of Minnesota without reference to choice of law or conflict of law principles. The Parties each consent to personal jurisdiction within the State and Federal courts for Hennepin County, Minnesota as the exclusive jurisdiction in which to bring any Claims. Any Claim in any form based on any cause of action or legal theory must be brought within one (1) year after the date the cause of action underlying that Claim first accrued.
 17. Electronic Interchange; Notice. Each Party agrees that notices provided to the other related to the Agreement will be valid if sent by email to authorized addresses set forth in the Agreement (notwithstanding any failure of the recipient’s email system, spam filters or similar impediments) or by courier service or regular U.S. mail to the authorized address set forth in the Agreement or though subsequent notice to the other Party. Emails constitute writings and electronic facsimiles of original signatures constitute written approval for purposes of the Agreement.
 18. General. The Agreement constitutes the entire agreement between the Parties hereto with respect to each covered Order and supersedes any and all prior agreements, discussions, negotiations, arrangements, or understandings, whether written, oral or implied, with respect to the subject matter of the Agreement. This Agreement may not be modified or amended without the prior written consent of each Party for accepted Orders as evidenced by a mutually signed written amendment hereto. NimbeLink may alter these Terms at any time and such alternations will apply to any Orders accepted after the date of that modification. Should any one or more parts of this Agreement be declared invalid through arbitration or by any court of competent jurisdiction for any reason, such decisions shall not affect the validity of any remaining portions, which shall remain in full force and effect as if this Agreement had been executed with the invalid parts thereof eliminated. The relationship between the Parties under this Agreement is that of independent contractors. This Agreement does not grant authority for either Party to act for the other in any agency or any other capacity nor to make commitments of any kind for the account of or on behalf of the other Party. The employees or agents of one Party shall not be deemed to be employees or agents of the other Party for any purpose. Except in connection with a change of control event such as a merger or the sale of substantially all the business assets of a Party, neither Party may assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party. This Agreement shall be binding upon and inure to the benefit of each Party and their respective successors and permitted assigns. Failure to insist upon strict compliance of any of the terms of the Agreement shall not be deemed a waiver of such term.
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