

NEXTIVA AUP

1. Unlimited Voice Services. NEXTIVA reserves the right to periodically review usage levels of unlimited minute service plans to ensure that you are not using such service in violation of this AUP and if such an abuse or violation is discovered to terminate or adjust the plan as appropriate. You agree to use the unlimited minute service plans for traditional voice or fax call of a duration comparable to that of the average residential or small business customer presently utilizing NEXTIVA's service and will not employ methods, devices or procedures to take advantage of unlimited plans by using the voice or fax services excessively or for means not intended by NEXTIVA. Excessive use is defined by NEXTIVA as use that substantially exceeds the average call volume or duration used by all other NEXTIVA unlimited plan customers. The following types of services are specifically prohibited and may not be accessed through NEXTIVA's unlimited voice service plan: conference calling, monitoring services, data transmissions, transmission of broadcasts or transmission of recorded material. NEXTIVA may terminate your service or change your service plan if, in its sole discretion, NEXTIVA determines that your use of the unlimited plan violates this prohibition or is otherwise "unreasonable" or results in abuse of the unlimited minute service plan.

1.1. We consider your use of our Unlimited plan to be "unreasonable" and therefore subject to immediate termination if you:

1.1.a. re-sell, re-brand, re-supply, re-market or commercially exploit our Unlimited Service, without our written consent, in order to aggregate traffic from more than one customer over an "unlimited" line or trunk;

1.1.b. set up routing functionality such that only outbound long-distance traffic is sent over the Unlimited Service; or

1.1.c. engage in any other conduct which is fraudulent or results in significant network congestion, or degradation.

1.2. We consider your use of our Unlimited plan to be "abusive" and subject to immediate termination or adjustment if you utilize:

1.2.a. Autodialing

1.2.b. Continuous, repetitive or extensive call forwarding

1.2.c. Continuous call session connectivity

1.2.d. Fax broadcasting

1.2.e. Fax blasting

1.2.f. Telemarketing; or

1.2.g. Any other activity that would be inconsistent with reasonable personal, residential and business use patterns, causes network congestion or jeopardizes the integrity of NEXTIVA's network.

2. Lawful purposes only. You may use our Service and your Device only for lawful, proper and appropriate purposes. You may not use our Service or your Device in any way that is illegal, improper or inappropriate. A non-exhaustive list of examples of illegal, improper or inappropriate uses of our Service and/or Devices includes:

2.1. Interfering with our ability to provide Service to you or other customers, or avoiding your obligation to pay for the Service within the time frame designated for payment.

2.2. Use of the Service to threaten, abuse, harass, defame, deceive, defraud, interfere or invade another's privacy or engage in any similar behavior.

2.3. Use our Service or your Device for: auto-dialing; continuous, repetitive or extensive call forwarding, telemarketing (including charitable or political solicitation or polling), fax or voicemail broadcasting or blasting.

2.4. Use our Service or your Device to: impersonate another person; send bulk unsolicited messages; use robots, data mining techniques, or other automated Devices or programs to catalog, download, store, or otherwise reproduce or distribute information from our Service or use any automated means to manipulate our Service

2.5. Violate any law, rule, or regulation; violate any third party's intellectual property or personal rights; or exceed your permitted access to our Service.

2.6. Use the Service for transmitting or receiving any communication or material of any kind which would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law or encourage conduct that would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law.

3. Right of Termination. In addition to NEXTIVA's right to terminate service for non-payment, NEXTIVA reserves the right to terminate the Service immediately and without advance notice if NEXTIVA, in its sole discretion, believes that you have violated any of the above restrictions, leaving you responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable.

4. Monitoring. We may monitor the use of our Service for violations of this agreement. We may, without liability, remove or block all communications if we suspect a violation of this agreement, or if we think it necessary in order to protect our Service, or NEXTIVA, its parent, affiliates, directors, officers, agents, and employees from harm.

4.1. Providing information to authorities and third parties. If we believe that you have used our Service or your Device for an unlawful purpose, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You consent to our forwarding of any such communications and information to these authorities. In addition, we may disclose your name, telephone number, credit card information, and other personal information, any communications sent or received by you, and any other information that we may have about your account, including but not limited to, types of service, length of service, MAC address(es), IP address(es), email address(es), registered 911 address, and all other account information, as follows: in response to law enforcement or other governmental agency requests; as required by law, regulation, rule, subpoena, search warrant, or court order; as necessary to identify, contact, or bring legal action against someone who may be misusing the Service, the Device, or both; to protect NEXTIVA's rights and property; or in emergency situations where disclosure of such information is necessary to protect NEXTIVA customers or third parties from imminent harm.

4.2. Use of Service and Device by Customers Outside the United States. Although we encourage you to use our Service to call foreign countries from the United States and to use our Service as you travel, the services are designed to work in the United States. Our Service is designed to work generally with unencumbered high-speed internet connections. However, if the high-speed internet connection you are using is not within a NEXTIVA service area or your ISP or broadband provider places restrictions on using VoIP services, we do not represent that they will allow you to use our Service. You will be solely responsible for any violations of local laws and regulations or violations of ISP and broadband provider terms of service because of your use of our Service. All use of NEXTIVA Service to or from areas outside the United States is at your own risk

4.3. No Transfer of Service. You may not resell or transfer your Service or your Device or provide a telephone service to anyone else by using your NEXTIVA service or features of your NEXTIVA service without first obtaining our prior written consent.

4.4. No Alterations or Tampering. If you copy or alter or have someone else copy or alter the firmware or software of the Device in any way that facilitates a compromise of your service, you are responsible for any charges that result. You may not attempt to hack or otherwise disrupt our Service or make any use of our Service that is inconsistent with its intended purpose.

4.5. Theft of Service. You may not use or obtain our Service in any manner that avoids NEXTIVA policies and procedures, including an illegal or improper manner. You will notify us immediately in writing if your Device is stolen or if you believe that your Service is being stolen, fraudulently used, or otherwise being used in an unauthorized manner. When you notify us of one of these events, you must provide your account number and a detailed description of the circumstances of the theft, fraudulent use, or unauthorized use of Service. If you fail to notify us in writing in a timely manner, we may disconnect your service and levy additional charges on you. Until you notify us in writing, you will remain liable for all use of our Service using a Device stolen from you and any and all stolen, fraudulent or unauthorized use of the Service up through the date notice is received by NEXTIVA.