

NEXTIVA VOIP SERVICE TERMS AND CONDITIONS

SIGNING UP FOR NEXTIVA'S VOIP SERVICE CREATES A CONTRACT BETWEEN YOU AND US, CONSISTING OF THE ORDER, THE APPLICABLE SERVICE DESCRIPTION AND THIS AGREEMENT. YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND ALL TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THIS AGREEMENT.

1. INTRODUCTION. This NEXTIVA VOIP Service Agreement, together with any operating rules, policies, price schedules, or other supplemental documents expressly incorporated herein by reference and published from time to time (collectively, the "Agreement"), constitutes the entire agreement between NEXTIVA, Inc., an Arizona corporation (hereinafter referred to as ("we," "us" or "NEXTIVA")) and the party set forth in the related registration order Form (herein after referred to as "you," "user" or "Customer") regarding NEXTIVA's Service (as defined herein), and supersedes all prior agreements, discussions and writings between the parties regarding the subject matter of this Agreement. For purposes of this Agreement, the term "NEXTIVA" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors, attorneys and any other service provider that furnishes services or devices to you in connection with this agreement.

2. DEFINITION OF SERVICE. NEXTIVA Broadband Phone Service is an enhanced *voice* communication service which uses a data network (like the Internet) to transport *voice* communications that have been converted into data packets. For purposes of this Agreement, the term "Service" shall mean NEXTIVA Broadband Phone Service, including all Software, Equipment and other features, products and services provided by NEXTIVA under the pricing plan that you have selected. For purposes of this Agreement, "Equipment" shall mean a NEXTIVA-provided Telephone Adapter ("Adapter") and accompanying Ethernet Cable.

3. REVISIONS TO TERMS AND PRICING. From time to time, we may *revise* the terms and conditions of this Agreement (including, without limitation, any of the policies incorporated by reference) and the pricing for the Service. Notice of revisions to the Agreement or pricing shall be posted on the NEXTIVA Web site ("the Web site") and deemed given and effective on the date posted to the Web site. If you do not agree to the revision(s), you must terminate your Service immediately, subject to the Termination provisions provided in this Agreement. By continuing to use the Service after revision(s) are in effect, you hereby accept and agree to all such revisions.

4. CUSTOMER REPRESENTATIONS. You represent and warrant that your primary residence or business address is in the United States. You represent and warrant that you are at least eighteen (18) years of age or, as applicable, the age of majority in the country, state or province in which you reside, and that you possess the legal right and ability to enter into this Agreement. You represent and warrant that your name, user name, contact information and registered location are true and correct and if for business use, you are authorized to act on behalf of your company. You understand that NEXTIVA relies on the information you supply and that providing false or incorrect information may result in Service provisioning and delivery delays, the suspension or termination of your Service and the inability of a 911-dialed call to be correctly routed to emergency service personnel, as further explained below. You agree to promptly notify NEXTIVA whenever your personal or billing information changes (including, but not limited to, your name, address, e-mail address, telephone number, and credit card number and expiration date). You agree to be financially responsible for your use of the Service as well as for use of your account by others.

5. USE OF SERVICE AND DEVICE

5.1. Business Plans Service is provided to you as a business user, for your business and home office use. This means that you are not using it for any personal, residential, nonbusiness and nonprofessional purpose. This also means that you are not to resell or transfer the Service to any other person for any purpose or make any charge for the use of the Service, without express written permission from NEXTIVA in advance. NEXTIVA reserves the right to immediately terminate, change the calling plan or modify the Service if NEXTIVA determines, in its sole discretion, that you are using the Service for non business or non-commercial use.

5.2 Residential Plans. If you subscribe to our residential services, we provide you with the Service and the device solely for residential use. NEXTIVA reserves the right to immediately terminate, change the calling plan or modify the Service if NEXTIVA determines, in its sole discretion, that you are using the Service for non residential use.

5.3 User Responsibility. You agree that you are responsible for all use(s) related to your account. You understand this means that you accept full liability and responsibility for your actions or the actions of anyone who uses the Service via your account with or without your permission. You acknowledge that NEXTIVA will be sending you information, including your Password, via e-mail over the Internet. You agree that the Internet is not a secure network and that third parties may be able to intercept, access, use or corrupt the information and telephone calls you transmit over the Internet. In order to maintain the security of your Service, you should safeguard your User IDs and Passwords, as well as the media access control (MAC) address of the Adapter. The MAC address is one of the pieces of information used by NEXTIVA to authenticate customer calls and should not be shared.

5.4 Use of Service and device by Customers Outside the United States. While Nextiva encourages use of the Service within the United States to other countries, Nextiva does not presently offer or support the Service to customers located in any countries other than the United States. Nextiva's Services are only for use by persons or entities whose primary residence or business address is in the United States. Nextiva's Services are designed to work generally with unencumbered high-speed internet connections. However, if the high-

speed internet connection you are using is outside the United States and/or your ISP places restrictions on the usage of VoIP services, Nextiva does not represent or warrant that use of the Service by you is permitted by any other jurisdictions or by any or all the ISPs. If you remove the device to a country other than the United States or use the Service from there, you do so at its own risk, including the risk that such activity violates local laws in the country where you do so. You will be solely responsible for any violations of local laws and regulations or violations of ISP terms of service resulting from such use. Nextiva reserves the right to disconnect Services immediately if Nextiva determines, in its sole and absolute discretion, that you have used the Service or the device in violation of applicable laws, including without limitation laws of jurisdictions outside the United States. You are solely liable for any and all use of the Service and/or device by any person making use of the Service or device provided to you.

6. LOCAL NUMBER PORTABILITY. In the event you are transferring an existing phone number that currently is subscribed to another carrier, the following terms and conditions apply:

6.1 Authorization. You hereby authorize NEXTIVA to process your order for the Service and to notify your local service provider of your decision to switch your local services to NEXTIVA and to transfer your telephone number, and represent that you are authorized to take these actions. You may be required to complete a letter of authorization, provide us with a copy of your most recent bill from your service provider, as well as provide us with any other information required by your service provider to port your number. Failure to provide any information requested by NEXTIVA or the third party services provider will delay the porting of the number to NEXTIVA. NEXTIVA shall not be responsible for any delay in the port of your number and will not provide credit for any such delays.

6.2 Activation. You agree and acknowledge that you must install and activate your Equipment prior to the date that the number switch becomes effective (“Port Effective Date”). You will be assigned a temporary telephone number until your transfer is completed. You may place and receive calls using this temporary number until such time as your phone number is transferred.

6.3 Limitation. NEXTIVA has the right to refuse to import a number if, in its sole discretion, it does not have the infrastructure to support the number.

7. SERVICE DISTINCTIONS. You acknowledge and understand that the Service is not a telephone service, and we provide it on a best efforts basis. Important distinctions exist between telephone service and the enhanced Service offering provided by NEXTIVA. The Service is subject to different regulatory treatment than telephone service. This treatment may limit or otherwise affect your rights of redress before Federal and State telecommunications regulatory agencies or judicial forums. Events beyond our control may affect our service, such as power outages, fluctuations in the internet, your underlying ISP or broadband service, or maintenance. We will act in good faith to minimize disruptions to your use of and access to our service.

7.1. EMERGENCY SERVICES - 911 DIALING *You acknowledge and understand that NEXTIVA 911 dialing is different than traditional 911 service. See complete 911 disclosure posted on our Web site at www.Nextiva.com. YOUR SERVICE WILL NOT BE ACTIVATED UNTIL NEXTIVA RECEIVES AN AFFIRMATIVE ACKNOWLEDGMENT THAT YOU HAVE READ AND UNDERSTOOD NEXTIVA’S 911 DISCLOSURE AGREEMENT.*

7.2. No 0+ or Operator Assisted Calling; May Not Support X11 Calling. You acknowledge and understand that the Service does not support 0+ or operator assisted calling, including, without limitation, collect calls, third party billing calls, 900, calling card calls or dial-around calls. Our Service may not support 311, 511, and other x11 services in one or more service areas.

7.3. No Directory Listing. The phone numbers you get from us will not be listed in any telephone directories. However, any phone numbers you transfer from your local phone company may be listed.

7.4. Incompatibility with Other Services.

7.4.1. Non-Voice Equipment Limitations. You acknowledge and understand that the Service is not compatible with all non-voice communications equipment, including but not limited to, some home and office security systems that are set up to make automatic phone calls, emergency phones in elevators, some aspects of satellite TV systems, digital entertainment systems, fax machines, modems and medical monitoring devices. By accepting this Agreement, you waive any claim you may have against NEXTIVA for interference with or disruption of such systems due to the Service.

7.4.2. Certain Broadband, Cable Modem, and Other Services. There may also be other services with which our Service may be incompatible. Some providers of broadband service may provide modems that prevent the transmission of communications using the Service. We do not warrant that the Service will be compatible with all broadband services and expressly disclaim any express or implied warranties regarding the compatibility of the Service with any particular broadband service.

7.5 Use Outside of the United States. As previously noted there are limitations with the Service’s access to 911. Nextiva’s Service does not provide access to emergency services in any country outside of the United States. Nextiva disclaims any obligation to provide you with access to emergency services in any jurisdiction other than the United States.

8. LENGTH OF SERVICE

8.1. Service Term. We provide the Service for the term that you have signed up for. Your term begins on the date you first ordered service “Subscription Date”, or the date we successfully process your payment, whichever is later. It is not the day you receive the Equipment you ordered or the first time you use the Service. You are purchasing the Service for the full service term as set forth in the Order.

8.2. Automatic Renewal. Nextiva shall automatically renew the Service for the same term on your “Subscription Date” unless you cancel your Service before the end of the current service term. See Termination of Service Section 8.4. The renewal begins on the day after the last day of your term. The renewal will be charged to your payment method (credit card) on file. If your credit card is declined, invalid, or payment is not made by the issuer of your credit card on your “Subscription Date”, without further notice Nextiva reserves the right to automatically recharge the payment method until payment is received, the payment method is updated, or the Service is discontinued for nonpayment.

8.3. Our right to disconnect. We have the right to suspend or discontinue service generally, or to disconnect the Service, at any time. In addition, we reserve the right to immediately disconnect the Service at any time without notice due to non-payment or unlawful or inappropriate use of the Service.

8.3.1. All of charges owed at the time of disconnection will be immediately payable. We will pursue collection for unpaid amounts on disconnected accounts and may report these unpaid charges to credit bureaus.

8.4. Termination of Service In order to terminate the Service, contact our Customer Care Department, via email at service@Nextiva.com or by calling 1-800-983-4289 prior to expiration of the current service term. Please refer to the NEXTIVA Cancellation Policy posted on our Web site at Nextiva.com.

9. DEVICES

9.1. Ownership and Risk of Loss. You will own the Device and bear all the risk of loss, theft, or damage regardless of the payment schedule selected for services and devices. Minimum Commitment Contracts for services and devices may include early termination fees. Returns of non-defective devices outside of the initial 30 day moneyback guarantee period will not be accepted. Refer to the Cancellation policy for more information.

9.2. Promotional Devices. Devices included in a service offering at no charge may be previously used equipment. Devices not returned upon cancellation of the Service will be charged to the customer. See Cancellation policy for details.

9.3 Replacement of a Defective Device Equipment and devices purchased from NEXTIVA will be covered by their respective factory warranties only. NEXTIVA does not offer any warranty in addition to, or in replacement of any factory warranties. Prior to returning the equipment, you must contact NEXTIVA at support@Nextiva.com so that NEXTIVA may determine whether a defect exists and to receive an RMA number, which is required along with the return. You must ship the equipment to the manufacturer at the address provided by NEXTIVA in accordance with all RMA procedures. You have 7 days after receipt of an RMA to ship the equipment back to the manufacturer at the address we provide. You must pay all shipping fees. Once the manufacturer has received the equipment, a replacement will be sent to you. If an advance replacement is provided and the factory has not received the defective device within 14 days or it was not in a returnable condition, (original carton, all packing materials and parts in the same condition in which you received them), then NEXTIVA will charge you for the second device or for the missing parts.

9.4. Receipt of damaged devices. If you receive cartons or devices that are visibly damaged, you must note the damage on the carrier’s freight bill or receipt and keep a copy. You must also keep the original carton, all packing materials, and parts in the same condition in which you received them from the carrier. You must then contact our Customer Care Department immediately at support@Nextiva.com for return instruction.

9.5. Tampering with the Device. You may not change the electronic serial number or equipment identifier of your Device or perform a factory reset of your Device without first getting our written consent.

9.6. Prohibited Devices. You are prohibited from using NEXTIVA services with any devices other than NEXTIVA-approved devices received from retailers or from us.

10. FEES AND CHARGES

10.1. We will publish fees and charges on our Web site. These fees and charges may change from time to time. New pricing will be effective the next day following posting to the Web site and may be applied to renewals of existing services. We may introduce new products and services at special introductory pricing. Introductory pricing will not be applied retroactively to existing services and may be applied for only limited periods of time. At our discretion, we may change introductory pricing.

10.2. Billing increments. All billing policies are defined by the specific package the customer chooses. Please refer to the Web site for exact billing policies.

10.3. Taxes. Taxes Customer is responsible for, and shall pay are any applicable federal, state, municipal, local or other governmental sales, use, excise, Universal Service Fees, value-added, personal property, public utility and other taxes, fees and charges now in force or enacted in the future, that arise from or as a result of Customer’s subscription or use or payment for the Service or a Device. Such amounts are in addition to payment for the Service or Device and will be billed to you. If Customer is exempt from payment of such taxes, you will provide NEXTIVA with an original government-issued certificate attesting to tax-exempt status. Tax exemption will only apply from and after the date NEXTIVA receives such certificate.

10.4. Charges for Directory Calls (411). We will charge you \$1.25 for each call you make to NEXTIVA directory assistance.

10.5. Activation Fee. One-time activation fees and any other installation fees that may apply are specified on the Web site and vary by product and plan chosen.

10.6 Regulatory Recovery Fee. A Regulatory Recovery Fee shall be charged monthly to offset costs incurred by NEXTIVA in complying with inquiries and obligations imposed by federal, state and municipal regulatory bodies/governments and the related legal and billing expenses. This fee is not a tax or charge required or assessed by any government. The Regulatory Recovery Fee may apply to every phone number assigned, including toll free and virtual numbers.

10.7 Reinstatement Fee. Reinstating any service deactivated for non-payment of fees shall result in a reinstatement fee up to \$25.

11. BILLING AND PAYMENT

11.1. Billing. We will charge you in advance for each term of service. If you have selected a free trial offering, we will commence charging you for the Service at the expiration of the free trial period, unless we are notified of the contrary. When you subscribe to the Service, you must give us a valid email address and a payment method (credit card) that we accept. We reserve the right to stop accepting your payment method or your payments. You must advise us at once if your payment method expires, you close your account, your billing address changes, your email address changes, or your payment method is cancelled and replaced on account of loss or theft. Except for usage-based charges, we will bill in advance to your payment method all charges, fees, taxes, and surcharges for each service term. We will bill monthly as due immediately usage-based charges and any other charges which we decide to bill as due immediately. Bills will be posted to the customer portal and emailed to the email address on record.

11.2. Payment. When you subscribe to the Service, you authorize us to collect from your payment method. This authorization will remain valid until thirty (30) days after you terminate our authority to charge your payment method.

11.3. Collection. If we disconnect the Service, you will remain liable to us for all charges under this agreement and all the costs we incur to collect these charges, including, without limitation, collection costs and attorney's fees. You also agree to pay any additional charges or fees applied to your billing account for any reason, including but not limited to, interest and charges due to insufficient credit.

11.4. Notices You understand that it is difficult for us to distinguish between credit and debit cards. You agree to waive your rights under Regulation E to receive ten (10) days advance notice from us regarding the amount that we will debit from your account. While we may send you messages about your billing from time to time, we are not obligated to do so. We may change or cease our messages at any time without notice to you.

11.5. Billing Disputes You must notify NEXTIVA in writing within seven (7) days after receiving your credit card statement or from the time funds are debited from your bank account if you dispute any NEXTIVA charges on that statement or that have been debited from your account, or such dispute will be deemed waived. Notification of all billing disputes shall be sent to the following address: billing@Nextiva.com.

12. PRICING AND PAYMENT.

12.1. Prices and Fees. NEXTIVA fees and charges for the Service are supplied to you during the ordering process unless otherwise provided for in this Agreement. You agree to pay the applicable one-time and recurring charges. You further agree that any taxes and other charges, including but not limited to, account setup fees, Adapter fees, Equipment charges, shipping and handling and other nonrecurring charges will be charged to your credit card. Recurring charges will be billed and automatically charged to your credit card on the first day of every billing cycle. Your billing cycle will begin on the anniversary date of your subscription date as defined in section 8.1.

12.2. YOU AGREE THAT WE MAY CHARGE YOUR CREDIT CARD FOR ALL AMOUNTS DUE TO US WITHOUT ADDITIONAL NOTICE OR CONSENT. You agree to provide a credit card and not a debit card. If your card is a combination credit card/debit card, you authorize us to use it as a credit card. You also agree to indemnify us for any claims or expenses resulting from providing a debit card instead of a credit card. If your credit card is declined, is invalid or payment is not made by the issuer of your credit card at the time that a charge is attempted, you will not be able to use the Service until your account is paid in full.

12.3 Credit Balance Account. Your credit balance account has been established to cover incidental charges on your account that are not covered by your subscription fee. For example, international calls, toll free charges, Directory Assistance calls and taxes related to these calls are automatically charged to your credit balance account. A certain credit limit will be set on your account based upon your service plan and credit history. When the balance of your credit account reaches the credit limit, your account will be unable to make additional calls until the balance is paid down. You can make payments to reduce your credit balance account at any time by contacting our Customer Care Department at 1-800-983-4289 or by email to support@nextiva.com. Any credit balance used as of your subscription renewal or monthly anniversary date will be charged to the credit card on file.

12.4. Discontinuation of Service for Nonpayment. The Service to you may be denied or discontinued without notice at any time in the event your credit card provider denies or discontinues providing credit to you for any reason, or you fail to provide us with a new credit card expiration date before the existing one expires. If your credit card fails for any reason during the ordering process, or any regular or monthly billing process, you will have 24 hours to provide NEXTIVA your new credit card information. If the credit card issue is not resolved within 48 hours, NEXTIVA will deactivate the Service. If your credit card is approved within 24 hours, your calling plan and billing cycle will remain unchanged. We reserve the right to modify the per minute calling plan at any time. You agree to pay all charges owed to NEXTIVA, including but not limited to the reinstatement fee for reactivated services. In the event NEXTIVA utilizes a

collection agency or resorts to legal action to *recover* monies due, you agree to reimburse us for all expenses incurred to *recover* such monies, including attorneys' fees.

12.5. Promotions. NEXTIVA may limit the number of promotions you may be eligible for in a given period. Promotions may be cancelled by NEXTIVA at any time.

12.6 Cancellation Policy. NEXTIVA cancellation policies are outlined in the Cancellation Policy posted at our Web site at Nextiva.com and are incorporated into this policy with this reference. All cancellation requests must be submitted in the form of an email ticket to service@Nextiva.com or by calling our Customer Care Department at 1-800-983-4289 and must be made prior to the expiration of the Service term. See the cancellation policy for details. Changes to the Cancellation Policy may be made at any time without notice to you and is effective the day following posting to our Web site.

13. Acceptable Use Policy. You agree to comply with the NEXTIVA Acceptable Use Policy ("AUP") which is posted on our Web site at Nextiva.com and is incorporated into this policy with this reference. Changes to the AUP may be made at any time without notice to you and is effective the day following posting to our Web site.

14. MANAGEMENT OF YOUR DATA AND COMPUTER.

14.1. System Management and Service Performance. You are solely responsible for obtaining, installing, configuring and maintaining suitable equipment, including your computer and telephone and software, including any necessary system or software upgrades, patches or other fixes which are or may become necessary to access the Service and to operate your computer. NEXTIVA will only provide technical assistance with respect to your NEXTIVA-provided Adapter.

14.2. Monitoring of Network Performance. NEXTIVA automatically measures and monitors network performance. We also will access and record information about your computer's profile and settings and the installation of the Software in order to provide customized technical support. No adjustments to your computer settings will be made without your permission. You hereby consent to NEXTIVA's monitoring of your Internet connection and network performance, and the access to and adjustment of your computer settings, as set forth *above*, as they relate to the Service.

15. LIMITATION ON WARRANTIES, REMEDIES AND LIABILITY, INDEMNIFICATION

15.1. WARRANTIES

15.1.1 NEXTIVA MAKES NO EXPRESS OR IMPLIED WARRANTY REGARDING THE SERVICE OR DEVICE OR THE INSTALLATION OF SAME AND DISCLAIMS ANY IMPLIED WARRANTY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. NEXTIVA DOES NOT WARRANT THAT THE SERVICE OR DEVICE WILL FUNCTION WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. NEXTIVA DOES NOT AUTHORIZE ANYONE, INCLUDING BUT NOT LIMITED TO ITS EMPLOYEES, AGENTS OR REPRESENTATIVES, TO MAKE A WARRANTY OF ANY KIND ON ITS BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. CUSTOMER AGREES THAT IT ACCEPTS THE DEVICE "AS IS" AND THAT CUSTOMER IS NOT ENTITLED TO REPLACEMENT OR REFUND IN THE EVENT OF ANY DEFECT. THE PROVISIONS OF THIS SECTION SHALL BE APPLIED TO THE FULLEST EXTENT OF THE LAW, BUT IF ANY PORTION OF THIS SECTION IS DETERMINED TO BE UNLAWFUL, THEN THIS SECTION SHALL BE CONSTRUED TO LIMIT LIABILITY AGAINST NEXTIVA TO THE FULLEST EXTENT POSSIBLE UNDER THE LAW.

15.1.2. NO CREDIT ALLOWANCES FOR INTERRUPTION OF NEXTIVA SERVICE WE WILL NOT GIVE YOU CREDIT FOR ANY INTERRUPTION OF NEXTIVA SERVICE, INCLUDING INTERNATIONAL CALLING SERVICES.

15.2. LIMITATION OF LIABILITY

15.2.1. IN NO EVENT SHALL NEXTIVA BE LIABLE TO YOU, YOUR REPRESENTATIVES OR AUTHORIZED ASSIGNS OR ANYONE ELSE FOR ANY INCIDENTAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, OR FOR ANY DAMAGES FOR LOSS OF DATA, LOSS OF REVENUE OR PROFITS, RELATING TO OR ARISING OUT OF THE SERVICE, THE USE OF OR INABILITY TO USE THE SERVICE, THE ABSENCE, DELAY, FAILURE OR OUTAGE OF THE SERVICE, THE INABILITY TO DIAL 911 OR E911 TO ACCESS EMERGENCY SERVICE PERSONNEL, THE INABILITY TO DIAL SECURITY, LAW ENFORCEMENT OR FIRE PREVENTION/ PROTECTION SERVICES OR SYSTEMS, THE DEVICE, THE USE OF AND/OR INABILITY TO USE THE DEVICE, THE INSTALLATION OF THE DEVICE, AND/OR THIS AGREEMENT. NOR SHALL NEXTIVA BE LIABLE FOR ANY DELAY OR FAILURE TO PROVIDE THE SERVICE, INCLUDING 911 DIALING, AT ANY TIME OR FROM TIME TO TIME, OR FOR ANY INTERRUPTION OR DEGRADATION OF VOICE QUALITY CAUSED BY ANY REASON INCLUDING BUT NOT LIMITED TO THE FOLLOWING: AN ACT OR OMISSION OF AN UNDERLYING CARRIER, SERVICE PROVIDER, VENDOR OR THIRD PARTY, EQUIPMENT, NETWORK OR FACILITY FAILURE, EQUIPMENT, NETWORK OR FACILITY UPGRADE, SERVICE, MAINTENANCE, MODIFICATION, SHORTAGE, OR RELOCATION, FORCE MAJEURE EVENTS SUCH AS BUT NOT LIMITED TO ACTS OF GOD, ADVERSE WEATHER, STRIKES, FIRE, WAR,

RIOT, GOVERNMENT ACTIONS OR TERRORISM, SERVICE, DEVICE, EQUIPMENT, NETWORK OR FACILITY FAILURE CAUSED BY THE LOSS OF POWER OR INTERNET SERVICE TO NEXTIVA OR CUSTOMER, AND ANY CAUSE THAT IS BEYOND NEXTIVA'S CONTROL, INCLUDING WITHOUT LIMITATION THE FAILURE OF AN INCOMING OR OUTGOING COMMUNICATION, THE INABILITY OF COMMUNICATIONS TO BE CONNECTED OR COMPLETED, INCLUDING 911 DIALING, OR DEGRADATION OF VOICE QUALITY. NEXTIVA SHALL NOT BE LIABLE FOR UNAUTHORIZED ACCESS TO NEXTIVA'S OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISES, EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES, OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF NEXTIVA'S NEGLIGENCE OR OTHER ACTS OR OMISSIONS. NEXTIVA'S LIABILITY FOR ANY ACT OR OMISSION SHALL IN NO EVENT EXCEED THE SERVICE CHARGES WITH RESPECT TO THE AFFECTED TIME PERIOD. THE LIMITATIONS SET FORTH HEREIN APPLY TO ALL CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT, AND ANY AND ALL OTHER THEORIES OF LIABILITY, AND APPLY WHETHER OR NOT NEXTIVA WAS INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGE. FURTHER, YOU AGREE TO REIMBURSE NEXTIVA FOR ALL COSTS AND EXPENSES RELATED TO THE DEFENSE OF ANY SUCH CLAIMS, INCLUDING ATTORNEYS' FEES AND LITIGATION COSTS. THE PROVISIONS OF THIS SECTION SHALL BE APPLIED TO THE FULLEST EXTENT OF THE LAW, BUT IF ANY PORTION OF THIS SECTION IS DETERMINED TO BE UNLAWFUL, THEN THIS SECTION SHALL BE CONSTRUED TO LIMIT LIABILITY AGAINST NEXTIVA TO THE FULLEST EXTENT POSSIBLE UNDER THE LAW.

16. INDEMNIFICATION AND WAIVER OF CLAIMS

16.1. INDEMNIFICATION

16.1.1. YOU ARE LIABLE FOR ANY AND ALL USE OF THE SERVICE AND/OR DEVICE BY YOURSELF AND BY ANY PERSON MAKING USE OF THE SERVICE OR DEVICE, AND YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS NEXTIVA AGAINST ANY AND ALL LIABILITY FOR ANY SUCH USE THAT FAILS TO COMPLY WITH THIS AGREEMENT. YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS NEXTIVA FROM ANY AND ALL CLAIMS AND/OR LIABILITY FOR DAMAGES, PERSONAL INJURY, DEATH, FINES, PENALTIES, COSTS, EXPENSES, LOSSES, LOST PROFIT, LOST REVENUE, PROPERTY DAMAGE, ATTORNEYS' FEES, AND ANY AND ALL OTHER DAMAGES OF WHATEVER KIND AND NATURE RELATING TO OR ARISING OUT OF THE SERVICE, THE USE OF OR INABILITY TO USE THE SERVICE, THE ABSENCE, FAILURE OR OUTAGE OF THE SERVICE, THE INABILITY TO DIAL 911 OR E911 TO ACCESS EMERGENCY SERVICE PERSONNEL, THE INABILITY TO DIAL SECURITY, LAW ENFORCEMENT OR FIRE PREVENTION/ PROTECTION SERVICES OR SYSTEMS, THE DEVICE, THE USE OF AND/OR INABILITY TO USE THE DEVICE, THE INSTALLATION OF THE DEVICE, AND/OR THIS AGREEMENT UNLESS THE CLAIMS OR CAUSES OF ACTION ARISE FROM OUR GROSS NEGLIGENCE, RECKLESSNESS, OR WILLFUL MISCONDUCT. . THIS SECTION SHALL SURVIVE THE AGREEMENT.

17. CONTENT You are liable for all liability that may arise from the content you transmit to any person, whether or not you authorize it, using the Service or Device. You promise that you and anyone who uses the Service and all your and their content comply at all times with all laws, regulations, and written and electronic instructions for using the Service and the Device.

18. MISCELLANEOUS LEGAL CONSIDERATIONS

18.1. Governing Law This Agreement and the relationship between you and NEXTIVA shall be governed by the laws of Arizona without regard to its conflict of law provisions. Any claim brought pursuant to this Agreement shall be brought in a court of competent jurisdiction within the State of Arizona and venue for any such claim shall be proper in the appropriate state or federal court located in Maricopa County, Arizona.

18.2. No Waiver of Rights Our failure to exercise or enforce any right or provision of this agreement will not constitute a waiver of the right or provision. NEXTIVA reserves all of its rights at law and equity to proceed against anyone who uses the Services or Device illegally or improperly. All determinations by NEXTIVA under this Agreement and exercise of its rights are made and done in our sole and absolute discretion.

18.3. No Third Party Beneficiaries If you are not a party to this Agreement, you do not have any remedy, claim, liability, reimbursement, or cause of action. This Agreement does not create any other third party beneficiary rights

18.4. Entire Agreement This Agreement, the Order, the applicable service description, the AUP, or any reference herein to the content of NEXTIVA's websites constitute the entire agreement between you and NEXTIVA and govern your use of the Service, superseding any prior agreements between you and NEXTIVA and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter. No changes to this Agreement shall be binding upon either you or NEXTIVA unless they are assigned by the parties.

18.5. Severability If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement will remain valid and enforceable. This invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this agreement.

19. DISPUTE RESOLUTION AND BINDING ARBITRATION

19.1. It is important that you read this entire section carefully. This section provides for resolution of disputes through final and binding arbitration before a neutral arbitrator instead of in a court by a judge or jury.

19.2. Arbitration NEXTIVA and you agree to arbitrate any and all disputes and claims between you and NEXTIVA except with respect to claims for amounts owed for services rendered. Arbitration means that all disputes and claims will be resolved by a neutral arbitrator instead of by a judge or jury in a court. This agreement to arbitrate is intended to be given the broadest possible meaning under the law. It includes, but is not limited to: disputes and claims arising out of or relating to any aspect of the relationship between you and NEXTIVA, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; disputes and claims that arose before this or any prior agreement (including, but not limited to, claims relating to advertising); disputes and claims that may arise after the termination of this agreement; disputes and claims that are currently the subject of individual litigation; disputes and claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and disputes and claims concerning the scope of this arbitration provision. References to “NEXTIVA,” “us” and “you” include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors and assigns, as well as all authorized or unauthorized users or beneficiaries of the Service under this agreement or any prior agreements between you and NEXTIVA.

19.3. Informal Resolution of Disputes Our Customer Care Department can resolve most customer concerns quickly and to the customer’s satisfaction. If you have a dispute or claim against us, you should first contact the NEXTIVA Customer Care Department at (800) 983-4289 and provide in detail, including documents or analysis supporting your position, the basis of your claim. Customer care shall be provided with 14 days in which to research and respond to your claim. In the event your dispute or claim is not resolved to your satisfaction, you may seek to have that dispute or claim resolved as set forth below.

19.4. Formal Notice of Disputes A party who intends to seek arbitration must first send to the other party a written “Notice of Dispute” setting forth in detail, including submission of supporting documentation, the grounds of your dispute. The Notice of Dispute to NEXTIVA must be sent to NEXTIVA by certified mail addressed to 8125 N. 86th Place, Scottsdale, AZ 85258.

19.4.1. The Notice of Dispute must describe the nature and basis of the dispute or claim and set forth the specific relief sought. If you and NEXTIVA do not reach an agreement to resolve the dispute or claim within thirty (30) days after the Notice of Dispute is received, you or NEXTIVA may commence an arbitration proceeding. The amount of any settlement offer made by you or NEXTIVA shall be non-discoverable and shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or NEXTIVA is entitled.

19.5. Arbitrator and Arbitral Rules The arbitration shall be administered by the American Arbitration Association (“AAA”). You may contact the AAA by telephone at 1-800-778-7879, by email at AAAUniversity@adr.org, or by mail at 3200 N. Central Ave, Ste 1560, Phoenix, AZ 85012. The arbitration shall be governed by the AAA’s Commercial Dispute Resolution Procedures and Supplementary Procedures for Consumer Related Disputes (collectively, “AAA Rules”), as modified by this Agreement. The AAA Rules are available at www.adr.org or by calling the AAA at 1-800-778-7879.

19.6. Waiver of Judge or Jury Trial You and NEXTIVA agree that, by entering into this agreement, you and NEXTIVA are waiving the right to a trial by judge or jury.

19.7. Waiver of Class Actions You and NEXTIVA agree that the arbitrator may award relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party’s individual claim. You and NEXTIVA agree that you and NEXTIVA may bring claims against the other only in your or its individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. You and NEXTIVA agree that, unless you and NEXTIVA agree otherwise, the arbitrator may not consolidate more than one person’s or entity’s claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific waiver of class actions provision, or any portion thereof, is found to be unenforceable, then the entirety of this dispute resolution and binding arbitration provision shall be null and void.

19.8. Statute of Limitations You must present a claim within one (1) year of the date of the occurrence of the event or facts giving rise to a dispute (except for billing disputes which are subject to section 10 and 11 of the agreement), or you waive the right to pursue a claim based upon such event, facts, or dispute.

19.9. Exceptions to Arbitration Agreement Notwithstanding the obligation to arbitrate and any other provisions to the contrary herein, you and we agree that with respect to claims for unpaid invoices: (a) we may take our dispute to small claims court, if the contained dispute qualifies for hearing by such court; (b) if you fail to timely pay amounts due, we may assign your account for collection, and the collection agency may pursue in court claims limited strictly to the collection of the past due debt and any interest or cost of collection permitted by law or the Agreement; (c) you or we may take any disputes over the validity of any party’s intellectual property rights to a court of competent jurisdiction; (d) any dispute related to or arising from allegations associated with fraudulent or unauthorized use, theft, or piracy of service may be brought in a court of competent jurisdiction; and (e) either you or we may seek any interim or preliminary relief from a court of competent jurisdiction, necessary to protect the rights or property of you or NEXTIVA, pending the completion of arbitration.

19.10. Modification of Arbitration If NEXTIVA makes any substantive change to this arbitration provision, you may reject any such change and require NEXTIVA to adhere to the language in this provision.

19.11. Venue/Jurisdiction All claims for Arbitration shall be submitted to and heard by the office of AAA located in Maricopa County, Arizona. Should an evidentiary hearing be required by the Arbitrator, such hearing shall be heard in Maricopa County, Arizona.,

20. PRIVACY. NEXTIVA Service utilizes, in whole or in part, the public Internet and third party networks to transmit voice and other communications. You acknowledge and understand that NEXTIVA cannot guarantee that voice over IP communication is completely secure. You agree that NEXTIVA may access all features of your account and the Service to determine whether the Service is being used fraudulently and/or in violation of this Agreement, and for any other purposes. **YOU AGREE THAT NEXTIVA SHALL NOT BE LIABLE FOR ANY LACK OF PRIVACY.** NEXTIVA is committed to respecting your privacy relating to personally identifiable information. Once you choose to provide personally identifiable information, it will only be used in the context of your relationship with NEXTIVA. NEXTIVA will not sell, rent, or lease your personally identifiable information to others. Upon the appropriate request of a government agency, law enforcement agency, court or as otherwise required by law, NEXTIVA may disclose personally identifiable information. Please refer to our Privacy Policy for additional information.

21. EXPORT COMPLIANCE. You agree to comply fully with all relevant export laws and regulations of the United States, including but not limited to the U.S. Export Administration Regulations, administered by the Department of Commerce, Bureau of Industry and Security. You also expressly agree that Customer shall not export, directly or indirectly, re-export, divert, or transfer any portion of the Service or device, including, without limitation, to any destination, company, or person restricted or prohibited by U.S. export controls.

22. ASSIGNMENT. NEXTIVA may assign all or part of its rights or duties under the Agreement without notifying you. If we do that, we have no further obligation to you. You may not assign the Agreement or the Service or Device without our prior written agreement.

23. SURVIVAL. The provisions of this Agreement relating to indemnification, limitations on liability, warranty limitations and disclaimers, resolution of disputes, billings and your obligation to pay for the Service provided and any additional usage charges, shall survive the termination of the Agreement and the termination of the Service.

24. CALEA. NEXTIVA intends to fully comply with the Communications Assistance for Law Enforcement Act ("CALEA"). By using the Service, you hereby agree and consent to NEXTIVA's right to monitor and otherwise disclose the nature and content of your communications if and as required by CALEA without any further notice to you.

25. FORCE MAJEURE (EVENTS BEYOND NEXTIVA'S CONTROL) NEXTIVA shall be excused from any delay or failure in performance hereunder caused by reason of occurrence or contingency beyond its reasonable control, including without limitation, acts of God, earthquake, fire, flooding, riots, war, government intervention, embargoes, strikes, labor difficulties, equipment failure, late delivery by suppliers or other difficulties as may occur in spite of NEXTIVA's best efforts.

26. SOFTWARE COPYRIGHT Any software used by NEXTIVA to provide the Service and any software provided to you in conjunction with providing the Service is protected by copyright law and international treaty provisions. You may not copy the software or any portion of it.

27. COPYRIGHT AND TRADEMARK; COPYRIGHT INFRINGEMENT; DIGITAL MILLENNIUM COPYRIGHT ACT (DMCA) NOTICE

Our Web site content, our materials, services, logs, service marks and trademarks are protected by trademark, copyright, or other intellectual property laws, and international treaty provisions. Infringement by you may result in civil or criminal prosecution.