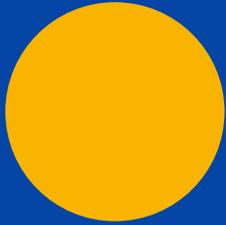


Nextiva



NEXTIVA DRIVE SERVICE
TERMS & CONDITIONS

(800) 285-7995
Nextiva.com/Support

Terms of Service

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THE SERVICES MAY ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. YOU ACKNOWLEDGE AND AGREE THAT NEXTIVA DOES NOT OPERATE OR CONTROL THE INTERNET AND THAT (1) VIRUSES, WORMS, TROJAN HORSES AND OTHER UNDESIRABLE DATA OR COMPONENTS, OR (2) UNAUTHORIZED USERS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE YOUR USER DATA, WEBSITES, DEVICES AND NETWORKS. NEXTIVA IS NOT RESPONSIBLE FOR SUCH ACTIVITIES. YOU ARE SOLELY RESPONSIBLE FOR THE SECURITY AND INTEGRITY OF YOUR ACCOUNT AND YOUR USER DATA. 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.

Indemnification and Waiver of Claims

YOU ARE LIABLE FOR ANY AND ALL USE OF THE SERVICE BY YOURSELF AND BY ANY PERSON MAKING USE OF THE SERVICE, 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, 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.

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. 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.

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You acknowledge that use of the Products may be subject to the export and import laws of the United States and other countries. You agree to comply with all export and import laws and regulations. In particular, you acknowledge that the Products may not be exported or re-exported to any U.S. embargoed countries or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Persons List or Entity List. By using the Products, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the Products for any purposes prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons.

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.

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.

FORCE MAJEURE

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.

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 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.

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.

Entire Agreement

This Agreement, the Terms, the applicable service description, 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.

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.