

Nextiva



# NextOS

TERMS & CONDITIONS

(800) 285-7995  
[Nextiva.com/Support](https://www.nextiva.com/Support)

## NEXTIVA NEXTOS SERVICE TERMS AND CONDITIONS

SSIGNING UP FOR NEXTIVA'S NEXTOS SERVICE CREATES A CONTRACT BETWEEN YOU AND US, CONSISTING OF THE ORDER, THE APPLICABLE SERVICE DESCRIPTION AND THIS AGREEMENT. ANY ONE OF THE FOLLOWING ACTIONS CONSTITUTES YOUR ACCEPTANCE AND AGREEMENT TO BE BOUND BY THESE TERMS AND CONDITIONS: (1) ACCEPTING THE TERMS AND CONDITIONS ELECTRONICALLY DURING THE ORDERING PROCESS AND/OR UPON LOGGING ON TO USE YOUR SERVICE, (2) YOUR SUBMISSION OF AN ORDER, (3) YOUR USE OF THE SERVICE DESCRIBED HEREIN. THROUGH THESE ACTIONS 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.** These Nextiva NextOS Service Terms and Conditions, 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. DEFINITIONS.**

**2.1. "Documentation"** means user manuals and other documentation relating to the Services, which are available to Customer by Nextiva accessible via the Internet or in the form of printed media.

**2.2. "Service"** means the products and services that are being provided to You as described in any quote or order form and made available online by Us, including, but not limited to, Nextiva NextOS, collaboration services, and any associated software, hardware or web-based platform, as described in the Documentation. "Service" excludes Content and Third Party Applications. "Service" shall also include any additional Services provided to you as described in any addendum or amendment.

**2.3. "Software"** means any proprietary software owned by, licensed by, or which Nextiva has a right to sublicense under this Agreement, which software is either provided to Customer under this Agreement or is used in or used to provide the Service.

**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 (except during the term of a Minimum Commitment Contract) for the Service. Notice of revisions to the Agreement or pricing shall be posted on the Nextiva Website ("the Website") and deemed given and effective on the date posted to the Website. 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. ELIGIBILITY.**

**4.1.** In order to use the Service, you must:

**4.1.1.** Be at least eighteen (18) years old and able to enter into contracts;

**4.1.2.** Complete the registration process;

**4.1.3.** Agree to the Terms; and

**4.1.4.** Provide true, complete, and up to date contact information.

**4.2.** By using the Service, you represent and warrant that you meet all the requirements listed above, and that you won't use the Service in a way that violates any laws or regulations. Nextiva may refuse service, close accounts of any users, and change eligibility requirements at any time

### **5. USE OF SERVICE**

**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 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. Restrictions.** You shall not: (a) copy or adapt the Software or the Services for any purpose, except as specifically permitted under this Agreement; (b) use the Software or Services except in accordance with all applicable laws and regulations, and except as set forth in the Documentation; (c) reverse engineer, translate, decompile, or disassemble the Software or Services; (d) use the Software or Services in any outsourcing, application service provider, time-sharing or service bureau arrangement, including, without limitation, any use to provide services or process data for the benefit of, or on behalf of, any third party other than the Customer; or (e) cause or permit the disabling or circumvention of any security mechanism contained in or associated with the Software or Services.
- 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.
- 5.4. Use of Service 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 the Service, 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 use the Service from a country other than the United States, 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. You also agree to indemnify us for any claims, damages or expenses resulting from your use of the Services outside of the United States. Nextiva reserves the right to disconnect Services immediately if Nextiva determines, in its sole and absolute discretion, that you have used the Service 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 by any person making use of the Service provided to you.
- 5.5. Account Ownership.** The owner of the account under which the Services are ordered shall be the legal entity (e.g., corporation, partnership, individual) that signs up for the Services with Nextiva. If no legal entity is provided upon sign-up, the account owner shall be the owner of the credit card used to open such account. Subsequent changes to ownership must be supported by appropriate legal documentation. Nextiva shall not adjudicate ownership-related disputes, or any other internal business dispute. If Nextiva is unable to determine the valid owner of the account, Nextiva reserves the right to suspend or terminate the account and Services

## 6. LENGTH OF SERVICE.

- 6.1. 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 (the "Subscription Date"), or the date we successfully process your payment, whichever is later. It is not the first time you use the Service. You are purchasing the Service for the full service term as set forth in the Order.
- 6.2. 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, which may include any payment method automatically updated by your issuing bank. 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.
- 6.3. Our right to suspend.** You understand and agree that Nextiva has the right to suspend or terminate any part of the Service generally at any time if:
- 6.3.1.** We determine or reasonably believe that You are violating, or violated, any applicable law;
  - 6.3.2.** We determine or reasonably believe that You materially breached this Agreement;
  - 6.3.3.** We determine or reasonably believe that You used a fraudulent credit card to pay for the Services;

- 6.3.4. We determine or reasonably believe that You abused or harassed (verbally or otherwise) any Nextiva employee, contractor, agent or representative;
- 6.3.5. We are ordered by law enforcement or other government agencies to suspend, terminate or disconnect your Services;
- 6.3.6. You bring any legal action or proceeding against Nextiva, or participate in any class action lawsuit against Nextiva
- 6.3.7. A petition in bankruptcy is filed by or against You and such petition is not dismissed within thirty (30) days after the effective filing date thereof, or a trustee or receiver is appointed over You or Your material assets;
- 6.3.8. We determine that such action is necessary to protect maintain, or improve the Services, to prevent fraud or misrepresentation, to protect Nextiva, its customers or other third party Nextiva affiliates, or for any other good cause;
- 6.3.9. You violated the Nextiva VOIP Terms and Conditions; or
- 6.3.10. It is otherwise contemplated by this Agreement

All 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.

- 6.4. **Termination of Service.** In order to terminate the Service, contact our Customer Care Department, via email at [service@Nextiva.com](mailto: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.

## 7. FEES AND CHARGES.

- 7.1. **We will publish fees and charges on our Web site.** These fees and charges may change from time to time (except pricing will not change during the term of a Minimum Commitment Contract). 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.
- 7.2. **Billing increments.** All billing policies are defined by the specific package the customer chooses. Please refer to the Web site for exact billing policies.
- 7.3. **Taxes.** Taxes Customer is responsible for, and shall pay, are any applicable federal, state, municipal, local or other governmental sales, use, excise, 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. Such amounts are in addition to payment for the Service 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.
- 7.4. **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.
- 7.5. **Reinstatement Fee.** Reinstating any Service deactivated for non-payment of fees shall result in a reinstatement fee up to \$25.
- 7.6. **Reinstatement Fee.** Nextiva may charge up to the maximum amount permitted by law if your banking institution dishonors or reverses a check, draft, or other payment.

## 8. BILLING AND PAYMENT.

- 8.1. **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. Fees may also include activation fees,

porting fees, early termination fees ("ETF"), reinstatement fees, and returned check fees. We reserve the right to charge all fees to your payment method. 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. Any payment not made when due may be subject to a late payment fee equivalent to the lesser of (i) one and a half percent (1.5%) per month; or (ii) the highest rate allowed by law. Nextiva's acceptance of late or partial payments (regardless of how they are marked or designated (including without limitation as 'Paid in Full', 'Accord and Satisfaction', or similarly)) will not waive, limit, or prejudice in any way Nextiva's rights to collect any amount due. Nextiva may terminate the Services and this Agreement for non-payment if any fees or charges are not paid within thirty (30) days of the due date.

- 8.2. **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.
- 8.3. **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.
- 8.4. **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.
- 8.5. **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](mailto:billing@Nextiva.com). Nextiva will charge a late fee as described in Section 11.1 for a disputed amount if (1) it was not paid by the due date and (2) NEXTIVA determines that you disputed the charge in bad faith.

## 9. PRICING AND PAYMENT.

- 9.1. **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, 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.
- 9.2. **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. If your issuing bank automatically provides us with an updated credit card, you agree that we may charge this new credit card for all amounts due to us without additional notice or consent. You also agree to indemnify us for any claims, damages 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.
- 9.3. **Credit Terms.** All Services provided to You and covered by the Agreement shall at all times be subject to credit approval or review by Nextiva. You will provide such credit information or assurance as is requested by Nextiva at any time. Nextiva, in its sole discretion and judgment, may discontinue credit at any time without notice or require a deposit.
- 9.4. **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.
- 9.5. **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.

**9.6. 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.

## 10. ACCEPTABLE USES

**10.1. Legal Compliance.** You represent and warrant that you will comply with all laws and regulations applicable to your use of the Service.

**10.2. Your Responsibilities.** You are responsible for your conduct, Content, and communications with others while using the Services. You must comply with the following requirements when using the Service:

**10.2.1.** You may not purchase, use, or access the Service for the purpose of building a competitive product or service or for any other competitive purposes.

**10.2.2.** You may not misuse the Services by interfering with their normal operation, or attempting to access them using a method other than through the interfaces and instructions that we provide.

**10.2.3.** You may not circumvent or attempt to circumvent any limitations that Nextiva imposes on your account.

**10.2.4.** Unless authorized by Nextiva in writing, you may not probe, scan, or test the vulnerability of any Nextiva system or network.

**10.2.5.** Unless permitted by applicable law, you may not deny others access to, or reverse engineer, the Services, or attempt to do so.

**10.2.6.** You may not transmit any viruses, malware, or other types of malicious software, or links to such software, through the Services.

**10.2.7.** You may not engage in abusive or excessive usage of the Service, which is usage significantly in excess of average usage patterns that adversely affects the speed, responsiveness, stability, availability, or functionality of the Service for other users.

**10.2.8.** You may not use the Service to infringe the intellectual property rights of others, or to commit an unlawful activity.

**10.2.9.** Unless authorized by Nextiva in writing, you may not resell or lease the Service.

**10.2.10.** If your use of the Service requires you to comply with industry-specific regulations applicable to such use, you will be solely responsible for such compliance, unless Nextiva has agreed with you otherwise. You may not use the Service in a way that would subject Nextiva to those industry-specific regulations without obtaining Nextiva's prior written agreement. For example, you may not use the Services to collect, protect, or otherwise handle "protected health information" (as defined in 45 C.F.R. §160.103 under United States federal regulations).

**10.2.11.** You may not register accounts by "bots" or other automated methods.

**10.2.12.** Your Content and use of the Services may not violate our Nextiva Platform Privacy Policy or Rules listed below.

## 11. RULES AND ABUSE

**11.1. General Rules. You promise to follow these rules:**

**11.1.1.** Nextiva has a zero-tolerance spam policy. This means that all email recipients must have opted in to, or otherwise validly consented to, receiving communications from you, the sender. Subscriber accounts may be terminated for sending unsolicited email messages. By "spam," we mean the definition on the Spamhaus website.

**11.1.2.** You will not use purchased, rented, or third-party lists of email addresses

**11.1.3.** Nextiva does not allow accounts with the primary purpose of promoting or inciting harm towards others or the

promotion of discriminatory, hateful, or harassing content. To this end, we may suspend or terminate your account if you send an email campaign, submit an advertisement or otherwise distribute any content that we determine, in our sole discretion, contains either of the following:

**11.1.3.1. A Threat of Physical Harm.** This means any statement, photograph, advertisement, or other content that in our sole judgment could be reasonably perceived to threaten, advocate, or incite physical harm to or violence against others.

**11.1.3.2. Hateful Content.** This means any statement, image, photograph, advertisement, or other content that in our sole judgment could be reasonably perceived to harm, threaten, promote the harassment of, promote the intimidation of, promote the abuse of, or promote discrimination against others based solely on race, ethnicity, national origin, sexual orientation, gender, gender identity, religious affiliation, age, disability, disease, or immigration status

**11.1.4.** We also may suspend or terminate your account if we determine, in our sole discretion, that you are either:

**11.1.4.1.** An organization which has publicly stated or acknowledged that its goals, objectives, positions, or founding tenets include statements or principles that could be reasonably perceived to advocate, encourage, or sponsor Hateful Content or A Threat of Physical Harm.

**11.1.4.2.** A person that has publicly made a comment or statement, or otherwise publicly made known a position, including by membership in an organization as discussed above, that could be reasonably perceived as Hateful Content or A Threat of Physical Harm.

**11.1.4.3.** A person or organization that has acted in such a way as could be reasonably perceived to support, condone, encourage, or represent Hateful Content or A Threat of Physical Harm.

**11.1.5.** If you violate any of these rules, then we may suspend or terminate your account.

## 12. PCI COMPLIANCE

**12.1. PCI Standards.** If You use the Service to accept payment card transactions, you must comply with the Payment Card Industry Data Security Standards (PCI-DSS) to the extent they are applicable to your business (the "PCI Standards"). Nextiva provides tools to simplify your compliance with the PCI Standards, but you must ensure that your business is compliant and the specific steps You will need to take to comply with the PCI Standards will depend on Your implementation of the Services.

**12.2. Cardholder Data.** Nextiva is responsible for the security of Cardholder Data that is collected, transmitted, stored, or processed by us on your behalf. "Cardholder Data" is defined as a cardholder's primary account number, and where a full unmasked card number is present, any of the cardholder name, expiration date, and/or service code. **YOU ACKNOWLEDGE AND AGREE THAT YOU ARE PROHIBITED FROM COLLECTING OR ENTERING CARDHOLDER DATA INTO ANY FORM OR DATA ENTRY FIELDS IN THE SERVICES, EXCEPT INTO THOSE FIELDS INTENDED SOLELY FOR THAT PURPOSE (i.e. where Nextiva explicitly enables such data to be entered into such fields).** Appropriate fields are clearly marked with labels such as 'Card number' or by having a credit card icon precede them. Similarly, excluding payment forms, you must never collect or enter any "Sensitive Authentication Data", as defined by the PCI Standards (including CVC or CVV2) into any fields in the Services. You assume all responsibility for any Cardholder Data entered into the Services in violation of these terms.

**13. ACCESSING THIRD PARTY APPLICATIONS INTEGRATED WITH THE SERVICE.** Many third party applications (hereinafter "Third Party Application(s)") are integrated with the Service. In the future, Nextiva may also be integrating more Third Party Applications with the Service. Access and use of Third Party Applications may require acceptance of terms of service and privacy policy applicable to such Third Party Applications (hereinafter "Third Party Terms"). You are responsible for reading and understanding the Third Party Terms before accessing or using any Third Party Application.

## 14. ACCOUNT MANAGEMENT

**14.1. Account and Password.** You're responsible for keeping your account name and password confidential. You're also responsible for any account that you have access to, whether or not you authorized the use. You'll immediately notify us of any unauthorized use of your accounts. We're not responsible for any losses due to stolen or hacked passwords. We don't have access to your current password, and for security reasons, we may only reset your password.

**14.2. Account Information Accuracy.** Nextiva occasionally sends notices to the email address registered with your account.



You must keep your email address and, where applicable, your contact details and payment details associated with your account current and accurate. Accounts are controlled by the entity whose email address is registered with the account.

**14.3. Backup Content.** You are responsible for maintaining, protecting, and making backups of your Content. To the extent permitted by applicable law, Nextiva will not be liable for any failure to store, or for loss or corruption of, your Content.

**15. ACCOUNT DISPUTES.** We don't know the inner workings of your organization or the nature of your personal relationships, and we don't arbitrate disputes over who owns an account. You won't request access to or information about an account that's not yours, and you'll resolve any account-related disputes directly with the other party. We decide who owns an account based on the content of the emails in that account, and if multiple people or entities are identified in the content, then we'll rely on the contact information listed for that account.

## **16. WARRANTIES.**

**16.1.** 16.1. NEXTIVA MAKES NO EXPRESS OR IMPLIED WARRANTY REGARDING THE SERVICE 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 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 SERVICE "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.

## **17. LIABILITY**

**17.1. LIMITATION OF LIABILITY.** 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, AND/OR THIS AGREEMENT. NOR SHALL NEXTIVA BE LIABLE FOR ANY DELAY OR FAILURE TO PROVIDE THE SERVICE, 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. 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.

**17.2. INDEMNIFICATION AND WAIVER OF CLAIMS.**



**17.2.1. INDEMNIFICATION.** 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.

**17.2.2.** SECTIONS 17.2.1 SHALL SURVIVE THE AGREEMENT.

**17.3. Attorney Fees.** If we file an action against you claiming you breached these Terms and we prevail, we're entitled to recover reasonable attorney fees and any damages or other relief we may be awarded.

**17.4. Equitable Relief.** If you violate these Terms then we may seek injunctive relief (meaning we may request a court order to stop you) or other equitable relief.

**17.5. Subpoena Fees.** If we have to provide information in response to a subpoena related to your account, then we may charge you for our costs. These fees may include attorney and employee time spent retrieving the records, preparing documents, and participating in a deposition.

## **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 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, 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 agreed to in writing by both 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, attention “General Counsel,” by certified mail addressed to 8800 E. Chaparral Road, Scottsdale, AZ 85250.
- 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](http://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. You acknowledge and understand that Nextiva cannot guarantee that the Service 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. CONTENT.**

**21.1. Privacy of Content.** In the course of using the Services, you may submit content to Nextiva or directly through the Service (including your personal data and the personal data of others) or third parties may submit content to you through the Services (all of the above will be referred to as your "Content"). You in turn agree that Nextiva may use and share your Content in accordance with the Nextiva privacy policies and applicable data protection laws.

**21.2. Confidentiality.** Nextiva will treat your Content as confidential information and only use and disclose it in accordance with this Agreement (including the Nextiva Platform Privacy Policy). However, Your Content is not regarded as confidential information if such Content: (a) is or becomes public (other than through breach of this Agreement by Nextiva); (b) was lawfully known to Nextiva before receiving it from You; (c) is received by Nextiva from a third party without knowledge of breach of any obligation owed to You; or (d) was independently developed by Nextiva without reference to your Content. Nextiva may disclose your Content when required by law or legal process, but only after Nextiva, if permitted by law, uses commercially reasonable efforts to notify you to give you the opportunity to challenge the requirement to disclose.

**21.3. Security.** Nextiva will store and process your Content in a manner consistent with industry security standards.

**21.4. You Retain Ownership of Your Content.** You retain ownership of all of your intellectual property rights in your Content. Nextiva does not claim ownership over any of your Content. This Agreement does not grant Us any licenses or rights to Your Content except for the limited rights needed for us to provide the Service, and as otherwise described in this Agreement.

**21.5. Limited License to Your Content.** You grant Nextiva a worldwide, royalty free license to use, reproduce, distribute, modify, adapt, create derivative works, make publicly available, and otherwise exploit your Content, but only for the limited purposes of providing the Services to you and as otherwise permitted by the Nextiva privacy policies. This license for such limited purposes continues even after you stop using our Services, with respect to aggregate and de-identified data derived from your Content and any residual backup copies of your Content made in the ordinary course of Nextiva's business. This license also extends to any trusted third parties we work with to the extent necessary to provide the Services to You. If You provide Nextiva with feedback about the Service, we may use your feedback without any obligation to you.

**21.6. Customer Lists.** Nextiva may identify you (by name and logo) as a Nextiva customer on our website and on other promotional materials.

**21.7. Liability Related to 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.

**22. COMPLIANCE WITH LAWS.** You represent and warrant that your use of the Service will comply with all applicable laws and regulations. You're responsible for determining whether our Services are suitable for you to use in light of any regulations like HIPAA, GLB, EU Data Privacy Laws, or other laws. If you're subject to regulations (like HIPAA) and you use the Service, then we won't be liable if the Service doesn't meet those requirements. You may not use the Service for any unlawful or discriminatory activities, including acts prohibited by the Federal Trade Commission Act, Fair Credit Reporting Act, Equal Credit Opportunity Act, or other laws that apply to commerce.

**23. 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, including, without limitation, to any destination, company, or person restricted or

prohibited by U.S. export controls.

24. **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 without our prior written agreement.
25. **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.
26. **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.
27. **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.
28. **INTELLECTUAL PROPERTY.** Neither this Agreement nor your use of the Service grants you ownership in the Service or the content you access through the Service (other than your Content).
29. **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. Furthermore, you may not delete, alter, cover, or distort any copyright or other proprietary notices or trademarks provided to you as part of the Service.
30. **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.

*Updated: February 2, 2019*