

NEXTIVA VOIP SERVICE TERMS AND CONDITIONS

1. INTRODUCTION. This agreement (“Agreement”) is between NEXTIVA, Inc. (“we,” “us” or “NEXTIVA”) and the user (“you,” “user” or “Customer”) of NEXTIVA’s VoIP Service (“Service”). This Agreement governs both the Service and any devices, such as a SIP Phone or Analog Telephone Adapter (“Device” or “Equipment”). BY ENROLLING IN, ACTIVATING, USING OR PAYING FOR THE SERVICE OR DEVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO ALL OF THE TERMS AND CONDITIONS IN THIS AGREEMENT, THAT YOU ARE OF LEGAL AGE, AND THAT YOU AGREE TO BE BOUND BY ALL TERMS HEREIN. IF YOU HAVE NOT READ AND UNDERSTOOD THIS ENTIRE AGREEMENT, AND DO NOT AGREE TO BE BOUND BY ITS TERMS, DO NOT USE THE SERVICES OR DEVICE, AND CANCEL THE SERVICES IMMEDIATELY BY CONTACTING NEXTIVA AND STATING YOUR NAME, ACCOUNT INFORMATION AND DESIRE TO CANCEL SERVICE.

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 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 revisions are in effect, you accept and agree to all revisions.

4. CUSTOMER REPRESENTATIONS. You represent and warrant that you are at least 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, for example, 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 on your account. You understand this means that you accept full liability and responsibility for 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.

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 website 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 our 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.

7.4. 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.

7.5. Incompatibility with Other Services.

7.5.1. 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.

7.5.2. 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 our Service. We do not warrant that our Service will be compatible with all broadband services and expressly disclaim any express or implied warranties regarding the compatibility of our Service with any particular broadband service.

8. LENGTH OF SERVICE

8.1. Service Term. We provide our Service for terms of a set length that depends on the term that you have signed up for (for example, 30 days, 90 days, or one year). Your term begins on the subscription date, which is the date you first ordered service 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 our Service for the full service term.

8.2. Automatic Renewal. The terms of this agreement automatically renew for the same term unless you call us and cancel your service before the end of your current service term. The renewal begins on the day after the last day of your term.

8.3. Our right to disconnect. We have the right to suspend or discontinue service generally, or to disconnect your service, at any time. In addition, we reserve the right to immediately disconnect your 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 your service, contact our Customer Care Department, via email at billing@NEXTIVA.com or 1-800-983-4289. See the NEXTIVA Cancellation Policy posted on our website at NEXTIVA.com.

9. DEVICES

9.1. Ownership and Risk of Loss. You will own your 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 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.

9.3. 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 billing@NEXTIVA.com for return instruction.

9.4. 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.

9.5. 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 upon posting to the website 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. 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 website 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 activation fees that may apply are specified on the website and vary by product and plan chosen.

10.6 Regulatory Recovery Fee. A Regulatory Recovery Fee may 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 Disconnection Fee. A minimum disconnection fee of \$50 per line may apply to services cancelled prior to the expiration of the term of service. Disconnect fees will be deducted from any refund due to you and if the fee exceeds the refund due, the balance will be charged to your payment method (credit card) on file.

10.8 Early Termination Fee. If you have committed to a minimum commitment contract, cancellation of such contract early will result in early termination fees. The early termination fee will be represented by the future amounts due under the contract term. The early termination fee will be charged to your payment method (credit card) on file.

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

11. BILLING AND PAYMENT

11.1. Billing. We will charge you for each term of service. When you subscribe to our 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 office manager portal or emailed to the email address or physical address on record.

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

11.3. Collection. If we disconnect your 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 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, early termination 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.

12.3. 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.

12.4 Extra Services Account. Your Extra Services Account is a prepaid account in which a certain dollar amount is set aside to cover incidental charges on your account that are not covered by your monthly fee. For example, international calls, Directory Assistance calls and taxes related to these calls are automatically deducted from your Extra Services Account. When the balance of your Extra Services Account reaches the Minimum Threshold Amount, your account will be automatically re-charged back to a preset dollar amount on your credit card. This preset dollar Re-Charge Amount may be taxed at the time it is charged to your Extra Services Account. **YOU AGREE THAT WE MAY CHARGE YOUR CREDIT CARD WHEN YOUR EXTRA SERVICES ACCOUNT REACHES THE MINIMUM THRESHOLD AMOUNT. THIS PRACTICE MAY RESULT IN YOUR CREDIT CARD BEING CHARGED MORE THAN ONE TIME IN A BILLING CYCLE.** The "Minimum Threshold Amount" will be posted on the Web site and may be revised from time to time.

12.5. Discontinuation of Service for Nonpayment. 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 24 hours, NEXTIVA will place you on a per-minute calling plan when your next billing cycle begins. The per-minute usage charges will be deducted from your Extra Services Account. When the balance of your Extra Services Account is depleted, Service will be terminated. 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 early termination fee. 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.

12.6. 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.

12.7 Cancellation Policy. NEXTIVA cancellation policies are outlined in the Cancellation Policy posted at our website 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 billing@NEXTIVA.com or by contacting Customer Care at 800-983-4289. A 30 Day moneyback guarantee, disconnect and early termination fees may apply. See the cancellation policy for details. Changes to the Cancellation Policy may be made at any time without notice to you and is effective upon posting to our website.

13. Acceptable Use Policy. You agree to comply with the NEXTIVA Acceptable Use Policy ("AUP") which is posted on our website 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 upon posting to our website.

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

15.1. WARRANTIES

15.1.1. THE TERM "NEXTIVA" AS USED IN THIS SECTION SHALL MEAN NEXTIVA, INC. AND ITS AFFILIATES, EMPLOYEES, DIRECTORS, OFFICERS, SERVANTS AND AGENTS AND ANY OTHER SERVICE PROVIDER THAT FURNISHES SERVICES OR DEVICES TO YOU IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE OR THE DEVICE.

15.1.2. 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.

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

15.3. LIMITATION OF LIABILITY

15.3.1. THE TERM "NEXTIVA" AS USED IN THIS SECTION SHALL MEAN NEXTIVA, INC. AND ITS AFFILIATES, EMPLOYEES, DIRECTORS, OFFICERS, SERVANTS AND AGENTS AND ANY OTHER SERVICE PROVIDER THAT FURNISHES SERVICES OR DEVICES TO YOU IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE OR THE DEVICE.

15.3.2. IN NO EVENT SHALL NEXTIVA BE LIABLE TO YOU 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. THE TERM "NEXTIVA" AS USED IN THIS SECTION SHALL MEAN NEXTIVA, INC. AND ITS AFFILIATES, EMPLOYEES, DIRECTORS, OFFICERS, SERVANTS AND AGENTS AND ANY OTHER SERVICE PROVIDER THAT FURNISHES SERVICES OR DEVICES TO YOU IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE OR THE DEVICE.

16.1.2. 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 your Service or Device. You promise that you and anyone who uses your Service and all your and their content comply at all times with all laws, regulations, and written and electronic instructions for using our 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. Because this agreement is a transaction in interstate commerce, the Federal Arbitration Act will govern the interpretation and enforcement of the arbitration provision in Section 14.

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 its 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 and any modifications to it pursuant to Section 15, and the rates for Services found on NEXTIVA's website, 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 made pursuant to Section 15. This agreement supersedes any prior agreements between you and NEXTIVA. It also supersedes all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter.

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. 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. 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.

19.4.1. A Notice of Dispute to NEXTIVA must be sent to NEXTIVA by certified mail addressed to 2151 E. Broadway Road, Suite 106, Tempe, AZ 85282.

19.4.2. A Notice of Dispute to you must be sent to you by certified mail at the last mailing address that you registered with NEXTIVA.

19.4.3. 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. You may download or copy a form to initiate an arbitration proceeding from the AAA website: <http://www.adr.org/si.asp?id=2062>. The amount of any settlement offer made by you or NEXTIVA 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 Websitemail@adr.org, or by mail at 335 Madison Avenue, Floor 10, New York, New York 10017. 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 Jury Trial You and NEXTIVA agree that, by entering into this agreement, you and NEXTIVA are waiving the right to a trial by 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 contact us 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 8.5 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 You and we agree: (a) you may take your dispute to small claims court, if your 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 Provision Despite section 15 or any other provision in this agreement to the contrary, 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.

20. CHANGES TO THIS AGREEMENT. NEXTIVA may change the terms and conditions of this Agreement from time to time. Changes to this Agreement supercede all previously agreed to electronic and written Terms and Conditions. IF YOU CONTINUE TO BE ENROLLED IN, USE, OR PAY FOR THE SERVICES AFTER RECEIVING NOTICE OF ANY CHANGES IN THE PRICES, CHARGES, AND/OR TERMS AND CONDITIONS HAVE BEEN MADE, YOU AGREE TO THE CHANGES. NEXTIVA may provide notice by e-mail or by publishing the changes on its website. These notices will be considered given and effective on the date posted on the website

21. 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.

22. EXPORT COMPLIANCE. You agree to comply with U. S. export laws concerning the transmission of technical data and other regulated materials via the Service. You agree to comply with applicable local, state and federal regulations governing the locality in which the Device and Services are used.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

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

Our website 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.

29. Third parties may make materials available using our Service. These third parties are not within our control. We do not review the content posted on our Service to see if it includes illegal or impermissible content, nor are we under any obligation to conduct any review. However, we respect the copyright interests of others. It is our policy not to permit materials we know infringes another party’s copyright to remain on our Service. If you believe any materials on our Service infringes a copyright, you should give us written notice. Your notice should at a minimum contain the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (c) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site; (d) information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted; (e) a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (f) a statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. All DMCA notices Should be sent to 2151 E Broadway Road, Suite 106, Tempe, AZ 85282.