

## **PART I -- THE SERVICE, AND THIS SERVICE AGREEMENT**

### **1. THE SERVICE**

The Service consists of (1) internet phone (VoIP) service and/or (2) wireless Internet access as indicated and agreed to on the attached Exhibit A for the term identified in Exhibit A.

### **2. MODIFICATIONS; RIGHTS OF CANCELLATION OR SUSPENSION**

#### **2.1 MODIFICATION OF THIS SERVICE AGREEMENT: NOTICES.**

Upon notice published over the Service, NextLink may at any time modify this Service Agreement, including, without limitation, pricing and billing terms. NextLink may, but is not required to, notify Subscriber by email, online via one of more of the websites within the NextLink Service or other electronic notice. In the event Subscriber does not agree to such changes or additions, then Subscriber must cancel the subscription and stop using the NextLink Service prior to the effective date of such modifications. Subscriber's continued use of the NextLink Service after the effective date of such modifications constitutes Subscriber's acceptance of same.

#### **2.2 MODIFICATION OF THE SERVICE**

NextLink may discontinue, add to or revise any or all aspects of the Service in its sole discretion and without notice, including access to support services, publications and any other products or services ancillary to the Service. In particular, NextLink specifically reserves the right in its sole discretion to modify, supplement, delete, discontinue or remove any software, file, publications, information, communication or other content appearing on or transmitted through the Service. NextLink may, among other things, (a) subject to NextLink's Statement on Privacy, make available to third parties information relating to NextLink or its subscribers, (b) withdraw, change, suspend or discontinue any functionality or feature of the NextLink Service, and (c) limit access to the Service to prevent abusive consumption and ensure fair access for all subscribers. In the event that NextLink determines to undertake any such change, NextLink may, but is not required to, notify Subscriber by email, online via one of more of the web sites within the NextLink Service or other electronic notice. In the event Subscriber does not agree to such changes, then Subscriber must cancel the subscription and stop using the NextLink Service prior to the effective date of such changes. Subscriber's continued use of the NextLink Service after the effective date of such changes or additions constitutes Subscriber's acceptance of such changes.

In addition, please note that NextLink may automatically check Subscriber's premise equipment and it may provide upgrades that will be automatically downloaded to Subscriber's system. In addition, NextLink may check the health and status of Subscriber's system to ensure that the configuration of Subscriber's equipment is optimized for use with NextLink.

#### **2.3 TERMINATION BY SUBSCRIBER**

In the event that NextLink modifies this Service Agreement, the Service or related pricing or billing terms, Subscriber may immediately terminate Subscriber's account and this Service Agreement. Subject to Subscriber's payment of the cancellation charges herein described, Subscriber may also do so at any other time and for any reason or for no reason upon thirty (30) days written notice. Subscriber must terminate this Agreement in accordance with the terms and conditions specified herein; failure to do so may delay or prevent NextLink from knowing that a termination was intended. In such event, Subscriber will continue to be liable under this Service Agreement for all fees and charges until such time as this Service Agreement has been properly terminated, or NextLink has acknowledged such termination in writing. In the event Subscriber cancels Subscriber's subscription to the NextLink Service prior to the expiration of the minimum commitment period specified for the applicable service plan, Subscriber may be subject to a cancellation fee of up to \$400.00.

#### **2.4 TERMINATION OR SUSPENSION BY NEXTLINK**

NextLink may immediately terminate Subscriber's account and this Service Agreement in the event of any breach of this Service Agreement by Subscriber or any user of Subscriber's account. NextLink reserves the right in its sole discretion to terminate Subscriber's account and this Service Agreement at any time or to suspend (with or without notice) or terminate access to or use of the Service, in whole or in part. In the event that NextLink either terminates or suspends Subscriber's account and/or this Service Agreement for reasons other than breach of this Service Agreement, then NextLink shall provide Subscriber thirty (30) days notice of such suspension or termination.

#### **2.5 CONTINUATION OF OBLIGATIONS**

Notwithstanding any cancellation or termination of this Service Agreement or any portion of your account, nor any suspension or termination of access to or use of the Service, Subscriber will remain responsible for any obligations accrued up to the date of such action, including payment of any charges that may be due as a result of or in connection with such action(s). Subscriber's payment and other obligations under this Service Agreement are not suspended or affected by a suspension of access to or use of the Service, in whole or in part, due to a violation (actual, threatened, or alleged) of this Service Agreement or of any law or legal obligation by Subscriber or any user of Subscriber's account.

### **3. WHO MAY USE THE SERVICE? - RESPONSIBILITY AND SUPERVISION**

#### **3.1 AGE AND ACCOUNT SETUP**

Subscriber represents that Subscriber is at least 18 years of age and has the right and ability to enter into this Service Agreement. Subscriber agrees that Subscriber is responsible for installing, establishing, setting up and verifying and maintaining the account, options, settings and other parameters under which the Service is used, including without limitation all related passwords and user identification information. These account functions may be performed only by a person at least 18 years of age, without exception.

### 3.2 INSTALLATION OF NEXTLINK EQUIPMENT

Subscriber acknowledges and agrees that NextLink or its designated service provider may be required to access Subscriber's premises or system in order to install and maintain the components necessary for Subscriber to access the NextLink Service. This may include opening Subscriber's computer to install, repair or replace equipment or install software on Subscriber's computer(s) at your location and installing a VoIP compatible phone(s). By accepting this Service Agreement, scheduling a service or installation visit and permitting NextLink or its service provider(s) to enter Subscriber's home or business, Subscriber hereby authorizes NextLink or its service provider(s) to access Subscriber's computer(s) for the purpose of installing, repairing or replacing the necessary components. **Neither NextLink nor its service provider(s) shall have any liability whatsoever for any losses resulting from installation, repair or other services, including without limitation damage to Subscriber's premises, loss of software, data or other information from Subscriber's computer(s).** This limitation does not apply to any damages arising from the gross negligence or willful misconduct of any installation or maintenance service provider. NextLink installs ground wire as a matter of course because the ground wire can protect electronic equipment and the premises from damage caused by electrical storms and lightning. NextLink, however, is not liable for Acts of God (i.e., lightning and fire) as these acts occur regardless of all reasonable precautions NextLink did or could take. Timeframes for installation, if any, are not guaranteed and may vary depending on the types of services requested and other factors. Subscriber further acknowledges and agrees that NextLink owns all equipment installed and provided in connection with NextLink's Service (including any VoIP telephones). Upon Termination of this Service Agreement, Subscriber is responsible for returning all NextLink equipment within fifteen (15) days of Termination.

### 3.3. SUBSCRIBER RESPONSIBILITY

Subscriber shall be responsible for all access to and use of the Service through Subscriber's account or password(s) and for any fees incurred for service, or for software or other merchandise purchased thereon, or any other expenses incurred in accordance with the terms of this Service Agreement. Except for items that are the subject of a bona fide contest, Subscriber promises to pay such amounts billed for such service, software, or merchandise and any related fees, taxes and charges. Permitted users of Subscriber's account are limited to those entities to whom Subscriber provides access through other agreements. Subscriber acknowledges that Subscriber is aware that areas accessible on or through the Service may contain material that is unsuitable for minors (persons under 18 years of age). Subscriber agrees to provide filtering software of the Service to limit access by minors of the Service through Subscriber's account.

## PART II -- PAYMENT

### 4. FEES AND PAYMENT

#### 4.1 FEES, TAXES AND OTHER CHARGES

Subscriber agrees to pay, in accordance with the provisions of the billing option Subscriber selected, any registration, activation or monthly fees, connect time charges, ISP service charges, minimum charges and other amounts charged to or incurred by Subscriber, or by users of Subscriber's account, at the rates in effect for the billing period in which those amounts are charged or incurred. Subscriber agrees to pay all applicable taxes related to Subscriber's use of the Service or the use of the Service by users of Subscriber's account. Information on charges and surcharges (if any) that are to be paid to NextLink and are incurred by Subscriber or by users of Subscriber's account will be made available to Subscriber on the NextLink website, and Subscriber agrees that this is sufficient notice for all purposes as to charges incurred, paid or to be paid to NextLink. NextLink reserves the right to increase fees, surcharges, monthly subscription fees or to institute new fees at any time upon thirty (30) days prior notice. Subscriber understands and acknowledges that Subscriber may not receive a bill in the mail for Subscriber's Service. Additional terms relating to pricing, billing and payment which are an integral part of this Service Agreement are set forth and available on the NextLink website and incorporated herein by reference.

#### 4.2 PAYMENT

Except where additional methods of payment are specifically required or permitted under applicable law or regulation or as otherwise agreed to by NextLink from time to time, Subscriber agrees that Subscriber will provide a major credit or charge card (e.g. MasterCard, Visa, American Express or Discover) that NextLink may charge for all Service fees or other amounts payable under this Service Agreement. Additionally, Subscriber agrees that NextLink may pre-charge Subscriber's monthly Service fee to the credit or charge card supplied by Subscriber during activation or subscription. With respect to such charges, the following authorization applies: Subscriber authorizes automatic credit or charge card billing by NextLink. Subscriber agrees that the charges described above will be billed to the credit or charge card that Subscriber has provided when you applied for the Service. Subscriber must provide current, complete and accurate information for Subscriber's billing account. Subscriber must promptly update all information in order to keep Subscriber's account current, complete and accurate (such as a change in billing address, credit card number or expiration date). If Subscriber fails to provide NextLink with any of the foregoing information, Subscriber agrees that NextLink may continue charging Subscriber for any Service provided under Subscriber's account. Subscriber agrees that all charges are considered valid unless disputed in writing within fifteen (15) days of the date Subscriber receives Subscriber's credit or charge card bill. Subscriber agrees that NextLink will not be responsible for any expenses that Subscriber may incur resulting from overdrawing Subscriber's bank account or exceeding Subscriber's credit limit as a result of an automatic charge made under this Service Agreement. If Subscriber thinks a charge is incorrect or Subscriber needs more information, Subscriber should contact NextLink's billing department. NextLink will make available to Subscriber a statement for each billing cycle showing payments, credit purchases and other charges. Payment of the outstanding balance is due in full each month. If Subscriber's entire amount of payment is not received by NextLink before the next statement is issued, Subscriber will be assessed a late payment charge of \$10 for Residential, \$35 for Business. NextLink may assign unpaid late balances to a collection agency for appropriate action. You will be charged a \$25 nonsufficient funds fee for any check or other instrument tendered by you and returned unpaid by a financial institution for any reason. Furthermore, if NextLink does not receive payment from Subscriber before Subscriber's next statement is issued, NextLink has the right to suspend or cancel Subscriber's subscription to the Service without notice. NextLink may, but is not required to, accept partial payments from Subscriber. If partial payments are made, they will be applied to statements starting with the oldest outstanding statement. If Subscriber sends NextLink checks or money orders marked "payment in full," or otherwise labeled with restrictive endorsements, NextLink can, but is not required to, accept them without

losing any of NextLink's rights to collect all amounts owed by Subscriber under this Service Agreement. In the case of late payment or non-payment for any of the NextLink Services ordered by Subscriber or any of the charges stated herein, Subscriber understands and agrees that NextLink may report such late payment or non-payment to the appropriate credit-reporting agencies. If NextLink chooses to use any collection agency or attorney to collect money that Subscriber owes NextLink, or to assert any other right which NextLink may have against Subscriber, Subscriber agrees to pay the reasonable costs of collection or other action including, but not limited to, the costs of a collection agency, reasonable attorney's fees and court costs, as provided by applicable law.

#### **4.3 COMMENCEMENT AND DURATION OF SUBSCRIBERSHIP FEES**

Subscriber acknowledges that, subject to any exceptions granted by NextLink, a monthly fee will apply for each and every month, or portion thereof, that Subscriber is a Subscriber. Subscriber's account will continue until Subscriber cancels the account in accordance with the method or methods specified by NextLink unless otherwise terminated in accordance with this Service Agreement. As stated above, Subscriber may cancel Subscriber's account at any time subject to payment of the cancellation fee, if applicable. The monthly subscription fee shall cease to apply for any months after the billing month in which Subscriber cancels or terminates Subscriber's account in accordance with the terms and conditions stated herein.

#### **4.4 REACTIVATION**

If Subscriber's service is inactivated because Subscriber did not submit payment on time or for any other reason, in addition to payment of past due amounts, NextLink may require a deposit before reactivating Subscriber's NextLink Service which shall not exceed one (1) year's subscription fees. Amounts deposited by Subscriber will appear on Subscriber's statement as a credit, and service charges and other fees will be invoiced as set forth above. Any unpaid amounts will be deducted each billing cycle from the credit amount. Credit amounts shall not earn or accrue interest. If Subscriber's NextLink service is inactive for any reason, including at Subscriber's request or because of Subscriber's failure to pay past due amounts, in order to reactivate the service, Subscriber agrees to pay a reactivation fee in accordance with NextLink's then-current rates. In addition, Subscriber must bring Subscriber's account up to date by making payment in full of any outstanding balance, fees and charges.

#### **4.5 ANCILLARY EQUIPMENT, SERVICES**

It is Subscriber's responsibility, at Subscriber's own expense, to obtain, maintain, and operate suitable and fully compatible computer equipment to access the Service. Subscriber acknowledges that certain Subscriber computer equipment may have been acquired by Subscriber separate and apart from this Service Agreement. Subscriber is solely responsible for maintaining such Subscriber computer equipment. NextLink makes no representation or warranties pursuant to this Service Agreement, either express or implied, regarding such Subscriber computer equipment (although you may have limited warranties under a separate purchase agreement).

### **PART III -- PERMITTED USE AND RESTRICTIONS ON USE**

#### **5. SOFTWARE LICENSE**

Subject to the terms of this Service Agreement, NextLink grants to Subscriber a personal, non-exclusive, non-assignable and nontransferable license to use and display the software provided by or on behalf of NextLink ("Software") only for purposes of accessing the Service on any machine(s) on which Subscriber is the primary user or which Subscriber authorizes for use. Unauthorized copying of the Software, including software that has been modified, merged or included with the Software, or the written materials associated therewith is expressly forbidden. Subscriber may not sublicense, assign or transfer this license or the Software except as permitted by NextLink. Any attempt to sublicense, assign or transfer any of the rights, duties or obligations under this license is void. Subscriber agrees that Subscriber shall not copy or duplicate or permit anyone else to copy or duplicate, any part of the Software, or create or attempt to create, or permit others to create or attempt to create, by reverse engineering or otherwise, the source programs or any part thereof from the object programs or from other information made available under this Service Agreement.

#### **6. SPECIFIC RESTRICTIONS ON USE OF THE SERVICE**

##### **6.1 PROHIBITED CONDUCT**

Subscriber agrees not to use the Service as follows: (a) for any unlawful, improper or criminal purpose or activity; (b) to post or transmit information or communications that, whether explicitly stated, implied or suggested, are obscene, indecent, pornographic, sadistic, cruel or racist in content, or of a sexually explicit or graphic nature, or which espouses, promotes or incites bigotry, hatred or racism, or which might be legally actionable for any reason; (c) to bombard individuals or newsgroups with uninvited communications, data or information, or other similar activities, including but not limited to "spamming," "flaming" or denial or distributed denial of service attacks; (d) to interfere with another person's usage or enjoyment of this Service; (e) to transmit information or communications that are defamatory, fraudulent, obscene or deceptive, including but not limited to scams such as "make-money-fast" schemes or "pyramid/chain" letters; (f) to damage the name or reputation of NextLink or its respective parents, affiliates and subsidiaries or any third parties; (g) to transmit confidential or proprietary information, except solely at your own risk; (h) to violate NextLink's or any third party's copyright, trademark, proprietary or other intellectual property rights, including trade secret rights; (i) to generate excessive amounts of Internet traffic, as determined in our sole discretion, or to disrupt Internet user groups or VoIP use by others; (j) to engage in activities designed to or having the effect of degrading or denying Service to NextLink users or others, including activities that compromise a server, router, circuit or software; (k) to use your NextLink account for the purpose of operating a call center of any type; (l) to use the Service or the Internet in a manner intended to threaten, harass or intimidate others; (m) to use the Service to disrupt the normal flow of online dialogue, (n) to use the Service to violate any operating rule, policy or guideline of any other online services provider or interactive service; (o) to attempt to subvert, or to aid third parties to subvert, the security of any computer facility or system connected to the Internet; (p) to impersonate any person or otherwise use a false name while using the Service; (q) to install "auto-responders," "cancel-bots" or similar automated or manual routines which generate excessive amounts of Internet traffic or disrupt Internet user groups or VoIP use by others; (r) to make false or unverified complaints

against any NextLink subscriber, or otherwise abuse any of our complaint response procedures; (s) to export software or any information in violation of U.S. export laws; or (t) to use the Service in contravention of the limitations of the pricing plan Subscriber has chosen.

#### **6.2 NEXTLINK COPYRIGHT INFRINGEMENT & DIGITAL MILLENNIUM COPYRIGHT ACT**

You are prohibited from infringing, publishing, submitting, copying, uploading, downloading, posting, transmitting, reproducing, or distributing software, video or audio content, or any other material that is protected by copyright, trademark, patent, trade secret, any other type of intellectual property rights, trademark laws (by rights of privacy or publicity) or other proprietary right of any party unless you own or control the rights thereto or have received all necessary consent to do the same. This prohibition includes the use of any material or information including images or photographs that are made available through the Site or Service(s). NextLink and AMG Technology Investment Group, LLC assume no responsibility, and you assume all risks, regarding the determination of whether material is in the public domain, or may otherwise be used by you for such purposes. Repeat Infringer Policy In accordance with the Digital Millennium Copyright Act of 1998 ("DMCA"), NextLink Broadband's policy is to terminate, in appropriate circumstances, the NextLink Broadband's Internet Service access of any subscriber or account holder who is a repeat infringer. The subscriber will be designated a repeat infringer if they have violated this policy three (3) times. If you believe that a NextLink Broadband subscriber or account holder has engaged in repeated infringement of your copyrighted materials in connection with NextLink Broadband's Internet Service, please provide our designated copyright agent (see below for more details) with information sufficient to show that the subscriber or account holder is a copyright infringer and that appropriate circumstances exist for NextLink Broadband's termination of such subscriber or account holder. "Three Strike" Policy NextLink Broadband maintains a graduated "Three Strike" policy. If a subscriber is found in violation of this policy, they will be subject to the following: • First Offense – An infringement case will be created and the subscriber will be

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notified via email of the offense as well as forwarded the DMCA takedown notice and the NextLink DMCA Copyright Policy. NextLink Broadband Bundled Service Agreement for Residential and Business - Page 6 of 10 • Second Offense – Notifications are the same as the above. In addition, the subscriber will be notified via phone and be required to acknowledge the offense via phone within 5 business days or face suspension of service. • Third Offense – Customers will be terminated NextLink respects the intellectual property rights of others. If you believe that your work has been copied and has been posted, stored or transmitted to the Site in a way that constitutes copyright infringement, please submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing NextLink's Copyright Agent the following written information: (a) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (b) a description of the copyrighted work that you claim has been infringed upon; (c) a specific description of where the material that you claim is infringing is located on the Site; (d) your address, telephone number, and e-mail address; (e) a statement by you that you have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; (f) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

DMCA notices and counter-notices, and repeat infringer information, should be delivered to NextLink Broadband's designated copyright agent:

NextLink Infringement / Abuse Agent NextLink  
2132 Tin Top Rd Suite 200  
Weatherford, TX 76087  
682-333-0042  
abuse@team.nxlink.com

#### **6.3 NEXTLINK FAIR ACCESS POLICY**

To ensure equal VoIP and wireless access for all subscribers, NextLink maintains a running average fair access policy. Fair access establishes an equitable balance in internet access across the NextLink Services by service plan for all NextLink customers regardless of their frequency of use or volume of traffic. To ensure this equity, Subscriber may experience some temporary throughput limitations. NextLink's internet access is not guaranteed. This policy applies to all service plans including "Unlimited" plans where customers' use of the service is not limited to a specific number of hours per month.

#### **6.4 ILLEGAL OR COMPETITIVE PURPOSES**

Subscriber agrees not to use the Service or any of its elements or related facilities or capabilities to conduct any business or activity, or solicit the performance of any activity, which is prohibited by or would violate any applicable law, rule, regulation or legal obligation.

#### **6.5 COMPLIANCE WITH LAWS**

Subscriber agrees to comply with all applicable laws, rules and regulations in connection with the Service, Subscriber's use of the Service and this Service Agreement.

### **PART IV -- GRANT OF IMPORTANT RIGHTS BY YOU TO NEXTLINK, AND IMPORTANT DISCLAIMERS, ACKNOWLEDGMENTS AND OBLIGATIONS**

#### **7. COPYRIGHT AND LICENSES**

NextLink reserves all copyrights and other rights in and to any content available through the Service which is identified as, claimed by NextLink as, or known by you to be, proprietary to NextLink or our licensors.

## **8. NO ENDORSEMENT**

NextLink does not endorse or in any way vouch for the accuracy, completeness, truthfulness or reliability of any service, opinion, advice, communication, information or other content on or made available through the Service. None of such content should be construed or understood to constitute or reflect the views or approval of NextLink or any of its subsidiaries or affiliates. NextLink does not recommend that such content be relied on for reaching important decisions or conclusions without appropriate verification and, as appropriate, professional advice.

## **9. INTERNET**

Subscriber acknowledges that Internet sites, and use of the Internet, might consist of, include and/or provide access to images, sound, messages, text, services or other content and material that may be unsuitable for minors and that may be objectionable to many adults. Subscriber acknowledges that NextLink is not responsible for any such content or material and agree that access to same through use of the service is at Subscriber's sole risk. The reliability, availability, legality, performance and other aspects of resources accessed through the Internet are beyond NextLink's reasonable control and are not in any way warranted or supported by NextLink or its third party contractors. Subscriber acknowledges that safeguards relative to copyright, ownership, appropriateness, reliability, legality and integrity of content may be entirely lacking with respect to the Internet and content accessible through it. Subscriber confirms that Subscriber assumes all risks and liability of any use of the Internet through Subscriber's account, including Subscriber's continuous compliance with the Service Agreement.

## **10. USE AND CONTROL OF INFORMATION; MEMBER COMMUNICATION; ADS**

NextLink may, without obligation, liability or notice, except to the extent prohibited by applicable law, distribute, loan, sell or otherwise share with other persons or entities user lists and aggregate information. Aggregate information includes information constituting or descriptive of demographic information, habits, usage patterns, preferences, survey data or other descriptive or related data which do not rely on providing to recipients the identity of any particular user of the Service. This shall not be construed to limit NextLink's use of other information not addressed in this Section 10. NextLink will be free, in its reasonable good faith discretion and without notice, to provide Subscriber and user information and records to the courts, law enforcement agencies or others involved in prosecuting claims or investigations for conduct or conditions alleged or believed to be illegal or to violate or threaten the rights of any person or entity, and to maintain and use internally such information and records. Information generated by, or in connection with, our administration of the Service shall be and remain our exclusive property. NextLink may also from time to time provide online, telefax, telephone, email, mail and other communications to Subscriber and other users on matters pertaining to the Service, its features, its sponsors or its use without compensation to them or reimbursement of costs for doing so, but NextLink shall do so reasonably and in good faith. Subscriber acknowledges that communications with NextLink, NextLink's representatives and NextLink's contractors may be monitored or reviewed for quality control and other reasonable business purposes. Subscriber also acknowledges that advertising and promotion may occur on the Service and that neither Subscriber nor any other user shall in any event have any claim with respect to any proceeds from such activities.

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## **11. DISCLAIMER OF WARRANTIES AND EXCLUSION OF LIABILITY**

### **11.1 DISCLAIMER OF WARRANTIES, LIABILITY AND RESPONSIBILITY**

Subscriber expressly agrees that use of the Service is at Subscriber's sole risk. Neither NextLink nor any of its information or content providers, service providers, licensors, employees or agents warrant that the service will be uninterrupted or error free; nor do NextLink or any of its information or content providers, service providers, licensors, employees or agents make any warranty as to the results obtained from use of the Service, including any minimum upload or download speeds. The service is distributed on an "as is" and "as available" basis without warranties of any kind, either express or implied, including but not limited to warranties of title or implied warranties of merchantability or fitness for a particular purpose or otherwise, except for those warranties, if any, which are implied by, and incapable of exclusion, restriction or modification under, the laws applicable to this Service Agreement. NextLink expressly disclaims any representation or warranty that the NextLink Service will be error free, secure or uninterrupted or operate at any minimum speed. No oral advice or written information given by NextLink, its employees, dealers, and licensors or the like shall create a warranty, nor shall Subscriber rely on any such information or advice.

In particular, because NextLink may provide Subscriber with electronic access to the content available on the Service, which content may be originated by independent publishers and/or providers and is not augmented by NextLink, NextLink cannot and does not warrant the accuracy of any of the information as originated by said independent publishers and/or providers, and NextLink shall not be liable in any manner whatsoever for any errors, omissions, or inaccuracies relating thereto. If defective, Subscriber - not NextLink, its dealers, distributors, agents, employees or any third-party content provider - assume the consequences resulting thereof.

No oral or written information or advice given by NextLink, its dealers, distributors, agents, employees or any third-party content provider, shall create any warranty in or to the NextLink Service or the content, and Subscriber may not rely on any such information or advice. This warranty gives Subscriber specific legal rights. Subscriber may have other rights, which vary from state to state.

### **11.2 LIMITATION OF LIABILITY**

To the maximum extent permitted by law, neither NextLink nor any of its information or content providers, service providers, licensors, employees or agents shall be liable for any direct, indirect, incidental, special, punitive or consequential damages arising out of use of the Service or inability to use the Service or out of any breach of any representation or warranty. Without in any way limiting the foregoing, if for any reason, by operation of law or otherwise, any portion of the foregoing limitation of liability shall be voided, then in such event NextLink's maximum, sole, and exclusive liability, and the liability of its dealers, distributors, agents, employees or third party content providers, if any, shall be limited to general money damages in an amount not to exceed the total amount actually paid to NextLink by Subscriber for Services furnished under this Service Agreement

during and for a period of time commencing upon the occurrence of such error, defect or failure and ceasing upon the discovery of same, in whole or in part; provided, however, that in no event shall such period of time exceed the twelve (12) month period immediately preceding the date which such error, defect or failure is first discovered in whole or in part.

### 11.3 APPLICABILITY OF PROVISIONS TO CIRCUMSTANCES INVOLVING OTHERS

Subscriber expressly acknowledges that the provisions of this Section 11 shall also apply to any and all claims relating to "acquired material" and any other content available through the Service. Subscriber agrees that Subscriber will not in any way hold NextLink responsible for any selection or retention of, or the acts or omissions of, third parties in connection with the Service (including those with whom NextLink may contract to operate various areas on or features of the Service).

### 11.4 FULL APPLICABILITY

The foregoing exclusions or limitations of liability apply regardless of any allegation or finding that a remedy failed its essential purpose, regardless of the form of action or theory of liability (including, without limitation, negligence) and even if NextLink or others were advised or aware of the possibility or likelihood of such damages or liability.

## 12. INDEMNITY

**SUBSCRIBER AGREES TO INDEMNIFY NEXTLINK AGAINST ALL CLAIMS, LIABILITY, DAMAGES, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES, ARISING OUT OF OR RELATED TO ANY AND ALL USE OF THE SERVICES. THIS INCLUDES, WITHOUT LIMITATION, RESPONSIBILITY FOR ALL SUCH CONSEQUENCES OF SUBSCRIBER (OR THAT OF ANY USER OF SUBSCRIBER'S ACCOUNT) VIOLATION OF THIS SERVICE AGREEMENT OR PLACEMENT ON OR OVER THE SERVICE, OR RETRIEVAL FROM OR THROUGH SAME, OF ANY SOFTWARE, FILE, INFORMATION, COMMUNICATION OR OTHER CONTENT.**

## 13. THIRD PARTY BENEFICIARIES

The provisions of Sections 11 and 12 are for the benefit of NextLink and its respective contractors, information or content providers, service providers, licensors, employees and agents; and each shall have the right to assert and enforce such provisions directly on its own behalf.

## 14. LIABILITY FOR UNAUTHORIZED USE

Subscriber agrees to notify NextLink immediately after Subscriber sells, gives away or otherwise transfers Subscriber's NextLink equipment to anyone else. Subscriber is considered the registered recipient of the NextLink Services until NextLink receives such notice, and Subscriber will be liable for any charges or fees incurred by the use of Subscriber's NextLink equipment by anyone else up to the time that NextLink receives Subscriber's notice, unless otherwise provided by state law. Subscriber may not assign or transfer Subscriber's service without NextLink's written consent. If Subscriber does, NextLink may inactivate Subscriber's service. If Subscriber's NextLink equipment is stolen or otherwise removed from Subscriber's premises without Subscriber's authorization, Subscriber must notify NextLink immediately, or Subscriber may be liable for payment for unauthorized use of Subscriber's NextLink system. Subscriber will not be liable for unauthorized use after NextLink has received Subscriber's notification.

## 15. PROPRIETARY RIGHTS

NextLink and/or third party content providers own all rights, title and interest to certain content provided by the Service, and Subscriber may not copy, distribute, transmit or publish in any form, including printed, electronic, digitized, audio or otherwise, or modify all or any portion of such content without the prior written consent of the copyright owner; provided, however, that Subscriber may store one (1) copy of the content on Subscriber's computer(s) for Subscriber's personal use for a period not to exceed thirty (30) calendar days. All copyright or other proprietary rights notices contained in or associated with the content must be preserved in or on any

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copies made of such material. The placement of any proprietary material in any public posting area or any software library, without the consent of the owner, is in violation of this Service Agreement.

## **PART V – GENERAL**

### 16. LIMITS ON TRANSFERS; OTHER LIMITS

Unless otherwise agreed in writing, Subscriber's rights to use the Service, or to designate other users of Subscriber's account, is not transferable and is subject to any limits established by NextLink, or by Subscriber's credit card company or other billing institution, as applicable.

### 17. CHOICE OF LAW

This Service Agreement is made in the State of Texas. This Service Agreement and all of the parties respective rights and duties in connection herewith, including, without limitation, claims for violation of state consumer protection laws, unfair competition laws and any claims in tort, shall be governed by and construed in accordance with the laws of the State of Texas, in the United States.

### 18. CONSTRUCTION AND DELEGATION

Neither the course of conduct between parties nor trade practices shall act to modify the provisions of this Service Agreement. NextLink may authorize or allow its contractors and other third parties to provide to services necessary or related to making the Service available, and to perform obligations and exercise NextLink's rights under this Service Agreement, and NextLink may collect payment on their behalf, if applicable. The provisions of any Sections of this Service Agreement which by their nature should continue shall survive any termination of this Service Agreement.

#### **19. MISCELLANEOUS**

Where notification by NextLink is contemplated by or related to this Service Agreement, notice may be made by any reasonable means, including but not limited to email or publication over the Service. If any term of this Service Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable it shall be construed in such a way as to render such term enforceable, while still giving as much effect as possible to the original intentions of such term. If this cannot be done, and the entire term is invalid, illegal or unenforceable and cannot be so repaired, then the term shall be considered to be stricken from this Service Agreement as if it had not been included from the beginning. In any such case, the balance of this Service Agreement shall remain in effect in accordance with its remaining terms, notwithstanding such invalid, illegal or unenforceable term. NextLink may enforce or decline to enforce any or all of the terms of this Service Agreement in its sole discretion. In no event shall NextLink be required to explain, comment on, suffer liability for or forfeit any right or discretion based on the enforcement, non-enforcement or consistency of enforcement of such terms. Captions used in this document are for convenience only and shall not be considered a part of this Service Agreement or be used to construe its terms or meaning.

#### **20. ASSIGNMENT OF ACCOUNT**

NextLink may sell, assign or transfer Subscriber's account to a third party without notice to Subscriber. In the absence of a notice of such sale or transfer, Subscriber must continue to make all required payments to NextLink in accordance with Subscriber's billing statement.

#### **21. RENEWAL**

This Agreement shall automatically renew for successive one (1) year terms unless either party gives ninety (90) days written notice of their intent to terminate the Agreement prior to the end of the one (1) year term.

#### **22. NOTICE**

All notices required pursuant to this Agreement shall be sent via email to [billing@team.nxlink.com](mailto:billing@team.nxlink.com).

#### **23. 911 SERVICE AND ALARM SYSTEM NOTICE**

NextLink's VoIP service does not support traditional 911 access to emergency services. As such, it is extremely important that customer provide NextLink the correct address where the equipment and services will be located. Customer must also update these addresses if they change. When Subscriber dials 911 using NextLink's VoIP service, customer will be routed to the general or administrative telephone number for the Public Safety Awareness Point (PSAP) or local emergency service provider, and will not necessarily be routed to the 911 dispatchers who are specifically designed to receive incoming 911 calls using traditional 911 dialing. Additionally, some PSAPs may from time to time refuse to accept calls from VoIP providers such as NextLink. PSAPs may not be able to determine the location of the 911 call so customer understands customer may need to provide the physical location of the emergency. Customer also understands and acknowledges that if customer's Internet service experiences an outage as a result of a power outage or other reason, NextLink's VoIP service will not work for 911 calls. Customer is encouraged to use a cellular phone to call 911 if there is an Internet outage. Customer should also notify any employees or guests that NextLink's VoIP 911 service may not work during an Internet outage and the employees or guests should use a cellular phone to call 911. Customers who have an alarm system connected to NextLink's VoIP service may also experience outages if the Internet connection is down. As such, NextLink encourages customers to use a cellular phone based alarm system.

#### **24. ENTIRE AGREEMENT**

This Service Agreement, including Exhibits, constitutes the entire and only agreement with respect to the subject matter hereof between Subscriber and NextLink, applicable also to all users of Subscriber's account. This Service Agreement supersedes all representations, proposals, inducements, assurances, promises, agreements and other communications with respect to the subject matter hereof, except as expressly set forth in this document. By executing this Service Agreement, the parties agree to the terms and conditions of this Service Agreement. This Service Agreement can be amended only in the manner expressly provided for in this Service Agreement.