

NEXTLEVEL STANDARD TERMS AND CONDITIONS

1. Introduction.

NextLevel Internet, Inc. ("NextLevel") is delighted to provide you the *NextLevelVoice*™ and other *NextLevel* Services and enhancements ordered on the Service Order Form (the "SOF"). The word "Agreement" includes and incorporates the SOF, the Standard Terms and Conditions, and any *NextLevel* Service Order Addendums that you may sign at any time. As used in this Agreement, the words "we", "our" and "us" refer to *NextLevel* and the words "you," and "your" refer to the entity that has signed this Agreement with us. The word "Services" includes and incorporates *NextLevel Internet*™ and *NextLevelVoice*™ communications packages, enhancements and other business services ordered on the SOF and any additional services you may order or obtain from *NextLevel* at any time that are not expressly governed by another agreement you sign with us. The following Terms and Conditions govern all aspects of your purchase, including use and termination of all Services, as defined in this section. Please review carefully the SOF and confirm the Services ordered on the SOF. These Terms and Conditions are subject to Early Termination Charges and other fees.

2. Installation Commitment.

i. We will provide to you the Services identified on the SOF for the "Service Period" and "Monthly Fee" and "Service Address" as defined in the SOF. You are responsible for the "Install Fee" and "Setup Fee" as defined in the SOF for each applicable Service. We will make the *NextLevel* Services available to you at the Service Address within 40 business days from the date you sign this Agreement so long as we have not been delayed as described below. If *NextLevel* is solely responsible for any delays in Service availability beyond that 40 business day period, we will credit any Install Fee or Setup Fee previously paid for that Service. To receive installation credit, first you must request the credit in writing through email to billing@nextlevelinternet.com within 30 days of the date of your first invoice. No credit will be issued, however, if we were delayed because of: (i) your delay in providing needed telco/local loop facilities or connections; or (ii) your failure to make the Service Address available to us within one (1) business day of your signing this Agreement; or (iii) your faulty or incomplete facilities or equipment; or (iv) your request for delay, failure to promptly respond to our requests or timely supply any requested or necessary information; or (v) your negligence or omissions; or (vi) your failure to meet Agreement approval terms; or (vii) any special installation circumstances we identified to you at the time of sale; or (viii) events or circumstances beyond our control, such as "Events of Force Majeure" (defined in Section 18 below); or (ix) inability to acquire and maintain commercially reasonable transport and other facilities; or (x) any delay pursuant to federal or state action. Further, no installation credit will be payable if your Services require special setup or installation including the delay in the transfer or porting of a phone number for any of the Services at your Service Address, whether or not identified at the time of sale. Should special setup or installation be required, we may terminate this Agreement or cancel any Services without any obligation or liability to you.

ii. You may request in writing the modification of Services ordered on the SOF. This includes changes to your requested installation date. *NextLevel* reserves the right to assess an order modification fee for changes that are accepted and also to limit the number of requests to delay an installation date. You may also request an expedited installation date. If accepted, *NextLevel* reserves the right to assess an expedite fee. In addition, *NextLevel* may bill you for any third party charges it incurs in order to complete your request to modify or expedite Services.

3. Equipment.

i. To provide *NextLevel* Services, we may install equipment at your Service Address, which remains our sole property at all times and shall not be considered customer-premises equipment. Examples of such equipment include routers, switches, firewalls, and digital phones. You agree to comply with all instructions and requirements regarding the use and/or care of our equipment, and to take reasonable measures to protect our equipment at all times. You will provide a secure, air-conditioned space to house the equipment and sufficient electricity (with certified earth ground) to operate the equipment. You agree to pay us the replacement value of any lost, stolen, damaged or unreturned equipment. We will replace any of our equipment that does not perform as specified, at no charge to you, unless we determine, in our sole discretion, that you are directly or indirectly responsible for *NextLevel* equipment failure.

ii. You should also know that the installation, operation, maintenance, repair or removal of any software, program, or other hardware related to *NextLevel* Services (the "Services-Related Products") on your computer(s), network(s) or other hardware may result in service outage, loss or damage to that equipment or any data, information or files on your equipment. You agree to be solely responsible for all data and software back up and to otherwise protect your computer and network data, information and files. You assume all responsibility for impacts, loss or damage to your computer or network hardware, data, information, files, peripherals, or Services-Related Products associated with installing, operating or removing any Services-Related Products. Any warranty covering your computer, network or other equipment may become void when you open that computer or equipment to install any Services-Related Products, whether or not you elect to install and run any of those Services-Related Products. We do not commit or warrant that your installation or use of any Services-Related Products will permit you to access, operate, or use any Service.

4. Return of Equipment.

Upon termination of Services, you must return equipment to *NextLevel* at your expense within 15 days of termination. *NextLevel* will provide you with return instructions. You must deliver equipment to *NextLevel* in the same condition as it was when first delivered to you, normal wear and tear excepted, and give *NextLevel* written notice of such return. If equipment is not returned as such, or not returned, you will be responsible for 100% of the list price for the unreturned equipment. *NextLevel* may invoice and collect from you all charges due under this section as a single amount. You may not sell or transfer title to any equipment without the express written consent of *NextLevel*. Any attempted sale in violation hereof shall be null and void. In addition, you acknowledge that any unauthorized sale may result in the immediate voiding of any warranties that may have been passed through to you.

5. Network Availability Commitment.

i. We will use commercially reasonable efforts to make our *NextLevel* IP "Network" (defined below) available to you at all times, subject to certain limitations described in this Agreement (the "Network Availability Commitment"). For purposes of this Network Availability Commitment, the *NextLevel* IP Network ("Network") means the integrated access device, local access loop, aggregation router, connectivity to the core network, and core network components up to the handoff to either the Internet peering point (for Internet packets) or the handoff to local, long distance or other voice Services provider for phone service traffic.

ii. A Network outage occurs when there is total "Loss of Service" (defined below) for more than 60 consecutive minutes per occurrence. "Loss of Service" means that *NextLevel* is unable to transmit IP packets on your behalf, such that you are unable to communicate with or access any other Internet Service

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Providers via the IP transmission protocol or unable to communicate with or access any other telecommunications providers via the Public Switched Telephone Network, as a result of the failure of *NextLevel* facilities, equipment, or personnel used to provide the *NextLevel Internet*[™], or *NextLevelVoice*[™] Services.

iii. The Network Availability Commitment in this Section 5 does not cover or apply to (a) Services activation or any Loss of Service caused by our maintenance of the system or Network; or (b) problems or issues relating to your equipment at the Service Address, including, but not limited to your Local Area Network, your phone equipment (including cables, PBX and associated cards), routine maintenance events, outages or disruptions caused by you either directly or indirectly, interconnections to or from and connectivity within other Local Exchange Carriers' networks (for example, calls to certain numbers or area codes), subsequent voice carriers' networks, interconnections to or from and connectivity within other Internet Service Provider networks, degraded or slow Services, and Events of Force Majeure. *NextLevel* reserves the right to change or modify the terms or conditions of the Network Availability Commitment at any time by notice to you.

iv. You are eligible for a full day's credit of 1/30th of the *NextLevel Internet*[™] or *NextLevelVoice*[™] communications package recurring Monthly Fee (excluding any fees for additional Services) (the "Daily Credit") for each full 60 minutes that you experience a covered Network outage for that Service after you have reported it to our technical support (support@nextlevelinternet.com or 1-858-836-0700) ("Technical Support") as further described in Section 5; however, you may receive: (a) a maximum of 5 Daily Credits for covered Network outages in any 24-hour period starting from when you reported it to us; and (b) no more than 30 Daily Credits for covered Network outages in any calendar month. You are eligible to receive daily credit only as to the *NextLevel Internet*[™] or *NextLevelVoice*[™] Service for which you experienced a covered Network outage.

6. Credit Limits and Reporting Procedures.

i. To be eligible for the Network Availability Commitment, you first must notify our Technical Support immediately when you experience a Network outage or Loss of Service. Our Technical Support staff will investigate the reported outage and assign a trouble ticket number.

ii. For purposes of determining the duration of a Network outage, a Network outage begins when you notify Technical Support and ends when *NextLevel's* Technical Support confirms that Services have been re-established. You must request a credit by email to billing@nextlevelinternet.com within 7 days of the end of the calendar month in which the Network outage occurred. Credits do not include any applicable taxes or other governmental charges described in Section 7.

iii. Your exclusive remedy or recovery for any Loss of Service or Network outages under the Network Availability Commitment or this Agreement, or other damages arising out of or related to the unavailability of the Services, shall not exceed the amount of the credit described in Sections 5.4 and this Section 6, or, if applicable, your right to terminate the *NextLevel Internet*[™] or *NextLevelVoice*[™] Service for which you experienced a covered Network outage as described in Section 9.3 below. All Network Availability Commitment credit requests are subject to *NextLevel's* review and verification. You must be current on all payments (*i.e.*, no balance older than 30 days) in order to receive credit under the Network Availability Commitment. Credits will appear within two (2) billing cycles after credit approval.

7. Payment.

i. Your Monthly Fee and other charges begin on the date when the Services are first available for your use. This date is called your Service start date and marks the beginning of your Service Period. Each Install Fee and Setup Fee for *NextLevel Internet*[™]

or *NextLevelVoice*[™] Services is due prior to completion of installation. Even if someone other than you uses or shares your Service Address or the *NextLevel* Services, you are responsible for all Monthly Fees and other charges invoiced for the Service Address and Services. *NextLevel* is not obligated to invoice or provide Services to anyone other than you.

ii. Each month, we will send an electronic invoice that will include all recurring, fixed Monthly Fees and charges billed one month in advance. YOU AGREE TO PAY THE TOTAL AMOUNT OF EACH INVOICE BY THE INVOICE DUE DATE SHOWN ON THAT INVOICE. Payment terms are net 15 from invoice date. To dispute the amount or accuracy of any invoice, you must notify *NextLevel* in writing no later than the due date of that invoice detailing the disputed charges. *NextLevel* will not issue credits for any charges that are not disputed in writing by the due date of the first invoice containing the disputed charges. You must pay any charge or amount that you do not properly dispute by the due date of the first invoice for those charges, without exception. If, after investigation, *NextLevel* determines that a refund is due, we will credit the amount of the incorrect items on a subsequent invoice. Upon receipt of notice from *NextLevel* that the disputed charges are correct, all past due amounts must be paid, in addition to any late payment charges described in Section 7.3.

iii. All payments must be in U.S. dollars. If you do not pay all charges when due under this Agreement, a late payment fee will be assessed on the unpaid amounts until paid at the greater of: (a) 1½ % (one and one half percent) interest per month on the unpaid amounts until paid; or (b) \$25. You are also responsible for all other costs and legal fees incurred in collecting all unpaid amounts, unless otherwise ordered by the court in any action to collect those unpaid amounts. *NextLevel* reserves the right to assess a \$35 fee for any check returned for insufficient funds or not paid when presented for payment.

iv. *NextLevel* takes into consideration your satisfactory credit standing, timely payment of all charges under this Agreement, and general payment record when providing the Services under this Agreement. You agree that we may obtain credit reports and other information about you from credit reporting agencies and other sources at any time during, or in anticipation of, this Agreement. You agree to provide a deposit as a guarantee of payments under this Agreement or to increase the amount of any prior deposit should we find your credit standing, financial circumstances or payment history unsatisfactory at any time or if your account incurs excessive usage charges. The amount of the deposit will be in our sole discretion. *NextLevel* reserves the right to apply a deposit amount to any past due charges under this Agreement, with or without notice to you. You also agree to re-deposit the amount so applied, promptly at our request. Additionally, *NextLevel* reserves the right to require you to subscribe to an automated payment plan (credit card or automatic bank withdrawal) if you have a balance that is more than 60 days past due. We may terminate your Services without notice to you as described in Section 9.4 below.

v. In addition to the charges for your *NextLevel* Services, you are responsible for all federal, state and local sales, use and excise taxes and any new or increased fees, assessments, taxes or other charges for the Services, including any universal service fund charges, collect call charges and any other charges that may be billed to you after your Service end date. You are also responsible for any charges from third parties that arise when you use your phone number as a billing mechanism for third-party services (such as 900 or other information charges). Should you request any third-party services, you agree that we may release your name and billing information to that third party so that it can bill you directly for those services.

8. Responsibilities.

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In addition to your other responsibilities under this Agreement, you agree that you and anyone using the Services will: (i) upon request, take all actions necessary in order to install and activate the Services; (ii) provide adequate facilities, including all required cabling, inside wiring, conduit, power, and any such related materials for demarcation extensions from the MPOE to your chosen circuit termination location, to house and operate our *NextLevel Internet™*, *NextLevelVoice™*, or any other *NextLevel* equipment; (iii) not resell the Services to any third party without prior written approval; (iv) comply with *NextLevel's* Acceptable Use Policy described in Section 24 below; (v) comply with all federal, state, and local laws, rules, regulations and tariffs that apply to the Services or this Agreement; (vi) be solely responsible to establish and maintain security measures (including, without limitation, codes, passwords or other features) necessary to restrict access to your computers, servers or other equipment through the Services; (vii) be solely responsible for all fraudulent, unauthorized, illegal or improper use of the Services by persons accessing those Services through your facilities, equipment or Service Address; and (viii) authorize and identify to us in writing at least one individual who is authorized to represent you on any aspect of the Services and your account (including all requests for moves, additions, deletions or changes to the Services). You warrant and represent that a significant amount of your local exchange traffic at the Service Address will occur through our Services for the entire term of this Agreement. You agree that you will notify us immediately of any Loss of Service or other problems with any of the Services.

9. Term and Termination.

i. This Agreement is effective upon signing by both parties and will continue in effect for the Service Period ("Initial Term") specified on the SOF. At the end of the Initial Term, this Agreement will renew automatically for additional periods ("Renewal Terms") of one year each until either party gives written notice to terminate this Agreement not less than 45 days and no more than 90 days before the end of the Initial Term or any Renewal Term. Disconnection requests must come from an authorized contact, and must be sent to *NextLevel* via email to clientservices@nextlevelinternet.com. Any written notice after 5pm Pacific Time Zone US will default to next day receipt. Any written notice during weekends will default to next Monday receipt. Furthermore, any email request for disconnection of Services must be acknowledged by an employee of *NextLevel*. Agents of *NextLevel* or independent consultants are not considered *NextLevel* employees.

ii. Any change to your Services at any time may require you to extend the term of the Agreement.

iii. You may terminate Services (without liability for Early Termination Charges) if you experience a Loss of Service (as defined in Section 5.2 above) for that particular Service of more than 8 consecutive hours on two occasions or more in any calendar month and you notify us of each Loss of Service (of any duration) or any other problem with that Service immediately after that Loss of Service or problem first occurs (in each instance). If *NextLevel* proactively contacts you regarding a possible outage prior to receiving notification from you, the termination clause is waived. You may also terminate this Agreement if we fail to comply with any other *NextLevel* obligation under this Agreement for 30 consecutive days after receiving written notice from you. In either case, you may terminate the affected *NextLevel Internet™* or *NextLevelVoice™* Service only if your account is current before termination (*i.e.*, no balance due more than 30 days) and you and your equipment (including Services-Related Products) did not contribute to the Loss of Service or to our failure to comply with this Agreement, either directly or indirectly. You may not cancel this Agreement for any Loss of Service except as permitted in this Section 9.3 concerning only the *NextLevel Internet™* and *NextLevelVoice™* Services. You may not cancel this Agreement

due to our system or network or other maintenance, either directly or indirectly. You must pay all charges due for each Service received until that Service is disconnected and for all charges that may be billed to you after the Service end date.

iv. *NextLevel* may terminate this Agreement or suspend all or any Services if: (a) you fail to take any action that we have requested in order for *NextLevel* to install or activate the Services; (b) you fail to pay any amount owing to us when due, and fail to pay all past due amounts within 10 days after notice from us; (c) you fail to comply with our Acceptable Use Policy described in Section 24 below; (d) you fail to provide a new or increased deposit when requested; (e) you fail to replenish any deposit as requested; (f) you fail to perform or comply with any other obligation under this Agreement, and do not perform or comply with that obligation within 10 days after notice from us; (g) you are involved in or are the subject of any change-in-control, including any sale of your stock or assets, reorganization or merger; (h) you, or anyone using any of the Services, use or operate any Services in a manner that could, in our sole determination, result in harm to us, our Network, our reputation, or other customers; or (i) you, or anyone using any of the Services, use or operate any Services in a manner that, in our sole determination, is in violation of or could violate our Acceptable Use Policy described in Section 24 below or applicable law or the intended business use of that Service; or (j) we determine at any time, in our sole discretion, that your payment record, ability to make timely payments or creditworthiness has become unsatisfactory (even if you have provided or replenished any requested deposits). If we elect to terminate this Agreement or any Services, you must pay Early Termination Charges as described in Section 11 below. If we elect to suspend any Services, you must pay all resumption and other charges described in the following Section 8.5.

v. If we elect to suspend Services under any circumstances pursuant to this Agreement, then to resume those Services, you must first pay all past due and other applicable charges, including the late payment fees and costs described in Section 7.3 above, and a resumption fee of \$75. Before we resume your Services, we may also request satisfactory assurances from you on your future ability to pay for Services timely, even if you have paid the required resumption fee and other amounts. Those assurances may include a new or increased deposit to guarantee payment for future Services, among other things. If you fail to provide satisfactory assurances (in our sole discretion) or you fail to promptly make all required payments to resume your Services, then you will be considered to have terminated this Agreement. At such time, you must pay Early Termination Charges (as described in Section 11 below), in addition to all other amounts that you owe under this Agreement.

vi. *NextLevel* reserves the right to apply any deposit to any amounts owing under this Agreement, and will return the remainder of any deposit to you at the end of the term of this Agreement. You must immediately make all *NextLevel* equipment and property available to us or pay us the replacement value of all equipment and other property that you do not make immediately available to us, promptly upon receipt of invoice. You must also pay all costs that we incur in retrieving or attempting to retrieve our equipment and property, promptly upon receipt of invoice. Promptly upon termination of this Agreement, you must return all Confidential Information and other *NextLevel* information to us. Upon our termination of this Agreement for any reason, you will forfeit any right to obtain a refund or credit of any amount paid previously or owing to us under this Agreement, except for any credit owing to you under the Network Availability Commitment. Sections 1, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 26, 27, 28, 29 and 30 will survive the termination of this Agreement.

vii. The volume commitment, as defined herein, is the greater of either the amount contained on the original contracts, plus any

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added billable features, or the current three-month average of services being provided and billed by NextLevel.

viii. You may downgrade NextLevelVoice™ Services by a maximum of 10% of the sum of: (i) the volume commitments; (ii) the dollar value of all discounts; and (iii) the dollar value of all free Services. Services removed beyond the 10% allowable amount will be subject to Early Termination Charges as defined in Section 11. In addition, we may, in our sole discretion, modify or remove any existing discounts.

ix. The Cancellation Fee will be equivalent to the then current Install Fee of the Services. A Cancellation Fee will only apply if you did not originally pay an Install Fee for the Services.

10. Price Changes.

NextLevel reserves the right to change its prices at any time by giving 30 days prior notice. You may elect not to accept any increase in price, at which time NextLevel may decide, at its sole discretion, to cancel this Agreement and terminate Services.

11. Early Termination Charges.

Except for your proper termination of this Agreement under Section 9.3 above, in every other instance in which this Agreement terminates before the end of the applicable Initial Term or Renewal Term, you are responsible to pay an early termination charge ("Early Termination Charge") as liquidated damages and a reasonable approximation of our loss from early termination. The amount of the Early Termination Charge will be calculated as follows:

i. If termination occurs before or during the Initial Term of this Agreement, NextLevel shall be entitled to keep any remaining deposit and, in addition, you shall be liable to pay to NextLevel: (a) all outstanding nonrecurring fees plus (b) 100% of the Monthly Fee for each month, if any, remaining in the Initial Term; and

ii. If termination occurs after the Initial Term of this Agreement, NextLevel shall be entitled to keep any remaining deposit and, in addition, you shall be liable to pay to NextLevel: (a) all outstanding nonrecurring fees plus (b) 100% of the Monthly Fee for each month remaining in the applicable term, up to one year.

12. Disclaimer of Warranties.

NEXTLEVEL IS PROVIDING THE SERVICES, EQUIPMENT, AND SERVICES-RELATED PRODUCTS TO YOU ON AN "AS IS" BASIS WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED. NEXTLEVEL DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY FROM USAGE OF TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE, AMONG OTHERS. YOU ARE SOLELY RESPONSIBLE TO SELECT, USE AND DETERMINE THE SUITABILITY OF NEXTLEVEL SERVICES AND SERVICES-RELATED PRODUCTS, AND NEXTLEVEL WILL HAVE NO LIABILITY FOR THAT SELECTION, USE OR SUITABILITY. NEXTLEVEL DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. NEXTLEVEL DOES NOT REPRESENT THAT THE SERVICES OR SERVICES-RELATED PRODUCTS WILL MEET YOUR REQUIREMENTS OR PREVENT UNAUTHORIZED ACCESS TO YOUR COMPUTERS, NETWORK, SERVERS AND OTHER EQUIPMENT OR TO ANY DATA, INFORMATION OR FILES ON ANY OF THEM.

13. Disclaimer of Emergency 9-1-1 Services.

IF YOUR NextLevel Internet™ OR NextLevelVoice™ SERVICES INCLUDE VOIP (VOICE OVER INTERNET PROTOCOL) SERVICE, YOU ARE ADVISED THAT EMERGENCY 9-1-1 SERVICE WILL NOT FUNCTION OR BE AVAILABLE TO YOU UNDER CERTAIN CIRCUMSTANCES. YOUR SIGNATURE ON

THIS AGREEMENT IS YOUR ACKNOWLEDGMENT THAT NEXTLEVEL HAS ADVISED YOU OF THESE LIMITATIONS AND THAT YOU ACCEPT THE SERVICES WITH THESE LIMITATIONS. THE FEDERAL COMMUNICATIONS COMMISSION RECOMMENDS THAT YOU PLACE LABELS THAT ALERT USERS TO THESE LIMITATIONS ON OR NEAR THE TELEPHONES AND OTHER EQUIPMENT ASSOCIATED WITH YOUR NextLevel Internet™ OR NextLevelVoice™ VOIP SERVICE.

i. VOIP SERVICE DOES NOT PROVIDE ACCESS TO EMERGENCY SERVICES VIA "911" IN THE SAME MANNER AS TRADITIONAL LANDLINE TELEPHONE SERVICE. THE SERVICE WILL ATTEMPT TO ROUTE 911 CALLS TO AN EMERGENCY SERVICES AGENCY SERVING THE ADDRESS ASSOCIATED WITH YOUR ACCOUNT IN OUR RECORDS, BUT WE DO NOT REPRESENT, WARRANT, OR GUARANTEE IN ANY MANNER THAT ANY CALL TO 911 OR OTHER EMERGENCY SERVICES WILL BE COMPLETED; THAT ANY SUCH CALL WILL BE DELIVERED IN A MANNER THAT INCLUDES INFORMATION CORRECTLY IDENTIFYING THE NUMBER OR ADDRESS FROM WHICH THE CALL WAS PLACED (OFTEN KNOWN AS "ENHANCED 911" OR "E911"); OR THAT ANY SUCH CALL WILL BE DELIVERED TO THE CORRECT RECIPIENT.

ii. You cannot use the service to call 911 in the event of a power interruption at your service location or on any portion of the electrical network used to deliver the service to your service location.

iii. If the broadband service or modem or other equipment that your voice service uses is malfunctioning for any reason or is installed incorrectly, you will not be able to place or receive 911 calls.

iv. Following a power outage, you may have to reset your Integrated Access Device (IAD) by disconnecting and then reconnecting the device's power cord in order to restore the VOIP Service.

v. We will attempt to deliver information to the agency receiving a 911 call that will identify the telephone number and address assigned to the IAD from which the call was placed. However, we do not represent, warrant, or guarantee in any manner that the service will be able to correctly deliver such information. If you place a call to 911 using the VOIP service and such call is disconnected or you are unable to speak or otherwise communicate your location to the agency receiving the 911 call, the agency receiving that call may not be able to determine your location or call you back. You will ensure that anyone using the VOIP service to call 911 will immediately tell the dispatcher their location (or the location of the emergency, if different).

vi. If you have activated features such as Call Forwarding, Call Blocking, or Do Not Disturb at the time a call is placed to 911 through the VOIP service and the call is interrupted, the agency receiving the 911 call may not be able to call back to the number from which the 911 call was placed.

vii. You agree to not attempt to use the IAD from any location other than the service address associated with your service account in our records. If your IAD is moved to a location other than the address associated with your account in our records, a 911 call placed from your IAD will be directed to the 911 response center associated with your service address, not the location of your IAD. In addition, the VOIP service will attempt to transmit information to the 911 responder that a call is originating from the address in our records, not you're your IAD's new location. If you use the VOIP service to call 911, you should immediately tell the responder your location (or the location of the emergency, if different). It is your sole responsibility to ensure that we have the correct service address for your VOIP service. Calls placed from an incorrectly provisioned E911 service, due to sending calls from an un-provisioned number or

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due to *NextLevel* receiving incorrect information from you will result in a \$350.00 service charge.

viii. For technical reasons, there is a greater possibility that a 911 call placed using the VOIP service will result in a busy signal or take longer to answer, as compared to traditional 911 calls.

ix. A 911 call placed using the VOIP service may not be compatible with all types of TDD, TTY, or similar devices for the hearing impaired. *NextLevel* does not represent, warrant, or guarantee in any manner that any such device will be able to successfully communicate with the agency responding to a 911 call placed using the VOIP service.

x. You agree to inform all individuals present at your service location, and others who may use the VOIP service, about the above limitations on the VOIP service's ability to support 911 or E911 capability.

xi. You agrees to maintain an alternative means of reaching 911 from your service location(s), such as a wireless phone, in addition to the VOIP service.

xii. **DISCLAIMER OF LIABILITY, INCLUDING 911 SERVICE LIABILITIES:** *NEXTLEVEL* DISCLAIMS ALL RESPONSIBILITY FOR 911 SERVICE, INCLUDING BUT NOT LIMITED TO THE CONDUCT OF LOCAL EMERGENCY RESPONSE CENTERS. *NEXTLEVEL* DOES NOT HAVE ANY CONTROL OVER ANY LOCAL EMERGENCY RESPONSE CENTER. THEREFORE, *NEXTLEVEL* IS NOT RESPONSIBLE FOR WHETHER THEY ANSWER CALLS USING THE VOIP SERVICE, HOW THEY ANSWER CALLS USING THE VOIP SERVICE, OR HOW THEY HANDLE VOIP SERVICE CALLS. NEITHER *NEXTLEVEL* NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, OR AGENTS, INDEPENDENT CONTRACTORS, OR ANY OTHER SERVICE PROVIDER THAT FURNISHES ANY SERVICES OR CUSTOMER PREMISES EQUIPMENT TO YOU IN CONNECTION WITH *NEXTLEVEL*'S VOICE SERVICE MAY BE HELD LIABLE FOR ANY CLAIM, DAMAGE, OR LOSS, FINE, PENALTY, COST, AND EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY OR USER OF VOICE SERVICES, RELATING TO *NEXTLEVEL*'S VOIP SERVICE, INCLUDING, WITHOUT LIMITATION, 911 DIALING, OR ANY CUSTOMER PREMISES EQUIPMENT.

xiii. SECTION 13 OF THIS AGREEMENT SHALL APPLY EVEN IF THERE IS A BREACH OF A CONDITION, A BREACH OF AN ESSENTIAL OR FUNDAMENTAL TERM, OR A FUNDAMENTAL BREACH OF THE AGREEMENT.

xiv. YOU AGREE THAT THE LIMITATIONS OF LIABILITY SET OUT IN THIS SECTION 13 ARE FAIR AND REASONABLE IN THE CIRCUMSTANCES OF THIS AGREEMENT AND THAT *NEXTLEVEL* WOULD NOT HAVE ENTERED INTO THE AGREEMENT BUT FOR YOUR AGREEMENT TO LIMIT *NEXTLEVEL*'S LIABILITY IN THE MANNER AND TO THE EXTENT PROVIDED FOR IN THIS SECTION.

14. Limitation of Liability.

i. You agree that your sole remedy against *NextLevel* for our failure to comply with this Agreement will be to obtain the credit(s) provided in Sections 2 and 4 above, or, if applicable, to terminate the affected *NextLevel Internet*™ or *NextLevelVoice*™ Service as described in Section 9.3. In order to terminate this Agreement or affected Service, you must first give proper written notice to *NextLevel*, be current on all payments (*i.e.*, no balance older than 30 days), and pay for all Services through the date we discontinue them.

ii. *NextLevel* is not liable for any damages, including indirect, incidental, consequential, punitive or special damages, relating to loss of data, profit, revenue or business, or loss, damage or destruction of any property, whether you, your assignee or any other transferee suffer that loss or damage and whether or not *NextLevel* is informed in advance of the possibility of such loss or damage. *NextLevel* is not liable for the content, accuracy or

quality of information transmitted through its equipment, facilities or Services, or through the Services-Related Products, and you agree to assume all risk of transmitting, receiving or using any such content or information.

iii. *NextLevel* is not liable for any injuries, death, or loss to any person or for damage, loss or destruction of any property of any person as a result of *NextLevel*'s act or omission in developing, adopting, implementing, maintaining, or operating any Emergency 9-1-1 or similar system or in identifying the telephone number, name, address, location or any other information on anyone accessing or trying to use or access the Emergency 9-1-1 or similar system. *NextLevel* is not liable for errors or omissions in any information about you in any published directory. You agree to be solely responsible for ensuring the accuracy of any information about you in any published directory.

iv. *NextLevel*'s sole liability to you for any claims, losses or damages caused by the Services or equipment or otherwise under this Agreement is limited as described in this Section 14. You agree that those limitations are reasonable. You also acknowledge that without those limitations of liability, your Monthly Fee and other charges under this Agreement would be substantially higher. You further agree that the limitations on *NextLevel*'s liability in this Section 14 will apply in any action or proceeding against *NextLevel*, whether based in contract, tort (including negligence or strict liability) or under any statute, law, rule or otherwise.

v. If your Services include use of a *NextLevel* co-location facility, you agree to name "NextLevel Internet, Inc." as an additional insured on both your general and your professional liability policies. You further agree to have minimum coverages of \$1,000,000 for general liability and \$2,000,000 for professional liability.

15. Voice Service Bandwidth Requirements.

If you decide to use an Internet provider other than *NextLevel*, it will be considered unmanaged third party bandwidth. If voice issues arise as a result of utilizing unmanaged third party bandwidth, you agree, at a minimum, to purchase *NextWAN Services*. If voice issues continue to arise after utilizing *NextWAN Services*, you agree, at a minimum, to purchase *NextLevel Clear Channel Internet* (*NextLevel* has higher bandwidth options, up to 1000Mbps, for *NextLevelVoice*™ Services). The cost of this connection will vary by location. If you decide to forego *NextLevel*'s private Internet connection option after having problems with third party bandwidth, both parties agree it is impossible for *NextLevel* to continue to troubleshoot QoS issues of third party bandwidth and an unmanaged network, and in this situation *NextLevel* may elect to exit this agreement by providing 30 days advanced notice of exit without further penalty.

16. Voice Support.

NextLevelVoice™ support is provided for "voice" service only, and only within the Service Address network. "Quality of Service" (QoS) is limited to prioritization of *NextLevelVoice*™ packets above all others. *NextLevel* is not responsible for QoS issues that occur within your network or outside of our network. Support for *NextLevelVoice*™ Services available 7am-6pm PT.

17. Loss and Damage.

To the extent you are the cause of any loss, damages or liabilities to *NextLevel*, you agree to reimburse, compensate and pay *NextLevel* for any losses, claims, damages, liabilities or penalties that *NextLevel* or any of our officers, directors, agents, successors or assigns may incur from your purchase or use of the Services and our equipment, except to the extent that any

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loss, damages or liabilities are caused by *NextLevel*'s gross negligence or willful misconduct.

18. Force Majeure.

We will not be in violation of this Agreement or otherwise liable for any delay, failure to perform or equipment or property damage, loss, destruction or malfunction, or any consequence thereof, caused by anything beyond our reasonable control, including, without limitation, fire; earthquake; flood; weather; acts of God; labor disputes; utility curtailments; power failures; cable cuts; failure caused by telecommunications or other Internet provider(s); Services-Related Products; worms, Trojan horses, viruses or other destructive code or software; explosions; civil disturbances; terrorism; vandalism; governmental actions; or shortages of equipment or supplies (collectively, "Events of Force Majeure").

19. Confidentiality.

"Confidential Information" is valuable, confidential or proprietary information, in any form, of or about us, or our Services, customers or contractors that is not generally known by, or readily available to, the public. You may use Confidential Information solely for your internal purposes, and will only disclose such information internally on a need-to-know basis. You will use reasonable best efforts to protect Confidential Information from unauthorized use or disclosure. We may seek equitable relief (and any other remedies) to enforce this Section 19. For Confidential Information that is a "trade secret" (as defined by applicable law), your obligations under this Section 19 will continue for the longer of: (i) 3 years after termination of this Agreement; or (ii) until such information is no longer a trade secret under applicable law. For all other Confidential Information, your obligations under this Section 19 will continue during the term of this Agreement and for 3 years after termination of this Agreement. Our use of your information is governed by applicable law and our privacy policy posted on the Internet at www.nextlevelinternet.com.

20. Publicity.

Neither party will use the other's name, logo, product names or trade or service marks, or refer to the other directly or indirectly in any advertising, sales presentation, news release, release to any professional or trade publication or for any other purpose without the other's prior written approval.

21. Authorized Contacts.

Your authorized contacts must be kept up-to-date at all times. A change requires the authorization of a currently-approved contact for your account. Updates and authorizations should be directed to support@nextlevelinternet.com.

22. Maintenance.

We may perform maintenance that may affect the availability or functionality of all or part of the Services at any time. Any impact on the Services as a result of maintenance will not be deemed our breach of this Agreement or the Network Availability Commitment and will not entitle you to any credit, refund or right to terminate this Agreement or any affected Service.

23. Relocation of Services.

Services cannot be moved unless pre-negotiated and documented on the most recent SOF for the Services. If there is no documented move option, you will need to work with *NextLevel* on a new SOF.

24. Acceptable Use Policy.

You agree to comply at all times with our Acceptable Use Policy ("AUP") which is posted on the Internet at

www.nextlevelinternet.com and is incorporated in this Agreement by this reference. We may change the AUP at any time without prior notice to you and any AUP amendments will be effective upon posting on our website.

25. Special Construction.

Service delivery is subject to availability and operational limitations of systems, facilities, and equipment. If facilities and equipment, including, but not limited to, outside plant, cable, conduit, structures and/or electronics (including, but not limited to, customer premise equipment, central office equipment, or remote terminals) are not available, special construction charges may apply and *NextLevel* will quote a one-time cost recovery charge to recover all costs associated with service delivery. Upon documentation and notification of the special construction charges or the cost recovery charge, you may cancel the request for service within twenty (20) days after the notification date. If you do not agree to the construction charge or cost recovery charge within those twenty (20) days, *NextLevel* will cancel your request for service. If you accept the construction charge or cost recovery charge, *NextLevel* will require payment for charges prior to accepting the service order. If you cancel the service order after acceptance but prior to installation, you will be liable for the cost recovery charge.

26. Unlimited Minute Plans.

The "unlimited minutes" included in any *NextLevelVoice*™ "Companywide Unlimited Minutes Plan" or "Unlimited VFax Minutes Plan" apply to Local, Domestic Long Distance, or Toll Free calls. International and Inbound Toll Free calls are not included. These plans are for reasonable business use only. All of your users must be on the unlimited minutes plan. Such use shall not include certain activities including, but not limited to, any of the following: (i) autodialing, continuous, or extensive call forwarding, use of virtual extensions for regular business use, continuous connectivity, fax broadcast, fax blasting, telemarketing (including without limitation charitable or political solicitation or polling), call center operations, junk faxing, fax spamming, calling/faxing any person (through the use of distribution lists or otherwise) who has not given specific permission to be included in such a process or any other activity that would be inconsistent with reasonable business use, or (ii) any other use resulting in improper usage patterns, including but not limited to dialing patterns wherein your inbound or outbound minutes exceed 80% of the aggregate usage, or your average minutes per seat are in excess of 90% of all other *NextLevel* customers. If *NextLevel* determines, in its sole discretion, that you are not using the unlimited minutes for reasonable business use, *NextLevel* reserves the right to immediately: (a) charge your credit card for the current per-minute rate for any usage determined to be outside of reasonable business use, and (b) terminate or modify the terms of this Agreement.

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27. Domain Names.

At your request, *NextLevel* will assist in obtaining and maintaining the domain name(s) you use in connection with the Services. You acknowledge and agree that the domain name(s) are subject to the policies and procedures of the Internet Assigned Numbers Authority ("IANA"), the Internet Ad Hoc Committee ("IAHC"), and the registrar issuing the domain name(s). You agree to pay all fees charged by the issuing registrar relating to such domain name(s). You acknowledge that *NextLevel* is not responsible for the actions taken by IANA, IAHC, or the issuing registrar and, therefore, *NextLevel* makes no representations or warranties regarding: (i) the ability to obtain or continue to use any particular domain name; or (ii) the ability to resolve any domain name into its associated Internet Protocol ("IP") address(es).

28. IP Addresses.

At your request, *NextLevel* will allocate IP addresses from our Classless Inter-Domain Routing ("CIDR") address blocks for your use solely in connection with the Services, and only for the Initial Term of the Agreement and any renewal periods. You acknowledge and agree that the IP addresses are subject to the policies and procedures of the Internet Assigned Numbers Authority ("IANA") and the specific Regional Internet Registry (RIR) authorizing the use of the IP addresses by *NextLevel*. Allocation of IP addresses shall be made in a manner consistent with the policies of IANA, the Internet Engineering Task Force ("IETF"), and the issuing RIR. You acknowledge that *NextLevel* is not responsible for the actions taken by IANA, IETF, and the RIR, or any other network operators, and therefore, *NextLevel* makes no representations or warranties regarding: (i) the ability to obtain or to continue to use any particular IP addresses; or (ii) the routability of any IP addresses. Your use of IP addresses allocated by *NextLevel* shall cease within 30 days of the termination of this Agreement.

29. Employee Solicitation.

During the term of this Agreement and for a period of one year after termination, neither you, nor any entity affiliated with you, shall, directly or indirectly, solicit for employment or performance of services, or hire or contract with, any *NextLevel* employee who becomes known to you in connection with the performance of *NextLevel* hereunder. In the event that you, or any of your affiliates, hires or contracts with any *NextLevel* employee contrary to this Agreement, you agree to pay to *NextLevel*, as liquidated damages and not as a penalty, an amount equal to all compensation, including salary, wages, bonuses, commissions and employee benefits, which said employee received from *NextLevel* during the last one-year period preceding such hiring or contracting.

30. Additional Services.

You may order additional or different *NextLevel* Services after the date of this Agreement through our website, or by email, facsimile or telephone call to us. Except to the extent expressly governed by another agreement you sign with us, any additional Services that you order through whatever means will be governed by these Terms and Conditions, as modified by explicit terms for such additional Services posted on the Internet at www.nextlevelinternet.com and incorporated herein by reference. Your use of any additional Services will be deemed to be your consent to comply with any additional terms and conditions.

31. General.

i. This Agreement may only be amended by a written document that is signed by you and a *NextLevel* corporate officer at a level of Vice President or above. Handwritten alterations or additions to this Agreement will not be considered binding. This Agreement

contains our entire agreement about the Services and supersedes any prior agreements, understandings or arrangements, both written and oral.

ii. Neither party may assign this Agreement without the prior written consent of the other party, not to be unreasonably conditioned, withheld or delayed, except that: (i) *NextLevel* may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries, (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, or (c) for purposes of financing; and (ii) you may assign your rights and/or obligations hereunder (a) to your parent, affiliates or subsidiaries, or (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all your assets, provided that any assignment by you pursuant to this exception is subject to the following conditions: (1) the proposed assignee satisfies *NextLevel*'s credit and deposit standards; (2) you have fully paid for all Services through the date of assignment; and (3) the proposed assignee agrees in writing to be bound by all provisions of this Agreement.

iii. Any party to this Agreement will be considered to have given up or waived its right to require strict performance and compliance by the other party only when it has signed a written agreement or acknowledgement waiving that strict performance and compliance in any instance. Any written waiver in any one instance will not apply to any other or later non-performance or non-compliance by the other party.

iv. Any controversy or claim arising out of or relating to this Agreement will be settled only by arbitration to be held and administered in the county of San Diego, California by the American Arbitration Association under its Commercial Arbitration Rules. A single arbitrator will conduct the arbitration. Within 30 days of the filing of a claim, both parties must select an arbitrator, who must be a licensed attorney with telecommunications experience. If the parties cannot agree on an arbitrator, then the parties will each select an arbitrator, and those two arbitrators will, in turn, select a third arbitrator, who is a licensed attorney with telecommunications experience, and only such third arbitrator shall conduct the arbitration. The arbitrator will conduct the arbitration so as to reach a final decision within 90 days of the filing of the claim. Each party will petition the arbitrator, and request an arbitration schedule, so that they can complete the arbitration within 90 days of the filing of a claim, and each party will otherwise diligently pursue completion of the arbitration within that time or as soon as possible thereafter. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction in the county of San Diego, California. Each party will bear its own expenses for the arbitration, unless otherwise ordered by the arbitrator. The parties will engage in discovery in the arbitration pursuant to the Federal Rules of Civil Procedure, except that the discovery period will be 60 days. No claim or action shall be submitted to arbitration if that claim, action or dispute involves any action for injunctive relief or to collect any debt. Any claim or cause of action for injunctive relief or to collect any debt will be severed from any arbitration claims arising from this Agreement and will be adjudicated in any court of competent jurisdiction.

v. In any action for injunctive relief or to collect any debt, each party consents to the exclusive jurisdiction of the state and federal courts having jurisdiction in the county of San Diego, California. This Agreement will be governed by and interpreted in accordance with the laws of the State of California, without regard to conflict of laws principles, and is subject to any federal, state or local tariffs that may apply. If any conflict should arise between the terms of this Agreement and an applicable tariff or addendum, you agree that the terms of the applicable tariff or addendum shall control.

vi. You acknowledge that future rules, tariffs, regulations, orders, treaties or other laws promulgated, enacted, or entered

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into by international, federal, state or local legislatures, agencies, governments or other regulatory bodies may affect your or our respective rights or obligations under this Agreement. If any such future action adversely affects *NextLevel*'s rights or obligations under this Agreement, then we may require, upon 30 days notice to you, that the parties renegotiate this Agreement in good faith to address the effect of such actions. Your failure to do so will be deemed to be your termination of this Agreement, subjecting you to Early Termination Charges as described in Section 11 above.

vii. If an arbitrator or court should declare any one provision of this Agreement to be invalid, then the other provisions will remain in effect and the parties will work in good faith to agree to a replacement provision that has the same or similar intent as the original provision. This Agreement is for the sole benefit of you and *NextLevel*, and no other person.

viii. All notices under this Agreement must be in writing, with all notices to us to be sent to: NextLevel Internet, Inc., Attn: Customer Care, P.O. Box 502661, San Diego, CA 92150-2661 or to any other address that we notify you of or post on our website. Notices can also be emailed to us at: clientservices@nextlevelinternet.com.

ix. The Section headings used herein are for reference only and will not impact the interpretation of this Agreement.

Customer Acceptance

BY SIGNING BELOW, THE PERSON SIGNING ON BEHALF OF CUSTOMER PERSONALLY REPRESENTS AND WARRANTS TO *NEXTLEVEL* THAT HE OR SHE HAS THE AUTHORITY AND POWER TO SIGN ON BEHALF OF THE CUSTOMER AND BIND CUSTOMER TO THIS AGREEMENT. CUSTOMER UNDERSTANDS AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS FOR SERVICE DESCRIBED HEREIN AND IN ALL APPLICABLE SERVICE ORDER FORMS AND SERVICE ORDER ADDENDUMS. CUSTOMER AUTHORIZES *NEXTLEVEL* TO OBTAIN BILLING INFORMATION AND CUSTOMER SERVICE REPORTS WITH RESPECT TO CUSTOMER'S TELEPHONE NUMBERS, AS WELL AS CUSTOMER'S CREDIT INFORMATION. THIS AGREEMENT IS ACCEPTED BY *NEXTLEVEL* ON THE DATE INDICATED BELOW.

CUSTOMER

(Customer Signature) (Date)

(Printed Name and Title)

(Customer Company Name)

NEXTLEVEL INTERNET, INC.

(NextLevel Internet Signature) (Date)

(Printed Name)