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## AGREEMENT

The following are the terms and conditions of the SERVICE AGREEMENT (“the “Agreement” or “Service Agreement”) between NEXOGY, INC., a Florida Corporation (“NEXOGY”, “we” or “us”), and the Customer signing this Agreement (the “Customer”, “you” or “your”).

For the consideration exchanged herein and other good and valuable consideration, receipt of which is acknowledged by the parties, NEXOGY and Customer agrees as follows:

- 1 **Term of Service:** The initial term of the Agreement shall be for the term set forth on Exhibit A or the duration of the term of Data Services, as defined below, purchased by Customer whichever is greater ("Term"). The effective date of this Agreement shall be the date the last party signs this Agreement ("Effective Date"). This Agreement shall be renewed automatically upon the Term's expiration for successive one-year terms unless either party notifies the other party in writing at least thirty days prior to the expiration of the Term.
- 2 **Service/Pricing/Return of Telephone.**
  - A) NEXOGY agrees to provide Customer with hosted PBX services for local and long distance telecommunication services, internet services, call recording capabilities, and/or any other services selected and attached hereto as Exhibit A and on any future amendments during the Term and successive terms (collectively "Service" or "Services"). In addition, NEXOGY agrees to comply with the Service Level Agreement posted on NEXOGY'S website, [www.nexogy.com](http://www.nexogy.com) ("Website") and specifically at [www.nexogy.com/legal](http://www.nexogy.com/legal), and which is an exhibit to this Agreement and is hereby incorporated by reference into this Agreement. All Services and Products purchased after the Effective Date of this Agreement shall be subject to this Agreement, as amended. In the event Customer terminates a Service, including without limitation Data Service as defined below (subject to paragraph 4(b)), prior to the start of Service date ("Installation Date" or "Start of Service Date") or subsequent thereto, Customer shall pay NEXOGY, (1) the price set by NEXOGY for phones, equipment, hardware or products financed or leased by NEXOGY to Customer, (2) all third party charges paid or incurred by NEXOGY as a result of the termination and arising out of this Agreement, including without limitation the Data Service Termination Fee if the Data Service is terminated on or before the Installation Date (there may be additional fees charged by third parties for termination of Data Service) and all other amounts paid or owed to third parties by

NEXOGY in connection with the purchase, lease or providing of equipment, phones, hardware or products to Customer as a result of this Agreement (excluding the amount paid by NEXOGY for the phones which is part of the price set by NEXOGY for the phones and to be paid by Customer as set forth above in Section 2a1, in addition to (3) all other amounts recoverable under this Agreement or under applicable law. Customer shall pay for all products and hardware listed on Exhibit A in connection with the Services.

Unless set forth herein, prices for NEXOGY Services are listed in Exhibit A. Customer accepts that the activation fee is non-refundable and immediately due upon entering into this Agreement. Prices are exclusive of all sales, use and other taxes and government and regulatory fees. Customer is responsible for any pertinent federal, state, municipal, local or government sales, use, excise or other taxes, fees or charges as a result of Customer's subscription to Service or a relevant later enacted regulation. NEXOGY may request references and other information from Customer to establish creditworthiness. If NEXOGY decides that Customer is not creditworthy, it may request payment in advance.

- B) Internet Access Products. If Customer opts to purchase T-1 Internet Access service and/or related products including metro Ethernet service (collectively "T1 Service") or DSL Service, the following terms shall apply:
- a) Pricing/Fees: NEXOGY will not order any products until payment set forth above is received by NEXOGY and clears. Applicable sales and gross receipts taxes may not be included in the initial pricing but nevertheless is Customer's responsibility to pay forthwith. **Failure of Customer to make such payment upfront will result in delay of service connection, as NEXOGY will not order or assist in implementing any Services until such payment is received.** If Customer requests a change to its T1 Services, Customer must first pay an additional fee to NEXOGY before NEXOGY implements the change.
  - b) Customer Obligations: NEXOGY will contact Customer upon receiving an Installation Date by the local loop or circuit provider or other third party provider. At this time, Customer *must* commit to a date for which NEXOGY can connect Customer to complete the installation of T1 Service(s) or DSL Service. Customer agrees to have all necessary equipment and/or personnel ready for the installation of T1 Service(s) or DSL Service by the agreed-upon Installation Date. If Customer does not have the necessary equipment and/or personnel ready for the installation of Service(s) by the Installation Date, or if Customer must change the Installation Date for any reason whatsoever, Customer is liable for payment of the circuit, and for any other costs incurred by NEXOGY in connection with Customer's Service(s) from the original, agreed-upon Installation Date. This remains true whether Customer is fully installed or not.

Payments for the T1 Service and the DSL Service do not begin until Customer is fully connected with the Service(s) purchased. Any additional charges incurred by NEXOGY on Customer's behalf, above and beyond the normal installation, or monthly access charges, including additional wiring, services, or equipment supplied by the circuit provider upon installation, or other service, will be passed on to Customer and will be due upon receipt.

- C) Customer may not sell, lease, license, rent, or assign the connection or any parts of the connection to any party not named in this Agreement.
- D) Customer agrees that NEXOGY shall accept the return of a telephone purchased from NEXOGY by Customer within the thirty (30) day period after the date the telephone is purchased from NEXOGY by Customer. In addition, Nexogy shall only accept such return if the telephone is returned in its original unopened and not damaged package. Customer shall pay NEXOGY a thirty dollar (\$30.00) restocking fee for the return of any such telephone within the thirty (30) day period after the date the telephone is purchased from NEXOGY. Without limiting the foregoing and NEXOGY's rights to amounts owed upon termination, NEXOGY may demand the return of a phone in the event of a termination without setoff or credit to amounts owed arising out of said termination.
- E) Notwithstanding anything contrary herein, if at any time during the Term of this Agreement, as renewed, Customer elects to suspend temporarily or cancel permanently any phone line purchased by Customer from NEXOGY during the Term of this Agreement, as renewed, the following fees, which may be changed periodically by Nexogy, shall apply:
  - a) In the event Customer elects to cancel any phone line purchased from NEXOGY, Customer shall pay to NEXOGY a one-time cancellation fee of Fifty-Nine Dollars and Ninety-Five Cents (\$59.95) per phone line Customer elects to cancel ("Phone Cancellation Fee") in addition to the price set by Nexogy for phones, equipment, hardware or products financed or leased by NEXOGY to Customer and all other amounts paid or incurred by NEXOGY concerning the phone, hardware, equipment or product that is leased, sold or provided along with or bundled with the phone line and all prepaid fees and amounts previously charged for the phone line without refund or reduction in said amounts for any reason, including as a result of the cancellation of the phone line prior to the end of the respective month.
  - b) Any Phone Cancellation Fee and all other amounts owed shall be paid to NEXOGY on or before the same date as amounts due and owing to NEXOGY for Services provided to Customer pursuant to NEXOGY's next monthly invoice (or such month an invoice would have been sent) sent to Customer after Customer cancels the phone line. If at any time, Customer cancels more than fifty percent (50%) of the total number of phone lines Customer has purchased from NEXOGY, Customer shall be

considered to be in breach of this Agreement and NEXOGY may enforce all rights and remedies herein, including as set forth in Section 8, and as permitted by applicable law.

- 3 Software/Equipment Leases and Installment Sales:** No ownership right is granted to the software provided to Customer by NEXOGY hereunder. No right is granted for Customer to replicate, produce, copy or alter software. No right is granted for Customer to use, distribute, rent, lease, lend, supply or market the software, except as expressly provided under this agreement. Customer may not decompile, disassemble or reverse-engineer the software.

If Customer leases equipment or if Nexogy provides equipment to be used without charge, a UCC-1 statement may be filed with the appropriate state for equipment that is leased, financed, or otherwise provided by NEXOGY, naming NEXOGY as lien holder until equipment is returned or paid off, respectively. Customer is responsible for all shipping charges. Failure of Customer to return any equipment, including but not limited to phones, when due or in the event of termination or as otherwise set forth in this Agreement, will result in charges to the Customer pursuant to this Agreement. Customer is responsible for protecting the equipment from any damage or loss of any kind. Customer agrees during the Term of this Agreement, as renewed, to keep the equipment fully insured against damage and loss, naming NEXOGY as the loss payee, and to obtain a public liability insurance policy and general liability insurance policy, including NEXOGY as an additional insured on the policies. Customer agrees to provide NEXOGY with certificates or other evidence of insurance upon request by NEXOGY. If Customer does not, NEXOGY has the right, but not the obligation, to obtain such insurance, in which Customer agrees to pay for all costs thereof. If the Equipment is damaged or lost, Customer agrees to purchase the equipment at its fair market value determined by Nexogy. All equipment provided by NEXOGY shall be titled to NEXOGY at all times and for all purposes. The Equipment may be marked and identified as property of NEXOGY, which markings and identification shall not be removed or altered by the Customer. Customer will not cause, create or suffer any claims, including but not limited to, any liens, charges, encumbrances, or security interests in, on, or to the Equipment, and will defend, indemnify and hold NEXOGY harmless from and against any loss, cost, liability and expense (including interest and reasonable attorney's fees) arising from such claims. Notwithstanding anything contrary herein, Customer has the option to purchase the leased equipment at the expiration of the Term of this Agreement, as renewed, at the fair market value of such leased equipment to be determined by NEXOGY, at its sole discretion. The purchase price of the leased equipment shall be paid by the Customer in full. Customer shall cooperate in the execution of all documents necessary or appropriate to effectuate the transfer of the purchased equipment to Customer.

- 4 Lawful Use/Prohibited Uses:** Customer agrees to use the Service only for lawful purposes. Customer shall not resell or transfer the Service, including without limitation local and toll-free numbers, to another without the prior written consent of NEXOGY. Customer, any person or entity under Customer's employ or contract, or any person or entity that has access

to Customer's Service may not use the Service for communications or transmissions that may or would constitute a criminal or civil offense, or that may or would otherwise violate any local, state, regional, federal, government or international law or regulation or otherwise violate the rights of NEXOGY or any third party, including rights to privacy. Customer shall comply with all applicable laws and regulations concerning the recording of a person or entity and shall comply with all privacy laws and regulations, including without limitation, all local, state, regional, federal, government and international privacy laws and regulations. Customer is further prohibited from using the Service or products used in connection with the Service for auto-dialing, continuous or extensive call forwarding, telemarketing (including, without limitation, charitable or political solicitation or polling), fax or voicemail broadcasting or fax or voicemail blasting, Bulk Messaging" or "Spamming" or transmission of any unwanted or unsolicited email. NEXOGY reserves the right to immediately terminate or modify Customer's Service if NEXOGY determines, in its sole and absolute discretion, that Customer has used at any time the Service or products used in connection with the Service for any of the aforementioned or similar activities. In addition, residential users will be required to pay higher rates for commercial service for all periods in which Customer's use of the Service or the Devices used in connection with the Service was inconsistent with normal residential use.

Customer shall not use the Services and any products used in connection with the Service in any way that is threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy rights, or any other wrongful conduct.

Use of NEXOGY'S connection in violation of any of the above mentioned manners may result in cancellation or suspension of service, at the discretion of NEXOGY. NEXOGY reserves the right to terminate or suspend Customer's Service without notice if NEXOGY believes that Customer is utilizing the Service in a wrongful or unlawful manner. In the event of any wrongful or unlawful use of the Service, Customer will be responsible for all damages incurred by NEXOGY. In the event of Service termination (due to wrongful or unlawful use) all current charges and amounts owed to NEXOGY under this Agreement are due and payable immediately and may be charged to Customer's credit card and/or account. NEXOGY may forward any information with respect to the unlawful or wrongful use of the Service to the appropriate authorities.

Customer acknowledges that the Service provided by NEXOGY is different than standard telephone service. This may limit or otherwise affect Customer's rights before Federal, State or Local telecommunications regulatory agencies.

Customer shall notify NEXOGY immediately if Customer becomes aware of wrongful or unauthorized use of the Service. Customer must provide NEXOGY with written notice of the wrongful or unauthorized use of Service. Failure to immediately notify NEXOGY of the wrongful or unauthorized use of the Service may result in the termination of Customer's

Service. NEXOGY may charge additional charges for the wrongful or unauthorized use of the Service.

Nexogy may determine at its discretion the level of usage that warrants measures of fraud or wrongful conduct protection such as suspending long distance communication. In this regard, if a Customer reached the limit of usage established on the account which may warrant protective measures the Customer might have to wait until the next billing period or make a payment in order to reestablish the outgoing long distance communications.

- 5 **Ownership Rights:** All copyrights, websites, corporate names, service marks, trademarks, trade names, logos, marketing materials, domain names, software and all other intellectual property and goodwill associated therewith originating with NEXOGY or provided by NEXOGY to Customer belong to NEXOGY and/or its licensors and are the exclusive property of NEXOGY and/or its licensors. Customer does not have a right or license to use any of such properties belonging to NEXOGY and/or its Licensors. Customer represents that Customer possesses all required rights and licenses, including, but not limited to, all required software, hardware, and/or equipment licenses, to use any device in conjunction with NEXOGY'S Service. Customer shall not reverse compile, disassemble, or reverse engineer or otherwise attempt to derive or obtain any codes, including source codes, in connection with the Services or Device used.

Upon termination of your Service, NEXOGY may release to Customer's new service provider the telephone number that Customer ported to NEXOGY from Customer's previous service provider and used in connection with the Services if the new service provider is able to accept the number, Customer's account is completely current through termination and Customer requests the transfer in writing upon termination of its Service.

- 6 **Billing/Collection:** Payment for the Services rendered will be due and payable at the twenty-fifth (25) day after receipt of invoice. Customer shall not offset or credit the invoice amounts without NEXOGY'S prior written approval. No payment by Customer to NEXOGY of any lesser amount than that due to NEXOGY shall be deemed to be other than a payment on account, and no endorsement or statement on any check or in any letter accompanying any check or other payment shall be deemed an accord, satisfaction or payment(s) in full of amounts due NEXOGY. NEXOGY may accept any payment without prejudice to NEXOGY'S right to recover any remaining balance or to pursue any other remedy provided in this Agreement or applicable law.

Usage charges will be billed in increments that are rounded up to the nearest minute.

Payments received by NEXOGY after the respective due dates will be subject to interest at the rate of one and one-half percent (1.5%) per month or the maximum allowed by law, whichever is less. NEXOGY shall be entitled to said interest as well as its collections costs and attorney's fees and costs in recovering unpaid amounts.

Customer acknowledges that Customer must notify NEXOGY in writing within thirty (30) days after receiving Customer's balance statement if Customer disputes any charges on that statement. Failure to comply with the notice requirement will result in the waiver of Customer's right to dispute the charges.

- 7 **Payment Form:** Payments made to NEXOGY must be in the form of credit card (Visa, MasterCard, Discover, and American Express), ACH or check. NEXOGY may discontinue acceptance of credit cards from one or more issuers at any time. Customer agrees to notify NEXOGY in writing immediately if the credit card expires, the credit card account is closed, the Customer's billing address changes, or the card is cancelled or replaced. NEXOGY will bill all charges, fees and applicable taxes and interest to Customer's credit card, unless specified otherwise by Customer in writing.

The Customer may make payments by credit card or ACH online at [www.nexogy.com](http://www.nexogy.com) in accordance with NEXOGY's terms and conditions for such method of payment set forth herein, if such option is offered by NEXOGY. NEXOGY shall have no responsibility for any failure or error in the online payment process, including without limitation, any interruption, omission, mistake, malfunction or delay related thereto. NEXOGY will use and transmit Customer's information in accordance with Nexogy's Privacy Policy as posted at [www.nexogy.com](http://www.nexogy.com). The use of online payment is at Customer's own risk, since the security and confidentiality of information transmitted or accessible over the internet cannot be guaranteed. Neither NEXOGY nor its affiliates are responsible for the security or confidentiality of information transmitted or accessible using the internet and Customer agrees to defend, indemnify and hold harmless NEXOGY and its affiliates from all claims, demands, liabilities and damages of any kind relating to or arising from the use of this payment option by internet.

## 8 Termination or Suspension of Service:

- A) Either party may terminate any Service and/or this Agreement in the event the other party commits a material breach of this Agreement and such breach remains uncured for twenty (20) days following receipt of written notice from the non-breaching party specifying the breach. Also, NEXOGY may terminate any Service and/or this Agreement immediately and without notice if Customer makes any assignments of assets or business for the benefit of creditors, or a trustee or receiver is appointed to conduct its business or affairs. In addition, NEXOGY may immediately suspend any Service and/or terminate any Service and/or this Agreement in the event that Customer fails to pay any amounts due to NEXOGY or Customer violates any of its obligations set forth in Section 4 or 5 of this Agreement. If any Service is suspended or the Agreement terminated due to non-payment, Customer shall pay to NEXOGY all fees and costs incurred by NEXOGY in collecting such amounts, including, but not limited to, collection costs and attorney's fees and costs. In addition, in the event NEXOGY terminates any Service and/or this Agreement pursuant to this paragraph, Customer shall pay NEXOGY within five (5)

business days of termination all amounts owed to NEXOGY for the balance of the Term or respective term. In the event NEXOGY suspends or terminates a Service or this Agreement pursuant to this paragraph, Customer shall pay NEXOGY the price set by Nexogy for phones, equipment, hardware or products financed or leased by NEXOGY to Customer, all third party charges paid or incurred by NEXOGY as a result of the termination or suspension and arising out of this Agreement, including without limitation the T1 Service Termination Fee charged if the T1 Service is terminated on or before the Installation Date (there may be additional fees charged by third parties for termination of T1 Service), and all other amounts paid or owed to third parties by NEXOGY in connection with the purchase, lease or providing of phones, hardware, equipment or products to Customer as a result of this Agreement. Customer shall also pay for all fees and costs incurred by NEXOGY in collecting the foregoing amounts, including, but not limited to, collection costs and attorney's fees and costs. These remedies are in addition to all other remedies NEXOGY is entitled to under this Agreement or applicable law.

- B) In the event of termination of this Agreement by Customer, Customer shall pay NEXOGY within five (5) business days all amounts owed to NEXOGY for the balance of the Term or respective term, the price set by Nexogy for phones, equipment, hardware or products financed or leased by NEXOGY to Customer and all other amounts paid or owed to third parties by NEXOGY, including without limitation the T1 Service Termination Fee charged if the T1 Service is terminated on or before the Installation Date (there may be additional fees charged by third parties for termination of T1 Service) and all other amounts in connection with the purchase, lease or providing of phones, hardware, equipment or products to Customer as a result of this Agreement, except that, without limiting NEXOGY'S rights under paragraph 8(a) above, in the event Customer terminates only the DSL Service for any reason, Customer shall only pay the DSL Service Termination Fee. Customer shall also pay NEXOGY for all fees and costs incurred by NEXOGY in collecting such amounts, including, but not limited to, collection costs and attorney's fees and costs. These remedies are in addition to all other remedies NEXOGY is entitled to under this Agreement or applicable law.
- C) Customer acknowledges and understands that Service suspension or termination under this Agreement will prevent Customer from using the Services including access to 911 dialing and NEXOGY is not responsible for any claim or damages as a result of this non-accessibility.
- D) At any time, Customer may request from NEXOGY specific third party charges or fees NEXOGY has paid or may be responsible for in the event of termination of this Agreement. Third party charges incurred by NEXOGY, including without limitation the T1 Service Termination Fee and DSL Service Termination Fee, may change from time to time pursuant to NEXOGY's agreement with the third party provider(s).

## 9 Service Disclaimer:



## A) EMERGENCY SERVICES - 911 DIALING

- a) 911 Dialing. 911 Dialing is different than traditional 911 service. Most of our customers (WiFi and SoftPhone customers have specific access under conditions set forth below) have or will have access to either basic 911 or Enhanced 911 (E911) service. With E911 service, when you dial 911, your telephone number and registered address is simultaneously sent to the local emergency center assigned to your location, and emergency operators have access to the information they need to send help and call you back if necessary. Customers in locations where the emergency center is not equipped to receive your telephone number and address have basic 911. With basic 911, the local emergency operator answering the call will not have your call back number or your exact location, so you must be prepared to give them this information. Until you give the operator your phone number, he/she may not be able to call you back or dispatch help if the call is not completed or is not forwarded, is dropped or disconnected, or if you are unable to speak. As additional local emergency centers become capable of receiving our customers' information, NEXOLOGY will automatically upgrade customers with basic 911 to E911 service. NEXOLOGY will not give you notice of the upgrade.

Certain customers do not have access to either basic 911 or E911. If you don't have access to basic 911 or E911 your 911 call will be sent to the Emergency Call Relay Center ("ECRC"). A trained agent at the emergency call center should ask for the name, telephone number and location of the customer calling 911, and then contact the local emergency center for such customer in order to send help. Examples of situations where 911 calls will be sent to the ECRC center include when there is a problem validating or confirming a customer's address, the customer is identified with an international location, or the customer is located in an area that is not covered by the landline 911 network. In addition, if you use WiFi or SoftPhones, you may provide your initial physical location address for 911 purposes for each phone and, due to the portable nature of these Devices, your 911 calls will be routed to the ECRC unless you provide your address for 911 purposes. If you use a WiFi or SoftPhone, you should immediately change your physical location address for 911 purposes pursuant to Section 9(A)(iii) if you move locations of use of phone. If you use a SoftPhone and any desktop IP phone, you should immediately change your physical location address for 911 purposes pursuant to Section 9(A)(iii) if you move locations of use of phone. Please note that a phone that is an extension of a main phone line does not have an independent address location designated for 911 purposes and the only address 911 Emergency Personnel will have on record is that designated to the main phone line. Accordingly, phones that are extensions of main phone lines can not be moved from the location assigned for 911 purposes. If a main phone line is relocated or moved from its current location, Client must change the address of its location for 911 purposes pursuant to Section 9(A)(iii). If an extension phone line is not at the same location as the main phone line, a 911 caller must inform the 911 Emergency Personnel of the correct location. AS TO PHONES THAT HAVE BEEN

ASSIGNED A UNITED STATES AND CANADA TEN DIGIT PHONE NUMBER AS THE PRIMARY NUMBER, IN LIGHT OF THE PORTABLE NATURE OF WIFI PHONES, SOFTPHONES, AND OTHER PHONES, INCLUDING DESKTOP PHONES, IT IS YOUR RESPONSIBILITY TO CHANGE YOUR PHYSICAL LOCATION FOR 911 PURPOSES TO INSURE 911 HAS YOUR CORRECT LOCATION. YOU MUST CHANGE YOUR PHYSICAL LOCATION PURSUANT TO THE MECHANISM SET FORTH IN SECTION 9(A)(iii) BELOW. YOU EXPRESSLY WAIVE ANY CLAIMS AGAINST NEXOGY AND ITS OWNERS, EMPLOYEES, REPRESENTATIVE, AGENTS AND AFFILIATED OR RELATED ENTITIES ARISING OUT OF ANY CLAIMS IN CONNECTION WITH 911 SERVICES AND ANY INCORRECT REPORTING TO OR BY 911 PERSONNEL OF THE PHYSICAL LOCATION OR ADDRESS IN CONNECTION WITH A 911 CALL.

You authorize NEXOGY to disclose your name and address to third-parties involved with providing 911 Dialing to you, including, without limitation, call routers, call centers and local emergency centers.

- b) Notice to All Users. You should inform any household residents, guests and other third persons who may be present at the physical location where you utilize the Service of the important differences in and limitations of 911 Dialing as compared with basic 911 or E911. The documentation that accompanies each Device that you purchase may include a sticker concerning the potential non-availability of basic 911 or E911 (the '911 Sticker'). It is your responsibility, in accordance with the instructions that accompany each Device, to place the 911 Sticker on each Device that you use with the Service.
- c) Registration of Physical Location. For each phone number that you use for Service, you must register with NEXOGY the physical location where you will be using the Service with that phone number. When you move the Device to another location, you must register your new location. If you do not register your new location, any call you make using the 911 Dialing feature may be sent to an emergency center near your registered address which is incorrect for the 911 purpose. You will register your initial location of use when you subscribe to the Service. Thereafter, you may register a new location by following the instructions from the '911' registration link on NEXOGY'S Website [www.nexogy.com](http://www.nexogy.com). For purposes of the 911 Dialing feature, you may only register one location at a time for each phone line you use with the Service.
- d) Service Outages.
  - (i) Service Outages Due to Power Failure or Disruption. 911 Dialing does not function in the event of a power failure or disruption. If there is an interruption in the power supply, the Service, including 911 Dialing, will not function until

power is restored. Following a power failure or disruption, you may need to reset or reconfigure the Device prior to utilizing the Service, including 911 Dialing.

- (ii) Service Outages Due to Internet Outage or Suspension or Termination of Broadband Service or ISP Service. Service outages or suspensions or terminations of service by your broadband provider or ISP will prevent all Service, including 911 Dialing, from functioning.
  - (iii) Service Outage Due to Termination of Your NEXOGY Account. Service outages due to termination of your account will prevent all Service, including 911 Dialing, from functioning.
  - (iv) Service Outages Due to ISP or Broadband Provider Blocking of Ports or Other Acts. Your ISP or broadband provider or other third party may intentionally or inadvertently block the ports over which the Service is provided or otherwise impede the usage of the Service. In that event, provided that you alert us to this situation, we will attempt to work with you to resolve the issue. During the period that the ports are being blocked or your Service is impeded, and unless and until the blocking or impediment is removed or the blocking or impediment is otherwise resolved, your Service, including the 911 Dialing feature, may not function. You acknowledge that NEXOGY is not responsible for the blocking of ports by your ISP or broadband provider or any other impediment to your usage of the Service, and any loss of service, including 911 Dialing, which may result.
  - (v) In the event you lose service as a result of blocking of ports or any other impediment to your usage of the Service, you will continue to be responsible for payment of the Service charges unless and until you terminate the Service in accordance with this Agreement.
  - (vi) Other Service Outages. If there is a Service outage for any reason, such outage will prevent all Service, including 911 Dialing, from functioning. Such outages may occur for a variety of reasons, including, but not limited to, those reasons described elsewhere in this Agreement.
- e) Re-Activation Required if You Change Your Number or Add or Port New Numbers. 911 Dialing does not function if you change your phone number or if you add or port new phone numbers to your account, unless and until you successfully register your location of use for each changed, newly added or newly ported phone number.
  - f) Network Congestion; Reduced Speed for Routing or Answering 911 Dialing Calls. There may be a greater possibility of network congestion and/or reduced speed in the routing of a 911 Dialing call made utilizing the Service as compared to traditional 911 dialing over traditional public telephone networks.

- g) **Disclaimer of Liability and Indemnification.** We do not have any control over whether, or the manner in which, calls using our 911 Dialing service are answered or addressed by any local or national emergency response center. We disclaim all responsibility for the conduct of local emergency response centers and the national emergency calling center. We rely on third parties to assist us in routing 911 Dialing calls to local emergency response centers and to a national emergency calling center. We disclaim any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. Neither NEXOGY nor its present or former affiliates, owners, directors, officers or employees may be held liable for any claim, damage, or loss, and you hereby waive all such claims or causes of action, arising from or relating to our 911 Dialing service. Customer shall defend, indemnify, and hold harmless NEXOGY, its officers, directors, owners, employees, affiliated and related entities, agents, representatives and any other service provider who furnishes services, equipment or products to you in connection with the Service, from all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys fees and costs) by, or on behalf of, you or any third party relating to the absence, failure or outage of the Service, including 911 Dialing, dialing that results from outages, incorrect routing information, including physical location, Service interruption and non-accessibility, and/or the inability of any user of the Service to be able to use 911 Dialing or access emergency service personnel.
- h) **Alternate 911 Arrangements.** If you are not comfortable with the limitations of the 911 Dialing service, you should consider having an alternate means of accessing traditional 911 or E911 services or terminating the Service.
- i) **State and/or local governments may assess fees to NEXOGY to pay for emergency services in your community.** If so, these fees will be included on your invoice.
- B) **Services Not Provided.** NEXOGY'S Service does not provide for 0+ calling (including without limitation collect, third party billing, 900 or calling card calling). NEXOGY'S Service does not support 311, 511 or other x11 (other than 911 and 411). NEXOGY does not list phone numbers for Customers in phone directories. Accordingly, the phone numbers Customers obtain from NEXOGY may not be listed in any phone directories. In addition, in certain countries, toll-free numbers are not accessible from mobile phones and payphones or may require payment before accessing.
- C) **Customer acknowledges and agrees that NEXOGY is not responsible for ensuring the availability of an international number Customer is adding to its Nexogy line or Service (referred to and may be sold by NEXOGY as an "International Local Number") because the international number may be provided by a third party which NEXOGY does not control.** Accordingly, the International Local Number may be cancelled, ported or eliminated by the third party provider and, therefore, it may be necessary for Customer to change the international number. Once the service is cancelled by Customer, the

International Local Number may be reassigned to another. NEXOGY is not responsible for ensuring that said International Local Number can be ported to another service provider anywhere.

D) Customer acknowledges and agrees that local and toll-free numbers cannot be used for calling card applications.

10 **Equipment/Products:** The equipment, hardware, software, phones or other products used by Customer in connection with NEXOGY'S Services (collectively "equipment" or "products") must be compatible with and comply with NEXOGY'S Services before use with NEXOGY'S Services. Any equipment or product provided by Customer must be compatible with the minimum requirements required by NEXOGY, including compatible firmware and software, in order for NEXOGY to provide its Services to Customer because certain equipment and products may use different equipment, products, software and firmware versions not compatible with NEXOGY'S Services. Any equipment or product provided by Customer and any third party service provider in connection with said equipment or product must be listed and registered in the "BYOE Equipment Registration" form attached hereto as Exhibit "B" and all equipment or products, including those provided by Customer, as well as third party service providers must be approved by NEXOGY in writing, which approval or denial shall be in NEXOGY's sole discretion. In addition, Customer shall not reconfigure any equipment or products used in connection with NEXOGY'S Services without NEXOGY'S prior written authorization. In the event any equipment or product fails to properly function subsequent to Customer's execution of this Agreement, Customer shall not have any right to terminate this Agreement with NEXOGY. In the event Customer's equipment or product fails to function properly, Customer shall, within three (3) days of the equipment or product failing to function: 1) provide its own alternate equipment or product, for NEXOGY approval, which may be approved or denied in NEXOGY's sole discretion, to replace the non-functioning equipment or product or 2) purchase new equipment or products directly from NEXOGY.

CUSTOMER MUST IMMEDIATELY CHANGE ITS (1) PHONE CONFIGURATION PASSWORD AND WEB PORTAL PASSWORD WHICH ARE THE SAME AND (2) PASSWORD ON EACH PHONE AND EXTENSION VOICEMAIL TO A PASSWORD THAT IS NOT SEQUENTIAL (I.E. 1,2,3,4) OR A SINGLE NUMBER (I.E. 1,1,1,1) OR CONTINUOUS PAIRS (I.E. 3,3,6,6,8,8) IN ORDER TO MINIMIZE THE RISK OF THIRD PARTY FRAUD OR WRONGFUL CONDUCT AGAINST CUSTOMER'S ACCOUNT AND VOICEMAIL SYSTEM WHICH MAY LEAD TO COMMUNICATION CHARGES BILLED TO CUSTOMER AND/OR VIOLATE THE RESPECTIVE USER'S PRIVACY RIGHTS. ALTHOUGH THE PHONE CONFIGURATION AND WEB PORTAL PASSWORD ARE THE SAME, THAT PASSWORD MUST BE DIFFERENT THAN THE PHONE AND EXTENSION PASSWORD. IN THE EVENT THE PHONE CONFIGURATION PASSWORD AND WEB PORTAL PASSWORD ARE TO BE

DIFFERENT AT A LATER POINT IN TIME, ALL THREE PASSWORDS MUST ALSO BE DIFFERENT.

NEXOGY does not provide any warranty of suitability, fitness for a particular purpose or merchantability or any other express or implied warranty concerning the equipment, hardware, software or other products used in connection with providing the Services and expressly disclaims any warranty. Customer must deal directly with the manufacturer of the equipment concerning any defects, deficiencies, problems, including malfunction, or other matters concerning the equipment. Customer may purchase a repair or replacement plan for equipment purchased from NEXOGY ("Plan") which must be executed by NEXOGY and Customer in order to be effective and which shall be considered a part of this Agreement as an exhibit hereto. If the Plan is offered by NEXOGY and purchased by Customer at a period in time subsequent to the execution of this Agreement, the Plan shall be considered an amendment to this Agreement. NEXOGY DOES NOT REPRESENT OR WARRANT THAT THE EQUIPMENT AND PRODUCTS, INCLUDING SOFTWARE, WILL BE ERROR FREE OR UNINTERRUPTED.

- 11 **Access to Customer's Premises:** Customer authorizes NEXOGY and its employees, agents, contractors, representatives, and vendors to enter Customer's premises in order to install, maintain, inspect, repair and/or remove any equipment or other product, as applicable, provided to Customer by NEXOGY under this Agreement and/or in order to perform the Services within twenty four (24) hours advance notice by NEXOGY or immediately in the case of an emergency. Customer shall provide access after regular business hours when necessary to insure proper operation of the Service.

Customer shall provide NEXOGY with access to Customer's premises to remove and recover all equipment or other materials owned or belonging to NEXOGY or its contracted individuals or entities within three (3) days of the effective date of termination or expiration of this Agreement.

- 12 **Warranty/No Warranty:** NEXOGY warrants that its Services will be performed in a professional manner that accords with industry standards. NEXOGY'S sole obligation with respect to this warranty shall be to attempt to correct any failure on the part of NEXOGY to perform the Services in a competent manner in accord with industry standards within thirty (30) days (except as set forth in the SLA defined below) after receipt by NEXOGY of written notice specifically identifying the Services which were purportedly not performed in accordance with industry standards. The existence of errors or defects in NEXOGY'S Services shall not be a basis for finding that NEXOGY'S Services have not been performed in the manner warranted above. CUSTOMER ACKNOWLEDGES THAT NEXOGY HAS MADE NO EXPRESS OR IMPLIED WARRANTIES RELATING TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES CONTEMPLATED BY THIS AGREEMENT OR SOFTWARE, EQUIPMENT AND/OR HARDWARE USED IN CONNECTION WITH THE SERVICES.

Customer acknowledges that all services are provided *as is*. NEXOGY does not warrant against interrupted operations of Service. NEXOGY specifically disclaims any liability for actual, consequential or indirect damages suffered by Customer as a result of the operation or malfunction of the Service, or delay in implementation, reconfiguration, or repair of the Service, including for matters that are outside the control of NEXOGY.

- 13 **Use Abroad:** Although NEXOGY encourages Customer to use the Service to place calls to foreign countries from within the United States, NEXOGY does not presently offer or support the Service in any country other than the United States. If Customer uses the Service or Devices in any country other than the United States, Customer is solely responsible for any violations of laws or regulations arising out of such use in foreign countries.
- 14 **Disclaimer of Warranty.** EXCEPT FOR THE ABOVE EXPRESS WARRANTY SET FORTH IN SECTION 12, THERE ARE NO OTHER WARRANTIES, INCLUDING EXPRESS, IMPLIED OR STATUTORY WARRANTIES, REGARDING THE SERVICES AND PRODUCTS, INCLUDING ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, SUITABILITY, USAGE OF TRADE, COURSE OF DEALING, COURSE OF PERFORMANCE, TITLE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, QUIET ENJOYMENT, AND ACCURACY. NEXOGY DOES NOT WARRANT THAT ANY SERVICE OR PRODUCT PROVIDED WILL OPERATE UNINTERRUPTED OR ERROR FREE. NEXOGY DOES NOT WARRANT THAT THE PRODUCTS WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, OR LOSS OF DATA OR INFORMATION. No representation or other affirmation of fact, including but not limited to, statements regarding capacity, suitability for use or performance of the Services, whether made by NEXOGY'S employees or otherwise, that is not contained in this Agreement, shall be deemed to be a warranty by NEXOGY for any purpose, or give rise to any liability of NEXOGY whatsoever.

The Services may not be compatible with home or other security systems. Customers may be required to maintain a telephone connection through Customer's local exchange carrier in order to use any alarm monitoring functions for any security system installed in Customer's home or business. Customer is responsible for contacting the alarm monitoring company to test and determine the compatibility of any alarm monitoring or security system with the Services.

NEXOGY does not warrant that the Services will be compatible with all broadband services and expressly disclaims any express or implied warranties regarding the compatibility of the Service with any particular broadband service.

- 15 **Limitation of Damages/Damages.** NEXOGY SHALL NOT BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF USE OR INTERRUPTION OF BUSINESS) OR PUNITIVE DAMAGES ARISING UNDER THIS

AGREEMENT, INCLUDING WITHOUT LIMITATION ARISING FROM INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL THROUGH THE 911 DIALING SERVICE OR TO OBTAIN EMERGENCY HELP OR ANY INCORRECT LOCATION REPORTING TO 911 EMERGENCY SERVICE PERSONNEL, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO THE DAMAGES, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF NEXOGY IS NOTIFIED OF THE POSSIBILITY OF THE DAMAGES OR THAT THE DAMAGES ARE FORESEEABLE.

NEXOGY shall not be liable for any delay or failure to perform under this Agreement due to conditions or circumstances beyond its control, including without limitation, Acts of God, floods, fires, riots or sabotage, wars, accidents, strikes, terrorism, freight embargoes, delay in transportation or inability to secure transportation, shortage of labor, material or equipment and/or an act in compliance with any government law or regulation.

Customer acknowledges that the Service requires a fully functional broadband connection to the Internet and, in the event of an outage, alteration, change or termination of service by Customer's Internet service provider ("ISP") or broadband provider, the Service may not function. In this event, Customer will continue to be billed for the Service unless Customer terminates the Service in accordance with this Agreement. Should there be an interruption in the power supply or ISP outage, the Service will not function until the interruption or outage is properly addressed. Customer represents that Customer is aware that a power failure or disruption may require the Customer to reconfigure equipment prior to restoring the Service.

In no event shall NEXOGY be liable to Customer or third parties for any damages, including without limitation lost or anticipated profits, direct, indirect, incidental, exemplary, punitive, special, reliance or consequential damages, nor shall NEXOGY be liable for any Service Level Agreement credits, as applicable, arising out of any equipment or product defect, malfunction or deficiency, an outage, alteration, change, suspension or termination of internet service or broadband service to Customer or any damages caused to Customer arising out of (1) Customer's or any person or individual's use of equipment or products not provided by NEXOGY without NEXOGY'S prior written approval, (2) any reconfiguration of equipment or products without NEXOGY'S prior written approval or (3) any violation of any Customer employee, contractor, or staff's rights or any third party rights, including without limitation rights to privacy as well as damages arising from wrongful "hacking" or access of Customer's account and voicemail systems as a result of Customer's failure to change its password(s) pursuant to paragraph 10 above. In addition, NEXOGY shall not be responsible or liable in any manner for any Service Level Agreement credits, delay, failure to perform or damage to Customer arising out of products, equipment or services provided by Customer or third parties, any acts or omissions of Customer or third parties, or any Services provided by NEXOGY to Customer in connection with a problem arising out of Customer's network malfunction or deficiency or products or services provided by Customer or third parties or problems or deficiencies with 911 access and service.



NEXOGY shall not be liable for any measure or action taken to prevent potential or actual fraud or other wrongful conduct.

NEXOGY'S total aggregate liability and Customer's exclusive remedy for any claim in connection with this Agreement shall not be greater than the amount paid for Services by Customer for the one (1) year beginning on the date of execution of this Agreement, as an agreed upon limitation of damages and not as a penalty.

- 16 **Defend/Indemnify/Hold Harmless:** Customer agrees to defend, indemnify and hold NEXOGY, its officers, directors, owners, employees, affiliated entities, subsidiaries, related entities, agents and representatives harmless from all claims, demands, judgments, liabilities and damages, including punitive damages, in connection to, arising from or relating to (1) any equipment or product defect, deficiency or malfunction whether or not said equipment or products were provided by NEXOGY, Customer or third parties, any deficiency in service, labor or parts pursuant to the Plan, any service deficiency or problem as a result of third party service providers of Customer and any claims concerning 911 by any person or entity, including current physical location of caller, (2) any acts or omissions of Customer or third parties, including without limitation those acts or omissions which violate third party rights as well as Customer's failure to change its password(s) pursuant to paragraph 10 above, (3) any Service provided by NEXOGY to Customer in connection with a problem arising out of Customer's network malfunction or deficiency or products or services provided by Customer or third parties, (4) any breach by Customer of any obligations under this Agreement, (5) any measures or actions taken by NEXOGY to address potential or actual fraud or other wrongful conduct (6) any violation by Customer of any and all privacy laws or regulations, including without limitation, all local, state, regional, federal, government or international privacy laws and regulations as well as any violation of the rights of NEXOGY or any third party, including rights to privacy and (7) any illegal, improper, wrongful or unauthorized conduct by Customer, including without limitation any illegal, improper, wrongful or unauthorized use of Services and/or equipment or products, including without limitation software used in connection with the Services, the illegal, unauthorized or improper recording of communications, and equipment or products reconfigured, not compatible, or not approved by NEXOGY in writing.
- 17 **Limitation on Actions.** Neither NEXOGY nor Customer may institute any action in any form arising out of this Agreement more than eighteen (18) months after the cause of action has arisen, or in the case of nonpayment, more than eighteen (18) months from the date of last payment or promise to pay.
- 18 **Notice:** Any notice required to be given pursuant to this Agreement shall be in writing and mailed by certified or registered mail, return receipt requested, or delivered by a national overnight express service, as follows: If to Customer, to the address provided by Customer under Customer's signature below. If to NEXOGY, Attn: CFO, 5757 Blue Lagoon Drive,

Suite 190, Coral Gables, Florida 33126. A party may change the designated address to receive notice by written notice to the other party.

- 19 **Jurisdiction and Venue:** This Agreement shall be exclusively construed, governed and enforced under the laws of Florida without regard to rules governing conflict of laws. The parties agree that the exclusive venue for all actions, relating in any manner to this Agreement, shall only be in a state court of competent jurisdiction located in Miami-Dade County, Florida. Each party consents and submits to the personal jurisdiction of such courts and irrevocably waives any and all defenses inconsistent with this Section. If NEXOGY or Customer deem it necessary to enforce its rights in a court of law, the parties hereby agree that the prevailing party in said litigation, including all appellate levels and proceedings, shall be entitled to recovery of its attorney's fees and costs.
- 20 **Agreement Binding on Others.** This Agreement shall be binding on and shall inure to the benefit of the users of Services provided hereto and the parties hereto, and their heirs, administrators, successors, and permitted assigns. This Agreement does not provide any person or entity not a party to this Agreement with any remedy, claim or cause of action or creates any other third party beneficiary rights.
- 21 **Compliance with the Law.** The parties shall comply with all applicable laws and regulations of governmental bodies or agencies in their performance under this Agreement and failure to do so shall constitute a material breach of this Agreement.
- 22 **Assignability.** Customer acknowledges that Customer cannot assign the Service Agreement without the prior written consent of NEXOGY and that it is unlawful to sell the Service, transfer the Service, assign the Service or charge any other person, party or entity for the use of the Service without prior written consent from NEXOGY. This Agreement and the rights and obligations may be assigned by NEXOGY.
- 23 **Survival.** Sections 2 (as to the requirement to not sell, lease, rent or assign the connection or any parts of the connection to any party not named in this Agreement) through 27 and the obligations of the parties thereunder shall survive termination or expiration of this Agreement to the extent permitted or allowed therein.
- 24 **Modification/Amendment.** NEXOGY may, amend or modify the terms and/or conditions of this Agreement and the exhibits attached hereto. Amendments and modifications to this Agreement will be considered given upon execution of an amendment by both parties.
- 25 **Severability.** In the event that any of the provisions of this Agreement or the application of any such provisions to the parties hereto with respect to their obligations hereunder are held by a court of competent jurisdiction to be unlawful or unenforceable, the provision and its application shall be construed to allow for its enforceability to the maximum extent permitted

by law and the remaining provisions of this Agreement shall remain in full force and effect, and shall not be affected, impaired, or invalidated in any manner.

- 26 **Internet/Third Party Networks.** NEXOGY uses, in whole or in part, the public internet and third party networks to transmit voice and other communications. NEXOGY is not liable or responsible for any lack of privacy which may be experienced by Customer in connection with the Service.
- 27 **Entire Agreement/Authorized Representative/Miscellaneous.** This Agreement and all exhibits hereto, including the SLA, contain the entire and only understanding between the parties and supersedes all prior representations, promises or agreements, either written or oral, relating to the subject matter hereof. Any right or provisions in this Agreement shall not be waived unless waived in writing by NEXOGY. Customer represents that the Customer has read and understood the terms and conditions set forth in this Agreement including its exhibits and has had opportunity to review same with counsel of Customer's choice. Headers are used for convenience purposes only and do not form part of the Agreement (including exhibits). Unless specified otherwise, periods of time shall be calculated in calendar days. In the event the last day of a period of time falls on a weekend or national holiday, the last day of said period of time shall be the immediately next business day. The individual signing below on behalf of the Customer acknowledges that said individual has the proper authorization from the Customer to enter into this Agreement on behalf of the Customer.
- 28 **Advice of Counsel/Fully Understand/Authority.** The parties hereto each represent and warrant that they have had sufficient time to review this Agreement and the opportunity to consult with attorney(s) and counsel of their choice and that they fully understand all of the terms and legal effect of this Agreement. Each signatory below has the requisite authority to sign on behalf of the respective party.

AGREED TO AND ACCEPTED BY:

(Name of Customer)

Nexogy, Inc.

\_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Position: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_