

# Crexendo Business Services, Inc. - Business Phone Services

## Terms of Use

### 1. TERMS OF SERVICE

1.1 TERMS. These Terms of Service constitute the agreement between Crexendo Business Solutions, Inc. ("Crexendo") and the user of Crexendo's communications services and any related products or services ("Customer"). This agreement together with (if applicable) the filed tariff at [www.crexendotelecom.com/tariffs](http://www.crexendotelecom.com/tariffs) governs both Crexendo service and any Crexendo - approved or Crexendo- provided devices used with our service. It applies to all lines on each Crexendo account. "Us" or "our" shall refer to Crexendo, and "you" or "yours" shall refer to Customer as appropriate by context. By subscribing to or using our service, you agree to these Terms of Service and amendments which may be made from time to time. All information linked to these Terms of Service is incorporated in the Terms of Service. You further confirm that you are of legal age to *enter into this agreement and that you have read and understand fully its terms and conditions.*

1.2 PRICE AND DELIVERY. Price and delivery terms are FOB Crexendo shipping origin. Upon Crexendo's delivery of the Products to the carrier at the FOB point, title and risk of loss and damage to the Products shall pass to the Buyer. All prices are subject to change without notice. Crexendo reserves the right to make adjustments to the price of all Products due to changing market conditions, Product discontinuation, manufacturer price changes, errors in advertisements and other extenuating circumstances. Prices for particular purchases will be those in effect at the time of shipment. Crexendo may make delivery in installments and receive payments for each installment. All delivery dates are estimated. CREXENDO SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES FOR CREXENDO'S FAILURE TO FILL, OR DELAY OR ERROR IN FILLING ANY ORDER, OR FOR ANY DELAY IN DELIVERY. Out of stock items will be deleted from the order after confirmation from you. These items may be placed on back order if requested.

1.3 SHIPPING INFORMATION. Crexendo ships products within the United States, Puerto Rico, and Canada. Crexendo cannot ship to a Post Office box address, territories, addresses outside the United States or APO/FPO addresses. Upon acceptance by Crexendo, orders will be shipped carrier ground service and no signature is required upon delivery. If a signature is to be required there is an additional charge of \$10.00, which will be added to your order. Please allow two (2) to seven (7) business days for shipments to arrive. Express or expedited shipping may be arranged at an additional cost by contacting Customer Support.

### 2. USE OF 911 SERVICES

911. Crexendo 911 service is different from traditional 911 and cellular/wireless 911 services. Dialing 911 may differ depending on where you are located, and the device used, when using your Crexendo service. Please see the full terms of the Crexendo 911 policy at [www.crexendo.com/e911-policy](http://www.crexendo.com/e911-policy)

When you dial 911 your Crexendo phone number and registered address are sent to the local emergency center serving your location, and emergency operators have access to this information in order to send help and call you back if necessary. When you dial 911 local emergency operators answering the call may not see your Crexendo telephone number or your registered address. The emergency center may not be equipped to receive, capture or retain your Crexendo telephone number and registered address, 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 disconnected, dropped or otherwise terminated.

We require you to provide the physical address where you will be using our service for 911 purposes. This address is used to route 911 calls to your local emergency center. When you initially provide your physical address, it can take up to 24 hours to verify your address and activate 911 services at this address. It is

advisable to have alternate 911 services until your 911 service has been activated and you have been notified by Crexendo of that activation. If you move this device to another location, you must update your address. The location must be in an area served by Crexendo. You may register only one location at a time. If you do not update your location, your 911 calls may be sent to an emergency center near your old address. There may be an additional delay of up to 24 hours after you notify Crexendo of the device having been moved.

If you have selected a service that enables you to utilize the same telephone number for two different devices you may be required to use an alternate service to contact local 911 service. 911 will only work at the location where the device is located. Please note that our 911 Dialing service will not function in the event of a broadband or power outage or if your broadband, Internet Service Provider (ISP), or Crexendo phone service is terminated.

**YOU AGREE TO NOTIFY ANY POTENTIAL USER OR AGENT OF THE SERVICES, WHO MAY PLACE CALLS USING THE SERVICES OF THE 911 LIMITATIONS DESCRIBED HEREIN**

**YOU ACKNOWLEDGE THAT E911 SERVICE HAS CERTAIN CHARACTERISTICS THAT DISTINGUISH IT FROM TRADITIONAL, LEGACY, CIRCUIT-SWITCHED 911 SERVICE. THESE CHARACTERISTICS MAY MAKE E911 SERVICES UNSUITABLE FOR SOME CUSTOMERS. CUSTOMER SHOULD CAREFULLY EVALUATE CUSTOMER'S OWN CIRCUMSTANCES WHEN DECIDING WHETHER TO RELY SOLELY UPON E911 SERVICE. CUSTOMER ACKNOWLEDGES THAT IT IS CUSTOMER'S RESPONSIBILITY TO DETERMINE THE TECHNOLOGY OR COMBINATION OF TECHNOLOGIES BEST SUITED TO MEET CUSTOMER'S EMERGENCY CALLING NEEDS, AND TO MAKE THE NECESSARY PROVISIONS FOR ACCESS TO EMERGENCY CALLING SERVICES (SUCH AS MAINTAINING A CONVENTIONAL LANDLINE PHONE OR WIRELESS PHONE AS A BACKUP MEANS OF COMPLETING EMERGENCY CALLS). IN ADDITION TO THE LIMITATIONS SET FORTH IN SECTION 11 OF THIS AGREEMENT, THE CHARACTERISTICS DISCUSSED ABOVE DISTINGUISH E911 SERVICE FROM TRADITIONAL, LEGACY, CIRCUIT-SWITCHED 911 SERVICE.**

You will be required to sign a 911 Disclosure Form. You acknowledge that information has been provided to you and that you agree to those terms.

### **3. TYPE OF SERVICE**

**TYPE OF SERVICE.** Our service is not a traditional Telecommunications Service. Our service is provided using an Internet Protocol (commonly called Voice over Internet Protocol (VoIP), and we provide it on a best efforts basis. There are important distinctions between a traditional Telecommunications Service and our VoIP service. Our service may be subject to different regulatory treatment than a traditional Telecommunications Service and be subject to applicable tariffs and regulations. This treatment may limit or otherwise affect your rights of redress before regulatory agencies. Our service requires a high speed broadband connection which we do not provide. Events beyond our control may affect our service, such as power outages, fluctuations in the Internet, your underlying Internet Service Provider (ISP)/broadband service, the speed of your internet connection, your computer network or maintenance. We will act in good faith to minimize disruptions to your use of and access to our service.

### **4. USE OF SERVICE**

**4.1 USE.** We provide our service and devices to you solely for business purposes. The following uses are not considered business uses and are not permitted: autodialing (unless purchased from Crexendo and used subject to local and Federal regulations), continuous or extensive call-forwarding, inbound/outbound centralized or distributed call center activity (unless sold as a call center solution), telemarketing of any kind that is in violation of any law or regulation; fax or voicemail broadcasting and fax or voicemail blasting. You are responsible for supplying, operating, and supporting the infrastructure required to support standard SIP based Customer Premise Equipment for use with the service. Your local network must utilize a business-class firewall properly sized to your environment and capable of 1.) Traffic Shaping – allocating specific bandwidth for VoIP traffic; 2.) Disabling SIP ALG; and 3.) Quality of Service (QOS) configuration to prioritize packets based on a.) any network traffic to and from Crexendo's subnet, and b.) port ranges including but not limited to RTP audio stream and defined SIP ports. Enterprise-class applications may

require the implementation of VLAN's. Please consult your IT specialist to confirm your firewall meets these specifications. As the subscriber and operator or administrator of this equipment, you are responsible for configuring and maintaining the security of the equipment, including but not limited to the physical and network security elements of your device. You agree to cooperate with Crexendo to verify the proper network provisioning has been completed by your IT specialist prior to and during the service term.

If you use the service or devices in a way that is inconsistent with the service level that you contracted for you will then be subject, at Crexendo 's sole discretion, to termination, or to pay the rates for the service or plan that would apply to the way you used the service or device. Failure to contact Crexendo in response to its notifications and/or failure to promptly correct usage activity to conform to normal use will result, in Crexendo's sole discretion, in immediate mandatory transfer to another appropriate plan, or suspension or termination of service. You acknowledge that if your service is terminated under this provision, you are subject to all applicable disconnection and device or other rebate recovery charges. Crexendo's maintains the right to terminate your account for non-performance which will not release you from the remaining liability under your agreement.

**4.2 SERVICES NOT SUPPORTED.** Crexendo service does not support 0+ or operator-assisted calling, including, without limitation, collect calls, third party billing calls, 900/ 976 numbers, or calling card calls. Our service may not support 311, 511, and other x11 services in one or more service areas.

**4.3 DIRECTORY LISTING.** The phone numbers you receive from us unless otherwise required by **tariff** will not be listed in any telephone directories. However, if you are able to transfer a number it may be listed. Listing of telephone numbers in published directories is the responsibility of the directory publishers and Crexendo bears no responsibility for directory listings.

**4.4 CERTAIN INCOMPATIBLE SERVICES.** You acknowledge that our service may not be compatible with all non-voice communications equipment, including but not limited to, home security systems, TTY, medical monitoring equipment, satellite television systems, PBX, Centrex, other private telephone networks, or computer modems. You waive any claim against Crexendo for interference with or disruption to the operation of these services and equipment, as well as any claim that Crexendo is responsible for any disruption to your business, if applicable. Some providers of broadband service may provide modems that prevent the transmission of communications using our service. We do not warrant that our services will be compatible with all broadband services and expressly disclaim any express or implied warranties regarding the compatibility of our service with any particular broadband service. There may also be other services with which our service may be incompatible.

**4.5 MUSIC ON HOLD.** Your use of the Music on Hold Service ("Music on Hold") feature is governed by the Copyright provision (4.6) as well as the entire Terms of Service. Your using Music on Hold means that you agree to these Terms.

**4.6 COPYRIGHT PERMISSIONS.** Crexendo does not monitor your use of Music on Hold. Crexendo has not secured (nor does it secure) for you any permissions, rights or licenses for the performance of any protected or copyrighted content or music. Therefore, you acknowledge and agree that you are solely responsible for seeking and securing the necessary permissions and licenses in and to such music or content prior to its public performance and/or your use in conjunction with or through the Music on Hold. **YOU ARE RESPONSIBLE FOR SECURING AND PAYING FOR ALL NECESSARY LICENSES AND CLEARANCES FOR THE PERFORMANCE OF COPYRIGHTED AND/OR PROTECTED MUSIC OR CONTENT THROUGH MUSIC ON HOLD.** You can find out more about obtaining licenses through the following performing rights organizations: ASCAP ([www.ascap.com](http://www.ascap.com)), BMI ([www.bmi.com](http://www.bmi.com)) and SESAC ([www.sesac.com](http://www.sesac.com)). You may not use Music on Hold in the violation of any civil or criminal law, or in violation of any federal or state regulation, code or statute. Music on Hold is provided "as is" without warranty of any kind.

**4.7 CALL RECORDING.** If you have enabled Call Recording on your account, you can record inbound or outbound telephone calls from your phone by using the appropriate command during the call as long as the other party is on the call. The Auto Call Record Option service includes 1 GB of space to host call recordings (additional storage may be purchased). When you use the "\*72" command, you will hear a "beep" indicating

that the entire call is being recorded. If you use the "\*73" command again during the call, the recording will stop. In the event you have activated "All Call Recording" calls for all or specified extensions will be automatically recorded, it is solely your obligation to confirm the legality of such use. You must abide by all applicable state, federal and international laws, rules and regulations regarding recording of calls. EACH JURISDICTION MAY HAVE DIFFERENT REGULATIONS REGARDING CALL RECORDING AND YOU ARE SOLEY RESPONSIBLE FOR COMPLAINE WITH ALL APPLICABLE REGULATIONS.

4.8 NETWORK INFRASTRUCTURE. Crexendo services rely on the customer's network infrastructure (firewalls, routers, switches, cabling, etc.) and internet connection which may be provided by various other parties and as such the customer is responsible for the availability and quality of the network infrastructure and the internet connection.

4.9 CUSTOMER DATA. Customer hereby grants, subject to Crexendo a non-exclusive, non-transferable (except in connection with an assignment of this Agreement) license to copy, store, record, transmit, display, view, print, and use Customer Data, solely to the extent necessary to provide the Services to Customer. Unless otherwise noted Customer grants no right, title, interest, or license in the Customer Data, and Customer hereby reserves for itself and its licensors all rights in and to all Customer Data. Notwithstanding the foregoing, Crexendo shall be permitted to disclose Customer Data to third parties as and to the extent required by law (including, without limitation, pursuant to a court order or subpoena).

## **5. CHANGE TO SERVICE/TERMS AND CONDITIONS**

Your service plan includes terms and conditions such as monthly service allowances, limitations and features, and associated charges which are listed on your service agreement(s). You acknowledge that your service plan is also subject to these Terms of Service. Our service is subject to our business policies, practices and procedures, which we can change at any time without notice. If we do give you notice, it may be provided on your account web portal, by email, or monthly bill, in a newsletter, or other communication permitted under applicable law. Rates will not be increased during the Initial Term as more fully detailed in Paragraph 8.

## **6. BILLING; FEES ON DISCONNECTION; PORTABILITY NOTICE TO TERMINATE AND RENEWAL OF SUBSCRIPTION**

6.1 BILLING. We provide our service to you pursuant to the terms of this agreement. Your terms for billing (i.e. monthly, annually or otherwise) are detailed in your service agreement. The service term is the term that you agreed to when you contracted for our service. You will be billed the first month of service in advance upon execution of your subscription agreement together with any activation fees if applicable. Your first service term begins on the date of the first occurrence of either: (a) telephone number porting or forwarding has taken place, (b) system is utilized, (c) the system installation and activation is complete (d) phones have been shipped to you and in your possession for more than thirty (30) days; subsequent billings will occur monthly thereafter. Your service will continue during the term of the agreement or until canceled as provided for herein. Please note that the obligations of this agreement begin on execution of the subscription agreement and are indefinite. Your subscription will automatically renew at the end of your then current subscription agreement for a period of one year at the then current rates unless you notify us thirty (30) days prior to the scheduled termination of your subscription.

You will be charged for the monthly service in advance at the beginning of each billing period. Any overages are charged after the month completes along with the next monthly service. Fax overage charges for 800 Fax Service may be delayed by as much as 90 days.

6.2 TERMINATION. *Termination by you*, if You terminate the services prior to the end of the contract term, you are responsible for all charges for any remaining time left on the term as if you remained a customer through the end of the then-current term, including, without limitation, outstanding charges, unbilled charges, taxes, and fees, including any applicable fees. *Termination by us*. If we terminate your service for any of the reasons detailed in this agreement, (including but not limited to nonpayment or use of service in violation of applicable law or company policy, or outside the parameters of your plan) you will be responsible for all charges through

the end of your current service term, including unbilled charges, plus any disconnection fees and any recovery fees.

**6.3 TO TERMINATE YOUR SERVICES.** All terminations require 30 days prior notification. All termination requests must be submitted via email to [billing@crexendo.com](mailto:billing@crexendo.com). No Termination request will be deemed to be received if the above procedure is not followed.

**6.4 NUMBERS MAY NOT BE PORTABLE.** In some circumstances you may not be able to take, or "port," your current telephone number to another service provider. If you ask your new service provider to port a number from us, we reserve the right to terminate our service for that number promptly after we receive notification from the underlying local exchange carrier that the porting of your number to your new service provider has been completed successfully. We will terminate our service in this fashion even if you have not independently called us to request disconnection. Once your service is terminated in this manner, you will remain responsible for all charges and fees including any unbilled charges, as well as for any disconnection or recovery fees that may be due.

**6.5 FAIR USAGE POLICY.** It is important to Crexendo Business Communication Service that all eligible Crexendo customers are able to access our services. For this reason, and to ensure the provision of quality and reliability of our services, a Fair Use Policy applies to all our unlimited services and plans. Limited plans will incur charges after using the pre-allotted minutes. Subject to applicable tariffs we reserve the right to vary the terms of this Fair Use Policy from time to time. Our Fair Usage policy allows for new and renewal customers effective March 1, 2019 up to 2,500 minutes of pooled domestic use per month per licensed extension. Any overages above the fair usage policy will be billed at the then current rates..

**6.6 IP LINE USAGE POLICY.** It is important to Crexendo Business Communication Service that all eligible Crexendo customers are able to access our service. For this reason, and to ensure the provision of quality and reliability of our services, customers are hereby notified that our average IP Line allocation is offered at a 3 to 1 ratio of users to company size. If a business customer requires a 1 to 1 ratio of lines to users and has not subscribed for such, the customer will be subject to additional network charges that are not standard to our offering. Such Customers may be required to purchase additional bandwidth to address the above average demand.

**6.7 PAPERLESS BILLING.** Crexendo, in an effort to reduce the use of paper and to reduce costs to our Customers, uses Paperless Billing. This service provides your billing information online rather than in a printed, paper format. By using our service, you agree that you will not receive a paper bill in the mail and will instead receive an email each month. To request a paper bill please email [billing@crexendo.com](mailto:billing@crexendo.com). There will be an additional charge for paper billing unless prohibited by tariff.

**6.8 E911.** You are responsible for maintaining the accuracy of the E911 phone number and address for all of your devices. Should you decide to move your service to another location, you are responsible for notifying Crexendo.

**6.9 FRAUDULENT CHARGES.** You are responsible for all charges attributable to the Services, even if incurred as the result of fraudulent or unauthorized use of the Services. If you believe your services are being stolen, fraudulently used, or otherwise being used in an unauthorized or unwanted manner you must contact Crexendo immediately.

**6.10 ADDITIONAL CHARGES.** In the event we are required to provide additional service or support which are either requested or required specifically for you there may be additional charges. This includes our having to repair or restructure changes to your system unless those changes are required by actions we have taken. In addition to the foregoing there will be charges for software configuration changes (adds, moves and changes) you request at our then current hourly rate billed in quarter-hour increments. We reserve the right to charge for requested changes to existing system reports or for the development of new reports at our then current developer hourly rate billed in full-hour increments.

## **7. DEVICE AND INSTALLATION INFORMATION AND LIMITATION OF WARRANTY ON DEVICE AND INSTALLATION**

**7.1 NON CREXENDO BRANDED DEVICES.** Except as set forth in these Terms of Service, if you received a device not Crexendo-branded you should read the separate limited warranty provided by the manufacturer.

**7.2 CREXENDO BRANDED DEVICES.** We will provide a limited warranty on Crexendo-branded devices only for manufacturing defects for the entire term of your subscription so long as you are current on all payments due (month-to-month agreements are excluded). We will replace defective or damaged phones during the term of your subscription if you are current on all charges. The replacement phone will be shipped via ground transportation (expedited shipping may be arranged at additional cost by contacting customer support). You are responsible for returning replaced equipment to us within thirty (30) days properly packed for shipment. Equipment not returned within 30 days or received damaged will result in a fee of 50% of the then-current Crexendo retail price and will be billed to your account. *Repair or replacement is your sole remedy* for any breach of any limited warranty or other breach of any duty regarding a device. For a replacement device, follow the instructions of our Customer Service representatives who may be contacted at 855-211-2255. This limited warranty applies in place of the limited warranty included with the device if the included limited warranty is less favorable to you than this warranty. This warranty gives you specific legal rights, and you may also have other rights which vary from State to State.

**7.3 SUBSTITUTIONS.** Crexendo reserves the right to substitute and ship equipment and products of similar quality and functionality based on availability of equipment at time of installation.

**7.4 TECHNICAL SUPPORT.** Crexendo provides technical support to Customers via telephone and e-mail for the Services and the Equipment provided hereunder. Support for other applications and uses is not provided or implied and except as stated in this Section, Crexendo has no obligation to provide additional technical support.

**7.5 INSTALLATION.** If we provide installation services for you, we will provide a limited warranty on those services for a period of one (1) year from the execution of the subscription agreement. This warranty applies only to work completed by us and not altered by you or your agents. Your sole remedy will be repair of improper installation or workmanship. Some States do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

**7.6 DAMAGED DEVICES.** If you receive cartons or devices that are visibly damaged, you must note the damage on the carrier's freight bill or receipt and keep a copy. You must also keep the original carton, all packing materials, and parts in the same condition in which you received them from the carrier. You must then contact our Customer Service Department immediately at 855-211-2255.

**7.7 RETURN AUTHORIZATION.** Except in-warranty defective merchandise or merchandise shipped in error by Crexendo, merchandise in the original, unopened manufacturer's package that is undamaged may be returned within 5 days of receipt without a restocking charge. Otherwise, merchandise must be returned PREPAID via an insured service within 30 days from date of receipt and is subject to a 25% inspection & restocking charge. No Equipment may be returned by Customer for any reason without prior approval. All returns shall be in original packaging or equivalent. Customer shall be responsible for all costs related to return shipping for any Equipment that is being returned. Any Equipment returned without prior authorization for its return or proper packaging may be refused. In order to obtain any credit Customer must immediately obtain a return material authorization number from Crexendo, return any Equipment provided hereunder, undamaged and in good working condition, in its original packaging and with its original content or otherwise there will be no credit issued or refund provided.

**7.7 OWNERSHIP AND RISK OF LOSS.** Unless you lease your phone from us at which time we retain ownership to the phone, you will own your device; whether you lease or own the phone you bear all the risk of loss or theft (including but not limited to fire, negligence, or destruction). You are responsible for damage other

than the limited warranty contained herein. This risk is from the time we ship your device to you until the time you return it to us according to this agreement.

**7.8 TAMPERING WITH DEVICE.** You may not change the electronic serial number or equipment identifier or encryption keys or other authentication or technical data of your device or perform a factory reset of your device without first getting our written consent or unless directed by a Customer Support representative.

**7.9 DISCLAIMER.** Other than express warranties included with your device and the customer limited warranty described in this agreement, we make no warranties of any kind, express or implied. We specifically disclaim, following the term of the limited warranty, any warranty of merchantability, fitness of the device for a particular purpose, title or non-infringement, or any warranty arising by usage of trade, course of dealing, or course of performance, or any warranty that the device or any firmware or software is "error free" or will meet your requirements. This section does not limit any disclaimer or limitation of warranty in the documentation provided with your device.

## **8. CHARGES, TAXES, AND ADDITIONAL FEES**

**8.1 RATES.** Rates will not be increased during the Initial Term, with the exception of tax or fee changes and international toll calling rates. Otherwise Crexendo may change the prices for the Services, toll charges, fees and taxes, from time to time. Where required by law, we will send notification of invoices to your email address on file with us. We will not give you credit for any interruption of Crexendo service, including international calling services. We bill usage charges in full minute increments. We round partial minutes up to the next full minute, unless we state otherwise in the rate schedules on our website. We bill fractional US Federal Universal Service Fund charges in full cents. We round up cents.

**8.2 TAXES AND FEES.** Federal, State and local governments assess taxes, surcharges, or fees, or all of these, on your use of our service. Charges include but are not limited to Federal Universal Service Fund and State and local use taxes and various required programs. There are substantial costs associated with the remittance of these taxes and fees in addition we collect and retain a recovery fee to recover some of the costs we incur to comply with local, state and federal governmental mandates and programs, we may impose the fee whether or not the benefits of any or all of these mandates and programs are available to you in your location. These charges may be a flat fee or a percentage of your Crexendo charges and may change without notice. These charges are based on the rates applicable to the address you provided to us. You are responsible for all applicable taxes, fees, recovery fees or charges for your subscription, use, or payment for our service or your device. These amounts are in addition to the payment for your service or devices. We will bill these charges to your payment method according to the terms in this agreement.

**8.3 TOLL FREE CHARGES.** If you use our "Toll Free" feature, we may recover from you any charges imposed on us either directly or indirectly for toll free calls made to your number. We may recover these amounts by means of a per call charge, rounded up to the next cent, or in any other way we decide is appropriate for the recovery of those costs.

## **9. BILLING PAYMENT AND DISPUTE**

**9.1 BILLING.** We will charge your method of payment in advance for each monthly service plan fee. Associated taxes and surcharges are billed in arrears as are any usage and calls not covered by your plan. We bill immediately on disconnection for any unbilled amounts and any disconnection, and other fees that are due. If you subscribe to a prepaid annual plan, we will bill you in advance for the service plan fee due for the entire year, plus any associated taxes, fees and surcharges, and in arrears on a monthly basis. Late payments will be subject to late payment fee of \$25.00 per occurrence and returned electronic check payments will be subject to returned check fee of \$25.00 per occurrence.

**9.2 PAYMENT.** When you subscribe to our service, you authorize us to collect from your payment method (Credit Card), including disconnection fees, porting fees, late fees, check return fees, rebate or device recovery fees and any other outstanding charges. This authorization will remain valid until 30 days after you terminate our authority to charge your payment method. Payments made over the phone will result in a convenience fee of \$9.95 per occurrence and will be added to your invoice or payment amount at the time of payment. If you

chose to pay by check instead of placing a credit card on file, a fee of \$5.95 will be added to your invoice each month where such charges are permitted by law.

9.3 COLLECTION. If we disconnect your service, you will remain liable to us for all charges under this agreement and all the costs we incur to collect these charges, including, without limitation, collection agency fees, reasonable attorneys' fees, and arbitration or court costs.

9.4 NOTICE AND BILLING DISPUTE. You agree to promptly update your account information whenever your personal or billing information changes (including, for example, your name, address, e-mail address, telephone number, and credit/debit card number, CVV, and expiration date). You acknowledge and agree that Crexendo will be sending you information regarding your service, including via e-mail, over the Internet. If notices are sent by us to the last email address provided by you, you agree that we have provided sufficient email notice and you waive any rights to assert failure of notice. If you want to dispute any Crexendo charges on your statement, you must notify us within 7 calendar days after you receive your statement from your bank or credit card issuer. If you do not dispute the charges within 7 calendar days, you waive any right to contest the charges.

## **10. PROHIBITED USES; UNLAWFUL USES AND CONDUCT**

10.1 LAWFUL PURPOSES. You may use our service and your device only for lawful, proper and appropriate purposes. You may not use our service or your device in any way that is illegal, improper or inappropriate. Crexendo in its sole discretion may determine what improper and inappropriate activities are.

10.2 MONITORING AND PROVIDING OF INFORMATION TO AUTHORITIES. We may monitor the use of our service for violations of this agreement. We may remove or block all communications if we suspect a violation of this agreement, or if we believe in good faith it is necessary in order to protect our service, or Crexendo, its parent, affiliates, directors, officers, agents, and employees from liability or other harm. If we believe that you have used our service or your device for an unlawful purpose, we may forward the relevant communication and other information, including your identity, to the appropriate law enforcement or other for investigations and prosecution. You consent to our forwarding of any such communications and information to law enforcement or other. In addition Crexendo will respond to any subpoena or court order or law enforcement or other governmental agency requests.

10.3 USE OF SERVICES AND LOCATIONS. The Crexendo services are only offered and supported where allowed by law. Our service is designed to work generally with unencumbered high-speed Internet connections. However, if your ISP or broadband provider places restrictions on using VoIP services, we do not claim that they will allow you to use our service. You will be solely responsible for any violations of federal, state or local laws and regulations or violations of ISP and broadband provider terms of service because of your use of our service. Crexendo only ships phones within the United States and Canada, if you ship a device outside the United States for use in another country, you are solely responsible for determining and adhering to compliance with all applicable customs, regulatory and other laws regarding the transport, distribution and use of such device and the service as well as the ability to use the service in that location.

10.4 NO TRANSFER OF SERVICE. You are the sole account holder for the service for all purposes and are solely responsible for all charges incurred on the account, regardless of changes to the account, including billing information. You may not resell or transfer your service, account or your device or provide a telephone service to anyone else by using your Crexendo service or features of your Crexendo service without first getting our written consent. In no event may your account be assigned to a non-U.S. entity.

10.5 NO ALTERATIONS OR TAMPERING. If you copy or alter or have someone else copy or alter the program, hardware or software of the device in any way that facilitates a compromise of your service, you are responsible for any charges that result. You may not attempt to hack or otherwise alter or disrupt our service or make any use of our service that is inconsistent with its intended purpose.



10.6 THEFT OF SERVICE. You may not use or obtain our service in any manner that avoids Crexendo policies and procedures, including using the service in an illegal or improper manner. You will notify us immediately if your device is stolen or if you believe that your service is being stolen, fraudulently used, or otherwise being used in an unauthorized, improper, or illegal manner.

10.7 REGISTRATION INFORMATION CUSTOMER COMMUNICATIONS. You are solely responsible for maintaining the confidentiality of your login/registration, and will not transfer your login, registration information, email address or password, or lend or otherwise transfer use of or access to any third party. You are solely responsible for any and all activities that occur under your account and will comply with applicable foreign, federal, state, and local law in its use of the Services, including but not limited to laws regarding online behavior, acceptable content, the import or export of Equipment and the transmission of information under applicable export laws. Recognizing the global nature of the Internet, Customer also agrees to comply with applicable local rules or codes of conduct (including, if applicable, codes of conduct or policies imposed by employers) regarding online behavior and acceptable content. Use of the Services is void where prohibited. Customer will immediately notify us of any unauthorized use of Customer's account or any other breach of security related to Customer's account or Services.

10.8 UNAUTHORIZED USAGE OF DEVICE, FIRMWARE OR SOFTWARE. You have not been granted any license to use the firmware or software we use to provide our service or that we provide to you in providing our service, or that is embedded in your device, other than a nontransferable, revocable license to use the firmware or software in object code form (without making any modification to it) strictly according to the terms and conditions of this agreement. Leased phones will be used exclusively for our services. We make no warranty express or implied that purchased phones may be compatible with any other service provider.

10.9 IMPORT AND EXPORT COMPLIANCE. You agree to comply with U.S. export laws, and applicable import and export laws that may apply in your location(s), concerning the transmission of technical data and other regulated materials via the Services, including, without limitation, laws governing the import and export of encryption software.

## **11. SERVICE AS IS, DISCLAIMERS OF WARRANTY LIMITATIONS ON LIABILITIES**

11.1 AS IS SERVICES. You agree that all our services including premium services which may be acquired from time to time, are provided "as is," except to the extent provided herein.

11.2 NO WARRANTIES ON SERVICE. We make no warranties, express or implied, including but not limited to, any implied warranties of merchantability, fitness of the service or device for a particular purpose, title or non-infringement or any warranty arising by usage of trade, course of dealing or course of performance. In addition, we do not warrant that the service or device will be without failure, delay, interruption, error, and omission, degradation of voice quality or loss of content, data, or information. Neither Crexendo nor its officers, directors, employees, affiliates or agents, or any other service provider or vendor who furnishes services, devices, or products to the customer for our service will be liable for unauthorized access to our or your transmission facilities or premises or equipment or for unauthorized access to, or alteration, theft, or destruction of, customer's data files, programs, procedures, or information through accident, fraudulent means, devices, or any other method, regardless of whether such damage occurs as a result of Crexendo's or its service providers' or vendors' negligence. Statements and descriptions concerning our service or device(s), if any, by Crexendo or Crexendo's agents or installers are informational and are not given as a warranty of any kind. We will not give you credit for any interruption of Crexendo service, including international calling services.

11.3 DISCLAIMER OF LIABILITY FOR DAMAGES. In no event will Crexendo, its officers, directors, employees, affiliates or agents or any other service provider who furnishes services or devices to you in connection with our service be liable for any damages, including but not limited to, personal injury, wrongful death, property damage, loss of data, loss of revenue or profits, or damages arising out of or in connection with the use or inability to use a device or the service, including inability to access emergency service personnel through the 911 dialing service or to obtain emergency help. These limitations apply to claims founded in breach of contract, breach of warranty, product liability, tort, and any and all other theories of liability. These limitations apply whether or not we were informed of the likelihood of any particular type of damages. *Some States do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.*

11.4 DISCLAIMER OF 911 LIABILITIES. We disclaim all responsibility for the conduct of local emergency response centers and the national emergency calling center. We do not have any control over any local emergency response center. Therefore, we are not responsible for whether they answer calls using our 911 dialing service, how they answer these calls, or how they handle them. 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 are neither liable nor responsible if the data used by a third party to route calls is incorrect or produces an erroneous result. Neither Crexendo nor its officers or employees 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 our service, relating to our service, including, without limitation, 911 Dialing, or your device.

11.5 LIMITATION ON TOTAL LIABILITY. Our total liability under this agreement will not exceed the service charges for the affected time period. Crexendo will not be responsible for third party fees or charges, including but not limited to, banking fees, overdraft fees, cellular phone or other wireline charges, technician charges, or other similar charges.

## **12. INDEMNIFICATION AND WAIVER OF CLAIMS**

12.1 INDEMNIFICATION. You shall defend, indemnify, and hold harmless Crexendo, its officers, directors, employees, affiliates and agents, and any other service provider who furnishes services to you for our service, from any and all claims, losses, damages, fines, penalties, costs, and expenses (including, without limitation, attorneys' fees) by, or on behalf of, you or any third party or user of our service, relating to our service, including, without limitation, 911 Dialing, or your device(s), or use of our service by you or others using your account (whether or not such usage is expressly authorized by you).

12.2 WAIVER OF CLAIM OR CAUSES OF ACTION. You waive all claims or causes of action arising from or relating to our 911 dialing service unless the claims or causes of action arise from our gross negligence, recklessness, or willful misconduct including the right to a jury trial and class action as detailed in Section 13.2.

12.3 CONTENT. You are liable for all liability that may arise from the content transmitted to any person, whether or not you authorize it, using your service or device(s). You promise that you and anyone who uses your service and all your and their content comply at all times with all laws, regulations, and written and electronic instructions for using our service and the device.

12.4 ACCOUNT INFORMATION. You are liable for all liability that may arise from your failure to provide true, accurate, current and complete information and to maintain and promptly update such information.

## **13. DISPUTE RESOLUTION AND BINDING ARBITRATION**

*It is important that you read this entire section carefully. This section provides for resolution of disputes through final and binding arbitration before a neutral arbitrator instead of in a court by a judge or jury.*

13.1 ARBITRATION. Crexendo, its parent company, affiliates, assigns and successors and you agree to arbitrate any and all disputes and claims between you and Crexendo. You specifically waive any right to a trial by Jury or by Court. Arbitration includes all right in law or equity including but not limited to: disputes and claims arising out of or relating to any aspect of the relationship between you and Crexendo, fraud, misrepresentation or any other legal theory; disputes and claims that arose before this or any prior agreement (including, but not limited to, claims relating to advertising); disputes and claims that may arise after the termination of this agreement; disputes and claims that are currently the subject of individual litigation; disputes and claims which may be raised in class action litigation whether or not you are or waive your right to be a member of a certified class; and disputes and claims concerning the scope of this arbitration provision. References to "Crexendo," "us" and "you" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors and assigns, as well as all authorized or unauthorized users or beneficiaries of the service under this agreement or any prior agreements between you and Crexendo. The arbitration shall be administered by the American Arbitration Association ("AAA"). The arbitration shall be

governed by the AAA's Commercial Dispute Resolution Procedures. Those Rules may be found at [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879. Unless you and Crexendo mutually agree otherwise, all hearings conducted as part of the arbitration shall take place at a location no further than 250 miles from the address where the Crexendo services were contracted.

**13.2 WAIVER OF JURY TRIAL AND CLASS ACTION.** You and Crexendo agree that, by entering into this agreement, you and Crexendo are waiving the right to a trial by jury. You and Crexendo agree that the arbitrator may award relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. You and Crexendo agree that you and Crexendo may bring claims against the other only in your or its individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. You and Crexendo agree that, unless you and Crexendo agree otherwise, the arbitrator may not consolidate more than one person's or entity's claims, and may not otherwise preside over any form of a representative or class proceeding, notwithstanding any other provision in this agreement to the contrary.

**13.3 TIME LIMITATION.** You agree that regardless of any statute or law to the contrary, any suit or arbitration arising out of or related to use of the Services or the Agreement must be filed within one (1) year after the earlier of (a) when such claim or cause of action arose or (b) termination of Services to Customer or be forever barred.

## **14. MISCELLANEOUS TERMS**

**14.1 GOVERNING LAW.** Unless otherwise required by Tariff this Agreement and the relationship between Customer and Crexendo shall be governed by the laws of the State of Arizona without regard to its conflict of law provisions and any applicable federal and international laws. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

**14.2 NO WAIVER OF RIGHTS.** Our failure to exercise or enforce any right or provision of this agreement will not constitute a waiver of the right or provision. Crexendo reserves all of its rights at law and equity to proceed against anyone who uses its services or device illegally or improperly. All determinations by Crexendo under these Terms of Sale and exercise of its rights are made and done in our sole and absolute discretion.

**14.3 CREDIT AND REPORTING.** You authorize us to investigate and/or review your credit history, including requesting a report, both when you sign up for our service and at any time after you sign up, for any purpose, including, but not limited to, your initial qualification for an account, your continued compliance with the terms of your account and general customer based evaluation purposes not specifically associated with your account and to share credit information about you with credit reporting agencies. Upon your request we will inform you whether or not we have requested a report, and if a report was requested, the name and address of the consumer reporting agency that furnished the report.

**14.4 PRIVACY.** Crexendo uses, in whole or in part, the public Internet, the public switched telephone network, and third party networks to transmit voice and other communications. Crexendo is not liable for any lack of privacy which you may experience from using our service. Please refer to our Privacy Policy located at [www.crexendo.com/privacy](http://www.crexendo.com/privacy) for additional information, such as how we use your information and how you can opt out of receiving marketing messaging.

**14.5 CHANGES TO THE TERMS OF SERVICE.** We may change the terms and conditions of this agreement from time to time. By subscribing to our service, you agree that we may provide to you by use of electronic communications required notices, agreements, and other information concerning Crexendo, including changes to this agreement. These changes will become binding on you on the date they are posted and we are not required to give you further notice in order for you to continue using our service. By continuing to use the service after revisions are in effect, you accept and agree to all revisions. If you do not agree to the changes, you must notify us within fifteen (15) days of the posted change.

14.6 SURVIVAL. The provisions of this agreement that by their sense and context are intended to survive the termination or expiration of this agreement shall survive.

14.7 ENTIRE AGREEMENT. This agreement, including any future modifications to its terms which are posted on our website, constitute the entire agreement between you and Crexendo. This agreement governs your use of our service, and the use of our services by you, your employees and guests. This agreement supersedes any prior agreements between you and Crexendo. It also supersedes all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter.

14.8 ADDENDUMS AND AMENDMENTS. Any addendum or amendments to the terms herein must be in writing and signed by a corporate officer of Crexendo to be effective. Any other change, amendment or addendum is deemed to be ineffective, invalid and of no effect.

14.9 SEVERABILITY. If any part of this agreement is legally declared invalid or unenforceable, all other parts of this agreement will remain valid and enforceable. This invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this agreement.

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