



NEXGO CELLULAR – TERMS AND CONDITIONS OF RETAIL DATA PLAN SERVICE

Carefully read this legal agreement (“Agreement”). By using the NEXGO Wireless Data Plan Service (the “Wireless Service”) you agree to and accept these terms. If you do not agree to the terms of this Agreement, do not sign the Wireless Activation Form or activate the Wireless Service.

As used in this Agreement “you” means both the party activating the Wireless Service and any entity responsible for the payment of the corresponding account. Upon written or electronic notice to you, NEXGO may modify this Agreement, may modify the Wireless Service rules or prices, and may discontinue or revise any or all other aspects of the Wireless Service.

The Basic Provisions of the NEXGO Wireless Retail Data Plan Service Agreement (“Basic Provisions”) contain the basic terms of this Agreement between you and NEXGO. These terms and conditions (“Terms and Conditions”) explain and define the Basic Provisions and are to be read in conjunction with the Basic Provisions. If there is a conflict between any provisions contained in the Terms and Conditions and Basic Provisions, these Terms and Conditions shall control.

You acknowledge and agree as follows:

1. Definitions, General Information & Operating Policies

1.1 Description. The Wireless Service consists of various wireless data communication services using radio base stations and switching facilities. The Wireless Service is provided by NEXGO, Inc. (“NEXGO”) through the facilities of wireless service provider(s) to NEXGO (“Providers”). NEXGO has contracted for the right to resell and sublicense the Wireless Service. The “Network” is the method by which Providers certified devices connect to the Wireless Service (“Wireless Equipment”). By subscribing to the Wireless Service, you agree to use the Wireless Service in a manner consistent with this Agreement and all applicable laws and regulations. If any information provided by you is incomplete or inaccurate, NEXGO retains the right to terminate your access to the Wireless Service.

1.2 Accounts. To use the Wireless Service, you must have an open, active account that corresponds to your Wireless Equipment.

1.3 Password Responsibility. Once you subscribe to the Wireless Service, you will receive a user ID and password to establish an account. You are solely and entirely responsible for:

- (1) maintaining the confidentiality of your password and
- (2) for all activities which occur under your account. You will immediately notify NEXGO of any unauthorized use of your account or any other breach of security known to you. The complete privacy of your data and messages transmitted while using the Wireless Service cannot be guaranteed. For the purposes of this Agreement, “use” means to transfer data over the Network.

1.4 Lost or Stolen Devices. You must notify NEXGO immediately if your Wireless Equipment is lost or stolen. If you fail to do so, any charges incurred on your account will be your responsibility.

1.5 SIM Cards: NEXGO Wireless retains full title to the software and intellectual property contained in the SIMs. Customer may not (and may not allow any third party to): (a) decompile, disassemble, reverse engineer or attempt to reconstruct or discover any source code or underlying ideas or algorithms or file formats or programming or interoperability interfaces of the SIMs; (b) remove any product identification, copyright, or other notices; (c) modify, incorporate into, or with other software create a derivative work of any part of the SIMs; (d) modify or otherwise alter the operation of the SIMs, or program, reprogram, or tamper with the SIMs in any manner; (e) rent, lease, lend or provide commercial hosting services with the SIMs; (f) insert the SIMs into devices bearing an Underlying Carrier mark, or that are purchased from Underlying Carrier that have been packaged with an Underlying Carrier SIM; or (g) provide SIMs, whether separately or together with an approved Device, to any individual or entity other than the expected Subscriber of that SIM and device. Various

components, functions, routines and/or portions of the SIMs may be protected by intellectual property rights including, but not limited to, designs, copyrights, trade secrets and one or more patents or pending patent applications (“IPR”). Customer is licensed to use such IPR, if any, only to the extent that such a license is required by Customer to install the SIMs on Customer’s devices in the manner intended by NEXGO Wireless. No other rights are granted under such IPR and no right to repair or replace the SIMs is intended or provided and specifically, no right of reconstruction or repair is granted. If you purchased a SIM card or Activation Code and are using your own compatible device with the NEXGO Service, it must be compatible, and not interfere with, our service, and must comply with all applicable laws, rules and regulations. **When activated on the NEXGO Wireless Service your SIM card shall be uniquely identified to the installed hardware device and shall not be installed in any other device.** You are responsible for ensuring that any compatible wireless terminal or other wireless device that you use is compatible with the NEXGO wireless service and that the device meets all Federal laws and standards. NEXGO Service will only work with wireless devices that are compatible and certified for our Providers networks. Not all services are available with all wireless devices or on all networks. If you notify us that your Product is lost or stolen, your account will be deactivated and any unused Service balance will be lost and will not be transferred. At NEXGO’s discretion, service may continue until the Service End Date.

1.6 Downloads. The device manufacturer may provide enhancements, updates or fixes (“Applications”) to your wireless device using the Wireless Service. Downloading of Applications may use significant amounts of data bytes and impact the amount of data bytes available in your wireless data plan. Your device may be capable of alternative means to connect to the Internet to download such applications.

1.7 Cancellation of Service. If you are not completely satisfied with the wireless data plan or wireless service chosen, you have the ability to deactivate service within 30 days of the date of activation. NEXGO will bill for activation fees and /or wireless usage fees and for any usage in excess of plan allocation incurred before the date of deactivation.

1.8 Interruptions of Wireless Service. If the Wireless Service is interrupted or you experience some other difficulty with the Wireless Service (including any problems or outages with the Network) NEXGO will use commercially reasonable efforts to try to correct problems with the Wireless Service as soon as reasonably possible. NEXGO is not responsible for performance degradation and delays due to conditions on the Provider’s or the Merchant Processor’s network, or due to the equipment or actions of the Providers or the Merchant Processor.

2. Charges & Billing Practices.

2.1 Fees. You will pay the fees for the Wireless Service as set forth in the Basic Provisions. In addition, you are responsible for paying any fees or surcharges imposed on your use of the Wireless Service, including, but not limited to carrier regulatory fees, and licensing and processing fees, NEXGO may change the fees upon written notice to you as provided in Section 9.2, below.

2.2 Payment. To establish a merchant direct billing account, payment must be made by direct payment through Automated Clearinghouse transactions (ACH), or a credit card on file. For an ISO/Agent account, payment terms of net thirty (30) may be extended upon credit approval by NEXGO Wireless.

2.3 Activation and Excess Usage Charges. Upon activation of your account, you will be charged the activation fee set forth in the Basic Provisions. Usage of data bytes in excess of your Plan will be billed at the rate set forth in the Basic Provisions rounded up to the nearest Megabyte (MB) for all plans. For example if your Plan allows for the use of 2 MB and you use 3.2 MB, you will be charged for an additional 2 MB.

2.4 Billing Information. You will be billed each month in arrears for any previously unbilled usage. Each time you use the Wireless Service you agree and reaffirm that NEXGO is authorized to charge your designated account.

2.5 Additional Charges. You will be charged and billed for any additional charges beyond the monthly rates and applicable usage surcharges that have accumulated through the date of termination of your account.

2.6 Late Payment; Discrepancies. If NEXGO does not receive the full amount of your Wireless Service account balance within thirty (30) days of the Billing Date, a late payment charge of one and one-half percent

(1.5%) per month (or the highest amount allowed by law, whichever is lower) may be added to your bill and immediately become due and payable. Unless you notify NEXGO of any discrepancies within sixty (60) days after they first appear on your account statement, they will be deemed accepted by you for all purposes. You release NEXGO from all liabilities and claim of loss resulting from any error or discrepancy that is not reported to NEXGO within sixty (60) days of its first appearance on an invoice or credit card statement.

2.7 Deactivation for Non-Payment. You agree to pay NEXGO all reasonable attorneys' fees and costs incurred by NEXGO to collect any past due amounts. Your account may be deactivated without further notice if payment is thirty (30) days past due, regardless of the dollar amount.

2.8 Reservation of Rights. NEXGO reserves the right, at any time, to change its fees and billing methods, including the addition of supplemental fees or separate charges for services provided by NEXGO, effective thirty (30) days after written notice to you through your desktop e-mail or through the U.S. mail. If a material change is unacceptable to you, you may terminate your subscription to the Wireless Service upon written notice to NEXGO. Your continued use of the Wireless Service following the effective date of a change to the fees and billing methods shall constitute your acceptance of the change.

3. Licenses and Copyrights.

NEXGO hereby grants to you a nonexclusive, nontransferable limited sub-license to use any Software solely in connection with your use of the Wireless Service only under the terms of this Agreement. "Software" means all software used in, for or in connection with the Wireless Equipment, the Wireless Service, or the access thereto in whatever form (including without limitation, source code, object code and microcode, including any computer programs and any documentation relating to or describing the software). No title to the intellectual property in, or transmitted by, the Wireless Service or the Wireless Equipment is transferred to you.

4. Term and Termination

4.1 Term. This Agreement shall be effective as of the date you activate the Wireless Service and will remain in effect from that date until terminated as set forth in this Agreement.

4.2 Suspension or Termination of Access and Use. NEXGO reserves the right, in its sole discretion, to suspend or terminate your access to and use of Wireless Service without further notice if you breach any of the terms and conditions of this Agreement.

4.3 Termination. This Agreement will terminate upon the occurrence of any of the following:

- (a) For month-to-month contracts, termination shall occur upon return of the devices, or with thirty (30) days prior written notice by either NEXGO or you for any reason;
- (b) For contracts greater than 12 months you may terminate the contract by paying the remaining payments due at the time of termination;
- (c) Immediately upon termination of the agreement between NEXGO and the Wireless Provider;
- (d) Subject to provider not curing any event of default in the provision of services;
- (d) Immediately if either NEXGO or Providers are prevented from providing the Wireless Service by any law, regulation, requirement, ruling or notice issued in any form whatsoever by judicial or governmental authority.

4.4 Cancellation Fee. Except for cancellation due to the provisions set forth in section 1.8 or due to a change to the fee and billing methods as set forth in section 2.8, if you terminate a month-to-month contract under this Agreement prior to the expiration of the Term there is no cancellation fee; if you cancel a contract greater than 12 months you will be obligated to pay a Cancellation Fee equal to the remaining payments due on the contract times the monthly fee.

4.5 Payment Due upon Termination. Termination of this Agreement shall not relieve you of any obligations to pay accrued charges, including any prorated charges accrued for the billing cycle in which this Agreement is terminated. Upon termination of this Agreement for any reason, you will immediately pay to NEXGO all fees due and owing to NEXGO under this Agreement.

5. Compliance with Laws. You shall not use the Wireless Service in any manner contrary to local, state or federal law. NEXGO expressly disclaims any and all responsibility or liability for any action by you that is contrary to such law(s) by you and reserves the right to terminate your Wireless Service immediately upon notice for your failure to comply with any such local, state or federal law.

6. International Roaming. Service is not permitted to be used under this Agreement for international roaming, except on a rare and incidental basis. Should you intend on utilizing international roaming more frequently than on a rare and incidental basis, Company may terminate such international roaming with or without notice. With respect to any international roaming under this Agreement, you shall obtain and hold any necessary licenses or authorizations to operate its business using the Service, and shall comply with any laws and regulations relating thereto; (3) provide Company with all assistance reasonably required to enable Company to comply with requests or requirements of a roaming carrier, regulator, or other governmental body relating to Customer's use of international roaming; and indemnify and hold Company harmless from any claims, losses or damages resulting from Customer's international roaming.

7. Disclaimer of Wireless Service Warranties.

7.1 Subscription to Wireless Service does not affect the warranty that came with your Wireless Equipment. No additional warranty of the Wireless Equipment is provided as a result of subscribing to the Wireless Service.

7.2 NEXGO DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS WITH RESPECT TO THE WIRELESS SERVICE.

7.3 NEXGO MAKES NO WARRANTY THAT THE WIRELESS SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT THE WIRELESS SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. NOR DOES NEXGO MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE WIRELESS SERVICE OR AS TO THE ACCURACY, COMPLETENESS OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE WIRELESS SERVICE.

7.4 ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE WIRELESS SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR WIRELESS EQUIPMENT AND/ OR YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF THE MATERIAL AND/OR DATA.

7.5 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM NEXGO OR THROUGH THE WIRELESS SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE IN THIS AGREEMENT.

7.6 SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

8. Limitation of Liability for the Wireless Service.

8.1 NEXGO shall not be liable for and you waive your right to claim any loss, injury, claim, liability or damage of any kind resulting in any way from your use of or inability to use the Wireless Service (including without limitation any third party(s) unauthorized access to your data transmission).

8.2 YOUR SOLE REMEDY FOR LOSS OR DAMAGES CAUSED BY PARTIAL OR TOTAL FAILURE, DELAY OR NONPERFORMANCE OF THE WIRELESS SERVICE, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) WILL BE CLIENT'S DIRECT DAMAGES, IF ANY RESULTING FROM THAT FAILURE. THE MAXIMUM LIABILITY OF NEXGO SHALL BE LIMITED SOLELY TO THE AMOUNT PAID BY YOU TO NEXGO FOR THE WIRELESS SERVICE DURING THE PERIOD OF FAILURE, DELAY, OR NONPERFORMANCE.

8.3 NEXGO SHALL NOT BE LIABLE FOR, AND YOU WAIVE YOUR RIGHT TO CLAIM, ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS), DIRECTLY OR INDIRECTLY RELATING TO OR ARISING FROM, (1) YOUR USE OR INABILITY TO USE THE WIRELESS

SERVICE, OR (2) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA , REGARDLESS OF THE FORM OF ACTION AND WHETHER THE DAMAGES WERE FORESEEN OR UNFORESEEN.

8.4 SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

9. Indemnifications.

9.1 By You. You will indemnify and hold NEXGO harmless from and against any claim, loss, liability, damage, cost or expense (including attorney fees) arising from or relating to:

- (a) the purchase, delivery, acceptance, rejection, use or condition of the Wireless Service,
- (b) your breach of any obligation under this Agreement, and
- (c) your negligent act or omissions.

9.2 By NEXGO. NEXGO will indemnify and hold you harmless from and against any claim, loss, liability, damage, cost or expense (including attorney fees) arising from any claim by a third party that the Wireless Service infringes upon the patent, copyright, trademark, or other proprietary right of that third party. This indemnification is expressly conditioned upon you providing NEXGO with prompt notice of any claim.

10. General.

10.1 Entire Agreement. This Agreement is intended as the complete, final and exclusive statement of the terms of the agreement between the parties relating to the subject matter of this Agreement and supersede all prior understandings, writings, proposals, representations or communications, oral or written, relating to that subject matter. NEXGO may make changes to this Agreement by notifying you in accordance with Section 9.2. No change requested by you shall be binding upon NEXGO unless agreed to in writing executed by both parties.

10.2 Notices. You may send notices to NEXGO by postal mail or by express delivery, addressed to NEXGO, Inc., 2861 Pullman Street, Santa Ana, CA 92705 or at such other address as NEXGO may provide. NEXGO may send notices to you electronically by facsimile, desktop e-mail, or by postal mail, addressed to you at your last known address or number. All notices shall be deemed to have been given and received on the earlier of actual delivery or three (3) days from the date of postmark.

10.3 Waiver. A waiver of any default under this Agreement or of any of the terms and conditions of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which the waiver is directed. The exercise of any right or remedy provided in this Agreement shall be without prejudice to the right to exercise any other right or remedy provided by law or equity.

10.4 Severability. If any provisions of this Agreement are found to be invalid, illegal or unenforceable, the validity, legality and enforceability of any of the remaining provisions shall not in any way be affected or impaired thereby.

10.5 Assignment. NEXGO shall be free to assign this Agreement in its sole discretion or subcontract all or any part of the Wireless Services. Assignment of this Agreement by you shall be prohibited without the express written consent of NEXGO. Any attempted assignment in violation of this provision shall be null and void.

10.6 Governing Law. THE VALIDITY, PERFORMANCE, CONSTRUCTION, AND INTERPRETATION OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA, EXCLUDING CONFLICTS OF LAWS PRINCIPLES. THE SUPERIOR COURT OF ORANGE COUNTY, CALIFORNIA AND/OR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA SHALL HAVE JURISDICTION AND VENUE OVER ALL CONTROVERSIES IN CONNECTION WITH THIS AGREEMENT.

10.7 Arbitration. All disputes, claims, and controversies between the parties arising out of or related to this Agreement or its breach (except for non-payment or late payment and breach of any obligation of confidentiality or infringement of any intellectual property right for which an injunction may be sought) shall be settled by

arbitration. The arbitration shall be conducted by one arbitrator under the then current Commercial Arbitration Rules of the American Arbitration Association. The power of the arbitrator shall be limited to that possessed by a Superior Court Judge in California. The arbitrator is prohibited from awarding damages or remedies in excess of those allowed by the provisions of this Agreement. The decision and award of the arbitrator shall be final and binding and judgment on the award so rendered may be entered in any court having jurisdiction thereof. The arbitration shall be held in Orange County, California, or a mutually convenient location, and the award shall be deemed to be made in California.

10.8 Survival. The following provisions shall survive the expiration or termination of this Agreement: Section 2 (“Charges and Billing Practices”), Section 6 (“Disclaimer of Wireless Service Warranties”), Section 7 (“Limitation of Liability for the Wireless Service”), Section 8 (“Indemnifications”), and Section 9 (“General”) shall survive the expiration or termination of this Agreement.