

TERMS & CONDITIONS

EFFECTIVE: MARCH 5, 2015. THESE TERMS OF SERVICE (“TERMS”) CONSTITUTE A CONTRACT BETWEEN YOU AND NXTH0P AND GOVERN USE OF AND ACCESS TO THE SERVICE AND SITE BY YOU, ADMINISTRATORS AND END-USERS WHETHER IN CONNECTION WITH A PAID SUBSCRIPTION TO THE SERVICE OR A FREE TRIAL OF THE SERVICE.

By accepting these Terms, or by accessing or using the Service or Site, or authorizing or permitting any Administrator or Administrator End-User to access or use the Service, You agree to be bound by these Terms. If You are entering into these Terms on behalf of a company, organization or another legal entity (an “Entity”), You are agreeing to these Terms for that Entity and representing to Nxth0p that You have the authority to bind such Entity and its affiliates to these Terms, in which case the terms “Subscriber,” “You,” “Your” or related capitalized terms herein shall refer to such Entity and its affiliates. If You do not have such authority, or if You do not agree with these Terms, You must not accept these Terms and may not use the Service.

1. DEFINITIONS

When used in these Terms with the initial letters capitalized, in addition to terms defined elsewhere in these Terms, the following terms have the following meanings:

Account: means all Nxth0p accounts or instances created by or on behalf of Subscriber or its Administrators or End-Users within the Service.

Administrator: means an individual who is an employee, non-employee or an entity the Subscriber authorized to use the Service through Your AccountAdministrator.**API:** means the application programming interfaces developed and enabled by Nxth0p that permits Subscriber to access certain functionality provided by the Service, including without limitation, the Nxth0p API that enables the interaction with a Nxth0p instance automatically through HTTP requests and the Nxth0p application development API that enables the integration of a Nxth0p instance with other web applications.

Confidential Information: means all information disclosed by You, Administrators or End-Users to Nxth0p or by Nxth0p to You, Administrators or End-Users which is in tangible form and labeled “confidential” (or with a similar legend) or which a reasonable person would understand to be confidential given the nature of the information and circumstances of disclosure. For purposes of these Terms, Your Data, including any e-mails transmitted and delivered through our Service, shall be deemed Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include information that (a) was already known to the receiving party at the time of disclosure by the disclosing party; (b) was or is obtained by the receiving party by a third party not known by the receiving party to be under an obligation of confidentiality with respect to such information; (c) is or becomes generally available to the public other than by violation of these Terms; or (d) was or is independently developed by the receiving party without use of the disclosing party’s Confidential Information.

Documentation: means any written or electronic documentation, images, video, text or sounds specifying the functionalities of the Service provided or made available by Nxth0p to You, Administrators or End-Users through the Site or otherwise.

End-User: means any person or entity Administrator using the Service.

Form: means any Nxth0p generated service order form executed or approved by You with respect to Your subscription to the Service, which form may detail, among other things, the number of Administrators authorized to use the Service under Your subscription to the Service and the Service Plan applicable to Your subscription to the Service.

Nxth0p: means Nxth0p, Inc., a Illinois corporation or any of its subsidiaries, successors or assignees. In these Terms, Nxth0p may also be referred to through the use of “We” or “Our.”
Other Services: means third party products, applications, services, software, products, networks, systems, directories, websites, databases and information which the Service links to, or which You, Administrators or End-Users may connect to or enable in conjunction with the Service, including, without limitation, certain Other Services which may be integrated directly into Your Nxth0p Service.

Service: means Nxth0p’s current and future e-mail, security and related services, including but not limited to spam filtering, virus filtering, and store and forward disaster recovery services, hosted email, and other associated services.

Service Plan: means the service plan and the functionality and services associated therewith (as detailed on the Site) for which You subscribe with respect to each Administrator or End-user.

Site: means <http://www.nxth0p.com>, <https://portal.nxth0p.com> and all other websites owned or operated by Nxth0p or its subsidiaries.

Software: means software provided by Nxth0p (either by download or access through the internet) that allows an Administrator or End User to use any functionality in connection with the Service.

Subscription Term: means the period during which You have agreed to subscribe to the Service with respect to any individual Administrator or End-User.

User: valid e-mail address on domains listed on the Account, unless otherwise marked as an alias or group in the User List in the account administration page.

Your Data: means all electronic data, text, messages or other materials submitted to the Service by You, Administrators and End-Users in connection with Your use of the Service.

2. GENERAL CONDITIONS; ACCESS TO AND USE OF THE SERVICE

2.1 During the Subscription Term and subject to compliance by You, Administrators and End Users with these Terms, You have the limited right to access and use the Service consistent with

the Service Plan You subscribe to for Your internal business purposes subject to restrictions stated in the Terms and in the Acceptable Use Policy, which is available at <http://www.nxth0p.net/agreements/aup.html> and is incorporated into the Terms. Without limiting the foregoing, Your right to access and use the API is also subject to the restrictions and policies implemented by Nxth0p from time to time with respect to the API as set forth in the Documentation or otherwise communicated to You in writing.

2.2 A high speed Internet connection is required for proper transmission of the Service. You are responsible for procuring and maintaining the network connections that connect Your network to the Service, including, but not limited to, “email server” software that supports protocols used by Nxth0p, including SMTP protocol or other protocols accepted by Nxth0p for email transmission, “browser” software that supports protocols used by Nxth0p, including Secure Socket Layer (SSL) protocol or other protocols accepted by Nxth0p, and to follow procedures for accessing services that support such protocols. We are not responsible for notifying You, Administrators or End Users of any upgrades, fixes or enhancements to any such software or for any compromise of data, including Your Data, transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned, operated or controlled by Nxth0p. We assume no responsibility for the reliability or performance of any connections as described in this section.

2.3 You agree not to (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than authorized Administrators and End Users in furtherance of Your internal business purposes as expressly permitted by these Terms; (b) use the Service to process data on behalf of any third party other than Administrators or End Users; (c) modify, adapt, or hack the Service or otherwise attempt to gain unauthorized access to the Service or related systems or networks; (d) falsely imply any sponsorship or association with Nxth0p, (e) use the Service in any unlawful manner, including but not limited to violation of any person’s privacy rights; (f) use the Service to send unsolicited or unauthorized junk mail, spam, pyramid schemes or other forms of duplicative or unsolicited messages; (g) use the Service to transmit information to distribution lists including any person who has not given specific permission to be included in the list; (h) use the Service to store or transmit files, materials, data, text, audio, video, images or other content that infringes on any person’s intellectual property rights; (i) use the Service in any manner that interferes with or disrupts the integrity or performance of the Service and its components; (j) attempt to decipher, decompile, reverse engineer or otherwise discover the source code of any software making up the Service; (k) use the Service to knowingly post, transmit, upload, link to, send or store any content that is unlawful, racist, hateful, abusive, libelous, obscene, or discriminatory; (l) use the Service to knowingly post transmit, upload, link to, send or store any viruses, malware, Trojan horses, time bombs, or any other similar harmful software (“Malicious Software”); or (m) try to use, or use the Service in violation of these Terms.

2.4 You are responsible for compliance with the provisions of these Terms by Administrators or End Users and for any and all activities that occur under Your Account, as well as for all Your Data. Without limiting the foregoing, You are solely responsible for ensuring that use of the Service to store and transmit Your Data is compliant with all applicable laws and regulations. You also maintain all responsibility for determining whether the Service or the information

generated thereby is accurate or sufficient for Your purposes. Subject to any limitation on the number of individual Administrators available under the Service Plan for which You subscribed, access to and use of the Service is restricted to the specified number of individual Administrators permitted under Your subscription to the Service. You agree and acknowledge that each Administrator will be identified by a unique username and password (“Login”) and that an Administrator Login may only be used by one (1) individual. You will not share an Administrator Login among multiple individuals. You and Your Administrators are responsible for maintaining the confidentiality of all Login information for Your Account.

2.5 In addition to Our rights as set forth in Section 8.4, Nxth0p reserves the right, in Nxth0p’s reasonable discretion, to temporarily suspend Your access to and use of the Service: (a) during planned downtime for upgrades and maintenance to the Service (of which Nxth0p will use commercially reasonable efforts to notify You in advance both through Our forum page and a notice to Your Account owner and Administrators) (“Planned Downtime”); (b) during any unavailability caused by circumstances beyond Our reasonable control, such as, but not limited to, acts of God, acts of government, acts of terror or civil unrest, technical failures beyond Our reasonable control (including, without limitation, inability to access the Internet), or acts undertaken by third parties, including without limitation, distributed denial of service attacks; or (c) if We suspect or detect any Malicious Software connected to Your Account or use of the Service by You, Administrators or End Users. We will use commercially reasonable efforts to schedule Planned Downtime for weekends (Pacific time zone) and other off-peak hours.

3. DATA PRIVACY AND SECURITY; CONFIDENTIALITY

3.1 Subject to the express permissions of these Terms, You and Nxth0p will protect each other’s Confidential Information from unauthorized use, access or disclosure in the same manner as each protects its own Confidential Information, but with no less than reasonable care. Except as otherwise expressly permitted pursuant to these Terms, each of us may use each other’s Confidential Information solely to exercise our respective rights and perform our respective obligations under these Terms and shall disclose such Confidential Information solely to those of our respective employees, representatives and Administrators who have a need to know such Confidential Information for such purposes and who are bound to maintain the confidentiality of, and not misuse, such Confidential Information.

3.2 Nxth0p will maintain commercially reasonable administrative, physical and technical safeguards to protect the security, confidentiality and integrity of Your Data. These safeguards include encryption of Your Data in transmission (using SSL, TLS or similar technologies), except for certain Other Services that do not support encryption, which You may link to through Service at Your election. Our compliance with the provisions of this Section 3.2 shall be deemed compliance with Our obligations to protect Your Data as set forth in Section 3.1.

3.3 You agree that Nxth0p and the service providers We use to assist in providing the Service to You shall have the right to access Your Account and to use, modify, reproduce, distribute, display and disclose Your Data solely to the extent necessary to provide the Service, including, without limitation, in response to Your support requests. Any third party service providers We utilize will only be given access to Your Account and Your Data as is reasonably necessary to

provide the Service and will be subject to confidentiality obligations. Nxth0p may also access or disclose information about You, Your Account, Administrators or End Users, including Your Data, in order to (a) comply with the law or respond to lawful requests or legal process and; (b) act on a good faith belief that such disclosure is necessary to protect personal safety or avoid violation of applicable law or regulation.

3.4 We collect certain information about You, Administrators and End Users as well as Your and their respective devices, computers and use of the Service. We use, disclose, and protect this information as described in Our Privacy Policy, the then-current version of which is available at [link to Privacy Policy] and is incorporated into the Terms.

4. INTELLECTUAL PROPERTY RIGHTS

Each of us shall maintain all rights, title and interest in and to all our respective patents, inventions, copyrights, trademarks, domain names, trade secrets, know-how and any other intellectual property and/or proprietary rights (collectively, "Intellectual Property Rights"). The rights granted to You, Administrators and End Users to use the Service under these Terms do not convey any additional rights in the Service, or in any Intellectual Property Rights associated therewith. Subject only to limited rights to access and use the Service as expressly herein, all rights, title and interest in and to the Service and all hardware, software and other components of or used to provide the Service, including all related intellectual property rights, will remain with and belong exclusively to Nxth0p. Nxth0p shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable and perpetual license to incorporate into the Service or otherwise use any suggestions, enhancement requests, recommendations or other feedback We receive from You, Administrators or End Users. Nxth0p, and Nxth0p's other product and service names, and logos used or displayed on the Service are registered or unregistered trademarks of Nxth0p (collectively, "Marks"), and You may only use such Marks to identify You as a Subscriber; provided You do not attempt, now or in the future, to claim any rights in the Marks, degrade the distinctiveness of the Marks, or use the Marks to disparage or misrepresent Nxth0p, its services or products.

5. THIRD PARTY SERVICES

If You decide to enable, access or use Other Services, be advised that Your access and use of such Other Services is governed solely by the terms and conditions of such Other Services, and We do not endorse, are not responsible or liable for, and make no representations as to any aspect of such Other Services, including, without limitation, their content or the manner in which they handle data (including Your Data) or any interaction between You and the provider of such Other Services. You irrevocably waive any claim against Nxth0p with respect to such Other Services. Nxth0p is not liable for any damage or loss caused or alleged to be caused by or in connection with Your enablement, access or use of any such Other Services, or Your reliance on the privacy practices, data security processes or other policies of such Other Services. You may be required to register for or log into such Other Services on their respective websites. By enabling any Other Services, You are expressly permitting Nxth0p to disclose Your Login as well as Your Data as necessary to facilitate the use or enablement of such Other Service.

6. BILLING, PLAN MODIFICATIONS AND PAYMENTS

6.1 Unless otherwise indicated on a Form referencing these Terms and subject to Section 6.2, all charges associated with Your access to and use of the Service (“Subscription Charges”) are due in full upon commencement of Your Subscription Term. If You fail to pay Your Subscription Charges or charges for other services indicated on any Form referencing these Terms within five (5) business days of Our notice to You that payment is due or delinquent, or if You do not update payment information upon Our request, in addition to Our other remedies, We may suspend or terminate access to and use of the Service by You, Administrators and End Users.

6.2 If You choose to upgrade Your Service Plan or increase the number of authorized Users during Your Subscription Term (a “Subscription Upgrade”), any incremental Subscription Charges associated with such Subscription Upgrade will be prorated over the remaining period of Your then current Subscription Term, charged to Your Account and due and payable upon implementation of such Subscription Upgrade. In any future Subscription Term, Your Subscription Charges will reflect any such Subscription Upgrades.

6.3 No refunds or credits for Subscription Charges or other fees or payments will be provided to You if You elect to downgrade Your Service Plan before the start of a Subscription Term. The reduction in Subscription Charges will be reflected in the next Subscription Term. Downgrading Your Service Plan may cause loss of content, features, or capacity of the Service as available to You under Your Account, and Nxth0p does not accept any liability for such loss.

6.4 Unless otherwise stated, Our charges do not include any taxes, levies, duties or similar governmental assessments, including value-added, sales, use or withholding taxes assessable by any local, state, provincial or foreign jurisdiction (collectively “Taxes”). You are responsible for paying Taxes except those assessable against Nxth0p based on its income. We will invoice You for such Taxes if We believe We have a legal obligation to do so and You agree to pay such Taxes if so invoiced.

6.5 If You pay by credit card, the Service provides an interface for the account owner to change credit card information (e.g. upon card renewal). The Account owner will receive a receipt upon each receipt of payment by Nxth0p, or they may obtain a receipt from within the Service to track subscription status. Nxth0p uses a third-party intermediary to manage credit card processing and this intermediary is not permitted to store, retain or use Your billing information except to process Your credit card information for Nxth0p.

7. CANCELLATION AND TERMINATION

7.1 Either You or Nxth0p may elect to terminate Your Account and subscription to the Service as of the end of your then current Subscription Term by providing notice, in accordance with these Terms, on or prior to the date of the end of such Subscription Term.

7.2 No refunds or credits for Subscription Charges or other fees or payments will be provided to You if You elect to terminate Your subscription to the Service or cancel Your Account prior to the end of Your then effective Subscription Term. Following the termination or cancellation of

Your subscription to the Service and/or Account, We reserve the right to delete all Your Data in the normal course of operation. Your Data cannot be recovered once Your Account is cancelled.

7.3 If You terminate Your subscription to the Service or cancel Your Account prior to the end of Your then effective Subscription Term or We effect such termination or cancellation pursuant to Section 2.5(c) or

7.4, in addition to other amounts You may owe Nxth0p, You must immediately pay any then unpaid Subscription Charges associated with the remainder of such Subscription Term. This amount will not be payable by You in the event You terminate Your subscription to the Service or cancel Your Account as a result of a material breach of these Terms by Nxth0p, provided that You provide advance notice of such breach to Nxth0p and afford Nxth0p not less than thirty (30) days to reasonably cure such breach.

7.5 Nxth0p reserves the right to modify, suspend or terminate the Service (or any part thereof), Your Account or Your and/or Administrators' or End Users' rights to access and use the Service, and remove, disable and discard any of Your Data if We believe that You, Administrators or End Users have violated these Terms. Unless legally prohibited from doing so, Nxth0p will use commercially reasonable efforts to contact You directly via email to notify You when taking any of the foregoing actions. Nxth0p shall not be liable to You, Administrators, End Users or any other third party for any such modification, suspension or discontinuation of Your rights to access and use the Service. Any suspected fraudulent, abusive, or illegal activity by You, Administrators or End Users may be referred to law enforcement authorities at Our sole discretion.

8. DISCLAIMER OF WARRANTIES

THE SITE AND THE SERVICE, INCLUDING ALL SERVER AND NETWORK COMPONENTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND TO THE FULLEST EXTENT PERMITTED BY LAW, AND NXTH0P EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. YOU ACKNOWLEDGE THAT NXTH0P DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR FREE FROM VIRUSES OR OTHER MALICIOUS SOFTWARE, AND NO INFORMATION OR ADVICE OBTAINED BY YOU FROM NXTH0P OR THROUGH THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS.

9. LIMITATION OF LIABILITY

9.1 UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) WILL EITHER PARTY TO THESE TERMS, OR THEIR AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, ADMINISTRATORS, SUPPLIERS OR LICENSORS BE LIABLE TO THE OTHER PARTY

OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL, PUNITIVE OR OTHER SIMILAR DAMAGES, INCLUDING LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA, BUSINESS INTERRUPTION OR ANY OTHER LOSS INCURRED BY SUCH PARTY OR THIRD PARTY IN CONNECTION WITH THESE TERMS OR THE SERVICE, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES.

9.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS, NXTHOP'S AGGREGATE LIABILITY TO YOU OR ANY THIRD PARTY ARISING OUT OF THESE TERMS OR OTHERWISE IN CONNECTION WITH ANY SUBSCRIPTION TO, OR USE OR EMPLOYMENT OF THE SERVICE, SHALL IN NO EVENT EXCEED THE SUBSCRIPTION CHARGES PAID BY YOU DURING THE TWELVE (12) MONTHS PRIOR TO THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. YOU ACKNOWLEDGE AND AGREE THAT THE ESSENTIAL PURPOSE OF THIS SECTION 10.2 IS TO ALLOCATE THE RISKS UNDER THESE TERMS BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE SUBSCRIPTION CHARGES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF NXTHOP WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. NXTHOP HAS RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE YOU THE RIGHTS TO ACCESS AND USE THE SERVICE PROVIDED FOR IN THESE TERMS.

9.3 Some jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages, which means that some of the above limitations may not apply to You. IN THESE JURISDICTIONS, NXTHOP'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

10. INDEMNIFICATION

10.1 Nxth0p will indemnify and hold You harmless, from and against any claim against You by reason of Your use of the Service as permitted hereunder, brought by a third party alleging that the Service infringes or misappropriates a third party's valid patent, copyright, trademark or trade secret (an "IP Claim"). Nxth0p shall, at its expense, defend such IP Claim and pay damages finally awarded against You in connection therewith, including the reasonable fees and expenses of the attorneys engaged by Nxth0p for such defense, provided that (a) You promptly notify Nxth0p of the threat or notice of such IP Claim, (b) Nxth0p will have the sole and exclusive control and authority to select defense attorneys, defend and/or settle any such IP Claim, and (c) You fully cooperate with Nxth0p in connection therewith. If use of the Service by You, Administrators or End Users has become, or in Nxth0p's opinion is likely to become, the subject of any such IP Claim, Nxth0p may at its option and expense (a) procure for You the right to continue using the Service as set forth hereunder; (b) replace or modify the Service to make it non-infringing; or (c) if options (a) or (b) are not commercially and reasonably practicable as determined by Nxth0p, terminate Your subscription to the Service and repay You, on a pro-rated basis, any Subscription Charges previously paid to Nxth0p for the corresponding unused portion of Your Subscription Term. Nxth0p will have no liability or obligation under this Section 10.1 with respect to any IP Claim if such claim is caused in whole or in part by (i) compliance with

designs, data, instructions or specifications provided by You; (ii) modification of the Service by anyone other than Nxth0p; or (iii) the combination, operation or use of the Service with other hardware or software where the Service would not by itself be infringing. The provisions of this Section 10.1 state the sole, exclusive and entire liability of Nxth0p to You and constitute Your sole remedy with respect to an IP Claim brought by reason of access to or use of the Service by You, Administrators or End Users.

10.2 You will indemnify and hold Nxth0p harmless against any claim brought by a third party against Nxth0p arising from or related to use of the Service by You, Administrators or End Users in breach of these Terms or matters which You have expressly agreed to be responsible pursuant to these Terms; provided that Nxth0p promptly notifies You of the threat or notice of such a claim.

11. ASSIGNMENT; ENTIRE AGREEMENT; REVISIONS

11.1 You may not, directly or indirectly, by operation of law or otherwise, assign all or any part of these Terms or Your rights under these Terms or delegate performance of Your duties under these Terms without Nxth0p's prior consent, which consent will not be unreasonably withheld. We may, without Your consent, assign Our agreement with You to any affiliate or in connection with any merger or change of control of Nxth0p or the sale of all or substantially all of Our assets provided that any such successor agrees to fulfill its obligations pursuant to these Terms. Subject to the foregoing restrictions, these Terms will be fully binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

11.2 These Terms, together with any Form(s), constitute the entire agreement, and supersede any and all prior agreements between You and Nxth0p with regard to the subject matter hereof. We may amend these Terms from time to time, in which case the new Terms will supersede prior versions. Nxth0p's failure to enforce at any time any provision of these Terms does not constitute a waiver of that provision or of any other provision of the Terms.

12. SEVERABILITY

If any provision in these Terms is held by a court of competent jurisdiction to be unenforceable, such provision shall be modified by the court and interpreted so as to best accomplish the original provision to the fullest extent permitted by law, and the remaining provisions of these Terms shall remain in effect.

13. EXPORT COMPLIANCE AND USE RESTRICTIONS

The Service and other Software or components of the Service which Nxth0p may provide or make available to You, Administrators or End Users may be subject to U.S. export control and economic sanctions laws. You agree to comply with all such laws and regulations as they relate to access to and use of the Service, Software and such other components by You, Administrators and End Users. You shall not access or use the Service if You are located in any jurisdiction in which the provision of the Service, Software or other components is prohibited under U.S. or

other applicable laws or regulations (a “Prohibited Jurisdiction”) and You shall not provide access to the Service to any government, entity or individual located in any Prohibited Jurisdiction. You represent, warrant and covenant that (i) You are not named on any U.S. government list of persons or entities prohibited from receiving U.S. exports, or transacting with any U.S. person, (ii) You are not a national of, or a company registered in, any Prohibited Jurisdiction, (iii) You shall not permit Administrators or End Users to access or use the Service in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions, and (iv) You shall comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which You, Administrators and End Users are located.

14. RELATIONSHIP OF THE PARTIES

The parties are independent contractors. These Terms do not create a partnership, franchise, joint venture, agency, and fiduciary or employment relationship among the parties.

15. SURVIVAL

Sections 1, 3, 4 and 8-18 shall survive any termination of our agreement with respect to use of the Service by You, Administrators or End Users. Termination of such agreement shall not limit Your or Nxth0p’s liability for obligations accrued as of or prior to such termination or for any breach of these Terms.

16. NOTICE

All notices to be provided by Nxth0p to You under these Terms may be delivered in writing (i) by nationally recognized overnight delivery service (“Courier”) or US mail to the contact mailing address provided by You on any Form; or (ii) electronic mail to the electronic mail address provided for Your Account owner. You must give notice to us in writing by Courier or US Mail to the following address: Nxth0p, Inc., Attn: Legal Department, P.O. Box 396, Chicago, IL 60628. All notices shall be deemed to have been given immediately upon delivery by electronic mail, or if otherwise delivered upon receipt or, if earlier, two (2) business days after being deposited in the mail or with a Courier as permitted above.

17. GOVERNING LAW

These Terms shall be governed by the laws of the State of Illinois without regard to conflict of laws principles. You hereby expressly agree to submit to the exclusive personal jurisdiction of the federal and state courts of the State of Illinois, Cook county, for the purpose of resolving any dispute relating to the Terms or access to or use of the Service by You, Administrators or End Users.

18. FEDERAL GOVERNMENT END USE PROVISIONS

If You are a U.S. federal government department or agency or contracting on behalf of such department or agency, this Service is a “Commercial Item” as that term is defined at 48 C.F.R.

§2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as those terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, this Service is licensed to You with only those rights as provided under the terms and conditions of these Terms.