

## 1 DEFINITIONS

- 1.1 "NextiraOne" means the legal entity issuing the local customer Confirmation Certificate or signing the Service Agreement.
- 1.2 "Customer" means the organization which is requesting and paying for Support Services.
- 1.3 "Customer Location" means one or more physical locations associated with an address(es) and includes a single building and/or adjoining buildings and/or multiple locations when linked together with products provided by NextiraOne into a functionally integrated voice and/or data and/or imaging system.
- 1.4 "Customer Confirmation Certificate" means the certificate validated by NextiraOne and provided to the customer and will list and confirm Service(s) purchased and contain the Agreement number.
- 1.5 "Software-Update" means an official software release which NextiraOne has classified as a release intended as an interim or bug fix release to correct deficiencies and bugs affecting performance of products provided by NextiraOne. It can also include minor enhancements which would normally be found in forthcoming upgraded products.
- 1.6 "Response Time" means the period after receipt of the service request by NextiraOne during which NextiraOne starts to provide the services.
- 1.7 "Normal Working Hours" of NextiraOne means Mo – Th 8:00 a.m. until 5:00 p.m. and Fr 8:00 a.m. until 3:00 p.m. (except Austrian public holidays). "Extended Working Hours" of NextiraOne exceeds Normal Working Hours and will be agreed explicitly in the Service Agreement.

## 2 TERM

- 2.1 **Commencement Date.** Unless otherwise defined in the service description Commencement Date for services within continuing obligation shall be the commissioning date in case of new products respectively the date of acceptance test by NextiraOne in case of products in use.
- 2.2 **Duration of Contract.** The Term of this agreement is effective upon the Commencement Date and shall remain in force and effect for the period specified in the Agreement unless terminated otherwise in accordance with the provisions hereinafter.
- 2.3 **Continuing Obligation.** For services rendered pursuant to a contract with continuing obligation the contract shall remain in force and effect for the rest of the calendar year current at Commencement Date and the following five (5) calendar years unless defined differently in the service description. The duration of contract extends for another calendar year unless the agreement is terminated by registered mail with three (3) months' notice.
- 2.4 **Termination For Cause.** Irrespective of any other provisions of this contract each party has the right of Termination for cause. Termination For Cause is applicable in particular: (a) if the other party fails to perform any material term or condition of this agreement, and does not remedy the failure within thirty (30) days after receipt of written notice of such default, or (b) the customer becomes incapable to act, files or has filed against it a petition under applicable bankruptcy or insolvency laws which is not dismissed within thirty (30) days or in case of liquidation. In the event of Termination For Cause the agreement for services with continuing obligation ends with entry of the written notice of termination (see Article 8.5).
- 2.5 In case of decommissioning of the central processing unit the agreement shall expire on the last day of the calendar quarter in which the decommissioning took place. The agreement shall however expire no earlier than the final day of the calendar quarter in which NextiraOne has been informed of the decommissioning by written notice, whereas outstanding customer payments at time of decommissioning have to be balanced by the customer without delay. If the customer does not issue the notice of decommissioning within fourteen (14) days previously, costs of a service visitation turning out to be futile due to decommissioning will be charged separately.

## 3 ELIGIBILITY FOR SERVICES

- 3.1 **Eligibility for Service.** The product must contain the current or previous to current software and/or firmware. If the services purchased do not include Software Updates of the product, then upgrading to the most current level shall be at customer's extra expense. Products which have been modified without NextiraOne's prior written approval are not eligible for support services.
- 3.2 **Same Product Coverage.** NextiraOne requires that each unit of the same NextiraOne or third party product type located at a customer location(s) where not already covered by a service agreement from any supplier be covered by service. The customer shall notify NextiraOne if any additional product unit(s) of the same type are purchased during the term of this agreement and shall pay a pro-rated price for service of the additional equipment.

- 3.3 In order to be in a position to receive spare parts or 3rd Level Support from manufacturers the Customer shall keep NextiraOne updated about the data of the installed Customer-base. Otherwise the performance of services cannot be guaranteed by NextiraOne. It is therefore necessary that the Customer informs NextiraOne in writing and without any delay of all changes of the location of products and modules to any other installation location different from the original site or to any other chassis. This information shall also state the respective serial number and the new installation site.

## 4 SERVICE RESPONSIBILITIES

- 4.1 **Service Time.** Services are provided within Normal Working Hours unless Extended Working Hours are agreed in the service agreement. Is the supply of a service possible before expiration of Response Time but not within Normal Working Hours/ agreed Extended Working Hours, the supply of the service can also be commenced on the following business day. In the event of impossibility of a troubleshooting within Normal Working Hours/ agreed Extended Working Hours troubleshooting will be continued on the following business day.
- 4.2 **Software Coverage** (if applicable). Service includes software updates to product(s) identified in the agreement.
- 4.3 **Parts/ Hardware Replacement** (if applicable). Service includes replacement of parts or a complete hardware unit as deemed necessary by NextiraOne. All parts/ hardware will be furnished on an exchange basis at no cost to the customer and will be new or reconditioned standard components of equal or greater quality, revision level and functionality. Upon notification, NextiraOne may provide a comparable temporary replacement unit and notify the customer of the estimated date for permanent replacement. Returned or exchanged product will become the property of NextiraOne.
- 4.4 **On-Site Support Services** (if applicable). NextiraOne personnel shall comply with all customer or Government imposed security requirements while on customer premises. However, NextiraOne shall not be responsible for delays in performing services due to customer's failure to provide NextiraOne personnel with access to customer's or facilities or due to such security requirements. NextiraOne may charge the customer a service fee if NextiraOne responds to customer's request to be on-site and a knowledgeable employee of the customer fails to appear at the designated time and place. NextiraOne reserves the right to use third party service providers to deliver on-site support.
- 4.5 **On-Site Product Modification.** NextiraOne may, at its sole discretion, perform engineering change orders on any item of product to improve its operating condition and performance.
- 4.6 **No Products Malfunction.** If, upon visiting a customer's site, NextiraOne demonstrates that the reported problem is not being caused by a malfunctioning product, then NextiraOne reserves the right to charge the customer on a time and materials basis.

## 5 SERVICE EXCLUSIONS

- 5.1 In addition to the service exclusions specified in the service offering(s), the following services are excluded from those provided under the scope of services:
  - a) any work at customer location, other than specified in the service offering;
  - b) any services for product which have been obsolete for a period longer than one (1) year, unless NextiraOne at its sole discretion elects otherwise;
  - c) service calls, electrical work (external to product), replacement of parts and repair of damage or faults resulting from negligence, misuse or operational errors of the customer or causes other than ordinary use by the customer of the product within normal operating conditions, or any repair or attempt to repair or modification carried out to the product or the software by any person other than an authorized representative of NextiraOne;
  - d) any changes to the performance of the product or the software beyond those required to make them comply with their specifications;
  - e) cleaning, painting or refurbishment of the product(s);
  - f) any services in connection with or arising out of relocation of the product or the addition, removal or servicing of any third party product, accessories, attachments, cabling or other devices not originally forming part of the product or the software;
  - g) any services to the product or the software resulting from unusual external causes such as, but not limited to, thunderstorm, power failure, power surges, air conditioning failure, humidity, improper input/output signals to NextiraOne's connections or the customer other software not previously approved by NextiraOne, accident, fire, explosion, Act of God, or damage while in transit to NextiraOne;
  - h) any services on mobile end devices, printer and fax machines;

- i) data backup, data recovery and data reassessment and any other operations which have to be carried out by the customer according to the operating instructions (unless covered explicitly by the scope of services in the service offering);
- j) any provision, free of charge, of consumable supplies and unit components whose physical life time ends during the term of this service agreement;
- k) any first-time technical inspection in case of a service contract for equipment already activated at time of acceptance of services;
- l) any services on products which become necessary by combination, connection or modification of hardware, software or operating parameters of equipment by the customer or any third party unless these actions have been taken up in consultation with NextiraOne.

## 6 OBLIGATIONS OF CUSTOMER

- 6.1 **Customer Requirements and Notification.** Customer shall provide NextiraOne with the agreement number when requesting service. All occurring dysfunctions and damages have to be notified immediately at the Customer Service Hotline announced by NextiraOne and shall only be eliminated by NextiraOne or a company entitled by NextiraOne.
- 6.2 **On-line support.** Customer shall at its own cost make available the infrastructure needed for remote services. If NextiraOne cannot log-in as to provide services and this inability is caused by a customer's lock or any other customer action NextiraOne is entitled to charge the additional costs arising thereof.
- 6.3 **On-Site Support.** When on-site Support Services are provided, the customer shall comply with the following additional obligations: provide, free of charge, working space, including heat, light, ventilation, electrical current, and electrical outlets; provide access to the product, in particular, free of charge, provide required auxiliary means as ladder, lifting ramp etc.; comply with the duties imposed on the customer by any applicable health and safety legislation and any other statutory provision.
- 6.4 To ensure receipt of appropriate versions of software updates, the customer shall notify NextiraOne of any hardware upgrades purchased during the term of this agreement.
- 6.5 **NextiraOne access.** Customer shall co-operate with NextiraOne and provide access to all documentation, diagnostics programs, operating systems, utilities and application programs necessary to resolve reported problems.
- 6.6 The customer shall be responsible for obtaining any necessary permissions and has to comply with the duties imposed on the customer by applicable statutory provisions concerning the operation of the equipment.
- 6.7 **Passwords.** If the customer is handed out one or more password(s) (at his own request) administration of such passwords, in particular modification, safety and the duty to keep it ready in the event of services is in the customer's sole responsibility. If the customer does not comply with his duty of proper administration and/or safekeeping of the passwords NextiraOne cannot be held liable for any damages arising thereof, including but not limited to data leakage.

## 7 PAYMENT TERMS

- 7.1 **Taxes.** All prices are exclusive of all VAT, or other government excise, sales, use, or like taxes now in force or enacted in the future. (Where applicable) VAT will be added at the then prevailing rate.
- 7.2 **Continuing Obligation.** For services within continuing obligation the customer will be charged a monthly fee for the term of this agreement which shall be based on the scope of services specified in the respective agreement. The monthly fee will be charged in advance for each calendar quarter. An eventual annual fee will be charged in advance and each respective fee per intervention after the supply with a service.
- 7.3 **Stable Value Clause.** The monthly fee shall be subject to a Stable Value clause. The minimum salary of the collective treaty for employees in occupation group E in Austrian Electrical and Electronic Industry effective at the time of conclusion of the agreement shall be basis for calculation, unless otherwise agreed. In the event of a rise of the minimum salary and/or ancillary labour costs the service fee shall increase proportional. The same shall apply to tax increase and introduction of new taxes or public charges which affect the service fee calculation.
- 7.4 **Service Exclusions.** Services excluded from those provided under the service agreement will be charged according to actual time spent on the service and the material.
- 7.5 **Due Dates.** All invoices are strictly net payable upon receipt.
- 7.6 **Delay in payment.** In the event that the customer should fail to perform his payment obligation and such default is not rectified within 30 days after due date NextiraOne may suspend its services or terminate this agreement without prejudice to other rights. In this case NextiraOne is entitled to charge default interest.
- 7.7 **Offset.** The customer shall only be entitled to offset claims against NextiraOne which have been approved by court or in written form.
- 7.8 **Price Changes.** NextiraOne reserves the right to change its prices from time to time. However, such price changes will not affect the

service prices for the duration of the current term of a purchased service offering. Where applicable, all future service renewals will use the then current service price unless otherwise agreed in writing. This shall not apply for service offering(s) with continuing obligations to be performed by NextiraOne.

## 8 LIMITED WARRANTY AND DELAY

- 8.1 NextiraOne warrants that any replacement subassembly or unit will be free from defects in material and workmanship and will be replaced for the period of the service agreement. NextiraOne moreover warrants to perform services duly.
- 8.2 This limited warranty does not extend to a unit or subassembly replaced by NextiraOne hereunder when the defect is due to any of the following reasons: accident, fire, explosion, thunder-storm, Act of God or natural causes, power surge, or power outage; modification, repair or attempted repair of the unit or subassembly by someone other than NextiraOne or its authorized representative; the unit or subassembly in the reasonable opinion of NextiraOne has been used in a negligent manner or for other than its intended use or outside the environmental range specified by NextiraOne.
- 8.3 The warranty period for software updates ends with the original warranty period calculated from the time of the original implementation.
- 8.4 The warranty period shall be twelve (12) months. With the exception of the limited warranty expressly provided in this section there are no other warranties relating to any of the services covered by this agreement.
- 8.5 The customer may terminate this agreement with regard to the service concerned without prior notice by registered mail in the event that NextiraOne should fail to perform any of its service obligations within continuing obligation and such default is not rectified within additional period of grace of reasonable length. In this case NextiraOne shall refund the corresponding service fee as of the month in which NextiraOne was granted an additional period of grace of reasonable length.

## 9 LIABILITY

- 9.1 Outside the scope of the Product Liability Act NextiraOne shall be liable only if the damage in question is proved to be due to intentional acts or acts of gross negligence, within the limits of statutory provisions. NextiraOne shall not be liable for damage due to acts of ordinary negligence nor for consequential damages or damages for pure economic loss, loss of profits, loss of savings or interest or damage resulting from third-party claims against the customer.
- 9.2 Provided that dial-up connections were configured in coordination with the customer NextiraOne shall not be liable for any additional costs arising from an unintentional activation.

## 10 OWNERSHIP OF SOFTWARE

- 10.1 The ownership of the rights to use the software and associated documentation made available to the customer under this agreement shall remain vested solely in NextiraOne and/or the producer, except from those under Article 10.2.
- 10.2 The customer shall have a non-exclusive, non-assignable license to use the software and associated documentation made available to it under this agreement. The foregoing license shall cover both the software originally installed by NextiraOne and any upgrades or updates that may be implemented by NextiraOne as part of the service offer.
- 10.3 The software licensed to the customer under Article 10 shall be used:
- a) in accordance with the provisions of this agreement and in compliance with the safety, use and operating instructions and requirements contained in the associated documentation; and
  - b) in accordance with its intended purpose, namely solely for running the product covered by this agreement and solely on the customer's operating site.
- 10.4 Any use not authorised under this agreement and not in accordance with applicable Intellectual Property laws shall be unlawful. Thus, for example, the customer shall be prohibited from:
- a) reproducing the software by any method whatever, except as necessary for using the software; provided, however, that for security reasons the customer may make one (1) backup copy to be used in the event of failure of the copy delivered to the customer for the utilisation of the product;
  - b) exhibiting, distributing or marketing the software and associated documentation, whether free of charge or against payment;
  - c) using the software in any manner whatever for the purpose of designing, developing, distributing or marketing similar or equivalent or substitute software;
  - d) leasing, assigning, lending or otherwise making the software available directly or indirectly to any third party;
  - e) adapting, modifying, transforming or arranging the software, in particular with a view to creating derived or new functions, or derived or entirely new software;
- and/or

- f) reverse engineering or disassembling the software, except with the aim of achieving the interoperability thereof under the conditions laid down by law.
- 10.5 The customer shall not have the right to correct any errors in the software.
- 10.6 If, for the use of one or more items of software, NextiraOne requires the customer to sign a specific contract directly with the author or distributor of the software concerned, the customer shall comply with the provisions of such contract and with the provisions of this agreement, it being specified that such contract shall prevail over the provisions of this Article.
- 11 GENERAL**
- 11.1 **Assignment of Rights and Obligations.** NextiraOne is authorized to transfer its rights and obligations under this agreement to a third party. Customer shall not assign or transfer its rights or obligations under this agreement without the prior written consent of NextiraOne.
- 11.2 **Surrender of products.** If products to which a service agreement refers are transferred to a third party, the customer's obligations under this agreement persist unless the third party takes over this service agreement upon approval by NextiraOne.
- 11.3 **Confidential Information.** Any confidential, technical or commercial information supplied by either party must not be disclosed to any third party without the disclosing party's prior written consent, and shall not be copied or used except as authorized. The information contained in all documents furnished shall remain the disclosing party's property and shall be returned to the disclosing party at their request, and in any case on the termination of this agreement.
- 11.4 **Force Majeure.** If either party is prevented from carrying out any of its obligations under this agreement due to any circumstance beyond its reasonable control including, without limitation, act of government, interruption of power supplies, failure of sources of

- supply, interference by a third party, industrial disputes or natural disaster the party affected shall be excused performance of such obligation for the duration and the extent of such circumstance.
- 11.5 **Jurisdiction and applicable law.** Any litigations arising under this agreement shall fall within the exclusive jurisdiction of the competent court of the Bezirksgericht Innere Stadt, Vienna. The agreement is subject to Austrian law excluding the UN Convention on Contracts for the International Sale of Goods.
- 11.6 The customer declares that he enters into this agreement as an agreement within the business of his company.
- 11.7 **Entire Agreement.** This agreement is the complete statement of the terms of the agreement between the parties relating to the subject matter of this agreement and may not be modified except in writing executed by both parties and supersede all prior agreements or understanding of any kind whatsoever relating to the subject matter of this agreement. The terms and conditions of this agreement shall prevail notwithstanding any conflict with the terms and conditions of any purchase order or other instrument submitted by customer. In case of inconsistencies between the various instruments forming part of this agreement the following order of precedence will be applicable:
1. Terms and Conditions for Services
  2. Customer Confirmation Certificate
  3. Order Form
  4. Any other exhibits
- 11.8 **Enforcement.** In the event any provision of this agreement is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of any of the remaining provisions shall not be affected. The parties shall then negotiate and agree upon a valid provision coming closest to their intention.