

## Dedicated Internet Access Terms and Conditions

**Description** Nex-Tech, LLC and its subsidiaries (“Nex-Tech”) hereby agrees to provide Symmetrical Dedicated Internet Access to Customer under the following terms and conditions and as set forth in the “Service Agreements”. Hereinafter, Nex-Tech and Customer may be referred to individually as a “Party” and collectively as the “Parties.”

**1. Confidentiality.** Customer, nor its officers, directors or employees, shall disclose any pricing, terms or conditions of the Service Agreement, to anyone without a direct need to know, or to any unaffiliated third party, expressly excluding legal counsel, for any reason whatsoever without advance written consent from Nex-Tech; provided, that both Parties shall have the right to disclose such information pursuant to a valid court order or as otherwise required by law. Nex-Tech will not use or reference Customer in or on any promotional or advertising material, including Nex-Tech’s website, without the advance written consent of Customer.

All data, documentation, records, files, software applications, vendor information, systems, training materials, product and service information, financial information and other business information related to Customer, including without limitation, names, addresses, phone numbers, email addresses and account numbers (collectively, the “Confidential Information”) provided or made available to Nex-Tech, accessed or received by Nex-Tech, or stored in the Nex-Tech systems shall be kept confidential and shall not be used by or disclosed to anyone except Nex-Tech’s officers, directors and Agents with a need to know for the furtherance, facilitation or performance of the Services herein, and who are legally bound to respect the confidentiality thereof. Nex-Tech shall exercise reasonable care for the protection of Confidential Information, shall not use Confidential Information for its benefit except to provide the Services hereunder, and shall maintain reasonable data integrity safeguards against the deletion or alteration of such. Nex-Tech shall be responsible for the retention of such Confidential Information, at its own expense and in accordance with regulatory requirements. All Confidential Information shall be and remain the property of Customer. Upon termination of the Service Agreement, all Confidential Information shall be returned to Customer or destroyed.

The provision of this Section 1 shall survive the expiration or termination of the Service Agreement for a period of five (5) years from the termination date.

**2. Independent Contractor.** Nex-Tech shall, at all times and for all purposes under the Service Agreement, be considered an independent contractor and shall be solely responsible for the supervision and payment of its Agents for the Services performed hereunder. As such, Nex-Tech shall provide, at its sole expense and decision, all tools, materials, training, hiring, supervision, hours of work, scheduling, work policies and procedures, work rules, compensation, payment for expenses, and discipline and termination of its Agents. Nex-Tech shall have reasonable control over all methods and details of performing the Services in compliance with the Service Agreement, subject to Customer’s inspection, and shall ensure that its Agents are performing the Services in accordance with the Service Agreement. Nex-Tech shall not have, nor represent itself as having, any authority under the Service Agreement to make agreements of any kind in the name of or binding upon Customer.



**3. Notice.** All notices required to be given hereunder shall be made in writing and deemed to have been delivered: a) on the date delivered in person; b) on the date sent via email with proof of delivery confirmation; or c) three (3) business days after being mailed via US Postal Service certified mail, postage prepaid, return receipt requested, to the address set forth below:

*To Nex-Tech:*

Attn: Director of Sales  
Nex-Tech, LLC  
145 North Main  
Lenora, KS 67645

*To Customer:*

Please see contact information as listed on the Service Agreement

**4. Term and Renewal.** The Initial Term of Service shall be as set forth in the Service Agreement and will begin on the Start of Service Date. If neither Party provides notice of intent to terminate the Service Agreement at least sixty (60) days prior to the end of the then-current term, the agreement shall automatically renew for an additional one (1) year term, pursuant to the rates, terms and conditions effective at the time of-renewal.

**5. Rates.** In exchange for the Services provided by Nex-Tech, Customer agrees to pay Nex-Tech the rates specified in the Service Agreement. Nex-Tech shall invoice Customer on or around the first (1<sup>st</sup>) of each month for all charges incurred by Customer during that calendar month. Customer shall have the option to receive its invoices from Nex-Tech in hard copy via US Postal Service or electronically via email. All amounts due to Nex-Tech by Customer shall be paid in full within thirty (30) days of the invoice date, in funds immediately available to Nex-Tech.

Payments received from Customer thirty (30) days or more after the due date shall be assessed a one-and-a-half percent (1.5%) late penalty (the "Late Fee") per month until such past due balance is paid in full. Should Customer's account become delinquent by sixty (60) days or more, such delinquency shall constitute a material breach of the Agreement, and Nex-Tech shall reserve the right to discontinue Services to Customer and its Subscribers, and terminate the Service Agreement in accordance with Section 6 below. Such termination shall not relieve Customer of any outstanding payment obligations to Nex-Tech.

**6. Default; Early Termination.** The Service Agreement may be terminated immediately upon notice if either Party:

- a. Fails to fulfill any material obligation of this Agreement, or fails to remedy or cure such breach or default within ten (10) days following notice to the defaulting Party (the "Cure Period");
- b. Becomes insolvent, makes a general assignment for benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointments of receiver for its business or assets, or becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign;
- c. Engages in actions or omissions hereunder which (i) constitute a violation of any law, regulation or tariff; (ii) are defamatory, fraudulent or deceptive; (iii) are intended to threaten, harass or intimidate; or (iv) are intended to damage the name or reputation of the other Party.



Under no circumstances shall early termination of the Service Agreement, by either Party for any reason whatsoever, result in the waiver of Customer's obligation to pay any Service Fees and/or Late Fees due and owed to Nex-Tech up to and through the date of termination.

In the event the Service Agreement is terminated prior to the expiration of the Initial Term or any then-current Renewal Term Nex-Tech shall bill Customer, and Customer shall be obligated to pay, an "Early Termination Fee" equal to a) any outstanding Service Fees and/or Late Fees owed to Nex-Tech up to and through the date of termination, *plus* b) a monthly Service Fee calculated at one-hundred percent (100%) of Customer's average monthly billing under the Service Agreement – using the three (3) most recent monthly invoices from Nex-Tech – for each month remaining in the then-current Term. Such payment shall be made to Nex-Tech within thirty (30) days of termination, using funds immediately available to Nex-Tech.

**7. Severability; Waivers.** The invalidity or unenforceability of any provision of the Service Agreement shall not affect the validity or enforceability of any other provision of the Service Agreement. No waiver of any of the provisions of the Service Agreement shall constitute a waiver of any other provision, nor shall any waiver as to one event constitute a waiver as to any other event.

**8. Non-Solicitation.** For the duration of the Service Agreement and for a period of three (3) years following termination, neither Party will, without the advance written consent of the other Party, either directly or indirectly, on its own behalf or in the service of or on behalf of others, solicit or attempt to solicit, divert or hire away any person employed by the other Party.

**9. Mutual Waiver of COVID-19 Claims.** This provision addresses issues regarding the novel coronavirus ("COVID-19") with regards to Nex-Tech's Service Agreements. All Parties to any Nex-Tech Service Agreement, or other Nex-Tech contracts, acknowledge their respective understanding of the hazards of COVID-19, including, but not limited to, its highly contagious nature and the corresponding health risks associated with being exposed to or infected by COVID-19. Each Party agrees to hold harmless and indemnify each other and waives, releases, discharges and covenants not to sue, or take any other action against, the other Party or its affiliates and its and their respective officers, directors, partners, principals, employees, agents or subcontractors from any and all claims, damages, expenses, liabilities, illnesses or losses that may occur from exposure to or infection by COVID-19 arising out of, related to, or in any way connected with the professional services provided to you by Nex-Tech.

**10. Assignment.** Customer shall not sell, assign or transfer this Agreement or any part thereof without the prior written consent of Nex-Tech; however, Nex-Tech may, without the consent of Customer assign any or all of its rights and obligations under this Agreement to its parent, any subsidiary (of Nex-Tech or its parent), or any affiliate (of Nex-Tech or its parent) or to any successor in interest pursuant to a sale of stock or assets, merger, acquisition, or reorganization.

**11. Entire Agreement.** The Service Agreement in conjunction with these terms and conditions contain the entire agreement of the Parties relating to the subject matter hereof, and no agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by the Parties that are not expressly set forth in the Service Agreement. The Service Agreement may be modified or amended only through a written Addendum or new Agreement with equal or greater terms signed by an authorized representative of each Party and attached hereto and incorporated herein.

**12. Counterparts.** The Service Agreement, and any Addendums attached hereto, may be executed in counterparts, each of which shall be deemed originals, regardless of whether such execution is made electronically or in hard copy, but all of which together shall constitute one and the same instrument.

**13. Governing Law.** The Service Agreement shall be governed in accordance with the laws of the State of Kansas.

**14. Equipment.** Provider will install the terminating equipment on the Customer's site. (Provider may provide a router, which will in turn be connected to the Customer's corresponding equipment, provided by the Customer. Proper configuration and connection of the Customer's equipment to the Provider's service is the responsibility of the Customer).

- a. Customer is responsible for establishing the inside wiring required to connect its server/router to the Provider's terminating equipment. Provisioning of any necessary cross connects on the Customer's side of the local access company's point of demarcation is the responsibility of the Customer.
- b. Customer shall properly use the terminating equipment installed by Provider, and Customer will not allow any equipment of Provider to be rearranged, moved or altered without Provider's prior written consent.
- c. Customer shall surrender the Provider's terminating equipment, if any, to Provider in good working order upon termination.
- d. Circuit charges to the Customer's location(s), if applicable, are the responsibility of the Customer. See Provider's Dedicated Internet Access Service Agreement.

**15. Miscellaneous Terms.** Customer may not resell, rename, package or otherwise distribute any Services provided by Provider without the express written consent of Provider.

**16. Use of Services – Restrictions.** Customer agrees to use the services provided by Nex-Tech in compliance with applicable laws. Transmission of any material in violation of any domestic laws and regulations, including (without limitation) threatening or obscene materials, is prohibited.

- a. Some materials available on the Service may be subject to laws and treaties relating to copyrights and intellectual property laws. In addition, Nex-Tech does not control the content of information available throughout its network and cannot be responsible for the accuracy or quality of information obtained through its services. Accordingly, Customer is solely responsible for determination of all suitability and propriety of its use of all materials available through the Service, and assumes all risks related to use of information or data.
- b. Any use of Nex-Tech's network or system resources which materially disrupts or interferes with normal operations or with other customers, or which uses Nex-Tech's network to make unauthorized attempts to access the systems and networks of others, is prohibited. Customer is solely responsible for compliance with all rules applicable to Customer's access to any other networks. Any customer, its agents, employees or others; engaging in such practices, or otherwise in violation of these Terms and Conditions, will be subject to termination of services.



**17. Disclaimers, Limitations, Indemnification.** With the exception of the Service Level Agreement section, Nex-Tech makes no warranties of any kind, whether express or implied, regarding the services it provides to Customer, or relating to the quality, accuracy, or validity of data and/or information residing on or passing through Nex-Tech's network. Nex-Tech expressly disclaims any and all warranties relating to its services, including any warranty of merchant ability or fitness for a particular purpose.

- a. Nex-Tech shall not be liable, either in contract or in tort, for unauthorized access to Customer's transmission facilities or Customer premises equipment; or for unauthorized access to or on, theft or destruction of Customer's data files, programs, procedures or information through accident, fraudulent means or devices, or any other method.
- b. Customer agrees that Nex-Tech will not be liable for any consequential, incidental or specific damages, including harm to business, lost revenues, lost savings, or lost profits suffered by Customer, regardless of the form of action, whether in contract, warranty, strict liability, or tort, or for any claim by any third party, even if Nex-Tech has been advised of the possibility of such damages. Nex-Tech's entire liability for any claim, loss, damage or expense from any cause whatsoever will in no event exceed sums actually paid to Nex-Tech by Customer in the last twelve (12) months for the specific service giving rise to the claim. No action or proceeding against Nex-Tech will be commenced more than one (1) year after service is rendered.
- c. Customer agrees to indemnify and hold Nex-Tech harmless from any claims or damages, including reasonable attorney's fees, resulting from Customer's use of Nex-Tech services or breach of these Terms and Conditions, including (without limitation) Customer's causation of damages or injury, directly or indirectly, to any other party.

**18. Service Level Agreement.** A service interruption defined as "Site Unavailability" may entitle the customer to credits as provided in the chart below. "Site Unavailability" is a loss of signal to the customer that results in a disruption of service. A "Site Unavailability" period begins when the customer opens a trouble ticket with Nex-Tech's Network Operations Center (NOC).

- a. **Site Unavailability.** "Site Unavailability" shall *not* include times when the Service is unavailable because of the following:
  - i. Scheduled maintenance;
  - ii. Equipment upgrades;
  - iii. Reasonable planned or predetermined downtime;
  - iv. Negligent actions or willful misconduct of Customer, its agents, employees or others;
  - v. A failure or malfunction resulting from applications of Customer, its agents or employees;
  - vi. Circumstances beyond reasonable control caused by wear and tear resulting from accident, theft or unexplained loss, abuse, connection of foreign power, fire, flood, wind, acts of God or public enemy, or improper wiring, installation, repair or alteration of the equipment by anyone other than Nex-Tech.

Only unavailability lasting at least thirty (30) minutes in length will be considered for credits.

Credit and Site Unavailability will be on a per month basis.

Applicable credits will be applied on the next monthly invoice after they are earned.

Credit will be assessed to customer in the following proportions:

Site Unavailability	Monthly Rate Discounted By
Less than 30 minutes	0%
30 minutes but less than 4 hours	5%
4 hours, but less than 8 hours	10%
8 hours, but less than 16 hours	15%
16 hours, but less than 24 hours	20%
24 hours or more	25%

- b. **Monitoring.** Nex-Tech monitors the Service 24x7x365. Nex-Tech will undertake problem management with respect to Service as soon as monitoring staff in Network Operations Center (NOC) becomes aware of an incident.
- c. **Problem Reporting and Resolution.** Customer may access the NOC 24x7x365 by calling 866-621-0662.