

## Directory Services/Classifieds & Advertising Solutions Terms & Conditions

**Description.** Nex-Tech, LLC and its wholly-owned subsidiaries (“Nex-Tech”) hereby agrees that Nex-Tech will publish advertising in the Directories and/or provide the Online Directory/Classifieds/Video and/or provide the Direct Marketing Services, TV Advertising also known as “Advertising Solutions” to Customer under the following terms and conditions and as set forth in the “Contract or relating Agreements”. These Terms and Conditions and all applicable additional terms and conditions, order forms and other separate contracts that you executed shall together be referred to as "Agreement." The term "Directories" means the directory or directories set forth in this Agreement. The term "Internet Services" means the Internet advertising and/or website design services set forth in this Agreement or in a separate agreement between Nex-Tech and Customer. The term "Lead Tracker" means the lead tracking services set forth in this Agreement. The term "Direct Marketing" means the direct marketing services set forth in this Agreement. Additional terms and conditions governing Internet Services, Lead Tracker services and Direct Marketing services are set forth below. The additional terms and conditions applicable to Customer are hereby incorporated into, and are a part of this Agreement to provide Directory and Advertising Solution Services. Hereinafter, Nex-Tech and Customer may be referred to individually as a “Party” and collectively as the “Parties.”

**1. No Obligation to Publish.** Nex-Tech reserves the right to reject this Agreement, and/or any copy that it deems, in its sole discretion, to be objectionable. Nex-Tech may reject this Agreement at any time within twenty (20) business days after delivery of this Agreement by Customer to Nex-Tech. Nex-Tech may reject any copy within twenty (20) business days after such copy is submitted by Customer to Nex-Tech.

**2. Credit.** Signer authorizes Nex-Tech to check credit history of signer and Customer with bank and trade references and business and/or consumer credit reporting agencies and further authorizes any such credit reporting agency to provide credit information about signer and/or Customer to Nex-Tech. Signer and Customer agree that Nex-Tech may share signer's and/or Customer's payment record with credit reporting agencies. Nex-Tech has the right to establish credit limits and terms, require deposits, advance payments (e.g., fifty percent (50%) in advance, full payment in advance) or to cancel this Agreement if Customer's or signer's, as the case may be, credit history proves to be unsatisfactory, in Nex-Tech's sole, but commercially reasonable, discretion.

**3. Term.** The initial term of Service shall be as set forth in the Contract or relating Agreements (“Initial Term”).

**4. Duration of Agreement; Automatic Renewal; Distribution of Directories.**

- a) With respect to advertising in the Directories, the term of this Agreement is equal to the issue period for each Directory as set forth in the Contract or relating Agreements. The issue period for each Directory is twelve (12) months from date of publication. Nex-Tech reserves the right to extend or reduce a Directory's issue period by no more than six (6) months. If the issue period of a Directory is extended; charges will be extended accordingly. With respect to Internet Services, the Initial Term of this Agreement is for



twelve (12) months. Thereafter, this Agreement will continue in effect with respect to the Internet Services until Nex-Tech or Customer cancels. Any cancellation by Customer under this paragraph shall be made in accordance with paragraph B.

- b) Customer acknowledges that Nex-Tech honors opt-out requests from consumers who do not wish to receive Directories. Customer also acknowledges that Nex-Tech may use targeted distribution to heavier directory users and therefore may not distribute directories to all households within the directory coverage area. Customer further acknowledges that the print quantity shown in the body of this Agreement is an estimate and may vary from the quantity distributed.

**5. Payment Terms.** For Advertising Solutions, Nex-Tech may require full payment in advance or at its discretion may invoice Customer monthly or annually, as indicated on the Contract or relating Agreements. If Nex-Tech does not receive the full amount invoiced by the due date on the bill, Nex-Tech may assess a late penalty (“Late Fee”) not to exceed one-and-a-half percent (1.5%) per month of the overdue amount. If Customer fails to pay any bill within thirty (30) days of the due date or, such shorter period as is provided in the Contract or relating Agreements, the entire annual charge for advertising shall be due and payable.

*If customer chooses to pre-pay for their directory advertising prior to the end of the sales canvass, they are eligible for a 5% discount off the gross amount as indicated on the Application. If payment is not received by the end of the sales canvass, customer is liable for the gross amount as indicated on the Application.*

**6. Early Termination.** Nex-Tech will have the following rights: In the event the Contract or relating Agreements is terminated prior to the expiration of the Initial Term or any then-current Term, Nex-Tech shall invoice 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 Contract or relating Agreements – 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. Disconnection of Customer's Phone Number or Termination of Internet Services.** The change or disconnection of a phone number in an advertisement, or termination of Internet Services by Customer, will not release Customer from its obligations under this Agreement.

**8. Copy, Proofs and Revisions:**

- a) Customer must furnish all copy for Advertising Solutions Services prior to the reasonable deadlines set by Nex-Tech. If Customer fails to do so, Nex-Tech may create and publish



such copy. Nex-Tech reserves the right to exercise printer's prerogative concerning details relating to typeface and style, use of Benday and minor adjustments in layout. Nex-Tech will endeavor to furnish proofs of new and revised display print advertisements, but failure to do so will not relieve Customer of its obligations under this Agreement. Color is at the discretion of Nex-Tech. No specific color is guaranteed. Nex-Tech reserves the right to modify camera ready or "spec art" if it does not meet Nex-Tech's printing requirements.

- b) It is Customer's responsibility to notify Nex-Tech, in writing, of any and all name, address or telephone number changes prior to the applicable deadline of each Directory. If Customer fails to do so, Customer will remain obligated to make payments for its advertisement, regardless of whether Nex-Tech was able to make the necessary changes.
- c) Nex-Tech will determine all headings that appear in its Directories. Nex-Tech, at its sole discretion, may refuse to publish an advertisement under a particular heading and does not guarantee the position of an advertisement under a particular heading. Failure to publish an advertisement in a particular position shall not be the basis for claim or adjustment to the amount owed by Customer. Nex-Tech may change the form, appearance, size and content of any of the Directories or of its Internet site at any time without notice to Customer.

**9. Limitations of Liability.** Applicant agrees that Nex-Tech shall not be liable for errors or omissions in Advertising Solutions. Nex-Tech assumes no obligation to notify its print or Online Directory/Classifieds subscribers of any error or omission. Nex-Tech does not guarantee the position of display advertisements. In no event will Nex-Tech be liable for consequential, indirect, incidental, punitive or any other indirect damages including, without limitation, lost profits or any claim or demand against Applicant by any other party due to any cause whatsoever, even if Nex-Tech has been advised of the possibility of such damages. Nex-Tech's liability hereunder, regardless of the form of action, shall not exceed the total amount paid by Applicant to Nex-Tech pursuant to the Contract.

NEX-TECH MAKES NO REPRESENTATIONS, EXPRESS OR IMPLIED, OTHER THAN THOSE CONTAINED IN THIS SECTION AND EXPRESSLY DISCLAIMS ANY WARRANTIES ARISING FROM COURSE OF DEALINGS, USAGE OF TRADE OR COURSE OF PERFORMANCE, AND IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

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

**11. Force Majeure.** Nex-Tech shall not be liable to Customer for any failure of the Internet Services resulting from events beyond Nex-Tech's control, including but not limited to fire, accident, acts of God, strike, power or telephone failure or the inability to obtain access to any website included in the Internet Services.



**12. Right to Use Trademarks and Photographs; Permits and Licenses; No Endorsement; Indemnification.** Customer represents and warrants that it has the right to use any trademark, trade name, or copyrighted material included in any copy submitted to Nex-Tech. Customer also represents and warrants that it has the right to use any artwork, portrait, picture or illustration of a person shown in any copy submitted to Nex-Tech. Customer will notify Nex-Tech, in writing, if Customer should cease to have any such right. Customer assumes sole responsibility for the protection of its intellectual property rights in any writing, pictorial illustration, design, map, photograph, or combination thereof, included in its Advertising Solutions services.

12.1 Customer represents and warrants that it holds all necessary permits and licenses to provide the products and services identified and to appear under the heading classification(s) listed on this Agreement. Customer agrees that it is responsible for ensuring that its Advertising Solutions services comply with any laws or regulations that may be applicable to its business. Customer understands and agrees that Nex-Tech does not approve or endorse any of Customer's products or services, whether or not identified in Customer's Advertising Solutions services.

12.2 Customer agrees to indemnify Nex-Tech (and its employees, affiliates and agents) against, and hold Nex-Tech (and its employees, affiliates and agents) harmless from, all liability, claims demands, suits or causes of action, and will pay all expenses, including reasonable attorney fees, settlements, and/or judgments, incurred by Nex-Tech in the defense thereof, arising out of Customer's breach or alleged breach of the foregoing representations and warranties.

**13. Additional Nex-Tech Rights.** Nex-Tech shall have the right to display Customer's Website in marketing.

**14. 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.

**15. Governing Law.** The Contract or relating Agreements and Terms and Conditions shall be construed in accordance with and governed by the laws of the State of Kansas.

**16. Attorney's Fees.** If litigation is pursued upon this Agreement, the most prevailing Party shall be entitled to recover all costs including, but not limited to, attorneys' fees.

**17. Amendment.** The Terms and Conditions and Contract or relating Agreements constitute the entire Agreement between the Parties and supersedes all previous communications, representations or agreements, either verbal or written, between the Parties hereto with respect to the subject matter hereof, and there shall be no amendment or modification of the Terms and Conditions without a written Amendment.



17.1 Effective with the publication date of the next issue of the Directory, these Terms and Conditions and Contract or relating Agreements cancel and supersede all previous agreements between Customer and Nex-Tech covering advertising now appearing in the current issue.

**18. Counterparts.** The Contract or relating Agreements, 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.

**19. Entire Agreement.** The Contract or relating Agreements 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 Contract or relating Agreements. Contract or relating Agreements may be modified or amended only through a written Addendum signed by an authorized representative of each Party and attached hereto and incorporated herein.

**20. Notice of Cancellation.** With respect to Advertising Solutions, you may cancel this transaction, without any penalty or obligation, within three (3) business days from the date on the Contract or relating Agreements of these items. To cancel this transaction, mail, fax, or deliver a signed and dated copy of the cancellation notice or any other written notice to:

Attn: Advertising Solutions  
Nex-Tech, LLC  
117 N. Norton  
Norton, KS 67654  
Fax: (785) 874-4497

**21. Authority; Persons Obligated; Signer Obligated.** The signer agrees that he/she has the authority and is signing this Agreement (1) in his/her individual capacity, (2) as a representative of the Customer, and (3) as a representative of the entity identified in the advertisement or for whose benefit the advertisement is being purchased (if the entity identified in the advertisement is not the same as the Customer or the signer).

