

Cloud Based Phone & Fax Services Terms and Conditions

Description. Nex-Tech, LLC and its subsidiaries (“Nex-Tech”) hereby agrees to provide Cloud Based Phone Services and/or Cloud Fax Services to Customer under the following Terms and Conditions and as set forth in the “Service Agreement.” Hereinafter, Nex-Tech and Customer may be referred to individually as a “Party” and collectively as the “Parties.”

1. Confidentiality. Customer, its officers, directors or employees, shall not 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 (collectively, the “Confidential Information”) provided or made available to Nex-Tech, accessed or received by Nex-Tech, or stored in Nex-Tech’s 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, upon written request from the Customer, be returned to Customer (at the then-current time and material rates) or destroyed.

The provision of this Section 1 shall survive the expiration or termination of the Service Agreement for three (3) years.

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. Initial Term and Renewal. The Initial Term of Service shall be as set forth in the Service Agreement (“Initial Term”) and shall commence on the Service installation date. If neither the Customer nor Nex-Tech cancels or terminates the Agreement before the end of the Initial Term or any renewal term, the Agreement, unless otherwise provided in a new Service Agreement, shall automatically renew annually for one (1) year terms pursuant to the rates, Terms and Conditions as set forth by Nex-Tech in the attached Cloud Phone Services Service Agreement unless Nex-Tech or Customer has provided notice of its intent to terminate the Agreement thirty (30) days prior to the renewal date.

5. Failure to Perform. In the event Customer fails to perform under the Terms and Conditions of this Agreement, Nex-Tech shall have the right to terminate this Agreement immediately and assess Customer’s Early Termination Fees (“ETFs”) as set forth in Section 6 below.

6. Early Termination; Early Termination Fees. In the event this Agreement is terminated prior to expiration of any current Term—either by Nex-Tech for Customer’s failure to perform or by Customer for any reason whatsoever—Nex-Tech shall have the right to assess Customer ETFs equal to: (i) any unpaid installation, construction and nonrecurring charges; plus (ii) one hundred percent (100%) of all Monthly Recurring Charges (MRCs) due under the Service Agreement, prorated according to the remaining months of the then-current Term (calculated as $MRC \times \text{number of months remaining in the then-current Term}$). Such payment shall be made to Nex-Tech within thirty (30) days of termination, using funds immediately available to Nex-Tech.

6.1 Nex-Tech reserves the right, at its sole discretion, to waive ETFs under the following circumstances: Customer upgrades to another service plan with Nex-Tech, with a term equal to or greater than the remainder of the then-current Term, and there is no lapse in service or payment.

7. Termination. This Agreement will terminate upon written notice from Nex-Tech in the event of Customer’s abandonment, fraud, insolvency, willful misconduct, or breach of this Agreement, which is not cured within thirty (30) days of notice of such breach.

8. Provisions of Service – Billing. Nex-Tech will provide Cloud Based Phone Service access to Customer, and Customer will pay for such service, in accordance with these Terms and Conditions. Nex-Tech will provide Customer with access to the Service, together with data transmission, through Nex-Tech’s network. Nex-Tech will also monitor Customer’s access line and router in accordance with Nex-Tech’s standard practices. A description of the specific services and corresponding charges are provided in the attached “Cloud Phone Services Service Agreement.”

8.1 Normal service charges will be invoiced monthly. Payment is due upon presentation of the invoice, and accounts are in default if payment is not received within thirty (30) days after the invoice date. Accounts in default are subject to a late payment charge equal to 1.5% per month on the unpaid balance.

8.2 Accounts in default may have their service interrupted. Service interruption does not relieve Customer of its obligation to pay charges.

- 8.3 Effective January 1, 2023, all new customers and all customers suspended for non-pay will be required to sign up for electronic invoice delivery and automatic electronic payments.
- 8.4 Use of Nex-Tech's network and services constitutes acceptance of the Terms and Conditions. Nex-Tech may modify these Terms and Conditions, including availability of services, upon notice furnished to Customer or published online.

9. Exclusivity. Customer agrees that the services provided under this Agreement (the "Services") are for Customer's exclusive use only, and not for resale with or for any other End Users. Should Customer wish to resell Services under this Agreement, Customer hereby agrees to enter into a separate interconnection contract with Nex-Tech before providing such resale Services, and compensate Nex-Tech accordingly. For purposes of this Agreement, "End Users" shall include, but are not limited to, businesses, residents and any other entity receiving telephony type services including Voice over Internet Protocol (VoIP) services from Customer. Resale of the Services provided hereunder shall be considered a material breach of this Agreement, and Nex-Tech, at its sole discretion, may terminate this Agreement without recourse or further obligation at any time following such breach.

10. Cloud Phone Basic. (Over-The-Top (OTT)) Customer agrees that Cloud Phone Basic requires a properly-configured, high performance broadband network and Internet connection. Providing a lesser quality network or Internet connection may result in partial/complete unavailability or under-performance of Cloud Phone Basic or other services utilizing the same network or Internet connection. Customer agrees to provide and maintain, at Customer's cost, an IP network, services and connection meeting the foregoing standards and all equipment necessary for Cloud Phone Basic to connect to and use such network, services and connection. Customer is solely responsible for providing this connection from Customer's premise to Nex-Tech's VoIP Network. Nex-Tech is not responsible for packets lost/dropped in the Internet; Nex-Tech only guarantees quality on its own VoIP network. Nex-Tech is not liable for any unavailability, interruption or under-performance of Cloud Phone Basic related to Customer's network or Internet connection.

11. Cloud Fax. Long Distance charges incurred with fax transmission are additional. Fax retention is the responsibility of the Customer and Nex-Tech is not responsible for lost fax communications. Customer is solely responsible for contents of transmissions through the service as Nex-Tech acts as a passive conduit for Customer to send and receive transmissions. Customer is also responsible for all actions while using Cloud Fax. Cloud Fax service is provided "as is" and does not make any express or implied warranties regarding Cloud Fax being uninterrupted, error-free, or meeting any level of performance or quality. Customer agrees not to use Cloud Fax to store or transmit any "Protected Health Information" as described in the Health Insurance Portability and Accountability Act of 1996.

12. Call Recording. For Customers who subscribe to the Call Recording feature available with Cloud Phone, Nex-Tech will retain recorded calls for a period of thirty (30) days, after which, recorded calls past that date will be erased. The Nex-Tech installing technician will inform the Customer on the various options to archive recorded calls and educate them on the procedure to do so with their chosen methodology. Nex-Tech is not responsible for retrieving calls past the 30-day threshold, nor is it responsible for the actual content of any recorded voice call.

13. Customer Passwords and Security. Customer is responsible for maintaining confidentiality of their passwords. Customer is responsible for any and all activities which occur under Customer's account. Customer agrees to notify Nex-Tech immediately of any unauthorized use of Customer's account or any other breach of security known to the Customer.

14. Out-of-Market VoIP. Out-of-Market VoIP is defined as any location that the Customer's Internet connection is not directly provided by Nex-Tech maintained facilities. It is the Customer's responsibility in Out-of-Market deployments to provide Nex-Tech with a quality Internet connection, including one (1) static public IP address, and provide unimpeded access directly to the Internet with adequate bandwidth and quality to support communications with Nex-Tech's VoIP network.

15. 911 Disclosure. Customer's use of the Service is conditioned on acceptance of, and compliance with, the Emergency Services Terms and Conditions, which can be found at <https://www.nex-tech.com/legal/terms-of-service/>. 911 service is available when using Cloud Based Phone Service from the initial registered service address. If Cloud Phone devices are moved to a new service address, 911 will still be available, but the initial service address will be displayed for emergency personnel. Customer needs to contact Nex-Tech to make changes to registered service address if necessary. Please note, if Customer experiences a loss of power or Internet service, Cloud Based Phone Service will not be available. Phones moved from original installed location are not designed or fit for access to emergency services. If Customer moves phone outside of service territory, it is the Customer's responsibility to obtain, separately from the service, traditional wireless (mobile) or fixed line telephone services that offer access to emergency services. Additional 911 stickers can be found at <https://www.nex-tech.com/business/communications/cloud-phone/#911>.

16. Adds, Moves and Changes. Adds, moves and changes will be performed at an additional charge of the then-current Time and Materials Rate to Customer. Adds include additional functions beyond when the system was originally installed. This can be additional bandwidth, users or content. Moves are physically moving equipment from the original installation point. Changes are when the system is modified in a way that changes how it was originally deployed. Changes for data security purposes are included in the Agreement.

Exclusions include services which, in Nex-Tech's opinion, are required due to unauthorized attempts to install, repair, maintain, modify or tamper with any devices or related software or peripherals, whether by Customer or by a third party, or excluded from the Service Agreement, and are subject to additional charges.

17. Insurance. Customer shall, at its own expense, maintain at all times during the term of this Agreement, replacement cost insurance coverage concerning any covered component(s) listed on the Service Agreement and located at the Customer's site(s). Coverage must include damage caused by negligence on behalf of Customer's employees or agents, accidents, acts of God and natural disasters. Should covered component(s) become damaged for any reason specified and Customer fails to carry adequate insurance coverage, Customer agrees to reimburse Nex-Tech for costs associated with replacement of covered component(s).

18. 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.

19. Non-Solicitation. Each Party, on its own behalf and on behalf of its affiliates, agrees and covenants that, during the term of this Agreement and for two (2) years following the termination of this Agreement, neither it nor its affiliate shall, directly or indirectly, through another person, firm, corporation or other entity, solicit or attempt to solicit any employee, consultant or independent contractor of the other Party to terminate his, her or its relationship with said Party in order to become an employee, consultant or independent contractor to or for any other person or business entity.

20. Assignment. Customer shall not sell, assign or transfer this Agreement, or any part thereof, without the prior written consent of Nex-Tech, which shall not be unreasonably withheld; 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.

21. Entire Agreement. The Service Agreement, in conjunction with these Terms and Conditions, contains 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.

22. 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.

23. Governing Law. The Service Agreement and any relating Agreements in conjunction with the Terms and Conditions shall be interpreted, construed and enforced in accordance with and governed by the laws of the State of Kansas, and jurisdiction shall only be proper within the State of Kansas.

24. Miscellaneous Terms. These Terms and Conditions represent the complete Terms and Conditions and understanding between Nex-Tech and Customer, notwithstanding any variance with Terms and Conditions of any other submitted by Customer.

24.1 In any action between the Parties to enforce any material provision of the Terms and Conditions, the prevailing Party will be entitled to recover its legal fees and court costs from the non-prevailing Party in addition to whatever other relief a court may award. If any provision of this Agreement is held by a court to be invalid, void, or unenforceable, the remainder of the Agreement will nevertheless remain unimpaired and in effect.

25. 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.

25.1 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.

25.2 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 engaging in such practices, or otherwise in violation of these Terms and Conditions, will be subject to termination of services.

26. Disclaimers, Limitations, Indemnification. 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 merchantability or fitness for a particular purpose.

- 26.1 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 alteration, theft or destruction of Customer's data files, programs, procedures or information through accident, fraudulent means or devices, or any other method.
- 26.2 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.
- 26.3 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.

27. Service Quality. The Nex-Tech network is defined as Nex-Tech-owned and controlled routers and circuits. Nex-Tech's network service quality does not include outages found to be caused by the Customer's provided Internet connection, the Customer's Premise equipment, scheduled maintenance events, Customer-caused outages or disruptions, interconnections to or from and connectivity within other Internet Service Provider ("ISP") networks, Customer directed Denial of Service attacks and force majeure events.

In the event the Services provided hereunder fail to meet Customer's satisfaction, Customer shall provide written notice of such deficiency to Nex-Tech. Nex-Tech will then have thirty (30) days after the receipt of such notice to cure any deficiencies in the Service. If Nex-Tech does not correct the Service to the satisfaction of Customer within the thirty (30) day cure period, Customer may terminate this Agreement and all Services, without penalty, by providing Nex-Tech with ten (10) days written notice thereafter.

28. Problem Reporting and Resolution. Service requests can be placed by calling Nex-Tech's Business Concierge Desk at (785) 621-2800, toll free at (800) 588-6649 or via email to concierge@nex-tech.com. If a Nex-Tech Business Concierge representative is not immediately available when Customer places a call for services, Nex-Tech will use its best efforts to respond by telephone to such service requests within four (4) hours. If it is not a critical issue, an email may be sent to concierge@nex-tech.com and a Business Concierge representative will respond during normal business hours within four (4) hours.