

NEX-TECH, LLC  
STANDARD TERMS AND CONDITIONS  
FIBER WIDE AREA NETWORK (“FWAN”)  
BY AND BETWEEN  
NEX-TECH, LLC (“NEX-TECH”)  
AND  
 (“CUSTOMER”)

---

The following are the Terms and Conditions pursuant to which NEX-TECH shall provide, or arrange for the provisions of, support and maintenance services to CUSTOMER. Capitalized terms used in this Agreement shall have the meaning assigned to them in Appendix A unless the context requires otherwise. Supported software and hardware are referenced in Appendix B.

**1. Maintenance Service**

- 1.1. NEX-TECH agrees to provide, or causes to be provided, to CUSTOMER, Maintenance Service during the Service Period specified on the Sales Order or Service Agreement and attached Appendices to keep the Covered Component(s) in, or restore the Covered Component(s) to, good working order. Maintenance Service may be provided by Remote Service or Proactive Service on Covered Component(s).
- 1.2. The Maintenance Service obligations described herein extend only to the hardware and software Covered Component(s) listed in the Sales Order or Service Agreement and located at the CUSTOMER’s site(s).
- 1.3. Priority Response Time during normal business hours will be within four (4) hours of the service request. NEX-TECH will achieve this service level with a minimum 80% success rate.

NEX-TECH will respond in a timely fashion to any service outages in order to determine needed repairs. Based upon structural, physical or environmental situation, a restoration plan will be discussed with CUSTOMER, and timelines will be established. There may be, at times, situational events that may cause a prolonged outage, and alternate, temporary options may be discussed with CUSTOMER. NEX-TECH will not place its employees or facilities in jeopardy unnecessarily for non-critical services.

- 1.4. Twenty-four (24) hour support will be provided only if CUSTOMER has selected the corresponding service level selection in the Sales Order or Service Agreement. Terms of support will be defined specific to the Sales Order or Service Agreement.
- 1.5. In the event any Covered Component is found to contain upgrades or non-standard manufacturer’s components or add-ons, and such upgraded components or add-ons were not previously identified by CUSTOMER on the Sales Order or Service Agreement, the cost of repairs, adjustments or parts required to restore such Covered Component(s) to good operating condition will be charged to CUSTOMER at NEX-TECH’s then-current Time and Material Rates. NEX-TECH shall have the right to adjust the Service Charges for such Covered Component(s) for the remaining term of this Agreement.
- 1.6. The NEX-TECH then-current Time and Material Rates shall apply to services which: (1) are beyond the scope of Maintenance Services, (2) are beyond the Service Period specified on the Sales Order or Service Agreement, unless 24x7 support has been purchased by CUSTOMER, any service(s) outside of the Service Period (Monday - Friday, excluding New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day) or outside of the Service Hours (8 a.m. – 5 p.m. CT), (3) are performed on equipment not covered hereunder, (4) represent remedial or repair services to Covered Component(s) as a result of, for example, the following: damage caused by water, wind, lightning, accident, vandalism or burglary; neglect or misuse; alterations and deviations from the manufacturer’s design; acts of non-NEX-TECH independent contractors or representatives; transportation or relocation of Covered Component(s); the failure of non-covered components if adversely affecting and connected to Covered Component(s), (5) relate to installation of any form of engineering change, enhancement model conversion or other requested non-covered service, or (6) are due to operator error.
- 1.7. In the event of additional equipment needs outside the scope of the original solution, only equipment either purchased from or previously approved in writing by NEX-TECH shall be supported. Service provided in support

of equipment not meeting one of the two previous requirements shall result in the application of NEX-TECH's then-current Time and Material Rates.

- 1.8. In the event a manufacturer of any Covered Component(s) or software chooses not to support its product, NEX-TECH reserves the right to replace the equipment with like equipment that is supported by its manufacturer.
- 1.9. Should Covered Component(s) fail, NEX-TECH shall either fix said component or replace it with like equipment. Failure means a malfunction or problem of Covered Component(s) resulting in significant loss of business productivity.

## **2. Maintenance Specific to Fiber Installations**

- 2.1. NEX-TECH is responsible for maintaining both the fiber it owns and provides access to for its customers. NEX-TECH is also responsible for maintaining the fiber that CUSTOMER pays NEX-TECH to maintain in good working order, to provide a viable connection for the CUSTOMER.
- 2.2. NEX-TECH will perform all necessary network and equipment maintenance functions to ensure the availability of the fiber connections being provided to the CUSTOMER on an active or lit fiber network link.
- 2.3. NEX-TECH will coordinate with the CUSTOMER prior to any necessary maintenance or repair that may result in downtime or degradation of contracted services.
- 2.4. Depending on the nature of the issue, location of network facilities, or situational scheduling, NEX-TECH may utilize a third-party entity for Locates, troubleshooting, repairs, or routine service issues at NEX-TECH's discretion.
- 2.5. NEX-TECH will appropriately document and record installed fiber facilities. This may be by either physical or electronic means.
- 2.6. For the duration of this Agreement, NEX-TECH will respond to One-Call locate requests within the time required by law. NEX-TECH will develop and maintain mapping information regarding the deployed infrastructure. NEX-TECH will accurately mark located facilities appropriately.
- 2.7. NEX-TECH and/or its designated representative shall have the right to inspect or observe the performance of CUSTOMER's network facilities hereunder, subject to those certain rights of way and other agreements that are necessary for the construction and maintenance of the fiber facilities. NEX-TECH reserves the right to perform scheduled or unscheduled inspections on the infrastructure at any time to ensure the safe, productive operation of the network.

## **3. Responsibilities of CUSTOMER**

- 3.1. The labor for any CUSTOMER request for Maintenance Service on items not listed as Covered Component(s) on the Sales Order or Service Agreement will be charged against Pre-Paid Service Hours. If CUSTOMER does not have Pre-Paid Service Hours available, the labor and parts will be billed at NEX-TECH's then-current Time and Material Rates. Parts for any CUSTOMER request for Maintenance Service on items not listed as Covered Component(s) on the Sales Order or Service Agreement will be billed at NEX-TECH's then-current Time and Material Rates.
- 3.2. New equipment may be added to this Agreement and included as an addendum to the Sales Order or Service Agreement upon the written approval of NEX-TECH. Contract price will be adjusted accordingly and the new rate will become effective as of the next billing cycle.
- 3.3. CUSTOMER shall immediately notify NEX-TECH of any condition, circumstance or failure of a Covered Component(s) that is service affecting, and a CUSTOMER authorized employee shall be present to approve any Maintenance Service.
- 3.4. CUSTOMER shall allow NEX-TECH, or its independent contractors, access to Covered Component(s) and shall notify NEX-TECH and its independent contractors of any potential safety or health hazards that may exist at the site, as well as any recommended safety procedures to be followed while at the site.

- 3.5. CUSTOMER shall maintain CUSTOMER site conditions within the environmental range of all system devices and media as specified by the manufacturer of Covered Component(s).
- 3.6. CUSTOMER is responsible for all related user replaceable, expendable or consumable items.
- 3.7. CUSTOMER agrees to notify NEX-TECH of any service issues before or at the beginning of each scheduled or unscheduled visit. CUSTOMER shall report to NEX-TECH all error messages and codes as well as other pertinent details leading up to the malfunction being reported. This information will be used to assist the technician with diagnostics.
- 3.8. CUSTOMER shall pay for service in advance. NEX-TECH has the right to refuse service and/or cancel this Agreement if not paid in accordance with this Agreement.
- 3.9. CUSTOMER will provide NEX-TECH with a short list of personnel to be notified in the event that maintenance services will need to be performed. Phone numbers, email addresses and alternate phone numbers will be the responsibility of the CUSTOMER to update.
- 3.10. CUSTOMER shall furnish a list of personnel authorized to receive and issue trouble reports under this Agreement.
- 3.11. CUSTOMER will make every effort to include NEX-TECH technicians or representatives in CUSTOMER's IT planning and decision-making meetings. If this is not possible, CUSTOMER will inform NEX-TECH technicians or representatives of plans and decisions regarding IT issues.
- 3.12. 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). 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).
- 3.13. Patching service requires systems be powered on and available to receive and install patches. If the system is inaccessible, a NEX-TECH technician will try contacting the CUSTOMER up to two times via phone. If contact via phone is unsuccessful, the technician will then notify the CUSTOMER up to two times via email. After this, no additional attempts will be made beyond monthly patch level report summaries.

#### **4. Responsibilities of NEX-TECH**

- 4.1. NEX-TECH agrees to quickly notify CUSTOMER of any issues discovered during Maintenance Service or otherwise which may be outside the scope of Maintenance Service, but that require attention by the CUSTOMER.
- 4.2. 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](mailto: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](mailto:concierge@nex-tech.com) and a Business Concierge representative will respond during normal business hours within four (4) hours.

#### **5. Exclusions**

- 5.1. Unless 24x7 support has been purchased by CUSTOMER as referenced in Section 1.4, any service(s) outside of the Service Period (Monday - Friday, excluding holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day) or outside of the Service Hours (8 a.m. – 5 p.m. CT) will be billed at NEX-TECH's then-current Time and Material rates.
- 5.2. Services which are required due to improper treatment or use of Covered Component(s).

- 5.3. Services which, in NEX-TECH's opinion, are required due to unauthorized attempts to install, repair, maintain, modify or tamper with any Covered Component(s) or related software or peripherals, whether by CUSTOMER or by a third party.
  - 5.4. Maintenance Service does not include (1) operating supplies, accessories or materials for paint or refinishing any Covered Component(s); (2) electrical work external to the Covered Component(s); (3) maintenance of accessories, alterations, attachments, upgrades or other devices; or (4) services related to any relocation of Covered Component(s) unless specifically stated herein.
  - 5.5. NEX-TECH shall not be deemed to be in default of any provision hereof or be liable for any delay, failure in performance, or interruption of any services due, directly or indirectly, to acts of God, civil or military catastrophes, unsafe working conditions, transportation delays, inability to obtain materials or parts from suppliers, or any other cause beyond NEX-TECH's reasonable control.
  - 5.6. NEX-TECH is not responsible for a successful "willful act" attack on CUSTOMER of any kind, whether internal or external. This Agreement specifically does not cover the cost of any repairs or recovery efforts due to such an attack. This includes, but is not limited to, hacking, viruses, deletion of files, hardware damage and business damage due to a willful attack. Although under this Agreement NEX-TECH may have the responsibility to oversee CUSTOMER's security, backup and business continuation systems such as firewalls, anti-virus software and backup software/hardware, NEX-TECH cannot be held responsible for attacks which are designed to circumvent these safeguards and successfully attack CUSTOMER.
  - 5.7. Adds, moves and changes will be performed at an additional charge of the then-current Time and Material Rates 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 Sales Order or Service Agreement.
    - 5.7.1. In the case of unforeseen instances that cause a substantial relocation, physical move, restructuring or altering of NEX-TECH facilities that result in burden cost of 15% of contract value or more, NEX-TECH reserves the right to renegotiate the terms of this Agreement.
    - 5.7.2. Forced relocations of facilities from a third party (not by NEX-TECH or the CUSTOMER) will be addressed on a "case-by-case" basis. "Public Right of Way" moves, utility pole replacements or relocations and private property alterations that cause NT to either temporarily or permanently change original layout or design, will be subject to section 10.1 of this Agreement.
  - 5.8. Unless otherwise indicated in the attached Appendices, application software is not included as part of Maintenance Service, including restoration of malfunctioning software to its proper operating and usable condition, as provided by the manufacturer. Maintenance Service does not include any end-user "help desk" or end-user training requirements. If end-user help desk support or training is needed, this service can be provided outside of Maintenance Service at NEX-TECH's then-current Time and Material Rates.
- 6. Disclaimers, Limitations, Indemnification.** NEX-TECH makes no warranties of any kind, whether express or implied, regarding the services it provides to CUSTOMER. NEX-TECH expressly disclaims any and all warranties relating to its services, including any warranty of merchantability or fitness for a particular purpose.
- 6.1. NEX-TECH shall not be liable, either in contract or in tort, for unauthorized access to CUSTOMER's facilities, systems, network 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.
  - 6.2. 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.

- 6.3. CUSTOMER agrees to indemnify and hold NEX-TECH harmless from any claims or damages, including 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.

## 7. Confidentiality

7.1. NEX-TECH recognizes that in the course of performing Services, it may have access to confidential and proprietary information and trade secrets concerning CUSTOMER's business and operations, including, without limitation, financial and tax information, business plans and development strategy and marketing methodology (collectively referred to as "Confidential Information"). NEX-TECH recognizes that disclosure of the Confidential Information to competitors, non-authorized third parties or the general public would be detrimental to the CUSTOMER. Accordingly, NEX-TECH covenants and agrees with CUSTOMER that it will keep secret and treat confidentially the Confidential Information and will not disclose any of the Confidential Information to any person or entity, nor shall it use the Confidential Information for any purposes other than purposes which serve CUSTOMER.

7.2. CUSTOMER recognizes that in the course of receiving Services, it may have access to confidential and proprietary information and trade secrets concerning NEX-TECH's business and operations, including, without limitation, pricing, financial and tax information, business plans, strategies and marketing methodology (collectively referred to as "Confidential Information"). CUSTOMER recognizes that disclosure of the Confidential Information to competitors, non-authorized third parties or the general public would be detrimental to NEX-TECH. Accordingly, CUSTOMER covenants and agrees with NEX-TECH that it will keep secret and treat confidentially the Confidential Information and will not disclose any of the Confidential Information to any person or entity, nor shall it use the Confidential Information for any purposes other than purposes which serve NEX-TECH.

## 8. Non-Hire Covenant

8.1. CUSTOMER acknowledges that NEX-TECH is involved in a highly strategic and competitive business. CUSTOMER further acknowledges that CUSTOMER would gain substantial benefit and that NEX-TECH would be deprived of such benefit, if CUSTOMER were to directly hire any personnel employed by NEX-TECH. Except as otherwise provided by law, CUSTOMER shall not, without the prior written consent of NEX-TECH, solicit the employment of NEX-TECH personnel during the term of this Agreement and for a period of one (1) year following expiration of this Agreement.

8.2. CUSTOMER agrees that NEX-TECH's damages resulting from breach by CUSTOMER of this provision would be impracticable and that it would be extremely difficult to ascertain the actual amount of damages. Therefore, in the event CUSTOMER violates this provision, CUSTOMER shall immediately pay NEX-TECH an amount equal to the employee's total annual compensation as liquidated damages, and NEX-TECH shall have the option to terminate this Agreement without further notice or liability to CUSTOMER. The amount of the liquidated damages reflected herein is not intended as a penalty and is reasonably calculated based upon the projected costs NEX-TECH would incur to identify, recruit, hire and train suitable replacements for such personnel.

## 9. Modification or Amendment

9.1. No modification or amendment of this Agreement will be binding on either Party, unless in writing and signed by an authorized representative or officer of each Party.

## 10. Relocation of Covered Component

10.1. CUSTOMER will notify NEX-TECH of any proposed relocation of a Covered Component to a new site at least sixty (60) days in advance of such relocation. NEX-TECH will determine, in its sole discretion, whether the Covered Component may be serviced by NEX-TECH in the new location. Response Time and Service Charges hereunder may be adjusted by NEX-TECH based on the new location. In the event the Covered Component at the new location requires NEX-TECH to reassign service providers to service the Covered Component, then such Covered Component shall be excluded from coverage under this Agreement beginning on the date of its relocation and an amendment to this Agreement for service of such Covered Component at the new location shall be negotiated by the Parties.

## 11. Fees & Payments

11.1. The charge for the service offering(s) selected by CUSTOMER, as set forth on the Sales Order or Service Agreement, shall be payable as described in the terms of this Agreement. In the event any sum of money owed by CUSTOMER under this Agreement is not paid when due and remains unpaid for ten (10) days after its due date, NEX-TECH may add a service charge equal to the lesser of 1-1/2 percent of the past due amount per month or the highest rate allowed by law.

## 12. Term and Termination

12.1. In the event any sum of money owed by CUSTOMER is not paid when due and remains unpaid for thirty (30) days or more, or if CUSTOMER defaults in the performance of any other obligation under this Agreement, NEX-TECH may terminate this Agreement by giving CUSTOMER ten (10) days' written notice. Any billing disputes must be submitted to NEX-TECH within thirty (30) days from date of invoice.

12.2. NEX-TECH may immediately terminate this Agreement by written notice to CUSTOMER, and CUSTOMER shall be in default hereunder, if CUSTOMER becomes insolvent, liquidates, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceedings under any bankruptcy or insolvency law, voluntarily or otherwise. If any of the above occurs, CUSTOMER shall immediately notify NEX-TECH of such occurrence.

12.3. NEX-TECH shall have the right to terminate this Agreement, without cause, upon thirty (30) days' prior written notice to CUSTOMER.

12.4. If for any reason the CUSTOMER chooses to terminate the Agreement before the full duration of the then-current term, the termination fee payable to NEX-TECH is one hundred percent (100%) of the then-current rate for the remaining term on this Agreement, in addition to any previous outstanding balance on the CUSTOMER's account.

12.5. All FWAN Agreements shall have the initial term of five (5) years, unless otherwise specified on the Sales Order or Service Agreement. The term of each Agreement will start with the date of the first billing cycle unless otherwise specified on the Sales Order or Service Agreement.

12.6. If CUSTOMER is under an Agreement for any FWAN services provided by NEX-TECH that has a contracted term, the CUSTOMER at no time has any inherent ownership in the facilities. The infrastructure and electronic components provided are a NEX-TECH asset and are not transferred or turned over to CUSTOMER for the duration of the Agreement. NEX-TECH, at its discretion, may elect to sell facilities to CUSTOMER at any time during or after Agreement terms have expired for fair market value unless otherwise specified in the Sales Order or Service Agreement.

12.7. CUSTOMER, at no time is permitted to provide access or "resell" any portion of FWAN facilities to a third party without express written consent from NEX-TECH.

## 13. Mutual Waiver of COVID-19 Claims.

13.1. 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.

## 14. Assignment

14.1. 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. Parties in Interest: No Third-Party Beneficiaries**

15.1. Except as otherwise provided herein, this Agreement will endure to the benefit of, and be binding upon, the respective successors and assigns of the Parties hereto. This Agreement will not be deemed to confer any rights or remedies upon any person not a party hereto.

**16. Entire Agreement**

16.1. This Agreement, including attachment(s) hereto, constitutes the entire Agreement of the Parties regarding the subject matter hereof, and supersedes all prior Agreements and understandings, both written and oral, among the Parties, or any of them, with respect to the subject matter hereof. This Agreement shall not be effective until approved in writing by an authorized NEX-TECH representative.

**17. Severability**

17.1. If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision will be fully severable and this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof, and the remaining provisions hereof will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or its severance here from. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there will be added automatically, as part of this Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

**18. Waiver**

18.1. The waiver by a Party hereto of any default hereunder will not be deemed to be a waiver of subsequent defaults of the same or different kind. The failure of any Party to act will not and of itself be construed as a waiver.

**19. Costs, Expenses and Legal Fees**

19.1. In the event of any dispute or litigation concerning any controversy or claim between the Parties hereto arising out of or relating to this Agreement, or the breach hereof, either Party may request that in addition to determining the respective rights and obligations of the Parties, the finder of fact determines which Party is the "prevailing Party," and the prevailing Party will be entitled to recover from the other Party its reasonable expenses, attorneys' fees and costs incurred in connection with the investigation, prosecution and defense thereof, or the enforcement or collection of any judgment or award rendered therein.

**20. Governing Law**

20.1. This 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.

**21. Captions**

21.1. The captions in this Agreement are for convenience or reference only and will not limit or otherwise affect any of the terms or provisions hereof.

**22. Numbers**

22.1. When the context requires, the number of all words includes the singular and plural.

**23. Reference to Agreement**

23.1. Use of the words "herein," "hereof," "hereto" and the like in this Agreement refer to this Agreement as a whole and not to any particular section or provision of this Agreement, unless otherwise noted.

**24. Improper Payments**

24.1. With respect to any transaction arising from this Agreement, the Parties agree not to make any illegal offer, or make or commit to the making of a transfer of anything of value (in the form of compensation, gift, contribution or otherwise) to any employee, representative, person or organization in any way connected with the other Party or any customer of the other Party. Nothing in this Agreement is intended to prevent ordinary and reasonable business

entertainment or gifts not of substantial value, customary in local business relationships and not in violation of any law as applied in the relevant jurisdiction.

**25. Notice**

25.1. Any notice or communication hereunder, or in any Agreement entered into in connection with the transactions contemplated hereby, must be in writing and given by depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid and registered or certified with return receipt requested, or by delivering the same in person. Such notice will be deemed received on the date on which it is hand-delivered, or on the third business day following the date on which it is so mailed. For purposes of notice, the address of CUSTOMER will be addressed on the Sales Order or Service Agreement and the address of the NEX-TECH will be:

**If to the Company:**        **NEX-TECH, LLC**  
   **Director of Sales**  
   **145 N. Main**  
   **Lenora, KS 67645**

Any Party may change its address for notice by giving written notice to the other Party in accordance with this Section.

**26. Surviving Obligation**

26.1. Expiration or termination by either Party of this Agreement will not affect any rights of either Party that may have accrued up to the date of such termination or expiration.

**27. Counterparts**

27.1. This Agreement or relating Sales Orders, Service 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.



## APPENDIX A DEFINITIONS

- a. **Pre-Paid Service** – A block of Service Hours packaged with this Agreement to provide CUSTOMER with services that are outside the scope of Maintenance Service.
- b. **Sales Order** – A form detailing CUSTOMER’s service level and/or Covered Component(s). This may also be referred to as Investment Proposal, Service Order or Service Agreement.
- c. **CUSTOMER Site(s)** – The CUSTOMER’s location(s), specified on the Sales Order or Service Agreement, where Covered Component(s) reside(s).
- d. **Maintenance Service** – The service or services furnished to remedy malfunctions or to perform Proactive Service on any Covered Component(s), including on-site and Remote Service.
- e. **Operating Systems** – Operating System software residing on a Covered Component(s) and identified on the Sales Order or Service Agreement.
- f. **Patching** – Automatic software application updates (complete list available upon request). Patching does not include version or firmware updates unless otherwise indicated on the Sales Order or Service Agreement
- g. **Proactive Service** – Service provided to, theoretically, remedy malfunctions before they occur.
- h. **Remote Service** – Technical support provided by support personnel via remote access (e.g., equipment, remote control software, system-to-system electronic data exchanges or telecommunications).
- i. **Response Time** – The time between the NEX-TECH Business Concierge Desk receiving a CUSTOMER’s notification of a Covered Component’s malfunction and the commencement of Maintenance Service when service personnel either begin diagnostic activity using voice communications or Remote Services or arrive at CUSTOMER Site in response to such notification.
- j. **Service Charge(s)** – Any and all fees CUSTOMER pays to NEX-TECH.
- k. **Service Hours** – The times of day, specified in the Sales Order or Service Agreement, during which NEX-TECH will provide Maintenance Service under this Agreement.
- l. **Service Period** – The dates, specified in the Sales Order or Service Agreement, during which NEX-TECH will provide Maintenance Service under this Agreement.
- m. **NEX-TECH Business Concierge Desk** – The NEX-TECH group that receives Maintenance Service requests from CUSTOMER and schedules or dispatches technicians to provide Maintenance Service.
- n. **Time and Material Rates** – The hourly service rates, travel charges and parts and material prices that apply to any services performed under this Agreement which are not specifically covered by Maintenance Service (as described herein). Also, see Section 1, Maintenance Service.

### Fiber Wide Area Network (FWAN) Terms

- a. **FWAN** - Fiber Wide Area Network. Fiber Optic infrastructure installed to connect two or more facilities typically not on the same property.
- b. **Covered Component** - Any fiber, cabling, hardware, software or other piece of IT equipment or other infrastructure to be maintained pursuant to this Agreement, as listed in the Sales Order or Service Agreement by type, make, model and serial number or other specific identifying factor.
- c. **Dark Fiber** - Fiber optic cable that is terminated, tested and labeled, but has no electronics attached to provide a signal.
- d. **Lit Fiber** - Fiber optic cable that is terminated, tested and labeled, and has electronics attached to provide a signal at a given speed or technological characteristic.
- e. **Shared Facilities** - Implementation of fiber optic facilities that may wholly or partially reside within NEX-TECH or other entities underground ducts, conduits or attached to or over lashed to aerial facilities.
- f. **Demarc** - Point of handoff or demarcation of NEX-TECH facilities and CUSTOMER network.

- g. **NOC** - Network Operations Center
- h. **Locates** - Physically and spatially identifying underground facilities and appropriately marking or flagging the facilities. This may be initiated by calling “811” to contact the appropriate “Dig Safe” call center and requesting a locate.
- i. **Wide Area Network (WAN) Agreement** - WAN equipment owned and maintained by NEX-TECH. This service provides site-to-site connectivity for a predetermined monthly fee.
- j. **Fiber Wide Area Network (FWAN) Agreement** - WAN equipment or facilities owned and maintained by NEX-TECH. This service provides site-to-site connectivity for a predetermined monthly fee.
- k. **Metro-Ethernet** - Network facilities, typically fiber optic driven, that are used to deliver a defined level of private bandwidth to the CUSTOMER in a multi-site environment.

## APPENDIX B SUPPORTED SOFTWARE AND HARDWARE

1. All Third-Party application software requires that CUSTOMER have a service contract in place with the manufacturer of that software and provides NEX-TECH with the information regarding that contract so that NEX-TECH may contact the manufacturer for support on behalf of CUSTOMER.
2. CUSTOMER understands that the level of support that NEX-TECH can provide on application software is limited to the level of support and response that is received from the manufacturer of such software. All services provided in support of Third-Party application software will be charged to CUSTOMER at NEX-TECH's then-current Time and Material Rates.
3. If CUSTOMER fails to renew or otherwise loses the manufacturer's support for any application software, NEX-TECH will consider that software to no longer be part of the Covered Component(s).
4. The following software and hardware are specifically excluded and will not be included as Covered Components:
  - a. All versions of Microsoft Windows that have reached End of Life (EOL).
  - b. All versions of Antivirus deemed as "Free Third-Party Antivirus."
  - c. Non-NEX-TECH supported email products such as IncrediMail, Gmail and Yahoo Mail.
  - d. Consumer grade wireless products, including firewalls, other than Fortinet and SonicWALL.
  - e. Consumer grade switches such as Linksys, D-Link and TRENDnet.