

Network Operations Center (NOC) Terms and Conditions

Description. Nex-Tech, LLC and its subsidiaries (“Nex-Tech”) hereby agrees to provide Branded Network Operations Center (NOC) support 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, 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.

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, Authorized Users or its Subscribers, including without limitation, Subscribers’ 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 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 materials rates) or destroyed.

The provision of this Section titled “Confidentiality” 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 United States 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 (1st) of each month for all charges incurred by Customer during the prior calendar month. Customer shall have the option to receive its invoices from Nex-Tech in hard copy via United States Postal Service or electronically via email. All amounts due to Nex-Tech by Company 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 7 below. Such termination shall not relieve Customer of any outstanding payment obligations to Nex-Tech.

6. **Outages; Special Events.** Both Parties agree to immediately notify the other Party of known service outages or issues that could impact Customer, the Subscribers or Nex-Tech's ability to perform the Services, as well as resolution of such outages or issues.
7. **Default; Early Termination.** The Service Agreement may be terminated immediately upon notice if either Party:
- 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"); or
 - 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; or
 - 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) 100% of the Monthly Recurring Charges (MRC) for the remaining term of the terminated Services if terminated anytime within the first year of the applicable term; (c) 50% of the MRC for the remaining term of the terminated Services if terminated anytime within the second year of the applicable term; or (d) 25% of the MRC for the remainder of the term of the terminated Services if terminated anytime after the second year of the applicable term. Such payment shall be made to Nex-Tech within thirty (30) days of termination, using funds immediately available to Nex-Tech.

8. **Severability; Waivers.** The invalidity or unenforceability of any provision of the Service Agreement shall not affect the validity or enforceability of any other provisions of the Service Agreement. No waiver of any of the provisions of the Service Agreement shall constitute a waiver of any other provisions, nor shall any waiver as to one event constitute a waiver as to any other event.
9. **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.
10. **Liability; Indemnity.** In no event and under no circumstances shall Nex-Tech or any of its officers, directors, Agents or affiliates be liable to Customer or any of Customer's affiliates or Subscribers for loss of profit or income, revenues or for any indirect, incidental, consequential or punitive damages, whether incurred or suffered as a result of the availability of the Services provided for in the Service Agreement, or for any outages, incorrect or defective transmissions, or direct or indirect consequence thereof.
11. **Force Majeure.** Neither Party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance due to causes beyond such Party's reasonable control (a "Force Majeure Event"). In the event Nex-Tech is unable to deliver Service as a result of a Force Majeure Event, Customer shall not be obligated to pay Nex-Tech for the affected Service for so long as Nex-Tech is unable to deliver the affected Service. Should such interruption in performance continue for a period of sixty (60) or more days, Customer may terminate this Agreement and any affected Service(s) hereunder upon immediate notice without any further liability of any kind to Nex-Tech.
12. **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.

13. **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.
14. **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.
15. **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.
16. **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.