

Master Service Agreement

Nex-Tech ("Nex-Tech", "we or us")	Customer ("Customer", "you or your")
Name: Nex-Tech, LLC Street Address: 145 N. Main City: Lenora State/Province: KS Zip Code: 67645 Country: USA	

Article I: Introduction & Definitions

- 1. Agreement.** This Master Service Agreement is entered into between You and Nex-Tech for the purpose of setting forth the terms and conditions for Your purchase of Products and Services from Us.
- 2. Definitions.** In this Agreement the following definitions shall have the following meanings, and all other capitalized terms have the meanings given to them elsewhere in this Agreement.
 - 2.1. "Nex-Tech", and "we or us"** means Nex-Tech, LLC DBA Nex-Tech.
 - 2.2. "Agreement"** means this Master Service Agreement together with any schedules or appendixes annexed hereto.
 - 2.3. "Commencement Date"** means the date on which the Products or Services are made operational or are first made available for use by Customer or would have been made available for use but for Customer's delay or default.
 - 2.4. "Confidential Information"** means any information relating to the disclosing party ("Disclosing Party") that is of a confidential or proprietary nature used in or otherwise relating to the Disclosing Party's business, operations, customers or financial or other affairs, including the relations of a party with its customers, employees and service providers, and any such information of employees, customers, affiliates or representatives of a Disclosing Party, which is received by the receiving party ("Receiving Party"), whether communicated in written form, orally, visually, demonstratively, technically or by any other electronic form or other media, or committed to memory, and whether or not designated, marked, labeled or identified as confidential or proprietary, including any data or information described above which the Disclosing Party has obtained from a Third Party and which the Disclosing Party treats as proprietary or designates as Confidential Information, whether or not owned or developed by the Disclosing Party. Confidential Information also includes: the marketing of goods or services including, without limitation, existing and future customer names and lists and other details of existing and future customers; future products, business development or planning, commercial relationships and negotiations; information relating to the Products, and Nex-Tech's Intellectual Property Rights; information received from third parties that a party is obligated to treat as confidential (including any Third Party Provider Intellectual Property Rights); all information disclosed or made available by a Disclosing Party to the Receiving Party hereunder in connection with this Agreement or the performance of obligations hereunder, whether marked as confidential or proprietary or disclosed orally, after the Effective Date; any personal information; and this Agreement.
 - 2.5. "Customer", and "you or your"** means the business entity or individual that enters into this Agreement along with any authorized employees, agents or other parties acting by or through Customer.
 - 2.6. "Customer Content"** means any and all Software, materials and data owned or licensed by Customer, including text, information, data, images (still and moving), trademarks, and logos, and any portion thereof and used by Customer in connection with the Products or Services hereto.
 - 2.7. "Customer Hardware"** means any Hardware (excluding Software) that is owned by the Customer.
 - 2.8. "Fees"** means the Prices for the Products or Services and all other amounts, costs, and charges required to be paid by Customer and referenced in this Agreement.
 - 2.9. "Hardware"** means any physical device, tool, machinery, or equipment (excluding Software).

- 2.10. **“Hardware Maintenance and Support Services”** means certain maintenance and support services provided by Nex-Tech for Customer Hardware and Software as defined in this Agreement and on one or more Service or Purchase Orders.
- 2.11. **“Installation Fees”** means the set-up fees for installing the Service.
- 2.12. **“Installation Services”** means the installation of certain Services listed on a Service or Purchase Order.
- 2.13. **“Intellectual Property Rights”** means any and all proprietary rights provided under: patent law, copyright law, trade-mark law, design patent or industrial design law or any other statutory provision or common law principle applicable to this Agreement, including trade dress and trade secret law, and any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing.
- 2.14. **“Law”** means all applicable statutes, laws, codes, ordinances, decrees, rules, regulations, by-laws, orders, decisions, rulings or awards, policies, permits, licenses, authorizations, directions, voluntary restraints, guidelines, or any provisions of the foregoing, including general principles of common and civil law and equity, binding on or affecting the party referred to in the context of which such word is used.
- 2.15. **“Payment Schedule”** means an agreement (including related attachments) or other document between Nex-Tech and Customer that is attached to or is later executed by the parties and references this Master Service Agreement. A Payment Schedule identifies the Purchase Order it applies to, and any special payment terms and conditions applicable for that Purchase Order.
- 2.16. **“Products”** means any Hardware, Software or Equipment, as defined in this Agreement and on one or more Purchase Orders.
- 2.17. **“Purchase Order”** means the documents that make up the agreement between Nex-Tech and Customer for the purchase of Products listed on a Quote.
- 2.18. **“Recurring Service Fees”** means the monthly fees for the Services being provided as defined in this Agreement and on one or more Service or Purchase Orders.
- 2.19. **“Recurring Variable Service Fees”** means monthly fees associated with the increased usage of certain Services as defined in this Agreement and on one or more Service Orders.
- 2.20. **“Services”** means any and all Services provided by Nex-Tech as defined in this Agreement and on one or more Service Orders, and including, without limitation the provision of people, infrastructure resources, support and access to and the use of Nex-Tech’s licensed software (including, without limitation, the Software) the Hardware (including without limitation the MSP Hardware), data center resources and interconnection to other Third Party networks and any other services provided by Nex-Tech in connection with the Services.
- 2.21. **“Service Contract”** means an agreement between Nex-Tech and Customer (including related attachments) that describe the Services to be provided, the additional terms and conditions specific to that particular Service (including payment obligations) and the period of time for which such Services are to be provided by Nex-Tech.
- 2.22. **“Service Order”** means the documents that make up the agreement between Customer and Nex-Tech for the purchase of Services listed on a Quote.
- 2.23. **“Software”** means any computer application or code in object (binary) form.
- 2.24. **“Statement of Work”** means an agreement between Nex-Tech and Customer, which defines project-specific activities, deliverables, and their respective timelines.
- 2.25. **“Third Party End User License Agreement”** means an agreement between Customer and a Third Party Provider that Customer must agree to and sign in order to license and use the Software.

- 2.26. **“Third Party Products”** means any Hardware, Software, or Products or Services not provided by, manufactured, or created by Nex-Tech.
- 2.27. **“Third Party Provider”** means any individual or business entity that is not owned by or affiliated with Nex-Tech, and which Nex-Tech contracts with or uses to provide Products or Services to Customer on behalf of Nex-Tech or otherwise.
- 2.28. **“Time and Material Rates”** means the hourly service fees, travel charges and parts and material prices that apply to any services performed under this Agreement which are not specifically covered by Maintenance and Support Services.
- 2.29. **“Quote”** means an electronic or paper document which lists the estimated pricing and descriptions of the Products.

- 3. Addendums to this Agreement & Order of Precedence.** Certain Products and Services may be provided to you in accordance with the terms of this Agreement (including any schedules or appendixes annexed hereto) and one or more Service Contracts, Service or Purchase Order, and/or Statements of Work. Each Service Contract, Purchase Order, or Statement of Work shall be incorporated hereto by referencing this Agreement and the applicable Service or Purchase Order it applies to and shall be interpreted separately from any other Service Contracts, Service or Purchase Orders, or Statements of Work. In the event of a conflict or ambiguity between this Agreement and any Service Contract, Purchase Order, or Statement of Work, the agreements shall be interpreted in the following order: (1) This Agreement, (2) The Service or Purchase Order, (3) The Statements of Work.
- 4. Term.** This Agreement shall become effective on the date of execution hereof, or in the absence of the forgoing, the date your Service or Purchase Order is accepted by Nex-Tech (“Effective Date”) and will continue for and renew pursuant to the period set forth in the Service or Purchase Order. After the initial Term, either Party may provide thirty (30) days' written notice of termination for convenience, as long as any applicable Service or Purchase Orders or any other obligation of either party has expired or was terminated pursuant to the terms of this Agreement.

Article II: Terms of Sale

1. Prices; Quotes & Service or Purchase Orders.

- 1.1. Prices and Quotes.** The amounts to be paid by the Customer for the Products and Services (the “Prices”) shall be set forth in one or more Nex-Tech Quotes which shall be prepared for you upon request by us. Prices shall remain valid until the expiration date listed on the Quote, or if not listed, thirty (30) days from the Quote creation date. Quoted Prices for Third Party Products are dependent upon availability at the time of sale. Nex-Tech is not responsible for pricing, typographical, or other errors contained in a Quote, and reserves the right to cancel Quotes arising from such errors.
- 1.2. Service or Purchase Orders.** During the Term of this Agreement, you may enter one or more Service or Purchase Orders for certain Products or Services by signing and submitting to Nex-Tech a valid Quote together with any Service Contracts and/or Statements of Work that correspond to the Products or Services listed on the Quote. Service or Purchase Orders you submit to us are subject to our acceptance at our sole discretion, and upon our acceptance, shall create a legally binding contract between you and Nex-Tech. Each Service or Purchase Order we accept is non-cancellable by you and shall be interpreted as a single agreement, independent of all other Service or Purchase Orders.
- 1.3. Changes to your Service or Purchase Order.** If you request a change to the Products or Services to be delivered or the scope of the Products or Services provided on your Service or Purchase Order, you shall submit details of the requested change to Nex-Tech in writing and upon Nex-Tech's approval in Nex-Tech's sole discretion, Nex-Tech shall, within a reasonable time, provide a written estimate to you of: the likely time required to implement the change; any variations to Nex-Tech's Prices arising from the change; the likely effect of the change; and any other impact of the change on the terms of your Service or Purchase Order. If you wish for Nex-Tech to proceed with the change, Nex-Tech has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to Nex-Tech's Prices, and any other relevant terms of your Service or Purchase Order to take account of due to the change.

1.4. Additions to your Service or Purchase Order. If Nex-Tech provides additions to the Products or Services you are currently receiving or any other Products or Services to you, such additions and other Products or Services will be agreed to in advance between Nex-Tech and you in writing as part of a separate Service or Purchase Order.

2. Billing & Payment.

2.1. Invoices. Nex-Tech may invoice parts of a Service or Purchase Order separately or together in one invoice, including Installation Fees. Except as otherwise defined in this Agreement and on your Service or Purchase Order, invoices are due and payable by the date noted on the face of the invoice, or if not stated, within 30 days from the date the invoice was issued.

2.2. Recurring Service Fees. Recurring Service Fees will commence on the Commencement Date and are payable by the 10th of the month for the month to which the Fees relate or, if later, by the 10th of the month following receipt of the invoice.

2.3. Recurring Variable Service Fees. Nex-Tech will invoice you monthly in arrears for any Recurring Variable Service Fees that become payable as a result of the Services that we provide. Recurring Variable Service Fees will be calculated in accordance with the Prices set out in your Service or Purchase Order.

2.4. Credit Card Authorization. Upon your purchase of the Services, you must provide Nex-Tech with a valid credit card number from an issuer that is accepted by Nex-Tech or an electronic check or other acceptable electronic means of payment. You authorize Nex-Tech to charge the credit card number provided by you for all Fees arising from your use of the Services. You agree to notify Nex-Tech of any change to the electronic payment information, including, but not limited to: changes in account number, expiration date or billing address. Nex-Tech shall not be responsible for any charges made by the credit card issuer to your credit card account for exceeding credit limit, insufficient funds or other reasons.

2.5. Credit Terms. All Products or Services provided to you and covered by this Agreement shall at all times be subject to credit approval or review by Nex-Tech. You will provide such credit information or assurance as is requested by Nex-Tech at any time. Nex-Tech, in its sole discretion and judgment, may discontinue credit at any time without notice or require a deposit.

2.6. Late Payments. Late payments shall accrue by the date noted on the face of the invoice and will be subject to interest on the unpaid invoice amount(s) until and including the date payment is received, at the lower of either 1.5% per month or the maximum allowable rate of interest permitted by applicable Law.

2.7. Taxes. Prices set forth in a Quote are exclusive of taxes and you shall pay all taxes, surcharges, recovery fees, customs clearances, duties, levies, shipping charges and other similar charges (and any associated interest and penalties resulting from your failure to timely pay such taxes or similar charges) relating to the installation, license, and use of the Products and/or Services, except to the extent you provide us with a valid tax exemption certificate with your Service or Purchase Order.

2.8. Billing Disputes. You shall have the right to reasonably and in good faith dispute any invoice, or portion thereof provided that you: pay the undisputed portion within the invoice due date; provide Nex-Tech written notice of the dispute no later than thirty (30) days from the date of the invoice; and specify with reasonable detail, the amount disputed and the reason for the dispute. Following Nex-Tech's notice of the results of its investigation of such a claim, payment of all properly due charges and properly accrued late payment Fees must be made within ten (10) days, and Nex-Tech will reverse any amounts including late payment Fees that were invoiced in error.

3. Shipping and Delivery. Delivery of Hardware and physical copies of Software shall be by F.O.B. shipping point. If Software is provided to you by electronic download, delivery shall be by F.O.B. origin. Shipping and delivery dates are provided as estimates only and Nex-Tech is not responsible for shipping delays unless expressly stated otherwise in writing in the documents that make up your Purchase Order.

4. Title; Risk of Loss and Security Interest. Title to and risk of loss for Hardware you purchase from Nex-Tech shall pass to you upon shipment. Title to the Software shall remain with the Third Party Providers of such Software. Nex-Tech reserves the right upon notice to you to take a present and continuing security interest in any applicable Products, together with any accessories, additions, substitutions and replacements (and any proceeds thereof if the Products are

sold), regardless of whether the Products are attached to real property, until Nex-Tech has been paid in full for the Products pursuant to the terms hereof. You agree to execute any documents, which may be necessary or appropriate to perfect Nex-Tech's security interest in the Products. Upon payment as provided herein, Nex-Tech will undertake to execute any releases reasonably required by you.

5. Sales & Returns. All sales are final unless otherwise specified in writing in the documents that make up your Purchase Order. You must notify Nex-Tech in writing within thirty (30) days upon receiving the Products listed in your Purchase Order (in part or in whole) if there are any wrong, damaged, missing, or otherwise non-conforming Products.

6. Software. Your use of Software is governed by the respective Third Party End User Licensing Agreements, applicable to such Software. Subject to your compliance with the terms and conditions contained in any Third Party End User License Agreements, Nex-Tech grants you a limited, revocable, non-transferable, non-exclusive right to use the Software for your own Internal use and for no other purpose.

7. Installation Services.

7.1. If Nex-Tech is providing you with Installation Services for Products listed in your Service or Purchase Order, Nex-Tech will use reasonable efforts to install the Products and Services within the estimated date(s) set forth in your Service or Purchase Order, but Nex-Tech shall have no liability should there be any delay in installation of the Products or Services caused by you or any Third Party Providers contracted to install the Products or Services.

7.2. You will be responsible for securing at your own cost, any necessary rights of entry (both remote and physical), licenses, permits or other permission necessary for Nex-Tech to install the Products or Services on the pre-arranged installation date(s) and you will also be responsible for providing the adequate physical space, air conditioning, necessary power, electrical power outlets, network connections and environmental conditions to support the Products and Services including, pre-drilling holes and wire ways through concrete, plaster, metal floors, walls or ceilings when required. If Nex-Tech is required to have physical access to your sites to install the Products or Services, you will ensure that your sites are safe, secure, and in compliance with all applicable industry and OSHA standards.

Article III: Terms of Service

1. Terms of Service. The terms and conditions listed in this Article III, shall apply to all Services provided by Nex-Tech pursuant to this Agreement, additional terms and conditions specific to certain Services not described in this Article III, shall be set forth below in a separate Article.

2. Provision of the Services.

2.1. **Service Commencement Date.** Nex-Tech will use reasonable efforts to commence the provision of the Services to you within the estimated date(s) set forth in your Service or Purchase Order, but Nex-Tech shall have no liability should there be any delay in the provision of the Services caused by you or any Third Party Providers contracted to provide such Services.

2.2. **Technical Support.** Nex-Tech will use commercially reasonable efforts to provide support for your inquiries relating to the Products or Services, retrieval of data or faults in the Products or Services in accordance with the support and escalation procedures defined in your Service or Purchase Order (if applicable).

2.3. **Rights Granted.** Subject to your compliance with the terms and conditions of this Agreement, Nex-Tech grants you a limited, revocable, non-transferable, non-exclusive right to access and use the Products or Services during the Service Contract Term defined in your Service or Purchase Order, solely for your business purposes. Except for the rights expressly granted to you under this Article III: Section 2.3, Nex-Tech and its Third Party Provider's shall retain all right, title, and interest in and to the Services, and other Intellectual Property Rights created, used, or provided by Nex-Tech to you pursuant to this Agreement, including all modifications or derivatives of, and improvements to, the Services, excluding any Customer Content.

2.4. **Customer Content.** In connection with Nex-Tech's performance of its obligations hereto, Nex-Tech may be required to host, store, manage, back-up and otherwise access the Customer Content for the purposes of providing certain Services hereunder. You hereby grant Nex-Tech a non-exclusive, worldwide, royalty-free, perpetual,

irrevocable license to use and access the Customer content as is reasonably necessary solely to provide the Services. The parties agree that you shall always retain ownership and legal title to the Customer Content.

- 2.5. **Hardware as a Service.** Nex-Tech may rent to you under the terms of a separate agreement, or otherwise provide to you for the Service Contract Term set forth in your Service or Purchase Order, certain devices, including, but not limited to servers, phones, routers, and switches, etc. ("MSP Hardware"), for use on your premises or at Nex-Tech's Data Center Site. Title to the MSP Hardware shall at all times remain with Nex-Tech or the Third Party Providers of the Services as the case may be. Nex-Tech may vary the technical specifications of the MSP Hardware, provided that at all times such changes do not materially impair or degrade the Service.
- 2.6. **Software as a Service.** If Software is being provided as part of the Services described in your Service or Purchase Order, your use of the Software is governed by the respective Third Party End User Licensing Agreements applicable to such Software. Subject to your compliance with the terms and conditions contained in any Third Party End User License Agreements, Nex-Tech grants you a limited, revocable, non-transferable, non-exclusive right to use the Software for your own Internal use and for no other purpose. Title to the Software shall at all times remain with Nex-Tech or the Third Party Providers of the Services as the case may be.
- 2.7. **Maintenance Downtime.** Nex-Tech may suspend provision of the Services or any part thereof for the purpose of carrying out or implementing necessary repairs, maintenance, or improvements, provided that in the event of such suspension, Nex-Tech will use commercially reasonable efforts to ensure that reasonable notice is given to you and minimum disruption to the Services is caused.
- 2.8. **Storage and Other Limitations.** Nex-Tech reserves the right to establish or modify general practices and limits concerning use of the Services, including without limitation, the maximum number of days that content will be retained by the Services, the maximum disk space and/or bandwidth capacity that will be allotted on MSP Hardware operated by Nex-Tech, if any. Where practical, Nex-Tech will provide you with prior notice of such new or modified practices; provided however, that Nex-Tech shall have the absolute right to implement such new or modified practices without prior notice in its sole discretion and without liability of any kind.

3. Customer Obligations.

- 3.1. **Access Rights.** You will be responsible for securing at your own cost, any necessary rights of entry (both remote and physical), licenses, permits or other permission necessary for Nex-Tech to install, maintain, repair, improve, upgrade, substitute or replace the Services (including any Software or Hardware) and you will also be responsible for providing adequate physical space, air conditioning, necessary power, electrical power outlets, network connections and environmental conditions necessary to support the Services including, pre-drilling holes and wire ways through concrete, plaster, metal floors, walls or ceilings when required. If Nex-Tech is required to have physical access to your sites to perform any obligations contained herein, you will ensure that your sites are safe, secure, and in compliance with all applicable industry and OSHA standards.
- 3.2. **Service Proprietary Rights.** Except as expressly permitted by Nex-Tech or to the extent expressly authorized by the Service, you will not (and will not allow any Third Party to): translate, adapt, reverse engineer, decompile, disassemble, unlock or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Service; modify, translate, or create derivative works based on the Service; rent, lease, distribute, sublicense, resell, pledge, assign, or otherwise transfer or encumber rights to the Service; use the Service for timesharing or service bureau purposes or otherwise for the benefit of a Third Party; or remove or otherwise alter any proprietary notices or labels from the Service or any portion thereof.
- 3.3. **Compliance with Laws.** You shall not use the Services for any illegal or unlawful purpose in violation of any Laws or in a manner which constitutes a violation or infringement of the rights (including any Intellectual Property Rights) of any other party. You shall at all times maintain all registrations and comply with all applicable Laws as may be necessary for the use of the Services.
- 3.4. **Acceptable Use Policy.** You will not use the Services to store, reproduce, transmit, communicate or knowingly receive any material, including the Customer Content, which is offensive, abusive, indecent, defamatory, obscene, racist, homophobic, menacing, or in any manner other than in conformance with any acceptable usage policies that you have agreed to with Nex-Tech. YOU ARE SOLEY RESPONSIBLE FOR THE CONTENTS OF THE CUSTOMER CONTENT, AND IN NO CIRUMSTANCES SHALL NEX-TECH BE HELD LIABLE FOR THE CONTENTS OF ANY

- 3.5. Use of MSP Hardware.** You will not acquire any rights of ownership in the MSP Hardware, or the Software installed on the MSP Hardware, by virtue of the Agreement and shall not have, by operation of law or otherwise, any lien or other similar right over or in relation to the MSP Hardware. In the event MSP is located on your premises, you shall: provide electric power for the MSP Hardware and keep the MSP Hardware physically secure and free from liens and encumbrances; take reasonable care of the MSP Hardware and not damage it, tamper with it, move or remove it or attempt to repair it; bear the risk of loss or damage to MSP Hardware (other than ordinary wear and tear) except to the extent caused by Nex-Tech or its agents; not remove any sign, label or other marking on the MSP Hardware identifying that Nex-Tech is the owner thereof; and on either the termination of this Agreement or an applicable Service or Purchase Order, allow Nex-Tech and its employees and agents reasonable access to your premises to remove the MSP Hardware.
- 3.6. Payment of Fees.** You will pay the Installation Fees, Recurring Service Fees and all other Fees defined in this Agreement and on your Service or Purchase Order.

Article IV: General Terms and Conditions

1. Termination and Breaches of this Agreement.

- 1.1. Material Breach.** If either party fails to perform any material term or condition of this Agreement or violates any representation or warranty, and such failure or violation continues un-remedied for thirty (30) days after receipt of notice by the other party, the aggrieved party may terminate the affected Service or Purchase Order(s); and, if the breach materially and adversely affects the entire Agreement, terminate the Agreement.
- 1.2. Bankruptcy.** Either party can promptly terminate this Agreement if the other party is: declared or becomes insolvent or bankrupt; if a petition is filed in any court to declare the other party bankrupt or for a reorganization under bankruptcy law or any similar statute and such petition is not dismissed in ninety (90) days; or, if a trustee in bankruptcy or a receiver or similar entity is appointed for the other party.
- 1.3. Termination or Suspension for Non-Payment.** Nex-Tech, without waiving any other rights or remedies and without liability to you, may suspend or terminate any or all Service or Purchase Orders and refuse additional Service or Purchase Orders until all overdue amounts are paid in full, provided that Nex-Tech has supplied you prior notice and ten (10) days' opportunity to cure such deficiency. In addition, Nex-Tech shall have the right to immediately terminate a Service or Purchase Order without notice and without liability on Nex-Tech's part if you fail on more than two (2) occasions to pay any Fee due under the affected Service or Purchase Order within the time period specified.
- 1.4. Fraud or Abuse.** Nex-Tech may suspend, terminate, withdraw or discontinue all or a part of a Service or Purchase Order immediately and without liability on its part by providing you with such advance notice as is reasonably practicable under the circumstances, when Nex-Tech reasonably believes: any part of the Service or Purchase Order is prohibited by Law; you are involved in fraudulent or illegal activity; you are in violation of the terms of this Agreement and such violation may: expose Nex-Tech to sanctions, liability, prosecution or other adverse consequences under applicable Law if Nex-Tech were to allow the violation to continue; harm or interfere with the integrity, normal operations, or security of Nex-Tech's network or networks with which Nex-Tech is interconnected; or otherwise presents an imminent risk of harm to Nex-Tech, Nex-Tech's customers, or its respective employees.
- 1.5. Termination by Customer.** You agree to provide Nex-Tech with thirty (30) days' notice of termination. You shall be responsible for the full amount of the Fees for the month during which the notice of termination of Service is provided to Nex-Tech. In accordance with Article IV: Section 1.6 below, termination Fees may apply.
- 1.6. Termination Fees.** If Nex-Tech terminates a Service Order for cause in accordance with this Agreement following a breach by you of this Agreement, or you fail to give sufficient notice of termination in accordance with the terms of this Agreement and/or your Service Order, you shall be liable and will pay any termination or cancellation fees set out in your Service Order, or in the absence of such specified charges, the early termination liability is 100% of the Fees due for remaining Service Contract Term of your Service Order. You shall also be responsible for reimbursing Nex-Tech for any Installation Fees for prior work Nex-Tech has performed and any Third Party charges resulting from the termination. If Nex-Tech terminates a Purchase Order for cause in accordance with this Agreement following a breach by you of this Agreement, You shall be liable and will reimburse Nex-Tech for the cost of the Products

Nex-Tech is unable to cancel with the Third Party Providers of such Products, any Installation Fees for prior work Nex-Tech has performed, and any Third Party charges resulting from the termination. Any such fees will be defined as "Termination Fees" for purposes of this Agreement.

1.7. Survival. The provisions of Article IV: Section 1, Article IV: Section 4, Article IV: Section 5 (including all Articles and Sections referenced therein), Article IV: Section 7, Article IV: Section 10, Article IV: Section 22, and any provisions related to the payment obligations of the parties, will survive the termination of this Agreement, and shall continue in full force and effect. Termination or suspension of a Service or Purchase Order by either party does not waive any other rights or remedies a party may have under this Agreement and will not affect the rights and obligations of the parties regarding any other Service or Purchase Order.

2. Representations and Warranties of the Parties. Each party hereby represents, warrants, and covenants: that It is duly organized, validly existing and in good standing; It has the requisite power and authority, to execute and perform its obligations under this Agreement; It exists under the laws of its own jurisdiction and is not under any contractual obligation that would preclude it from entering into this Agreement; It shall at all times maintain all registrations and comply with all applicable Laws as may be necessary to perform its obligations under this Agreement; It will adhere to the terms and conditions of this Agreement.

3. Third Party Products. All Third Party Products are sold by Nex-Tech "as is." Nex-Tech makes no independent representations, warranties or covenants with respect to the Third Party Products supplied under this Agreement. You chose any/all Third Party Providers based on your judgment. You may contact us or the Third Party Provider for a statement of the warranties, if any, that the Third Party Provider is providing. We assign to you any warranties given to us. Any Third Party Provider warranties are the exclusive remedies of you with respect to such Third Party Products. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NEX-TECH HAS NO DEFENSE, SETTLEMENT, INDEMNIFICATION OR OTHER OBLIGATION OR LIABILITY ARISING FROM THE ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY BASED ON HARDWARE, SOFTWARE AND SERVICES NOT MANUFACTURED OR CREATED BY NEX-TECH.

4. Disclaimer of Warranties & Limitations of Liability. In addition to the disclaimer of warranties and limitations provided elsewhere in this Agreement, the following terms and conditions shall apply.

4.1. Disclaimer of Warranties. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEX-TECH SPECIFICALLY DISCLAIMS ANY WARRANTY ARISING BY USAGE OF TRADE OR BY COURSE OF DEALING AND MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO ANY OF THE SERVICES, INCLUDING BUT NOT LIMITED TO: ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; FOR THE PERFORMANCE OF OR RESULTS TO BE OBTAINED FROM YOUR USE OF THE SERVICES; THAT THE SERVICES WILL OPERATE OR BE PROVIDED WITHOUT INTERRUPTION OR ERROR; FURTHER, NEX-TECH MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER) AND MAKES NO GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING OR THAT NEX-TECH'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO CUSTOMER'S OR ITS END USER'S DATA AND INFORMATION.

4.2. Disclaimer of Liability. IN NO CIRCUMSTANCES SHALL NEX-TECH BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR LOSS OF CORRUPTED DATA, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF EXPRESS OR IMPLIED WARRANTIES, ANY BREACH OF THIS AGREEMENT OR ITS INCORPORATED AGREEMENTS AND POLICIES, OR YOUR INABILITY TO USE THE SERVICES, EVEN IF SUCH DAMAGES WERE FORESEEABLE AND NEX-TECH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4.3. Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, IN THE EVENT EITHER PARTY IS FOUND LIABLE FOR ANY BREACH UNDER THIS AGREEMENT, SAID PARTIES' TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED: THE TOTAL

FEES ACTUALLY PAID BY CUSTOMER TO NEX-TECH DURING THE PRIOR THREE (3) MONTHS FROM THE DATE IN WHICH THE SPECIFIC SERVICE OR SERVICES GAVE RISE TO SUCH CLAIMS.

4.4. Application. THE LIMITATIONS SET FORTH IN THIS ARTICLE IV: SECTION 4 AND THE LIMITATIONS SET ELSEWHERE IN THIS AGREEMENT, APPLY TO ANY CLAIMS AND CAUSES OF ACTION WHATSOEVER, REGARDLESS OF THE FORMS OF THE ACTIONS, AND WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY.

5. Indemnification.

5.1. Customer Indemnification Obligations. You will indemnify defend and hold harmless Nex-Tech and its affiliates, owners, officers, directors, employees, from any and all Third Party actions (including claims by your end users or their affiliates), liability, damages, costs and expenses: due to a breach by you of Article III: Section 3, Article IV: Section 2, Article IV: Section 6, Article IV: Section 7, Article IV: Section 8, Article IV: Section 9, Article IV: Section 10; arising from, relating to, or is covered by: Article IV: Section 3; or otherwise arising from or relating to: the contents of the Customer Content; modifications to the Services by you, your end users, or a Third Party without Nex-Tech's express written consent; your violation of any Third Party End User License Agreements governing Software furnished in connection with the Services; or otherwise resulting from your use of the Services in violation of this Agreement.

5.2. Nex-Tech Indemnification Obligations. Nex-Tech will indemnify defend and hold harmless you and your affiliates, owners, officers, directors, employees, from any and all Third Party actions, liability, damages, costs and expenses for a claim alleging that a Service provided to you under this Agreement infringes any patent, trademark, copyright or trade secret, but not where the claimed infringement arises out of or results from the exemptions listed above in Article IV: Section 5.1. or from the combination of the Products or Services with any non-Nex-Tech Services, and in such circumstances, Nex-Tech shall either procure the right for you to continue using the infringing Service(s) or replace or modify the Products or Services so that they are non-infringing.

5.3. Each party's indemnity obligations under this Article IV: Section 5, are contingent on the other party promptly notifying the other party (the "Indemnitor") in writing of any claim or threat thereof, promptly tendering to the Indemnitor sole control of the defense and any settlement of such claim, and providing to Indemnitor (at Indemnitor's cost) any assistance necessary to such defense or settlement. The Indemnitor will not be responsible for any settlement it does not approve in writing.

5.4. This Article IV: Section 5, sets forth both party's entire liability in regards to the indemnity obligations contained herein.

6. Insurance. Customer shall maintain property insurance in an amount of at least \$100,000 and which shall specifically cover damage to or the destruction or loss of Nex-Tech-owned property that is provided to Customer as part of the Products and Services. In the event of damage to or the destruction or loss of any such Nex-Tech-owned property provided to Customer, Customer must, at its own expense or using insurance proceeds, replace or restore such damaged, destroyed, or lost portion so that such Nex-Tech-owned property shall be in substantially the same condition as it was in prior to such damage, destruction, or loss.

7. Confidentiality.

7.1. Each party agrees: to keep confidential all the other party's Confidential Information (whether written or oral) which it has obtained or received as a result of the discussions leading up to or the entering into, or obtains or receives in performance or during the term of this Agreement; not to disclose the other party's Confidential Information in whole or in part to any Third Party without the disclosing party's written consent, save to those of its employees, agents and contractors involved in the implementation of this Agreement and who have a need to know the same and are bound to keep if confidential; to use the other party's Confidential Information solely in connection with the performance of the Agreement and not otherwise or for the benefit of any other Third Party. Such obligations will apply during the term of this Agreement and for a period of 2 years after termination of this Agreement.

7.2. The provisions of this Article IV: Section 7, shall not apply to the whole or any part of Confidential Information which is: lawfully obtained free of any duty of confidentiality otherwise than directly or indirectly from the disclosing party; already in a party's possession other than as a result of a breach of this Article IV: Section 7; in the public

domain (other than as a result of a breach of this Article IV: Section 7); or necessarily disclosed pursuant to a statutory obligation.

7.3. Each party, upon the request of the other, shall: return all the other party's Confidential Information and copies in its possession to the other party, or destroy such Confidential Information and copies as directed by the other party and provide to such party a certificate of an officer of the party certifying such destruction. For clarity, each party agrees that any data retained and stored on an anonymous and/or aggregated basis does not constitute data required to be destroyed under this section.

7.4. Each party further acknowledges and agrees that: the restrictions set forth in this Article IV: Section 7, are reasonable in the circumstances; a violation of any of the provisions of this Article IV: Section 7 shall result in immediate and irreparable harm and damage to the Disclosing Party; and In the event of any violation of any provision of this Article IV: Section 7, the Disclosing Party shall, in addition to any other right to relief, shall be entitled to equitable relief by way of temporary or permanent injunction and to such other relief as any court of competent jurisdiction may deem just and proper.

8. Proprietary Rights. Nothing in this Agreement shall be construed to give any ownership interest in or constitute an assignment or transfer of any such intellectual Property of the other party.

9. Real Property. This Agreement is not intended to and does not grant a lease or license over any real or personal property of Nex-Tech or its Third Party Providers. In particular, you acknowledge and agree that you have not been granted any real property interest in the MSP Hardware, Nex-Tech's Data Center Site or Nex-Tech's other premises, and you have no rights as a tenant or otherwise under any real property or landlord/tenant/tenant laws, or regulations.

10. Mutual Non-Solicitation. No party shall solicit for employment any employee of the other party during the term of this Agreement and for a period of two (2) years following its expiration or termination. Any breach of this Article IV: Section 10, by either party without express written consent of the non-breaching party will result in recovery of any and all training fees, recruiting fees, and an amount equal to two times the individuals' current salary at the time of the breach.

11. Privacy Laws. Each party is responsible for complying with the privacy laws applicable to its business. You agree to identify and use reasonable security precautions on any Personally Identifiable Information (PII) or other identifiable sensitive data. Customer will immediately report to Nex-Tech any unauthorized usage, or any other breach of security involving Nex-Tech's services and cooperate in the investigation thereof.

12. Import/Export Control. Neither party will use, distribute, transfer, or transmit any Hardware, Software, Products or Services or technical information provided under this Agreement (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions, and regulations.

13. Trademarks. Each party agrees not to display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks or other indicia of origin without the other party's prior written consent, which consent may be revoked at any time by notice.

14. Independent Contractor. The parties are independent contractors. Neither party will have any rights, power, or authority to act or create an obligation on behalf of the other party except as specified in this Agreement. Neither party's employees, agents, nor consultants shall be considered under any circumstances to be employees of the other party.

15. Changes To Agreement By Provider. Except for the Term for which the Services will be provided, the terms and conditions of this Agreement may be revised by Nex-Tech at its sole discretion, at any time, and with or without notice to Customer. Nex-Tech will provide you with written or electronic notice of any changes that require notice pursuant to applicable law. Customer hereby agrees to any revisions to the terms and conditions by continuing to use the Services after any such change is made.

16. Force Majeure. Except for payment of amounts due, neither party will be liable for any delay, failure in performance, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, strike, pandemic, work slow-downs or other labor related activity, inability to obtain necessary equipment or services, embargo, labor disputes, acts of civil or military authority, war, terrorism, acts of God, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies or other causes beyond such party's reasonable control. For the duration of a

Force Majeure event preventing the delivery of a Service(s), the payment obligation for that Service(s) will be suspended for the corresponding duration.

- 17. Amendments and Waivers.** Any supplement to or modification of any provision of this Agreement must be in writing and signed by authorized representatives of both parties. The failure by either party to exercise or enforce any right conferred by the Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of any such right on any later occasion.
- 18. Use of Affiliates & Subcontractors.** Nex-Tech may perform/deliver the services in whole or in part using an "Affiliate" or a subcontractor, provided however, that in such cases Nex-Tech shall remain responsible for the performance of such obligations under this Agreement. Affiliate shall mean Nex-Tech's parent company or any wholly owned subsidiary of Nex-Tech's parent company.
- 19. 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. Nex-Tech may assign any or all of its rights and obligations under this Agreement to any successor in interest pursuant to a sale of stock or assets, merger, acquisition, or reorganization.
- 20. Severability.** If any portion of this Agreement is found to be invalid or unenforceable or if applicable Law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties will negotiate in good faith to substitute for such invalid, illegal or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.
- 21. Injunctive Relief.** Nothing in this Agreement is intended to or should be construed to prohibit a party from seeking preliminary or permanent injunctive relief in appropriate circumstances from a court of competent jurisdiction.
- 22. Legal Action.** Any legal action arising in connection with this Agreement must be filed within one (1) year after the cause of action accrues, or it will be deemed time-barred and waived. The parties waive any statute of limitations to the contrary. In the event of any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, the prevailing party shall be entitled to recover reasonable attorneys' Fees incurred in connection with any court proceeding.
- 23. Governing Law/Jurisdiction.** This Agreement shall be enforced subject to the laws of the State of Kansas. Both parties agree that any dispute relating to this Agreement shall be subject to a Kansas Court of appropriate jurisdiction for resolution.
- 24. Counterparts/Facsimile.** This Agreement may be executed by the parties in one or more counterparts, each of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each party and delivered to the other party. This Agreement may be delivered by facsimile, email or other functionally equivalent electronic means of transmission agreed upon in writing by the parties.
- 25. Notices.** Any required notices under this Agreement shall be in writing and shall be deemed validly delivered if made by hand (in which case delivery will be deemed to have been effected immediately), or by overnight mail (in which case delivery will be deemed to have been effected one (1) business day after the date of mailing), or by first class pre-paid post (in which case delivery will be deemed to have been effected five (5) days after the date of posting), or by facsimile or electronic transmission (in which case delivery will be deemed to have been effected on the day the transmission was sent). Any such notice shall be sent to the office of the recipient set forth in the Service Contracts, Service or Purchase Order, and/or Statements of Work.
- 26. Modifications.** Any modifications to this Agreement must be made in writing and signed by authorized representatives of both parties to this Agreement hereto.
- 27. No Third Party Beneficiaries.** This Agreement is for the benefit of Nex-Tech and Customer and does not provide any Third Party (including users) the right to enforce it or to bring an action for any remedy, claim, liability, reimbursement, or cause of action or any other right or privilege.

28. Headings. The headings in this Agreement are for convenience only and shall not in any way affect the interpretation or enforceability of this Agreement.

29. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and all oral or written agreements relating to the same subject matter and existing prior to the date of the Agreement are expressly cancelled. Except as otherwise stated in this Agreement, this Agreement supersedes all other agreements, proposals, representations, statements, and understandings, whether written or oral, concerning the Products or Services or the rights and obligations relating to the Products or Services, and the parties disclaim any reliance thereon.