

Nexsan Service Agreement

Terms and Conditions

1. Sole Agreement

These terms and conditions constitute the entire agreement ("Agreement") between Nexsan and users/resellers of Nexsan products ("End-Customers") who have directly or indirectly purchased technical support and/or hardware maintenance ("Service") for certain Nexsan products ("Products"). These Terms and Conditions are the sole and exclusive terms governing all Service provided by Nexsan (or its agents or subcontractors) for the Products. Nexsan shall not be bound by any terms or conditions not set forth in this Agreement. These Terms and Conditions may be modified only by written amendment executed by Nexsan.

2. Period of Performance

Product(s) eligible for Service must be either new or in good operating condition as determined by Nexsan. This Agreement will commence upon Nexsan acceptance of a Purchase Order ("PO") issued by a distributor, reseller or other party with whom Nexsan has a direct sales relationship ("Direct-Customer") on behalf of End-Customer, or from the End-Customer itself. If the PO is issued by the End-Customer, all references in this Agreement to "Direct-Customer" shall mean "End-Customer". The period during which Nexsan will perform the Services ("Term") will commence and expire as described on the Service Acknowledgement Form.

3. Renewal

This Agreement may renew for additional Terms upon receipt by Nexsan of a PO from an End-Customer or a Direct-Customer on behalf of End-Customer. Any such renewal will be subject to Nexsan's updated Agreement revisions and to the price(s) then offered at the time of the renewal request.

4. Service

A. To initiate Service, End-Customer will contact Nexsan Technical Support ("TS") to report problems covered by this Agreement. If End-Customer's service plan requires site access, End-Customer hereby authorizes Nexsan or its subcontractors to enter the End-Customer's premises to perform Service under the supervision of relevant site personnel. Any such site access will be subject to End-Customer's security rules and requirements and subject to the terms of End-Customer's service plan and this Agreement.

B. Service **shall not** include: third party software maintenance, training, preventive maintenance or any hardware maintenance, servicing, repair or replacement of parts required as a result of (a) accident, vandalism, negligence, abuse, or misuse, including the failure to operate and care for the Product in accordance with Nexsan's power, environmental and other specifications; (b) causes external to the Product such as, but not limited to, failure of, or faulty electric power or air conditioning, damage caused by fire originating outside of the Product, water damage, environmental contamination, or as a result of any causes other than ordinary use of the Product; (c) re-manufacturing or refurbishing the Product except as specifically authorized by Nexsan; (d) moving, removal/reinstallation of the Product; (e) alterations, modifications, repairs or maintenance of the Product made by persons other than Nexsan or a Nexsan authorized service provider; (f) implementation of non-mandatory engineering changes; (g) installation of new or upgraded features except as authorized by Nexsan; (h) service of parts, components or Products which were not manufactured and approved by Nexsan; or (i) acts, errors or omissions committed by End-Customer or End-Customer's representatives.

C. Nexsan may suspend Service to an End Customer if parts

replaced under this agreement have not been returned or paid for within 30 days of replacement.

5. Nexsan Responsibilities

During the term of this Agreement, Nexsan shall use reasonable commercial efforts to: (a) assure the Product operates substantially in accordance with the Product specifications in effect at the time of End-Customer's purchase of the Product or subsequent upgrades or enhancements procured by the End-Customer under conditions of normal use, (b) if applicable, provide parts and labor required for Services purchased, (c) install all mandatory Field Change Orders which Nexsan determines are required to ensure proper Product operation, and (d) provide such other Services as described in this Agreement.

6. End-Customer Responsibilities

A. Obtain and provide to Nexsan sufficient information to establish severity and priority for identified problems.

B. Use reasonable commercial efforts to isolate problems and reproduce any identified errors or malfunctions.

C. Provide, upon Nexsan's request, diagnostic output and such additional data in machine-readable or interpreted form deemed necessary or desirable by Nexsan to reproduce the environment in which the errors or malfunctions occurred and to aid understanding the errors or malfunctions.

D. Provide End-Customer and/or End-Customer's vendor(s) contact information as needed.

E. Identify to Nexsan on or before Agreement commencement, any end-customer site that is a U.S. Government Agency or U.S. Government customer, if applicable.

F. Identify to Nexsan on or before Agreement commencement, any special access or security requirements if on-site services are purchased.

G. Identify to Nexsan on or before Agreement commencement, any requirement for the use of protective equipment or other measures including but not limited to specific site safety training. End-customer also agrees to provide such equipment or training as needed at no charge prior to the start of on-site maintenance activities.

H. Provide Nexsan thirty (30) days advance notice of site location changes for covered Product.

I. For purchased on-site services, provide Nexsan and its subcontractors an appropriate and safe work environment, reasonable access, working space and facilities including heat, ventilation, electric current, electric outlets and access to a working telephone.

J. Return all allegedly defective Nexsan parts to Nexsan within 30 days of receipt of the replacement parts. If parts are not returned or paid for, prior to the shipment of additional parts or dispatch of technician, Nexsan may require a security deposit, payment or return of previously unreturned parts for which a replacement was provided.

7. Subcontracting

Nexsan, at its sole discretion, may authorize and utilize one or more third parties to provide the Services under this Agreement. Subcontractor(s) shall comply with the terms of this Agreement and all reasonable End-Customer requirements.

8. Pricing

Price quotes are obtained from resellers via authorized Nexsan distributors and other parties with whom Nexsan has a direct sales relationship. Pricing shall remain fixed for the term as specified in the Service Acknowledgement Form. Prices are in US Dollars and exclusive of any tax, duty, VAT, GST or other charges that are the responsibility of Direct-Customer and End-Customer. For service sales in the USA, Nexsan requires a valid resale or exemption certificate from Direct-Customer to avoid charging sales tax to Direct-Customer.

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9. Payment

Upon execution of this Agreement Nexsan shall invoice Direct-Customer for the Term of Service. Payment is due within thirty (30) days of invoice date. Nexsan will delay commencement of End-Customer service performance until acceptance of a PO from Direct-Customer. All payments will be made in the currency shown on the pricing quote without setoff or deduction.

10. Warranty

Nexsan warrants that all services will be performed in accordance with workmanship standards prevailing in the industry, and all Products or parts thereof provided to End-Customer under this Agreement will be either new or refurbished to like new condition. All services are warranted for a period of thirty (30) days. End-Customer's sole remedy for breach of this remedy is re-performance of the service by Nexsan. End-Customer acknowledges that any deviations or exceptions to the foregoing warranty shall be valid only if in writing executed by a Nexsan authorized representative and no employee, dealer, distributor or third party is authorized to modify the foregoing warranty. **THE FOREGOING IS THE SOLE WARRANTY BY NEXSAN UNDER THIS AGREEMENT AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, CUSTOMIZATION, AND FITNESS FOR PURPOSE ARE HEREBY DISCLAIMED.**

11. Limitation of Liability

UNDER NO CIRCUMSTANCES SHALL NEXSAN BE LIABLE TO END-CUSTOMER FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, LOST DATA OR LOST GOODWILL, HOWEVER CAUSED. NEXSAN'S MAXIMUM LIABILITY IN ANY CLAIM ARISING OUT OF THIS AGREEMENT WILL NOT EXCEED THE AMOUNT WHICH DIRECT-CUSTOMER HAS PAID TO NEXSAN FOR SERVICES ON BEHALF OF END-CUSTOMER UNDER THIS AGREEMENT.

12. Intellectual Property Rights

Nexsan owns the entire right, title and interest in and to all intellectual property rights in and relating to the design of the Products and any software, firmware, knowledge or other technology developed by Nexsan in the performance of this Agreement.

13. Force Majeure

Nexsan shall not be liable for delay or failure to perform any of its obligations due to fire, flood, earthquake, severe weather or other natural disaster, strikes or labor disturbances, war, embargo, materials or capacity shortages, riot, the intervention of any government authority, nor any other cause beyond the reasonable control of Nexsan.

14. Cancellation

Cancellations are not accepted after issuance of a service contract acknowledgement from Nexsan.

15. Termination

Nexsan may terminate this Agreement immediately and incur no future support obligation upon written notice if Direct-Customer fails to pay for services when due and such failure is not cured within ten (10) working days after Direct-Customer's receipt of written notice.

16. Assignment

These Terms and Conditions shall be binding and inure to the benefit of the parties hereto and their respective successors and assigns. End-Customer shall not assign this Agreement to any third party without the prior consent of Nexsan and any attempted assignment in violation of this provision will be void. Nothing in this Provision will be interpreted to prevent or impede Nexsan from subcontracting its efforts under this Agreement.

17. Rights and Remedies

All rights and remedies conferred by these Terms and Conditions, by any other instrument, or by law are cumulative and may be exercised singly or concurrently. If any provision of these Terms and Conditions is held invalid by any law or regulation of any government or by any court, such invalidity shall not affect the enforceability of any other provisions. No waiver of a breach of any provision of these Terms and Conditions shall constitute a waiver of any other breach or of such provision or any other provision.

18. Applicable Law

This Agreement and any POs issued hereunder will be interpreted in accordance with the laws of the State of California without regard to its conflicts of laws rules. The United Nations Convention on the International Sale of Goods will not apply to this Agreement.

19. Disputes

The parties shall attempt in good faith to promptly resolve any controversy or claim arising out of or relating to Service delivery by good-faith negotiations between representatives of the parties. Neither party will file or otherwise initiate litigation against the other without providing the other party at least thirty (30) days prior written notice. The prevailing party in any litigation against the other party under this Agreement will be entitled to recover attorney fees.

20. Survival

Provisions entitled "Limitation of Liability," "Intellectual Property Rights," "Rights and Remedies," "Applicable Law," and "General" shall survive termination or expiration of this Agreement.

21. General

A. This Agreement is the complete and entire understanding between Nexsan and End-Customer and supersedes all prior agreements, proposals, representations, statements, or understandings whether written or oral on this subject between them.

B. The headings of the sections in these Terms and Conditions are included for convenience only and are not to be used in construing or interpreting the provisions hereof.

C. All notices required to be given pursuant to the provisions hereof shall be in writing and shall be deemed given and delivered upon actual receipt by the party to whom it is addressed or sent by email (support@nexsan.com). Notices deposited in the mail will be sent certified mail, return receipt requested, with postage pre-paid and addressed as set forth:

Nexsan

Nexsan Headquarters
1287 Anvilwood Avenue
Sunnyvale, CA 94089
Attention: VP Service & Support.

Direct-Customer

Address as listed on the PO

End-Customer

Address as listed in the Service Acknowledgement Form

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D. End-Customer acknowledges that Service activities may create a risk of loss of data, programs or disruption of End-Customer's information and End-Customer agrees to be solely responsible to back up all existing computer files prior to initiation of any Service.

E. Nexsan reserves the right to charge for performance of services, maintenance, support or other activities requested by End-Customer that are outside the scope of this Agreement.

F. Availability of coverage varies by location. Please refer to <https://www.nexsan.com/support/> for program information and country coverage details.

22.0 Coverage – Nexsan hardware and firmware. Excludes software, SFPs, cords, mounting brackets/kits, rails and cables. Cache batteries, cache drives and data drives HDD's are considered redundant in a properly maintained and configured system. Service for these parts may not be available by next business day, though a best effort will be made when commercially feasible.

22.1 Service Initiation – Upon receipt of a valid PO from Direct-Customer, Nexsan will use reasonable commercial efforts to complete End-Customer service set up within four (4) weeks. Nexsan will deliver services on a best-effort basis during this initial period.

23.0 Remote Support – Provides first point of contact and technical assistance with Product performance-related questions, helps to identify, verify and resolve causes of suspected errors or malfunctions for covered Nexsan Products. Hours of operation vary; see <https://www.nexsan.com/support/>

23.1 Case Management – Based on information provided by the End-Customer, the Remote Support engineer will determine the nature of the reported issue and attempt to resolve the problem. If the issue cannot be resolved in a timely manner, the case will be escalated to the appropriate support team. End-Customer's personnel will be contacted as appropriate. Nexsan will monitor the case for response and resolution and track it through resolution.

24.0 Response Commitment – Nexsan will acknowledge receipt of End-Customer's request and begin resolution efforts as described here: <https://www.nexsan.com/support/>

25.0 On-site Commitment – Nexsan will attempt to resolve all issues via Remote Support because this is typically the fastest path to resolution. If this is not possible then for covered Products, upon End-Customer request and with Nexsan Remote Support concurrence, Nexsan or its subcontractor will provide on-site technical personnel at End-Customer's location(s) for hardware replacement.

26.0 Hardware Replacement – When required, Nexsan will deliver replacement hardware to End-Customer per the delivery times as specified in the Service Descriptions table above. Product returned by End-Customer as part of an advanced exchange shall be a genuine Nexsan Product and subject to verification by Nexsan.

26.1 Replacement Parts – When applicable and if deemed necessary by Nexsan, End-Customer will be provided the necessary replacement via an advanced part exchange. The End-Customer will return the failed Product or part pursuant to a Return Material Authorization (RMA) per instructions provided with receipt of the advance replacement Product.

26.2 RMA – If End-Customer fails to return the allegedly defective Nexsan Product or part to Nexsan within thirty (30) days of shipment of such replacement or if the returned Product is not genuine, Nexsan may charge End-Customer the then-current MSRP (Manufacturer's Suggested Retail Price) for the replacement. No product may be returned without a valid RMA and **the RMA number must appear on the outside of the shipping container.** Nexsan may refuse delivery and return the materials to sender at the sender's cost if any product or component is returned without an RMA number. End-Customer will be responsible for proper packaging of the returned Product and shall be responsible for damage arising from improper packaging. End-Customer is responsible to ensure that product or part returned to Nexsan is complete and has no missing components. If required, proof of delivery to Nexsan is the responsibility of the End-Customer.

26.3 Packaging – The End-Customer is responsible to put the defective Product in the packaging that accompanied the advance exchange unit(s) and apply the return shipping label(s) per instructions received with the same.

27.0 Shipping Costs – Nexsan will pay shipping costs for the advanced hardware replacement and the return of defective unit(s), subject to Section 26.2 and 26.3.

28.0 Software/Firmware Updates & Upgrades – Nexsan will provide electronic access to patches and maintenance releases correcting firmware errors when and if available for **End-Customers with an active Agreement.**

29.0 Assureon Systems and Windows OS – Provided that a particular Windows OS is still supported by Microsoft, Windows updates will be provided as follows: (a) Windows updates are certified by Nexsan and made available on our WSUS server. The Assureon system will automatically download the Windows updates from the WSUS server and will then be available until an Administrator can schedule a maintenance window to disrupt the production environment to apply updates and reboot. Nexsan support cannot determine when the ideal date and time is for customers to proactively interrupt their production environments. Therefore, it is the customer's responsibility to apply the updates and reboot. (b) At the customer's request, Nexsan can apply updates for the customers while they already have a maintenance window due to a software upgrade or some other reason.

Assureon Gold Support SLA contracts **do not** include upgrades to Windows Server OS or SQL Server. However, such upgrades may be available for purchase along with the necessary Professional Services and potential HW upgrades (if applicable) from your Nexsan sales partner. Additionally, upgrades to Windows Server OS and SQL Server are available for no charge as part of the Assureon Concierge Service, provided the customer's hardware is capable of running the upgraded package.