

## STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions (these “**Terms**”) govern the provision and use of services provided by Netexperience, Inc. (“**Netexperience**”) to the Client identified in any order form that incorporates these Terms (the “**Client**”).

### 1. NETWORK SERVICES

- 1.1 Services. Client may order Netexperience networking services as part of a subscription ordered by Client (“**Services**”) in a separate service order that incorporates these Terms (collectively, the “**Service Order**”). Netexperience will provide the Services subject to Client’s timely payment of the fees set forth on such Service Order (the “**Fees**”). Client acknowledges that the Fees for an applicable Service Order are non-refundable, regardless of Client’s use or non-use of the Services.
- 1.2 End User Access. Client may authorize its employees and customers (collectively, “**End Users**”) to access the Services in a manner consistent with this Agreement as part of Client’s service offerings. Client acknowledges and agrees that Netexperience will require all End Users to agree to Netexperience’s standard “click wrap” end user terms and conditions of use as a condition of accessing the Services. Client agrees that all such use of the Services by Client’s End Users shall be deemed use by Client for all purposes of this Agreement.
- 1.3 Limitations. Client may only access and use the Services in accordance with all applicable laws, rules and regulations, subject to any restrictions specified herein and in the applicable Service Order. Client agrees that Client will not, without the express prior written authorization of Netexperience: (a) circumvent, copy, modify, decompile, reverse engineer or disassemble the technology (including any software therein) provided by Netexperience and used in connection with the Services (the “**Network Services Technology**”); (b) except as expressly permitted in Section 1.2, sublicense, rent, lease, timeshare or rebrand the Network Services Technology or Services; (c) copy any ideas, features, functions or graphics of the Services or modify or make derivative works based upon the Services; (d) disclose or publish performance benchmark results or test results to non-affiliated third parties with respect to the Services; or (e) encumber the Network Services Technology with any lien or grant a security interest in the Network Services Technology.
- 1.4 Suspension of Services. If Netexperience reasonably believes that any element of the Services, or Client’s receipt or use of the Services violates any applicable law, rule, regulation or any of these Terms, Netexperience may, in its sole discretion, suspend any Services and/or terminate these Terms or any Service Orders without liability or further obligation to Client, notwithstanding the provisions of Section 3.2. Client will remain liable for Fees for the Services during any period of suspension.
- 1.5 Client Content Use of Data. As between the parties, Client owns all data, imagery, information and other content (“**Client Content**”) transmitted by or on behalf of Client in connection with the Services and Client has sole responsibility for Client Content and its intellectual property ownership and right to use. Client hereby expressly consents to Netexperience’s collection and use of information collected by Netexperience regarding the performance of the Network Services Technology and the network parameters relating to the Services and/or the Network Services Technology in connection the Netexperience’s monitoring, support, and improvement of the Services and the Network Services Technology.
- 1.6 Reservation of Rights. As between the parties, Netexperience (or its licensors) retains title to the Services and the Network Services Technology and all modifications, alterations, derivative works and enhancements and all Intellectual Property Rights contained within. Netexperience does not grant

to Client a license, right, or Intellectual Property Right in any of its trademarks, trade names or service marks pursuant to these Terms. For the purposes of these Terms, “**Intellectual Property Rights**” means all current and future worldwide common law and statutory rights, whether arising under the laws of the Canada, the United States of America or any other state, country, jurisdiction, government, or public legal authority, in, to, or associated with: (a) patents, patent applications, and invention disclosures; (b) copyrights, copyright registrations and applications therefor, moral rights, and mask work rights; (c) the protection of trade or industrial secrets or confidential information; (d) all other intellectual property rights and proprietary rights; (e) trademarks, service marks, and other designations of source or origin; (f) any analogous rights to those set forth above; (g) divisions, continuations, renewals, reissuances, and extensions of the foregoing (as applicable); and (h) rights to apply for, file for, certify, register, record, or perfect any of the foregoing.

1.7 Support and Maintenance. Netexperience may proactively monitor the Services via Netexperience’s remote support platform (the “**Support Platform**”). Netexperience will provide Client with tools on the Support Platform to manage Client’s ordered Services and to submit support requests. If Client experiences a problem with the Services, Client shall use the Support Platform tools to resolve the problem, or if it is unable to do so, Client shall submit a ticket via the Support Platform. Netexperience will use commercially reasonable efforts to respond and resolve support requests having an associated support ticket via Internet, e-mail, and telephone support during Netexperience’s normal business hours.

1.8 Third Party Products and Services. Notwithstanding anything to the contrary herein, Client acknowledges and agrees that Netexperience makes no representation or warranty, express or implied, as to any third-party hardware, software, products or services included with the Services.

## 2. FEES

2.1 Fees and Payment. Client will pay the applicable Fees for the Services annually in advance or as set forth in the applicable Service Order. Client will be responsible for paying all federal, state or provincial, and local or other government-imposed taxes applicable to its purchase of any Services under these Terms. Payments not received when due may be assessed interest at 1.5% per month commencing with the payment due date. If Client does not make payment in a timely manner, Netexperience may suspend its performance under these Terms until such time as payments of the applicable Fees are made current. Netexperience will not be responsible for delays, costs incurred or problems experienced by Client due to the suspension of Netexperience’s performance under this section.

## 3. TERM AND TERMINATION

3.1 Term. These Terms will remain in effect during the term of any unexpired Service Order. Each Service Order shall have the initial term indicated on the Service Order, commencing on the Acceptance Date (“**Initial Term**”). Service Orders whose Initial Term is for one year or longer shall automatically renew for additional periods of one year, and Service Orders whose Initial Term is for less than one year shall automatically renew for one year. Either party may cancel renewal of a Service Order and these Terms by notifying the other party at least 60 days prior to the expiration of the then-current term. In addition, Client may terminate a Service Order during any trial period identified on the applicable Service Order by providing Netexperience with notice of such termination at least seven days prior to the expiration of such trial period. “**Acceptance Date**” means the date on which Netexperience first provides access to the Services.

3.2 Termination. Either party may terminate these Terms or the applicable Service Order: (a) upon written notice to the other party if the other party commits a material breach of these Terms or the

applicable Service Order, which breach is not cured within 45 days of receipt of written notice of such breach from the non-breaching party; provided that in the event any material breach by Netexperience requires more than 45 days to cure, Client will not be entitled to terminate these Terms or the applicable Service Order if Netexperience promptly commences to cure such breach and proceeds diligently until cured; or (b) immediately upon written notice to the other party if the other party has a receiver appointed, or an assignee for the benefit of creditors or in the event of any insolvency or inability to pay debts as they become due by the other party, except as may be prohibited by applicable bankruptcy laws.

3.3 Effect of Termination. Termination of these Terms or any Service Order does not relieve Client of the obligation to pay any amounts owed that became due prior to the date of termination. Upon termination or non-renewal of these Terms, Netexperience will have no further obligations to provide any of the Services. Client will promptly pay any due but unpaid Fees (including for any partial months on a pro rata basis). In addition, Client agrees that, within ten days after termination or non-renewal, it will return all Confidential Information and Network Services Technology of Netexperience in its possession or control.

3.4 No Impact on Other Remedies. Except as otherwise expressly provided in these Terms, each party's right to terminate these Terms will be in addition to any and all rights and remedies as will be available to it at law or in equity.

3.5 Survival. Client's payment obligation for all outstanding Fees will survive termination of these Terms, and Sections 1.5, 1.6, 1.8, 3.3, 3.4, 3.5 and 4 – 11, will survive any termination of these Terms.

#### 4. CONFIDENTIALITY

4.1 Confidential Information. Each party receiving Confidential Information (the "**Receiving Party**") will use the Confidential Information of the other party (the "**Disclosing Party**") solely to carry out its obligations and exercise its rights under these Terms. Except as otherwise required by law, Receiving Party will not disclose the Confidential Information of the Disclosing Party to any third parties or to any of its employees or independent contractors except those employees and independent contractors who have a need to know the Confidential Information in order for the Receiving Party to perform its obligations and where such employees are under a written obligation regarding non-disclosure of such information. The Receiving Party will use the same care to avoid disclosure of the Disclosing Party's Confidential Information that the Receiving Party uses to protect its own Confidential Information, but not less than reasonable care. The Disclosing Party will retain exclusive ownership of all of its Confidential Information. For purposes of these Terms, "**Confidential Information**" means all information relating to the business or affairs of a Disclosing Party, including but not limited to, all trade secrets, proprietary or confidential information in whatever form that is disclosed under these Terms that is not generally known in the relevant industry or industry segment, including, but not limited to, the Service Order form(s), information regarding either party's business, strategies, plans, suppliers, clients, finances, business plans, product development, technology and software. Confidential Information will not include information that the Receiving Party can demonstrate: (a) was independently developed by the Receiving Party without any use of the Disclosing Party's Confidential Information or by the Receiving Party's employees or other agents (or independent contractors hired by the Receiving Party) who have not been exposed to the Disclosing Party's Confidential Information; (b) becomes known to the Receiving Party, without restriction, from a source other than the Disclosing Party without breach of these Terms and that had a right to disclose it; (c) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of the Receiving Party; or (d) was rightfully known to the Receiving Party, without restriction, at the time of disclosure.

4.2 Disclosures Required By Law. Where disclosure of the Confidential Information is required by law, or court or governmental order, the Receiving Party will notify the Disclosing Party thereof immediately

upon becoming aware: (a) that such disclosure is required; or (b) that a court or governmental order is being considered that, if granted, would require such disclosure (including the manner of disclosure) so that the Disclosing Party may take such action as it deems necessary to limit the scope of such disclosure. Receiving Party will cooperate fully with the Disclosing Party in taking action to protect the Disclosing Party's Confidential Information.

4.3 Remedies. Unauthorized use by a party of the other party's Confidential Information will diminish the value of such information. Therefore, if a party breaches any of its obligations with respect to confidentiality or use of Confidential Information hereunder, the other party shall be entitled to seek all available legal and equitable remedies, including but not limited to injunctive relief, as well as money damages.

4.4 Return. Upon request, the Receiving Party will return all Confidential Information to the Disclosing Party, or certify (by an authorized officer), that all of the Receiving Party's Confidential Information has been destroyed.

## **5. INTELLECTUAL PROPERTY RIGHTS**

5.1 No Limitation. Nothing in these Terms will preclude Netexperience from developing, using, marketing or otherwise exploiting software programs or other materials or providing any services, including those similar to the Services for any of its other clients.

5.2 Client Trademarks. Client hereby authorizes Netexperience to use Client's name and logo in connection with Netexperience's promotional and marketing efforts of its business. Netexperience agrees to comply with Client's trademark usage guidelines, as may be provided and updated from time to time. Netexperience will correct or cease any non-conforming uses of Client's name and logo upon written notice and request from Client.

## **6. INDEMNIFICATION**

Client will indemnify, defend and hold Netexperience and its officers, directors, shareholders, employees and agents harmless from and against all third-party claims, suits or proceedings (and all damages, losses, costs and expenses relating thereto) arising out of any use or misuse of, or inability to use, the Services by Client or its End Users.

## **7. WARRANTIES**

7.1 Services Warranty. Netexperience warrants that all Services provided under these Terms will be performed in a professional and workmanlike manner and in compliance with the requirements and specifications included in any applicable schedule or Service Order.

7.2 Disclaimer of Any Other Warranties. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THESE TERMS, THE SERVICES, WI-FI ACCESS POINTS, AND NETWORK SERVICES TECHNOLOGY PROVIDED BY NETEXPERIENCE HEREUNDER ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, INCLUDING AS TO ACCURACY OR FREEDOM FROM ERROR, OR AS TO ANY RESULTS GENERATED THROUGH THEIR USE, AND FURTHER INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. NETEXPERIENCE DOES NOT WARRANT THAT THE USE OR OPERATION OF THE SERVICES WILL BE UNINTERRUPTED.

## **8. LIMITATION ON LIABILITY**

8.1 EXCLUSION OF CONSEQUENTIAL DAMAGES. EXCEPT FOR A PARTY'S BREACH OF SECTION 4, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE LOSSES OR DAMAGES, WHETHER IN AN ACTION IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR RELATING TO THESE TERMS OR THE SERVICES PERFORMED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RELATING TO DATA LOSS, LOSS OF BUSINESS, OR SYSTEM OR SECURITY BREACH, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES. NOTWITHSTANDING ANY PROVISION OF THESE TERMS, NETEXPERIENCE SHALL HAVE NO LIABILITY IN THE EVENT OF ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF CLIENT'S CONTENT OR OTHER DATA.

8.2 LIMITATION OF LIABILITY. NETEXPERIENCE'S TOTAL AGGREGATE LIABILITY TO CLIENT WILL NOT EXCEED THE TOTAL AMOUNT OF FEES RECEIVED BY NETEXPERIENCE FROM CLIENT FOR THE SERVICES AT ISSUE IN THE 12-MONTH PERIOD PRECEDING THE DATE OF THE FIRST CLAIM. THIS LIMITATION WILL APPLY REGARDLESS OF THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## **9. DISCLAIMER SPECIFIC TO TIP ECOSYSTEM**

THE NETEXPERIENCE SERVICE INTERACTS WITH, AND PROVIDES YOU ACCESS TO CERTAIN PARTS OF, THE TELECOM INFRA PLATFORM ("TIP") DESCRIBED AT [HTTPS://TELECOMINFRAPROJECT.COM/](https://telecominfraproject.com/). SUCH ACCESS TO OUR SERVICE ALSO MAY ENABLE YOU TO INTEROPERATE WITH ADDITIONAL THIRD PARTY SERVICES THAT LEVERAGE (OR THAT ARE AVAILABLE THROUGH) THE TIP PLATFORM ("THIRD PARTY VENDORS"). YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT NETEXPERIENCE DISCLAIMS, AND HAS NO LIABILITY FOR, ANY ISSUES ARISING OUT OF TIP, ANY PARTY CONTRIBUTING TO OR SERVING AS A MEMBER OF THE TIP CONSORTIUM, OR ANY THIRD PARTY VENDOR. NETEXPERIENCE'S DISCLAIMER REGARDING THE FOREGOING INCLUDES WITHOUT LIMITATION VIRUSES OR MALWARE INTRODUCED THROUGH OR BY THE TIP PLATFORM OR ANY THIRD PARTY VENDOR, OPEN SOURCE CONTAMINATION UNDER A "VIRAL" OR "HEREDITARY" LICENSE, AND DOWNTIME OR OTHER DISRUPTION TO THE NETEXPERIENCE PLATFORM ARISING OUT OF THE FOREGOING.

## **10. OPEN SOURCE**

CERTAIN COMPONENTS OF THE NETEXPERIENCE PLATFORM AND RELATED TECHNOLOGIES (OR THAT AVAILABLE THROUGH OUR PLATFORM) ARE SUBJECT TO OPEN SOURCE LICENSES, THAT IS, A SOFTWARE LICENSE UNDER WHICH SOURCE CODE IS MADE AVAILABLE UNDER TERMS THAT ALLOW ANY LICENSEE TO COPY, CREATE DERIVATIVE WORKS AND DISTRIBUTE THE SOFTWARE WITHOUT ANY FEE OR COST. AS AN EXAMPLE OF THE FOREGOING, CERTAIN COMPONENTS OF THE TIP PLATFORM ARE SUBJECT TO THE BSD3 OPEN SOURCE LICENSE. THIS SOFTWARE IS PROVIDED BY THE COPYRIGHT HOLDERS, AUTHORS, AND CONTRIBUTORS "AS IS" AND ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED. IN NO EVENT SHALL THE COPYRIGHT HOLDER OR ANY AUTHORS OR CONTRIBUTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR

CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

## 11. GENERAL PROVISIONS

11.1 Independent Contractors. The relationship between Netexperience and Client under these Terms is that of independent contractors only. Nothing in these Terms will be construed so as to constitute Netexperience and Client as partners or joint venturers, or either party as the employee or agent of the other party. Neither party will have any power or authority to bind the other party.

11.2 Governing Law. These Terms will be governed by the laws of the province of Ontario, Canada without giving effect to its conflict of law principles. The parties expressly agree to exclusive jurisdiction in any court of competent jurisdiction in the province of Ontario and all claims or proceedings brought by a party relating to these Terms will be brought only in such courts. The parties hereby disclaim and exclude the application hereto of the United Nations Convention on Contracts for the International Sale of Goods.

11.3 Attorneys' Fees. The substantially prevailing party in any suit, action, counterclaim, or arbitration arising out of these Terms shall be entitled to recover reasonable attorneys' fees, litigation expenses, collection costs, and the cost of arbitration in addition to court costs subject to, in the case of a proceeding brought before a court of competent jurisdiction in the province of Ontario, the discretion of such court.

11.4 Notices. All notices under these Terms will be deemed to have been properly delivered: (a) upon delivery if delivered in person; (b) three days after being sent by registered, express, certified mail, postage prepaid, return receipt requested; or (c) upon delivery if sent by e-mail or other generally accepted means of electronic transmission with verification or confirmation of delivery. Notice will be sent to the parties at the addresses on the ordering document or another address the receiving party designates.

11.5 Force Majeure. Each party is excused from performance of these Terms (other than for any payments due) and will not be liable for any delay in whole or in part caused by the occurrence of any contingency beyond the reasonable control of such party. These contingencies include, without limitation, war, pandemic, act of government or any agency affecting these Terms, judicial action, fire, natural disaster or other act of God, hardware failure, interruptions or failure of the Internet or third-party network connections or if Netexperience is unable to obtain any necessary or material services from its third-party contractor.

11.6 Assignment. Client may not assign these Terms without the prior written consent of the Netexperience (whether by merger, sale of assets, sale of equity, operation of law, or otherwise) and any assignment in violation of the foregoing will be void and of no force and effect. Netexperience may assign these Terms without restriction in its sole discretion. Netexperience may subcontract the performance of any of its obligations hereunder, provided that Netexperience will be responsible for any payment to any subcontractor for the performance of Services hereunder. These Terms will be binding upon and inure to the benefit of the parties hereto, their successors, and permitted assigns.

11.7 Amendments. No modification of, or amendment to, these Terms, nor any waiver of any rights under these Terms, will be effective unless in writing signed by an authorized representative of both parties.

11.8 No Waiver. No waiver of any term or condition of these Terms will be valid or binding on either party unless the same will have been mutually assented to in writing by an officer of both parties. The failure of either party to enforce at any time any of the provisions of these Terms, or the failure to require at any time performance by the other party of any of the provisions of these Terms, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of either party to enforce each and every such provision thereafter.

11.9 Entire Agreement. The Service Order (including these Terms as incorporated by reference), sets forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes all prior and contemporaneous communications, representations, discussions, and agreements between the parties with respect to such subject matter.

11.10 Other Provisions. Nothing herein is intended to or shall be construed to confer upon or give any person or entity, other than Netexperience and Client, and their respective successors and permitted assigns, any rights or remedies. If any provision of these Terms is held to be invalid or unenforceable by a court of competent jurisdiction, then such provision shall be eliminated or limited to the minimum extent such that the remaining provisions will nevertheless continue in full force and effect. Each party acknowledges that it has had the opportunity to review these Terms with legal counsel of its choice, and there will be no presumption that any ambiguities will be construed or interpreted against the drafter.

**[END OF TERMS AND CONDITIONS]**