

## QUOTE TERMS AND CONDITIONS

### 1. DEFINITIONS

1.1 Unless otherwise defined in the Quote, the terms listed below shall have the following meanings when used in these Terms and Conditions:

“**Agreement**” means the Quote together with these Terms and Conditions.

“**Confidential Information**” means all confidential and proprietary information, in any form, furnished or made available directly or indirectly by one party to another party, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected in all orders hereunder), business and marketing plans, technology and technical information, product designs, financial information, business processes and correspondence.

“**Customer**” means the customer identified on the applicable Quote.

“**Customer Data**” means the data submitted by or for Customer to the Network or collected and Processed by or for Customer using the Network and the Network Services.

“**Data Controller**” shall mean the natural or legal person who alone or jointly with others determines the purposes and means of the processing of Personal Information.

“**Data Processor**” shall mean the natural or legal person who processes Personal Information on behalf of the Data Controller.

“**Data Protection Laws**” means all laws and regulations, including laws and regulations of Canada (including the *Personal Information Protection and Electronic Documents Act* (Canada) and the Canadian Anti-Spam Legislation), the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, including the GDPR, applicable to the Processing of Personal Information under the Agreement.

“**Device**” means a device, computer or sensor that: (a) complies with all applicable regulatory requirements; (b) has been approved by eleven-x to operate on the Network; and (c) has been activated by eleven-x on to the Network.

“**Documentation**” means the user manual and other documentation as prepared and supplied by eleven-x for use in association with the Network or a Device.

“**eleven-x Device**” means a Device manufactured by or for eleven-x and supplied to the Customer by eleven-x hereunder and specified in the applicable Quote.

“**Evaluation Period**” if applicable, means the evaluation period stipulated in a Quote.

“**Gateway**” means a router equipped with a LoRa concentrator that has been approved by eleven-x for use on the Network.

“**Network**” means the eleven-x LoRaWAN network described in the applicable Quote.

“**Network Access Fees**” means the fees charged to eleven-x to access the Network. eleven-x reserves the right to change its Network Access Fees no more than once annually unless otherwise specified in the Quote.

**“Network Services”** means the data and services provided by eleven-x that allow Devices operating on the Network to transport data to over the Network.

**“Personal Information”** means any information relating to an identified or identifiable natural person as defined under applicable Data Protection Laws.

**“Processing”** means any operation or set of operations which is performed upon Personal Information, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**“Professional Services”** means the customization, integration, implementation, set-up, training and other professional services described in a Quote.

**“Quote”** means the eleven-x quote for Network Services, eleven-x Devices, Third Party Products and/or Professional Services to which these Terms and Conditions are attached or incorporated by reference.

**“Term”** means the term of this Agreement as set out in Section 10.

**“Third Party Product”** means (a) any hardware product, including without limitation a Device, that is not manufactured by or on behalf of eleven-x; and/or (b) standalone software applications that are proprietary to a third party.

## **2. NETWORK ACCESS AND NETWORK SERVICES**

- 2.1 **Right to Access Network with Provisioned Devices.** Once eleven-x has setup Customer with an account, eleven-x will provide the Network Services to Customer and Customer is hereby authorized to access the Network using eleven-x Devices, Third Party Products or Customer supplied Devices, in each case on the terms and conditions contained herein, until the earliest of the end of the Term or the Evaluation Period, as applicable, or the Agreement being terminated in accordance with the terms hereof.
- 2.2 **Network Limitations.** Customer acknowledges and agrees that: (a) the Network has a limited operational range and this range may change depending on environmental conditions and location of Devices (eg; Devices placed in basement limit the operating range); and (b) the Network may be temporarily down or limited due to atmospheric, environmental, capacity constraints, or other events beyond eleven-x’s control. The Network performance may also be temporarily interrupted due to changes or maintenance performed by eleven-x. eleven-x shall use reasonable commercial efforts to provide prior notice where the Network interruptions are planned in advance and have material impact on the Customer. If the Network fails to operate in accordance with its Documentation and Customer has confirmed that the issue is not with its Devices or other infrastructure, Customer shall provide notice of the issue to eleven-x using the support contact information provided by eleven-x, and eleven-x shall use reasonable commercial efforts to resolve the issue within 48 business hours from delivery of the notice.
- 2.3 **Third Party Content on Network.** eleven-x is not a publisher of third party content that can be accessed through the Network Services. eleven-x is not responsible for any content, including information, opinions, advice, statements, or services that are provided by third parties and accessible through the Network Services or any damages resulting therefrom. eleven-x does not guarantee the accuracy, completeness, or usefulness of information that is obtained through the Network Services. eleven-x makes no representations or warranties regarding the provider, scope or nature of the content, or services that will be available through the Network Services.
- 2.4 **No Reverse Engineering.** Customer shall not alter, modify, adapt, create derivative works, deface, disassemble, or Reverse Engineer the Network or Devices or any other eleven-x supplied product or service, or attempt to do so, or permit, acquiesce, authorize or encourage any other person to do so. For the purposes of this Agreement, **“Reverse Engineer”** means any act of reverse engineering,

translating, disassembling, decompiling, decrypting, or deconstructing (including any aspect of “dumping of RAM/ROM or persistent storage”, “cable or wireless link sniffing”, “protocol analysis” or “black box” reverse engineering) data, software (including backend APIs, interfaces and any other data included in or used in conjunction with programs that may or may not technically be considered software code) or hardware or any method of obtaining or converting any information, data or software from one form in to human-readable form.

- 2.5 **Limitations on eleven-x’s Responsibility.** Unless eleven-x expressly agrees otherwise, its sole responsibility is the provision of the Network, and if applicable, the eleven-x Devices and Third Party Products supplied by eleven-x. Customer shall be responsible to provide all other aspects of its system, including without limitation any Devices not provided by eleven-x. In no event shall eleven-x be responsible for the functioning or functionality of any Device not provided by eleven-x or any other portion of Customer’s system. Nothing in this Agreement shall transfer any ownership right, interest or title in or to the Network to Customer and all rights not expressly granted under this Agreement are reserved.

### 3. **DEVICES**

- 3.1 **Sale of Devices.** Eleven-x shall sell to Customer, and Customer shall purchase from eleven-x, the eleven-x Devices and Third Party Products set forth in the Quote in the quantities and at the price specified in the Quote and upon the terms and conditions set forth in this Agreement.

- 3.2 **Delivery.** Eleven-x shall deliver the eleven-x Devices and Third Party Products to Customer’s address as identified on the Quote (the “**Delivery Point**”) using eleven-x’s standard methods for packaging and shipping Devices. All prices for eleven-x Devices and Third Party Products are EXW (Incoterms 2010), Delivery Point. The eleven-x Devices and Third Party Products will be delivered within a reasonable time after the delivery date stated on the Quote, subject to availability.

- 3.3 **Title and Risk of Loss.** Title and risk of loss passes to Customer upon delivery of the eleven-x Devices and Third Party Products at the Delivery Point.

### 4. **PROFESSIONAL SERVICES, SUPPORT AND SERVICE LEVEL AGREEMENT**

#### 4.1 **Professional Services.**

- (a) *Professional Services and Fees.* If agreed to in a Quote, eleven-x, or its authorized services partner, will provide the Professional Services described in the Quote for the fee specified therein.
- (b) *Proprietary Rights.* All software, appliances, methodologies, code, improvements, designs, templates, tools, policies, records, work papers, knowledge, data, know-how, ideas, interfaces, utilities, architectures, concepts, techniques, works of authorship or other intellectual property, written or otherwise, that is: (i) pre-existing property of eleven-x; (ii) developed at any time by eleven-x independently of this Agreement or the Professional Services; or (iii) developed by eleven-x alone or jointly with Customer, whether independently of this Agreement or in relation to this Agreement, that relates to the Professional Services (including any updates, modifications, improvements, and derivative works of the same whether or not created or developed during the course of performance of the Professional Services), including all intellectual property rights therein, shall be the exclusive property of eleven-x.

- 4.2 **Support.** eleven-X will use reasonable efforts to provide support to Customer from 9:00 am to 5:00 pm ET, on eleven-x business days. Customer acknowledges and agrees that notwithstanding the obligation to use reasonable efforts to provide support on business days, there may be times when eleven-x support personnel are not available. eleven-X reserves the right to charge its then-current professional services fees for certain support requests, with the prior approval of the Customer.

4.3 **Service Level Agreement.** eleven-X will use commercially reasonable efforts to ensure that the Network Services will achieve Service Availability (as defined below) of at least 99.9% during each calendar month. In the event that the Network ceases to function substantially in accordance with the Documentation, eleven-X will use commercially reasonable efforts to have the Network operating and functioning substantially in accordance with the Documentation within forty-eight (48) hours. “**Service Availability**” means the number of minutes in a month that the key components of the Network Services are operational as a percentage of the total number of minutes in such month, excluding downtime resulting from (a) scheduled maintenance, (b) force majeure events (as defined in Section 15.3), (c) malicious attacks on the Network or the Network Services, (d) issues associated with Gateways or the Customer’s Devices, or (e) acts or omissions of Customer. eleven-X reserves the right to take the Network Services offline for scheduled maintenance for which Customer has been provided reasonable notice and eleven-X reserves the right to change its maintenance window upon prior notice to Customer.

## 5. **FEES AND PAYMENT TERMS**

5.1 **Fees.** Customer shall pay to eleven-x the fees and Device prices specified in the Quote in accordance with the payment terms set out therein and shall pay the applicable Network Access Fees (specified in the Quote or otherwise in the Agreement) on a monthly basis in advance.

5.2 **Taxes and Other Charges.** Customer shall be responsible for all shipping, insurance and other costs, including, but not limited to, any import duties or other taxes (except for taxes on the income of eleven-x) associated with the supply of products and services under this Agreement.

5.3 **Purchase Orders.** Customer may issue a purchase order or purchase orders to eleven-x for access to the Network to receive the Network Services in relation to the number of Devices set forth in the applicable Quote, and eleven-x’s invoices submitted thereafter with respect to such fees will include references to the applicable purchase order(s). Except as otherwise expressly provided in this Agreement, the Customer purchase order(s) with respect to the Network shall serve as authorization from Customer for eleven-x to proceed with the activation of the Customer on the Network and/or provisioning of the Network Services for the number of Devices specified therein.

5.4 **Purchase Orders Terms.** Unless otherwise agreed to in writing by Customer and eleven-x, the acceptance of any purchase order placed by Customer for the Network Services is expressly made conditional upon Customer’s acceptance of and agreement to the terms and conditions contained in this Agreement and eleven-x agrees to furnish the Network Services only upon the terms and conditions of this Agreement and not on the terms and conditions contained in Customer’s purchase order (other than the information required in Section 5.3 hereof). The terms and conditions on the reverse side of a Customer purchase order are of no force and effect.

5.5 **Billing.** Following receipt of a Customer purchase order eleven-x will bill Customer as set forth in the applicable Quote. Customer expressly acknowledges that some charges incurred in a billing cycle may not appear on the invoice for that billing cycle and that those charges may appear on subsequent invoices.

5.6 **Disputed Invoice.** If Customer disputes an invoice in good faith, Customer must (a) notify eleven-x in writing within thirty (30) days of any such invoice, specifying the nature of the dispute or inaccuracy; and (b) pay any undisputed amounts as provided herein. Both parties will in good faith investigate and attempt to promptly resolve any disputed invoices.

5.7 **Interest on Overdue Amounts.** eleven-x reserves the right to charge interest at 1.5% per month on any undisputed amounts past due. All computations of interest shall be made on the basis of a 360 day year and the actual days elapsed.

5.8 **Suspension for Non-Payment.** eleven-x reserves the right to suspend Customer’s access to the Network and performance of any Network Services if Customer is past due in making payment to eleven-

x under this Agreement or any other agreement between eleven-x and Customer; provided that eleven-x has delivered to Customer written notice that payment is past due and Customer has failed to cure such default within ten (10) business days of receipt of such notice. The foregoing right to suspend shall not arise from non-payment of amounts for which Customer has provided eleven-x with written notice in Section 5.6 above disputing the accuracy of the applicable invoice, so long as Customer has complied with Section 5.6 and such dispute remains unresolved.

## **6. CUSTOMER DATA**

- 6.1 **Ownership.** As between eleven-x and Customer, Customer exclusively owns all rights, title and interest in and to all Customer Data. eleven-x does not acquire any rights, title or ownership interest of any kind whatsoever, express or implied, in any of the Customer Data.
- 6.2 **No Access to Customer Data.** Customer acknowledges that eleven-x does not need, require or have any access to any Customer Data or any Personal Information. If Customer desires eleven-x to receive and access any Customer Data, Customer shall first obtain the written approval of an executive officer of eleven-x which may be withheld by eleven-x in its sole discretion.
- 6.3 **Use of Aggregated and Anonymized Data.** Customer agrees that eleven-x may collect, use, and disclose quantitative data derived from the use of the Network Services for its business purposes, including providing and supporting the Network Services and Devices, to improve the Network Services, develop new products and services, to understand usage, industry analysis, benchmarking, analytics, and marketing. All data collected, used, and disclosed will be in aggregate and anonymized form only and will not identify Customer, its end users, Customer Data, Personal Information, or any third parties utilizing the Network Services.

## **7. PROTECTION OF PERSONAL INFORMATION**

- 7.1 **Customer is Data Controller.** In relation to any Personal Information provided by or through Customer to eleven-x under this Agreement, Customer will at all times remain the Data Controller and will be responsible for compliance with all applicable Data Protection Laws. To the extent that eleven-x processes Personal Information in the course of providing the Network Services, it will do so only in its capacity as a Data Processor acting on behalf of the Customer and in accordance with the requirements of this Agreement.
- 7.2 **eleven-x's Processing of Personal Information.** eleven-x shall only process Personal Information on behalf of and in accordance with Customer's documented instructions and Data Protection Laws for the following purposes: (i) Processing in accordance with the Agreement; (ii) Processing initiated by Customer's end users or customers in their use of the Network; and (iii) Processing to comply with other documented reasonable instructions provided by Customer where such instructions are consistent with the terms of the Agreement.
- 7.3 **Technical and Organizational Safeguards.** In connection with the provision of the Network Services, eleven-x will maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Personal Information and shall secure Personal Information with safeguards appropriate to the level of sensitivity of the Personal Information. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Personal Information by eleven-x personnel except (a) to provide the Network Services and prevent or address service or technical problems, (b) as compelled by law and upon identification of lawful authority, or (c) as expressly permitted in writing by Customer. eleven-x shall, in connection with the provision of the Network Services, comply with Data Protection Laws, as well as eleven-x's [Privacy Policy](#). eleven-x shall ensure that its personnel engaged in the processing of Personal Information are informed of the confidential nature of the Personal Information and have received appropriate training on their responsibilities and eleven-x shall take commercially reasonable steps to ensure the reliability of any eleven-x personnel engaged in the processing of Personal Information.

7.4 **Data Breach.** Upon becoming aware of any unlawful access to any Personal Information, any unauthorized access to such facilities or equipment resulting in loss, disclosure or alteration of any Personal Information, or any actual loss of or suspected threats to the security of Personal Information (including any physical trespass on a secure facility, computing systems intrusion/hacking, loss/theft of a computing device, storage media or printed materials, or other unauthorized access) (each a “**Security Incident**”), eleven-x will promptly notify Customer of the Security Incident (and in all circumstances at least as soon as it reports to similarly situated customers of Customer, but in any event as soon as reasonably possible in the circumstances), and will investigate or perform required assistance in the investigation of the Security Incident and provide Customer with detailed information about the Security Incident. eleven-x will take all commercially reasonable steps to mitigate the effects of the Security Incident, or assist Customer in doing so; and will provide prior notice to Customer of, and will not undertake any, proposed communications to third parties related to a Security Incident involving Personal Information without Customer’s prior written approval, not to be unreasonably withheld, conditioned or delayed. eleven-x will work with and coordinate with Customer on any such notices in any event. eleven-x will comply with this Section 7.4 at eleven-x’s cost unless the Security Incident arose from Customer’s negligent or willful acts or eleven-x’s compliance with Customer’s express written instructions.

7.5 **Subcontracting.** eleven-x may engage third party subcontractors to assist in the provision of the Network Services under this Agreement. Customer authorizes eleven-x to subcontract the processing of Personal Information under this Agreement provided that (i) eleven-x shall maintain a list of such subcontractors and will provide a copy of that list to Customer upon request; and (ii) all subcontractors will be contractually required by eleven-x to abide by substantially the same obligations as eleven-x under this Agreement to protect Personal Information, such that the data processing terms of the subcontract will be no less onerous than the data processing terms set out in this Agreement.

## 8. **CUSTOMER OBLIGATIONS**

8.1 **Trouble Reporting.** Customer will report any trouble with respect to the Network Services to eleven-x only upon reasonable verification that the trouble is due directly to issues with the Network Services and not to elements or conditions within the reasonable control of Customer.

8.2 **Interference.** Customer’s agents, employees, and representatives may not interfere with the Network or the Network Services in a way as to impair the quality of service provided by eleven-x to its customers. Notwithstanding this prohibition, upon discovery of interference by either eleven-x or Customer, the party discovering the interference will promptly notify the other party, and Customer will promptly order the agent, employee, or representative to cease the act(s) constituting the interference. eleven-x, upon notice to Customer, may suspend or terminate the Network Services to Customer and require Customer to take appropriate action to eliminate the use or interference by Customer, the agent, employee or representative.

8.3 **Restrictions on Use.** Customer will not knowingly, after making such inquiries as a reasonable person in Customer’s position would undertake, use or permit others to use the Devices or Network or backend API’s or any portion thereof in isolation or with any other software, digital product, or data in a manner that in eleven-x’s judgment, acting reasonably, interferes with, degrades or adversely affects any software, system, network or data used by any person including eleven-x or its partners or otherwise has a detrimental effect upon the Network, eleven-x or any of their respective customers or products or services, and Customer will immediately cease any such activity upon eleven-x delivering notice of same to Customer. Further, Customer will not use or permit others to use the Devices, or the Network to: commit a crime, or for any tortious purpose; and will not resell or otherwise make or attempt to make available to third parties the right(s) to access the Network granted under this Agreement.

8.4 **Modifications to Devices.** Customer shall not make any modification to a Device that could reasonably be expected to impact the Network or other Devices on the Network. In the event that the Customer does modify a Device, Customer shall immediately notify eleven-x of the modifications made to the Device in sufficient detail to enable eleven-x to determine if it must terminate access to the Network by that Device

to avoid potential damage or any other adverse impact on the Network or on other Devices on the Network, or otherwise have an adverse impact on eleven-x, its partners, customers or the public.

8.5 **Personal Information.** Customer (i) is fully responsible for any unauthorized collection, disclosure, disposal or use of, or access to, personal data in Customer's possession or under Customer's control that relates to an employee's use of a Device including, without limitation, location information; (ii) will implement administrative, physical, and technical safeguards to protect the same; (iii) will maintain an up-to-date privacy policy that fully explains (a) what information it collects about its employees, (b) how it uses that information, (c) how it secures that information, and (d) to whom it discloses that information; and (iv) will comply with all applicable laws, including without limitation data security, privacy, marketing, and consumer protection laws as applicable within Canada, as well as with applicable data protection and privacy laws and regulations. Customer hereby represents and warrants to, and covenants with eleven-x that Customer Data will only contain Personal Information in respect of which Customer has provided all notices and disclosures, obtained all applicable third party consents and permissions and otherwise has all authority, in each case as required by applicable laws, to enable eleven-x to provide the Network Services, including with respect to the collection, storage, access, use, disclosure and transmission of Personal Information, including by or to eleven-x and to or from all applicable third parties.

8.6 **Other Obligations.** In addition to its other obligations contained herein, Customer shall:

- (a) provide commercially reasonable information and assistance to eleven-x to enable eleven-x to deliver the Network Services;
- (b) be responsible for procuring, installing, operating, supporting and maintaining Customer's systems, including computer hardware and software, including browsers, necessary for Customer to access the Network Services (the minimum requirements of which are as stipulated in the Documentation);
- (c) use the Network Services in accordance with the terms of the Agreement and the Documentation;  
and
- (d) comply, at all times, with all applicable legal and regulatory requirements in respect of the use of the Network Services.

## 9. **CONFIDENTIAL INFORMATION**

9.1 **Confidentiality Obligations.** The receiving party undertakes not to disclose any Confidential Information disclosed to it by the other party to any third party other than its responsible employees and contractors who require such disclosure for the proper performance of their duties hereunder, nor use Confidential Information received hereunder for any purpose other than in connection with the activities contemplated by this Agreement. The receiving party undertakes to take all reasonable steps to minimize the risk of disclosure of such Confidential Information by employees and others, including without limitation, ensuring that its employees and contractors are bound by obligations regarding the use and protection of Confidential Information that are no less restrictive than the terms of this Section 9.

9.2 **Exclusions.** Confidential Information does not include any information or materials which the receiving party can demonstrate: (i) is or becomes available to the public through no breach of the receiving party or its employees or contractors of this Agreement; (ii) before its disclosure hereunder, was known to the receiving party without any obligation or duty to hold it in confidence; (iii) is received from a third party who is not bound by an obligation or duty to maintain such information or materials in confidence; (iv) is independently developed by the receiving party without the use or reference to Confidential Information received from the disclosing party; (v) is approved for release by written authorization of the disclosing party, but only to the extent of such authorization and without any disassembly, reverse engineering, or similar undertaking by the receiving party.

- 9.3 **Required Disclosure.** If the receiving party is required by law or regulation to disclose Confidential Information of the disclosing party, the receiving party may do so, but only to the extent and for the purposes of such required disclosure, and only if the receiving party first promptly notifies in writing the disclosing party of the requirement for such disclosure and cooperates with the disclosing party, at the disclosing party's expense, in any efforts by the disclosing party to seek a protective order regarding such proposed disclosure.
- 9.4 **Confidentiality Period.** These restrictions shall apply for three years following the expiry or termination of this Agreement, and in the case of trade secrets shall apply for so long as the Confidential Information in question remains a trade secret.

## 10. **TERM AND TERMINATION**

- 10.1 **Initial Term and Renewals.** This Agreement shall come into effect on the Term Commencement Date specified in the Quote. Except in the case of a Quote for an evaluation of the Network and/or Devices only, which shall terminate upon the expiry of the Evaluation Period, this Agreement shall remain in effect for the period specified in the Quote as the Initial Term (the "**Initial Term**"). The Initial Term will be automatically renewed for the period specified in the Quote as the Renewal Term (the "**Renewal Term**") on the same terms and conditions as those contained herein, unless either party gives to the other party written notice of termination at least thirty (30) days prior to the end of the Initial Term or a Renewal Term. The Initial Term and the Renewal Term are collectively referred to as the "**Term**".
- 10.2 **Termination for Cause.** Either party may terminate this Agreement for cause (i) by delivering written notice of termination to the other party if the other party is in material breach of this Agreement and has not cured such breach within thirty (30) days of receipt of written notice of the breach; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. For the purposes hereof, a material breach by the Customer shall include a breach of Section 2.4 and a failure to pay any amounts payable hereunder when due.
- 10.3 **Effect of Termination.** Upon the termination of this Agreement, Customer shall remain liable for all fees and prices for Devices accrued up to the effective date of termination.
- 10.4 **Survival.** Notwithstanding the termination or expiration of this Agreement, those provisions that by their nature are intended to survive after the Agreement expires or terminates, including without limitation, Sections 1, 2.3, 2.5, 5.6, 9, 11, 13 and 15 shall survive.
- 10.5 **Suspension of Access to Network and Network Services.** In addition to any termination rights of eleven-x pursuant to this Agreement, extraordinary circumstances may require eleven-x to suspend or terminate (where appropriate), as determined in eleven-x's reasonable discretion, Customer's access to and/or use of, or otherwise modify, the Network and the Network Services in order to: (a) prevent material damages to, or material degradation of the integrity of the Network; or (b) comply with any law, regulation, court order, or other governmental order. eleven-x will notify Customer of such suspension or termination action as far in advance of such suspension or termination as reasonably possible, and if such advance notice is not possible, then as soon as possible after such suspension or termination. In the event of a suspension, eleven-x will limit such suspension to that which is minimally required and will promptly restore Customer's access to the Network and the Network Services as soon as the event giving rise to the suspension has been addressed (including by Customer agreeing to accept the risks associated with such suspension) or resolved. Unless caused by a breach of this Agreement by Customer: (i) all fees related to the use of the Network and the Network Services, or other suspended services shall be waived for the duration of the suspension and any such waived fees which have been pre-paid shall be refunded to Customer; and (ii) in the event of a termination in connection with this Section 10.5, Customer shall receive a refund of any and all prepaid fees applicable to the remainder of the then-current Term.



## 11. CUSTOMER INDEMNITIES

Customer will defend eleven-x against any claim, demand, suit or proceeding made or brought against eleven-x by a third party (a) to the extent caused by the negligent or wilful acts or omissions of Customer, its employees, contractors, subcontractors or agents, arising in connection with this Agreement, except to the extent caused by the negligent or wilful acts or omissions of eleven-x; or (b) alleging that Customer Data, or Customer's use of the Network, the Network Services or any Device in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law (a "**Claim Against eleven-x**"), and will indemnify eleven-x for any damages, legal fees and costs finally awarded against eleven-x as a result of, or for any amounts paid by eleven-x under a court-approved settlement of, a Claim Against eleven-x, *provided that* eleven-x (a) promptly gives Customer written notice of the Claim Against eleven-x, (b) gives Customer sole control of the defense and settlement of the Claim Against eleven-x (except that Customer may not settle any Claim Against eleven-x unless it unconditionally releases eleven-x of all liability), and (c) gives Customer all reasonable information and assistance, at Customer's expense.

## 12. WARRANTIES AND DISCLAIMERS

12.1 **Network and Network Services Warranty.** eleven-x warrants that during the Term, the Network and the Network Services will operate substantially in accordance with, and have the functions set out in, the Documentation. eleven-x does not warrant that the Network is free from defects or that the operation of the Network Services will be uninterrupted or error free.

### 12.2 **Hardware Warranty.**

(a) *Eleven-x Devices.* If the Quote includes any eleven-x Device or Third Party Product (collectively "**Hardware**"), eleven-x hereby warrants that the Hardware shall operate in accordance with its Documentation for twelve (12) months from the date of delivery to Customer (the "**Warranty Period**"). During the Warranty Period, eleven-x shall repair or replace, at its option, any Hardware that fails to operate in accordance with its Documentation. In order to obtain the benefit of this warranty, Customer must provide notice to eleven-x using the support contact information provided by eleven-x, obtain a return authorization number from eleven-x and ship the Hardware to eleven-x along with this return material authorization ("**RMA**") number. If eleven-x determines that the defect is the result of something for which eleven-x excludes responsibility under its Documentation for such Hardware, then eleven-x will notify Customer of this determination and Customer may request eleven-x to repair the hardware on a time and materials basis. This section sets out Customer's sole remedy, and eleven-x's sole obligations and liabilities for a breach of the warranty.

(b) *Third Party Products.* In the event that any manufacturer or supplier warranty or guarantee for any Third Party Product extends beyond the Warranty Period, upon expiry of the Warranty Period, eleven-x shall manage third party warranty claims, under the above RMA process for the Customer at no cost and use commercially reasonable efforts to transfer all right and interest in such warranty to the Customer. In the event the third party declines the warranty claim and the Third Party Product is not covered under the above Hardware warranty, eleven-x will quote repair or replacement to the Customer.

12.3 **Warranty Disclaimer.** EXCEPT AS EXPRESSLY SET OUT HEREIN, ELEVEN-X DOES NOT MAKE OR PROVIDE ANY WARRANTIES, CONDITIONS, ENDORSEMENTS, REPRESENTATIONS OR GUARANTEES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONDITIONS, ENDORSEMENTS, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF DURABILITY, MERCHANTABILITY, MERCHANTABILITY, SATISFACTORY QUALITY, ACCURACY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ARISING FROM A STATUTE OR CUSTOM OR A COURSE OF DEALING OR USAGE OF TRADE.

### 13. LIMITATION ON LIABILITY

- 13.1 **Exclusion of Certain Types of Damages.** SUBJECT TO SECTION 13.6 BELOW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING FOR LOSS OF USE, DATA, BUSINESS, LOSS OF GOODWILL, REPUTATION, CREDIT OR PUBLICITY, LOSS OF REVENUE AND INTEREST, PROFITS, OR ANTICIPATED PROFITS AND CLAIMS FOR SUCH DAMAGES BY A THIRD PARTY) RELATED TO OR ARISING OUT OF THIS AGREEMENT, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, WHETHER IN AN ACTION IN CONTRACT (INCLUDING FUNDAMENTAL BREACH), STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR SUCH DAMAGE WAS REASONABLY FORESEEABLE.
- 13.2 **Limitation on Damages.** SUBJECT TO SECTION 13.6 BELOW, ELEVEN-X'S TOTAL AGGREGATE LIABILITY TO THE OTHER FOR ANY CLAIM FOR DAMAGES OR ANY OTHER LIABILITY RELATED TO OR ARISING OUT OF THIS AGREEMENT, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, WHETHER IN AN ACTION IN CONTRACT (INCLUDING FUNDAMENTAL BREACH), STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND WHETHER OR NOT THE PARTY MAKING THE CLAIM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE REASONABLY FORESEEABLE, SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO ELEVEN-X HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE INCIDENT GIVING RISE TO THE CLAIM OR LIABILITY OCCURRED.
- 13.3 **Customer Supplied Devices.** IF ELEVEN-X AGREES TO PROVIDE TO, OR INSTALL ANY CUSTOMER SUPPLIED DEVICES ON BEHALF OF CUSTOMER, ELEVEN-X DOES SO AS A SERVICE TO CUSTOMER, AND CUSTOMER ACKNOWLEDGES AND AGREES, THAT ELEVEN-X HAS NO ABILITY TO CONTROL THE DESIGN OR PERFORMANCE OF SUCH CUSTOMER SUPPLIED DEVICE, THAT ELEVEN-X PROVIDES THE CUSTOMER SUPPLIED DEVICE ON AN "AS IS" BASIS AND THAT NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, ELEVEN-X SHALL HAVE NO LIABILITY FOR THE DESIGN OR PERFORMANCE OF ANY CUSTOMER SUPPLIED DEVICE WHATSOEVER.
- 13.4 **Exclusion of Liability for Specified Persons.** IN NO EVENT WILL EITHER PARTY'S OFFICERS, DIRECTORS OR EMPLOYEES HAVE ANY PERSONAL LIABILITY UNDER OR IN RELATION TO THIS AGREEMENT. THE PERSONS MENTIONED IN THIS PROVISION SHALL BE DEEMED TO BE THIRD PARTY BENEFICIARIES OF THIS AGREEMENT SOLELY FOR THE PURPOSES OF OBTAINING THE BENEFIT OF THIS PROVISION.
- 13.5 **Application of Limitations, Exclusions and Disclaimers.** THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET OUT IN THIS AGREEMENT SHALL APPLY: (A) WHETHER AN ACTION, CLAIM OR DEMAND ARISES FROM A BREACH OF WARRANTY OR CONDITION, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER KIND OF CIVIL OR STATUTORY LIABILITY CONNECTED WITH OR ARISING OUT OF THIS AGREEMENT; AND (B) TO EACH PARTY AND TO EACH PARTY'S AFFILIATES.
- 13.6 **EXCLUSIONS FROM LIMITATIONS.** NOTWITHSTANDING ANY OTHER PROVISION, THE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SET FORTH IN THIS AGREEMENT SHALL NOT APPLY TO: (A) ANY BREACH OF SECTIONS 2.1, 2.2 OR 2.3 HEREOF; (B) ANY BREACH OF THE CONFIDENTIALITY OBLIGATIONS CONTAINED HEREIN; (C) ANY VIOLATION OR INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ONE PARTY BY THE OTHER PARTY; (D) THE PAYMENT OF AMOUNTS DUE TO ELEVEN-X UNDER THIS AGREEMENT; (E) CLAIMS RELATING OR BASED ON FRAUD OR GROSS NEGLIGENCE OF A PARTY; (F) A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, OR (G) IF AND TO THE EXTENT THAT THE LAWS OF A COMPETENT JURISDICTION REQUIRE LIABILITIES BEYOND AND DESPITE THESE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS.

## 14. ASSIGNMENT

Customer may not assign any of its obligations or rights hereunder to any party without the prior written consent of eleven-x. For clarity, (a) eleven-x may assign its right to receive payment of payments hereunder upon notice to the Customer, and (b) eleven-x shall have the right to assign this Agreement in conjunction with: (i) the transfer or sale of a substantial portion of its business or an entire business unit to which this Agreement relates; or (ii) the sale or transfer of the voting stock or shares of such party pursuant to a purchase, merger, amalgamation, consolidation or other reorganization resulting in a change in its effective control, without any requirement to provide notice to or to obtain the consent of the Customer.

## 15. GENERAL

- 15.1 **Publicity.** eleven-x reserves the right to make announcements, press releases, publications, presentations and other public statements that reference Customer as a customer of eleven-x, without Customer's prior written approval, provided that eleven-x does not disclose Customer's Confidential Information in the course of such publicity or misrepresent Customer's relationship with eleven-x. Customer agrees that, upon request by eleven-x, it will provide eleven-x with a testimonial that eleven-x may use for the purposes of marketing its products and services.
- 15.2 **Feedback.** Customer agrees to provide eleven-x with feedback on the Network, Network Service and Devices as reasonably requested by eleven-x and hereby agrees that eleven-x shall own all such feedback, including any associated intellectual property rights; and further agrees that it shall sign such further documents and take such further steps as eleven-x indicates are reasonably necessary to give effect to this provision.
- 15.3 **Force Majeure.** Either party's performance of its obligations hereunder (except for the Customer's obligation to pay any amount due and payable hereunder at the time of the occurrence of the force majeure event) may be impeded by events outside of such party's reasonable control (a "force majeure event"), including acts of God, floods, fires, hurricanes, earthquakes, acts of war or terrorism, epidemics and pandemics, or labour actions (other than strikes or other labour actions by the party's own employees), or for any of the foregoing which affect any of eleven-x's suppliers or contractors and for which no alternate source of supply is available to eleven-x on commercially reasonable terms. Failure to perform such obligations due to a force majeure event will be excused, provided that the affected party promptly notifies the other party and resumes performance as soon as practicable. In the event eleven-x is unable to deliver the Network Services as a result of a force majeure event, Customer shall not be obligated to pay eleven-x for the affected Network Services for so long as eleven-x is unable to deliver the affected Network Services. Notwithstanding the foregoing, if due to a force majeure event the performance of eleven-x's obligations under this Agreement is delayed or interrupted for longer than sixty (60) days, Customer may terminate this Agreement or any outstanding purchase order then in effect upon written notice to eleven-x.
- 15.4 **Governing Law.** Unless otherwise specified in this Agreement, this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The *United Nations Convention on Contracts for the International Sale of Goods* shall not apply to this Agreement or to any dispute arising therefrom. The courts of the Province of Ontario shall have exclusive jurisdiction to hear any matter arising in connection with this Agreement.
- 15.5 **Language of Agreement.** The parties hereto confirm that they have requested that this agreement and all related documents be drafted in English. Any French translation hereof has been provided for information purposes only and does not have any legal value nor create any contractual relationship between the parties. Les parties aux présentes ont exigé que la présente entente et tous les documents connexes soient rédigés en anglais. Toute traduction de celle-ci est non-officielle, est fournie à des fins d'information seulement et ne crée aucun lien contractuel entre les parties.

- 15.6 **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter thereof. It supersedes all requests for quotes, discussions, correspondence or communication of any nature relating to the subject of this Agreement, all of which shall no longer be of any force or effect.
- 15.7 **Amendments.** Except as expressly permitted herein, this Agreement may not be amended except in a writing signed by eleven-x and Customer.
- 15.8 **Severability.** In the event that any provision or part thereof is determined by a court of competent jurisdiction to be unenforceable, such provision, or part thereof, shall be deemed to be severed from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect and shall be binding upon the parties hereto as though such severed provision had not formed part of this Agreement.
- 15.9 **No Waiver.** No waiver by either party of any breach of any term or condition of the terms and conditions set out herein by the other party shall be deemed to constitute a waiver of any other breach, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy hereunder operate as a waiver thereof. No waiver given by a party hereunder shall be binding upon such party unless expressed in writing and signed by such party.

***END OF TERMS AND CONDITIONS***

**Last update:** October 22, 2020