

ELEVEN-X DASHBOARD

TERMS OF SERVICE

BY ACCEPTING THESE TERMS OF SERVICE, EITHER BY: A) ACCEPTING THE TERMS OF SERVICE ONLINE, B) SIGNING THE QUOTE (AS DEFINED BELOW) WHICH REFERENCES THE TERMS OF SERVICE, OR C) USING, OR ACCESSING THE SERVICE AFTER BEING MADE AWARE OF THESE TERMS OF SERVICE, THE CUSTOMER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTOOD ALL OF THE PROVISIONS, AND HAS THE AUTHORITY TO AGREE TO, AND IS CONFIRMING THAT IT IS AGREEING TO, COMPLY WITH AND BE BOUND BY, ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN, TOGETHER WITH ANY QUOTE AND INCLUDING THE [ELEVEN-X PRIVACY POLICY](#), ALL OF WHICH ARE INCORPORATED BY REFERENCE AND DEEMED TO BE PART OF THE ENTIRE AGREEMENT ENTERED INTO BETWEEN ELEVEN-X AND THE CUSTOMER. IF, AFTER READING THE TERMS OF SERVICE, THE CUSTOMER DOES NOT ACCEPT OR AGREE TO THE TERMS AND CONDITIONS CONTAINED HEREIN, THE CUSTOMER SHALL NOT USE, OR ACCESS THE SERVICE.

IF YOU ARE AN AGENT OR EMPLOYEE OF THE CUSTOMER THEN YOU HEREBY REPRESENT AND WARRANT THAT: (I) THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS DULY AUTHORIZED TO ACCEPT THIS AGREEMENT ON CUSTOMER'S BEHALF AND TO BIND THE CUSTOMER, AND (II) THE CUSTOMER HAS FULL POWER, CORPORATE OR OTHERWISE, TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS HEREUNDER.

1. **Definitions**

1.1 In this Agreement:

- (a) **"Agreement"** means the Quote and these Terms of Service.
- (b) **"Customer"** means the customer named in the applicable Quote.
- (c) **"Documentation"** means the written or electronic documentation, including user manuals, reference materials, installation manuals and/or release notes, if any, that eleven-x generally makes available to subscribers to the Service, as the case may be.
- (d) **"eleven-x"** means eleven-x Corporation.
- (e) **"Malicious Code"** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.
- (f) **"Quote"** means (i) an electronic form provided by eleven-x on its website for ordering Service Subscriptions, or (ii) a written document executed by eleven-x and Customer in respect to Customer's purchases of Service Subscriptions from eleven-x.
- (g) **"Service"** means eleven-x's cloud-based eleven-x Dashboard for which Customer is granted rights of access and use in accordance with this Agreement, including any ancillary services available in connection therewith, as such Service may be updated from time to time by eleven-x in its sole discretion.
- (h) **"Subscription"** means the right granted by eleven-x to Customer to access and use the Service in accordance with these Terms of Service and the applicable Quote, for the Subscription Term specified in the applicable Quote.
- (i) **"Subscription Fee"** means the fee payable by Customer for a Subscription as set out in the Quote.



- (j) **“Subscription Term”** means the period of time that Customer is authorized by eleven-x to access and use the Service (including the Documentation).
- (k) **“Support Services”** means the technical support services for the Service provided by eleven-x as described in Section 4 hereof.
- (l) **“User”** means an employee or contractor of Customer to whom Customer (or eleven-x at Customer’s request) has supplied a user identification and password.

2. **The Service**

- 2.1 **Right to Use the Service.** Subject to the terms and conditions of this Agreement (including the applicable Quote) and payment of the applicable Subscription Fees, eleven-x hereby grants to Customer a non-exclusive, worldwide, non-transferable, non-sublicensable, internal right to (a) access and use (and to permit Users to access and use) the Service, solely during the Subscription Term; and (b) access and use, and to permit Users to access and use, the Documentation as reasonably necessary to support the Customer’s permitted use of the Service during the Subscription Term.
- 2.2 **Reservation of Rights.** eleven-x and its licensors own and shall retain all right, title and interest (including without limitation all patent rights, copyrights, trade-mark rights, trade secret rights and all other intellectual property rights), in and to the Service and Documentation and any copies, corrections, bug fixes, enhancements, modifications or new versions thereof, all of which shall be deemed part of the Service and subject to all of the provisions of this Agreement. Customer shall keep the Service and Documentation free and clear of all liens, encumbrances and/or security interests. Subject to the limited rights expressly granted in this Agreement, eleven-x reserves all rights, title and interest in and to the Service and Documentation. No rights are granted to Customer pursuant to this Agreement other than as expressly set forth in this Agreement.
- 2.3 **Restrictions.** Customer shall not (and shall not allow Users or any third party to): (a) possess, download or copy the Service or any part of the Service, including but not limited any component which comprises the Service, but not including any output from the Service; (b) knowingly interfere with service to any of eleven-x’s users, host or network, including by means of intentionally submitting a virus, overloading, flooding, spamming, mail bombing or crashing; (c) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Service and/or Documentation, except to the extent that enforcement is prohibited by applicable law; (d) circumvent any timing restrictions that are built into the Service; (e) sell, rent, lend, transfer, distribute, license, or grant any rights in the Service or Documentation in any form to any person without the written consent of eleven-x; (f) remove any proprietary notices, labels, or marks from the Service or Documentation; or (g) create any **“links”** to or **“frame”** or **“mirror”** of the Service or any portion thereof.
- 2.4 **Rights in Derivative Data.** Customer acknowledges and agrees that the Service compiles, stores and uses aggregated data and system usage, analytics and diagnostic information to monitor and improve the Service and for the creation of new products. eleven-x may aggregate and anonymize such information and data and create anonymized, aggregated data records and use such anonymized and aggregated data, and all modifications thereto and derivatives thereof (**“Derivative Data”**) to improve the Service, develop new products and services, to understand usage, and for any other business purpose, provided that Derivative Data does not contain any personal information and is no longer associated with Customer or a User.

3. **Account Activation**

- 3.1 **Account.** Customer is required to open an account with eleven-x (an **“Account”**) in order to use the Services. Customer shall ensure that such account activation information is accurate and complete



and that such information remains current throughout the Subscription Term. Customer is fully responsible for all activity that occurs in Customer's Account, including for any actions taken by its Users. eleven-x may approve or reject an application to register for the Service in its sole discretion. If eleven-x rejects an application, it is not obliged to provide the Customer with its reasons for doing so. If eleven-x approves an application to open an Account, it will notify the Customer by email, and the Customer will then be able to access and use the Service.

- 3.2 Passwords. Customer is responsible for keeping all Account passwords secure. eleven-x will not be liable for any loss or damage caused by or arising from a failure by Customer or its Users to maintain the security of the Customer's Account and password.

4. **Support Services**

During the Subscription Term, eleven-x, or its authorized support partner, will use reasonable efforts to provide Support Services 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. eleven-x shall not be required to provide Support Services if Customer is in default of any of Customer's obligations under this Agreement.

5. **Customer Responsibilities**

- 5.1 Users. Customer is responsible for all activities that occur in User Accounts and for its and its Users' compliance with this Agreement. Customer shall: (a) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all data, if any, uploaded to the Service and the means by which Customer acquired data; (b) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify eleven-x promptly of any such unauthorized access or use; and (c) use the Service only in accordance with the Documentation and applicable laws and government regulations.

- 5.2 Equipment. Customer is solely responsible for acquiring, servicing, maintaining and updating all equipment, computers, software and communications services (such as Internet access) that are required to allow Customer to access and use the Service and for all expenses relating thereto. Customer agrees to access and use, and shall ensure that all Users access and use, the Service in accordance with any and all operating instructions or procedures that may be issued by eleven-x from time to time.

- 5.3 Feedback. Customer may provide reasonable feedback to eleven-x including, but not limited to, suitability, problem reports, suggestions and other information with respect to the Service ("**Feedback**"). Customer hereby grants to eleven-x a fully paid-up, royalty-free, worldwide, assignable, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Service, Documentation and any other eleven-x products or services, or for any other purposes, any Feedback provided by Customer or its Users.

6. **Fees and Payment**

- 6.1 Subscription Fees. Customer shall pay all Subscription Fees specified in each Quote. All Subscription Fees are quoted and payable in the currency specified in the Quote. Except as otherwise specified herein or in an Quote, Subscription Fees are non-cancellable and non-refundable.

- 6.2 Taxes. Subscription Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, HST, GST, sales, value-added, use or



withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If eleven-x has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, eleven-x will invoice Customer and Customer will pay that amount unless Customer provides eleven-x with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, eleven-x is solely responsible for taxes assessable against it based on its income, property and employees.

- 6.3 Invoicing and Payment. Subscription Fees will be invoiced in advance and otherwise in accordance with the relevant Quote. Unless otherwise stated in the Quote, charges are due net thirty (30) days from the invoice date. Customer is responsible for maintaining complete and accurate billing and contact information with eleven-x.
- 6.4 Overdue Charges. Any payment not received from Customer by the due date may accrue (except with respect to charges then subject to a reasonable and good faith dispute), at eleven-x's discretion, late charges at the rate of 1.5% of the outstanding balance per month (19.57% per annum), or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.
- 6.5 Suspension for Non-Payment. eleven-x may immediately suspend Customer's Subscription to use the Service if Customer fails to make any payment due in respect of the Service and does not cure such non-payment within ten (10) business days after receiving notice of such failure. Any suspension of the rights hereunder by eleven-x under the preceding sentence shall not excuse Customer from its obligation to make all payment(s) under the Agreement.
- 6.6 Payment Disputes. eleven-x will not exercise its rights under Sections 6.4 or 6.5 hereof if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

7. Limited Warranties and Disclaimers

7.1 Limited Warranties. eleven-x hereby represents and warrants to Customer that:

- (a) During the Subscription Term the Service will perform materially in accordance with the Documentation therefor;
- (b) the Service will not contain any Malicious Code;
- (c) it owns or otherwise has sufficient rights in the Service and Documentation to grant to Customer the rights to access and use the Service and Documentation granted herein.

7.2 General Warranty Disclaimers. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED HEREIN, THE SERVICE AND THE PROFESSIONAL SERVICES ARE PROVIDED "**AS IS**" AND "**AS AVAILABLE**" AND COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, AND THERE ARE NO CONDITIONS, ENDORSEMENTS, UNDERTAKINGS, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, (INCLUDING WITHOUT LIMITATION ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF QUALITY, PERFORMANCE, RESULTS, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF THE TRADE) AS TO, ARISING OUT OF OR RELATED TO THE FOLLOWING: (I) THIS AGREEMENT; (II) THE SERVICE; AND/OR (III) SECURITY ASSOCIATED WITH THE TRANSMISSION OF INFORMATION OR CUSTOMER DATA TRANSMITTED TO OR FROM ELEVEN-X VIA THE SERVICE. ELEVEN-X DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET ANY OR ALL OF CUSTOMER'S PARTICULAR REQUIREMENTS, THAT THE SERVICE WILL OPERATE ERROR-FREE OR UNINTERRUPTED OR THAT ALL PROGRAMMING ERRORS IN THE SOFTWARE CAN BE



FOUND IN ORDER TO BE CORRECTED. COMPANY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

7.3 Internet Connectivity Disclaimer. eleven-x makes the Service available for access via the Internet. Customer shall provide, at Customer's own expense, all necessary hardware, applications and Internet connectivity necessary to access the Service over the Internet. Customer is responsible for and shall ensure that Customer's computer equipment and an internet connection meets the minimum specifications published by eleven-x in the Documentation and updated from time to time on eleven-x's website, and Customer shall periodically update Customer's computer equipment and/or Internet connection to meet such minimum specifications. Customer hereby acknowledges that the Service may be interrupted due to (a) website downtime for scheduled maintenance at eleven-x's sole discretion, or (b) interruptions in Internet connectivity or other website downtime caused by circumstances beyond eleven-x's control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, computer or telecommunications failures, or delays involving hardware or software not within eleven-x's control or network intrusions. Customer hereby acknowledges and agrees that eleven-x shall not, in any way, be liable for, or have responsibility with respect to, any such service interruptions and releases eleven-x from any claims relating thereto.

8. Limitation of Liability

8.1 Exclusion of Indirect and Consequential Damages. SUBJECT TO SECTION 8.3 HEREOF, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS).

8.2 Limitation of Liability. SUBJECT TO SECTION 8.3 HEREOF, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR RELATING TO THE SUBJECT MATTER HEREOF FOR ALL CLAIMS, COSTS, LOSSES AND DAMAGES EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY.

8.3 Certain Damages Not Excluded or Limited. NOTWITHSTANDING THE FOREGOING, NO LIMITATION OF EITHER PARTY'S LIABILITY SET FORTH IN THIS AGREEMENT SHALL APPLY TO (I) DAMAGES ARISING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, (II) DAMAGES ARISING FROM INFRINGEMENT OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS; (III) ANY CLAIMS FOR NON-PAYMENT, (V) FRAUD OR WILLFUL MISCONDUCT, OR (IV) BODILY INJURY OR DEATH.

8.4 Application of Exclusions and Limitations. The foregoing limitations and exclusions of liability shall apply even if a party had been advised of the possibility of any such costs, losses or damages or knew or ought to have known of such costs, losses or damages and shall apply regardless of whether the action arose in contract, including, without limitation, from a fundamental breach, or breach of a condition, fundamental term or warranty, or in tort (including, without limitation negligence) or otherwise. The foregoing provisions limiting the liability of eleven-x shall also apply to its officers, directors, employees, and agents as trust provisions for the benefit of such officers, directors, employees, and agents and shall be enforceable by such persons as trust beneficiaries.

9. Term

9.1 Term. Service Subscriptions commence on the earlier of the start date specified in the relevant Quote and continue for the Subscription Term specified therein unless terminated earlier as provide for in this Agreement. Unless otherwise agreed upon in the applicable Quote, Subscriptions shall

automatically renew for additional periods of one (1) year at the list price then in effect at the time of renewal unless Customer gives eleven-x written notice of non-renewal at least sixty (60) days prior to the end of the applicable Subscription Term.

- 9.2 Termination. A party may terminate this Agreement or a Service Subscription for cause (i) upon 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, 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.

10. **Export Restrictions; US Government Licenses**

Customer hereby represents and warrants that Customer is not located in, under the control of, and is not a national or resident of, any country to which the export of the Service or related information would be prohibited by the laws and/or regulations of Canada and/or the United States. Customer shall comply with the export laws and regulations of Canada and the United States that are applicable to the Service and related information and Customer shall comply with any local laws and/or regulations in Customer's jurisdiction that may impact Customer's right to export, import, or use the Service or related information, and Customer represents and warrants that Customer has complied with any such applicable laws and/or regulations. Notwithstanding any agreement with a third-party or any provision of law, regulation or policy, if Customer is an agency of the government of the United States of America, then Customer's rights in respect of the Service and Documentation shall not exceed the rights provided under this Agreement, unless expressly agreed upon by eleven-x in a written agreement between Customer and eleven-x.

11. **Assignment**

Customer may not assign any of its rights or obligations hereunder, whether by operation of law, change of control or otherwise, without the prior written consent of eleven-x. Notwithstanding the foregoing, eleven-x may assign this Agreement in its entirety without consent of the Customer, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets to which this Agreement relates. Any attempt by Customer to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12. **General**

- 12.1 Force Majeure. Neither eleven-x nor Customer shall be deemed to be in default of any provision of this Agreement (other than Customer's obligation to pay amounts due to eleven-x hereunder) for any failure in performance resulting from acts or events beyond its reasonable control, including acts of God, acts of civil or military authority, civil disturbance, strikes, fires or other catastrophes.

- 12.2 Waiver. The failure of a party to claim a breach of any term of this Agreement shall not constitute a waiver of such breach or the right of such party to enforce any subsequent breach of such term. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

- 12.3 Unenforceable Provisions. If any provision of this Agreement is held to be unenforceable or illegal, such decision shall not affect the validity or enforceability of such provisions under other circumstances or the remaining provisions of this Agreement and this Agreement shall be reformed only to the extent necessary to make it enforceable under such circumstances.

- 12.4 Governing Law. This Agreement shall be governed by the laws of the Province of Ontario, without regard to its conflict of law principles. The courts located in the Province of Ontario shall have

exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement and each party hereby consents to the exclusive jurisdiction of such courts. The application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement is expressly excluded and does not apply to this Agreement.

- 12.5 Entire Agreement. This Agreement is the entire agreement between Customer and eleven-x in respect to the subject matter hereof, superseding any other agreements or discussions, oral or written, and may not be changed except by a written license agreement with eleven-x or a distributor of eleven-x.
- 12.6 Purchase Orders etc. The terms and conditions of this Agreement shall prevail over any pre-printed terms on any quotes, orders, purchase orders, or purchase order acknowledgements, and shall prevail over any other communications between the parties in relation to the Service and Documentation and the right to access and use the Service and Documentation shall be deemed to be pursuant to the terms and conditions of this Agreement, unless Customer has executed a written license agreement with eleven-x or a distributor of eleven-x, in which case the Service and Documentation shall be deemed to have been licensed pursuant to the terms and conditions of such written license agreement.
- 12.7 Remedies. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 12.8 Amendments. EXCEPT WHERE PROHIBITED BY APPLICABLE LAW OR AS OTHERWISE AGREED IN THE ORDER FORM, ELEVEN-X MAY UNILATERALLY AMEND THESE TERMS OF SERVICE, IN WHOLE OR IN PART (EACH, AN “**AMENDMENT**”), BY: (I) GIVING CUSTOMER PRIOR NOTICE OF SUCH AMENDMENT; OR (II) POSTING NOTICE OF SUCH AMENDMENT ON THE WEBSITE. UNLESS OTHERWISE INDICATED BY COMPANY ANY SUCH AMENDMENT WILL BECOME EFFECTIVE AS OF THE DATE THE NOTICE OF SUCH AMENDMENT IS PROVIDED TO CUSTOMER OR IS POSTED ON THE WEBSITE (WHICHEVER IS THE EARLIER).
- 12.9 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.

Last update: October 27, 2020