

Originally Effective : 01-Oct-2013

This Agreement is entered into between:

- Nexus Internet Services, hereinafter called "NEXUS,"
- and any person or corporation, individual or professional, private or public, wishing to receive one or more services from NEXUS, and hereinafter called the "Customer".

#### DEFINITIONS:

**Customer:** Person or corporation, signing on to NEXUS' general and specific Agreement terms and conditions in connection with any Service purchased from NEXUS.

**Customer ID:** Customer Account for any Service purchased from NEXUS and giving access to the management interface.

**Diagnostic:** Research undertaken by NEXUS at the Customer's request to identify a malfunction problem of the Service.

**Documentation:** NEXUS makes available to its Customer a set of tools and documentation accessible on NEXUS' website.

**Facilities Management:** Specific service performed by NEXUS at the request of the Customer and billed to the Customer.

**Incident:** Problem or malfunction encountered with the Service and under the responsibility of NEXUS. The following are considered problems which NEXUS is liable for: material, network, electrical problems...

**Management Interface:** "Manager" space accessible to the Customer on NEXUS' website upon identification by entering Customer ID and corresponding password.

**NEXUS Site:** NEXUS' website accessible at <http://www.nexus-iservices.com/>

**Personal Data:** Last name, first name, phone number, address, e-mail address, and all other information disclosed by the Customer in the course of its relationship with NEXUS as well as any information which may be transmitted by NEXUS to the judicial authorities.

**Service:** Means all the services provided by NEXUS in compliance with the Service agreements entered into by the Customer.

**Technical Support:** Department in charge of advising the Customer regarding the installation and use of the Service by supplying the required documentation.

#### SECTION 1: PURPOSE

The Customer acknowledges that he/it has checked the suitability of the Service to his/its needs and that he/it has received from NEXUS all the information and advice needed to enter into this agreement knowledgeably and willingly.

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The purpose of this Agreement is to define the legal, technical and financial conditions of NEXUS' agreement with the Customer.

These General Terms and Conditions of Service, to which will be added, as applicable, specific terms and conditions and/or schedules proposed by NEXUS, shall be applicable, at the exclusion of all other terms and conditions, including the terms and conditions of the Customer, to all the Customer's orders of service from NEXUS.

The NEXUS services offered gratuitously are also governed by these General Terms and Conditions of Service.

## **SECTION 2: NEXUS' OBLIGATIONS**

NEXUS agrees to use all due care and due dispatch to provide a quality Service in compliance with professional standards and the state of the art. NEXUS only has an obligation of means.

## **SECTION 3: NEXUS' LIABILITY**

NEXUS shall not be liable in the circumstances described below.:

If the performance of this Agreement, or of any of NEXUS' obligations under such Agreement, is barred, limited or disrupted due to a fire, an explosion, a failure in the transmission networks, the collapse of the facilities, an epidemic, an earthquake, a flood, a power failure, a war, an embargo, a statute, an injunction, a request or demand from a government, a strike, a boycott, a withdrawal of authorization from the telecommunications operator, or any other circumstances beyond NEXUS' reasonable control ("Force Majeure event"), then NEXUS, subject to a prompt notice to the Customer, shall be relieved from performing his/its obligations within the limits of this inability to act, limitation or disruption, and the Customer shall be likewise relieved from performing his/its obligations to the extent that his/its obligations pertain to the performance of the obligations thus barred, limited disrupted, subject to such Party thus affected using its best efforts to avoid or mitigate such failure to perform and to both Parties acting promptly once such causes cease to exist or are eliminated. The Party affected by a Force Majeure event shall keep the other Party informed on a regular basis via electronic mail regarding the prognosis of eliminating such Force Majeure event or of recovering from it.

Should the effects of this Force Majeure last more than thirty (30) days, as of the date of notice regarding such event from one Party to the other, the Agreement may be terminated as a matter of right, at the request of one of the Parties, without any right to compensation for either of them.

Or NEXUS shall not be liable the Customer causes, for example:

- a deterioration of the application;
- the misuse of the terminals by the Customer or his/its clientele, a fault, negligence, omission or failure on his/its part, or non-compliance with the advice given;
- the disclosure or illegal use of the password confidentially given to the Customer ;

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- fault, negligence or omission of a third party over whom NEXUS has no control or supervision power;
- a request for a temporary or permanent interruption of the Service from a competent administrative or judicial authority, or upon notice from a third party; or
- the total or partial destruction of information transmitted or stored resulting from errors directly or indirectly attributable to the Customer.

The Customer acknowledges that NEXUS authorizes other Service users to install their websites and servers in his/its facilities. NEXUS shall not be liable in any way whatsoever for damages, costs or losses incurred by the Customer (or by his/its own customers) and caused by another Service user's act, material or failure to act, NEXUS' liability in contract, in tort (including negligence) or by statute, or otherwise, to the Customer (or his/its own customers), concerning performance or non-performance, as applicable, of any obligation created under this Agreement, with regard to any claim, shall be limited and shall not, in the aggregate, exceed the total fees paid by the Customer to NEXUS under this Agreement in the three- (3-) month period immediately preceding the date on which the claim arose. In no event shall NEXUS be liable for any lost profits, or any special, indirect, consequential, incidental or punitive damages.

NEXUS does not by default offer any backup for the hosted data. It is therefore the Customer's responsibility to take all required steps in order to back up his/its data in the event of a loss or deterioration of such data for any reason whatsoever, including reasons not explicitly mentioned hereunder.

#### **SECTION 4: CUSTOMER'S OBLIGATIONS AND LIABILITIES**

The Customer agrees to use his/its power, authority and capabilities to enter into this Agreement and perform his/its obligations as provided hereunder.

The Customer agrees to communicate to NEXUS his/its accurate and updated contact information upon the creation of the Customer Account and each time such information is modified.

NEXUS reserves the right to request supporting documentation from the Customer to ensure the accuracy of their information.

The Customer is solely and exclusively responsible for the passwords that are required in order to use the Service.

Customer explicitly agrees not to disrupt or contravene such additional monitoring and access as NEXUS may install into servers for internal management.

NEXUS is not responsible for the illegal or fraudulent use of passwords made available to the Customer. The passwords provided are considered confidential. The Customer shall be solely liable, at the exclusion of NEXUS, in the event of any suspicion that the passwords provided have been disclosed, whether intentionally or not.

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The Customer alone shall bear all the consequences of a malfunction of the Service resulting from the use by his/its staff or by any other person to whom the Customer has provided his/its password(s). The Customer shall also bear all the consequences resulting from the loss of such password(s).

The Customer hereby agrees to comply with all legal and regulatory requirements in force, and, more specifically, with those pertaining to software, files, freedom and intellectual property, as well as the rights of third parties. The Customer also agrees to take out all required insurance policies from a well-known solvent insurer, in order to cover all damages attributable to the Customer in connection with this Agreement or the performance thereof.

The Customer hereby fully accepts all legal obligations arising from the administration of their Services. NEXUS cannot be held liable or investigated in this respect for any reason, especially in the event of a violation of the laws or regulations applicable to the Customer's Services. Non-compliance by the Customer with the aforementioned points detailed in NEXUS' Special Conditions, and especially with any activity likely to generate a civil and/or penal liability will give NEXUS the right to immediately disconnect and/or stop the Customer's Services without prior notice, and to immediately and lawfully terminate this Agreement, without prejudice to the right to all damages and interest that NEXUS may claim.

The Customer undertakes to settle directly with a claimant, any sum demanded from NEXUS by such claimant.

Moreover, the Customer undertakes to intervene at the request of NEXUS in any proceedings brought against NEXUS and shall indemnify and hold harmless NEXUS from any and all such third party claims. Consequently, the Customer undertakes to address any third party complaint and/or procedure, regardless of form, object or nature, that is brought against NEXUS and is related to the Customer's obligations under this Agreement.

The Customer hereby agrees to inform NEXUS within 48 hours of any changes in his/its situation, and within 24 hours, of any lost passwords.

Whenever contacting NEXUS, the Customer agrees to clearly describe his/its request in compliance with the terms of use.

When suspicious activity (SPAM violation of copyright, Attack, Phishing, illegal content, DoS PortScan ...) is detected by NEXUS or reported by a third party, NEXUS may contact the Client by email (and optionally attach a copy of the complaint received). It is expected that the Client respond to the notification within the time limit (24, 48 or 72 hours depending on the nature of the case) to provide its comments and intentions. Failure to respond could result in the suspension / termination of service.

## **SECTION 5: TECHNICAL SUPPORT**

### **5.1 Tools and Documentation provided by NEXUS**

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NEXUS makes available to the Customer a set of tools and documentations which are accessible on the NEXUS Site.

This page also includes contact information to reach the NEXUS staff.

On the same page, NEXUS makes available to its Customer:

- a set of documentation and technical guides, designed to provide a better understanding and an easier use of the Service (“Documentation”);
- communication tools to find out about the condition of NEXUS’ facilities;
- interfaces to view in real time NEXUS’ network;
- contact information to reach NEXUS’ Technical Support;
- an Incident Reporting Form; and
- the Facilities Management’s contact information to obtain complementary services (facilities management, specific intervention ...) which will be billed separately.

#### **Preliminary checks:**

In the event of Service malfunction, it is the Customer’s responsibility to consult the Documentation and perform the technical tests suggested by NEXUS on the NEXUS Site in the contact tools. If the malfunction problem encountered persists, the Customer shall have the responsibility of reporting the Incident to NEXUS.

#### **5.2 Incident Reporting Procedure:**

In order to report an Incident, the Customer shall complete the form designed for such purpose on the website, then go to the Customer’s Management Interface where earlier tickets of electronic exchanges between the Customer and NEXUS may be found.

The Customer shall complete the form on the NEXUS Site and attempt to provide as much information as possible on the problem encountered to help with the Diagnostic.

To this end, the Customer explicitly authorizes NEXUS and its staff to connect to the Customer’s Service and to perform any operation required in connection with the Diagnostic, with respect to both the hardware and the software. NEXUS reserves the right to reject any intervention in this regard if NEXUS notices in its research work that the Customer uses the Service in breach of NEXUS’ General and Specific Terms and Conditions or of laws and regulations in force.

All the exchanges between the parties, and more particularly the electronic exchanges and telephone conversations, shall reflect Customer’s assent to NEXUS’ intervention.

#### **5.3 Incident Takeover and Development of Diagnostic**

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NEXUS shall, in connection with the Incident reporting procedure, carry out a Diagnostic in order to determine the origin and cause of the malfunction problem. If, during the Diagnostic process, NEXUS concludes that the malfunction is an Incident, namely that it is a problem under the responsibility of NEXUS, the costs related to the Diagnostic process shall be entirely borne by NEXUS, in compliance with the Agreement terms and conditions applicable to the Service.

Alternatively, if the Diagnostic reveals that NEXUS does not bear responsibility for the Incident encountered by the Customer or that its existence cannot be confirmed the time spent by NEXUS on carrying out the Diagnostic will be invoiced to the Customer at a flat rate available for consultation noted on NEXUS' Website.

In the event of NEXUS being unable to identify the origin or the cause of the incident, the investigations relating to production of the Diagnostic will not be invoiced to the Customer if NEXUS is unable to identify the cause of the dysfunction, or if NEXUS is unable to provide the customer with a quotation for the correction of the malfunction.

Likewise, the Diagnostic will not be invoiced to the Customer if NEXUS is unable to provide a quotation for the correction of the incident.

The Customer undertakes not to improperly make use of the Technical Assistance. NEXUS reserves the right to refuse to handle a Customer request if their conduct or the frequency of their requests is likely to adversely affect the normal operation of the Technical Assistance Service.

The Customer agrees to avoid using the Technical Support service in an abusive manner. NEXUS reserves the right to refuse to respond to a Customer's claim if the Customer's behaviour or the frequency of claims is likely to disrupt the normal operations of the Technical Support service.

#### **5.4 Resolution of Malfunction**

At the end of the Diagnostic, NEXUS shall inform the Customer on the cause of the malfunction and indicate which technical solutions will be used to resolve the problem encountered.

At the end of the Diagnostic, NEXUS will convey the cause of the malfunction and will direct the Customer to the technical solutions for resolving the problem encountered.

In the event of NEXUS not bearing the responsibility for the Malfunction, NEXUS will forward a quotation to the Customer corresponding to the cost of the resolution operations, if the Customer wants NEXUS to take charge of resolving its problem.

As previously stated, NEXUS only has an obligation of means.

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### **5.5 Conditions of payment**

The base price of the quotation is set out on the NEXUS Site. The sums due will be invoiced monthly on the anniversary date of technical support being received for the Service. In the event of monthly renewal of the Service, all sums due relating to this Service, including technical support, will be invoiced.

No new interventions will be carried out if the payment of the preceding intervention has not been honoured.

### **5.6 Fraudulent Activity**

Nexus Internet Services utilizes FraudRecord to screen new orders for previous fraudulent activity and report existing clients who violate our Terms of Service. Nexus Internet Services reserves the right to refuse services to any potential client based on previous activity. In case of a violation, you may be reported to FraudRecord for misbehaviour using non-identifiable anonymous information.

## **SECTION 6: TERM AND RENEWAL OF SERVICE, TARIFF**

### **6.1. Term**

The Service agreement shall be signed for an indefinite term. NEXUS reserves the right to suspend the Service at any time. NEXUS shall, to the extent possible, notify in advance the Service users, through a message on the mailing list created in connection with the beta-test, on NEXUS' website or forum, or by any other means NEXUS deems necessary.

### **6.2. Service Renewal**

NEXUS may possibly not renew its Service at the end of the term. NEXUS shall make every effort to inform the Customer beforehand regarding this and shall delete all the data stored by the Customer on the Service. The Customer hereby agrees to recover all his/its data prior to the end of the Service term.

Any non-payment or irregular payment, meaning incorrect or incomplete amounts in particular, or lacking the required references, or made by any method or procedure not accepted by NEXUS are not acceptable and will result in rejection by NEXUS of the registration or renewal request.

Concerning renewals paid by cheque, it is up to the Customer to request the renewal with sufficient time for the cheque to be received and processed by NEXUS prior to expiration of the Service. NEXUS reminds the Customer that the processing of a payment by cheque may take more than 5 working days in some cases. Electronic payment by means of Credit Card, or Debit card is the recommended means of payment.

### **6.3 Tariff**

NEXUS will invoice the Customer for the setup fees of any dedicated server order. These fees correspond particularly to setting up and configuring the server, according to the operating system chosen by the Customer.



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After each payment, NEXUS will send an invoice by email and/or will make it available to the Customer via their management Interface. The Customer expressly accepts that the invoice will be sent to them electronically.

NEXUS reserves the right to modify their prices at any time, subject to informing the Customer by email and/or to making an online announcement on the NEXUS Site one month in advance, if the new prices excluding tax are less favourable to the Customer. In this event, the Customer will have one month from receipt of this information to cancel their contract without penalty. Failing any such action by the Customer, the Customer will be deemed to have accepted the new tariffs. Price changes will apply to all Agreements, and especially ongoing Agreements.

NEXUS reserves the right to pass on any new tax or any increase in existing taxes without delay.

The Services provided by NEXUS are payable at the time of ordering. The Customer is solely responsible for payment of all sums due under the Agreement for NEXUS Services. By express agreement and unless deferment is requested in good time and specifically granted by NEXUS in writing, the total or partial non-payment of any sum due under the Agreement by the due date will automatically result in the following, without prior notification:

- immediate payment of any outstanding amounts owed by the Customer under the Agreement, regardless of the planned method of payment;
- suspension of all ongoing services, regardless of their nature, without prejudice to the ability of NEXUS to terminate the contract;
- removal of the possibility to subscribe to new services or to renew them;
- application of interest at a rate equal to 1.5% per month, compounded, or such rate as may be set, and identified to the Customer and posted to NEXUS' site.

Any disagreement concerning invoicing or the nature of the Services must be forwarded to NEXUS' Support Department via the Support System Interface, within one month of the order confirmation being issued.

#### **SECTION 7: TERMINATION, LIMITATION AND SUSPENSION OF SERVICE**

Breach by the Customer of his/its obligations as defined hereunder, including all activities specifically barred while using NEXUS services and/or any content specifically barred when using NEXUS services, and/or likely to result in civil and/or criminal liability and/or likely to prejudice a third party's rights, shall give rise to NEXUS' right to immediately cut off and/or interrupt the Customer's services, without any prior demand, and to immediately terminate the Service, as of right, without prejudice to any other damages NEXUS may have a right to claim.



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At the end of the term of this Service, for any reason whatsoever, NEXUS shall entirely delete all the files on the Customer's Service.

NEXUS reserves the right to restrict, limit or suspend its services without prior notice nor indemnity if it appears that the Customer uses the services provided for any activity which violates the terms and conditions of the Agreement with NEXUS or the Service objectives.

The Service may also be restricted, limited or suspended when the specific terms and conditions applicable to a type of Service offered by NEXUS provide for such sanctions in the event of a breach.

The restriction, limitation or suspension measures shall always be taken in accordance with the seriousness or recurrence of the breach(es), and shall be based on the nature of such breach(es).

The Customer agrees in advance that NEXUS may restrict, limit or suspend the Service offered if NEXUS receives a notice in that regard from a competent administrative, arbitral or judicial authority, in compliance with the laws and regulations in force.

Either Party may terminate the Agreement, as of right and without indemnity, in the case of a Force Majeure event lasting more than thirty (30) days.

NEXUS reserves the right to interrupt the Customer's Service if such Service endangers the maintenance of security or stability on NEXUS' hosting platform. NEXUS shall, to the extent possible, give the Customer prior notice regarding such interruption.

NEXUS reserves the right to interrupt the Service, as needed, for technical interventions designed to improve its operations, or for maintenance procedures.

#### **SECTION 8: OPERATING CONDITIONS**

The Customer hereby acknowledges that bandwidth fluctuations and problems with the access provider could cause a gap in the services provided by the NEXUS Corporation, which it would be unable to resolve.

However, the Service shall be restricted, limited or suspended, as of right, by NEXUS:

- if it seems that the Customer is using the services provided for any activity whatsoever which is not in compliance with these General Terms and Conditions;
- if it seems that the Customer is using the services provided for any activity whatsoever which is not in compliance with the applicable Specific Terms and Conditions;
- if NEXUS receives a notice in that regard from a competent administrative, arbitral or judicial authority, in compliance with the appropriate applicable laws, or from a third party;
- if the contact information in the Customer's account seems to be false, inaccurate or out of date.

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#### **SECTION 9: CUSTOMER INFORMATION AND COMPLIANCE WITH SERVICE**

The Customer acknowledges that he/it has checked the suitability of the material and the Service to his/its needs and has received from NEXUS all the information and advice needed to knowingly enter into this agreement.

NEXUS reserves the right to monitor compliance with the Service's terms of use.

#### **SECTION 10: TOLERANCE**

The fact that NEXUS fails to invoke one of the General Terms and Conditions of Service and/or tolerates the violation by the other Party of any of the obligations hereunder shall not be construed as a waiver to invoke in the future any of these Terms and Conditions.

#### **SECTION 11: PERSONAL DATA**

NEXUS reminds the Customer that, while providing the Service to the Customer, NEXUS may keep some of the Customer's personal data in compliance with its regulatory and judicial obligations.

Information such as "last name, first name, mailing address, e-mail address, phone numbers, and IP connection addresses" shall be kept by NEXUS during the entire term of the Agreement and up to twelve (12) months after the expiration of the Service.

The data transmitted by the Customer shall be kept as long as deemed necessary for evidence purposes. Except as otherwise provided in the Specific Terms and Conditions, NEXUS shall not disclose nor sell the Customer's personal data.

The Customer agrees that his/its personal data may be stored, handled and transferred by NEXUS to its affiliates, who shall only have access to such data in order to perform essential functions in the provision of the Service, all in strict compliance with the Customer's privacy rights.

The Customer also acknowledges that NEXUS may communicate the Customer's information at the request of administrative, regulatory or judicial authorities.

The Customer also agrees and acknowledges that NEXUS may communicate the Customer's encrypted information for the purpose of Fraud Checking and Reporting.

#### **SECTION 12: AMENDMENTS**

These Online General and Specific Terms and Conditions online take precedence over any prior General and Specific Terms and Conditions. The parties agree that NEXUS may, as of right, bring changes to its Service simply by informing the Customer through an online notice and/or by amending its General Terms and Conditions online.

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Any amendment or introduction of new options offered shall be posted online on the NEXUS Site or sent via e-mail to the Customer. Notwithstanding the provisions of section 7, the Customer shall then have the right to terminate the Agreement within thirty (30) days of the effective date of such amendments.

## **SECTION 13: GENERAL PROVISIONS**

### **13.1 Severability**

The invalidity of one of the provision of the Service Agreement entered into with NEXUS, particularly under a law or a regulation or as a result of the final judgment of a court of competent jurisdiction, shall not invalidate the other provisions of such Service Agreement, which will remain in full force and effect.

The Parties shall, in such cases, to the extent possible, replace the invalid provision with a valid provision consistent with the spirit and object of the Agreement's terms and conditions.

### **13.2 Headings**

The Agreement section headings are inserted solely for reference purposes and do not have any contractual value nor any specific meaning.

### **13.3 Specific Conditions and Schedules**

The Specific Conditions and prospective schedules are incorporated by reference into the General Terms and Conditions of Service and are necessarily incidental thereto. The combination of all these documents is hereunder referred to as the "General Terms and Conditions."

The Customer may consult on NEXUS' website all the documents incorporated by reference into this Agreement.

Such documents are subject to amendments or updates.

### **13.4 Communications**

The NEXUS server's date and time shall be relied upon as evidence of the exchange of information by e-mail between the Parties. Such information shall be kept by NEXUS during the entire term of the contractual relationship between the Parties.

All notices, communications, and demands provided under the General Terms and Conditions shall be deemed to have been validly delivered if they are sent by registered mail, return receipt requested, to:

- in the case of NEXUS:

NEXUS INTERNET SERVICES  
301-420 Erb Street West,  
Waterloo, Ontario  
Canada N2L 6K6

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- in the case of the Customer:

at the mailing and/or e-mail address provided to NEXUS.

### **13.5 Advertising and Promotion**

NEXUS may from time to time, in connection with advertisements, events, seminars, and specialized publications within the professional markets, indicate the services provided to the Customer, on its commercial documents and/or in its annual report.

### **SECTION 14: APPLICABLE LAWS AND JURISDICTION**

This Agreement, its interpretation, performance, application, validity, and effects shall be subject to the applicable laws in force in the Province of Ontario and in Canada, which will govern its provisions, in whole or in part.

The Parties hereby agree that all judicial proceedings instituted shall be filed with and heard by the courts having jurisdiction in the judicial district of Kitchener-Waterloo, in the Province of Ontario, where NEXUS elects their current domicile.