

NYIIX Master Services Agreement of General Terms and Conditions

This NYIIX Master Services Agreement of General Terms and Conditions (the "MSA"), is entered into by and between the customer submitting a Service Order as defined below ("Customer") and Telehouse International Corporation of America ("Telehouse"). NYIIX is a Telehouse facility which is used solely for the interconnection and exchange of Internet Protocol traffic among its participants who are utilizing the NYIIX.

1. DEFINITIONS

In this MSA,

1.1 the following expressions shall have the following meanings:

"Agreement"	means collectively all of the herein referenced relevant agreements, such as the MSA, Exhibits, and Service Orders.
"Business Day"	means any day other than a Saturday or Sunday or public/Telehouse holiday.
"Customer"	means the customer identified in the relevant Service Order.
"Equipment"	means any equipment owned by the Customer, excluding any Telehouse owned property.
"Exhibit(s)"	means the subsequent additional terms and conditions pertaining to specific products and services provided by Telehouse as exhibits.
"Intellectual Property Rights"	means all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, copyright, database rights, domain names and any other rights in any invention, discovery or process, in each case in all countries in the world and together with all renewals and extensions.
"Services"	means the services provided by Telehouse to the Customer, as described in the Service Order(s) now or hereafter entered into by Customer and Telehouse.
"Customer Representative"	means the Customer contract representative named by the Customer in the Service Order.
"Telehouse Account Representative"	means the Telehouse contract representative, referred to as the "account rep", in the Service Order.
"Party or Parties"	means the Customer and/or Telehouse as the context requires.
"Service Order"	means a Telehouse service order form, for services and/or amendments thereof, that references this MSA.
"Telehouse Group Company"	means any legal entity which from time to time is controlled by or under common control with Telehouse (where "control" means majority share ownership or the ability otherwise to direct the

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management of such legal entity).

- 1.2 All other capitalized terms shall have the meanings given to them in the relevant Agreement, including but not limited to the MSA, Exhibits, and Service Orders.
- 1.3 All headings are for the ease of reference only and will not affect the construction or interpretation of this MSA.
- 1.4 In the event of any conflict or ambiguity between the MSA, Exhibits and/or Service Orders, such conflict or ambiguity shall be resolved in accordance with the following order of precedence (with 1.4.1 being the highest priority and 1.4.3 being the lowest):
 - 1.4.1 Service Orders;
 - 1.4.2 Exhibits; and
 - 1.4.3 MSA.
- 1.5 Unless the context otherwise requires:
 - 1.5.1 References to the singular include the plural and vice versa, and references to any gender include every gender;
 - 1.5.2 References to a "person" include any individual, body corporate, association, partnership, firm, trust, organization, joint venture, government, local or municipal authority, governmental or supra governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality); and
 - 1.5.3 Any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them.
2. **CONFIDENTIALITY; PUBLICITY**
- 2.1 Subject to the provisions of this **Clause 2**, each Party will keep confidential:
 - 2.1.1 the terms of the Agreement, and
 - 2.1.2 any and all confidential information it may acquire from the other Party in relation to the Agreement (collectively, "**Confidential Information**"). Each Party shall not disclose to any third party nor use Confidential Information for any purpose other than the performance of the Agreement without the prior written consent of the other Party.
- 2.2 The obligations on a Party set out in **Clause 2.1** will not apply to any information which:
 - 2.2.1 is publicly available or becomes publicly available through no act or omission of that Party;
 - 2.2.2 is rightfully received from a third party not in breach of an obligation of confidentiality;
 - 2.2.3 is independently developed by the receiving Party without access to Confidential Information;
 - 2.2.4 is known to the receiving Party at the time of disclosure; or
 - 2.2.5 a Party is required to disclose by law or a court of competent jurisdiction.
- 2.3 Telehouse shall be entitled to:
 - 2.3.1 disclose the identity of the Customer to other customers of Telehouse in the event that Equipment causes interference to the equipment of other customers;

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- 2.3.2 disclose any Confidential Information to its affiliates, provided that Telehouse shall ensure that its affiliates are bound by similar obligations of confidentiality to those set out in this **Clause 2**; and
- 2.3.3 disclose the identity of the Customer as a customer of Telehouse (and to identify any or all of the Services subscribed to hereunder) to potential customers of Telehouse and in Telehouse's advertising, NYIIX member list, and marketing materials (including trademarks in conjunction with any such use; the foregoing of which shall not grant Telehouse any right, title of interest in such trade names or trademarks).
- 2.4 Either Party shall be entitled to disclose any Confidential Information to its professional advisers, including, without limitation, its insurers, accountants, lawyers, financial advisers and/or lenders, provided that each Party shall ensure that such persons are bound by similar obligations of confidentiality to those set out in this **Clause 2**.
- 2.5 The Parties hereto agree that it is each Party's responsibility to review and adopt requirements imposed on Controllers and Processors by the General Data Protection Regulation 2016/679 ("GDPR"), the CCPA/CPRA, and any other applicable personal data and/or privacy laws.
3. **INTELLECTUAL PROPERTY**
- 3.1 Nothing in the Agreement shall operate (or be deemed to operate) to transfer or create any right, title or interest in the Intellectual Property Rights belonging to either Party.
4. **THIRD-PARTY RIGHTS & CLAIMS; INDEMNIFICATION**
- 4.1 Each Party guarantees that its actions or omissions with regard to the performance of its contractual obligations, the fulfillment of duties of cooperation and other obligations, or the use of a contractual service, shall not violate any applicable laws, official orders, or third-party rights.
- 4.2 The Customer shall hold harmless and indemnify Telehouse from claims by any and all third parties, including but not limited to other Telehouse customers, if it is due to a breach of any of the Customer's obligations hereunder (e.g., configuration errors) any other customers have limited access to the Telehouse services.
- 4.3 Furthermore, each Party hereto shall hold harmless and indemnify the other Party hereto from any and all third-party claims for breach of any third party intellectual property rights, applicable laws, and/or official orders, upon first written request. This duty of indemnification also includes payment by the indemnifying Party for any and all expenses, including but not limited to legal fees, court costs, and any other defense costs, incurred by the other indemnified Party with regard to the third-party claim(s).
- 4.4 Except in respect to the Telehouse Group Companies, the Parties to the Agreement do not intend that any of its terms will be enforceable by applicable law by any person not a party to the Agreement.
5. **FORCE MAJEURE**
- 5.1 Neither Party to the Agreement shall be liable for its delay or failure to perform its obligations under the Agreement (including applicable Exhibits and Service Orders) due to causes beyond its control, including but not limited to, fire, explosion, defective

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computers and/or telecommunication systems and/or equipment provided by the other Party and/or its suppliers or carriers, earthquakes, flood, the elements, acts of God, acts of the public enemy, acts or omissions of carriers or suppliers, the voluntary or involuntary filing for bankruptcy by carriers or suppliers, failure or shortage of power supplies, supplier failure, acts of terror, interruption of power or other utilities, interruption of transportation or communication services, acts of civil or military authority, national emergencies or strike (not involving the affected party); provided, however, that (a) the foregoing shall not apply to accrued payment obligations of Customer and (b) the Party subject to the force majeure delay will use reasonable efforts to alleviate such delay.

6. LIMITATIONS OF LIABILITY

6.1 EXCEPT FOR AMOUNTS PAYABLE BY CUSTOMER PURSUANT TO THE AGREEMENT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL TELEHOUSE BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES UNDER ANY LEGAL THEORY (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM PERFORMANCE UNDER OR FAILURE OF PERFORMANCE OF ANY PROVISION OF THE AGREEMENT (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS. EXCEPT FOR AMOUNTS PAYABLE BY CUSTOMER PURSUANT TO THE AGREEMENT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TELEHOUSE BE LIABLE FOR DAMAGES IN EXCESS OF THE VALUE RECEIVED BY THE OTHER PARTY UNDER THE AGREEMENT. ALL CLAIMS BEYOND THOSE ALLOWED IN THESE NYIIX MASTER SERVICES AGREEMENT OF GENERAL TERMS AND CONDITIONS FOR ANY LOSS OR DAMAGE FROM WHATEVER CAUSE ARISING, INCLUDING DAMAGE TO THE OTHER PARTY'S PROPERTY, SHALL BE EXCLUDED AND HEREBY WAIVED BY THE OTHER PARTY UNLESS SUCH CLAIM IS MADE BASED ON PROVEN INTENTIONAL BAD ACTS OR GROSS NEGLIGENCE BY TELEHOUSE; IN SUCH CASE, DAMAGES SHALL BE LIMITED TO THOSE THAT ARE REASONABLY FORESEEABLE AS A RESULT OF THE INTENTIONAL BAD ACTS OR GROSS NEGLIGENCE BY TELEHOUSE.

7. NOTICES

7.1 All notices, reports, requests or other communications given pursuant to the Agreement shall be made in writing, and shall be sent to the address of the recipient set out on the first page of the relevant Service Order (or such other address as the recipient may designate by notice given in accordance with this **Clause 7**). Customer is responsible for updating its contact information, and Telehouse will not be responsible for any communications not received by the Customer due to outdated and/or incorrect contact information. Any such notice may be delivered personally, by priority mail (airmail if overseas) or electronic mail transmission and shall be deemed to have been received:

7.1.1 By hand delivery - at the time of delivery;

7.1.2 By priority mail - 48 hours after the date of mailing (72 hours if overseas) (excluding days other than Business Days); and

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7.1.3 By electronic mail, immediately upon transmission provided that the sender does not receive any indication that the electronic mail message has not been successfully transmitted to the intended recipient.

8. FEES

8.1 Subject to the provisions of **Clause 8.2**, Customer shall pay Telehouse the fees specified in the Service Orders, in U.S. currency, without deduction, set off or delay for any reason (i) monthly in advance with respect to monthly recurring charges, and (ii) within thirty (30) days of the date of the applicable invoice with respect to all other charges. Restrictive endorsements or other statements on checks accepted by Telehouse shall not apply. Any unpaid balance shall bear interest from the date due until paid at a rate equal to the lesser of 1.5% per month of such past due payment and the maximum rate permitted by law. In addition, Customer agrees to a late charge equal to 5% of such past due payment as an agreed liquidated amount in compensation for Telehouse's administrative expenses relating to such late payment.

8.2 If Customer, in good faith, disputes any invoice hereunder, Customer may withhold payment on the disputed amount pending resolution thereof provided Customer (i) submits a written claim to Telehouse within thirty (30) days of the date of the applicable invoice describing the dispute in reasonable detail and (ii) makes full and timely payment of all undisputed amounts. The default interest and administrative fees provided in **Clause 8.1** shall not apply to any sum that is withheld by Customer in accordance with this **Clause 8.2** during the period in which Customer so withholds such payment.

9. NON-SOLICITATION

9.1 Each Party agrees that during the term of the Agreement it shall not directly solicit, or offer employment or engagement to, any of the other Party's staff who is at the time of such action or was during a period of twelve (12) months immediately preceding such action directly involved in the carrying out of any obligations under the Agreement without the other Party's prior written consent.

10. SURVIVAL

10.1 The provisions of **Clauses 2.1, 3, 10, 15 through 18** and any other clauses that by their nature should survive shall survive the expiration or earlier termination of the Agreement.

11. BINDING AGREEMENT AND ASSIGNMENT

11.1 The Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

11.2 Customer may not, without the prior written consent of Telehouse assign the Agreement, in whole or in part, either voluntarily or by operation of law, and any attempt to do so shall be a material default of the Agreement and shall be null and void.

11.3 Telehouse shall be entitled to assign the Agreement, including any of its obligations, upon written notice to the Customer. Telehouse shall also be entitled to engage subcontractors to carry out all or any of the Services, provided that Telehouse shall remain liable to the Customer for the performance of its obligations hereunder.

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12. WAIVER

12.1 No forbearance by either Party to enforce any provision under the Agreement or any right existing under the Agreement shall constitute a waiver of such provisions or rights or be deemed to amend or modify the Agreement. Failure or delay by either Party to require performance of any term or condition of the Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing of future waiver of such term, condition, right or privilege unless and to the extent that such Party gives written confirmation that it expressly waives its rights or privilege.

13. TERMINATION

13.1 Notwithstanding anything contained herein to the contrary, if (i) Customer fails to pay monthly or other fees and charges within fifteen (15) days of Telehouse's written notice to Customer of its failure to pay when due, (ii) Customer fails to perform or comply with any other material provision of this Agreement (or of any applicable Exhibits and any Service Order) within thirty (30) days of Telehouse's written notice to Customer of its failure to so perform or comply (provided that, if such default cannot be reasonably cured within such thirty (30) day period and Customer shall have commenced to cure within such period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Customer in the exercise of due diligence to cure such default), (iii) Telehouse's ability to provide services to other customers is impaired due to Customer's acts or omissions, (any of the events described above in **Clauses 13.1(i) through 13.1(iii)**, are singularly and/or collectively hereinafter "Event(s) of Default"), or (iv) if any regulatory decision or governmental order requires the suspension of Service(s), then Telehouse may at its sole discretion take any or all of the following actions (x) terminate or suspend any or all of the Services, and deny Customer access to the Customer Equipment and the Telehouse servers and facilities; (y) terminate the applicable Service Order; and/or (z) terminate this Agreement (including all Service Orders). Customer shall in any event remain fully liable for damages as provided by law and for all costs and expenses incurred by Telehouse on account of any termination by reason of an Event of Default, including reasonable attorneys' fees. Termination of a Service Order does not waive any other rights or remedies Telehouse may have under this Agreement. Termination or suspension of one Service Order shall not affect the rights and obligations of the Parties under any other Service Order. Notwithstanding anything contained herein to the contrary, if this Agreement and/or any Service Order (or any portion thereof) is terminated by Customer for any reason, during the Initial Term (as such term is defined in each individual Service Order), then all accrued but unpaid charges incurred by Customer shall become due and owing as of the effective date of such termination. In addition to the foregoing, if Customer terminates this Agreement and/or any Service Order (or any portion thereof), for any reason whatsoever, prior to the expiration of the Initial Term of this Agreement and/or said Service Order, then Customer will pay to Telehouse the following sums which shall become due and owing as of the effective date of such termination: all charges reasonably expended by Telehouse to establish service to Customer; all disconnection, early cancellation and termination charges reasonably incurred and paid to third parties by Telehouse on behalf of Customer; and a total of one hundred (100) percent of all non-recurring charges and all recurring service charges for the remainder of the Initial Term (if any) of the applicable Service Order.

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14. ENTIRE AGREEMENT; NO THIRD-PARTY BENEFICIARIES; SEVERABILITY

14.1 The Agreement (including any applicable Exhibits and any Service Orders) constitutes the entire agreement between Telehouse and Customer with respect to the Services. Unless expressly set forth otherwise in the Agreement, no representation or statement shall be binding upon Telehouse as a warranty or otherwise. The Agreement does not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right or privilege. If any portion of the Agreement (including any provision of any applicable Exhibits and any Service Orders) is found to be invalid or unenforceable, the remaining provisions shall remain in effect and the Parties shall promptly negotiate to replace such invalid or unenforceable portions that are essential parts of the Agreement (or Exhibits or Service Orders, as applicable).

15. REPRESENTATIONS, WARRANTIES AND COVENANTS

15.1 Each Party represents, warrants and covenants to the other Party that (i) it has and shall have full power and authority to enter into this Agreement and all Service Orders and to grant the rights and carry out its obligations hereunder and thereunder, (ii) that it has and shall have during the term of this Agreement, sufficient rights to grant the rights it grants in this Agreement (including any Service Order), including any necessary approval, consent, authorization, release, clearance or license of any third party as may be necessary to enter into this Agreement (including any Service Order), and (iii) that it will comply at all times with all applicable federal, state and local laws, rules and regulations.

16. DISPUTE RESOLUTION

16.1 Any dispute between the Parties in relation to the fulfilment of their obligations under the Agreement (including any question regarding the validity, existence or termination of the Agreement and/or this dispute resolution clause) shall be referred as follows:

16.1.1 in the first instance, to the Customer Representative and the Telehouse Account Representative for discussion and resolution and, if such dispute is not resolved within fourteen (14) days of the date of such referral or such other period as agreed between the Parties, then;

16.1.2 the dispute shall be referred to Customer's management and Telehouse's management, and if such dispute is not resolved within a further period of fourteen (14) days of such referral or such other period as agreed between the Parties, then it shall be settled via binding arbitration as noted below in **Clause 16.2**.

16.2 Any dispute arising out of or in connection with the Agreement, which is not resolved pursuant to **Clause 16.1** within the aforementioned twenty-eight (28) days, or such other period as agreed between the Parties, of the date the dispute was initially referred to the Parties' representatives pursuant to **Clause 16.1.1**, shall be referred to and finally resolved by binding arbitration under the Commercial Rules of the American Arbitration Association ("AAA"). The arbitration hearing shall be held in the New York, New York offices of the AAA. The language to be used for the arbitral proceedings shall be English. The award of the arbitrators shall be final and binding upon the Parties.

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17. **GOVERNING LAW**

- 17.1 The formation, existence, construction, performance, validity and all aspects whatsoever of the Agreement will be governed by the laws of the State of New York, without reference to its provisions on conflicts of law.