



**ND/Filter**

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### **1. Definitions**

The following terms shall have the meanings:

**Affiliate:** means a company of which more than 50% of the common stock is owned by a party to this Agreement, or a company which owns more than 50% of the common stock of a party to this Agreement, or a company which has more than 50% of its common stock owned by a parent company which also owns more than 50% of the common stock of a party to this Agreement.

**Application:** means the NetDexterity software (“Software”), excluding Third Party Software, which set of computer programs is owned and marketed by NetDexterity and listed above in this Agreement, including any of the following which may be supplied by NetDexterity to the Licensee: (a) Documentation; (b) Updates and Upgrades to such Software and Documentation provided the Licensee has continually subscribed for Support and Maintenance from NetDexterity and (c) all copies of the foregoing made by NetDexterity or by the Licensee. Software shall be made available to the Licensee in Object Code format only.

**Documentation:** means the relevant user manuals and any other documentation provided by NetDexterity for general release to NetDexterity licensees of the Application at the time the Application is licensed to you.

**Intellectual Property** means intellectual or industrial property rights protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country and includes moral rights, trade secrets, patent rights, rights in inventions, trade-marks, trade names and service marks, as

well as applications for, and registrations, extensions, renewals and re-issuances of, the foregoing, in whatever form such rights may exist and whether registered or unregistered.

**Support and Maintenance Agreement:** means the provision of Updates and Upgrades to the Application and access to technical helpline support pursuant to a separate Support and Maintenance Agreement entered into between NetDexterity and you, and, for greater certainty, is not provided under this License Agreement. To obtain Support and Maintenance, please contact NetDexterity at [apps@netdexterity.com](mailto:apps@netdexterity.com) to enter into a Support and Maintenance Agreement.

**Third Party Software:** means any and all software provided by other than NetDexterity and specifically excludes the Application.

**Updates:** means error corrections and maintenance releases to the Application as may be made generally available from time to time in the ordinary course of NetDexterity's business. Updates to the Application shall be provided to Licensee by NetDexterity under a separate Support and Maintenance Agreement so long as the Licensee remits timely payment to NetDexterity for Support and Maintenance and Licensee is in good standing under all its agreements with NetDexterity. To obtain Support and Maintenance, please contact NetDexterity at [apps@netdexterity.com](mailto:apps@netdexterity.com) to enter into a Support and Maintenance Agreement.

**Upgrades:** means Software enhancements that may accomplish incidental, structural, and functional and/or performance improvements as may be made generally available from time to time in the ordinary course of NetDexterity's business. Upgrades to the Application shall be provided to Licensee by NetDexterity under a separate Support and Maintenance Agreement so long as the Licensee remits timely payment to NetDexterity for Support and Maintenance and Licensee is in good standing under all its agreements with NetDexterity. To obtain Support and Maintenance please contact NetDexterity at [apps@netdexterity.com](mailto:apps@netdexterity.com) to enter into a Support and Maintenance Agreement.

## **2. License and Use**

- 2.1 Subject to the terms and conditions of this Agreement, NetDexterity grants to the Licensee a non-exclusive license to use the Application in accordance with its terms (the "License"). The License for the Application includes use of the NexDexterity Software together with any Documentation provided by NetDexterity. ***The License granted in this Agreement is restricted to use by the Licensee solely for the single e-mail address associated with the Application.*** Further, the License granted in this Agreement is restricted to use by the Licensee solely for its own internal operation to process its own data or the data of an Affiliate, and not for processing the data of others for hire.
- 2.2 The Licensee shall have no right to sublicense the Application under this Agreement, and the Licensee shall not assign its license, whether voluntarily or by the operation of law or otherwise, without prior written approval of NetDexterity.

- 2.3 The Licensee shall not modify the Documentation. Licensee may make copies of the Documentation provided: (a) the number of copies made does not exceed the number of associated Licenses granted to the Licensee; (b) each copy is only used by individuals who are permitted to access the Application under this Agreement; and (c) no copies are distributed or used to conduct training for which Licensee, or any other party, receives a Fee.
- 2.4 Licensee may only make as many copies of the Application as is reasonably required to allow the Licensee to make use of the Application in accordance with the terms, conditions and limitations of the applicable License **for the single e-mail address associated with the Application**. No other copies of the Application shall be made. Licensee shall: (a) assign an identifier number to each copy of the Application made by Licensee; and (b) maintain a system sufficient to track the location of each such copy. Each copy of the Application (or Documentation) made by Licensee hereunder must contain the same copyright and other proprietary notices that appear on the original copy provided to Licensee.
- 2.5 Licensee has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, or make error corrections to the Application in whole or in part. Licensee shall not gain any rights in the Application and related material, except the limited License and use rights specifically described in this Agreement.
- 2.6 Risk of loss in the Application shall pass to the Licensee upon downloading or installation.
- 2.7 All the license rights, restrictions and obligations of the Licensee related to the Application hereby extend and apply likewise to the Documentation.

### **3. Ownership**

- 3.1 The Application is owned by and is a trade secret of NetDexterity and its Affiliates and is their confidential information. None of the Application is being sold. All ownership, license, intellectual property, and other rights and interests in the Application shall remain solely with NetDexterity or its Affiliates. The Application is protected by Canadian, United States, and other national and international copyright laws and treaties, as well as other laws and treaties.

### **4. Application Warranty**

- 4.1 NetDexterity warrants to Licensee that the Application does not violate any patent, copyright or other third party intellectual property rights. If an action is brought against the Licensee and/or NetDexterity claiming that the Application infringes any patent, copyright or other third party intellectual property rights, it is agreed that: (a) NetDexterity shall have sole authority to defend or settle such claim and shall defend and indemnify the Licensee and pay all costs and damages finally awarded (provided that NetDexterity is given prompt written notice of any such claim and reasonable assistance from Licensee) subject to the limitations contained in this Agreement; (b) NetDexterity's sole obligation in respect of a breach of this warranty, shall, at its option, be to

either: (i) obtain for the Licensee the right to continue using the affected portion of the Application; (ii) modify or replace such Application so as to eliminate the infringement; or (iii) in the event neither of the above alternatives is available to NetDexterity on commercially reasonable terms, accept the return of the applicable Application and refund a pro-rated portion of the associated Application License Fee already paid for the Application in question amortized over a 60 month term; and (c) NetDexterity shall not have any liability hereunder if any claim of infringement: (i) results from the Licensee's alteration of the Application whether directly or through a third party; or (ii) results from use of any Application in combination with any non-NetDexterity product. NetDexterity warrants that the Application shall be capable of functioning substantially in accordance with its related Documentation. NetDexterity's sole obligation in respect of a breach of the foregoing warranty shall be to repair or replace the affected Application so as to correct the defective performance. Licensee shall give NetDexterity prompt written notice of any claims under the warranties set forth herein. The foregoing warranties shall not apply to the extent that any alleged defect derives from: (a) a combination of the Application with any other program, equipment or device not supplied or recommended in writing by NetDexterity or permitted under the License; (b) any modification or customization of the Application made by or on behalf of the Licensee, except where such modification or customization was made by NetDexterity; (c) where the Licensee has entered into a separate Support and Maintenance Agreement, the Licensee's failure to promptly install any Updates or Upgrades made available by NetDexterity; or (d) the Licensee's failure to adhere to any instructions provided by NetDexterity with respect to the operation of the Application. This paragraph states the entire liability of NetDexterity and the Licensee's sole and exclusive remedies. Licensee shall give NetDexterity prompt written notice of any claims under the foregoing warranties. **EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS SECTION, NETDEXTERITY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AND CONDITIONS OF EVERY KIND PERTAINING IN ANY WAY TO APPLICATION PROVIDED BY NETDEXTERITY UNDER THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED BY STATUTE, COMMON LAW, USAGE OF TRADE, COURSE OF DEALING, CUSTOM, OR OTHERWISE.**

- 4.2 The Licensee acknowledges its sole responsibility for the selection of the Application to achieve its intended results. Except as provided in this Section 4, all warranties, conditions, representations, indemnities and guarantees, whether express or implied, arising by law, custom, oral or written statements (including, without limitation, any warranties of merchantability, fitness for a particular purpose, or of error-free and uninterrupted use) are hereby superseded, excluded and disclaimed.

## **5. Confidential Information**

- 5.1 During the course of this Agreement, either party may disclose to the other confidential or proprietary information belonging to the disclosing party. Such information, excluding information: (i) in the public domain, (ii) in recipient's knowledge prior to such disclosure, (iii) that subsequently come into the public domain through no fault of the recipient, or (iv) was developed

by the recipient independent of access to the confidential and proprietary information of the disclosing party shall be deemed "**Confidential Information**".

- 5.2 All Confidential Information shall remain the sole and exclusive property of the party making the disclosure, and may be used by the recipient and its employees and agents solely to permit the recipient to perform its obligations under this Agreement. The parties agree that they will use the same degree of care to protect the Confidential Information they receive as they use to protect their own confidential information.
- 5.3 Licensee acknowledges that the Application is NetDexterity's Confidential Information and contains trade secrets and proprietary information belonging to NetDexterity and/or its Affiliates and that the presence of any copyright notices on the medium containing the Software does not constitute publication or otherwise impair the confidential nature thereof. The Licensee shall implement all reasonable measures necessary to safeguard NetDexterity's ownership in, and the confidentiality of the Application, including, without limitation: (a) prohibiting the copying and use of the Application except as permitted in Section 2, License and Use; (b) prohibiting the removal or alteration of any copyright or confidentiality labels or notices contained in the Application; and (c) where licensed by Licensee for use by Licensee's employees, allowing its employees, agents and third parties access to the Application but only to the extent necessary to permit the performance of their ordinary services to Licensee; (d) ensuring that as a condition to the access described in (c) above, that such persons comply with the provisions of this Agreement including subsection (a) and (b) above and including this Section 5, Confidential Information; and (e) fully cooperating with NetDexterity to the extent required by it in the enforcement of such compliance by the Licensee's employees, agents and third parties.
- 5.4 Licensee acknowledges that use or disclosure of the Application in violation of this Agreement may cause irreparable harm to NetDexterity. Therefore, Licensee agrees that without limiting any other rights and remedies, including collection of monetary damages, in the event of a perceived breach by the Licensee of this Section 5 or Section 2, NetDexterity shall be entitled to seek immediate injunctive relief without posting of a bond.
- 5.5 Notwithstanding the foregoing, Licensee agrees not to disclose the Application to any service bureau, outsourcer or other third party whose primary function shall be to provide the Licensee with day-to-day management and /or support responsibility of the Application without the prior express written consent of NetDexterity.

## **6. Audit**

- 6.1 During the Term of this Agreement and for 12 months thereafter: (a) Licensee shall maintain electronic and/or other records sufficient for NetDexterity to confirm that Licensee has complied with this Agreement; (b) Licensee shall make available to NetDexterity, upon NetDexterity's

request, copies of Licensee's Application login accounts (with all personal data and other information that could identify a specific individual removed) and records of the location of the Application; (c) NetDexterity may audit Licensee's records, devices and computer systems to ensure Licensee has complied with this Agreement, and (d) Licensee shall promptly and accurately complete and return any self-audit questionnaire supplied by NetDexterity along with a certification by Licensee or, if applicable, an officer of Licensee confirming that Licensee's responses to the questionnaire accurately and fully reflect Licensee's usage of the Application. Licensee will promptly reply to audit confirmation requests from NetDexterity's internal or external auditors. Each audit shall be conducted during regular business hours at Licensee's facilities and, if applicable, shall not interfere unreasonably with Licensee's business. NetDexterity shall provide Licensee with seven (7) days prior notice of each audit. Licensee shall co-operate with NetDexterity's audit team, provide access to Licensee records, and allow NetDexterity to make and remove copies of Licensee records for the above purposes.

- 6.2 If at any time Licensee is out of compliance with the Application Licenses granted hereunder, Licensee will be deemed to have acquired additional Application Licenses at NetDexterity's then-current list price License Fees to the extent necessary to bring Licensee into compliance, and Licensee must immediately pay: a) the applicable License Fees, b) the Applicable Taxes, and c) if the Licensee has received Maintenance and Support under a separate Maintenance and Support Agreement, the Maintenance and Support Fees related to the period during which Licensee was using the Application in an unlicensed fashion. If any audit reveals that Licensee has failed to comply with this Agreement, Licensee shall also make payment to NetDexterity of all audit and other costs incurred by NetDexterity in performing the audit.

## **6. Term and Termination**

- 6.1 NetDexterity shall have the right to terminate any agreements between NetDexterity and the Licensee for cause, upon written notice, if Licensee breaches any of its obligations under any agreement between the parties, and thereafter fails to cure such breach to the reasonable satisfaction of NetDexterity within 7 business days following the Licensee's receipt of such notice of termination in case of a "serious Breach" (as determined by NetDexterity is its unfettered discretion), or within 21 business days of any other form of breach. Upon termination of this Agreement for any reason, the Licensee shall, within 3 business days from the effective date of such termination: (a) purge the Application(s) all systems with which the Application is used; (b) return to NetDexterity all copies of the Application; (c) pay all charges, Fees, expenses and taxes incurred prior to the effective date of termination, and (d) certify to NetDexterity in writing by Licensee or, if applicable, an officer of the Licensee that it has complied with the foregoing obligations. The termination of this Agreement shall not extinguish or diminish Licensee's obligation under Section 5 to maintain the confidentiality of the Application, which obligation shall continue and survive termination of this Agreement.

**7. Remedy Limitations.**

- 7.1 IN NO EVENT SHALL NETDEXTERITY BE LIABLE FOR ANY CONSEQUENTIAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST GOODWILL, LOST REVENUES OR LOST PROFITS (WHETHER DIRECT OR INDIRECT), LOSS OF THE USE OF THE SOFTWARE, LOSS OF DATA, OR INTERRUPTION IN ITS USE OF AVAILABILITY, STOPPAGE OF OTHER WORK, OR IMPAIRMENT OF OTHER ASSETS, WHETHER OR NOT FORESEEABLE AND WHETHER ARISING OUT OF BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, MISREPRESENTATION, STRICT LIABILITY IN TORT OR OTHERWISE, AND WHETHER BASED ON THIS AGREEMENT OR THE TERMINATION OF THIS AGREEMENT OR ANY TRANSACTION PERFORMED OR UNDERTAKEN UNDER OR IN CONNECTION WITH THIS AGREEMENT.**
- 7.2 LICENSEE AGREES THAT NETDEXTERITY'S TOTAL LIABILITY TO LICENSEE OR ANY THIRD PARTY FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, SHALL IN ANY EVENT BE LIMITED TO DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE APPLICABLE LICENSE FEES FOR THE APPLICATION PAID BY LICENSEE AND RECEIVED BY NETDEXTERITY FROM LICENSEE DURING THE 12-MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO AND TO WHICH THE PARTICULAR CLAIM RELATES.**
- 7.3 THE LICENSEE WAIVES THE RIGHT TO BRING ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT MORE THAN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION UPON WHICH THE CLAIM IS BASED AROSE.
- 7.4 LICENSEE UNDERSTANDS AND ACKNOWLEDGES THAT COMPUTER NETWORKS ARE INHERENTLY INSECURE AND SUBJECT TO ATTEMPTS AT UNAUTHORIZED ENTRY, THAT NO FORM OF PROTECTION CAN ENSURE THAT LICENSEE'S COMPUTER SYSTEMS, INFORMATION AND DATA WILL BE COMPLETELY PROTECTED AGAINST UNAUTHORIZED ENTRY OR BEHAVIOR AND THAT LICENSEE HAS A RESPONSIBILITY TO ACTIVELY MONITOR THE FUNCTIONS OF ITS SYSTEMS AND TO BACK UP ITS DATA REGULARLY.

**8. Assignment.**

- 8.1 This Agreement is personal to Licensee and neither this Agreement nor any of Licensee's rights or duties hereunder shall be assigned, sublicensed, sold, or otherwise transferred by Licensee, including to any successor-in-interest, without NetDexterity's prior written consent in its sole discretion

**9. Governing Law and Jurisdiction**

- 9.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter are governed exclusively by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. The parties hereto submit to and irrevocably agree that the courts of the Province of Ontario have exclusive jurisdiction to settle any dispute or claim that

arises out of or in connection with the Agreement. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**10. General and Miscellaneous**

- 10.1 The Licensee shall not disclose the terms and conditions of this Agreement to third parties (except the Licensee's auditors, legal counsel or third parties whose review is mandated by law) without the prior written authorization of NetDexterity. NetDexterity may announce the entering into of this Agreement with the Licensee in a press release and refer to its business relationship with Licensee in marketing literature and other publications.
- 10.2 NetDexterity is not responsible for failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control.
- 10.3 NetDexterity may, upon written notice to the Licensee, withhold the provision of any obligation hereunder if the Licensee is deemed to be in breach of any agreement with NetDexterity.
- 10.4 NetDexterity may, in its discretion and at any time, modify these terms and conditions by posting the amended terms at [apps@netdexterity.com](mailto:apps@netdexterity.com). You will be deemed to have accepted such changes by continuing to use the Application. Except as otherwise expressly stated, all amended terms shall automatically be effective immediately when posted. The terms and conditions of this License shall not be otherwise amended except in writing (not an email) signed by you and NetDexterity.
- 10.5 If any provision of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the remainder of this Agreement, unless NetDexterity, acting in good faith, deems the unenforceable provision to be essential, in which case NetDexterity may terminate this Agreement effective immediately upon written notice to the Licensee.
- 10.6 The Licensee acknowledges that it has read this Agreement, understands it and agrees to be bound by it. The Licensee further agrees that this Agreement is made for the benefit of the parties to it and (to the extent not prohibited herein) their successors and permitted assigns, and is not intended to benefit or be enforceable by anyone else.
- 10.7 This Agreement contains the entire agreement and understanding of the parties as to the subject matter hereof and merges and supersedes all prior discussions and agreements with respect thereto.

TO CONTACT NETDEXTERITY FOR ANY REASON, PLEASE CONTACT US AT [apps@netdexterity.com](mailto:apps@netdexterity.com)



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