

General Terms and Conditions
(these "Terms and Conditions")

I. Fees.

1. Payment Terms. Fees due under these Terms and Conditions shall be payable 30 days after receipt of an invoice. All payments shall be made in U.S. dollars. Specific fees for Software and Services shall be set forth in a Quote. If fees are not paid in accordance with these Terms and Conditions, NP may declare Licensee in breach and suspend or terminate these Terms and Conditions at NP's sole option and pursue any or all of the following remedies: (a) collect interest at the lower of the rate of 1.5% per month or the maximum interest rate allowed under applicable law on all invoices older than 30 days; (b) declare all unpaid balances, including interest, immediately due; or (c) any other remedies available at law or in equity. NP shall be entitled to any reasonable costs or expenses incurred in collecting any amounts due pursuant to these Terms and Conditions or in addressing any violations by Licensee of the terms and conditions of these Terms and Conditions, including, without limitation, reasonable attorneys' fees. All fees are subject to a reasonable annual increase that will be assessed each year beginning on the first anniversary of the Effective Date.
2. Taxes. All payments required by these Terms and Conditions are exclusive of all applicable taxes or duties, including, without limitation, federal, state, local, and foreign taxes, levies, and assessments. Licensee agrees to bear and be responsible for the payment of all such taxes, levies, and assessments imposed upon Licensee or NP in connection with these Terms and Conditions, excluding any income tax imposed on NP by a governmental entity of the United States.

II. Term and Termination

1. Term. These Terms and Conditions and the license granted under the EULA shall be effective upon the earlier of the following to occur (the "**Effective Date**"): (i) the date that the last Party executes the Quote, or (ii) the date on which the Software is downloaded or installed. and, unless earlier terminated as set forth herein, shall continue for the duration specified in a Quote, or Purchase Order (the "**Initial Term**"). Following the expiration of the Initial Term, the Term can be renewed and extended for additional consecutive 12-month periods (each a "**Renewal Term**"). The Initial Term and Renewal Term are collectively referred to in these Terms and Conditions as the "**Term.**"
2. Suspension. NP reserves the right to immediately suspend access to the Software by disabling the license key upon any violation of these Terms and Conditions or use of the Software in excess of the scope of license granted, provided that, NP will provide at least 10 days' notice prior to suspending access to Software for violation of Section I.1 for late payment.
3. Termination for Cause. NP may terminate these Terms and Conditions: (a) effective upon written notice if Licensee, materially breaches these Terms and Conditions and such breach is incapable of cure; or, being capable of cure, remains uncured for ten (10) days after NP provides written notice thereof; or (b), effective immediately, if Licensee files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other

insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property.

4. Effect of Termination. Upon expiration or earlier termination of these Terms and Conditions, the license granted under the EULA shall also terminate with respect to the Software and Services provided under the Quote to which these Terms and Conditions are attached, and Licensee shall (a) promptly cease use of such Software, and (b) Licensee shall destroy all such Software, with such destruction to be certified in writing upon NP's written request. No expiration or termination shall affect Licensee's obligation to pay all fees that may have become due before such expiration or termination or entitle Licensee to any refund.
5. Survival. Any right, obligation, or provision of these Terms and Conditions that by its nature should survive expiration or early termination of these Terms and Conditions, will remain in effect, including but not limited to, Sections I, IV, V, VI, and VIII.

III. Limited Warranty

1. Software. NP warrants that each unmodified copy of a Software product will substantially conform to the applicable Documentation at the time of delivery, when operated in accordance with the Customer Knowledge Base. For example, as set forth in the Customer Knowledge Base, only certain types of devices are supported; the warranty set forth in this Section III.1 does not cover use of the Software on an unsupported device. If Licensee does not provide written notice to NP of a claim for breach under this Section III.1 within sixty (60) days after the date Licensee installs a particular Software product, then its right to make a claim will terminate.
2. Remedies. For any breach of the warranty in this Article III, Network Perception shall in its sole discretion either: (a) exercise commercially reasonable efforts to modify the Software such that the Software conforms to the applicable Documentation at the initial time of delivery of the Software; (b) permit Licensee to continue using Software as-is and the Parties may revise the applicable pricing after good faith negotiation between them; or (c) in NP's sole discretion, refund all or a portion of the Fees paid for the nonconforming Software. Licensee must return all copies of nonconforming Software and any associated Documentation and certify in writing to NP by Licensee's General Counsel, President, or other officer reasonably acceptable, that all copies were returned, before any refund will be provided. This requirement applies to all copies in all forms, partial and complete, and whether or not modified or merged into other materials. The Limited Warranty set forth in this Article III is Licensee's sole remedy with respect to any breach of the Limited Warranty set forth in this Article III.
3. DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS ARTICLE III, ALL SOFTWARE, DOCUMENTATION, AND SERVICES ARE PROVIDED "AS IS." NP SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, NP MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE, DOCUMENTATION, OR SERVICES, OR RESULTS OF THE USE THEREOF, WILL MEET LICENSEE'S OR ANY OTHER PERSON'S

REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

IV. LIMITATION OF LIABILITY

IN NO EVENT SHALL NP OR ITS OFFICERS, SHAREHOLDERS, DIRECTORS, EMPLOYEES, AGENTS, OR AFFILIATES ("**NP PARTIES**") BE LIABLE TO LICENSEE, AUTHORIZED USERS, OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE SOFTWARE; LOST REVENUES OR PROFITS; DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR BREACHES IN SYSTEM SECURITY; SPECIAL, INDIRECT, INCIDENTAL, ECONOMIC, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHETHER ARISING UNDER CONTRACT, WARRANTY, OR TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR IF NP MAY HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT FOR DAMAGES OR LOSSES ARISING FROM LICENSEE'S PAYMENT OBLIGATIONS OR EITHER PARTY'S CONFIDENTIALITY OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR DAMAGES OR LOSSES UNDER OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, THAT EXCEED, IN THE AGGREGATE, THE AMOUNT OF FEES PAID BY LICENSEE PURSUANT TO THESE TERMS AND CONDITIONS WITHIN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO ANY SUCH DAMAGES OR LOSSES.

NP shall not be liable for any damages or losses incurred in connection with the expiration of an Authorized User's account or with use of the Software in violation of these Terms and Conditions.

V. Indemnification

1. Indemnification by Licensee. Licensee shall indemnify, defend, and hold NP and the NP Parties harmless from and against any and all costs, liabilities, losses and expenses, including, but not limited to, reasonable attorneys' fees resulting from or arising out of any claim, suit, action, arbitration, or proceeding ("**Claim**") brought or threatened by a third party against any NP Party relating to (a) a breach or alleged breach by Licensee of any of its representations, warranties, covenants, or obligations hereunder or of applicable law, (b) Licensee's or Authorized Users' use or misuse of the Software, or (c) infringement or misappropriation of any NP Materials or the intellectual property or other rights of any third party by Licensee or any Authorized Users; provided that, (i) NP promptly provides Licensee written notice thereof and reasonable cooperation, information, and assistance in connection therewith, and (ii) Licensee shall have sole control and authority with respect to the defense, settlement, or compromise thereof.

2. Infringement Indemnification by NP. Except as provided below, NP shall defend and indemnify Licensee from and against any damages, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of any third party Claim that the Software infringes a valid and issued United States patent, copyright or other intellectual property right or misappropriates a trade secret of a third party; provided that, (a) Licensee promptly provides NP written notice thereof and reasonable cooperation, information, and assistance in connection therewith, and (b) NP shall have sole control and authority with respect to the defense, settlement, or compromise thereof. Should any Software become or, in NP's opinion, be likely to become the subject of an injunction preventing its use as contemplated herein, NP may, at its option, (i) obtain a license for Licensee to continue use of the Software consistent with the license granted under the EULA and pay for any additional fee(s) required for such license, (ii) replace the Software, without additional charge, with an equally suitable, compatible, functionally equivalent, and non-infringing product, (iii) modify the Software to avoid the infringement while maintaining the equivalent functionality, or (iv) terminate both the license granted under the EULA and these Terms and Conditions. NP shall have no liability or obligation to Licensee hereunder with respect to any patent, copyright, trade secret, or other intellectual property infringement, misappropriation, or Claim thereof based upon (x) Licensee's or Authorized Users' use of the Software in combination with products or software not approved or provided by NP, or (y) modifications, alterations, or enhancements of the Software not created by, or on written request of, NP. This Section V.2 states the entire liability of NP (and shall be Licensee's sole and exclusive remedy) with respect to alleged infringement of patents, copyrights, trade secrets, and other intellectual property rights by the Software, any part thereof, or the operation thereof.

VI. Confidential Information

All non-public, confidential, or proprietary information of NP, including the NP Materials, these Terms and Conditions, and related information (e.g., pricing information), whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with these Terms and Conditions is confidential, solely for the use of performing these Terms and Conditions, may not be disclosed or copied unless authorized by NP in writing, and shall be protected in the manner that Licensee protects its own, similar information or at least based on a reasonable standard of care. NP shall be entitled to injunctive relief for any violation of this Section VI. This Section VI shall not apply to information that is: (a) in the public domain absent a breach of Licensee's confidentiality obligations hereunder by Licensee; (b) known to the Licensee at the time of disclosure absent an obligation of confidentiality to NP; or (c) rightfully obtained by Licensee on a non-confidential basis from a third party. If Licensee becomes aware of any unauthorized licensing, copying, or use of the Software or any other confidential information, Licensee shall promptly notify NP in writing.

VII. Service-Specific Terms

These Service-Specific Terms ("**Service-Specific Terms**") form part of these Terms and Conditions and govern Licensee's use of the below described services provided by NP. These Service-Specific Terms operate in addition to the other provisions of these Terms and Conditions. In the event of any conflict or inconsistency between the Service-Specific Terms and the remainder of these Terms and Conditions, the applicable Service-Specific Terms will govern and control solely with respect to Licensee's use of such specific service.

1. Premium Support Service. If set forth in a Quote or Purchase Order, NP will provide Licensee during the Premium Support Term (defined below) with the additional support for the applicable Software licenses based on the level of Premium Support Services to which Licensee has enrolled ("**Premium Support Services**"). Premium Support Service is only available for Licensees whose Software licenses are under active maintenance and support.
 - a. *Term*. Premium Support starts on the day NP invoices Licensee for Premium Support Service and ends on the date the Premium Support Service expires as set forth in the relevant Quote or Purchase Order, unless sooner expired or terminated in accordance with this Section VII.1.a ("**Premium Support Term**").
 - b. *Expiration*. Premium Support Services will automatically expire without notice if Licensee fails to maintain active maintenance and support for all applicable Software receiving Premium Support Services or after the Premium Support Services Term ends and is not renewed. For clarity, NP will continue to provide Premium Support Services to all other applicable Software that remain under active maintenance and support and for which Licensee has paid fees during the Premium Support Services Term.
 - c. *Termination*. In addition to NP's early termination rights set forth in Section II herein, NP may terminate provision of Premium Support Services upon fifteen (15) days prior written notice for any material default or breach of this Section VII.1, these Terms and Conditions, or the EULA, unless Licensee has cured such failure or default within such period, or immediately if NP terminates these Terms and Conditions or the EULA, or for Licensee breach. However, there will be no cure period for a breach of the license restrictions contained in the EULA or if Licensee misappropriate or infringes NP's intellectual property rights.
 - d. *Exclusions from Premium Support Services*. Regarding Premium Support Services, NP is not obligated to provide any support other than what is set out in a Quote or Purchase Order.
2. Reporting Packages.
 - a. *Scope*. The Software may be used to generate reports regarding the Licensee's information technology network (the "**Reports**"), and NP may push the Reports to the Licensee (the "**Reporting Package Service**"). For purposes of these Terms and Conditions, the term "**Documentation**" shall include the Reports.
 - b. *Term*. The Reporting Package Service starts on the day NP invoices Licensee for the Reporting Package Service and ends on the date the Reporting Package Service expires as set forth in the relevant Quote or Purchase Order, unless sooner expired or terminated in accordance with this Section VII.2.a ("**Reporting Package Service Term**").
 - c. *Expiration*. Reporting Package Service will automatically expire without notice if Licensee fails to maintain active maintenance and support for all applicable Software receiving Reporting Package Service or after the Reporting Package Service Term ends and is not renewed. For clarity, NP will continue to provide Reporting Package Service to all other applicable Software that remain under active maintenance and support and for which Licensee has paid fees during the Reporting Package Service Term.

- d. *Termination.* In addition to NP's early termination rights set forth in Section II herein, NP may terminate provision of Reporting Package Service upon fifteen (15) days prior written notice for any material default or breach of this Section VII.2, these Terms and Conditions, or the EULA, unless Licensee has cured such failure or default within such period, or immediately if NP terminates these Terms and Conditions or the EULA for Licensee breach. However, there will be no cure period for a breach of the license restrictions contained in the EULA or if Licensee misappropriate or infringes NP's intellectual property rights.
- e. *Disclaimer.* In addition to the disclaimer of warranty set forth in Article III, NP does not provide any representation or warranty as to the effectiveness, accuracy, or legality of the Reports that may be generated by the Software and pushed to the Licensee by NP pursuant to Reporting Package Service. NP is not responsible for any decisions or judgment made by Licensee based on any of the Reports. Licensee bears all risks associated with the use of any of the Reports, including any risk that may arise from reliance on the correctness, accuracy, completeness, or suitability of any of the Reports, and Licensee shall indemnify, defend, and hold harmless NP against any Claims that may arise from Licensee's use of any of the Reports.

VIII. Miscellaneous

1. Entire Agreement. These Terms and Conditions, the Quote and the EULA (each of which are incorporated by reference herein), represent the parties' entire agreement relating to the NP Materials and the Services and supersede all prior or contemporaneous communications, agreements, and understandings, written or oral, with respect to the subject matter hereof. These Terms and Conditions may not be extended, amended, modified, in whole or in part, except by further specific written agreement of the parties signed by their respective authorized officials. NP reserves the right to modify and amend these Terms and Conditions at any time.
2. Order of Precedence. If these Terms and Conditions conflict with the terms and conditions of the EULA, unless expressly stated herein, the terms and conditions of the EULA shall prevail and control with respect to the NP Materials and the Services provided hereunder. Any and all additional or conflicting terms provided by Licensee, whether in a Purchase Order (whether or not such Purchase Order is accepted by NP), or otherwise, shall be void and shall have no effect.
3. Notices. All notices required or permitted under these Terms and Conditions will be in writing and delivered via overnight or express mail, certified mail (return receipt requested), or in person to: (i) for Licensee, the address specified in a Quote or Purchase Order; (ii) for NP, 60 Hazelwood Drive, Attn: Robin Berthier, Champaign, IL 61820; or (iii) such other address as either party may designate subsequently in writing, and will be deemed effective upon receipt.
4. Waiver. The failure of either party to enforce any provision of these Terms and Conditions shall not constitute a waiver of that right or future enforcement of that or any other provision.
5. Assignment. Licensee may not assign or otherwise transfer any of its rights or obligations under these Terms and Conditions without the prior written consent of NP.

6. Choice of Law and Venue. These terms and conditions shall be governed by the substantive laws of the State of Illinois, U.S.A., excluding its conflict of laws provisions. If any provision of these Terms and Conditions is held to be invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions. The venue for all claims and disputes between Licensee and NP shall be the state and federal courts located in the County of Champaign, State of Illinois.
7. U.S. Government Licensees. The Software and related documentation are “Commercial Items,” as that term is defined at 48 C.F.R. § 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as such terms are used in 48 C.F.R. § 12.212 or 48 C.F.R. §§ 227.7202-1 through 227.7202-4, as applicable. The Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.
8. Export Law Assurances. Licensee may not use or otherwise export or re-export the Software except as authorized by United States law and the laws of the jurisdiction in which the Software was obtained. In particular, but without limitation, the Software may not be exported or re-exported (a) into (or to a nation or resident of) any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person’s List or Entity List. By installing or using any component of the Software, Licensee represents and warrants that you are not located in, under control of, or a national or resident of any such country or on any such list.

IX. Definitions

“Authorized User” means a person who uses the Software.

“EULA” means the End User License Agreement provided at [\[LINK\]](#).

“Licensee” means an individual or legal entity exercising rights under and complying with all terms of these Terms and Conditions and the EULA. For legal entities, Licensee includes any entity that controls, is controlled by, or is under common control with Licensee that has either entered into or is identified in a Quote or Purchase Order. For purposes of these Terms and Conditions, “control” means ownership, directly or indirectly, of more than fifty percent (50%) of the equity capital of the legal entity.

“Documentation” means the documentation and other supplemental materials associated with the Software and provided by NP, including, but not limited to, if applicable, the Reports (as defined herein).

“NP” means Network Perception, Inc.

“NP Materials” means the Software, Documentation, Customer Knowledge Base, and all modifications, derivative works, upgrades, and enhancements thereto, and all supporting systems, databases, information, data, documents, materials, works, and all intellectual property rights in and to the foregoing.

“NP Parties” has the meaning given in [Section IV](#).

“Purchase Order” means a purchase order for the Software submitted by Licensee and accepted by NP.

“Quote” means the quote setting forth the Software and Services executed between the parties to which these Terms and Conditions are attached.

“Registered” is the act of binding a copy of the Software to a specific Authorized User and takes place by registering the identity of the User on <https://portal.network-perception.com>.

“Services” means the installation services, the premium support service, maintenance and support services, the virtual training services, the reporting services, and other services provided by NP to Licensee in connection with the Software.

“Software” means the software, in object form only, provided to you by NP in accordance with a signed Quote or Purchase Order.

“Term,” “Initial Term,” and “Renewal Term” have the meanings given in Section II.1.