

## Customer and End User Terms and Conditions

### 1. Definitions.

- (a) **"Agreement"** means this agreement, the proposal entered into between the Customer and Xpertek Contact, the Turnstyle end user license agreement accessible at [www.xpertekcontact.co.za/teula](http://www.xpertekcontact.co.za/teula) and any amendments made in accordance with the terms hereof from time to time.
- (b) **"Customer Data"** has the meaning ascribed to it in Section 6(b).
- (c) **"Effective Date"** means the date set out in the Introduction and Details section at the beginning of this Agreement.
- (d) **"Services"** means the services described in the Introduction and Details section at the beginning of this Agreement.
- (e) **"Subscription Account"** means a subscription account issued by Turnstyle to Customer pursuant to the terms and conditions of this Agreement.
- (f) **"Subscription Fee"** means a charge in the amount and the frequency indicated in the Introduction and Details section at the beginning of this Agreement in connection with Customer's ongoing access to and use of the Services.
- (g) **"Turnstyle"** means either Turnstyle Analytics Inc, or Xpertek Contact, as the context may require..

### 2. Provision of the Services.

- (a) **Setup of the Services.** Conditional on Customer making commercially reasonable efforts to cooperate with the reasonable requests of Turnstyle, including providing Turnstyle required access to Customer premises and third party systems in order for Turnstyle to install and operate the Device (and obtaining all required third party consents and making all required third party disclosures regarding such access and Device installation), Turnstyle will issue a Subscription Account to Customer and allow Customer to use the Services in accordance with the terms and conditions of this Agreement.
- (b) **Customer Obligations in Respect of the Device.** Customer will allow Turnstyle, or Xpertek Contact, access to Customer premises during regular business hours, and will, at no cost to Turnstyle, provide any reasonable cooperation or assistance that Turnstyle may request or require (including appropriate installation location and reasonable access to and use of electricity on Customer's premises) in order for Turnstyle to install, maintain and operate the Device on such Customer premises during the Term, and to remove the Device therefrom following the end of the Term. During the Term and such reasonable period thereafter as Turnstyle may require to remove the Device from Customer's premises, Customer will not, and will not permit any other person to: (i) interfere with or prevent the operation of the Device, (ii) remove the Device from the location where it is installed, or (iii) modify, tamper with or disassemble the Device, or attempt to do any of the above. While on Customer's premises, the Device will at all times remain the sole property of Turnstyle, and Customer will take reasonable measures to secure and insure the Device against loss or theft that are in any event no less stringent than security measures Customer takes to safeguard similar property of Customer. Customer will immediately return the Device to Turnstyle upon request.
- (c) **Provision of the Services.** Turnstyle will: (i) provide to Customer basic support through the Turnstyle website for the purchased Services at no additional charge as described more fully in Section 9 (Customer Support) below; and (ii) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (a) planned downtime and scheduled upgrades (as described more fully in Section 9 (Customer Support) below), or (b) any unavailability caused by circumstances beyond Turnstyle's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes (other than those involving Turnstyle employees), Internet service provider failures or delays, or the unavailability or modification by third parties of third party sites.
- (d) **Provisioning of the Services.** Turnstyle may update the functionality and user interface of the Services from time to

time in its sole discretion as part of its ongoing mission to improve the Services and customers' use of the Services.

### 3. License Grants.

- (a) **License Grant by Turnstyle.** Subject to the terms and conditions of this Agreement, Turnstyle grants to Customer a revocable, non-exclusive and non-transferable license during the Term to permit Customer to access the Services over the Internet and through the then available standard interface for the Services.
- (b) **License Grant by Customer.** Subject to the terms and conditions of this agreement, including Turnstyle's confidentiality obligations, Customer grants to Turnstyle a royalty-free, fully paid-up, worldwide license to access, collect, store and use the Customer Data solely to provide the Services to Customer, and where applicable use the Customer Data for analytical purposes.

### 4. Privacy Policy; Disclaimer; Suspension of Access.

- (a) **Privacy Policy.** To the extent that Customer Data may contain any personally-identifiable data, Customer agrees to Turnstyle's use, collection and disclosure of such personally identifiable information for the purposes authorized under this Agreement and in accordance with Turnstyle' privacy policy located at: <http://www.getturnstyle.com/tos/privacy.html> (the **"Privacy Policy"**). The Privacy Policy is hereby incorporated by reference and forms a part of this Agreement.
- (b) **Disclaimer.** As between Turnstyle and Customer, Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. Customer understands that the uninterrupted operation of the Device and the technical processing and transmission of Customer Data is fundamentally necessary to use of the Services. Therefore, Customer expressly consents to Turnstyle's storage of Customer Data, which will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Turnstyle. Customer acknowledges and understands that Customer Data may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. Turnstyle is not responsible for any Customer Data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across public networks not owned and/or operated by Turnstyle, including, but not limited to, the Internet, third party websites, and your local network. Customer agrees that Turnstyle is not in any way responsible for any interference with Customer's use of or access to the Services or security breaches arising from or attributable to the Internet and Customer waives any and all claims against Turnstyle in connection therewith.

### 5. Customer ID; Limitations; Customer Responsibilities.

- (a) **Customer ID.** Upon Customer's request, but subject to any limitations associated with Customer's Subscription Account, Turnstyle will issue user identification and password (**"User ID"**) to Customer for each individual Customer wishes to have access to and use of the Services (each, a **"User"**). Customer may only identify its partners, shareholders, employees and contractors who, in each case, are bound by confidentiality restrictions at least as restrictive as this Agreement as Users. Users may only access and use the Service through their particular User ID. Customer will not allow Users to share their User ID with any other person. Customer is responsible for all activity occurring under their User IDs. Customer is responsible for all use of the Services by Users and for maintaining the confidentiality of their User ID and will promptly notify Turnstyle of any actual or suspected unauthorized use of the Services. Turnstyle reserves the right to replace any User ID if it determines it may have been used for an unauthorized purpose.
- (b) **Limitations.** Customer agrees that it will not permit any Users or any other person to: (a) permit any person to access or use the Services other than the Users authorized under this Agreement; (b) modify, adapt, alter or translate any software underlying the Services, except as expressly allowed hereunder; (c) sublicense, lease, rent, loan, distribute, or otherwise transfer the Service to any other person; (d) reverse engineer, decompile, disassemble, or otherwise

derive or determine or attempt to derive or determine the source code (or algorithms, structure or organization) of any software underlying the Services (including the Local Software); or (e) use or copy the any software underlying the Services (including the Local Software) except as expressly allowed hereunder.

(c) Customer Responsibilities. Customer agrees that Customer is responsible for the compliance by the Users with this Agreement and for the Users' use of the Services, as well as for ensuring that the Users maintain the confidentiality of their User IDs. Customer agrees that Customer is responsible for all charges incurred by the Users with access to the Services. For greater certainty but without limiting the generality of the foregoing, Customer agrees that Customer will not:

- (i) use or permit the Users to use the Services except as permitted by this Agreement;
- (ii) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Services available to any third party, other than to the Users except as expressly contemplated by this Agreement;
- (iii) use or permit the Users to use the Services to collect, transmit or process: (A) infringing, obscene, threatening, offensive, libellous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (B) any non-public or personally-identifiable data regarding an individual's financial or economic identity, sexual orientation, religious beliefs, medical or physical identity;
- (iv) use or permit the Users to use the Services to send, store, publish, post, upload or otherwise transmit any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another;
- (v) continue to use the Services in a manner that interferes with or disrupts the integrity or performance of the Services following a notice from Turnstyle of such use;
- (vi) attempt to gain unauthorized access to the Services or its related systems or networks;
- (vii) use or knowingly permit the use of any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Services;
- (viii) use any data mining, robots or similar data gathering or extraction methods;
- (ix) access the Services for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to the Services; or
- (x) copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Services or any part thereof or otherwise attempt to discover any source code or modify the Services.

6. **Reservation of Rights.**

- (a) Rights Reserved by Turnstyle. Turnstyle expressly reserves all rights in the Services and all materials provided by Turnstyle hereunder not specifically granted to Customer. It is acknowledged that all right, title and interest in the Services and all materials provided by Turnstyle hereunder, any update, adaptation, translation, customization or derivative work thereof, and all intellectual property rights therein will remain with Turnstyle (or third party suppliers, if applicable) and that the Services and all materials provided by Turnstyle hereunder are licensed on a subscription basis and not "sold" to Customer.
- (b) Rights Reserved by Customer. Customer expressly reserves all rights in any data, information, records and files that

Customer (or the Users) loads, transmits to or enters into the Service, and including all results from processing such data, including compilations, and derivative works thereof, and for greater certainty, any data or information collected through the Device (the "**Customer Data**"), subject to the license that Customer grants Turnstyle in accordance with the provisions of this Agreement, and provided that Customer does not acquire any intellectual property rights in the Services or any elements thereof.

7. **Customer Data.**

- (a) Responsibility. Customer has sole responsibility for the accuracy, appropriateness and completeness of all Customer Data. Turnstyle will use the Customer Data it is provided in performing the Services and is not responsible for reviewing, validating or otherwise confirming the accuracy, appropriateness or completeness of Customer Data.
- (b) Third-Party Disclosures and Consents. Customer is solely responsible for obtaining all necessary third party consents and making all required third party disclosures in accordance with applicable law (including applicable provincial and federal privacy laws) regarding data or information (including any personally-identifiable information) collected by Turnstyle through the Device from third parties.
- (c) Removal of Customer Data on Request by Customer. Customer may control the Customer Data stored by the Services including, at any time, by deleting all or part of the Customer Data stored on the Services.
- (d) Restrictions. Customer agrees not to upload or transmit any Customer Data: (i) that Customer does not have the lawful right to copy, transmit, distribute, and display (including any Customer Data that would violate any confidentiality or fiduciary obligations that Customer might have with respect to the Customer Data); (ii) for which Customer does not have the consent or permission from the owner of any personally identifiable information contained in the Customer Data; (iii) that infringes, misappropriates or otherwise violates any intellectual property or other proprietary rights or violates any privacy rights of any third party (including, without limitation, any copyright, trademark, patent, trade secret, or other intellectual property right, or moral right or right of publicity); (iv) that is false or misleading; (v) that is defamatory, obscene, or offensive; or (vi) that violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil or criminal liability.
- (e) **Indemnity. Customer agrees to defend, indemnify and hold harmless Turnstyle, its employees, officers, directors and affiliates against any and all liability (including damages, recoveries, deficiencies, interest, penalties and reasonable attorney's fees) to third parties relating to: (a) Customer Data, (b) Customer's responsibilities and obligations under Section 7(b), (c) Customer's breach of any of its obligations, representations or warranties under this Agreement; (d) the operation of the Device while on Customer's premises; or (e) use or receipt of the Services by Customer or third parties on Customer's behalf, including in combination with any third party software, application or service.**

8. **Contract Term.**

This Agreement will commence on the Effective Date and continue for the term agreed to in the Introduction and Details section of this Agreement (the "**Initial Term**"). On expiry of the Initial Terms this Agreement will continue for a further 12 month periods (each 12 month period referred to as an "**Extended Period**"). This Agreement may be terminated by either Party by providing the other Party written notice of its intention to terminate no less than 30 days prior to the expiry of either the Initial Period or any subsequent Extended Period.

9. **Customer Support.**

Turnstyle will provide the following standard customer support to Customer:

- (a) Web Support. Customer will have access to Turnstyle's technical support web site and may use the web site to submit service requests. Turnstyle will use commercially reasonable efforts to correct any reproducible failure of the Services to substantially conform to its expected operation.
- (b) Service Upgrades and Scheduled Downtime. Turnstyle may update the Services in its sole discretion. Turnstyle may from

time to time schedule downtime for maintenance and upgrades, provided that Turnstyle notify the Customer in writing of such proposed scheduled downtime no less than 1 business day prior to such proposed scheduled downtime being undertaken.

- (c) It is agreed that the Parties will enter into an applicable service level agreement, detailing the processes and procedures relating to the aforementioned, as well as any other applicable provisions relating to the support of the Services, at the same time as entering into this Agreement.

10. **Fees and Payment.**

- (a) Subscription Fee. Customer will pay to Xpertek Contact, the Subscription Fee each calendar month during the Term, and Xpertek Contact may invoice Customer for the Subscription Fee in respect of each calendar month on or after the first day of such month.
- (b) Invoices. From time to time, Xpertek Contact may prepare and send to the Customer, at the contact information on file with Xpertek Contact, invoices for any fees and charges that have become due and payable under this Agreement (including the Subscription Fee). Unless otherwise expressly stipulated in an invoice, Customer agrees to pay all invoiced amounts within thirty (30) business days of the invoice date.
- (c) Late Payment. Customer may not withhold or "set off" any amounts due under this Agreement. Turnstyle reserves the right to suspend Customer's access to the Services until all due amounts are paid in full. Any late payment will be increased by the costs of collection (if any) and will incur interest at the rate of one and a half percent (1.5%) compounded monthly (19.56% annually), or the maximum legal rate (if less) per month or fraction thereof until fully paid.
- (d) Certain Taxes. Fees and charges quoted in this Agreement do not include, and Customer shall pay, indemnify and hold Turnstyle harmless, from all sales, use, gross receipts, value-added, GST/HST, personal property or other taxes, and all applicable duties, tariffs, assessments, export and import fees or similar charges (including interest and penalties imposed thereon) on the transactions contemplated in connection with this Agreement, other than taxes based on the net income or profits of Turnstyle.

11. **Confidential & Proprietary Information.**

Definitions. For purposes of this section, Customer will be the "**Recipient**", Turnstyle and/or Xpertek Contact will be the "**Discloser**", and "**Confidential & Proprietary Information**" includes all information disclosed by Discloser to Recipient during the Term of this Agreement and marked as "**confidential**" or "**proprietary**" or which a reasonable person would understand to be confidential or proprietary; provided that (i) all parts of the Service, whether marked as "**confidential**" or "**proprietary**" or not, and (ii) the terms of this Agreement will be considered to be Turnstyle Confidential & Proprietary Information; provided, however, that Discloser's Confidential & Proprietary Information does not include: (i) information already known or independently developed by Recipient outside the scope of this relationship by personnel not having access to any Discloser's Confidential & Proprietary Information; (ii) information that is publicly available through no wrongful act of Recipient, or (iii) information received by Recipient from a third party who was free to disclose it without confidentiality obligations.

- (a) Covenant. Recipient hereby agrees that during the Term and at all times thereafter it shall not (i) disclose such Confidential & Proprietary Information of the Discloser to any person or entity, except to its own personnel, affiliates or contractors having a "need to know", and to such other recipients as the Discloser may approve in writing; (ii) use Confidential & Proprietary Information of the Discloser except to exercise its license rights or perform its obligations under this Agreement; or (iii) alter or remove from any Confidential & Proprietary Information of the Discloser any proprietary legend. Recipient shall use at least the same degree of care in safeguarding the Confidential & Proprietary Information of the Discloser as it uses in safeguarding its own confidential information of a similar nature, but in no event shall less than due diligence and reasonable care be exercised. Each party will be deemed to have fulfilled its confidentiality obligations under this Section 11 (Confidential & Proprietary Information ) if it affords the other party's Confidential & Proprietary Information at least the same degree of care it takes in

protecting its own confidential information from unauthorized disclosure (but in no event using less than a reasonable degree of care). Upon the earlier of Discloser's written request or termination or expiration of this Agreement, and regardless of whether a dispute may exist, Recipient shall return or destroy (as instructed by Discloser) all Confidential & Proprietary Information of Discloser in its possession or control and cease all further use thereof. Notwithstanding the foregoing, Recipient may disclose Discloser's Confidential & Proprietary Information to the extent that such disclosure is necessary for the Recipient to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that the Recipient promptly notifies the Discloser in writing of such required disclosure and cooperates with the Discloser to seek an appropriate protective order.

- (b) Injunctive Relief. Recipient acknowledges that violation of the provisions of this section would cause irreparable harm to Discloser not adequately compensable by monetary damages. In addition to other relief, it is agreed that injunctive relief shall be available without necessity of posting bond to prevent any actual or threatened violation of such provisions.

12. **Warranties and Disclaimers.**

- (a) Customer Warranty. Customer represents and warrants that Customer will use and receive the Services in accordance with applicable law, including applicable provincial and federal privacy legislation.
- (b) Warranty Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 12 (WARRANTIES AND DISCLAIMERS) THE SERVICES, THE DEVICE AND ANY OTHER PRODUCTS AND SERVICES PROVIDED BY TURNSTYLE TO CUSTOMER ARE PROVIDED "AS IS", "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND. TURNSTYLE HEREBY DISCLAIMS ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, REPRESENTATIONS OR CONDITIONS, WHETHER WRITTEN OR ORAL, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, SECURITY, RELIABILITY, COMPLETENESS, QUIET ENJOYMENT, ACCURACY, QUALITY, INTEGRATION OR FITNESS FOR A PARTICULAR PURPOSE. TURNSTYLE DOES NOT WARRANT THAT THE SERVICE OR THE DEVICE WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE.

13. **Limitation of Liabilities.**

The Parties acknowledge that the following provisions have been negotiated by them and reflect a fair allocation of risk and form an essential basis of the bargain and shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy:

- (a) Amount. EXCEPT FOR INDEMNITIES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT AND SUBJECT TO SECTION 14(c), IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF TURNSTYLE OR XPERTEK CONTACT IN CONNECTION WITH OR UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF FEES AND CHARGES COLLECTED BY XPERTEK CONTACT UNDER THIS AGREEMENT. FOR GREATER CERTAINTY, THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THIS AGREEMENT WILL NOT INCREASE THIS MAXIMUM LIABILITY AMOUNT. IN NO EVENT SHALL TURNSTYLE'S SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT.
- (b) Type. IN NO EVENT SHALL TURNSTYLE OR XPERTEK CONTACT BE LIABLE TO CUSTOMER FOR ANY (I) SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, (II) LOST SAVINGS, PROFIT, DATA, USE, OR GOODWILL, (III) BUSINESS INTERRUPTION EVEN IF NOTIFIED IN ADVANCE OF SUCH POSSIBILITY, OR (IV) PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT, REGARDLESS OF CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE, FUNDAMENTAL BREACH, BREACH OF A FUNDAMENTAL TERM) OR OTHERWISE. IN NO EVENT SHALL TURNSTYLE OR XPERTEK CONTACT BE LIABLE FOR PROCUREMENT OR COSTS OF SUBSTITUTE PRODUCTS OR SERVICES.

- (c) THE PROVISIONS OF SECTIONS 14(a) AND 14(b) SHALL NOT BE APPLICABLE TO THE EXTENT THAT THE CAUSE OF ACTION GIVING RISE TO THE CLAIM ARISES DIRECTLY FROM:
  - (i) CUSTOMER'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT; OR
  - (ii) A BREACH OF CUSTOMER'S OBLIGATIONS UNDER SECTION 11.

14. **Notices.**

Notices sent to either Party shall be effective when delivered in person or by email, one (1) day after being sent by overnight courier, or two (2) days after being sent by first class mail postage prepaid to the official contact designated below and immediately after being received by the other party's server. Notices must be in writing and sent to the respective email or postal address set out on the cover page of this Agreement. Either Party may change its contact information by giving notice of such change to the other Party.

15. **Termination.**

- (a) Generally. Either Party may, in addition to other relief, suspend or terminate this Agreement if the other Party breaches any material provision thereof and fails within fifteen (15) days after receipt of notice of default to correct such material breach or to commence corrective action reasonably acceptable to the aggrieved Party and proceed with due diligence to completion. Either Party shall be in default hereof if it becomes insolvent, makes an assignment for the benefit of its creditors, a receiver is appointed or a petition in bankruptcy is filed with respect to the Party and is not dismissed within thirty (30) days.
- (b) Survival. Upon termination or expiration of this Agreement for any reason: (a) all rights and obligations of both Parties (except for Customer's payment of all sums then owing, including any Subscription Fees), including all licenses granted hereunder, shall immediately terminate except as provided below; (b) within thirty (30) days after the effective date of termination, each Party shall comply with the obligations to return or destroy all Confidential Information of the other Party, as set forth Section 11 (Confidential & Proprietary Information); and (c) Customer will, at Turnstyle's option: (1) immediately return the Device to Turnstyle or Xpertek Contact, as the case may be; or (2) for a reasonable period of time following the termination or expiration of this Agreement, provide Turnstyle or Xpertek Contact with such reasonable cooperation and access to Customer's premises as are requested by Turnstyle or Xpertek Contact in order to remove the Device. The following Sections will survive expiration or termination of this Agreement for any reason: Section 6 (Reservation of Rights), Section 7 (Customer Data), Section 11 (Confidential & Proprietary Information), Section 12 (Warranties and Disclaimers), Section 13 (Limitation of Liabilities), Section 16(c) (Survival), and Section 17 (General Provisions).

16. **General Provisions.**

- (a) Assignment. The Customer may not assign this Agreement to any third party without the Turnstyle's prior written consent, except this Agreement may be assigned by either Party (i) to any party that controls, is controlled by, or is under common control with such Party, or (ii) pursuant to a transfer of all or substantially all of such Party's business or assets, whether by merger, sale of assets, sale of stock, or otherwise. Any assignment in violation of this section shall be void. The terms of this Agreement shall be binding upon permitted assignees. It is specifically recorded that Turnstyle shall be entitled, in its sole discretion to cede, assign or transfer the whole or part of its rights and obligations in terms of this Agreement to any third party.
- (b) Choice of Law. This Agreement and any action related thereto shall be governed by and construed in accordance with the substantive laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflicts of law principles. The Parties will initiate any lawsuits in connection with this Agreement in Toronto, Ontario, and irrevocably consent to the exclusive personal jurisdiction and venue of the courts sitting therein. The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
- (c) Right to List As A Customer. Customer agrees that Turnstyle, or Xpertek Contact may utilize Customer's entity

name in listings of current customers. Use of Customer's name in any other marketing materials or press announcements will be submitted to Customer in advance for approval, and such approval will not be unreasonably withheld.

- (d) Compliance with Export Regulations. Customer has or shall obtain in a timely manner all necessary or appropriate licenses, permits or other governmental authorizations or approvals; shall indemnify and hold Turnstyle harmless from, and bear all expense of, complying with all foreign or domestic laws, regulations or requirements pertaining to the importation, exportation, or use of the technology to be developed or provided herein. Customer shall not directly or indirectly export or re-export (including by transmission) any regulated technology to any country to which such activity is restricted by regulation or statute, without the prior written consent, if required, of the administrator of export laws.
- (e) Construction. Except as otherwise provided herein, the Parties rights and remedies under this Agreement are cumulative. The term "including" means "including without limitation." The headings of sections of this Agreement are for reference purposes only and have no substantive effect.
- (f) Force Majeure. Neither Party shall be liable for delays caused by events beyond its reasonable control, except non-payment of amounts due hereunder shall not be excused by this provision.
- (g) Severable. Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect.
- (h) Waiver. Waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions.
- (i) Independent Contractors. Customer's relationship to Turnstyle, or Xpertek Contact is that of an independent contractor, and neither Party is an agent or partner of the other. Customer will not have, and will not represent to any third party that it has, any authority to act on behalf of Turnstyle.
- (j) Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other communications, whether written or oral. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.
- (k) Amendments. No amendment, supplement, modification, waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party or Parties to be bound thereby. Any waiver by one Party of any default by the other Party will not affect or impair any rights of the first Party arising from any subsequent default by that other Party.
- (l) English Language. It is the express wish of the parties that this Agreement and all related documents be drawn up in English.