

GENERAL TERMS AND CONDITIONS

THE AGREEMENT

Your use of Xfernet services is governed by these General Terms and Conditions, the Acceptable Use Policy, any applicable Country Specific Terms, and the terms of your Order. Your Order may have additional terms that apply to the particular services in your Order. When we use the term "Agreement" in any of the Order, General Terms and Conditions, or Acceptable Use Policy, we are referring collectively to all of them, including any product specific terms that apply to the Services. Your use of the Services includes the ability to enter into agreements and make purchases electronically. You acknowledge that your electronic assent constitutes your acceptance to the Agreement for each electronic purchase or transaction you enter. If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have the legal authority to bind that entity to this Agreement. The Agreement is effective as of the time that you sign the form of Agreement prepared by Xfernet, or accept the Agreement as part of Xfernet's online order process.

1. DEFINED TERMS

Some words used in the Agreement have particular meanings:

"Acceptable Use Policy" or "AUP" means the Xfernet Acceptable Use Policy posted in Xfernet's AUP as of the date you sign the Agreement.

"API" means application programming interface.

"Affiliate" means any and all legal entities which now or hereafter the ultimate parent of Xfernet controls. For the purpose of this definition, "control" shall mean an entity, directly or indirectly, holding more than fifty percent (50%) of the issued share capital, or more than fifty percent (50%) of the voting power at general meetings, or which has the power to appoint and to dismiss a majority of the directors or otherwise to direct the activities of such legal entity.

"Business Day" or "Business Hours" means 8:00 a.m. – 5:00 p.m. Monday through Friday, United States Pacific time, excluding federal public holidays in the United States.

"Confidential Information" means all information disclosed by one of us to the other, whether before or after the effective date of the Agreement, that the recipient should reasonably understand to be confidential including: (i) unpublished prices and other terms of service, audit and security reports, product development plans, nonpublic information of the parties relating to its business activities or financial affairs, data center designs (including non-graphic information

you may observe on a tour of a data center), server configuration designs, and other proprietary information or technology, and (ii) information that is marked or otherwise conspicuously designated as confidential. Information that is developed by one of us on our own, without reference to the other's Confidential Information, or that becomes available to one of us other than through violation of the Agreement or applicable law, shall not be "Confidential Information" of the other party. Confidential Information shall not include Customer Data.

"Country Specific Terms" means the addendum or addenda that may be incorporated into your Hosting Services Agreement if a portion of your Services are to be provided from a non-United States jurisdiction for which we have special legal terms.

"Customer Data" means all data, records, files, input materials, reports, forms and other such items that are received, stored, or transmitted using the Hosted System.

"Hosted System" means a combination of hardware, software and networking elements that comprise an information technology system. Depending on the Services you are buying, the Hosted System may consist of a dedicated system for your use only, or the right to use certain parts of a shared system that Xfernet maintains for many customers, or a combination of some dedicated elements and some shared elements.

"Hosting Services" means: (i) Xfernet's provision for your use of the Hosted System described in the Services Description, and (ii) Support.

"Order" means: (i) the online order that you submit or accept for the Services, (ii) any other written order (either in electronic or paper form) provided to you by Xfernet for signature that describes the type or types of services you are purchasing, and that is signed by you, either manually or electronically, and (iii) your use or provisioning of the Services through the Xfernet Cloud control panel or through an API.

"Product Terms and Conditions" means the terms and conditions for the particular Hosting Services you are buying.

"Services Description" means a written description of the Hosted System and/or Supplementary Services you are buying from Xfernet, and related fees, that is incorporated by reference in the Agreement, including any "Plan" or other name given to a Services description that you submit to Xfernet as part of an online order process.

"Service Level Guarantee" or "Service Level Guarantees" means a guarantee or guarantees identified as a "Service Level Guarantee" or "Service Level Guarantees" in the applicable Product Terms and Conditions.

"Services" means Hosting Services and Supplementary Services, collectively.

"Supplementary Services" means those services you purchase from Xfernet other than the Hosting Services, such as database administration or "DBA" services, and assistance or support for the application that you operate on your Hosted System.

"Support" has the meaning stated in the applicable Product Terms and Conditions.

2. XFERNET'S OBLIGATIONS

Xfernet's obligation to begin providing Services is contingent on your satisfaction of Xfernet's credit approval criteria. Xfernet will provide the Hosting Services in accordance with the Service Description, the Service Level Guarantees, and other specifications in this Agreement. Xfernet will maintain security practices that are at least as stringent as the minimum security practices described in Xfernet's Security Practices document and will provide the specific security services described in your Services Description. Xfernet will perform all Services in accordance with applicable law.

3. YOUR OBLIGATIONS

You must use reasonable security precautions in connection with your use of the Services. You must comply with the laws applicable to your use of the Services and with the Acceptable Use Policy. You must cooperate with Xfernet's reasonable investigation of Service outages, security problems, and any suspected breach of the Agreement. You are responsible for keeping your account permissions, billing, and other account information up to date using your Xfernet portal or via another Xfernet defined process. You must pay when due the fees for the Services stated in the Services Description or other agreement between us.

Customer Data Security: In addition to the foregoing obligations, you acknowledge that you are solely responsible for taking steps to maintain appropriate security, protection and backup of Customer Data. Xfernet's security obligations with respect to Customer Data are limited to those obligations described in Section 2 above. Xfernet makes no other representation regarding the security of Customer Data. Customer is solely responsible for determining the suitability of the Services in light of the type of Customer Data used with the Services.

4. PROMISES WE DO NOT MAKE

- 4.1.** We do not promise that the Services will be uninterrupted, error-free, or completely secure. You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of your privacy, Customer Data, Confidential Information and property.
- 4.2.** We disclaim any and all warranties not expressly stated in the Agreement including the implied warranties of merchantability, fitness for a particular purpose, and noninfringement. You are solely responsible for the suitability of the services chosen, including the suitability as it relates to your Customer Data. Any services that we are not contractually obligated to provide but that we may perform for you at your request and without any additional charge are provided on an AS IS basis.
- 4.3.** We do not promise to backup your data unless you have purchased backup services. If you purchase backup services, we do not promise to retain the data backup for longer than the agreed data retention period.
- 4.4.** We will provide Support only to your administrative or technical contacts listed on your account. We will not provide support directly to your end users unless specifically agreed in writing.
- 4.5.** Certain Xfernet Services are designed to help you comply with various regulatory requirements that may be applicable to you. However, you are responsible for understanding the regulatory requirements applicable to your business and for selecting and using those Services in a manner that complies with the applicable requirements.

5. ACCESS TO YOUR CUSTOMER DATA OR USE OF THE SERVICES

Xfernet is not responsible to you or any third party for unauthorized access to your data or the unauthorized use of the Services unless the unauthorized access or use results from Xfernet's failure to meet its security obligations stated in Section 2 (Xfernet Obligations) of these General Terms and Conditions or the Services Description. You are responsible for the use of the Services by any employee of yours, any person you authorize to use the Services, any person to whom you have given access to the Services, and any person who gains access to your data or the Services as a result of your failure to use reasonable security precautions, even if such use was not authorized by you.

Xfernet agrees that it will not use or disclose Customer Data. Customer Data is and at all times shall remain the exclusive property of Customer and will remain in the exclusive care, custody, and control of Customer.

6. TERM

The initial term for each Order begins on the date we make the Services available for your use and continues for the period stated in the Order. If no period is stated in the Order, then the initial term shall be one month. Upon expiration of the initial term, the Order will automatically renew successively for a one-month term each time ("Renewal Term"), unless and until one of us gives the other a written notice of non-renewal prior to the expiration of the initial term, or then-current renewal term, as applicable. You must follow Xfernet's non-renewal process accessible from the Xfernet Cloud control panel to give an effective notice of non-renewal. The Renewal Term may be extended to a longer committed term by written request provided by you and upon mutual agreement.

7. FEES

7.1. Fees. Xfernet will charge you fees in accordance with your Order. Unless you have made other arrangements, Xfernet will charge your credit card without invoice as follows: (i) for recurring fees, in advance, on or around the first day of each billing cycle, and (ii) for non-recurring fees (such as fees for initial set-up, overages, compute cycle fees, and domain name registration) on or around the date incurred, or on or around the first day of the billing cycle that follows the date incurred, at Xfernet's option; provided that Xfernet may wait to charge your credit card until the total aggregate fees due are at least \$50. Unless otherwise agreed in the Order, your billing cycle will be monthly, beginning on the date that Xfernet first makes the Services available to you. Xfernet may suspend all Services (including Services provided pursuant to any unrelated Order or other agreement we may have with you) if our charges to your credit card are rejected for any reason. Xfernet may charge interest on overdue amounts at 1.5% per month (or the maximum legal rate if it is less than 1.5%). If any amount is overdue by more than thirty (30) days, and Xfernet brings a legal action to collect, or engages a collection agency, you must also pay Xfernet's reasonable costs of collection, including attorney fees and court costs. All fees are stated and will be charged in US Dollars. Any "credit" that we may owe you, such as a credit for failure to meet a Service Level Agreement, will be applied to fees due from you for Services, and will not be paid to you as a refund. Charges that are not disputed within sixty (60) days of the date charged are conclusively deemed accurate. You must provide Xfernet with accurate factual information to help Xfernet determine if any tax is due with respect to the provision of the Services, and if Xfernet is required by law to collect taxes on the provision of the Services, you must pay Xfernet the amount of the tax that is due or provide satisfactory evidence of your exemption from the tax. You authorize Xfernet to obtain a credit report at any time during the term of the Agreement.

- 7.2. Additional Service Fees/Hourly Service Fees/One Time Fees. For fees for additional services such as Content Delivery Network ("CDN") overages, bandwidth use overages and backup overages, payment shall be due on the next Renewal Date. For Orders for Hourly Services, you shall specify the period of time for which the Hourly Services are requested in minimum increments of one hour and payment shall be due on the next Renewal Date. One time fees, such as setup fees, bandwidth, storage, administrative fees and late fees, are due and payable when invoiced, and/or as agreed by Xfernet through the Customer Portal.
- 7.3. Payment Methods. The payment shall be made by the credit card maintained on file with Xfernet, automatic file transfer or such other method as approved by Xfernet. For methods such as credit card, the payment of fees shall be automatic on the due date.
- 7.4. Taxes. All prices and fees specified in or referred to in this Agreement are stated exclusive of any tax, including withholding tax, sales, use, value added, levies, import and custom duties, excise or other similar or equivalent taxes imposed on the supply of Services. Any sales, use, levies, excise, withholding taxes or similar charges, direct or indirect, applicable or to become applicable, which are levied as a result of the supply of the Services shall be paid by you. Neither party shall be liable for the other party's taxes based on income. If withholding tax applies to any payments for Services made under this Agreement, you may deduct such taxes and shall pay such taxes to the appropriate tax authority; provided that you shall provide Xfernet with an official receipt for any such taxes withheld and must notify Xfernet prior to payment that withholding tax is required to be paid and you shall pay to Xfernet additional amount to ensure that Xfernet receives the full amount of the invoice. If Xfernet has the legal obligation to pay or collect taxes for which you are responsible under this paragraph, the appropriate amount shall be charged to and paid by you in addition to the amount of the invoice, unless you provide Xfernet with a valid tax exemption certificate authorized by the appropriate taxing authority. The parties undertake to cooperate, where possible, to minimize the amount of withholding tax due by making advance clearance applications under the relevant double taxation treaties (where applicable) to the relevant tax authority to reduce the rate of withholding tax or exempt entirely this amount if applicable. In any event, you undertake to account for any tax withheld to the tax authorities on a timely basis.
- 7.5. Fee Increases. For those Services provided on a month-to-month term, we may increase fees at any time on thirty (30) days advanced written notice. If your Order contains Services with a specified term longer than one month, then we may increase your fees effective as of the first day of the renewal term that first begins thirty (30) days from the day of our written notice of a fee increase.

- 7.6. SLA Credits. SLA Credits, if issued to your account, shall be used only to offset future charges for certain Services as provided in the Service Level Agreement. SLA Credits may not be sold, converted to cash or transferred to Third Parties or Affiliates. SLA Credits shall expire on the termination or expiration of the Agreement.
- 7.7. Refunds & Disputes. All fees paid for Services to Xfernet are non-refundable. If the Customer believes that any bill is in error, the Customer's sole and exclusive remedy is to seek SLA credits through the Customer Portal by opening an accounting ticket to give notice to Xfernet within thirty (30) days of the receipt of the disputed bill. Any invoice not disputed by Customer within thirty (30) days of receipt of the invoice shall be conclusively accepted by Customer as correct. Customer shall not chargeback any credit card payments to Xfernet and any such chargeback will result in an additional payment to Xfernet of up to \$500, which is a reasonable estimate of Xfernet's additional administrative costs. Customer is responsible for any additional fees and costs (including, but not limited to, reasonable attorneys' fees, court costs and collection agency fees) incurred by Xfernet in enforcing collection of fees.

8. ORDERING AND MODIFICATION OF SERVICES

You may order Services and all upgrades to such Services through the Customer Portal or as otherwise designated by Xfernet. Xfernet may accept such Orders in its sole discretion and shall give notice to Customer of acceptance of such Order through the Customer Portal. For downgrades, Xfernet requires a written notice by email or by support ticket through the Customer Portal a minimum of ten (10) days prior to 00:00:01 PST (GMT- 8) on the Renewal Date. The failure to provide the required written notice will result in the downgrade of Services being effective on the following Renewal Date and you will be charged for the Services during the relevant Renewal Term.

For cancellation of Services, Xfernet requires a thirty (30) day written cancellation notice by email or cancellation support ticket through the Customer Portal. The failure to provide the required written notice will result in the discontinuance of Services being effective on the following Renewal Date and you will be charged for the Services during the relevant Renewal Term. Cancellations received after a Renewal Date will be prorated on a calendar day basis past the next Renewal Date and billed as a one-time pro-rata charge. Any Services cancelled will remain accessible to Customer until the the Renewal Date or the resulting date determined by the receipt of the thirty (30) day written cancellation notice.

9. EXPORT MATTERS

You represent and warrant that you are not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons and are not otherwise a person to whom Xfernet is legally prohibited to provide the Services. You may not use the Services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, in a country listed in Country Groups D: 4 and D: 3, as set forth in Supplement No. 1 to the Part 740 of the United States Export Administration Regulations, or as otherwise prohibited by law, nor may you provide administrative access to the Service to any person (including any natural person or government or private entity) that is located in or is a national of any country that is embargoed or highly restricted under United States export regulations.

10. CHANGES TO THE ACCEPTABLE USE POLICY

- 10.1.** We may change the Acceptable Use Policy to add or modify restrictions on our customers' use of the Services, provided that the changes are reasonable and consistent with hosting industry norms. If we make a change to the AUP we will publish a revised version of the AUP in Xfernet's AUP document. The revised AUP will become effective as to you on the first to occur of: (i) the first day of a renewal term for the Agreement that begins at least thirty (30) days after the time that the revised AUP has been posted, or (ii) your execution of a new or additional agreement for all or part of your Hosted System that incorporates the revised AUP by reference, or (iii) thirty (30) days following our written notice to you of the revision to the AUP.
- 10.2.** If your compliance with the revised AUP would adversely affect your use of the Hosting Services, and you give a written notice of your objection no later than thirty (30) days following the date that the revised AUP would otherwise have become effective as to you, we will not enforce the revision as to you until sixty (60) days following the date the revision would otherwise have become effective as to you and you will continue to be subject to the prior version. During the sixty (60) day period, you may elect to terminate the Agreement on these grounds by giving written notice. We will not charge you an early termination fee for a termination on these grounds. If you do not elect to terminate during the sixty (60) day period, then the revised AUP will become effective as to you as of the end of the sixty (60) day period. If you terminate your Services under this Subsection, we may decide to waive that change as to you and keep your Agreement in place for the remainder of the term.

11. SUSPENSION OF SERVICES

We may suspend the Services without liability if:

- (i) we reasonably believe that the Services are being used (or have been or will be used) in violation of the Agreement,
- (ii) we discover that you are, or are affiliated in any manner with, a person who has used similar services abusively in the past;
- (iii) you don't cooperate with our reasonable investigation of any suspected violation of the Agreement;
- (iv) we reasonably believe that the Services have been accessed or manipulated by a third party without your consent,
- (v) we reasonably believe that suspension of the Services is necessary to protect our network or our other customers,
- (vi) suspension is required by law, or a regulatory or government body to suspend your Services, or
- (vii) a payment for the Services is overdue:
 - 1. By more than ten (10) days from the Renewal Date for all Cloud-related services
 - 2. By more than thirty (30) days from the Renewal Date for all Colocation services
 - 3. By more than thirty (30) days from the Renewal Date for all Dedicated Hosting services
 - 4. By more than five (5) days from the Renewal Date for all Shared Web Hosting services
 - 5. By more than ten (10) days from the Renewal Date for all CDN (Content Delivery Network) services
 - 6. By more than ten (10) days from the Renewal Date for all ISP services

We will give you reasonable notice of a suspension under this paragraph and a chance to cure the grounds on which the suspension are based, unless we determine, in our reasonable commercial judgment, that a suspension on shorter or contemporaneous notice is necessary to protect Xfernet or our other customers from imminent and significant operational or security risk. If the suspension was based on your breach of your obligations under the Agreement, then we may continue to charge you the fees for the Services during the suspension, and may charge you a reasonable reinstatement fee upon reinstatement of the Services.

12. TERMINATION FOR BREACH

12.1 You may terminate the Agreement for breach if: (i) we materially fail to provide the Services as agreed and do not remedy that failure within ten (10) days of your written notice describing the failure, or (ii) we materially fail to meet any other obligation stated in the Agreement and do not remedy that failure within thirty (30) days of your written notice describing the failure.

12.2 We may terminate the Agreement for breach if: (i) we discover that the information you provided for the purpose of establishing the Services is materially inaccurate or incomplete, (ii) the individual signing the Agreement did not have the legal right or authority to enter into the Agreement on behalf of the person represented to be the customer, (iii) your payment of any invoiced amount is overdue and you do not pay the overdue amount within four (4) Business Days of our written notice, (iv) without notice if you have made payment arrangements via credit card or other third party, and the third party refuses to honor our charges, or (v) you fail to comply with any other provision of the Agreement and do not remedy the failure within thirty (30) days of our notice to you describing the failure. We may also terminate the Agreement for breach if you violate the AUP more than once even if you cure each violation, or if your agreement for any other Xfernet service is terminated for breach of the acceptable use policy applicable to that service.

12.3 Either of us may terminate the Agreement if the other party becomes insolvent or is unable to pay its debts or enters into or files (or has filed or commenced against it) a petition, arrangement, application, action or other proceeding seeking relief or protection under the bankruptcy laws of the United States or any similar laws of the United States or any state of the United States.

12.4 You will not have access to your data stored on the Services during a suspension or following termination.

13. REMOVAL OF EQUIPMENT

Upon termination or expiration of the Agreement Term, unless prohibited by Xfernet in accordance with this Agreement, you will remove the Equipment from the Premises. Unless the parties otherwise agree in writing, in the event the Equipment has not been removed within 5 days following the date of such termination or expiration, Xfernet will have the right to remove, relocate, or otherwise store the Equipment at your expense without incurring any liability to you. If after 30 days of such storage by Xfernet you have not retrieved the Equipment, then Xfernet may dispose of the Equipment as in a manner consistent with

applicable law. In order for Xfernet to release Equipment, Client must have a \$0 balance on their account and have sent us a request for the scheduled date/time.

14. CONFIDENTIAL INFORMATION

Each of us agrees not to use the other's Confidential Information except in connection with the performance or use of the Services, as applicable, the exercise of our respective legal rights under the Agreement, or as may be required by law. Each of us agrees not to disclose the other's Confidential Information to any third person except as follows:

- (i) to each of our respective service providers, agents and representatives, provided that such service providers, agents or representatives agree to confidentiality measures that are at least as stringent as those stated in this General Terms and Conditions;
- (ii) to a law enforcement or government agency if requested, or if either of us reasonably believes that the other's conduct may violate applicable criminal law;
- (iii) as required by law; or
- (iv) in response to a subpoena or other compulsory legal process, provided that each of us agrees to give the other written notice of at least seven (7) days prior to disclosing Confidential Information under this subsection (or prompt notice in advance of disclosure, if seven (7) days advance notice is not reasonably feasible), unless the law forbids such notice.

15. LIMITATION ON DAMAGES

15.1 We are not liable to you for failing to provide the Services unless such failure results from a breach of a Service Level Guaranty, or results from our gross negligence, willful misconduct, or intentional breach of the Agreement. The credits stated in the Service Level Guaranty are your sole and exclusive remedy for our failure to meet those guaranties for which credits are provided unless such failure is due to Xfernet's willful misconduct.

15.2 Neither of us (nor any of our employees, agents, contractors, affiliates or suppliers) is liable to the other for any lost profits or any other indirect, special, incidental or consequential loss or damages of any kind, or for any loss that could have been avoided by the damaged party's use of reasonable diligence, even if the party responsible for the damages has been advised or should be aware of the possibility of such damages. In no event shall either of us be liable to the other for any punitive damages.

15.3 We are not liable to you for lost data unless and to the extent you purchase data backup services from Xfernet and we fail to provide the backup services as agreed. If you purchase backup services, you release Xfernet from liability for loss of data to the extent that the data has changed since the time that we were last required by the Agreement to perform a backup.

15.4 Notwithstanding anything in the Agreement to the contrary, except for liability based on willful misconduct or fraudulent misrepresentation, and liability for death or personal injury resulting from Xfernet's negligence, the maximum aggregate monetary liability of Xfernet and any of its employees, agents, suppliers, or affiliates in connection with the Services, the Agreement, and any act or omission related to the Services or Agreement, under any theory of law (including breach of contract, tort, strict liability, violation of law, and infringement) shall not exceed: (i) for Hosting Services an amount that is twelve (12) times one month's recurring fee under the Agreement for the Services that are the subject of the claim as of the time of the occurrence of the events giving rise to the claim, and (ii) for Supplementary Services, fees paid for the Supplementary Services that are the subject of the claim.

16. INDEMNIFICATION

16.1 If we, our affiliates, or any of our or their respective employees, agents, or suppliers (the "Indemnitees") is faced with a legal claim by a third party arising out of your actual or alleged gross negligence, willful misconduct, violation of law, failure to meet the security obligations required by the Agreement, violation of the AUP, violation of your agreement with your customers or end users, or violation of Section 8 (Export Matters) or Section 16 (Software) of this General Terms and Conditions, then you will pay the cost of defending the claim (including reasonable attorney fees) and any damages award, fine or other amount that is imposed on the Indemnitees as a result of the claim. Your obligations under this subsection include claims arising out of the acts or omissions of your employees or agents, any other person to whom you have given access to the Services, and any person who gains access to the Services as a result of your failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorized by you. If you resell the Services, the grounds for indemnification stated above also include any claim brought by your customers or end users arising out of your resale of the Services. You must also pay reasonable attorney fees and other expenses we incur in connection with any dispute between persons having

a conflicting claim to control your account with us, or any claim by your customer or end user arising from an actual or alleged breach of your obligations to them.

16.2 You must comply with our reasonable requests for assistance and cooperation in the defense of the claim. We may not settle the claim without your consent, although such consent may not be unreasonably withheld. You must pay expenses due under this Section as we incur them.

17. PUBLICITY

You agree that we may publicly disclose that we are providing Services to you and may use your name and logo to identify you as our customer in promotional materials, including press releases. We will not use your name or logo in a manner that suggests an endorsement or affiliation.

18. SOFTWARE

18.1 General. You may not copy any software we provide for your use unless expressly permitted by the Agreement. You may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any software we provide for your use. Unless permitted by the terms of an open source software license, you may not reverse engineer, decompile or disassemble any software we provide for your use except and to the extent that you are expressly permitted by applicable law to do this, and then following at least ten (10) days advance written notice to us. In addition to the terms of our Agreement, your use of any Microsoft® software is governed by: (i) Microsoft's license terms that appear in Xfernet's Microsoft Licensing document. If you use any non-Xfernet provided software on your Hosted System you represent and warrant to Xfernet that you have the legal right to use the software in that manner. On Xfernet's request you will certify in writing that you are in compliance with the requirements of this paragraph and any other software license restrictions that are part of the Agreement, and will provide evidence of your compliance as we may reasonably request.

18.2 Customer Provided Licenses. If Xfernet has agreed to install, patch or otherwise manage software in reliance on your license with a software vendor (rather than Xfernet's license with the software vendor), then you represent and warrant that you have a written license agreement with the vendor that permits Xfernet to perform these activities. You agree that you will provide Xfernet with evidence of licensing as Xfernet may reasonably require prior to the scheduled deployment date, and from time to time as necessary to update the status of the license. If you fail to provide the required evidence of licensing Xfernet may, at its option, either (i) delay the deployment date for the Hosted System that was to include such software until the evidence is provided, (ii) deploy the Hosted System in reliance on Xfernet's licensing agreement with the vendor, and charge you its standard fee for the use of the software until such time as the required evidence is provided, or (iii) suspend or terminate the Agreement. Please Note: Your licensed software may not be compatible with Xfernet's standard process for deploying and repairing Hosted Systems. In addition, in order to install the software Xfernet may require you to send the

physical or electronic media provided to you by the vendor, both for deployment and again in the event of a failure of your Hosted System. You agree that Xfernet will not be in breach of any Service Level Guaranty or other obligation under this Agreement that would not have occurred but for a delay resulting from our agreement to use your licensed software.

19. RECOMMENDATIONS

Xfernet personnel may from time to time recommend third party software or other products and services for your consideration. Xfernet MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING PRODUCTS AND SERVICES THAT ARE NOT PURCHASED FROM Xfernet. Your use of any such products and services is governed by the terms of your agreement with the provider of those products and services.

20. WHO MAY USE THE SERVICE

You may permit your subsidiaries and affiliated companies to use the Services if you wish, however you are responsible for the acts or omissions of your permitted users. Xfernet will provide support only to you, not to your customers, subsidiaries or affiliates. There are no third party beneficiaries to the Agreement, meaning that your customers, subsidiaries, affiliates and other third parties do not have any rights against either of us under this Agreement.

21. NO HIGH RISK USE

You may not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, you may not use, or permit any other person to use, the Services in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or Class III medical devices under the Federal Food, Drug and Cosmetic Act.

22. SERVICES MANAGEMENT AGENT

You agree that you will not interfere with any services management software agent(s) that Xfernet installs on your Hosted System. Xfernet agrees that its agents will use only a minimal amount of computing resources, and will not interfere with your use of your Hosted System. Xfernet will use the agents to track system information so that it can more efficiently manage various service issues, such as patching exceptions and product life cycles. Xfernet may also use the agents to identify security vulnerabilities. Xfernet will not use the agents to view or capture your content or data. Your Services will become "unsupported" as described in the Product Terms if you disable or interfere with our services management software agent(s). You agree that Xfernet may access your Hosted System to reinstall services management software agents if you disable them or interfere with their performance.

23. NOTICES

Your routine communications to Xfernet regarding the Services, including any notice of non-renewal, should be sent to your Xfernet account team using the Xfernet portal. If you want to give a notice regarding termination of the Agreement for breach, indemnification, or other non-routine legal matter, you should send it by electronic mail and first class United States mail to:

legalnotice@xfernet.com

General Counsel Xfernet

3250 Wilshire Blvd. Suite 301 Los Angeles, California 90010

Xfernet's routine communications regarding the Services and legal notices will be posted on the Xfernet portal or sent to the individual(s) you designate as your contact(s) on your account either by electronic mail (including an electronic mail referring you to a ticket posted on your Xfernet portal), United States mail, or overnight courier. Notices are deemed received as of the time posted or delivered, or if that time does not fall within a Business Day, as of the beginning of the first Business Day following the time posted or delivered. For purposes of counting days for notice periods, the Business Day on which the notice is deemed received counts as the first day. Notices must be given in the English language.

24. OWNERSHIP OF INTELLECTUAL PROPERTY

Each of us retains all right, title and interest in and to our respective trade secrets, inventions, copyrights and other intellectual property. Any intellectual property developed by Xfernet during the performance of the Services shall belong to Xfernet unless we have agreed with you in advance in writing that you shall have an interest in the intellectual property.

25. OWNERSHIP OF OTHER PROPERTY

You do not acquire any ownership interest in or right to possess the Hosted System, and you have no right of physical access to the Hosted System. We do not acquire any ownership interest in or right to the information you transmit to or from or store on your Xfernet servers or other devices or media.

26. INTELLECTUAL PROPERTY INFRINGEMENT

If Xfernet or any of its customers is faced with a credible claim that the Services infringe on the intellectual property rights of a third party, and Xfernet is not reasonably able to obtain the right to use the infringing element or modify the Services such that they do not infringe, then Xfernet may terminate the Services on reasonable notice of at least ninety (90) days, and will not have any liability on account of such termination except to refund amounts paid for Services not used as of the time of termination.

27. ASSIGNMENT/SUBCONTRACTORS

Neither party may assign the Agreement without the prior written consent of the other party except that Xfernet may assign the Agreement to an Affiliate with sufficient financial standing in order to meet its obligations under this Agreement or as part of a bona fide corporate reorganization or a sale of its business. Xfernet may use third party service providers to perform all or any part of the Services, but Xfernet remains responsible to you under this Agreement for Services performed by its third party service providers to the same extent as if Xfernet performed the Services itself.

28. FORCE MAJEURE

Neither of us will be in violation of the Agreement if the failure to perform the obligation is due to an event beyond our control, such as significant failure of a part of the power grid, significant failure of the Internet,

natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry.

29. GOVERNING LAW, LAWSUITS

The Agreement is governed by the laws of the State of California, exclusive of any choice of law principle that would require the application of the law of a different jurisdiction, and the laws of the United States of America, as applicable. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods. Each of us agrees that any dispute or claim, including without limitation, statutory, contract or tort claims, relating to or arising out of this Agreement or the alleged breach of this Agreement, shall, upon timely written request of either of us, be submitted to binding arbitration. The party asserting the claim may elect to have the arbitration be in-person, telephonic or decided based on written submissions. The arbitration shall be conducted in the city in which you reside. The arbitration shall proceed in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA") in effect at the time the claim or dispute arose.

The arbitration shall be conducted by one arbitrator from AAA or a comparable arbitration service, and who is selected pursuant to the applicable rules of the AAA. The arbitrator shall issue a reasoned award with findings of fact and conclusions of law and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Either you or we may bring an action in any court of competent jurisdiction to compel arbitration under this Agreement, or to enforce or vacate an arbitration award. We will pay the fee for the arbitrator and your filing fee, to the extent that it is more than a court filing fee. We agree that we will not seek reimbursement of our fees and expenses if the arbitrator rules in our favor. Each of us waives any right to a trial by jury, and agrees that disputes will be resolved through arbitration. No claim subject to this provision may be brought as a class or collective action, nor may you assert such a claim as a member of a class or collective action that is brought by another claimant. Each of us agrees that we will not bring a claim under the Agreement more than two years after the time that the claim accrued. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

30. SOME AGREEMENT MECHANICS

These General Terms and Conditions, the applicable Product Terms, and any applicable Country Specific Terms are incorporated in your Agreement by reference to pages on the Xfernet website. Although we may from time to time revise the General Terms and Conditions, Product Terms, and Country Specific

Terms posted on those pages, those revisions will not be effective as to an Agreement that you signed prior to the date we posted the revisions, and your Agreement will continue to be governed by the General Terms and Conditions and Product Terms posted on the effective date of the Agreement until the first day of any renewal or extended term that follows the date we published the revision. However, if over time you sign multiple Agreements for a single Hosted System –for example to add service elements to an existing Hosted System, then the version of the General Terms and Conditions, Product Terms and Conditions, and Country Specific Terms (if any) referenced in the last signed Agreement will govern the entire Hosted System, unless otherwise agreed in writing.

Unless otherwise expressly permitted in this Agreement, the General Terms and Conditions, Product Terms and Conditions, Acceptable Use Policy, Country Specific Terms and Conditions, and any addenda referenced in any of them, may be amended only by a formal written agreement signed by both parties. A Services Description may be amended to modify, add, or remove Services, by a formal written agreement signed by both parties, or by an exchange of correspondence, including via electronic mail or the Xfernet ticketing system, that includes the express consent of an authorized individual for each of us. The pre-printed terms on your purchase order or other business forms will not become part of this Agreement.

If there is a conflict between the terms of any of the documents that comprise the Agreement, the documents will govern in the following order: signature page for the Agreement, Country Specific Terms (if any), Services Description, Product Terms and Conditions, any addendum to the General Terms and Conditions, the General Terms and Conditions, and the Acceptable Use Policy. If any part of the Agreement is found unenforceable by a court, the rest of the Agreement will nonetheless continue in effect, and the unenforceable part shall be reformed to the extent possible to make it enforceable but still consistent with the business and financial objectives of the parties underlying the Agreement. Each of us may enforce each of our respective rights under the Agreement even if we have waived the right or failed to enforce the same or other rights in the past. The relationship between us is that of independent contractors and not business partners. Neither of us is the agent for the other, and neither of us has the right to bind the other on any agreement with a third party. The captions in the Agreement are for convenience only and are not part of the Agreement. The use of the word "including" in the Agreement shall be read to mean "including without limitation." The words "our" and "us" refers to Xfernet, unless the context clearly indicates another meaning. The Agreement is effective when you sign it, even though the "initial term" may be defined in the Agreement with reference to the Service Commencement Date or other date. The following provisions shall survive expiration or termination of the Agreement: (i) Sections 4, 7, 14, 15, 16, 24, 25, 26, 29, and 30 of this General Terms and Conditions, (ii) all provisions in the Agreement requiring you to pay fees for Services provided prior to the time of expiration or termination or requiring you to pay an early termination fee, and (iii) all other provisions of the Agreement that by their nature are intended to survive expiration or termination of the Agreement. If you have made any change

to the Agreement that you did not bring to our attention in a way that is reasonably calculated to put us on notice of the change, the change shall not become part of the Agreement.

The Agreement may be signed in multiple counterparts, which taken together will be considered one original. Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be original signatures.