

TERMS AND CONDITIONS - *Note* Payments to XenSpec are Non-Refundable.

1. Fees and Billing.

- 1.1. **Service Charges.** Customer agrees to pay the monthly charges for Services and any set-up and other charges indicated on the Service Order(s) or otherwise due hereunder (collectively, "Service Charges"). Service Charges do not include any applicable taxes, which may be billed to Customer in addition to the Service Charges. If a Service Order provides for deferred payment of set-up costs over time, Customer acknowledges that they are responsible for paying in full the remaining balance of such set-up costs in the event of any early termination of the Service Order or this Agreement for any reason whatsoever.
- 1.2. **"Burst" Bandwidth.** Billing for connectivity beyond the committed level ("burst" bandwidth) will follow the "95th percentile" rule: Usage samples will be collected and sorted from highest to lowest and the top 5% discarded. The next highest sample (the 95th percentile number) will then be used as the basis in computing the charge for the month for bandwidth beyond the committed level.
- 1.3. **Billing and Payment Terms.** Beginning on the date of commencement of the Services, as set forth in the Service Order or otherwise documented, Customer will be billed monthly in advance for the contracted Services; except for specified one-time additional Services ordered by Customer and for "burst" bandwidth, which will be billed after the end of the month. All Service Charges and other fees will be due in U.S. dollars within fifteen (15) days of the date of invoice, or on such other terms as XenSpec may require if Customer has not met the criteria for an unsecured net-15-day line of credit. Late payments will accrue interest at a rate of one and one-half percent (1 ½%) per month or the highest rate allowed by applicable law, whichever is lower. If Customer fails to make payments when due and does not cure such failure within (10) days after receipt of written notice of the same pursuant to the terms hereof, XenSpec will consider Customer in default of its payment obligations hereunder, may suspend service to Customer and require payment in advance of further Services.
- 1.4. **Unmetered Bandwidth.** Unmetered Bandwidth maintains a no commit guarantee on ports speeds for services. Unmetered Bandwidth services allow customers to burst

to the full speed of the service port for short time periods, but not to have sustained usage that is greater than 95% metric of 30% of the port. For instance, a 100Mbps port cannot be utilized and sustained beyond 30Mbps, without upgrading service to a dedicated or burst bandwidth model. XenSpec has the right to cap, rate limit, or traffic shape your service, in order to comply with our needs to maintain a fair and acceptable usage amongst other customers on this shared service. Unmetered Service is not guarantee of any port speeds or performance metrics. It is the ability to burst without metering for compensation. XenSpec reserves the right to terminate services with customers when it sees an undue burden on its network, or its other customers. Unmetered service is a shared service with no guarantee of bandwidth, data transferred, or other metrics of any kind.

2. **Services.** The Services will be provided to Customer on the terms set forth on the Service Order(s), subject to the provisions of this Agreement. Requests for additional Services may be made to XenSpec's sales staff or by e-mail to sales@xenspec.com and will be effective when accepted by XenSpec. Such additional Services shall result in an increase in the Service Charges as set forth in the Service Order. For additional services outside the scope of this Agreement (including any Service Order), XenSpec must receive 72 hours advance notice before commencing such services, or may bill Customer a \$500 rush services charge.

- 2.1. **Network Burden.** It is the right to XenSpec to suspend, cap, or rate limit any and all traffic when deemed detrimental to the health network or other customers. Unmetered service is a shared service and is sold with no guarantees of any kind. Customers are asked to upgrade to dedicated port, metered, or flat rate plans to avoid congestion on the network.

3. **Equipment.**

- 3.1. **Equipment Sales.** If any Service Order includes the sale of equipment to Customer (including hardware, software, or other equipment), the Customer agrees to pay the prices specified in the Service Order including all applicable taxes, import and custom duties, and similar charges, upon the terms set forth herein. All risk of loss or damage to such equipment passes to Customer upon installation to Customer's data center space or such other point designated in the Service Order. Title passes to Customer when all outstanding balances due for such equipment are paid in full. In the event Customer defaults on its payment obligations hereunder, XenSpec may

enter the premises wherein the equipment may be found and take possession and remove such equipment.

- 3.2. **Supplied Equipment.** Customer shall have no right or interest in any equipment supplied by XenSpec other than the right to use such equipment during the specified term while payments are current. Customer shall be liable to XenSpec for any damage to such equipment caused by Customer or Customer's representatives, agents or employees.
4. **Warranty.** XenSpec warrants that it will provide the Services at a professional level of quality conforming to generally accepted industry standards and in compliance with all applicable laws and regulations. **EXCEPT AS SPECIFICALLY SET FORTH HEREIN, CUSTOMER'S USE OF THE SERVICES ARE AT CUSTOMER'S OWN RISK, AND XenSpec DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THERE IS NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.**
5. **Disclaimer of Third Party Actions and Control.** XenSpec does not and cannot control the flow of data to or from the XenSpec network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions caused by these third parties can produce situations in which Customer connections to the Internet (or portions thereof) may be impaired or disrupted. It cannot be guaranteed that such situations will not occur and, accordingly, XenSpec disclaims any and all liability resulting from or related to such events. In the event that Customer's use of the Service or interaction with the Internet or such third parties is causing harm to or threatens to cause harm to the XenSpec Network or its operations, XenSpec shall have the right to suspend the Service. XenSpec shall restore Service at such time as it reasonably deems that there is no further harm or threat of harm to the XenSpec Network or its operations.
6. **Limitations of Liability.**

 - 6.1. **Exclusions** In no event will XenSpec be liable for any incidental, punitive, indirect or consequential damages (including without limitation any lost revenue or lost profits)

or for any loss of technology, loss of data, or interruption or loss of use of Service (except as set forth in any applicable Service Level Agreement) or any other similar claims by Customer or related to Customer's business, even if XenSpec is advised of the possibility of such damages.

6.2. **Maximum Liability.** Notwithstanding anything to the contrary in this Agreement, XenSpec's maximum aggregate liability to Customer related to or in connection with this Agreement whether under theory of contract, tort (including negligence), strict liability or otherwise will be limited to the total amount due to XenSpec from Customer hereunder for the first twelve (12) month period of the Agreement.

7. **Indemnification.**

7.1. **Covered Claims.** Each party (the "Indemnifying Party" for purposes of this Section) will indemnify, defend and hold harmless the other party (the "Indemnified Party"), its directors, officers, employees, and affiliates (collectively, the "Indemnified Entities") from and against any and all claims, actions or demands brought against any of the Indemnified Entities alleging: (a) infringement or misappropriation of any intellectual property rights by the Indemnifying Party except to the extent caused by the Indemnified Party; (b) defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity, or spamming or any other tortuous or illegal conduct; (c) any property loss suffered by any other customer of XenSpec resulting from acts or omissions by the Indemnifying Party or its representative(s) or designees; or (d) any personal injury suffered by any representative, employee or agent of the Indemnified Party arising out of such individual's activities related to the Services except to the extent caused by the Indemnified Party's negligence or willful misconduct (collectively, the "Covered Claims").

7.2. **Notice Procedure.** The Indemnified Party will provide the Indemnifying Party with prompt written notice of each Covered Claim of which the Indemnified Party becomes aware. At the Indemnified Party's sole option, it may elect to participate in the defense and settlement of any Covered Claim, provided that such participation shall not relieve the Indemnifying Party of any of its obligations under this Section. The Indemnifying Party shall have the right to control the defense of any Covered Claim.

8. **Term.** This Agreement will commence on the Effective Date and will expire upon the expiration of all Service Order(s) hereunder, unless sooner terminated as provided herein. Each Service Order will have the term specified therein, and will automatically renew at similar terms of original Service Order unless Customer notifies XenSpec in writing prior to the expiration of the then-current term that it has elected to terminate the Services under such Service Order at the end of such term.
9. **Termination.**
 - 9.1. **Nonpayment.** In addition to its rights under Section 9.3 below, XenSpec may suspend service to Customer if Customer is in default of its payment obligations hereunder. Reinstatement of Services may involve costs, for which a reconnection fee may be required.
 - 9.2. **Bankruptcy.** Either party may terminate this Agreement upon written notice to the other party if such other party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, or liquidation for the benefit of creditors, if such petition or proceeding is not dismissed within 60 days of filing.
 - 9.3. **Breach.** Except as otherwise stated, either party may terminate this Agreement if the other party breaches any material term or condition of this Agreement and fails to cure such breach within ten (10) days.
 - 9.4. **Effect of Termination.** Upon expiration or termination of this Agreement: (a) XenSpec will cease providing the Services; (b) except in the case of termination by Customer pursuant to Section 9.3, all of Customer's payment obligations under this Agreement, including but not limited to the Service Charges through the end of the Term indicated on the Service Order(s) will become due in full immediately; and (c) XenSpec reserves the right to restrict Customer's physical access to its equipment in any facility of XenSpec's and to hold such equipment securely until payment in full has been received or until such equipment is taken in full or partial satisfaction of any lien or judgment.
10. **Survival.** The Parties' respective representations, warranties, and covenants, together with obligations of indemnification, confidentiality and limitations on liability will survive the expiration, termination or rescission of this Agreement and continue in full force and effect.
11. **Miscellaneous Provisions.**

- 11.1. **Force Majeure.** Other than with respect to failure to make payments due, neither party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, labor disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond its reasonable control.
- 11.2. **Confidentiality.** Each party agrees that all information furnished to it by the other party, or information of the other party to which it has access under this Agreement, shall be deemed the confidential and proprietary information (collectively referred to as "Confidential Information") of the Disclosing Party and shall remain the sole and exclusive property of the Disclosing Party (the party furnishing the Confidential Information referred to as the "Disclosing Party" and the other Party referred to as the "Receiving Party"). Each party shall treat the Confidential Information and the contents of this Agreement in a confidential manner, shall use such information only to the extent necessary to perform its obligations hereunder, and, neither party may directly or indirectly disclose the same to anyone other than its employees on a need to know basis and who agree to be bound by the terms of this Section, without the written consent of the Disclosing Party. Information will not be deemed Confidential Information hereunder if such information: (i) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (ii) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; (iv) is independently developed by the Receiving Party; or (v) is required to be released by law or regulation, provided that the Receiving Party provide prompt written notice to the Disclosing Party of such impending release, and the Receiving Party cooperate fully with the Disclosing Party to minimize such release.

- 11.3. **Marketing.** Unless Customer at any time requests otherwise, XenSpec may refer to Customer by name and with logo in XenSpec's marketing materials and website and, subject to Customer's review and approval, may promote Customer's business and use of the Services through a press release, advertising, and other marketing literature.
- 11.4. **Government Regulations.** Customer will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by any government within whose jurisdiction Customer operates or does business.
- 11.5. **Assignment.** Neither party may assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other party, except to an affiliate or a party that acquires substantially all of the assigning party's assets or a majority of its stock as part of a corporate merger or acquisition. Any attempted assignment or delegation without such consent will be void. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.
- 11.6. **No Resale.** Customer may not resell the Services. For purposes of this Section, the provisioning of web-hosting on Customer's equipment and/or ISP service is not considered reselling the Services. Customer hereby indemnifies XenSpec against any harm or any claims arising out of acts or omissions of any customers of Customer or other third parties using Customer's equipment or service that is the subject of this Agreement.
- 11.7. **Notices.** Any required notice hereunder may be delivered personally or by email, courier, regular mail or mailed by registered or certified mail, return receipt requested, to either party at the name and address on the signature page of this Agreement, or at such other address as such party may provide to the other by written notice. Such notice will be deemed to have been given as of the date it is delivered personally or by email, courier, or five (5) days after it is sent by mail. In addition, XenSpec shall have the right to send Customer notices to Customer's email address as contained on XenSpec's customer contact list. Such email notification is deemed delivered on the day sent unless returned to sender.

- 11.8. **Relationship of Parties.** This Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties.
- 11.9. **Changes Prior to Execution.** Each party represents and warrants that any changes to this Agreement made by it were properly marked as changes and that it made no changes to the Agreement that were not properly identified as changes.
- 11.10. **Choice of Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Illinois excluding its conflict of laws principles.
12. **General.** This Agreement, together with the Service Order(s) and Service Level Agreement(s) and Exhibit(s) (including the policies referred to therein) is the complete agreement and understanding of the parties with respect to the subject matter hereof, and supersedes any other agreement or understanding, written or oral. This Agreement may be modified only through a written instrument signed by both parties. Should any provision of this Agreement be declared void or unenforceable, such provision will be deemed amended to achieve as nearly as possible the same economic effect as the original terms and the remainder of this Agreement will remain in full force and effect. If a conflict arises between a party's pre-printed business form and this Agreement or between a Service Order and this Agreement, this Agreement will take precedence. By initialing each page, Customer agrees that it has reviewed and approved all material contained within the corresponding page.

Addendum: Additional Terms

1. **Acceptable Use; SPAM.** Customer will at all times comply with and conform their use of the Service to the XenSpec Acceptable Use Guidelines and XenSpec Anti-SPAM Policy set forth at the XenSpec website, as updated from time to time, subject to notice to Customer of any material changes. In the event Customer violates the XenSpec Acceptable Use Guidelines where XenSpec determines in its reasonable discretion that there is potential harm to its Network or business, XenSpec shall have the right to immediately suspend Service. In other cases of violation of the XenSpec Acceptable Use
2. **Illegal Use.** Customer will cooperate in any investigation of Customer's alleged illegal use of XenSpec's facilities or other networks accessed through the XenSpec Network. If Customer fails to cooperate with any such investigation, XenSpec may suspend Customer's Service. Additionally, XenSpec may modify or suspend Customer's Service in the event of illegal use

of the XenSpec Network or as necessary to comply with any law or regulation, including the Digital Millennium Copyright Act of 1998, 17 U.S.C. 512, as reasonably determined by XenSpec.

3. **Other Networks.** Customer is responsible for paying any fees, obtaining any required approvals and complying with any laws or usage policies applicable to transmitting data beyond the XenSpec Network and/or through other public and private networks. XenSpec is not responsible or liable for performance or non-performance of such networks or their inter-connection points.

CHANGES IN TERMS OF AGREEMENT

XenSpec reserves the right to make changes to the terms and conditions of this Agreement upon thirty (30) days notice to the Customer, advising of the change and the effective date thereof, but with changes in service fees being effective only at the end of any period for which the Customer has prepaid.

Utilization of the service by the Customer following the effective date of such change shall constitute acceptance by the Customer of such change(s).

GOVERNING LAW

The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

ENFORCEMENT OF AGREEMENT

In the event it is necessary for XenSpec to enforce its rights under this agreement, Customer agrees to pay all fees incurred by XenSpec (including, but not limited to, attorney's fees and collection agency fees)

AMENDMENT OR WAIVER

Except as otherwise provided herein, this Agreement may not be amended except upon the written consent of Customer and an officer of XenSpec. No failure to exercise and no delay in exercising any right, remedy, or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, or power provided herein or by law or in equity. The waiver by any party of the time for performance of any act or condition hereunder shall not constitute a waiver of the act or condition itself.

ASSIGNMENT AND SEVERABILITY

This Agreement shall be binding upon and inure to the benefit of Customer, XenSpec and our respective successors, and assigns. Customer may not assign this Agreement without the prior written consent of XenSpec, which consent will not be unreasonably withheld or delayed. If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

NOTICES

All notices to Customer hereunder shall be given at the Billing Address provided on the signature page hereto. All notices to XenSpec hereunder shall be given to:

Legal Department
legal@xenspec.com

Any notice hereunder shall be in writing and shall be given by registered, certified or express mail, or reliable overnight courier addressed to the addresses in this Agreement, or by facsimile. Notice shall be deemed to be given upon the earlier of actual receipt or three (3) days after it has been sent, properly addressed and with postage prepaid.

ENTIRE AGREEMENT

This Agreement, and any other document or agreements specifically identified in this Agreement, supersedes all previous representations, understandings or agreements. This Agreement, and any other document or agreements specifically identified in this Agreement constitutes in whole the entire agreement between XenSpec and Customer. Any services or products, expressed or implied, that are not specifically included and outlined in this Agreement or the accompanying Service Order Form do not fall under the breadth of this Agreement and are in no way the responsibility of XenSpec. Any additions, subtractions, or modifications to this Agreement, in part or in full, must be agreed upon by both XenSpec and Customer with accompanying signatures to this effect on the appropriate document referenced by the Agreement.

SURVIVAL

The rights and obligations of the parties in this Agreement that would by their nature or context be intended to survive the expiration or termination of this Agreement shall so survive.

ACCEPTANCE OF SERVICES

ACCEPTANCE OF THIS AGREEMENT BY XenSpec MAY BE SUBJECT, IN XenSpec's ABSOLUTE DISCRETION, TO SATISFACTORY COMPLETION OF A CREDIT CHECK AND CONTINUED CREDIT WORTHINESS OF CUSTOMER. ACTIVATION OF SERVICE SHALL

INDICATE XenSpec's ACCEPTANCE OF THIS AGREEMENT. USE OF THE XenSpec NETWORK CONSTITUTES

ACCEPTANCE OF THIS AGREEMENT. CUSTOMER REPRESENTS AND WARRANTS THAT CUSTOMER HAS FULL AUTHORITY AND RIGHT TO ENTER INTO THIS AGREEMENT. CUSTOMER FURTHER REPRESENTS AND WARRANTS THAT CUSTOMER IS AT LEAST 18 YEARS OF AGE.