

Xifos Ltd Terms and Conditions

Last Updated – 15th July 2005

1. THE ORDER

- 1.1. These terms and conditions apply to your Order.
- 1.2. Xifos reserves the right not to accept Orders at its discretion.
- 1.3. Services are provided in accordance with each Order.
- 1.4. The customers' standard purchasing terms and conditions (if any) are excluded, even if such terms are attached to the Order.

2. ACTIVATING THE SERVICE

- 2.1. Before being able to activate the Service, Xifos will:
 - 2.1.1. verify that the customer premises are in an area in which the Service is available; and
 - 2.1.2. carry out a line test
- 2.2. Occasionally it will not be possible to establish whether the Service can be activated until after the service is installed at the customer premises.
- 2.3. If the Service cannot be activated Xifos will notify the customer as soon as possible and this Agreement will be cancelled and any charges made will be repaid to the customer. Xifos may propose an alternative service (e.g. a lower bandwidth line). If the customer prefers to accept the alternative instead of cancellation the customer will need to confirm that within 5 calendar days.
- 2.4. Xifos will use its reasonable endeavours to provide the Service within 15 Business Days of the date of Order acceptance by Xifos.
- 2.5. If Xifos is unable to activate the Service due to the customers' act or omission or due to incorrect information being provided by the customer Xifos reserves the right to charge the customer a failed connection fee of £80.
- 2.6. Occasionally visits to the customer premises will be required. These visits are sometimes carried out by BT. Xifos will liaise with the customer to arrange the timing of these appointments. It is also possible that BT may contact the customer directly in relation to the appointment.
- 2.7. During activation of the Service the customer may temporarily lose the use of other telecommunications services.
- 2.8. If the customer requires a static IP address you will need to specify this in your Order. If you do not do not specify this requirement you will receive either a dynamic or a static IP address at our discretion.

3. PROVISION OF THE SERVICE

- 3.1. Xifos will provide the Service using the reasonable skill and care of a competent telecommunications service provider. Xifos may subcontract the provision of all or any part of the Services to third parties.
- 3.2. Changes may be made to the Network or the technical specification of a Service from time to time; if these changes will detrimentally affect the Service, Xifos will inform the customer in advance.
- 3.3. It is technically impracticable for Xifos to provide a fault free Service and Xifos does not warrant or undertake to do so.

4. SERVICE LEVEL AND SERVICE CREDITS

- 4.1. Xifos shall provide the Service in accordance with the service levels stated in Schedule 1 and pay the service credits detailed in Schedule 1 where applicable.
- 4.2. The Customer agrees that the service credits stated in Schedule 1 contains the Customer's sole remedy for unavailability of the Service including any failure to meet the guarantee stated in Schedule 1 and payment of the service credits shall be in full and final satisfaction of Xifos's liability for unavailability of the telecommunications circuit and the Customer's connection to the Internet.
- 4.3. Notwithstanding clause 4.1 above the customer acknowledges that is impractical to provide the service free of faults or uninterrupted and that Xifos does not give an undertaking to do so. In the event of a fault in the service the customer must report it to Xifos by the methods advised to the customer at the commencement of the service.

5. COMMENCEMENT AND TERM

- 5.1. Following activation, the Service shall continue to be provided for a period of at least 3 months (the "Initial Term"). If the customer cancels this Agreement during the Initial Term the customer will be charged for the remainder of the Initial Term. After the Initial Term either of us may cancel the Service. Cancellation requires thirty (30) days prior written notice, such notice to take effect at the end of the Initial Term or the same day in any subsequent month.

6. TERMINATING HARDWARE

- 6.1. The customer shall ensure that any terminating hardware connected to a Service is connected to and used with the Service in accordance with the published instructions and any safety and security procedures notified to the customer.
- 6.2. Xifos makes no warranty that the Service will interoperate properly with the customers' terminating hardware, unless the aforementioned hardware has been purchased from Xifos.
- 6.3. The website www.xifos.net offers advice on terminating hardware that has been tested on the Network and which we believe is compatible with the Network.

7. USE OF SERVICES

- 7.1. The customer shall not use the Service:
 - 7.1.1. in connection with the carrying out of any fraudulent, criminal, or any other illegal activity;
 - 7.1.2. to send, knowingly receive, upload, download or use any material which is offensive, abusive, indecent, defamatory, obscene or menacing or in breach of copyright, confidence, privacy or any other rights;
 - 7.1.3. to cause annoyance or needless anxiety;
 - 7.1.4. to send or provide or, knowingly receive responses to, any spam or unsolicited advertising or promotional material;

- 7.1.5. to knowingly or recklessly transmit any electronic material (including viruses) which shall cause or is likely to cause detriment or harm in any degree to computer systems owned by Xifos or other Internet users;
- 7.1.6. in a manner which restricts or inhibits any other user from using or enjoying Xifos ' products or services;
- 7.1.7. to utilise excessive amounts of bandwidth (for example by connecting for an excessive amount of time; repeatedly eng
- 7.1.8. aging site-local scripts or similar behaviour);
- 7.1.9. in breach of any reasonable instructions given by Xifos ;
- 7.2. Xifos shall have the right to examine, from time to time, the use to which the customer put the Services and the nature of the data/information that the customer are transmitting or receiving via the Services where such examination is necessary: (i) to protect / safeguard the integrity, operation and functionality of Xifos's (and neighbouring) networks; or (ii) to comply with police, judicial, regulatory or governmental orders, notices, directives or requests.
- 7.3. The customer agrees to indemnify Xifos and its subcontractors from any liability or claim arising out of, or any penalty or fine imposed in respect of, your breach of this clause 6.

8. SERVICE SUSPENSION / ALTERATION

- 8.1. Xifos may suspend the provision of the Services or any part thereof, and/or to disconnect your facilities from the Network if and to the extent that:
 - 8.1.1. Xifos has reasonable grounds to believe that the Services are being used in breach of Clause 6; or
 - 8.1.2. your use of the Network may damage or disrupt the proper functioning of the Network; or
 - 8.1.3. temporarily, for operational or technical reasons.
- 8.2. Xifos shall give the customer as much notice of a suspension under Clause 7.1 as is reasonably practicable in all the circumstances.
- 8.3. Xifos shall be entitled to terminate or modify the Service, without any liability whatsoever, if any licence or authorisation which Xifos requires in order to provide the Service is not obtained, withdrawn or otherwise cancelled; in the event of a modification that is detrimental to the Service, the customer shall have the right to terminate this Agreement with immediate effect.
- 8.4. Should the customer move house or premises a new activation is required and is charged at the current rate as set out on our website.

9. CHARGES AND CREDIT TERMS

- 9.1. Xifos only accepts payment by Credit Card, Debit Card, Cheque's or Bank transfer, we do not currently accept American Express or Diners Cards.
- 9.2. Unless specifically stated prices shown are exclusive of VAT.
- 9.3. On the date that Xifos confirms your order, Xifos shall charge the customer for the Activation Charges and Line Charges.
- 9.4. [The customer agrees that on the date of activation of the Service, Xifos will invoice the customer for the Recurring Charges for the following 30 days. The customer further agrees that thereafter, the Recurring Charges for the Services shall accrue daily and Xifos will invoice the customer monthly in advance. All amounts due under this Agreement to be paid by the customer to Xifos shall be paid in full (without deduction or withholding except as required by law) and the customer shall not be entitled to assert any credit, set-off or counterclaim against Xifos in order to justify withholding payment of any such amount in whole or in part.]
- 9.5. Xifos may charge interest on any overdue amounts payable from the due date until payment (whether before or after judgement) at the rate of 4 percent per annum, above the base rate of HSBC from time to time.
- 9.6. If the customer is at any time in violation of their obligations to make payments to Xifos and remain in violation after forty-eight (48) hours written notice by Xifos, then Xifos may suspend the provision of Services and the performance of its associated obligations forthwith without prejudice to Xifos's rights under this Order, including its rights to payment. Notwithstanding any other provision of this Agreement, Xifos shall have no liability to the customer for any loss or damages the customer suffers as a consequence of such suspension.
- 9.7. Any and all prices given as quotations are subject to change in accordance with Xifos's current price list in force from time to time. All quotations are based on information supplied to Xifos by the Customer. In delivering the Service additional and supplemental work may be required and the Customer agrees to pay such additional amounts as specified on the invoice.
- 9.8. Xifos shall be entitled to set off against the Charges any amounts due to the Customer under any contract or arrangement between the parties.
- 9.9. Xifos may also make an additional charge on its own behalf or on behalf of a Carrier in the following circumstances:
 - 9.9.1. an abortive visit charge may be incurred where incorrect information supplied by the Customer means it is technically impractical to provide the Service over the Customers Access Connection;
 - 9.9.2. where Xifos or the Carrier are unable to gain access to the Site to carry out installation of the Service or the installation is aborted, an abortive visit charge may be payable;
 - 9.9.3. where certain order information provided by the Customer is illegible, inaccurate or incomplete an administration fee will be charged;
 - 9.9.4. where Xifos or the Carrier provide the support to the Customer outside Working Hours in supply of the Service;
 - 9.9.5. where a fault relates to equipment other than the Xifos Equipment or equipment past the Xifos service demarcation point.

10. TERMINATION

- 10.1. Xifos may terminate this Agreement by notice, such notice to take effect forthwith:
 - 10.1.1. If the customer has not paid following suspension under clause 8.6';
 - 10.1.2. if the customer has committed a material breach of this Agreement;
 - 10.1.3. if the customer fails to pay their account when it becomes due,
 - 10.1.4. if any mortgage, charge, licence or other security interest which may for the time being affect any of the customers assets becomes enforceable;

- 10.1.5. if any meeting is convened for the purpose of considering a resolution, or any petition is presented or any other steps taken, for the purpose of making an administration order against the customer, or for the customers winding-up or dissolution or any similar action or steps are taken in relation to the customer and such action or step is not withdrawn within 30 days;
- 10.1.6. if any administrator, administrative or other receiver or trustee or similar officer is appointed over the customer or any steps are taken to do the same to the customer.
- 10.2. The customer may terminate an Order if the Service to be delivered under that Order is not delivered within 42 days of the "customer agreed date" notified to the customer, provided that such failure is not due to the customers act or omission.
- 10.3. The termination or expiry of this Agreement shall be without prejudice to the rights and liabilities of either of us accruing up to such date;

11. DATA PROTECTION

- 11.1. Xifos shall be entitled to store and process Personal Data provided on the Order form for its internal use and for the purposes of providing the Service.
- 11.2. The customer has the right to request a copy of information relating to the customer that is held by Xifos, by written request to our data protection compliance manager and upon payment of a fee.
- 11.3. The customer may change the personal information held by us at any time, by advising us in writing.
- 11.4. From time to time Xifos will contact the customer about future Xifos products and services. If the customer does not wish us to contact you please tell us. In order that other respected organisations selected by Xifos can tell you about their products and services directly, your name and address details will be passed to them. If you do not wish to receive such mailings please tell us.

12. LIABILITY

- 12.1. Nothing in this Agreement shall serve to limit Xifos's liability in respect of death or personal injury caused by or arising from Xifos's negligence or for liability arising out of or in connection with fraud or fraudulent misrepresentation.
- 12.2. Xifos's maximum aggregate liability to the customer in contract, tort (including negligence or breach of statutory duty) or otherwise arising in connection with this Agreement, shall be limited to the aggregate amount paid by the customer to Xifos.
- 12.3. Xifos shall not in any event be liable to the customer in contract, tort (including negligence) or for breach of statutory duty or in any other way for any indirect or consequential losses or for any loss of goodwill or reputation, loss of revenues, profits, contracts, business or anticipated savings.

13. GENERAL TERMS

- 13.1. If any provision of this Agreement is held by a court or any governmental agency or authority to be invalid, void, or unenforceable, the remainder of this Agreement shall nevertheless remain legal, valid, and enforceable.
- 13.2. Xifos shall not be liable for any delay or failure in performance of its obligations to the extent that such delay or failure is attributable to matters beyond its reasonable control.
- 13.3. Xifos may assign the benefit or burden of this Agreement upon notice to the customer.
- 13.4. Xifos's failure to exercise or enforce or any delay in exercising or enforcing any right or benefit conferred by this Agreement shall not be deemed to be a waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.

14. GOVERNING LAW

- 14.1. This Contract shall be governed and construed in accordance with English law, and the Parties irrevocably agree to the non-exclusive jurisdiction of the English courts.

15. DEFINITIONS

- "activation" occurs when Xifos notifies the customer that the relevant Service is available for use;
- "Activation Charges" means those amounts payable by the customer to Xifos for the connection and activation of a Service as set out in the Order;
- "Agreement" means these terms and conditions together with the Order;
- "Charges" means the Activation Charges and the Recurring Charges;
- "Modem" means the device to be installed at the customer premises between the Service and your local infrastructure includes the DSL modem and Line Filters;
- "Network" means the Xifos DSL network
- "Order" shall mean a purchase order for the Services in a form attached hereto;
- "Recurring Charges" means those amounts payable by the customer to Xifos on a recurring monthly basis for provision of the Services as set out in the Order;
- Xifos means Xifos Ltd. incorporated in England under number 4599510, whose registered office is at 6 Seymour House, Warwick Road, Coventry, CV3 6TY;
- The "Customer" means the person who accepts this document and places the order for the service.