



Data Backup Terms of Use Agreement

Please read these terms of use carefully before using Xinfosystems Data Backup products and services

This Agreement is between Xinfosystems Inc. ("Xinfosystems") and you, as an authorized user of Xinfosystems products and services, and governs the terms and conditions of your use of Xinfosystems products and services ("Terms of Use"). This Agreement, together with any operating rules, policies, price schedules, or other supplemental documents expressly incorporated herein by reference and published from time to time by Xinfosystems (collectively, the "Agreement"), constitutes the entire agreement between Xinfosystems and you regarding Xinfosystems services, and supersedes all prior agreements between the parties regarding the subject matter of this Agreement.

You Must Agree to these Terms of Use to Use Xinfosystems Products and Services

By using or registering for a Xinfosystems Product (defined below), you agree to these terms and conditions ("Terms of Use") and the Xinfosystems Privacy Policy. You agree to accept notices electronically. Each time you use an Xinfosystems Product, you reaffirm your acceptance of the then-current Terms of Use. If you do not wish to be bound by these Terms of Use, you may discontinue using the Xinfosystems Products. You cannot use or sign up for Xinfosystems Products until you have accepted these Terms of Use.

Definition of Terms

- a. Xinfosystems Inc. is referred to herein as "Xinfosystems", "we," "us," or "our."
- b. You, as the user, are referred to herein as "you," "user," "subscriber," "client," or "customer."
- c. Xinfosystems Products. For purposes of these Terms of Use, the term " Xinfosystems Products" shall mean Xinfosystems software ("Xinfosystems Software" or "Software", whether preinstalled, on a medium, or offered by download), Xinfosystems services, Xinfosystems websites (including, without limitation, www.xinfosystems.com) and all other software, features, tools, websites and services provided by Xinfosystems Inc.

Modifications to the Terms of Use

In the event that Xinfosystems makes material changes to these Terms of Use, all current Xinfosystems customers and trial users will be notified via email at least 30 days before the modified terms of use go into effect. Xinfosystems will email users at the email address(es) provided by each user and is not responsible for invalid addresses or undeliverable email. The modified Terms of Use will be posted on our website at least 30 days in advance of the effective date. You agree to the new posted Terms of Use by continuing your use of the Xinfosystems Products. If you do not agree with the modified Terms of Use, your only remedy is to discontinue using Xinfosystems Products and cancel your registration.

Requirements for Use or Registration of Xinfosystems Products

The Xinfosystems Products are intended for general consumer use. You represent and warrant that you have adequate legal capacity to enter into binding agreements such as these Terms of Use. Xinfosystems Products may require the user to register and provide certain personal information to Xinfosystems, such as name, e-mail address, gender, date of birth, postal code (the "Personal Information"). If you register for any Xinfosystems Product, you agree to provide accurate and complete Personal Information and you agree to keep such information current.

Lawful Use of Xinfosystems Products

You may use Xinfosystems Products for lawful purposes only.

Description of Xinfosystems Products

Xinfosystems is in the business of providing Internet-based backup products and services, the Xinfosystems Products. We want you to have the best possible experience in dealing with Xinfosystems and using Xinfosystems Products. Xinfosystems offers the Xinfosystems Products through its website www.xinfosystems.com and through its retail partners and other vendors. Xinfosystems Products may backup specific file types, such as photos, music, home office application files, and other file types. Xinfosystems Products operate automatically with little user involvement, and work to back up your files whenever your computer is connected to the Internet.

All backup data is stored in secure data centers in Canada.

Changes to the Service

Xinfosystems has the right at any time to change, modify, add to or discontinue or retire any aspect or feature of the Xinfosystems Products including, but not limited to, the software, hours of availability, equipment needed for access or use, the maximum disk space that will be allotted on Xinfosystems servers on your behalf either cumulatively or for any particular service or the availability of Xinfosystems Products on any particular device or communications service. Xinfosystems has no obligation to provide you with notice of any such changes.

Xinfosystems License to You

Xinfosystems and its vendors grant you a non-exclusive, non-transferable limited license to install the software and services distributed by Xinfosystems in object code form only on any computer or device from which you wish to access the Xinfosystems service for the sole and exclusive purposes of connecting to and using the Xinfosystems Products in accordance with these Terms of Use. You may not sub-license, or charge others to use or access the Xinfosystems Service. Xinfosystems occasionally will provide automatic upgrades to improve your Xinfosystems experience, although these upgrades may not be consistent across all platform and devices. You agree to accept and to take no action to interfere with such automatic upgrades, scanning, and related services.

You may not sell, assign, grant a security interest in or otherwise transfer any right in the Software or incorporate it (or any portion of it) into another product. You may not copy the Software. You may not translate reverse-engineer or reverse-compile or decompile, disassemble, make derivative works from, or otherwise attempt to discover any source code in the Software. You may not modify the Software or use it in any way not expressly authorized by these Terms of Use. You may not obtain the communications protocol for accessing the Xinfosystems service, the Xinfosystems Products, or any other Xinfosystems services. Finally, you may not authorize or assist any third party to do any of the things described in this paragraph. You understand that Xinfosystems introduction of various technologies may not be consistent across all platforms and that the performance and features offered by Xinfosystems may vary depending on your computer and other equipment.

You agree to install and use a paid subscription to any of the Xinfosystems Products on only one device at a time. If you wish to protect multiple devices, each requires a separate paid subscription.

Restrictions on Access to or Use of Xinfosystems Products

You may access Xinfosystems Products only through the interfaces and protocols provided or authorized by Xinfosystems. You agree that you will not access Xinfosystems Products through unauthorized means, such as unlicensed software clients. Certain Xinfosystems Products backup only certain types of files. You agree not to circumvent these limitations in any way, including but not limited to, changing file extensions or head information.

Payment Terms for Services

- a) Payment of Setup Fees and Service Fees must be made by credit card (Visa, or MasterCard) or Debit Card if available. Payment for all Services are due at the commencement of any service period, unless specifically stated otherwise in the offer or promotion pursuant to which you have ordered or are ordering the Hosted Services. All payments shall be made in Canadian Dollars.

Payment by Credit Card or Debit Card:

- b) Prior to activation of your user account and at any applicable time thereafter you authorize Xinfosystems to charge the credit card provided by you or transfer funds from the bank account provided by you for the amount of the fees due for the agreed upon services, together with any applicable set-up charges, registration fees, bank transfer fees, or fees resulting from services provided in addition to or in excess of the previously agreed-upon limits, or any other charges outlined herein as may be applicable.
- c) You further authorize Xinfosystems to perform like transactions for all subsequent service periods and other applicable fees on or during a reasonable period in advance of the commencement of any such subsequent period until such fees are collected. It is your responsibility to provide Xinfosystems with up-to-date Credit Card or Debit Card information that is sufficient to pay all fees due to Xinfosystems when those payments are due. If for any reason the Credit Card or Debit Card information you provided is insufficient to pay any fees at the commencement of any service period, Xinfosystems at its sole discretion will have the right to suspend and/or terminate your account.
- d) Refunds of Service Fees will be made only for pre-payment of Service Fees beyond the renewal date following the effective notice and termination of this agreement and only when pre-payment did not result in any discount or waiver of any fees. Xinfosystems may grant refunds under any other circumstance it deems appropriate without waiving any other rights hereunder. Xinfosystems is not responsible for refunds of any fees paid by you to any third party or delivery of any services purchased by you from any third party. The party that Xinfosystems bills for use of the Services has the right to limit access to those Services.

Communications

You are responsible for obtaining your own Internet access, such as maintaining all telephone, computer hardware and other equipment needed for access to and use of the Xinfosystems Products, and all charges related thereto. Any telephone or other communications charges incurred by you to access Xinfosystems are your responsibility.

Termination and Fair Use Policy

YOUR USE OF XINFOSYSTEMS PRODUCTS IS SUBJECT TO XINFOSYSTEMS 'S "TERMINATION AND FAIR USE POLICY." THIS POLICY IS INTENDED TO ALLOW XINFOSYSTEMS TO DENY SERVICE TO ABUSERS. USERS WHO ARE DEEMED TO BE "ABUSERS", IN XINFOSYSTEMS 'S SOLE DISCRETION, MAY BE NOTIFIED PRIOR TO SUSPENSION OR TERMINATION OF THEIR ACCOUNTS, HOWEVER, XINFOSYSTEMS RESERVES THE RIGHT TO TERMINATE OR SUSPEND SUCH ACCOUNTS WITHOUT PRIOR NOTICE IN THE EVENT OF A POLICY VIOLATION. ANY FAILURE BY XINFOSYSTEMS TO ENFORCE THIS POLICY WILL NOT PRECLUDE US FROM ENFORCING IT AT ANYTIME IN THE FUTURE, WHETHER FOR PAST OR CURRENT VIOLATIONS.

Software Data Collection and Privacy Policy

Xinfosystems needs to collect limited amounts of basic data about files on your computer. None of this data is shared with third parties. Xinfosystems software routinely scans your computer in order to detect new, modified or deleted data files that require our software to take further action to complete backup and restore operations. Xinfosystems software also catalogs the number and total storage size of various file types on your computer. Xinfosystems software inspects file headers and related information in order to confirm that each file's type is properly represented by its file extension. Xinfosystems will never examine the contents of your files for any other purpose, and no information about a file's content, other than its type (e.g. digital photos, word processing document, etc.) and size, will ever be collected, tracked or stored by Xinfosystems. Contents of all files are encrypted before they are transmitted to Xinfosystems 's data centers. By using Xinfosystems Products, you expressly agree to allow Xinfosystems to collect and use data as specified in our "Software Data Collection and Privacy Policy."

Disclaimer of Warranty; Limitation of Liability

DISCLAIMER OF WARRANTIES:

YOUR USE OF XINFOSYSTEMS PRODUCTS AND SOFTWARE IS AT YOUR SOLE RISK. THE XINFOSYSTEMS PRODUCTS AND SOFTWARE ARE PROVIDED "AS IS," "WITH ALL FAULTS" AND "AS AVAILABLE" FOR YOUR USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, UNLESS SUCH WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. SPECIFICALLY, XINFOSYSTEMS AND ITS VENDORS DISCLAIM IMPLIED WARRANTIES THAT THE XINFOSYSTEMS PRODUCTS AND SOFTWARE ARE MERCHANTABLE, OF SATISFACTORY QUALITY, ACCURATE, FIT FOR A PARTICULAR PURPOSE OR NEED, OR NON-INFRINGEMENT. XINFOSYSTEMS AND ITS VENDORS DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE XINFOSYSTEMS PRODUCTS AND SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE XINFOSYSTEMS PRODUCTS AND SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE XINFOSYSTEMS PRODUCTS AND SOFTWARE WILL BE CORRECTED. XINFOSYSTEMS AND ITS VENDORS DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE XINFOSYSTEMS PRODUCTS, SOFTWARE OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. XINFOSYSTEMS PROVIDES THE XINFOSYSTEMS PRODUCTS AND SOFTWARE ON A COMMERCIALY REASONABLE BASIS AND DOES NOT GUARANTEE THAT USERS WILL BE ABLE TO ACCESS OR USE THE XINFOSYSTEMS PRODUCTS AT TIMES OR LOCATIONS OF THEIR CHOOSING, OR THAT XINFOSYSTEMS WILL HAVE ADEQUATE CAPACITY FOR THE XINFOSYSTEMS PRODUCTS AS A WHOLE.

LIMITATION OF LIABILITY:

XINFOSYSTEMS S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY DISPUTE WITH XINFOSYSTEMS (INCLUDING WITHOUT LIMITATION YOUR USE OF THE SOFTWARE OR XINFOSYSTEMS PRODUCTS) IS TO DISCONTINUE YOUR USE OF THE XINFOSYSTEMS PRODUCTS AND SOFTWARE. XINFOSYSTEMS AND ITS VENDORS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGE ARISING FROM YOUR USE OF THE XINFOSYSTEMS PRODUCTS, SOFTWARE OR FOR ANY OTHER CLAIM RELATED IN ANY WAY TO YOUR USE OR REGISTRATION WITH XINFOSYSTEMS PRODUCTS AND SOFTWARE. THESE EXCLUSIONS FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES INCLUDE, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST DATA, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF XINFOSYSTEMS HAD BEEN ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY UPON WHICH THE CLAIM IS BASED. BECAUSE SOME PROVINCES, STATES, OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH PROVINCES, STATES, OR JURISDICTIONS, XINFOSYSTEMS AND ITS VENDORS' LIABILITY IN SUCH PROVINCES, STATE OR JURISDICTION SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

Indemnification

You agree to defend, indemnify and hold harmless Xinfosystems, its vendors, and their respective directors, officers, employees and agents from and against all claims and expenses, including attorneys' fees, arising out of your use of the Xinfosystems Products. Xinfosystems reserves the right, at its own expense and in its sole discretion, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you. In that event, and only in such event, shall you have no further obligation to provide indemnification for Xinfosystems in that matter.

Trademarks

All trademarks appearing on the Xinfosystems Products are the property of their respective owners.

Miscellaneous

The provisions of these Terms of Use addressing disclaimers of representations and warranties, limitation of liability, indemnity obligations, intellectual property and governing law shall survive the termination of these Terms of Use and your registration with the Xinfosystems Products.

Schedule 'A' Remote Data Backup Service Level Agreement (SLA) forms part of this agreement.

Schedule 'A' to Data Backup Terms of Use Agreement

Remote Data Backup Service Level Agreement (SLA)

The following terms and conditions of this Service Level Agreement (this "SLA") govern:

(A) the availability of the internal computer network ("The Xinfosystems Network") owned by or operated on behalf of XINFOSYSTEMS INC. ("Xinfosystems") to those persons that have purchased Products and Services directly from Xinfosystems (each, a "Customer") and

(B) the right, under certain circumstances specified below, of a Customer to receive services credits in respect of the failure of Xinfosystems to provide the Products and Services purchased by Customer from Xinfosystems in accordance with

(i) the Terms of Service (as in effect from time to time between the Customer and Xinfosystems, the "Terms of Service"), and

(ii) this SLA, each of which is incorporated herein by reference and made a part hereof (collectively, the "Agreement"). Capitalized terms used herein without being defined herein shall have the meaning ascribed to such capitalized term in the Terms of Use, as applicable. Customer's use of the Xinfosystems website, The Xinfosystems Network, Products and Services is also subject to Customer's acceptance and compliance with Xinfosystems Terms of Service which Xinfosystems hereby reserves the right to amend, alter, modify, replace or suspend, from time to time in its sole discretion.

By submitting the online order form or placing an order with an Xinfosystems representative, Customer hereby agrees to the following:

1. 99.99% Xinfosystems Network Availability Assurance:

Xinfosystems assures each Customer 99.99% uptime availability of The Xinfosystems Network and all redundant internet connectivity, including all associated network services (i.e. bandwidth, routers, switches, and cabling,) covered by this SLA. In the event that Xinfosystems fails to provide Customer with the products and services purchased by Customer in accordance with the Customer Agreement and such failure results from the unavailability of The Xinfosystems Network or any redundant internet connectivity, including all associated network services covered by this SLA (other than as specified below, each such event, a "Qualified Downtime Event"), Xinfosystems will issue Customer a Service Credit (as defined below) calculated as follows:

a. *FTP Services.* In the case of products and services associated with Xinfosystems FTP Services line of products and services, upon the passage of twenty (20) continuous minutes of a Qualified Downtime Event, the Service Credit shall equal five percent (5%) of the monthly fees payable by Customer in respect of such products and services for the month in which such Qualified Downtime Event occurred and thereafter during the pendency of such unavailability, the Service Credit shall increase by an additional five percent (5%) for each continuous thirty (30) minutes of a Qualified Downtime Event up to a maximum of one hundred percent (100%) of monthly fees payable by Customer in respect of such products and services for the month in which such Qualified Downtime Event occurred.

b. *Other Services.* In the case of services and products not associated with Xinfosystems's FTP Services line of products and services, upon the passage of sixty (60) continuous minutes of a Qualified Downtime Event, the Service Credit shall equal one percent (1%) of the monthly fees payable by Customer in respect of such products and services for the month in which such Qualified Downtime Event occurred and thereafter during the pendency of such unavailability, the Service Credit shall increase by an additional one percent (1%) for each continuous thirty (60) minutes of Qualified Downtime Event up to a maximum of one hundred percent (100%) of monthly fees payable by Customer in respect of such products and services for the month in which such Qualified Downtime Event occurred. All Service Credits are calculated by Xinfosystems on a "per-event-basis" each calendar month and in no event will downtime or unavailability be cumulated during any monthly period for purposes of determining a Customer's right to any Service Credit.

The following events do not constitute a Qualified Downtime Event or qualify for any Service Credit under this SLA:

- (i) Scheduled Maintenance (as defined below) or
- (ii) Customer generated outages created by failed equipment, customer misconfigurations, exploited servers, or traffic in excess of the maximum allowed by contract. Service Credits are based directly on all equipment and/or services affected by a network outage. Products, services or hardware not related to the network outage do not qualify for a Service Credit. Redundant Internet connectivity is measured as traffic routing into and out of a Customer's equipment through The Xinfosystems Network out to internet backbone carriers and does not include third party carrier latency or peering issues not utilized by Xinfosystems.

2. Service Credits:

A credit, calculated in accordance with this SLA, issued by Xinfosystems to the Customer in respect of products and services contracted for, but not delivered by Xinfosystems in accordance with the Customer Agreement due to a Qualified Downtime Event. Service Credits do not constitute a refund in respect of any product or service and may not be paid for or exchanged for cash or other monetary consideration or value. Service Credits are not available (i) to any Customer that is more than thirty (30) days past due on any amount owing to Xinfosystems. Valid approved Service Credits will appear as a credit for products and services and be applied against the amounts owing in respect of such products and services on the next billable invoice following the month in which occurred the Qualified Downtime Event giving rise to such Service Credit. In order for a Customer to qualify for a Service Credit, the Customer must:

- (i) have purchased and paid for Xinfosystems's line of products and services and
- (ii) submit a request for a Service Credit in writing via Xinfosystems's Helpdesk system at within ten (10) days from the date of event giving rise the requested Service Credit. Failure to request a Service Credit in accordance with the terms of this SLA will result in an automatic waiver of any rights to such Service Credit under this SLA in respect of the event giving rise to such Service Credit.

3. Scheduled Maintenance:

Customer hereby acknowledges that Xinfosystems may, from time to time, perform maintenance service on The Xinfosystems Network, with or without notice to Customer, which may result in the unavailability of The Xinfosystems Network. Downtime or unavailability resulting from Scheduled Maintenance shall not constitute a Qualified Downtime Event or qualify for any Service Credit.

Scheduled Maintenance means all such maintenance services for which Xinfosystems gives Customer at least five (5) days prior notice of such maintenance services via Xinfosystems's customer mailing list maintained on Xinfosystems's billing system. Emergency maintenance and maintenance for which Xinfosystems has not given Customer notice in accordance with this SLA shall not be deemed Scheduled Maintenance for purposes of this SLA.

4. DISCLAIMER:

Xinfosystems shall not be liable for the failure or delay in performing its obligations hereunder or under the Customer Agreement if such failure or delay is due to external circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of interruption or delay in telecommunications, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of Xinfosystems products and services. Xinfosystems agrees to exercise reasonable efforts to mitigate the damage arising from such occurrences; however, under no circumstances will Xinfosystems or its affiliates be held liable for any cost, expense, liability, claim or damage due to such interruptions. In no event shall Xinfosystems or its affiliates be liable to Customer or any other person for any special, incidental, consequential or punitive damages of any kind, including, without limitation, refunds of fees, loss of profits, cost of cover, loss of income or cost of replacement services.

Customer acknowledges and agrees that the receipt of a Service Credit as provided for in this SLA constitutes Customer's sole and exclusive remedy, and Xinfosystems's sole and exclusive liability, for any failure by Xinfosystems to provide Customer with the products and services purchased by Customer in accordance with the Customer Agreement which results from a Qualified Downtime Event. Xinfosystems reserves the right to amend, modify or terminate this SLA Terms of Service from time to time.

CUSTOMER HEREBY REPRESENTS AND WARRANTS THAT IT HAS READ, UNDERSTOOD AND ACCEPTED THE TERMS OF THE SLA.