

## Network Administrator Services Agreement

**This Packet Includes:**

1. General Information
2. Instructions and Checklist
3. Network Administrator Services Agreement

## **General Information**

### **Network Administrator Services Agreement**

This Network Administrator Services Agreement is between a customer and a company who offers network administration services. This agreement sets out the terms of the arrangement including the specific services the company will offer, fees for network services and set-up services and fees. It also spells out the company's limitation of liability and ownership and license of software and intellectual property.

It is crucial that this type of business arrangement be memorialized in writing. A well-written Network Administrator Services Agreement will prove useful in the event of disagreements, misunderstandings or litigation between the parties.

## **Instructions and Checklist**

### **Network Administrator Services Agreement**

- Both parties should read the agreement carefully.
- Insert all requested information in the spaces provided on the form.
- This form contains the basic terms and language that should be included in similar agreements.
- This agreement contains exhibits which become a part of the agreement. These exhibits should be carefully reviewed for content.
- Both the customer and company must sign the agreement.
- Both parties should retain either an original or copy of the signed agreement.
- All legal documents should be kept in a safe location such as a fireproof safe or safe deposit box.

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## SERVICE AGREEMENT - NETWORK ADMINISTRATOR

This Network Services Agreement is between \_\_\_\_\_ (“Company”) and \_\_\_\_\_ (“Customer”), Company offers a variety of data connectivity services (“Network services”) through X Net (Company’s Registered Trademark- network). Company is an interactive network for electronic communications and commerce. This agreement governs Customer's use of X Net and the network services selected on the attached Services Schedule.

**NOW, THEREFORE**, the parties agree as follows:

**1. SERVICES.** Customer subscribes for the network services selected on the attached Services Schedule. Company will enter into agreement with a local telecommunications provider to establish and maintain a connection from Customer's data processing and associated equipment (“Customer's equipment”) to X Net. Upon mutual agreement of the parties, the Services Schedules may be added at any time to add or reduce services or telecommunications bandwidth.

**2. FEES.** The fees for access to X Net and for each network service are as described in the Services Schedule. In addition to the listed fees, Customer will pay any applicable sales, use, value-added, personal property or similar taxes, Monthly recurring fees will begin upon commencement of service, and are due upon receipt of invoice from Company. Fees for additional services or telecommunications bandwidth will begin upon commencement of the new or upgraded service. Fees may be increased for any renewal term of this agreement, upon notice to Customer at least 60 days prior to the end of the current term. Fees may also be increased on an annual basis to reflect changes in the All-Urban Consumer Price Index as published by the Bureau of Labor Statistics with 120 days notice to Customer. Failure to pay any fees on time may result in suspension of service.

**3. SET-UP OF THE SERVICES.**

**3.1** Any network servers, routers and other equipment paid for by Customer as part of the monthly fees are described in the attached Equipment Schedule. This equipment belongs to Company. All equipment associated with X Net and Customer's connection to X Net is owned or leased by Company, whether located at a Customer facility or a Company facility. Customer is responsible for wiring at Customer's facility, with assistance from Company engineering staff.

**4. NETWORK OPERATIONS.**

**4.1** Customer is solely responsible for providing support to its Customers regarding their use of X Net and the network services.

**4.2** Company will provide telephone support to Customer during regular business hours at the nearest Company staffed facility. Emergency support is available 24 hours per day, 365 days per year. Company will maintain, administer and upgrade the network as appropriate (in Company's judgment) for effective network operations. Should an upgrade of the Network require upgrade of Customer’s equipment or software to remain compatible, the upgrade of Customer's equipment or software to remain compatible, the upgrade of Customer's equipment or software will be

Customer's responsibility?

**4.3** Company will maintain the network connection equipment provided to Customer's facility under this agreement. However, Customer is responsible for maintaining as appropriate operating environment and restricting access to the connection equipment. Company relies on Customer to promptly notify Company of any problem affecting Customer's connection to the network, and to cooperate with Company (including providing access to Customer's facility and technical personnel) as needed to correct any such problem.

**4.4** X Net uses standard telecommunication links and standard network server technology. While expected to be minimal, unscheduled temporary service disruptions cannot be completely eliminated. Network service will also be limited or interrupted from time to time for scheduled maintenance, network expansion, upgrades or other administrative purposes. Company will make commercially reasonable efforts to notify Customers in advance of scheduled downtime, and to limit scheduled downtime to off-peak hours.

**4.5** Company reserves the right to monitor X Net traffic as appropriate (in Company's judgment) for proper operation of the network and as otherwise required or permitted by law. However, Company does not have the practical ability to control the conduct of users of the network and assumes no liability for such conduct.

**5. STANDARDS OF USE.** Customer will use X Net and the network services, and will permit the use of X Net and the network services, only in a manner that is lawful, consistent with the rights of other users and third parties, in keeping with accepted internet etiquette, and not disruptive to the operations of the network. Customer will provide access to the network only to its employees, independent Agree mentors and examiners, and only from equipment located at Customer's facilities. Customer will communicate the restrictions described in this section to anyone to whom it provides access. Vendors who use the network to provide services to Customer or its members must do so by agreement with Company. Customer agrees to comply with any rules and policies posted on X Net's web server that is generally applicable to users of X Net or a network service. Material breach of this section will cause for immediate suspension of service or termination of this agreement.

**6. SECURITY.** Company will take commercially reasonable steps to ensure that network services sessions accessed from the internet, and X Net interfaces to the Internet, are protected using network firewalls, encryption, and/or other appropriate security measures. Customer is responsible for (a) the security of network equipment located at Customer's facility, and (b) safeguarding any passwords or other validation information resigned to Customer or Customer's users. In addition, while the private telecommunication circuits between Customers facility and X Net provide physical security for Customer's unencrypted network traffic, these circuits are owned and operated by telecommunications providers and Company does not guarantee their security.

**7. LIMITED WARRANTIES.**

**7.1** Except as described in section 4.4, X Net will be online and available 24 hours per day, 365 days per year. Each network service will be capable of performing the functions described in

the online documentation associated with the service, for the term of this agreement, provided the service is used with an approved web browser and otherwise in accordance with the documentation. Company does not guarantee that operation of X Net or the network services will be uninterrupted or error-free. Company is not responsible for network unavailability caused by Customer's equipment, equipment of Customer's customers, telecommunications circuits or the Internet. Customer is responsible for \_\_\_\_\_ which of the telecommunications circuits offered by X Net will be used, and for the adequacy of the telecommunications circuit to carry Customer's traffic over X Net.

**7.2** Claims for breach of this warranty should be submitted in writing, including as much detail as possible concerning the circumstances of the problem. If Company is unable to correct the problem (with Customer's cooperation) within 30 days, Company will refund the monthly charges relating to the service in which the problem is experienced, promised for the affected period.

**7.3** This section sets forth Company's exclusive warranties with respect to the performance of X Net and the network services. Company **DISCLAIMS ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OR MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, AUTHORITY OR NON-INFRINGEMENT.** These warranties are exclusively for the benefit of Customer, and are not transferable without Company's prior written consent.

**8. LIMITATION OF LIABILITY.** Customer is exclusively responsible for all financial risks associated with access to and use of X Net and the network services by Customer's customers, including validation of all transaction. In no event will Company be liable for lost data, lost profits, or any other incidental, consequential or exemplary damages. In no event will Company's liability for any claim related to this agreement exceed the amount paid by Customer under this agreement during the six months prior to the claim, except in the case of Company's gross negligence or willful misconduct.

## **9. OWNERSHIP AND LICENSE.**

**9.1** "Company Technology" means all inventions, designs, software and intellectual property of any kind used in the operation of X Net and the network services, including all portions and complete or partial copies thereof, all \_\_\_\_\_, modifications and enhancements thereof, and any documentation associated therewith. "Company Technology" does not include Customer's lost data processing software. Company owns or licenses from third parties all Company technology.

**9.2** Company hereby grants to Customer, during the term of this agreement and subject to the provisions of this agreement, a nonexclusive nontransferable license (a) to use the Company technology (other than the network services software) for the purpose of connecting to, and transmitting and receiving data across the network as contemplated by this agreement, and (b) to use any network services software subscribed and paid for under the Services Schedule to access, employ and make available to Customer's members the corresponding network services. This license does not include rights to (a) use the Company technology for any other purpose, (b) modify, translate, or merge any network services software with another program, (c) create a

\_\_\_\_\_ work based on the Company technology, or (d) sublicense or transfer the Company technology to any third party (except for the implied sublicense to Customer's members to use the network services as contemplated by this agreement). Customer will not reverse-engineer, disassemble, decompile, or make any attempt to discover the source code of the network services software. Customer will not copy the network services software, except for temporary browser-embedded copies as required to run the software. All rights not explicitly granted to Customer under this section are reserved to Company.

**9.3** Company hereby grants to Customer, during the term of this agreement and subject to the provisions of this agreement, a nonexclusive, nontransferable license to use the X Net name and any materials concerning X Net provided by Company, for the purpose of promoting the network and the network services.

## **10. CONFIDENTIALITY.**

**10.1** "Confidential Information" means any and all confidential business information concerning either party that is disclosed to the other party in connection with this agreement, including all confidential information disclosed to Customer concerning Company technology and including the terms of this agreement. Any confidential financial information of Customer's members to which Company has access as network administrator will be treated as confidential information of Customer. "Confidential information" does not include information which the recipient can show (a) is public (other than through the recipient's actions), (b) was rightfully disclosed to the recipient by a third party, or (c) was independently developed by the recipient, information that is not otherwise confidential will not be treated as confidential merely because it is disclosed under this agreement.

**10.2** Each party (and its employees and agents) (a) will use the same degree of care (and at least a reasonable degree of care) to prevent the unauthorized disclosure or use of confidential information as \_\_\_\_\_ to protect its own confidential information of a similar nature and (b) will immediately notify the disclosing party upon discovery of any loss, unauthorized disclosure, or unauthorized use of confidential information.

**10.3** Upon termination of this agreement, or at any time upon the request of the disclosing party, the recipient will promptly return or destroy all confidential information in any form (including computer media), and the recipient will not retain any copies of confidential information in any form. Notwithstanding the preceding sentence. Company may keep archival copies of network traffic as required in Company's discretion for proper operation of the network. Company will not be required to return or destroy those copies, but will continue to treat them as confidential information under this section as long as they are retained.

**10.4** Any breach of this section will cause the disclosing party irreparable harm for which it cannot be adequately compensated in damages. The disclosing party will therefore be entitled, in addition to any remedies otherwise available, to injunctive and other equitable relief, without posting bond, to enforce this section and to prevent any breach of this section. The provisions of this section will survive termination of this agreement for the longest of the following: (a) two years, (b) in the case of archive copies or described in the preceding subsection, any period for



which Company retains such copies or, (c) in the case of any trade secret, as long as such information remains a trade secret.

**11. INDEMNITIES.** Each party indemnifies the other (and its affiliates and agents) against all loss, liability or expense (including reasonable attorney and witness fees and expenses) arising out of any claim that materials of the indemnifying party infringes the patent, copyright, trademark or trade \_\_\_\_\_ rights of any third party. For this purpose, "materials" of a party means any technology or content supplied by that party for use or publication on the network or the internet. Customer Indemnifies Company (and its affiliates and agents) against all loss, liability or expense (including reasonable attorney and witness fees and expenses) arising out of any use of the network, the network \_\_\_\_\_ or the internet by anyone to whom Customer provides access, in each case, the indemnity is subject to the conditions that: (a) the indemnifying party is notified of the claim in a timely manner; (b) the indemnified party provides all reasonable assistance to defend against the claim at the indemnifying party's expense; and (c) the indemnifying party is given control of the defense and settlement. If any materials are held or are believed by the indemnifying party to infringe, the indemnifying party will have the option, at its expense, to (a) modify the materials to be non-infringing, (b) obtain for the indemnified party the right to continue using the materials, or (c) terminate the use of the materials under this agreement. The provisions of this section will survive termination of this agreement for a period equal to the statute of limitations governing the indemnified claim, and will continue to apply to any claim filed within that period.

## **12. TERMS AND TERMINATION.**

**12.1** The term of this agreement will be for five years from the date hereof. Thereafter, this agreement will automatically renew for additional one year periods unless (a) terminated by either party by notice at least 60 days prior to the renewal date, or (b) replaced by a new agreement governing access to X Net and the network services.

**12.2** During the first 90 days of the initial term, Customer may terminate this agreement upon notice to Company, if (a) Customer is dissatisfied in any material respect with the performance of X Net or the network services, and gives notice to Company specifying the nature and circumstances of the dissatisfying performance with as much detail as practical, and (b) Company (with Customer's cooperation) has not resolved the issue to Customer's satisfaction within 60 days after the notice of dissatisfaction.

**12.3** Either party may terminate this agreement upon notice to the other:

- (a) If the other party materially breaches any of its obligations under this agreement and such breach is not cured within 60 days after notice thereof; or
- (b) if insolvency proceedings pursuant to any federal or state law are filed by the other party, or are filed against the other party and not dismissed within 60 days, if substantially all of the assets of the other party is transferred to an assignee for the benefit of creditors, a receiver or a trustee in bankruptcy; if the other party is adjudged bankrupt; or if the other party ceases to carry on business.

**12.4** Termination of this agreement will not be exclusive of any other remedy available under this agreement or applicable law. Upon termination, each party will promptly make any payments

owed to the other party. Company will reasonably cooperate with Customer in the transfer of Customer's domain hosting. If any, Monthly network services fees will not be prorated. Access to the network and network services will be discontinued upon termination. Within 30 days after termination, each party will return (or will provide reasonable access to its facilities for the other party to retrieve) any equipment in its possession that belongs to the other party.

**13. DISPUTES.** Except as otherwise agreed, any disputes concerning this agreement will be resolved as follows:

**13.1** If either party believes that a dispute cannot be resolved by informal negotiation, the matter will be submitted to mediation. The parties will agree upon a neutral impartial mediator experienced in the field of interactive electronic networks. At the commencement of the mediation, the parties will agree upon (a) a procedure for exchange of information related to the dispute, and (b) ground rules and a schedule for conducting the proceeding before the mediator.

**13.2** If a dispute is not settled pursuant to mediation within the agreed time period, or if any party will not participate in the mediation, the dispute will be submitted to binding arbitration in \_\_\_\_\_, in accordance with the rules of the \_\_\_\_\_. The arbitration will be by a single arbitrator (or, if the amount in controversy is greater than \$30,000, by three arbitrators, none of whom will be appointed by either party) experienced in the field of interactive electronic networks. The arbitration will be governed by the \_\_\_\_\_, and judgment upon the award damages in excess of actual damages, but will be empowered (now required) to require any party to pay the reasonable attorney fees, expert witness fees, and other arbitration costs of any other party.

**13.3** Except as specified in section 11.4, the procedures described in this section will be the exclusive procedures for the resolution of disputes; provided, however, that either party may seek preliminary judicial relief in \_\_\_\_\_. If in the judgment of that party such relief is necessary to avoid irreparable damage. Despite the initiation of any such judicial proceedings, the parties will continue to participate in good faith in the mediation or arbitration. Any cause of action either party may have with respect to this agreement will be barred unless it is commenced within one year after the cause of action arises, is discovered, or should have been discovered with the exercise of reasonable diligence.

**14. GENERAL.**

**14.1** The parties are independent Agree mentors. Neither party is an agent or partner of the other, or has the right to incur any obligation on behalf of the other. Each party may use the other's name and trademarks only with the others prior written consent (except that Company may use Customer's name in any listing of X Net Customers). Upon termination of this agreement, all use of such names and trademarks will immediately be discontinued, and each party will return to the other all promotional materials and other items bearing the other's name or trademarks that are in its possession.

**14.2** Neither party will be liable for any delay or failure in its performance under this agreement (except for payment obligations) directly or indirectly due to acts of \_\_\_\_\_ other party or its agents, or to cause beyond the control of the delaying party (including equipment failure, utility failure, casualty, emergency conditions, acts of governmental authorities, labor disputes and acts of suppliers, telecommunications providers or other third parties).

**14.3** Notices under this agreement will be in writing and will be effective when resolved by certified mail, overnight courier or hand delivery to the address set forth below (as may be changed from time to time by written notice). Refusal to accept delivery will be deemed receipt.

**14.4** This agreement will be binding upon the assigns and successors in interest of Company and Customer. Either party may assign this agreement to an affiliate, or as collateral for financing purposes, or Company may assign this agreement to a purchaser of X Net, without the consent of the other party. Neither party may otherwise assign this agreement without the other party's written consent, which will not unreasonably be withheld.

**14.5** This agreement is governed by the laws of the State of \_\_\_\_\_. No provisions of this agreement may be waived or modified except in writing signed by Customer and Company. This agreement (including the Services Schedule as modified by the parties from time to time) is the entire agreement between the parties as to it subject matter, and supersedes any other communications between the parties. This agreement may be executed in counterparts, each of which will constitute an original. If any provision of this agreement is found to be invalid or unenforceable, such provision will be modified (in the effected jurisdiction) to the minimum extent required, and the remainder hereof will not be affected.

**IN WITNESS WHEREOF**, the parties have executed this Network Services Agreement as of the date written below.

**CUSTOMER**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

**COMPANY**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

## **SERVICES SCHEDULE TO NETWORK SERVICES AGREEMENT**

### **1. DESCRIPTION OF SERVICES**

Customer subscribes for the following network services:

### **2. PRICING SUMMARY**

Customer agrees to pay the following fees in connection with the Network Services Agreement:

Half of One-\_\_\_\_\_ and Annual Charges

\*Monthly recurring charges will begin and be invoiced as services are activated

**EQUIPMENT SCHEDULE TO NETWORK SERVICES AGREEMENT**