



## SERVICE LEVEL AGREEMENT

### 1. Introduction.

This Service Level Agreement ("Agreement") is made between Premier Hosting Inc., doing business as Infiniwiz, ("INFINIWIZ"), with its principal place of business at 1835 Hicks Road, Rolling Meadows, IL, 60008 and you, our Customer. As used in this Agreement, the words "we", "our" and "us" refer to INFINIWIZ and the words "you," and "your" refer to the Customer. PLEASE READ THIS AGREEMENT CAREFULLY. BY AGREEING TO OUR TERMS OF SERVICE ON THE SERVICE ORDER FORM, SIGNING UP, COMMUNICATING WITH US, PAYING FOR AND/OR USING OUR SERVICES, YOU ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. The word "Services" includes Information Technology helpdesk support ("IT Helpdesk"), consulting work ("IT Consulting"), maintenance and monitoring plans ("IT Maintenance Plans") as well as Microsoft Exchange email hosting ("Email Service"), VoIP PBX phone system hosting ("Phone Service"), virtual private server hosting ("Desktop Hosting"), website hosting ("Webhosting") and other business services ordered on the Service Order Form. The following terms and conditions govern all aspects of your purchase, including use and termination of all Services.

**1.2** Upon agreeing to use INFINIWIZ's service, you will designate in writing at least one but no more than three (3) individuals ("Designees") who will be authorized to communicate with Infiniwiz to make any adds, deletes, changes or modifications to the service Customer is purchasing from Infiniwiz ("Service Modifications"). The types of changes include, but are not limited to, canceling the service, moving the service address or altering the responsible party on the services. INFINIWIZ may decline to take any instructions from representatives of a Customer who have not been named a Designee. In the event a dispute arises within the business of Customer regarding who has the authority to make Service Modifications, INFINIWIZ shall be authorized, in its sole discretion, to make its own determination as to whether or not to accept or act upon a request for Service Modification and any decision by INFINIWIZ concerning any such modification shall be final and binding upon Customer. If, during an internal Customer dispute, Customer does not continue to timely pay Infiniwiz's invoices for service, INFINIWIZ shall be authorized, without liability to Customer, to cancel Customer's service and upon cancellation any telephone numbers associated with the service shall be returned to the North American Numbering Plan Administrator for recycling and redistribution.

### 2. Services.

**2.1** Subject to the terms and conditions of this Agreement, INFINIWIZ will provide the Services specified in the Service Order Form and at the Service Address specified in the Service Order Form.

**2.2** INFINIWIZ stores all Customer data on secure servers or directories that require access authentication. To ensure higher level of security INFINIWIZ supports 128-bit encryption via SSL. INFINIWIZ maintains third-party anti-virus and anti-spam software on its front-end SMTP servers which are utilized for the Email Service. This software is configured to check all messages coming into the Exchange server for viruses and spam according to the detection heuristics provided by the software. As a part of the software service, these heuristics are regularly updated. If a virus is detected, the message is deleted. No notification is sent to either recipient or sender of the message.

**2.3** INFINIWIZ advises you to use up-to-date, local anti-virus and anti-spam software because we are not responsible for infection of end-user devices.

**2.4** INFINIWIZ employs RAID techniques to ensure the redundancy of the data on its servers.

**2.5** INFINIWIZ performs Customer data backups for Desktop Hosting as follows:

- Incremental backups are completed nightly and retained for 1 week.
- Full backups are completed daily and retained for 1 week.

INFINIWIZ performs Customer data backups for Phone Service as following:

- Call log backups are performed nightly and retained indefinitely.

**2.6** If a disruption of any Services occurs, INFINIWIZ will assign the highest priority and will make our best commercial efforts to ensure the timely restoration of Service. In case of Email Service, depending on the type of disruption that has occurred, INFINIWIZ may elect to first restore the Email Service without client email messages.

**2.8** You agree not to share your login username or password with anyone. We recommend that you and your other users change passwords at least every forty-five (45) days.

**2.9** To guarantee optimal performance of Services, it is necessary for INFINIWIZ to perform routine maintenance on the servers. INFINIWIZ reserves the right to plan a scheduled maintenance with forty-eight (48) hours advance notice issued to you. INFINIWIZ will use commercial best efforts to plan such maintenance at non-peak hours and limit their

occurrence to strictly necessary upgrades and required maintenance.

**2.10** You agree that it is your responsibility to notify all persons within your organization of scheduled outages.

**2.11** To ensure highest quality of Customer care our technical support operates twenty four (24) hours a day and seven (7) days a week. You can submit all inquiries by calling 847-994-1111 or by sending an email to support@infiniwiz.com.

**2.12** Some INFINIWIZ data restores may result in fees depending on type of service and nature of data loss. See section 5.5 for more information about data restores.

**2.13** You understand that you have full ownership of your data stored on INFINIWIZ equipment and that you have full access to your data for all your Services including and not limited to Desktop Hosting. In addition, you understand that you can copy any or all of your data to your computer at any time with or without notice to INFINIWIZ.

**2.14** Retention policy for call recordings is three (3) months.

### **3. Network Availability Commitment**

**3.1** A network is unavailable when there is total "Loss of Service" as defined herein for more than sixty (60) consecutive minutes per occurrence. "Loss of Service" means that you are unable to access Services or communicate using Services as intended as a result of the failure of INFINIWIZ facilities, equipment, or personnel used to provide the Services.

**3.2** The Network Availability Commitment in this section does not cover or apply to:

- Services activation or any Loss of Service caused by scheduled maintenance of our systems or networks;
- Services or software running on servers of Desktop Hosting;
- DNS issues outside direct control of INFINIWIZ;
- Your acts or omissions (or acts or omissions of others engaged or authorized by you) including, without limitation, custom scripting or coding (such as CGI, Perl, HTML, ASP, etc), any negligence, willful misconduct, or use of the Services in breach of this Agreement;
- Problems or issues relating to your equipment at the Service Address, including, but not limited to your local area network, your phone equipment including cables, PBX, outages or disruptions caused by you either directly or indirectly, interconnections to or from and connectivity within other Local Exchange
- Carriers' networks, subsequent voice carriers' networks, interconnections to or from and connectivity within Internet Service Provider networks, degraded or slow Services, and Force Majeure events.

**3.3** INFINIWIZ will use commercial best efforts to provide Customers with 99.9% network availability relating to its Services. Network Availability is calculated by the number of hours the service is available to you plus the total number of hours, if any, the service is scheduled to be unavailable, divided by the total number of hours in that month.

**3.4** If you experience Loss of Service as described in this Agreement, INFINIWIZ will refund 5% of the Customer's monthly fee otherwise payable for each 60 minutes of downtime, up to a maximum of 50% of Customer's monthly fee for the affected Services. Loss of Service is measured from the time the trouble ticket is initiated either by you or us on your behalf as a result of your notification. All Network Availability Commitment refunds are subject to review and verification by INFINIWIZ. You must be current on all payments (i.e. no balance older than 30 days) in order to receive credit under the Network Availability Commitment. Refunds will appear within two (2) billing cycles after approval.

### **4. Equipment.**

**4.1** INFINIWIZ co-locates the Services in a Tier III+ data center. Physical access to the data center is protected by biometric security systems with armed security staff. Access to INFINIWIZ equipment is strictly limited to personnel authorized by INFINIWIZ. The Data center is equipped with a redundant HVAC system, protected by state-of-the-art fire prevention system and has its continuous power supplied by battery backup systems and redundant diesel generators.

**4.2** You may elect to lease equipment, such as phones or network devices ("Leased Equipment"), from INFINIWIZ. Leased Equipment remains the sole property of INFINIWIZ at all times and shall not be considered Customer-premises equipment. Leased Equipment must be returned to INFINIWIZ within 10 calendar days from the termination date if service is terminated by either party. You agree to comply with all instructions and requirements regarding the use and/or care of Leased Equipment, and to take reasonable measures to protect Leased Equipment at all times. You will provide a secure, air-conditioned space to house the Leased Equipment and sufficient electricity to operate the Leased Equipment. You agree to pay INFINIWIZ the replacement value of any lost, stolen, damaged or unreturned Leased Equipment. INFINIWIZ will replace any of its Leased Equipment that does not perform as specified within the first twelve (12) months from the original setup of your service with a like-new replacement (either a like unit or one

of comparable quality), at no charge to you, unless we determine, on our sole discretion, that you are directly or indirectly responsible for Leased Equipment failure. Replacements will carry the remaining warranty period from the original equipment, or 90 days, whichever is greater. Once you receive your replacement device, you must return your defective device within 10 calendar days. If you do not return your defective device or if you return a device that has been subjected to neglect, misuse, liquid damage, software alterations, or unreasonable wear and tear, you will be charged up to the full retail price of your replacement device, which may be in excess of \$500.

**4.3** When purchasing our Phone Service, you may purchase desktop phones ("Phones") from INFINIWIZ. Your purchase may also include related software and other products ("Phone Related Products") in order to operate your Phones properly. Phones and Phone Related Products may be covered under a limited warranty from their manufacturer that INFINIWIZ will extend to you without charge. If and when available, you may also elect to purchase an extended warranty for the Phones and Phone Related Products, at the then current cost for the selected warranty. Because these warranties for your Phone and Phone Related Products are provided by third parties, we cannot and do not commit or warrant as to the performance of those Phones or Phone Related Products or that any of them will, if need be, be replaced or repaired as you desire. At our sole discretion, we may change or modify configuration settings on your Phones and Phone Related Products remotely and without notice to you, including changes or modifications to any software or programming. Among other things, this may affect or delete any data or information stored on your Phones or Phone Related Products, including the configuration of your Phones or Phone Related Products. INFINIWIZ is not responsible for any monetary loss, or adverse effects of such changes or modifications.

**4.4** Installation, operation, maintenance, repair or removal of any software, program, or hardware related to the INFINIWIZ Services, including the Phone Related Products ("Services Related Products") on your computer(s), network(s) or other hardware may result in service outage, loss or damage to that equipment or any data, information or files on your equipment. Any warranty covering your computer, network or other equipment may become void when you open that computer or equipment to install any Services Related Products, whether or not you elect to install and run any of those Services Related Products. We do not commit or warrant that your installation or use of any Services Related Products will permit you to access, operate, or use any Service.

**4.5** If a phone is stolen or misplaced, be it owned or leased, it is in your best interest to report it to INFINIWIZ. You will be liable for call charges on a per-minute usage basis from the time the phone was stolen or misplaced until we learn about the incident and suspend the phone. Upon proper notice, we will suspend the stolen or misplaced phone to permit you to find a replacement.

**4.6** You may elect the option where you will own equipment after making twelve consecutive monthly payments ("Lease To Own Equipment"). An initial installment payment shall be invoiced immediately upon purchase. Thereafter, eleven (11) subsequent equal installments shall be issued to you monthly as described in Section 5 of this Agreement. Until all installment payments related to this Lease To Own Equipment, have been paid, INFINIWIZ shall retain title in, and ownership of the Lease To Own Equipment, together with any and all equipment, parts, accessories, attachments, additions and other goods, and all replacements of them, affixed to or used in connection with the goods and, if buyer sells or otherwise disposes of the goods in violation of the terms of this Agreement, in the proceeds of such sale or disposition. All Lease To Own Equipment will be new at the time of shipment to you. Upon receipt of the Lease To Own Equipment, you shall inspect the same. You shall be deemed to have inspected the Lease To Own Equipment and acknowledged that the Lease To Own Equipment is in good and acceptable condition, unless INFINIWIZ shall have received written notice of any defect or damage immediately following receipt of the Lease To Own Equipment. You shall be responsible for any theft, loss or damage to the Lease To Own Equipment, and in the event of such loss or damage, shall remain responsible for all installment payments hereunder.

## **5. Charges, Payments and Late Payment Fees and Costs.**

**5.1** First (1st) invoice with prorated Monthly Fees and other charges will be issued on the date Services are available to you. All installation, setup and activation fees for Services are due upon completion of installation or setup. Even if someone other than you uses or shares your Service Address or INFINIWIZ Services, you are responsible for all Monthly Fees and other charges invoiced for the Service Address and Services. INFINIWIZ is not obligated to invoice or provide Services to anyone other than you.

**5.2** Second (2nd) invoice and all subsequent invoices will be issued ten (10) days before the first (1st) of each month and will include all recurring, fixed Monthly Fees and charges billed ten (10) days in advance. You agree to pay the total amount of each invoice by the invoice due date shown on that invoice. To dispute the amount or accuracy of any invoice, you must notify INFINIWIZ in writing no later than the due date of that invoice detailing the disputed charges. INFINIWIZ will not issue credits for any charges that are not disputed in writing by the due date of the invoice containing the disputed charges. You must pay any charge or amount that you do not properly dispute by the due date of the invoice for those charges, without exception. If, after investigation, INFINIWIZ determines that a refund is due, we will credit the amount of the incorrect items on a subsequent invoice. Upon receipt of notice from INFINIWIZ that the disputed charges are correct, all past due amounts must be paid, in addition to any late payment

charges described in Section 5.3

**5.3** All payments must be in U.S. dollars. If you do not pay all charges by the specified due date under this Agreement, a late payment fee will be assessed on the unpaid amounts until paid at the lower of: (a) one and one half percent (1 ½ %) interest per month (annual percentage rate of 18%) on the unpaid amounts until paid; or (b) the maximum rate allowed by law. You are also responsible for all other costs and legal fees incurred in collecting all unpaid amounts, unless otherwise ordered by the court in any action to collect those unpaid amounts. INFINIWIZ reserves the right to assess a \$25 fee for any check returned for insufficient funds or not paid when presented for payment.

**5.4** In addition to the charges for your INFINIWIZ Services, you are responsible for all federal, state and local sales, use and excise taxes and any new or increased fees, assessments, taxes or other charges for the Services, including any universal service fund charges that may apply. You are responsible for collect call, international call and any other charges that may be billed to you after your Service end date. You are also responsible for any charges from third parties that arise when you use your phone number as a billing mechanism for third-party services (such as 900 or other information charges). Should you request any third-party services, you agree that we may release your name and billing information to that third party so that it can bill you directly for those services.

**5.5** Data restores for specific items can be very time consuming and therefore INFINIWIZ is obligated to charge additional fees.

**5.5.1** Exchange Mailbox and Public Folder restores for Email Service Customers are subject to consulting fees at a rate of \$125 per hour. Please note that items within a mailbox that have been accidentally deleted can normally be restored directly from Deleted Items folder by the end user, even after the Deleted Items folder has been emptied. Instructions for this procedure are contained within Microsoft Outlook's Help menu. If a public folder or mailbox cannot be recovered from the online Deleted Items storage.

**5.5.2** Virtual Private Server restores for Desktop Hosting Customers may take hours depending on amount of data and will be billed to Customer at a rate of \$125 per hour if the total system failure was found to be caused by Customer.

**5.5.3** Individual file restores for Desktop Hosting Customers are free of charge.

**5.6** INFINIWIZ reserves the right to disconnect or discontinue any one or all of the Service(s) when an account is at or over thirty (30) days past due. Service(s) will remain disconnected or discontinued until past due balances and all reconnection fees described in Section 5.7 are paid in full.

**5.7** After disconnection of any one or all of the Services initiated by either party and in the event you request to reconnect such Service(s), a \$125 reconnection fee will be assessed per each Service reconnected. This fee does not apply to the addition or removal of users or phones.

**5.8** In the event of a credit card chargeback INFINIWIZ reserves the right to assess a \$25 fee in addition to the amount of the chargeback.

## **6. Your Responsibilities.**

In addition to your other responsibilities under this Agreement, you agree that you and anyone using the Services will:

- upon request, take all actions necessary in order to install and activate the Services;
- provide adequate facilities to house and operate Service Related Products;
- not resell the Services to any third party;
- comply with INFINIWIZ Acceptable Use Policy described in Section 16 below;
- comply with all federal, state, and local laws, rules, regulations and tariffs that apply to the Services or this Agreement;
- be solely responsible to establish and maintain security measures (including, without limitation, codes, passwords or other features) necessary to restrict access to your computers, servers or other equipment through the Services;
- be solely responsible for all fraudulent, unauthorized, illegal or improper use of the Services by persons accessing those Services through your facilities, equipment or Service Address;
- authorize and identify to us in writing at least one individual who is authorized to represent you on any aspect of the Services and your account (including all requests for moves, additions, deletions or changes to the Services).

You agree to notify us immediately of any Loss of Service or other problems with any of the Services.

## **7. Term and Termination.**

**7.1** This Agreement is effective upon signing of the Service Order Form by both parties and will continue in effect for

the term specified in Service Order Form (“Initial Term”).

**7.1.1** If your Initial Term is twelve (12) or more months, this Agreement will automatically renew for successive one (1) year periods (each a “Renewal Term” and collectively with the Initial Term the “Term”) at the end of the Initial Term unless you provide INFINIWIZ with notice of your intent not to renew the Agreement as described in this Section 7.

**7.1.2** If your Initial Term is one (1) month, this Agreement will automatically renew for successive one (1) month periods at the end of the Initial Term unless you provide INFINIWIZ with notice of your intent not to renew the Agreement as described in this Section 7.

**7.2** You may terminate your Services without liability for termination charges by providing written notice at least 30 days prior to the expiration of the then current Term. INFINIWIZ will block access to all requested Services on the requested cancellation date. Charges for terminated Services will include days prior to and including the requested cancellation date.

**7.3** Prior to termination or within two (2) weeks after termination of Services, all data will be fully accessible for download for you free of charge as described in Section 2.13. Alternatively, you may request to physically mail your data to you or a third party, in which case consulting fees at a rate of \$125 per hour plus cost of media and transportation will be billed to your account. Upon expiration of a two (2) week waiting period and in the event of no requests, all data will be permanently deleted.

**7.4** Prior to termination of the Phone Service, you may transfer or transport your then current phone number(s) to your new service provider. If you request your new service provider to transport a number from us, and new service provider requests us to do so, we will treat that request from your new provider as notice from you to immediately terminate the Phone Service for that phone number upon successful transfer of that number. After any phone number has been transferred or transported to your new provider successfully, you will not be able to use the Phone Service for that phone number. You remain liable to pay all Phone Service charges through the Agreement expiration date.

**7.5** INFINIWIZ may terminate this Agreement or suspend all or any Services if:

- you fail to take any action that we have requested in order for INFINIWIZ to install or activate the Services;
- you fail to pay any amount owed when due, and fail to pay all past due amounts within 10 days after notice from us;
- you fail to comply with our Acceptable Use Policy described in Section 16 below;
- you fail to perform or comply with any other obligation under this Agreement, and do not perform or comply with that obligation within 30 days after notice from us;
- you are involved in or are the subject of any change-in-control, including any sale of your stock or assets, reorganization or merger;
- you, or anyone using any of the Services, use or operate any Services in a manner that could, in our sole determination, result in harm to us, our network, our reputation, or other Customers;
- you, or anyone using any of the Services, use or operate any Services in a manner that, in our sole determination, is or could violate our Acceptable Use Policy described in Section 16 below or applicable law or the intended business use of that Service;
- we determine at any time (on our sole discretion) that your payment record, ability to make timely payments or creditworthiness has become unsatisfactory (even if you have provided or replenished any requested deposits).

If we elect to terminate this Agreement or any Services, you must pay all charges and late fees for terminated Services accumulated prior to the termination date.

**7.6** If we elect to suspend Services under any circumstances pursuant to this Agreement, and then resume those Services, you must first pay all past due and other applicable charges, including the late payment fees and costs described in Section 5 above.

**7.7** You must immediately make all INFINIWIZ equipment and property available to us or pay us the replacement value of all equipment and other property that you do not make immediately available to us, promptly upon termination of the Agreement. You must also pay all costs that we incur in retrieving or attempting to retrieve our equipment and property, promptly upon termination of the Agreement. Immediately upon termination of this Agreement, you must return all Confidential Information, as described in Section 13, and other INFINIWIZ information to us. Upon our termination of this Agreement for any reason, you will forfeit any right to obtain a refund or credit of any amount paid previously or owed under this Agreement, except for any credit owed to you under the Network Availability Commitment. Sections 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 17, 18 and 19 will survive the termination of this Agreement.

**7.8** If your Term is twelve (12) or more months, you are responsible to pay an early termination charge ("Early Termination Charge") if termination date is earlier than the end of the Term. The amount of the Early Termination Charge will be calculated as indicated in Sections 7.8.1, 7.8.2, 7.8.3 and 7.8.4.

**7.8.1** If after execution of the Agreement, termination occurs before we install our equipment or activate the Services, you shall be liable for \$1,000;

**7.8.2** If termination occurs after we activate the Services and during the Initial Term of this Agreement, you shall be liable for all outstanding nonrecurring fees plus hundred percent (100%) of the Monthly Fees for each month, if any, remaining in the first year of the Initial Term; plus seventy five percent (75%) of the Monthly Fees for each month, if any, remaining in the second year of the Initial Term; plus fifty percent (50%) of the Monthly Fees for each month, if any, remaining in the third year of the Initial Term.

**7.8.3** If termination occurs during the Renewal Term of this Agreement, you shall be liable for all outstanding nonrecurring fees plus hundred percent (100%) of the Monthly Fees for each month, if any, remaining in the Renewal Term.

**7.8.4** Monthly Fees used in calculation of Early Termination Charge, will be equal to monthly fees specified on Service Order Form that executed this Agreement, or then current monthly fees at the time of service termination, whichever is greater.

## **8. Disclaimer of Warranties.**

INFINIWIZ is providing the Services, equipment, Phones, and Services Related Products including Phone Related Products to you on an "as is" basis without any warranty, express or implied. INFINIWIZ disclaims all implied warranties, including warranties of merchantability and fitness for a particular purpose, and any warranty from usage of trade, course of dealing, or course of performance, among others. You are solely responsible to select, use and determine the suitability of INFINIWIZ Services, Phones, and Services Related Products including Phone Related Products, and INFINIWIZ will have no liability for that selection, use or suitability. INFINIWIZ does not warrant that the Services will be uninterrupted or error-free. INFINIWIZ does not represent that the Services, Phones or Services Related Products including Phone Related Products will meet your requirements or prevent unauthorized access to your computers, network, servers and other equipment or to any data, information or files on any of them.

## **9. Disclaimer of Emergency 911 services.**

When using our Phone Service, you are advised that Enhanced 911 ("E911") access capabilities available with INFINIWIZ Phone Service function differently when compared to Emergency 911 access capabilities available with traditional telephone service. E911 service will not function or be available to you with the loss of electrical power or if the broadband connection is not operational. Enhanced 911 service that is compatible with the FCC technical requirements is, nonetheless, not available in all areas, and even in those areas where it is available, it is not entirely reliable. Your signature on Enhanced 911 Limitations Notification and Registration Form will be your acknowledgment that INFINIWIZ has advised you of these limitations and that you accept the services with these limitations.

## **10. INFINIWIZ Liability Limitations.**

**10.1** You agree that your sole remedy against INFINIWIZ for our failure to comply with this Agreement will be to obtain the credit(s) provided in Sections 2 and 3 above or, if applicable, to terminate the affected Service as described in Section 7. In order to terminate this Agreement or affected Service, you must first give proper written notice to INFINIWIZ, be current on all payments (i.e. no balance older than 30 days), and pay for all Services through the date we discontinue them.

**10.2** INFINIWIZ is not liable for any damages, including indirect, incidental, consequential, punitive or special damages, relating to loss of data, profit, revenue or business, or loss, damage or destruction of any property, whether you, your assignee or any other transferee suffer that loss or damage and whether or not INFINIWIZ is informed in advance of the possibility of such loss or damage. INFINIWIZ is not liable for the content, accuracy or quality of the information transmitted through its equipment, facilities or Services, or through the Phones or Services Related Products (including Phone Related Products) and you agree to assume all risk of transmitting, receiving or using any such content or information.

**10.3** INFINIWIZ is not liable for any injuries, death, or loss to any person or for damage, loss or destruction of any property of any person as a result of act or omission by INFINIWIZ in developing, adopting, implementing, maintaining, or operating any Emergency 911 or similar system or in identifying the telephone number, name, address, location or any other information on anyone accessing or trying to use or access the Emergency 911 or similar system. INFINIWIZ is not liable for errors or omissions in any information about you in any published directory. You agree to be solely responsible for ensuring the accuracy of any information about you in any published directory.

**10.4** INFINIWIZ sole liability to you for any claims, losses or damages caused by the Services or equipment or otherwise under this Agreement is limited as described in this Section 11. You agree that those limitations are

reasonable. You also acknowledge that without those limitations of liability, your Monthly Fee and other charges fees under this Agreement would be substantially higher. You further agree that the limitations on INFINIWIZ liability in this Section 11 will apply in any action or proceeding against INFINIWIZ, whether based in contract, tort (including negligence or strict liability) or under any statute, law, rule or otherwise.

#### **11. Your Liability for INFINIWIZ loss and damage.**

To the extent you are the cause of any loss, damages, or liabilities to INFINIWIZ, you agree to reimburse, compensate and pay INFINIWIZ for any losses, claims, damages, liabilities, or penalties that INFINIWIZ or any of our officers, directors, agents, successors or assignees may incur from your purchase or use of the Services and our equipment, except to the extent that any loss, damages or liabilities are caused by INFINIWIZ gross negligence or willful misconduct.

#### **12. Force Majeure.**

We will not be in violation of this Agreement or otherwise liable for any delay, failure to perform or equipment or property damage, loss, destruction or malfunction, or any consequence thereof, caused by anything beyond our reasonable control, including, without limitation, fire; earthquake; flood; weather; acts of God; labor disputes; utility curtailments; power failures; cable cuts; failure caused by telecommunications or other Internet provider(s); Phones or other Services Related Products (including Phone Related Products); worms, Trojan horses, viruses or other destructive code or software; explosions; civil disturbances; terrorism; vandalism; governmental actions; or shortages of equipment or supplies (collectively, "Events of Force Majeure").

#### **13. Confidentiality.**

"Confidential Information" is valuable confidential or proprietary information, in any form, of or about us, or our Services, Customers or contractors that is not generally known by, or readily available to, the public. You may use Confidential Information solely for your internal purposes, and will only disclose such information internally on a need-to-know basis. You will use reasonable best efforts to protect Confidential Information from unauthorized use or disclosure. We may seek equitable relief (and any other remedies) to enforce this Section 13. For Confidential Information that is a "trade secret" (as defined by applicable law), your obligations under this Section 13 will continue for the longer of: (i) 3 years after termination of this Agreement; or (ii) until such information is no longer a trade secret under applicable law. For all other Confidential Information, your obligations under this Section 13 will continue during the term of this Agreement and for 3 years after termination of this Agreement. Our use of your information is governed by applicable law and our privacy policy posted on the Internet at [www.infiniwiz.com](http://www.infiniwiz.com).

#### **14. Publicity.**

Neither party will use the other's name, logo, product names or trade or service marks, or refer to the other directly or indirectly in any advertising, sales presentation, news release, release to any professional or trade publication or for any other purpose without the other's prior written approval.

#### **16. Acceptable Use Policy.**

You agree to comply at all times with our Acceptable Use Policy ("AUP") which is posted on the Internet at [www.infiniwiz.com](http://www.infiniwiz.com) and is incorporated in this Agreement by this reference. We may change the AUP at any time with an advance notice to you.

#### **17. Additional Services.**

You may order additional or different INFINIWIZ Services after the date of this Agreement through our website, or by email, facsimile or a telephone call to us. Except to the extent expressly governed by another agreement you sign with us, any additional Services that you order through whatever means will be governed by this Agreement.

#### **18. Business Continuity Provision.**

**18.1** In the event that INFINIWIZ is unable to continue Services to you, we will use commercial best effort to provide no less than two (2) weeks of interim service. During this period, INFINIWIZ will provide access to the most current data at no cost, as well as all necessary information including application settings and utilities in order to facilitate a transition of your service to another provider or in-house implementation.

**18.2** In the event that INFINIWIZ is unable to continue Phone Service to you, INFINIWIZ will use commercial best effort to provide no less than forty-five (45) days of interim Phone Service to give you time to transfer or transport your then current phone number(s) to a service provider of your choice.

**19. General.**

**19.1** INFINIWIZ reserves the right to amend this Agreement at any time and will notify you of any such changes via email communication and by posting the revised Agreement online at [www.infiniwiz.com](http://www.infiniwiz.com). You should check this Agreement periodically for changes. All changes shall be effective upon posting. Your continued use of INFINIWIZ Services after modification of the Agreement constitutes your acceptance of the modifications.

**19.2** This Agreement will be governed by and interpreted in accordance with the laws of the State of Illinois, without regard to conflict of laws principles, and is subject to any federal, state or local tariffs that may apply. If any conflict should arise between the terms of this Agreement and an applicable tariff or addendum, you agree that the terms of the applicable tariff or addendum shall control.

**19.3** If an arbitrator or court should declare any one provision of this Agreement to be invalid, then the other provisions will remain in effect and the parties will work in good faith to agree to a replacement provision that has the same or similar intent as the original provision. This Agreement is for the sole benefit of you and INFINIWIZ, and no other person.

**19.4** All notices under this Agreement must be in writing, with all notices to us to be sent to: Infiniwiz, 1835 Hicks Road, Rolling Meadows, IL 60008 or to any other address that we may notify you or post on our web site.

**19.5** The Section headings used herein are for reference only and will not impact the interpretation of this Agreement.

**19.6** In the event litigation shall be instituted to enforce any provision of this Agreement, INFINIWIZ shall be entitled to recover litigation expenses and reasonable attorneys' fees incurred in such litigation, including, without limitation, any attorneys' fees and expenses incurred on appeal, in addition to any other recovery to which INFINIWIZ may be legally entitled.