



Universal Terms of Service

IMPORTANT: PLEASE READ THE UNIVERSAL TERMS OF SERVICE CAREFULLY. YOU CAN REQUEST THE LATEST VERSION OF THIS DOCUMENT BY EMAILING SUPPORT@L1N.COM, OR GO TO [HTTP://WWW.L1N.COM/LEGAL](http://WWW.L1N.COM/LEGAL) TO OBTAIN A DOWNLOADABLE COPY.

L1N IS WILLING TO PROVIDE SERVICES TO YOU ONLY UPON THE CONDITION THAT YOU ACCEPT ALL THE TERMS CONTAINED IN THE AGREEMENT. THE AGREEMENT IS EFFECTIVE AS OF THE DATE YOU UTILIZE ANY L1N SERVICES, ACCESS OUR HOSTED SYSTEMS OR SIGN THE MSA.

L1N OFFERS MANAGED SERVICES, HOSTED SYSTEMS AND SOFTWARE ONLY SUBJECT TO THE AGREEMENT AND THEREFORE YOU MUST ACCEPT THE AGREEMENT BEFORE YOU CAN UTILZE ANY L1N SERVICE, HOSTED SYSTEM OR SOFTWARE.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN L1N IS UNWILLING TO OFFER SERVICES, HOSTED SYSTEMS AND SOFTWARE TO YOU, AND YOU MUST NOT ORDER, DOWNLOAD, COPY, INSTALL, RECEIVE OR USE THEM.

1.0 The Master Services Agreement

The Master Services Agreement incorporates the following documents by reference: (i) the Services Description that describes the Services you are buying and related fees; (ii) these Universal Terms of Service containing the general terms and conditions applicable to all Services; (iii) the specific Product Terms and Conditions containing the additional terms for the particular Services you are buying; (iv) the Acceptable Use Policy, and (v) the Service Level Agreement. When we use the term “Master Services Agreement” or “Agreement” in any of these documents, we are referring collectively to all of them.

2.0 Changes and Modifications to Terms

L1N may, in its sole and absolute discretion, change or modify this Agreement, and any policies or agreements which are incorporated herein, at any time, and such changes or modifications shall be effective immediately upon posting to Our Website. Your use of our Services after such changes or modifications have been made shall constitute your acceptance of this Agreement as last revised. If you do not agree to be bound by this Agreement as last revised, do not use (or continue to use) our Services. In addition, L1N may occasionally notify you of changes or modifications to this Agreement by email. It is therefore very important that you keep your contact information current with us. L1N assumes no liability or responsibility for your failure to receive an email notification if such failure results from an inaccurate email address.

3.0 Defined Terms

Some words used in the Agreement have particular meanings:

“Hosted System” means a combination of hardware, software and networking elements that comprise an information technology system located in the Cloud or a remote data center. The Hosted System may consist of elements that are directly owned and operated by L1N, and/or elements that are owned and operated by partners or affiliates of L1N. Depending on the Services you are buying, the Hosted System may consist of a dedicated system for your use only, the right to use certain parts of a shared system that L1N maintains for many customers, the right to use certain 3rd party hosted services from L1N partners or affiliates, or a combination of these elements.

“Hosting Services” or “Cloud Services” means: (i) L1N’s provision for your use of the Hosted System described in the Services Description

“L1N” or “We” or “Us” or “Our” means Layer One Networks, LLC., and may be used interchangeably in the Agreement or herein.

“Managed Services” or “IT Managed Services” means the suite of hardware, software, technical support and 3rd party vendor services and resources used to provide proactive monitoring, management and maintenance of your systems. Managed Services may apply to both on premise systems or Hosted Systems.

“MSA” means the Master Service Agreement

“Product Terms and Conditions” means the terms and conditions that are incorporated by reference in your Master Services Agreement and that state additional terms and conditions for the particular Services you are buying.

“Services” means Hosting Services, Managed Services and Supplementary Services, collectively.

“Services Description” means a written description of the Hosted System, Managed Services and/or Supplementary Services you are buying from L1N, and related fees that are incorporated by reference in the Agreement, including any “plan” or other name given to a Services description that you submit to L1N as part of an order.

“Website” mean the Layer One Networks website – <http://www.l1n.com>.

“Supplementary Services” means those Services you purchase from L1N other than the Hosting Services and Managed Services, including time and materials based professional or consulting services, one-time or non-recurring services which are not part of the existing Support and any other services identified as “Supplementary”, “One-time” or “Non-Recurring on the applicable Services Description.

“You” or “Your” means the Client and may be used interchangeably in the Agreement or herein.

4.0 Our Responsibility

- Our obligation to begin providing Services is contingent on your satisfaction of credit approval criteria and, at our discretion, a reference check
- We will provide the Services in accordance with the Services Description, the Service Level Agreement, and other specifications in the Agreement.
- We will perform any Supplementary Services in a good and professional manner.
- We will maintain security practices that are in-line with industry standard best practices, and will perform all Services in accordance with applicable law.

5.0 Client Responsibility

Client is required to conform to the following criteria:

- Allow the installation of managed service software on Client's network as necessary to allow for the performance of the services contemplated in this agreement.
- Have adequate back-up hardware and software.
- Have current anti-virus software.
- Provide configuration and proper ownership documentation as necessary for hardware and software.
- Immediately alert Layer One Networks concerning any third party activity on Client's network or hardware, or the addition by a third party of additional hardware or software to Client's systems.
- Allow Layer One Networks to take reasonable measures to ensure the security of the managed system(s). Measures may include defining permitted business applications, restricting user access to unnecessary functions, restricting administrative access, limiting the attack profile of servers and workstations, etc.

6.0 Service Charges

Client agrees to pay Layer One Networks fees in accordance with the schedule and pricing set forth in the Agreement, as modified from time to time by the parties in writing.

7.0 Term and Termination

7.1 Term

This Agreement shall commence upon execution of the MSA by Client and shall be automatically renewed for additional terms, unless either party shall give notice of cancellation 30 days prior to the expiration of the term.

7.2 Termination

Client may terminate this agreement at any time with 30 days written notice to Layer One Networks. However, Client agrees that the provision of the services under this agreement requires the application of significant Layer One Networks resources, and that termination prior to the end of the contract period would result in a significant loss to Layer One Networks. In the event of early termination, client will be charged for all service due through the end of the current term, unless termination is due to breach by Layer One Networks. Calculation of the termination fee is done by taking an average of the monthly billing since the beginning of the contract term, and multiplying it by the number of months left in the current term.

In the event of non-conformance to the Service Level Agreement, Client must notify Layer One Networks in writing within 3 days of the non-conforming event. Layer One Networks has 10 business days to take corrective measures to ensure response times are met. If Layer One Networks fails to implement corrective measures within the 10 day period, Client may terminate the Agreement with written notice to Layer One Networks for non-conformance.

Layer One Networks may immediately terminate the Agreement in the event Client fails to perform its obligation for payment of invoices pursuant to this Agreement. In such event, Layer One Networks shall have the right to recover for all Services performed prior to the date of termination. Client shall be liable for all costs of collection including reasonable attorney's fees incurred by Layer One Networks to enforce its rights under this Agreement.

7.3 Effect of Termination

Upon termination of this Agreement each party shall return or destroy, at the direction of the other party, all the other party's Confidential Information in its possession.

Upon termination of this Agreement, any hardware that is owned by Layer One Networks that was installed in order to provide service to the Client must be returned to Layer One Networks. Any software that is licensed to Layer One Networks that was installed on Client systems in order to provide Services under this Agreement must be removed from all systems immediately. Customer has no residual usage rights to any hardware/software solution that is owned by Layer One Networks, or that is provided by Layer One Networks partners, affiliates or vendors. This includes, but is not limited to, firewall hardware and software, antivirus/antispyware applications, backup hardware and software, computer systems, etc. Layer One Networks reserves the right to bill Client for any lost, stolen or damaged equipment or software that has not been returned by the Client at the termination of this Agreement.

8.0 Indemnities and Limitations Of Liability

8.1 Infringement Claims

Subject to the limitations set forth in Section 8.3, Layer One Networks and Client each agree to indemnify, defend and hold the other harmless against any action to the extent that such action is based upon a claim that the software (other than, with respect to Layer One Networks, third-party software provided by Layer One Networks) or Confidential Information provided by the indemnitor, or any part thereof, infringes upon the intellectual property rights of any third party.

8.2 Third Party Indemnification of Layer One Networks

Client acknowledges that by entering into and performing its obligations under this Agreement and each Order, Layer One Networks will not assume and should not be exposed to the business and operational risks associated with Client's business, and Client therefore agrees, subject to Section 8.3, to indemnify, defend and hold Layer One Networks harmless from any and all third party claims, actions, damages, liabilities, costs and expenses (including attorneys' fees and expenses) arising out of or related to the conduct of Client's business, including, without limitation, the use by Client of the Services.

8.3 Procedures

All indemnification obligations under this Section 8 shall be subject to the following requirements: (a) the indemnified party shall provide the indemnifying party with prompt written notice of any claim; (b) the indemnified party shall permit the indemnifying party to assume and control the defense of any action upon the indemnifying party's written acknowledgment of the obligation to indemnify (unless, in the opinion of counsel of the indemnified party, such assumption would result in a material conflict of interest); and (c) the indemnifying party shall not enter into any settlement or compromise of any claim without the indemnified party's prior written consent, which shall not be unreasonably withheld. In addition, the indemnified party may, at its own expense, participate in its defense of any claim. In the event that the indemnifying party assumes the defense of any such claim, the indemnifying party shall have no liability for attorney's fees and costs incurred by the indemnified party.

8.4 Liability

Layer One Networks DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING ANY LIABILITY FOR SERVICES NOT BEING AVAILABLE FOR USE OR FOR LOST OR CORRUPTED DATA OR SOFTWARE, OR THE PROVISION OF SERVICES AND SUPPORT. Layer One Networks WILL NOT BE LIABLE FOR LOST PROFITS, LOSS OF BUSINESS OR OTHER CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY EXCEPT AS EXPRESSLY PROVIDED HEREIN. CLIENT AGREES THAT FOR ANY LIABILITY RELATED TO THE PURCHASE OF PRODUCTS OR SERVICES, Layer One Networks IS NOT LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE AGGREGATE DOLLAR AMOUNT PAID BY CLIENT FOR THE PURCHASE OF SERVICES UNDER THIS AGREEMENT. CLIENT ACKNOWLEDGES THAT Layer One Networks WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON LIABILITY.

9.0 Confidentiality

9.1 Scope of Obligation

In connection with the Services performed under this Agreement, the parties may have access to the other party's Confidential Information. "Confidential Information" means non-public information that the disclosing party designates as being confidential or which under the circumstances surrounding disclosure ought to be treated as confidential and information received from others that the disclosing party is obligated to treat as confidential. Confidential Information includes, without limitation, information relating to the disclosing party's software or hardware products which may include source code, data files, documentation, specifications, databases, networks, system design, file layouts, tool combinations and development methods, as well as, information relating to the disclosing party's business or financial affairs, which may include business methods, marketing strategies, pricing, competitor information, product development strategies and methods, Client lists and financial results. Confidential Information includes all tangible materials which contain Confidential Information whether written or printed documents, computer disks or tapes whether user or machine readable. The parties agree to maintain the confidentiality of the Confidential Information and to protect as a trade secret any portion of the other party's Confidential Information by preventing any unauthorized copying, use, distribution, installation or transfer of possession of such information. Each party agrees to maintain at least the same procedures regarding Confidential Information that it maintains with respect to its own Confidential Information, but in no event less than a reasonable standard of care. Without limiting the generality of the foregoing, neither party shall permit any of its personnel to remove any proprietary or other legend or restrictive notice contained or included in any material provided by the disclosing party and the receiving party shall not permit its personnel to reproduce or copy any such material except as expressly authorized hereunder. A party's Confidential Information may only be used by the other party in order to fulfill its obligations under this Agreement.

9.2 Exceptions

Confidential Information shall not include any information that: (a) is already known to the receiving party or its affiliates, to be free of any obligation to keep it confidential; (b) is or becomes publicly known through no wrongful act of the receiving party or its affiliates; (c) is received by the receiving party from a third party without any restriction on confidentiality; (d) is independently developed by the receiving party or its affiliates; (e) is disclosed to third parties by the disclosing party without any obligation of confidentiality; or (f) is approved for release by prior written authorization of the disclosing party.

9.3 Residual Rights

Each party acknowledges that the other may, as a result of its receipt of or exposure to the other party's Confidential Information, increase or enhance the knowledge and experience retained in the unaided memories of its directors, employees, agents or contractors. Notwithstanding anything to the contrary in this Agreement, each party and its directors, employees, agents or contractors may use and disclose such knowledge and experience in such party's business, so long as such use or disclosure does not involve specific Confidential Information received from the other party. The disclosing party will not have rights in such knowledge and experience acquired by the recipient party, nor rights in any business endeavors of the recipient party which may use such knowledge and experience, nor rights to compensation related to the recipient party's use of such knowledge and experience.

9.4 Irreparable Harm

Both parties acknowledge that any use or disclosure of the other party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the non-disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and both parties agree that the non-disclosing party may request injunctive or other equitable relief seeking to restrain such use or disclosure without the necessity of proving actual harm or posting bond.

9.5 Survival of Obligation

The terms and provisions of this Section 9 shall survive any expiration or termination of this Agreement.

10.0 Ownership of Work Product

10.1 General

All worldwide intellectual property rights associated with any ideas, concepts, techniques, processes or other work product created by Layer One Networks during the course of performing the Services shall belong exclusively to Layer One Networks, and Client shall have no right or interest therein. Unless this Agreement is terminated by Layer One Networks for Client's material breach or failure to make payments to Layer One Networks, Layer One Networks hereby grants to Client a perpetual, royalty-free, nontransferable, nonexclusive license to use, solely for Client's internal business purposes, the object code form of any application software programs or other work product created by Layer One Networks in performing the Services.

10.2 Development Tools

Notwithstanding anything to the contrary in this Agreement, Layer One Networks will retain all right, title and interest in and to all software development tools, know-how, methodologies, processes, technologies or algorithms used in providing the Managed Services which are based on trade secrets or proprietary information of Layer One Networks or are otherwise owned or licensed by Layer One Networks. Licenses will not be deemed to have been granted by either party to any of its patents, trade secrets, trademarks or copyrights except as otherwise expressly provided in this Agreement. Nothing in this Agreement will require Layer One Networks or Client to violate the proprietary rights of any third party in any software or otherwise.

10.3 Further Assurances

Layer One Networks and Client agree to execute and deliver such other instruments and documents as either party reasonably requests to evidence or effect the transactions contemplated by this Section 10. The provisions of this Section 10 will survive the expiration or termination of this Agreement.

11.0 Right To Engage In Other Activities

Client acknowledges and agrees that nothing in this Agreement will impair Layer One Networks' right to perform services or acquire, license, market, distribute, develop for itself or others or have others develop for Layer One Networks similar technology performing the same or similar functions as the technology and Services contemplated by this Agreement.

12.0 Independent Contractor

Layer One Networks is an independent contractor. Neither Layer One Networks nor Client are, or shall be deemed for any purpose to be, employees or agents of the other and neither party shall have the power or authority to bind the other party to any contract or obligation.

13.0 Recruiting or Hiring of L1N Staff

Client agrees to not recruit or hire or retain any Layer One Networks staff for employment or work of any kind, either as an employee or an independent contractor, except through Layer One Networks, during the duration of Layer One Networks servicing Client and for a period of twelve months thereafter. In addition, Client recognizes that because of the substantial recruitment and training costs in the Information Technology industry, Client agrees that liquidated damages for such a breach will be 50% of the staff member's or contractor's then current annualized compensation.

14.0 Arbitration

Except for collection actions for payment of charges and for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any controversy or claim arising out of or relating to this Agreement or to its breach shall be settled by arbitration by a single arbitrator in accordance with Commercial Arbitration Rules of the American Arbitration Association, pursuant to an arbitration held in Texas, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The prevailing party shall be entitled to receive from the other party its attorney's fees and costs incurred in connection with any action, proceeding or arbitration hereunder.

15.0 Assignment

Neither party shall assign its rights or obligations under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may assign this Agreement to an entity who acquires substantially all of the stock or assets of such party; provided that consent will be required in the event that the non-assigning party reasonably determines that the assignee will not have sufficient capital or assets to perform its obligations hereunder. All terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted transferees, successors and assigns.

16.0 Governing Law

The laws of the United States government and the state of Texas shall govern this agreement, its terms and conditions. Client agrees that the proper forum for any claim arising under this agreement shall be in the state of Texas.

17.0 Service of Notice

Service of all notices under the Agreement shall be sufficient if made by registered mail to:

Layer One Networks, LLC.
5705 Gollihar Rd. Ste 1
Corpus Christi, TX 78412

18.0 Entire Agreement and Modifications

This Agreement, together with all modifications, is the complete and exclusive statement of the parties and supersedes and merges all prior proposals, understandings, and agreements, oral or written, between the parties relating to the subject matter hereof, including without limitation, the terms of any Client request for proposal. No modification, amendment, supplement to or waiver of this Agreement by Client shall be binding unless made in writing and duly signed by both parties.

19.0 Severability

In the event any one or more of the provisions of this Agreement or of any exhibit is held to be invalid or otherwise unenforceable, the enforceability of the remaining provisions shall be unimpaired.

20.0 Force Majeure

Layer One Networks shall not be responsible for failure to perform under this Agreement when its failure results from any of the following causes: Acts of God or public enemies, civil war, insurrection or riot, fire, flood, explosion, earthquake or serious accident, strike, labor trouble or work interruption, loss of a IP address or other disruption to Internet connection, or any cause beyond its reasonable control.

21.0 Agreement Headings and Numbering

Paragraph headings and numbers used in this Agreement are included for convenience of reference only, and, if there is any conflict between any such numbers and headings, and the text of the Agreement, the text shall control.