

Managed Hosting Cloud Services Terms and Conditions

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1. General Terms & Conditions

1. THE HOSTING SERVICES AGREEMENT

The Hosting Services Agreement incorporates the following documents by reference: **(i)** the Services Description that describes the Services you are buying and related fees; **(ii)** these General Terms and Conditions containing the general terms and conditions applicable to all Services, **(iii)** the specific Product Terms and Conditions containing the additional terms for the particular Hosting Services you are buying, **(iv)** the Acceptable Use Policy, and **(v)** if your Hosted System will be provided from data centers located both in the United States and one or more non-U.S. jurisdictions, the Country Specific Terms that may be applicable in those jurisdictions. When we use the term “Hosting Services Agreement” or “Agreement” or “Private Cloud” in any of these documents, we are referring collectively to all of them. The Agreement is effective as of the time that you sign the form of Agreement prepared by NearData, or accept the Agreement as part of NearData’s online order process.

2. DEFINED TERMS

Some words used in the Agreement have particular meanings:

“**Acceptable Use Policy**” or “**AUP**” means the NearData Acceptable Use Policy posted at <https://neardata.net/AUP.pdf> as of the date you sign the Agreement.

“**Affiliate**” means any and all legal entities which now or hereafter the ultimate parent of NearData controls. For the purpose of this definition, “control” shall mean an entity, directly or indirectly, holding more than fifty per cent (50%) of the issued share capital, or more than fifty per cent (50%) of the voting power at general meetings, or which has the power to appoint and to dismiss a majority of the directors or otherwise to direct the activities of such legal entity.

“**Business Day**” or “**Business Hours**” means 8:00 a.m. – 5:00 p.m. Monday through Friday, United States central time, excluding federal public holidays in the United States.

“**Confidential Information**” means all information disclosed by one of us to the other, whether before or after the effective date of the Agreement, that the recipient should reasonably understand to be confidential including: (i) unpublished prices and other terms of service, audit and security reports, product development plans, nonpublic information of the parties relating to its business activities or financial affairs, data center designs (including non-graphic information you may observe on a tour of a data center), server configuration designs, and other proprietary information or technology, and (ii) information that is marked or otherwise conspicuously designated as confidential. Information that is developed by one of us on our own, without reference to the other’s Confidential Information, or that becomes available to one of us other than through violation of the Agreement or applicable law, shall not be “Confidential Information” of the other party. Confidential Information shall not include Customer Data.

“**Country Specific Terms**” means the addendum or addenda that may be incorporated into your Hosting Services Agreement if a portion of your Services are to be provided from a non-United States jurisdiction for which we have special legal terms.

“**Customer Data**” means all data, records, files, input materials, reports, forms and other such items, including any PII (as defined in the applicable Product Terms and Conditions) or "cardholder data" as that term is in the Payment Card Industry-Data Security Standard, that are received, stored, or transmitted using the Hosted System.

“**Hosted System**” means a combination of hardware, software and networking elements that comprise an information technology system. Depending on the Services you are buying, the Hosted System may consist of a dedicated system for your use only, or the right to use certain parts of a shared system that NearData maintains for many customers, or a combination of some dedicated elements and some shared elements.

“**Hosting Services**” means: (i) NearData's provision for your use of the Hosted System described in the Services Description, and (ii) Support.

“**Product Terms and Conditions**” means the terms and conditions for the particular Hosting Services you are buying.

“**Services Description**” means: (i) the online order that you submit or accept for the Services, or (ii) any other written order (either in electronic or paper form) provided to you by NearData for signature that describes the type or types of services you are purchasing, and that is signed by you, either manually or electronically.

“**Service Level Guaranty**” or “**Service Level Guaranties**” means (i) a guaranty or guaranties identified as a “Service Level Guaranty” or “Service Level Guaranties” in the applicable Product Terms and Conditions or (ii) any provision which provides a specified credit remedy for an identified failure to deliver or provide the Services.

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

“**Supplementary Services**” means those Services you purchase from NearData other than the Hosting Services, including time and materials based professional or consulting services (such as database administration or “DBA” services), one-time or non-recurring services which are not part of the existing Support (such as support for the application that you operate on your Hosted System), and any other services identified as "Supplementary Services" on the applicable Services Description.

“**Support**” has the meaning stated in the applicable Product Terms and Conditions.

3. OUR OBLIGATIONS

NearData's obligation to begin providing Services is contingent on your satisfaction of NearData's credit approval criteria. NearData will provide the Hosting Services in accordance with the Services Description, the Service Level Guaranties, and other specifications in this Agreement. NearData will perform any Supplementary Services in a good and professional manner. NearData will maintain security practices that are at least as stringent as the minimum security practices described at <https://neardata.net/2AGlobalSecurity.pdf> , and will provide the specific security services described in your Services Description. NearData will perform all Services in accordance with applicable law.

4. YOUR OBLIGATIONS

You must use reasonable security precautions in connection with your use of the Services. You must comply with the laws applicable to your use of the Services and with the Acceptable Use Policy. You must cooperate

with NearData's reasonable investigation of Service outages, security problems, and any suspected breach of the Agreement. You are responsible for keeping your account permissions, billing, and other account information up to date using your *MyNearData* portal or via another NearData defined process. You must pay when due the fees for the Services stated in the Services Description or other agreement between us.

Customer Data Security: In addition to the foregoing obligations, you acknowledge that you are solely responsible for taking steps to maintain appropriate security, protection and backup of Customer Data. NearData's security obligations with respect to Customer Data are limited to those obligations described in Section 3 above. NearData makes no other representation regarding the security of Customer Data. Customer is solely responsible for determining the suitability of the Services in light of the type of Customer Data used with the Services.

5. PROMISES WE DO NOT MAKE

5.1 We do not promise that the Services will be uninterrupted, error-free, or completely secure. You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of your privacy, Customer Data, Confidential Information and property.

5.2 We disclaim any and all warranties not expressly stated in the Agreement including the implied warranties of merchantability, fitness for a particular purpose, and noninfringement. You are solely responsible for the suitability of the services chosen, including the suitability as it relates to your Customer Data. Any services that we are not contractually obligated to provide but that we may perform for you at your request and without any additional charge are provided on an AS IS basis.

5.3 We do not promise to backup your data unless you have purchased backup services. If you purchase backup services, we do not promise to retain the data backup for longer than the agreed data retention period.

5.4 We will provide Support only to your administrative or technical contacts listed on your account. We will not provide support directly to your end users unless specifically agreed in writing.

5.5 Certain NearData Services are designed to help you comply with various regulatory requirements that may be applicable to you. However, you are responsible for understanding the regulatory requirements applicable to your business and for selecting and using those Services in a manner that complies with the applicable requirements.

6. ACCESS TO YOUR CUSTOMER DATA OR USE OF THE SERVICES

NearData is not responsible to you or any third party for unauthorized access to your data or the unauthorized use of the Services unless the unauthorized access or use results from NearData's failure to meet its security obligations stated in Section 3 (*Our Obligations*) of these General Terms and Conditions or the Services Description. You are responsible for the use of the Services by any employee of yours, any person you authorize to use the Services, any person to whom you have given access to the Services, and any person who gains access to your data or the Services as a result of your failure to use reasonable security precautions, even if such use was not authorized by you.

NearData agrees that it will not use or disclose Customer Data. Customer Data is and at all times shall remain the exclusive property of Customer and will remain in the exclusive care, custody, and control of Customer.

7. TAXES ON SERVICES

7.1 Sales Taxes. Unless otherwise expressly provided in the Agreement or included in the invoice for the Services, all amounts due to NearData under the Agreement are exclusive of any value added, goods and services, sales, use, property, excise and like taxes, import duties and/or applicable levies (collectively, “**Tax**”). If NearData is required by law to collect Taxes on the provision of the Service, NearData will invoice you for such Tax and you must pay NearData the amount of the Tax that is due or provide NearData with satisfactory evidence of your exemption from the Tax. The obligation to pay any Taxes that Customer may be required to pay in connection with Customer’s use of Services or Customer’s payment of amounts due to NearData under the Agreement shall be borne exclusively by Customer. You must provide NearData with accurate factual and adequate information and documentation (as determined by NearData), to help NearData determine if any Tax is due with respect to the provision of the Services.

7.2 Withholding Taxes. All payments to NearData shall be made without any withholding or deduction for any Taxes, except for any withholding (or similar) taxes imposed on income that may be attributed to NearData in connection with its provision of the Services that you are legally required to withhold from such payment and remit to the applicable governmental or taxing authority (such taxes, “**Local Withholding Taxes**”). You agree to timely provide NearData with adequate and accurate factual information and documentation (as determined by NearData), including tax receipts, of your payment of any such Local Withholding Taxes. NearData shall remit such cost to you in the form of a credit on your outstanding account balance following receipt of sufficient evidence of payment of any such Local Withholding Taxes as set forth above.

8. EXPORT MATTERS

You represent and warrant that you are not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons and are not otherwise a person to whom NearData is legally prohibited to provide the Services. You may not provide administrative access to the Services to any person (including any natural person or government or private entity) that is located in or is a national of any country that is embargoed or highly restricted under United States export regulations.

9. TERM AND FEES

See your applicable Product Terms and Conditions and Services Description for applicable term and renewal information as well as fee and pricing information.

10. SUSPENSION OF SERVICES

We may suspend Services without liability if: (i) we reasonably believe that the Services are being used in violation of the Agreement; (ii) you don’t cooperate with our reasonable investigation of any suspected violation of the Agreement; (iii) there is an attack on your Hosted System or your Hosted System is accessed or manipulated by a third party without your consent, (iv) we are required by law, or a regulatory or government body to suspend your Services, or (v) there is another event for which we reasonably believe that the suspension of Services is necessary to protect the NearData network or our other customers. We will give you advance notice of a suspension under this paragraph of at least twelve (12) Business Hours unless we determine in our reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect NearData or its other customers from imminent and significant operational, legal, or security risk. If your Hosted System is compromised, then you must address the vulnerability prior to NearData placing

the Hosted System back in service or, at your request, we may be able to perform this work for you at our standard hourly rates as a Supplementary Service.

11. TERMINATION FOR BREACH

11.1 You may terminate the Agreement for breach if: **(i)** we materially fail to provide the Services as agreed and do not remedy that failure within ten (10) days of your written notice describing the failure, **(ii)** we fail to meet our Support Promise (subject to the conditions and procedures described at <http://www.nearData.com/whynearData/support/promise/remedy.php>), or **(iii)** we materially fail to meet any other obligation stated in the Agreement and do not remedy that failure within thirty (30) days of your written notice describing the failure.

11.2 We may terminate the Agreement for breach if: **(i)** we discover that the information you provided for the purpose of establishing the Services is materially inaccurate or incomplete, **(ii)** the individual signing the Agreement did not have the legal right or authority to enter into the Agreement on behalf of the person represented to be the customer, **(iii)** your payment of any invoiced amount is overdue and you do not pay the overdue amount within four (4) Business Days of our written notice, **(iv)** without notice if you have made payment arrangements via credit card or other third party, and the third party refuses to honor our charges, or **(v)** you fail to comply with any other provision of the Agreement and do not remedy the failure within thirty (30) days of our notice to you describing the failure. We may also terminate the Agreement for breach if you violate the AUP more than once even if you cure each violation, or if your agreement for any other NearData service is terminated for breach of the acceptable use policy applicable to that service.

11.3 Either of us may terminate the Agreement if the other party becomes insolvent or is unable to pay its debts or enters into or files (or has filed or commenced against it) a petition, arrangement, application, action or other proceeding seeking relief or protection under the bankruptcy laws of the United States or any similar laws of the United States or any state of the United States.

12. CONFIDENTIAL INFORMATION

Each of us agrees not to use the other's Confidential Information except in connection with the performance or use of the Services, as applicable, the exercise of our respective legal rights under the Agreement, as may be required by law, or as set forth below.

Each of us agrees not to disclose the other's Confidential Information to any third person except as follows:

- i. to each of our respective service providers, employees, Affiliates, suppliers, agents and representatives, provided that such service providers, employees, Affiliates, suppliers, agents or representatives agree to confidentiality measures that are at least as stringent as those stated in this General Terms and Conditions;
- ii. to a law enforcement or government agency if either of us reasonably believes that the other's conduct may violate applicable criminal law;
- iii. as required by law; or
- iv. in response to a subpoena or other compulsory legal process, provided that each of us agrees to give the other written notice of at least seven (7) days prior to disclosing Confidential Information under this subsection (or prompt notice in advance of disclosure, if seven (7) days advance notice is not reasonably feasible), unless the law forbids such notice.

13. LIMITATION ON DAMAGES

13.1 We are not liable to you for failing to provide the Services unless such failure results from a breach of a Service Level Guaranty, or results from our gross negligence, willful misconduct, or intentional breach of the Agreement. The credits stated in the Service Level Guaranty are your **sole and exclusive** remedy for our failure to meet those guaranties for which credits are provided unless such failure is due to NearData's willful misconduct.

13.2 Neither of us (nor any of our employees, agents, affiliates or suppliers) is liable to the other for any indirect, special, incidental, exemplary or consequential loss or damages of any kind. In addition, neither of us is liable for any loss that could have been avoided by the damaged party's use of reasonable diligence, even if the party responsible for the damages has been advised or should be aware of the possibility of such damages. In no event shall either of us be liable to the other for any punitive damages or for any loss of profits, revenue, customers, contracts or goodwill.

13.3 We are not liable to you for lost data unless and to the extent you purchase data backup services from NearData and we fail to provide the backup services as agreed. If you purchase backup services, you release NearData from liability for loss of data to the extent that the data has changed since the time that we were last required by the Agreement to perform a backup.

13.4 Notwithstanding anything in the Agreement to the contrary, except for liability based on willful misconduct or fraudulent misrepresentation, and liability for death or personal injury resulting from NearData's negligence, the maximum aggregate monetary liability of NearData and any of its employees, agents, suppliers, or affiliates in connection with the Services, the Agreement, and any act or omission related to the Services or Agreement, under any theory of law (including breach of contract, tort, strict liability, violation of law, and infringement) shall not exceed: (i) for Hosting Services an amount that is twelve (12) times one month's recurring fee under the Agreement for the Services that are the subject of the claim as of the time of the occurrence of the events giving rise to the claim, and (ii) for Supplementary Services, fees paid for the Supplementary Services that are the subject of the claim.

14. INDEMNIFICATION

14.1 If we, our affiliates, or any of our or their respective employees, agents, or suppliers (the "Indemnitees") is faced with a legal claim by a third party arising out of your actual or alleged gross negligence, willful misconduct, violation of law, failure to meet the security obligations required by the Agreement, violation of the AUP, violation of your agreement with your customers or end users, or violation of Section 8 (*Export Matters*) or Section 16 (*Software*) of this General Terms and Conditions, then you will pay the cost of defending the claim (including reasonable attorney fees) and any damages award, fine or other amount that is imposed on the Indemnitees as a result of the claim. Your obligations under this subsection include claims arising out of the acts or omissions of your employees or agents, any other person to whom you have given access to the Services, and any person who gains access to the Services as a result of your failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorized by you. You must also pay reasonable attorney fees and other expenses we incur in connection with any dispute between persons having a conflicting claim to control your account with us, or any claim by your customer or end user arising from an actual or alleged breach of your obligations to them.

14.2 We will choose legal counsel to defend the claim, provided that these decisions must be reasonable and must be promptly communicated to you. You must comply with our reasonable requests for assistance and cooperation in the defense of the claim. We may not settle the claim without your consent, although such consent may not be unreasonably withheld. You must pay expenses due under this Section as we incur them.

15. PUBLICITY

You agree that we may publicly disclose that we are providing Services to you and may use your name and logo to identify you as our customer in promotional materials, including press releases. We will not use your name or logo in a manner that suggests an endorsement or affiliation.

16. SOFTWARE

16.1 General. You may not copy any software we provide for your use unless expressly permitted by the Agreement or use such software after the expiration or termination of the Agreement. You may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any software we provide for your use. Unless permitted by the terms of an open source software license, you may not reverse engineer, decompile or disassemble any software we provide for your use except and to the extent that you are expressly permitted by applicable law to do this, and then following at least ten (10) days advance written notice to us. In addition to the terms of our Agreement, your use of any Microsoft® software is governed by: (i) Microsoft's license terms that appear at <https://neardata.net/ms1.pdf> , for client or redistributable software, (ii) Microsoft's license terms at <https://neardata.net/ms2.pdf> for use of Microsoft software on the NearData Cloud under the license mobility program, and (iii) any use restrictions on your use of the Microsoft software as indicated in your Services Description, such as a limitation on the number of users (a "SAL" license).

16.2 Customer Provided Licenses. If you use any non-NearData provided software on your Hosted System you represent and warrant to NearData that you have the legal right to use the software in that manner. If NearData has agreed to install, patch or otherwise manage software in reliance on your license with a software vendor (rather than NearData's license with the software vendor), then you represent and warrant that you have a written license agreement with the vendor that permits NearData to perform these activities. On NearData's request you will certify in writing that you are in compliance with the requirements of this paragraph and any other software license restrictions that are part of the Agreement, and will provide evidence of your compliance as we may reasonably request. If you fail to provide the required evidence of licensing NearData may, at its option, either (i) charge you its standard fee for the use of the software in reliance on NearData's licensing agreement with the vendor until such time as the required evidence is provided or (ii) suspend or terminate the Agreement. **Please Note:** Your licensed software may not be compatible with NearData's standard process for deploying and repairing Hosted Systems. In addition, in order to install the software NearData may require you to send the physical or electronic media provided to you by the vendor, both for deployment and again in the event of a failure of your Hosted System. You agree that NearData will not be in breach of any Service Level Guaranty or other obligation under this Agreement that would not have occurred but for a delay resulting from our agreement to use your licensed software.

17. RECOMMENDATIONS

NearData personnel may from time to time recommend third party software or other products and services for your consideration. NEARDATA MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING PRODUCTS AND SERVICES THAT ARE NOT PURCHASED FROM NEARDATA. Your use of

any such products and services is governed by the terms of your agreement with the provider of those products and services.

18. WHO MAY USE THE SERVICE

You may permit your subsidiaries and affiliated companies to use the Services if you wish, however you are responsible for the acts or omissions of your permitted users. NearData will provide support only to you, not to your customers, subsidiaries or affiliates. There are no third party beneficiaries to the Agreement, meaning that your customers, subsidiaries, affiliates and other third parties do not have any rights against either of us under this Agreement.

19. TEST SERVICES

If you use any Services that have been designated as a “Beta” service, limited release, pilot test, or with similar designation, then your use of that Service is subject to the terms at <http://www.nearData.com/information/legal/testterms.php>.

20. SERVICES MANAGEMENT AGENT

You agree that you will not interfere with any services management software agent(s) that NearData installs on your Hosted System. NearData agrees that its agents will use only a minimal amount of computing resources, and will not interfere with your use of your Hosted System. NearData will use the agents to track system information so that it can more efficiently manage various service issues, such as patching exceptions and product life cycles. NearData may also use the agents to identify security vulnerabilities. NearData will not use the agents to view or capture your content or data. Your Services will become “unsupported” as described in the Product Terms if you disable or interfere with our services management software agent(s). You agree that NearData may access your Hosted System to reinstall services management software agents if you disable them or interfere with their performance.

21. NOTICES

Your routine communications to NearData regarding the Services, including any notice of non-renewal, should be sent to your NearData account team using the *MyNearData* portal. If you want to give a notice regarding termination of the Agreement for breach, indemnification, or other non-routine legal matter, you should send it by electronic mail and first class United States mail to:

Legal@nearData.com

General Counsel

NearData US, Inc.

NearData’s routine communications regarding the Services and legal notices will be posted on the *MyNearData* portal or sent to the individual(s) you designate as your contact(s) on your account either by electronic mail (including an electronic mail referring you to a ticket posted on your *MyNearData* portal), United States mail, or overnight courier. Notices are deemed received as of the time posted or delivered, or if that time does not fall within a Business Day, as of the beginning of the first Business Day following the time posted or

delivered. For purposes of counting days for notice periods, the Business Day on which the notice is deemed received counts as the first day. Notices must be given in the English language.

22. OWNERSHIP OF INTELLECTUAL PROPERTY

Each of us retains all right, title and interest in and to our respective trade secrets, inventions, copyrights and other intellectual property. Any intellectual property developed by NearData during the performance of the Services shall belong to NearData unless we have agreed with you in advance in writing that you shall have an interest in the intellectual property.

23. OWNERSHIP OF OTHER PROPERTY

You do not acquire any ownership interest in or right to possess the Hosted System, and you have no right of physical access to the Hosted System. We do not acquire any ownership interest in or right to the information you transmit to or from or store on your NearData servers or other devices or media.

24. INTELLECTUAL PROPERTY INFRINGEMENT

If NearData or any of its customers is faced with a credible claim that the Services infringe on the intellectual property rights of a third party, and NearData is not reasonably able to obtain the right to use the infringing element or modify the Services such that they do not infringe, then NearData may terminate the Services on reasonable notice of at least ninety (90) days, and will not have any liability on account of such termination except to refund amounts paid for Services not used as of the time of termination.

25. ASSIGNMENT/SUBCONTRACTORS

Neither party may assign the Agreement without the prior written consent of the other party except that NearData may assign the Agreement to an Affiliate with sufficient financial standing in order to meet its obligations under this Agreement or as part of a bona fide corporate reorganization or a sale of its business. NearData may use third party service providers to perform all or any part of the Services, but NearData remains responsible to you under this Agreement for Services performed by its third party service providers to the same extent as if NearData performed the Services itself.

26. FORCE MAJEURE

Neither of us will be in violation of the Agreement if the failure to perform the obligation is due to an event beyond our control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry.

27. GOVERNING LAW, LAWSUITS

The Agreement is governed by the laws of the State of Texas, exclusive of any choice of law principle that would require the application of the law of a different jurisdiction, and the laws of the United States of America, as applicable. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods. Each of us agrees that any dispute or claim, including without limitation, statutory, contract or tort claims, relating to or arising out of this Agreement or the alleged breach of this Agreement, shall, upon timely written request of either of us, be submitted to binding arbitration. The party asserting the claim may elect to have the

arbitration be in-person, telephonic or decided based on written submissions. The arbitration shall be conducted in the State and county (or equivalent geographic location) of the non-asserting party's principal business offices. The arbitration shall proceed in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA") in effect at the time the claim or dispute arose. The arbitration shall be conducted by one arbitrator from AAA or a comparable arbitration service, and who is selected pursuant to the applicable rules of the AAA. The arbitrator shall issue a reasoned award with findings of fact and conclusions of law and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Either you or we may bring an action in any court of competent jurisdiction to compel arbitration under this Agreement, or to enforce or vacate an arbitration award. We will pay the fee for the arbitrator and your filing fee, to the extent that it is more than a court filing fee. We agree that we will not seek reimbursement of our fees and expenses if the arbitrator rules in our favor. Each of us waives any right to a trial by jury, and agrees that disputes will be resolved through arbitration. No claim subject to this provision may be brought as a class or collective action, nor may you assert such a claim as a member of a class or collective action that is brought by another claimant. Each of us agrees that we will not bring a claim under the Agreement more than two years after the time that the claim accrued. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

28. SOME AGREEMENT MECHANICS

These General Terms and Conditions, the applicable Product Terms, and any applicable Country Specific Terms are incorporated in your Agreement by reference to pages on the NearData website. Although we may from time to time revise the General Terms and Conditions, Product Terms, and Country Specific Terms posted on those pages, those revisions will not be effective as to an Agreement that you signed prior to the date we posted the revisions, and your Agreement will continue to be governed by the General Terms and Conditions and Product Terms posted on the effective date of the Agreement until the first day of any renewal or extended term that follows the date we published the revision. However, if over time you accept multiple Agreements for a single Hosted System –for example to add service elements to an existing Hosted System, then the version of the General Terms and Conditions, Product Terms and Conditions, and Country Specific Terms (if any) referenced in the last Agreement will govern the entire Hosted System, unless otherwise agreed in writing.

Unless otherwise expressly permitted in this Agreement, the General Terms and Conditions, Product Terms and Conditions, Acceptable Use Policy, Country Specific Terms and Conditions, and any addenda referenced in any of them, may be amended only by a formal written agreement signed by both parties. A Services Description may be amended to modify, add, or remove Services, by a formal written agreement signed by both parties, or by an exchange of correspondence, including via electronic mail or the NearData ticketing system, that includes the express consent of an authorized individual for each of us. The pre-printed terms on your purchase order or other business forms will not become part of this Agreement.

If there is a conflict between the terms of any of the documents that comprise the Agreement, the documents will govern in the following order: signature page for Hosting Service Agreement, Country Specific Terms (if any), Services Description, Product Terms and Conditions, any addendum to the General Terms and Conditions, the General Terms and Conditions, and the Acceptable Use Policy. If any part of the Agreement is found unenforceable by a court, the rest of the Agreement will nonetheless continue in effect, and the unenforceable part shall be reformed to the extent possible to make it enforceable but still consistent with the business and financial objectives of the parties underlying the Agreement. Each of us may enforce each of our respective

rights under the Agreement even if we have waived the right or failed to enforce the same or other rights in the past. The relationship between us is that of independent contractors and not business partners. Neither of us is the agent for the other, and neither of us has the right to bind the other on any agreement with a third party. The captions in the Agreement are for convenience only and are not part of the Agreement. The use of the word “including” in the Agreement shall be read to mean “including without limitation.” The words “our” and “us” refers to NearData, unless the context clearly indicates another meaning. The Agreement is effective when you sign it, even though the “initial term” may be defined in the Agreement with reference to the Service Commencement Date or other date. The following provisions shall survive expiration or termination of the Agreement: (i) Sections 5.1, 5.2, 7, 12, 13, 14, 20, 21, 22, 23, 24, 28, and 29 of this General Terms and Conditions, (ii) all provisions in the Agreement requiring you to pay fees for Services provided prior to the time of expiration or termination or requiring you to pay an early termination fee, and (iii) all other provisions of the Agreement that by their nature are intended to survive expiration or termination of the Agreement.

If you have made any change to the Agreement that you did not bring to our attention in a way that is reasonably calculated to put us on notice of the change, the change shall not become part of the Agreement.

The Agreement may be signed in multiple counterparts, which taken together will be considered one original. Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be original signatures.

MANAGED HOSTING SERVICES

TERMS AND CONDITIONS

In addition to the General Terms and Conditions, your use of the Managed Hosting Services is subject to the following additional terms and conditions:

1. ADDITIONAL DEFINED TERMS

Some words used in these Managed Hosting Services Terms and Conditions have particular meanings:

“Hosting Services” means NearData’s provision for your use of the Hosted System described in the Service Description.

“Personally Identifiable Information” or “PII” means: (i) a combination of any information that identifies an individual with that individual’s sensitive and non-public financial, health or other data or attribute, such as a combination of the individual’s name, address, or phone number with the individual’s social security number or other government issued number, financial account number, date of birth, address, biometric data, mother’s maiden name, or other personally identifiable information; (ii) any “non-public personal information” as that term is defined in the Gramm-Leach-Bliley Act found at 15 USC Subchapter 1, § 6809(4), and (iii) “protected health information” as defined in the Health Insurance Portability and Accountability Act found at 45 CFR §160.103.

“Service Commencement Date” means the date on which we provide the access codes that enable to you to send and receive information from your Hosted System.

“Support” means: (i) the management of the Hosting Services by a service delivery team that includes a team leader, account manager, and support specialists with training and experience in hosted systems; (ii) availability of live support twenty four hours per day, seven days per week, year round; (iii) any specific support services described in the Service Description; and (iv) use of the MyNearData® customer portal.

2. DEPLOYMENT

2.1 Deployment Guaranty. If your Services Description provides a Deployment Guaranty, we will deploy the server(s) described in the Service Description within the timeframe stated in the Service Description, provided that you promptly provide all information that we reasonably request from you to complete deployment. Servers are deemed deployed as of the Service Commencement Date. Your sole and exclusive remedy for our failure to deploy the servers by the guaranteed time shall be a credit equal to the amount of the set up fee stated in the Service Description for the affected server(s). You are not entitled to a credit if you request or cause the deployment delay. This deployment guaranty does not apply to any software, other managed services, or hardware devices other than the server(s).

2.2 Delayed Deployment. If you wish to delay the deployment of a Hosted System you may do so, provided that you give us written notice of your election to delay no later than five (5) days following the date you sign the Agreement. The requested delay may not continue for more than two (2) months following your signature on the Agreement. If you request a delay in deployment, we may charge you up to fifty percent (50%) of the monthly recurring fees for the Hosted System during the period of delay. You are not entitled to a credit under Subsection 2.1 above if you request the deployment delay. The initial term of the Agreement will begin when we deploy your Hosted System at your request, or on the second monthly anniversary of the date you sign the Agreement, whichever comes first. Following deployment we will charge you the full monthly recurring fee (plus other usage fees as applicable) for the full term of the Agreement.

3. ENCRYPTION OF PERSONALLY IDENTIFIABLE INFORMATION

The General Terms and Conditions require you to use reasonable security precautions in light of your use of the Services. For the Hosting Services, this includes encrypting any PII transmitted to or from, or stored on, the NearData servers or storage devices you use.

4. SERVICE LEVEL GUARANTIES

4.1 Network. We guaranty that our data center network will be available 100% of the time in a given month. The data center network means the portion of the NearData network extending from the outbound port on your edge device to the outbound port of the data center border router and includes NearData managed switches, routers, and cabling. We will credit your account 5% of the monthly fee for the affected components of your Hosted System per half hour of network downtime, up to 100% of your monthly fee for the affected server(s).

4.2 Infrastructure. We guaranty that data center HVAC and power will be functioning 100% of the time in a given month. Power includes UPSs, PDUs and cabling, but does not include the power supplies on your servers. Infrastructure downtime exists when a particular server is shut down due to power or heat problems. NearData will credit your account 5% of the monthly fee for the affected components of your Hosted System per half hour of infrastructure downtime, up to 100% of your monthly fee for the affected server(s).

4.3 Hardware Repair or Replacement. NearData will repair or replace the following failed hardware components provided by NearData at no additional cost within one (1) hour of problem identification by NearData for dedicated server hardware, firewalls, and load balancers, in each case excluding failed replication appliances (see Section 4.4 below) and storage devices (see Section 4.5 below). This guaranty does not include the time required to rebuild your system, such as the time required to configure a replacement device, rebuild a RAID array, reload the operating system, reload and configure applications, and/or restore from backup (if necessary). If NearData fails to meet the guaranties in this Section 4.3 and the failure adversely affects your Hosted System, you are entitled to a credit in the amount of 5% of the monthly fee per hour of downtime (after the initial one (1) hour from problem identification), up to 100% of your monthly fee for the affected components of your Hosted System.

4.4 Replication Appliance. If a replication appliance (such as an RecoverPoint appliance) is unavailable due to a hardware failure, NearData will have a technical specialist and necessary parts onsite to begin repairs within six (6) hours of problem identification. If NearData fails to meet this guaranty and the failure adversely affects your Hosted System, you are entitled to a credit in the amount of 5% of your monthly recurring fee for each 30 minutes of delay in beginning repairs (after the initial six (6) hours from problem identification) for the affected replication appliance, up to 100% of the monthly recurring fee.

4.5 Storage Devices

4.5.1 SAN/DAS Availability. We guarantee that your Storage Area Network ("SAN") and Direct Attached Storage ("DAS") service will be available 99.99% of the time in a given calendar month, excluding unavailability or degradation due to hardware failure. Your SAN or DAS is unavailable if your SAN or DAS connected servers do not have access to the data stored on the SAN or DAS respectively, and is measured from the time a trouble ticket is opened (either by you or by NearData) until access to the data is restored. If the SAN or DAS is unavailable due to a hardware failure, NearData will have a technical specialist and necessary parts onsite to begin repairs within six (6) hours of problem identification.

4.5.2 NAS Availability. We guarantee that your Network Attached Storage ("NAS") service will be available 99.99% of the time in a given calendar month, excluding unavailability or degradation due to hardware failure. Your NAS is unavailable if your NAS connected servers do not have access to the data stored on the NAS, and is measured from the time a trouble ticket is opened (either by you or by NearData) until access to the data is restored. If the NAS is unavailable due to a hardware failure, NearData will have a technical specialist and necessary parts onsite to begin repairs within six (6) hours of problem identification.

4.5.3 Remedy. If NearData fails to meet the guaranties stated in this Section 4.5 and the failure adversely affects your Hosted System, you are entitled to a credit in the amount of 5% of your monthly recurring fee per half hour of downtime (after the initial .01% of downtime) or delay in beginning repairs, as applicable, for the affected SAN, DAS, or NAS Service and each server relying on access to the affected SAN, DAS, or NAS Service ("storage dependent servers"), up to 100% of the monthly recurring fee for the affected SAN, DAS, or NAS Service and their storage dependent servers.

4.6 Downtime Measurement. Downtime is measured from the time a trouble ticket is opened until network availability is restored, or the affected device is powered back on, as applicable.

4.7 Limitations. You are not entitled to a credit if you are in breach of the Agreement (including your payment obligations to us) at the time of the occurrence of the event giving rise to the credit until you have cured the

breach. You are not entitled to a credit if the event giving rise to the credit would not have occurred but for your breach of the Agreement or misuse of your Hosted System. To receive a credit, you must contact your account manager within ten (10) days of the occurrence of the event giving rise to the credit. The Service Level Guaranties are contingent on NearData having full logical access to your configuration. No credit will be due if the credit would not have accrued but for your restriction of NearData's logical access to your configuration.

4.8 Maintenance. You are not entitled to a credit for downtime or outages resulting from Maintenance. For the purposes of the Service Level Guaranty, Maintenance shall mean:

- a. NearData maintenance windows - modification or repairs to shared infrastructure, such as core routing or switching infrastructure that we have provided notice of at least 72 hours in advance, that occurs during off peak hours in the time zone where the data center is located;
- b. Scheduled customer maintenance – maintenance of your configuration that you request and that we schedule with you in advance (either on a case by case basis, or based on standing instructions), such as hardware or software upgrades;
- c. Emergency maintenance – critical unforeseen maintenance needed for the security or performance of your configuration or NearData's network.

4.9 Data Center Upgrades. We are constantly upgrading our data center facilities and in order for you to benefit from these upgrades, you agree that we may relocate your servers within our data centers, make changes to the provision of the Services, URLs and your IP addresses and may establish new procedures for the use of the Services. We may also make changes to DNS records and zones on NearData operated or managed DNS servers as we deem necessary for the operation of the shared network infrastructure. In each case we will give you reasonable advance notice and use all reasonable endeavors to minimize the effect that such change will have on your use of the Services.

4.10 Cumulative Dollar Amount. Notwithstanding anything in this Agreement to the contrary, the maximum total credit for failure to meet the Service Level Guaranties under this Agreement for any calendar month shall not exceed 100% of your monthly recurring fee for the affected Hosted System. Credits that would be available but for this limitation will not be carried forward to future months.

5. TERM

The initial term of the Agreement begins on the Service Commencement Date (unless otherwise provided in Section 2.2 (Delayed Deployment) and continues for the period stated in the Service Description. Upon expiration of the initial term, we may offer you the option of renewing the Agreement for one or more additional terms having a fixed number of months. If you do not renew the Agreement for a fixed term, it will automatically renew for one year. If you add service elements to the Hosted System by a subsequent agreement, we may use the word "coterminous" to describe the initial term of the subsequent agreement for those additional elements. If the term of an agreement is "coterminous," the initial term of that agreement shall expire on the last day of the initial term of the agreement that initially established the Hosted System.

6. FEES

6.1 Your first invoice will include the initial one-time set-up fee and a pro rated monthly recurring fee from the Service Commencement Date to the last day of the calendar month. We may require you to pay this initial

invoice before beginning the Hosting Services. Following the Service Commencement Date, monthly recurring fees will be billed monthly in advance on or around the first day of each calendar month. Non-recurring fees, such as bandwidth overages, will be billed monthly in arrears.

6.2 Fees are due within five (5) days of invoice date. If you have arranged for payment by credit card or ACH, NearData may charge your card or account on or after the invoice date. NearData may suspend all Services, and services provided pursuant to any unrelated agreement, if payment of any invoiced amount is overdue, and you do not pay the overdue amount within four (4) Business Days of our written notice to your billing contact. You agree that if your Services are reinstated after a suspension for non-payment, you will pay a reasonable reinstatement fee. NearData may charge interest on overdue amounts at 1.5% per month (or the maximum legal rate if it is less than 1.5%). If any amount is overdue by more than thirty (30) days and NearData brings a legal action to collect, or engages a collection agency, you must also pay NearData's costs of collection, including reasonable attorney fees and court costs. If your check is returned for insufficient funds, we may charge you a fee up to the maximum amount permitted by law. Fees must be paid in U.S. Dollars. Invoices that are not disputed within 180 days of invoice date are conclusively deemed accurate.

7. FEE INCREASES

7.1 Increase in Producer Price Index. If during the initial term or any renewal term there is an increase in the Producer Price Index over the Producer Price Index reported for the month in which you signed your Agreement, we may increase your fees by the same percentage as the increase in the Producer Price Index; provided that we may not increase your fees under this Subsection more often than once per twelve (12) months, and we must give you at least thirty (30) days advance written notice of the increase. The "Producer Price Index" means the Producer Price Index for Finished Goods, WPUSOP3000, not seasonally adjusted, and first published as "preliminary" data by the United States Bureau of Labor Statistics in its PPI Detailed Report or successor publication. For historical information on the Producer Price Index you may visit the Bureau of Labor Statistics website. (Example: if the Producer Price Index for the month in which you sign the Agreement is 186, and then increases in a subsequent month during the term of the Agreement to 195, we may increase your fees by up to 4.8%).

7.2 Increase During Month-to-Month Term. If following the expiration of the initial term or any renewal term you do not sign a renewal of your Agreement, but continue to use your Services on a month-to-month basis as described in Section 5 (Term) above, then we may increase your fees at any time by any amount, in our sole discretion, on thirty (30) days advance written notice.

7.3 Third Party License Fees. In the event that a third party license provider increases the fee they charge NearData for your use of such license, we will increase your fees by the same amount, provided we notify you in writing at least ninety (90) days before the effective date of the price increase.

8. TERMINATION FOR CONVENIENCE

You may terminate this Agreement for convenience at any time on thirty (30) days advance written notice.

9. EARLY TERMINATION FEE

If you terminate this Agreement for convenience or we terminate this Agreement for your breach, in addition to other amounts you may owe, you must pay an early termination fee equal to the total monthly recurring fees for the remaining portion of the then-current term. You will not be charged an early termination fee under this

Section in the event you terminate this Agreement as part of an agreement to establish a replacement for the Hosted System in a different NearData service segment, even if the overall fees for the replacement system are less than those for the Hosted System, provided that the replacement system is the functional equivalent of the Hosted System.

10. RESALE

You may resell the Hosting Services, subject to the provisions of Section 18 of the General Terms and Conditions. If you resell any part of the Hosting Services that include Microsoft software then you must include the Microsoft terms posted at <https://nearData.net/ms1.pdf> in a written agreement with your customers.

11. MANAGED BACKUP

NearData's managed backup services are designed to facilitate restoration of data to the server or device from which the data originated in the event the primary data is lost or corrupted. The quality of your backup depends on how your data is organized. We recommend that you test your managed backup service promptly following the Service Commencement Date, and then periodically, to determine if it is capturing your data properly. If it is not, we will work with you to maximize the accuracy of our managed backup service for your data and/or help you identify other data backup solutions that may work better for you. In the event your primary server or device hardware fails and is replaced, we may not be able to restore your backed up data exactly as it was configured on the failed device. If this risk is not acceptable to you, then we will help you identify other data backup solutions that are more reliable in this situation. The "retention" period for your backup refers to the amount of time that we will retain the backup in a useable form for restoration to the server or device from which it originated. If you wish to preserve your backup after the time that this server or device is decommissioned, you must make arrangements with us at least seventy-two (72) hours in advance of the scheduled decommissioning of the server or device. Database duplications or "cloning" for purposes other than a restoration of lost or corrupted data as described in this paragraph are not included as part of your managed backup service, but may be arranged as a Supplementary Service for an hourly fee. We may choose to use either tape or disk to collect your data, in our discretion. Provided that we do not impair the security or reliability of your backup service, you agree that we may from time to time test our backup systems, and may use copies of your data as part of these tests. We will treat duplicate data in accordance with the same security standards applicable to your backup service.

12. HIPAA

If NearData is your "Business Associate" as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, then the HIPAA Business Associate Addendum published at <http://www.nearData.com/information/legal/hipaabaa.php> as of the date that NearData becomes your Business Associate is part of the Agreement.

13. DATA REPLICATION

If you purchase any Services that involve data replication at a geographically diverse site then the following applies to your use of that Service: The rate by which the data at the primary site can be transferred to the secondary site will vary depending on the amount and type of data, constraints inherent in your Hosted System, and fluctuations in bandwidth availability. Therefore, at any given time, the secondary site may not be completely up to date. In the event of a failover to the secondary site, the data that has not yet completed the

transfer from the primary site will be lost. We may provide you with some guidelines on latency times based on our understanding of your data and system constraints, but these guidelines are not guaranties.

14. COLOCATION

If we host a device that you own in our datacenter, then the Colocation Addendum at <http://www.nearData.com/information/legal/colocationaddendum.php> as of the date you sign the order or agreement covering the colocation services is part of the Agreement.

15. VIRTUALIZATION

If you use NearData's virtualization services, your virtual server(s) will be active on the Service Commencement Date. Following the Service Commencement Date you are responsible for managing the active or inactive status of your virtual servers via your MyNearData portal. NearData will invoice you for your virtual service in arrears based on the number of calendar days (full or partial) in each billing period that your virtual servers are set to "active." While your virtual servers are in an "inactive" status we will not install any software updates that we may have otherwise agreed to install. We will update your virtual servers when you return them to "active" status, but there could be a delay of up to twenty-four (24) hours before the updates are fully installed.

16. DOMAIN NAME SERVICES

If you register, renew or transfer a domain name through NearData, NearData will submit the request to its domain name services provider (the "Registrar") on your behalf. NearData's sole responsibility is to submit the request to the Registrar. NearData is not responsible for any errors, omissions or failures of the Registrar. Your use of domain name services is subject to the applicable legal terms of the Registrar. You are responsible for closing any account with any prior reseller of or registrar for the requested domain name, and you are responsible for responding to any inquiries sent to you by the Registrar.

17. VULNERABILITY TESTING

Vulnerability testing services involve inherent risks, such as data corruption and impaired performance of your Hosted System. If you ask NearData to provide vulnerability testing services, then you agree that NearData is not liable to you for any damages arising from the performance of the Services as agreed.

18. UNSUPPORTED CONFIGURATION ELEMENTS OR SERVICES

If you ask us to implement a configuration element (hardware or software) or hosting service in a manner that is not customary at NearData, or that is in "end of life" or "end of support" status, we may designate the element or service as "unsupported," "non-standard," "best efforts," "reasonable endeavor," "one-off," "EOL," "end of support," or with like term in the Service Description (referred to in this Section as an "Unsupported Service"). NearData makes no representation or warranty whatsoever regarding any Unsupported Service, and you agree that NearData will not be liable to you for any loss or damage arising from the provision of the Unsupported Service. The Deployment and Service Level Guaranties shall not apply to the Unsupported Service, or any other aspect of the Hosting Services that is adversely affected by the Unsupported Service. You acknowledge that Unsupported Services may not interoperate with NearData's other services, such as backup or monitoring.

19. IP ADDRESSES

The IP addresses allocated to your Hosted System during the term of the Agreement are managed by NearData and NearData will retain these IP addresses after termination of the agreement, meaning that they may not be transferred or utilized by you after termination of the Agreement.