

## **Software Subscription Agreement for XenData Cloud File Gateway and Alert Module**

This XenData Software Subscription Agreement is between the entity you represent, or, if you do not designate an entity in connection with a Subscription purchase or renewal, you individually (“you” or “your”), and XenData Limited (“XenData”, “we”, “us”, or “our”). It consists of the terms and conditions below and the Offer Details for your Subscription or renewal (together, the “agreement”). It is effective on the date we provide you with confirmation of your Subscription or the date on which your Subscription is renewed as applicable. Key terms are defined in Section 7.

### **1. Use of Software.**

- a. Right to use. We grant you a license to install and use the Software included with your Subscription under the terms of the Offer Details and as further described in this agreement. We reserve all other rights.
- b. Acceptable Use Policy. You may use the Software only in accordance with the agreement. You may only use the Software within the limitations defined in the Offer Details. You may not reverse engineer, decompile, disassemble, or work around technical limitations in the Software, except to the extent applicable law permits it despite these limitations. You may not disable, tamper with, or otherwise attempt to circumvent any mechanism that meters your use of the Software. You may not rent, lease, lend, resell or transfer the Subscription, or any portion thereof, to or for third parties except as expressly permitted by XenData in writing.
- c. Preview releases. We may make Previews available. Previews are provided “as-is,” “with all faults,” and “as-available,” and are excluded from the SLAs and all limited warranties provided in this agreement. Previews may not be covered by customer support. We may change or discontinue Previews at any time without notice. We also may choose not to release a Preview into “General Availability.”

### **2. Ordering.**

- a. By ordering or renewing a Subscription, you agree to the Offer Details for that Subscription.
- b. Pricing and payment. Payments are due and must be made according to the Offer Details for your Subscription.
- c. Taxes. Prices are exclusive of any taxes. You must pay any applicable value added, goods and services, sales, or like taxes that are owed with respect to any order placed under this agreement and which we are permitted to collect from you under applicable law. We will be responsible for all taxes based on our net income or on our property ownership.

### **3. Term and termination.**

- a. Agreement term and termination. This agreement will remain in effect until the end of the Term or the termination of your Subscription.
- b. Subscription termination. You may terminate a Subscription at any time during its Term; however, you must pay all amounts due and owing before the termination is effective.

c. Cease use of Software. At the end of the Term or on the termination of your Subscription, whichever is earlier, you will immediately cease use of the Software.

#### **4. Warranties.**

a. Limited Software warranty.

We warrant for one year from the date you first use the Software that it will perform substantially as described in the applicable user documentation. If Software fails to meet this warranty we will, at our option and as your exclusive remedy, either (1) return the price paid for the Software or (2) repair or replace the Software.

b. Limited warranty exclusions. This limited warranty is subject to the following limitations:

(i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;

(ii) this limited warranty does not cover problems caused by accident, abuse or use of the Software in a manner inconsistent with this agreement or our published documentation or guidance, or resulting from events beyond our reasonable control;

(iii) this limited warranty does not apply to problems caused by a failure to meet minimum system requirements; and

(iv) this limited warranty does not apply to Previews.

c. **DISCLAIMER.** Other than this warranty, we provide no warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers will apply except to the extent applicable law does not permit them.

#### **5. Limitation of liability.**

a. **Limitation.** The aggregate liability of each party for all claims under this agreement is limited to direct damages up to the amount paid under this agreement for the Subscription during the 12 months before the cause of action arose. For Products provided free of charge, XenData's liability is limited to direct damages up to 3,000 UK pounds.

b. **EXCLUSION.** Neither party will be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for lost profits, revenues, business interruption, or loss of business information, even if the party knew they were possible or reasonably foreseeable.

#### **6. Miscellaneous.**

a. **Notices.** You must send notices by mail, return receipt requested, to:

XenData Limited, Sheraton House, Castle Park, Cambridge CB3 0AX, United Kingdom

b. **Assignment.** You may not assign this agreement either in whole or in part.

c. **Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.

- d. Waiver. Failure to enforce any provision of this agreement will not constitute a waiver.
- e. Applicable law.

**United States.** If you acquired the software in the United States, California state law governs the interpretation of this agreement and applies to claims for breach of it, regardless of conflict of laws principles. The laws of the state where you live govern all other claims, including claims under state consumer protection laws, unfair competition laws, and in tort.

**Outside the United States.** If you acquired the software in any other country, the laws of England and Wales apply and govern the interpretation of this agreement and apply to claims for breach of it, regardless of conflict of laws principles.

- f. Entire agreement. This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this XenData Software Subscription Agreement, (2) the applicable Offer Details, and (3) any other documents in this agreement.

- g. Survival. The terms in Sections 1, 2, 3b, 3c, 4, 5, 6 and 7 will survive termination or expiration of this agreement.

- h. Contracting authority. If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf.

## **7. Definitions.**

"Acceptable Use Policy" is set forth in section 1b of this Agreement.

"Instance" of the Software is created by executing the Software's setup and install procedure or by duplicating an existing Instance. An Instance of the Software is run by loading it into memory and executing one or more of its instructions

"Offer Details" means the pricing and limitations on use of the Software for the Term. The limitations on use of the software include the number of Instances of the Software that may be installed and run and the maximum capacity of the object storage under management.

"Previews" means preview, beta, or other pre-release version or feature of Software offered by XenData to obtain customer feedback.

"Software" means XenData Cloud File Gateway and Alert Module software.

"Subscription" means an enrollment to use the Software under the terms of the Offer Details. You may purchase multiple Subscriptions, which may be administered separately and which will be governed by the terms of separate XenData Subscription Agreements.

"Term" means the duration of a Subscription (e.g., 30 days or 12 months).