

ATTACHMENT A TO SOW
TERMS AND CONDITIONS

The following Terms and Conditions constitute part of and are incorporated into, the Revenue Reconciliation Statement of Work ("SOW") between XSELL and Village of Lombard:

1. Definitions.

(a) "Confidential Information" means any proprietary information, LCE information or data, , technical data, know-how, research, experiments, inventions, processes, formulas, designs, drawings, products, services, plans, marketing strategies, finances, software, source code, hardware configuration, or other information disclosed by Village of Lombard or XSELL, their representatives, affiliates, vendors or citizens, or their officers, employees, agents, representatives, independent contractors, or attorneys, in writing, orally, electronically, or by drawings or inspection of parts or equipment, and includes any other information that the parties may reasonably understand to be confidential. Work Product (as hereinafter defined) are hereby deemed to be the Confidential Information of XSELL. Confidential Information does not include information: (a) already known by a party at the time it is disclosed as shown by written records; (b) publicly known without breach of this SOW; (c) received from a third party, other than Village of Lombard, authorized to disclose it without restriction; (d) independently developed by a party without use of Confidential Information; or (e) required by law, regulation or valid court or government order to be disclosed, provided a party first notifies the other party of such required disclosure, so the other party may seek a protective order pertaining to such information.

(b) "Intellectual Property" means collectively: (a) trademarks, trade names, service marks, trade dress, product configurations, logos and other trade identities, trade secrets, know-how, mask work rights, inventions, formulas, algorithms, business methods, rights in packaging, computer software (in source code and object code formats), domain names, uniform resource locaters, Internet protocol addresses, websites (and source codes for websites), patents, patent rights, copyrights, moral rights, authorship rights and other ownership rights, owned in whole or part by a party; (b) common law rights, licenses, royalties, assignments, associated goodwill, applications, registrations, renewals and extensions for all of the items under (a) above in the United States, each individual state thereof, and all other countries and jurisdictions worldwide; and (c) agreements relating to (a) or (b) above to which a party hereto is a party (including expiration dates, if applicable), including, without limitation, all agreements relating to technology, know-how, processes, website development and hosting, software (including, but not limited to, all agreements covering application software and operating system software and all agreements with application service providers), and hardware.

(c) "Work Product" means improvements, inventions, developments, discoveries, processes, techniques, products, and data, whether or not subject to patent; creative works, preliminary concepts, concept executions, and all other copyrightable material; reports, notes, records and other documentation; designs and/or mechanicals; source code and other documentation that would assist in modifying, enhancing or maintaining delivered software; and trade secrets; as well as all their derivatives and modifications that XSELL's personnel, agents or contractors make, conceive or reduce to practice, solely or with others, while performing services in connection with this SOW.

2. Confidentiality. Village of Lombard and XSELL and their respective personnel shall use the other party's Confidential Information solely to fulfill the purposes of this SOW, and each shall take all reasonable precautions to prevent unauthorized disclosure thereof. Neither Village of Lombard nor XSELL shall make any public disclosure of the other party's Confidential Information in the absence of the prior written consent of the other party. Upon termination of this SOW or upon demand, except as otherwise provided herein, the parties shall promptly return to each other all property and Confidential Information of the other party. If agreed, a certificate of destruction may be provided in lieu of return of the Confidential Information, with sufficient detail regarding the Confidential Information destroyed, destruction date, and assurance that all copies also were destroyed. Village of Lombard and XSELL shall retain ownership rights of any Confidential Information deemed to be owned by them pursuant to the terms of this SOW.

3. XSELL Proprietary Rights in Work Product. The parties acknowledge and agree that the rendering of the services under this SOW and the creation of any property or property rights associated therewith shall not constitute work-made-for-hire, and any such property or property rights shall be considered the Work Product of, and owned by, XSELL. Nothing contained in this SOW shall give Village of Lombard any ownership rights in any materials or information contained in the Work Product developed or acquired by XSELL, or licensed by XSELL from any person not a party or affiliate of a party, all of the foregoing deemed and agreed to constitute the proprietary Intellectual Property and/or Confidential Information of XSELL. XSELL shall own all worldwide right, title and interest in and to all Work Product (including, without limitation, all related Intellectual Property rights) from the time that the same is or are created, authored, invented, discovered or first reduced to practice, and neither Village of Lombard nor any of its personnel or affiliates shall obtain any right, title or interest therein or thereto, whatsoever. Subject to any separate license agreement between the parties, XSELL and/or its licensors shall retain ownership of all right, title and interest in and to all separately licensed software, and no license thereto is granted to Village of Lombard under this SOW.

4. Independent Contractor. The parties are, remain, and shall continue to conduct themselves as, independent contractors and this SOW shall not be interpreted as appointing XSELL or Village of Lombard or their respective personnel as agents, employees, lessees, partners, or joint venturers of the other. Neither XSELL (its affiliates or personnel) nor Village of Lombard (its affiliates or personnel), shall attempt to bind or obligate the other party in any matter or for any reason without the express prior written consent of the party to be bound. Neither party shall be liable for the debts, obligations or liabilities of the other party.

5. Disclaimers and Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR EXEMPLARY DAMAGES ARISING IN CONNECTION WITH THIS SOW AND/OR ITS SUBJECT MATTER, REGARDLESS OF THE THEORY OF LIABILITY GIVING RISE TO SUCH DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

THE WARRANTIES PROVIDED, IF ANY, BY XSELL HEREUNDER AND THE LIABILITIES OF XSELL HEREUNDER ARE EXCLUSIVE AND IN LIEU OF, AND VILLAGE OF LOMBARD HEREBY WAIVES, ALL OTHER WARRANTIES, GUARANTIES OR LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE (INCLUDING WITHOUT LIMITATION ANY OBLIGATIONS OF XSELL WITH RESPECT TO FITNESS AND MERCHANTABILITY FOR A PARTICULAR PURPOSE) OR WHETHER OR NOT OCCASIONED BY XSELL'S NEGLIGENCE. NO WARRANTY SHALL NOT BE EXTENDED, ALTERED OR VARIED EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY XSELL AND VILLAGE OF LOMBARD. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, XSELL'S LIABILITY TO VILLAGE OF LOMBARD SHALL NOT EXCEED THE AMOUNT PAID BY VILLAGE OF LOMBARD TO XSELL UNDER A PARTICULAR INVOICE FOR SERVICES PROVIDED UNDER SUCH INVOICE.