

TERMS AND CONDITIONS: DATA CENTER

Business Services

This agreement applies to business clients only.

This agreement supplements the "Master Service Agreement for Business Services" and the "Terms and Conditions: General" for those Clients receiving access to data center services. Clients who contract for business services should reference <https://www.venyu.com/terms-conditions> for all applicable policies. Services provided pursuant to this agreement are provided by Venyu Solutions, L.L.C.

The terms contained herein apply in addition to the terms provided in the "Master Service Agreement for Business Services" and the "Terms and Conditions: General." Where there is a conflict between the "Master Service Agreement for Business Services" and this specific set of terms specific to data center services, this document prevails. Where there is a conflict between the general terms set forth at <https://www.venyu.com/terms-conditions> including the terms set forth in the "Terms and Conditions: General" document, the data center-specific terms set forth below prevail.

DATA CENTER-SPECIFIC TERMS

Client agrees to pay applicable fees and charges as specified on the Business Service Agreement. Such information may also be obtained by calling Customer Service for Venyu at 225-214-3800.

In addition, the following terms and conditions are specifically applicable to data center services provided pursuant to this agreement, hereinafter referred to as the "Data Center Terms" or "DCT."

1. **DEFINITIONS.** "**Client Data Center Equipment**" means all equipment owned or leased from a third party by Client and which is collocated or used in one or more Technology Centers. "**Technology Center**" means the facility from which data center services are provided. "**Client Technology**" means Client's data and Client's proprietary technology, including Client's design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, network architecture, class libraries, objects and documentation (both printed and electronic), know-how, trade secrets and any related intellectual property rights Client holds throughout the world (whether owned by Client or licensed to Client from a third party) and also including any derivatives, improvements, enhancements, or extensions of Client Technology conceived, reduced to practice, or developed during the DCT term by Client. "**Provider Technology**" means any of Provider's proprietary technology, including the data center services, software tools, hardware, designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects, and documentation (both printed and electronic), network designs, know-how, trade secrets, and any related intellectual property rights Provider holds throughout the world (whether owned by Provider or licensed to Provider from a third party) and also including any derivatives, improvements, enhancements, or extensions of Provider Technology conceived, reduced to practice, or developed during the DCT term by Provider. "**SLA**" or "**Service Level Agreements**" mean the standards for performance, availability, reliability, quality, and responsiveness that Provider will be required to meet in its performance of the data center services, as those standards are established pursuant to Section 2 of Annex 1, attached hereto and incorporated herein by reference.

2. **TERM.** The term is set forth in the MSA.

3. INTELLECTUAL PROPERTY AND CONFIDENTIALITY.

3.1 *Ownership.* Except for the rights expressly granted herein and the assignment expressly made below, the DCT does not transfer from Provider to Client any Provider Technology, and all right, title, and interest in and to the

Provider Technology will remain solely with Provider. Except for the rights expressly granted herein, the DCT does not transfer from Client to Provider any Client Technology, and all right, title, and interest in and to Client Technology will remain solely with Client. Neither Party will, directly or indirectly, reverse engineer, decompile, disassemble, nor otherwise attempt to derive source code or other trade secrets from the other Party. Use of Provider Technology provided hereunder is governed by the applicable license terms, including, without limitation, end-user terms related thereto.

3.2 *General Skills and Knowledge.* Notwithstanding anything to the contrary in the DCT, Provider shall not be prohibited or enjoined at any time by Client from utilizing any skills or knowledge of a general nature acquired during the course of providing the services, including information publicly known or available or that could reasonably be acquired in similar work performed for another of Provider's Clients, as long as such work for another of Provider's Clients was not derived from Client Technology.

3.3 *License Grants.* Provider hereby grants to Client a nonexclusive, royalty-free license, during the applicable services term, to use the Provider Technology solely for purposes of using the services. Client shall have no right to use the Provider Technology for any purpose other than using the services in accordance with the terms and provisions in the DCT, including the applicable product-specific terms and conditions in **Annex 2**, attached hereto and incorporated herein by reference. Client agrees that if, in the course of performing the services, it is necessary for Provider to use Client Technology, Provider is hereby granted and shall have a nonexclusive, royalty-free license, during the applicable services term, to use the Client Technology solely for the purposes of delivering the services to Client. Provider shall have no right to use the Client Technology for any purpose other than providing the services to Client under the DCT.

3.4 *Assignments and Licenses.* (a) Effective at the time Provider receives full and final payment for equipment purchased by Client, Provider assigns to Client all right, title, and interest in the specified equipment; provided, however that such assignment does not include any Provider Technology or the intellectual property right of any third party; and (b) Commencing at the time Provider receives full and final payment for the work performed and services rendered, Provider grants to Client a non-exclusive, non-transferable, royalty-free license to use the Provider Technology incorporated into the originally developed tangible deliverable solely in connection with the use of the tangible deliverable as a whole, and to the extent that Client or its employees or contractors participate in the creation or development of Provider Technology. Client, on behalf of itself and its employees and contractors, hereby assigns to Provider all right, title, and interest, including all intellectual property rights in, the Provider Technology; provided, however that such assignment does not include any Client Technology or the intellectual property rights of any third parties.

3.5 *Internet Protocol ("IP") Addresses and Numbers.* The MSA sets forth agreement regarding internet protocol addresses and numbers.

3.6 *Confidentiality.* The MSA sets forth agreement regarding confidentiality.

4. CLIENT ASSURANCES.

4.1 *Representations.* Client represents and warrants that all Client Data Center Equipment and other tangible items placed by Client in Technology Centers will be used in compliance with all applicable manufacturer specifications. Client will comply at all times with all applicable laws and regulations and the Provider policies as updated by Provider from time to time. The Provider policies are incorporated herein and made a part hereof by this reference. Provider may change the policies upon five (5) days' notice to Client, which notice may be by publication on Provider's website at <https://www.eatel.com/policies>. Client agrees that it has read and understands the current version of the Provider policies. Client shall not knowingly submit to Provider for publication via Provider's bandwidth any of the following material, regardless of the form of such content: (i) any material which violates or infringes any copyright, trademark, trade secret, patent, or any statutory, common law, or other proprietary rights of others, (ii) any material that is libelous or slanderous, (iii) any material which is or contains anything obscene or pornographic; or (iv) distribution lists to be used in connection with unsolicited electronic mails or other mass electronic mailings including mass newsgroup postings, SPAM, and unsolicited e-mail sent from Client's server or any other service on the Internet, which contains Client's domain name or any other domain name on Provider's network. Due to the public nature of the Internet, all material placed by Client on the Internet will be considered

publicly accessible. Client acknowledges that Provider does not screen, nor exercise any control over, the content of the information passing through Client's site(s) and that is the sole responsibility of Client to ensure that the information it and its users transmit and receive complies with all applicable laws and regulations and the Provider Policies. Provider's publication of material submitted by Client does not create any express or implied approval by Provider of such material, nor does it indicate that such material complies with the terms of the MSA, applicable laws and regulations or the Provider policies. Provider has no responsibility for any failure to meet its obligations under the MSA that relate, directly or indirectly, to Client's failure to perform its responsibilities and obligations specified in the MSA and associated agreements.

4.2 Restrictions on Use and Resale of Services. Upon prior written notice to Provider and subject to (a) Provider's prior approval of creditworthiness, and (b) Provider's receipt of documentation, in form and substance acceptable to Provider, evidencing each approved affiliates agreement to be bound by all of the terms and provisions of the MSA, affiliates of Client may order and use Services, and may exercise rights of Client hereunder, provided that Client, as well as the affiliate, shall be primarily liable to Provider for such affiliates compliance with all of the terms and provisions of the MSA. Client may not resell the services to its Clients without an additional resale agreement signed by the Provider. Without limiting the foregoing, Client's obligations under Section 8 shall apply to any and all claims made against Client or Provider, or both, by Client's customers arising out of Client's sale of services to Client's customers, including the Services.

5. INSURANCE. Each Party shall carry and maintain during the Term, at its own cost and expense, commercial general liability insurance of at least one million dollars (\$1,000,000) per occurrence with a two million dollars (\$2,000,000) million aggregate covering claims for bodily injury, death, personal injury, or property damage. If Client Data Center Equipment will be located in a Technology Center, Client shall also carry an "all risk" property insurance policy covering the Client Data Center Equipment in an amount not less than its full replacement value. The coverage required herein may be obtained through any combination of primary and excess or umbrella liability insurance. Each Party shall provide the other Party certificate(s) of insurance that evidence such coverage upon request and provide at least thirty (30) days' written notice of any policy cancellation. Provider shall be named as an additional insured on the property insurance policy.

6. TERMINATION EFFECT ON DATA CENTER SERVICES.

6.1 Client Data Center Equipment. Within five (5) days of termination of services, Client shall: (a) remove from the Technology Centers all Client Data Center Equipment and any other Client property and (b) return the area occupied within the Technology Center by Client during the DCT term to Provider in the same condition as it was on the commencement date, normal wear and tear excepted. If Client does not remove the Client Data Center Equipment and its other property and pay all payment obligations of Client under the DCT in full within such five (5)-day period, Provider has the option to (i) move any and all such property to secure storage and charge Client for the cost of such removal and storage and/or (ii) liquidate the property in any commercially reasonable manner. In no event is Client allowed to access Client Data Center Equipment or remove Client Data Center Equipment until Client has paid all sums owed to Provider under the DCT.

6.2 Client Data Stored by Provider. If any of the services provided pursuant to this DCT include an obligation of Provider to store Client's data, the following shall apply: (a) upon termination (i) Client shall verify in writing that it has uninstalled all Provider Technology; (b) until the written verification described in Section 6.2(a)(i) is received by Provider, Client shall be liable for all costs incurred as a result of continued use of the Provider Technology; and (c) upon receipt of Client's full payment and the written verification noted in Section 6.2(a)(i) above, within three (3) business days of termination of the DCT, Provider will, at Client's request and expense (and Provider's then-current rates), promptly return all of Client's backup data stored on the Provider Technology. Notwithstanding anything herein to the contrary, Client understands and agrees that if the written verification in Section 6.2(a)(i) above, as well as full payment, are not received within three (3) business days after the DCT termination, Provider, at its sole discretion, may permanently delete Client's data from the Provider Technology and Provider shall have no liability whatsoever to Client or any third party for such deletion. Provider will use commercially reasonable efforts to inform Client of the deletion of Client's data prior to any such deletion; provided, however, to the extent Client's data

remains on Provider Technology after termination of the DCT, Provider may continue to invoice Client, and Client shall continue to pay Provider, monthly for the services at Provider's then-current prevailing rates, until Client confirms in writing to Provider that such data may be deleted the Provider Technology.

7. **LEASE.** Each Party acknowledges that the DCT is not intended to and will not constitute a lease, sublease, license, or use agreement with respect to any property as it pertains to a Technology Center.

8. LIMITATIONS OF LIABILITY.

8.1 The following limitations are in addition to those set forth in the MSA. For purposes of Section 8 and all other exclusive remedies and limitations of liability set forth in the MSA, Provider shall be defined as including Provider Affiliates, and Provider and their employees, directors, officers, agents, representatives, subcontractors, interconnection, service providers and suppliers; and "Client" shall be defined as Client, its Affiliates, and its and their employees, directors, officers, agents, and representatives.

8.2 PROVIDER SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: (a) INTEROPERABILITY, INTERACTION, ACCESS OR INTERCONNECTION PROBLEMS WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT OR NETWORKS PROVIDED BY ALTERED MESSAGES OR TRANSMISSIONS, EXCEPT AS OTHERWISE PROVIDED IN THE SLA OR APPLICABLE TERMS AND CONDITIONS IN **ANNEX 2**, (b) UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CLIENT'S OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORK OR SYSTEMS UNLESS DUE TO PROVIDER'S NEGLIGENCE OR WILLFUL ACTIONS, OR (c) ACTS OR OMISSIONS OF CLIENT OR CLIENT'S AGENTS OR REPRESENTATIVES THAT RESULT IN THE FAILURE OF OR DISRUPTIONS TO THE SERVICES.

8.3 THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 8 AND IN ANY OF THE APPLICABLE TERMS AND CONDITIONS SET FORTH IN **ANNEX 2** SHALL APPLY: (a) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND (b) WHETHER OR NOT DAMAGES WERE FORESEEABLE. CLIENT ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS MSA AND THAT PROVIDER WOULD NOT ENTER INTO THIS MSA, INCLUDING AGREEMENTS THERETO, WITHOUT THESE LIMITATIONS ON ITS LIABILITY. THESE LIMITATIONS OF LIABILITY SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDIES PROVIDED IN THE MSA.

8.4 *No Liability for Termination or Upon Expiration.* Unless otherwise provided elsewhere, neither Party will be liable to the other for any termination or expiration of any Service or the MSA in accordance with its terms, provided, however, that the terminating Party complies with its post-termination and/or post-expiration obligations.

8.5 *Third Party Beneficiaries.* The MSA does not expressly or implicitly provide any third party (including any potential customers of Client) with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

9. **GOVERNING LAW; DISPUTE RESOLUTION; ATTORNEYS' FEES.** The MSA is made under and shall be governed by the laws of the State of Louisiana, without giving effect to its principles on choice of law and any dispute shall be resolved in a forum located in the State of Louisiana. Disputes that cannot be resolved by the respective Party's personnel related to the dispute will be referred to officers of Client and Provider for informal resolution, who will meet by teleconference within ten (10) days of the referral. If the dispute is not resolved within thirty (30) days of the referral, either Party may pursue other remedies in law or equity that are not excluded by the MSA. During the dispute resolution process described herein, until the dispute is resolved, each Party shall continue to comply with its obligations under the MSA. The provisions of this Section will not delay or prevent a Party from seeking injunctive relief whenever the facts or circumstances would permit a Party to seek such relief in a court of competent jurisdiction. If either Party commences any legal action against the other Party arising out of the MSA, the prevailing Party shall be entitled to recover its reasonable litigation expenses, including costs of preparation for litigation, court costs, expert witness fees, discovery expenses and reasonable attorney's fees. No action arising out of or otherwise associated with the MSA or the rights granted hereunder, regardless of form, may be brought by either Party more than two years after the cause of action has accrued. In the event any provision of the MSA is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of the MSA will remain in full force and

effect.

10. **MISCELLANEOUS.** The respective obligations of each Party, which by their nature would continue beyond the termination or expiration of the MSA, including the obligations regarding confidentiality, publicity and marks, limitations of liability and dispute resolution shall survive termination or expiration. Headings are for convenience only with no effect. Provider is an independent contractor and neither Party's employees will be considered employees of the other Party for any purpose. The Parties hereto have participated jointly in the negotiation and drafting of the MSA. In the event an ambiguity or a question of intent or interpretation arises, the MSA shall be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of the MSA. The decision to implement any or all of Provider's recommendations shall be the responsibility of Client and Client should consult with its own legal, tax, accounting and/or other advisors regarding the advisability of implementation of any recommendations provided by Provider under the MSA. Including means including without limitation.

ANNEX 1: SLA. This **Annex 1** is part of the MSA between Client and Provider entered into as of the Effective Date.

1. **GENERAL PROVISIONS.**

1.1 *General.* This **Annex 1** sets forth additional terms and conditions upon which Provider shall provide Services to Client pursuant to the MSA.

1.2 *Defined Terms.* Capitalized terms used in this **Annex 1** and not defined herein shall have the meaning set forth elsewhere in the MSA. The following terms will have the meaning set forth below: "**Affected Service Fees**" shall mean those Fees attributable to (a) the Affected Services and (b) those Services that are adversely affected by, or become unusable by Client, as a direct result of the Unavailability of the Affected Services, during the period that the Affected Services are Unavailable. "**Affected Services**" shall mean those Services pertaining to storage systems, the network, Technology Center(s) and servers, as the case may be. "**Available**" means, with respect to an Affected Service, operationally capable of receiving, processing and sending data. "**NOC**" means Network Operation Center which is part of the Technology Center. "**Service Level Credits**" mean a service level credit as calculated in accordance with Section 4.2. "**Unavailable**" or "**Unavailability**" means the state of not being Available.

2. **SLAs.**

2.1 *Technology Center.* Except as otherwise provided herein, Provider shall provide Technology Center services for Client in accordance with the applicable terms and conditions set forth in **Annex 2** to the standard set forth in the Technology Center Table described in Section 4.2 below ("**Technology Center Table**"). The Technology Center will be standing, powered and climate controlled twenty-four (24) hours a day, seven (7) days a week and three hundred sixty-five (365) days a year ("**7x24x365**"). Provider will monitor the climate in the Technology Center continuously. All power and cooling will be maintained at a level necessary to maintain the SLAs. Provider will monitor all critical electrical, HVAC, fire detection and fire protection equipment, and security systems at the Technology Center or NOC 7x24x365.

2.2 *Network.* Except as otherwise provided herein, Provider shall provide network services for Client in accordance with the applicable terms and conditions set forth in **Annex 2** to the standard set forth in the network table described in Section 4.2 below ("**Network Table**"). For the purposes of determining whether network services are being provided at such standards, the availability of only the following network services shall be considered: (a) Technology Center switches and ports into which Client circuits are connected; (b) Technology Center's backbone network interconnecting its switches, hubs and routers; (c) Technology Center's supporting or ancillary systems that provide domain name services and routing, logically enabling Client to interact with the network services and circuits; and (d) Technology Center connectivity to Internet service providers or network providers.

2.3 *Servers.* If the Services purchased by Client include server(s) operated by Provider then Provider shall be required to maintain such servers to the standard set forth in the servers table described in Section 4.2 below ("**Servers Table**").

2.4 *Storage Systems.* If the Services purchased by Client include storage services, then Provider shall maintain the

storage services to the standard set forth in the storage system table described in Section 4.2 below ("**Storage System Table**"). If Provider provides storage system services pursuant to the applicable terms and conditions set forth in Annex 2, Provider shall monitor such storage system hardware. Unless otherwise provided in applicable terms and conditions set forth in Annex 2, storage system services shall include periodic monitoring of disk performance, cache memory usage and related performance metrics available through tools generally used by Provider.

2.5 *Backup Services*. If the Services purchased by Client include back-up Services then Provider shall provide the backup Services for Client in accordance with the applicable terms and conditions set forth in Annex 2 to the standard set forth in the backup Services table (the "**Backup Services Table**") described in Section 4.2 below.

3. PROVIDER’S RESPONSIVENESS TO PROBLEMS.

3.1 *Reporting of Problems; Provider's Response to Reported Problems.*

(a) *Reporting of Problems*. Client shall be responsible for immediately contacting Provider of any suspected problem with any of the Services provided by Provider. Either Provider’s receipt of Client’s written request or the trouble ticket opened by Provider shall document the initial contact. Client will report problems according to the procedures located at <https://portal.myvenyu.com/> which are included in the Provider Policies.

(b) *Provider's Response to Client Reported Problems*. In response to Client contact initiated pursuant to (a) above, Provider’s technician will receive the call or trouble ticket, if a message has been left, call the 'call-back' number or response to the trouble ticket for the incident, as well as initiate steps for problem identification and corrective action. Mean time to repair shall be measured from the time when Provider responds pursuant to Section 3.1(b) hereof until the time the Client Data Center Equipment becomes Available, as recorded in the trouble ticket.

3.2 *Service Interruptions Status Reporting*. With respect to an interruption in Services reported by Client, Provider will use commercially reasonable efforts to inform Client’s Authorizing Officer or Authorizing Officer’s designee, of the status of repair activity periodically throughout the repair time. Upon request, monthly or quarterly reports detailing interruptions in Services by incident and duration shall be prepared and provided by the fifteenth (15th) day of the following month or the month following the end of the preceding quarter, as the case may be. Reports can be provided in paper or electronic formats.

3.3 *Action Plan for Chronic Service Failure*. When a Service has suffered chronic service failure, Provider will review the history of such problem and upon written request of Client, provide to Client a written action plan to remedy the problem. The action plan shall include an itemized list of tests to be performed to document the remediation. Upon examination of a chronic service failure report and/or action plan, the Parties may discuss modifying a particular Service.

4. SERVICE LEVEL CREDITS.

4.1 *General*. If the Affected Services do not meet the levels as described in Section 2 above and the Affected Services are Unavailable for a period of time beyond the agreed upon SLAs, Client shall receive a Service Level Credit based on the period of time in a calendar month that the Affected Service was Available, as determined in accordance with this Section 4.

4.2 *Calculating Service Level Credits*. For purposes of determining Service Level Credits, the Availability of an Affected Service for a given calendar month shall be determined by dividing (a) the number of minutes of Availability in such calendar month by (b) the difference between (i) the number of minutes in the applicable calendar month and (ii) the number of minutes of Excusable Unavailability in such calendar month (the "**Quotient**"), and then multiplying the Quotient by one hundred (100) (the "**Availability Percentage**"). The number of Service Level Credits to which Client is entitled shall be obtained by referencing the applicable Availability Percentage in the applicable table below.

Technology Center Table

Availability	Service Level Credit
>99.99 to 100%	0

>99.9% to 99.99%	5% of the Affected Service Fee.
>99.8% to 99.9%	10% of the Affected Service Fee.
>98.9% to 99.8%	20% of the Affected Service Fee.
>97.9% to 98.9%	30% of the Affected Service Fee.
>96.9% to 97.9%	40% of the Affected Service Fee.
>95.9% to 96.9%	50% of the Affected Service Fee.
0% to 95.9%	100% of the Affected Service Fee.

Network Table

Availability	Service Level Credit
>99.8% to 100%	0
>98.9% to 99.8%	5% of the Affected Service Fee.
>97.9% to 98.9%	10% of the Affected Service Fee.
>96.9% to 97.9%	20% of the Affected Service Fee.
>95.9% to 96.9%	30% of the Affected Service Fee.
>80.0% to 95.9%	50% of the Affected Service Fee.
0% to 80%	100% of the Affected Service Fee.

Servers Table

Availability	Service Level Credit
>99.9% to 100%	0
>98.9% to 99.9%	5% of the Affected Service Fee.
>97.9% to 98.9%	10% of the Affected Service Fee.
>96.9% to 97.9%	20% of the Affected Service Fee.
>95.9% to 96.9%	30% of the Affected Service Fee.
>80.0% to 95.9%	50% of the Affected Service Fee.
0% to 80%	100% of the Affected Service Fee.

Storage Systems Table

Availability	Service Level Credit
>96% to 100%	0
>92% to 96%	5% of the Affected Service Fee.
>88% to 92%	10% of the Affected Service Fee.
>84% to 88%	15% of the Affected Service Fee.
>80% to 84%	20% of the Affected Service Fee.
>70% to 80%	25% of the Affected Service Fee.
>50% to 70%	50% of the Affected Service Fee.
0% to 50%	100% of the Affected Service Fee.

Backup Services Table

Availability	Service Level Credit
>99% to 100%	0

0% to 99%	Pro-rata credit of the Affected Services Fee for that month's pro-rata deficiency
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For the purposes hereof, "**Excusable Unavailability**" shall refer to the Unavailability of Affected Services on account of the following: (1) scheduled outages; (2) Client's acts or omissions, including any negligence, willful misconduct, or noncompliant use of Provider's network or the Services by Client or others authorized by Client; (3) failure of power, facilities, equipment, applications, systems or connections not provided by Provider and outside of Provider's reasonable control; (5) a software failure or defect; (4) a Force Majeure Event; (6) Client Data Center Equipment and/or third party equipment (not within Provider's sole control); (7) any breach of the MSA by Client; or (8) applying necessary security or application updates. In addition to the Excusable Unavailability, false or erroneous information, whether as a result of errors by, or outages of, Availability measurement systems shall be disregarded when determining the Availability of Affected Services. Provider reserves the right to apply any necessary security or application updates as needed without scheduled notification and any downtime or unavailability associated with such updates will not be counted for purposes of calculating the SLA.

4.3 *Effect of Service Level Credits.* Service Level Credits in favor of Client shall be counted against the Affected Service Fees for the applicable month.

4.4 *Right of Client to Terminate on Account of Unavailability.* Client shall have the right to terminate the MSA or an Agreement with or without cause pursuant to applicable sections of the MSA if (a) it is determined in accordance with this Section 4 that Client is entitled to a Service Level Credit of one hundred percent (100%) under the Technology Center Table, Network Table, Servers Table, or Backup Services Table or fifty percent (50%) under the Storage Systems Table, or (b) it is determined in accordance with this Section 4 that Client is entitled to Service Level Credits for any 3 calendar months equal to or greater than twenty-five percent (25%) of the Fees paid by Client on account of Services for the same three (3)-month period.

4.5 *Process.* Client must request, any credit due hereunder within sixty (60) days of the conclusion of the month in which it accrues. Client waives any right to credits not requested within this sixty (60) day period. Credits will be issued once validated by Provider and applied toward the invoice which Client receives no later than sixty (60) days following Client's credit request. All performance calculations and applicable service credits are based on Provider records and data unless Client can provide Provider with reasonable technical evidence to the contrary. If a single event gives rise to multiple Service Level Credits, Client is only entitled to the largest Service Level Credit from such event. In no event will the credits accrued in any single month exceed, in the aggregate across all service levels and events, one hundred percent (100%) of the invoice amount for the Affected Services Fee.

ANNEX 2: This Annex 2 is part of the MSA between Client and Provider entered into as of the Effective Date.

1. **GENERAL PROVISIONS.** This Annex 2 sets forth additional terms and conditions upon which Provider shall provide Services to Client pursuant to the MSA.

2. BUSINESS BACKUP AND BACKUP PRO SERVICES

2.1 Pricing is based on initial assessment. Pricing for Services provided assume no significant changes to the client environment, client data, or client infrastructure. If, in the sole discretion of Provider, such significant changes occur during the term of the Agreement, the parties agree that Service activities and the associated price will be revised to accommodate such changes.

2.2 Additional hours for administration services are billed at one hundred seventy-five dollars (\$175) per hour, unless otherwise noted. Administrative services are billed in fifteen (15) minute increments with no minimums. Client will be billed for reasonable and customary related travel expenses that may be incurred as part of the services provided by Provider.

2.3 Subject to the MSA, Client has sole and exclusive control and responsibility for the determination of what data is sent to Provider and remains on Provider's infrastructure.

2.4 Client shall provide and incur the cost for the hardware, supported operating system, Internet access and appropriate network connectivity that is needed for the software provided by Provider (the "Software") to operate

properly. At the request of Provider, Client shall upgrade any third party software in a timely manner. Client may refuse to upgrade third party software in the event that Client's existing third party software supplier does not authorize such upgrade, provided, however, Provider HEREBY DISCLAIMS ANY AND ALL LIABILITY OR HARM ASSOCIATED WITH ANY FAILURE OF ANY SERVICES, SOFTWARE, HARDWARE OR ANY OTHER FAILURE RELATED, DIRECTLY OR INDIRECTLY, TO THE FAILURE OF CLIENT TO UPGRADE PROVIDER OR THIRD PARTY SOFTWARE IN A TIMELY MANNER.

2.5 Client shall perform regular backups using the Software, communicate any errors promptly to Provider and also monitor backups and work with Provider to resolve any noted errors.

2.6 Client shall be responsible for ensuring the communication services and equipment used to connect to the Provider Services are reliable and agrees to provide a technical environment for the required access to and use of the Software and the Services, which environment meets the standard system requirements as determined by Provider from time to time.

2.7 Client shall designate an on-site coordinator to manage day-to-day support and interactions with Provider and be responsible for addressing training, implementation and support issues related to the Services. Client is also responsible for notifying Provider of any changes in authorized personnel who can request additions, removals or other Service activities and shall notify Provider of any changes in servers, tasks, retention schedules or technical environment so that the vaulted data may be adjusted.

2.8 If Client designates a consultant to coordinate backup and recovery activities, Client shall be responsible for the actions or breaches of the consultant and shall notify Provider promptly of any change of consultants.

2.9 Provider shall provide Client the following support services ("Support Services") in connection with the Backup Service: Monday to Friday, from 8:00 a.m. to 6 p.m. CST: (i) problem reporting, tracing and monitoring by Internet electronic mail; (ii) telephone support for problem determination, verification, and resolution (or instruction as to work around, as applicable) on a call-back basis; (iii) commercially reasonable efforts to diagnose and resolve defects and errors in the Services; and (iv) upgrades to the Services as may be developed in Provider's sole discretion. Support services do not include the provision of or support for products other than the Services. Fees for additional services beyond basic service rates and installation charges are listed below in the Professional Services and Other Fees table.

2.10 Provider does not represent or warrant that the Services provided under this proposal comply with Clients' compliance related obligations under any rules, regulations, applicable laws or similar requirements. Provider may, upon Client request, provide documentation to assist Client in its compliance related obligations.

2.11 Provider shall use reasonable commercial efforts to provide Client access to the Services. Client acknowledges and agrees that actual access to Client's data may be delayed if Client's technical environment does not comply with the minimum requirements specified in the installation notes for the Software provided to Client including, but not limited to bandwidth availability, system I/O and processor speed. Provider shall have no obligation to provide any Services to Client if Client has: (i) deleted or modified the Software or the database tables or procedures created or maintained therein or (ii) failed to maintain the minimum technology standards required as noted in the installation notes of the Software.

2.12 A list of optional services and associated fees beyond basic service rates and installation fees can be found in the Business Backup Professional Services and Other Fees Table.

Business Backup Professional Services and Other Fees Table	
Description of Service	Fees
Mobile Vault Initial Seed Dispatch (Storage device sent to client site in hard-shell protected case)	Included (up to 3 days)
Mobile Vault Rental Post-Install (for disaster recovery testing or large recoveries)	\$195 (up to 3 days)
Mobile Vault Rental Over 3 Days (Scheduled or Unscheduled)	\$50/additional day
Post-Install Formal Training (done through remote session)	\$175/hour

Tailored Professional Services Agreement (includes: onsite, customized reporting, training etc.)	\$175/hour + expenses
Password Escrow Service (physical storage of client password at Provider site)	\$195/year
Additional Billing Group (after setup - for purpose of billing multiple client sites separately)	\$175/hour
Media Cut of All or Portion of Client's Backup Data	\$1/GB (\$500 minimum)
Storage Device Provided by Provider for Media Cut	Market Rates

3. BACKUP + CLOUD RECOVER SERVICES

3.1 *Emergency Declarations.* At the time of an emergency, Client will contact Provider to declare an emergency. Provider will not be liable for any system downtime due to scheduled maintenance if Client fails to notify Provider of a declaration of emergency. When Provider accepts the declaration, Provider will create a project inside of Provider's tracking system (the "Recovery Project"). Client will be assessed the declaration fee as quoted. If Client cancels its emergency declaration and no work has been started on the Recovery Project, Provider will refund fifty percent (50%) of the relevant declaration fee.

3.2 *Recovery Time (RTO).* Every DR plan is unique and takes a different amount of time to provision. As part of staging the Client's Business Backup + Cloud Recover platform, Client is assigned a verified RTO. This RTO was the result of properly staging and documenting the Client's virtualized recovery environment, networking settings, firewall settings etc. The document provided to Client at the end of Provider's staging/testing process is your "Systems Recovery Plan." Any changes to the Client's production environment made by the Client, a Contractor or other entity that causes an unforeseen issue during the failover or recovery may void the Provider documented RTO as provided in the "Systems Recovery Plan." It is critical to note that Provider's verified and tested RTO of the Client's virtualized recovery environment is strictly an estimated value, not a guarantee. Client is responsible for maintaining and updating the Systems Recovery Plan. Provider recommends that Client update their System Recovery Plan each time that a change is made to Client's environment. Unless expressly requested by the Client, Provider does not keep a copy of the Systems Recovery Plan. The recovery time stated in the Systems Recovery Plan is the amount of time it is expected to take to complete the Recovery Project from the time that Provider begins working on the Recovery Project, not from the time Provider receives an emergency declaration. When Provider accepts the emergency declaration, Client will be given an estimate of when Provider can begin work on the Recovery Project.

3.3 *Staging and Testing.* Provider allows reasonable testing of the recovery plan at client's discretion. Neither remote user connectivity fees nor declaration fees will be charged during a test. Provider will invoice Client, on an hourly basis, for the involvement of Provider personnel (e.g., Provider engineers) to assist with testing of Client's "Systems Recovery Plan." In the event that Client requests Provider's assistance during a test, Provider reserves the right to schedule a test period based on availability of resources and so as not to conflict with any scheduled maintenance windows. During the testing process, the server images can be updated by the Client using a third-party tool, Provider's BMR-Plugin, or by Provider professional services billable hourly. Testing not only ensures that recovery will be productive, it is also necessary to re-evaluate the amount of native RECOVERY storage required in a DR mode. If Client requires more storage because of data growth, Provider will be able to use statistics from testing to correctly provision the virtual recovery environment. As stated above in Recovery Time, Provider recommends that Client update their Systems Recovery Plan during each testing period and following any changes made to Client's environment. Failure to maintain and update the plan could result in an extended RTO and may void the Provider-documented RTO initially provided in the Systems Recovery Plan. Provider recommends the use of Windows Remote Desktop for Clients requiring multiple end-user access into the virtualized recovery environment – the use of Remote Desktop requires an additional VDR session in order to act as the Remote Desktop Server. The Remote Desktop VDR session will require staging in order to be included in the "Systems Recovery Plan" and be a part of the verified RTO

3.4 *Declaration Fee.* The declaration fee is billed upon declaration and activation of a Disaster Recovery (DR) mode. The declaration fee is required at time of disaster or outage to activate your VDR server environment. This fee

provides you with all or designated reserved VDR servers "powered up" and ready for recovery. Engaging Provider professional services to aide in failing-over or failing-back is billable on an hourly basis. In addition to the foregoing, Client will incur a declaration fee(s) for testing in excess of the two (2) forty-eight (48) hour testing sessions included per year. See Business Backup + Cloud Recover Table for associated fees.

3.5 *Post Declared DR Mode Usage Fees for Business Backup + Cloud Recover Servers.* DR Mode usage fees are included in your standard monthly reservation fees. Client may incur additional monthly fees for Remote User Connectivity, additional resources (i.e., vRAM and vSAN), Variable Fees, and Professional Services. Monthly fees vary based on particular requirements at time of disaster and depend on the need of all or just several of the reserved VDR servers and typically reflect Provider's Virtual Server Hosting fees.

3.6 *Post Declared DR Mode Remote User Connectivity Fees.* In Server Recovery Mode, Client receives one VPN connection provided through the vCloud Director management portal into the Client's Provider VDR server environment. If additional connectivity is required for Client's end-users, Provider would recommend Windows Remote Desktop licenses for each end-user. Provider can provide these licenses upon the client's request. Use of Remote Desktop will require additional VDR server(s) and setup for each Remote Desktop needed to fully-provision Client's end-user connectivity needs. Monthly usage fees for Remote Desktop end user client licenses begin on day one of declared DR mode. See Business Backup + Cloud Recover Table for associated fees.

3.7 *Server Recovery Fee.* In the event Client needs to engage Provider engineers when they declare a disaster and recover a server(s) in Provider's Virtualized Disaster Recovery platform, Provider engineers will create a Recovery Project. This project is billable on professional services basis and includes the time and materials used in order to effectively recover client's data to a virtual machine session on Provider's VDR platform. See Business Backup + Cloud Recover Table for associated fees.

3.8 *Variable Fees.* Bandwidth fees for Business Backup + Cloud Recover servers are invoiced monthly beginning the 1st day of declared DR mode. Variable fees for recovered Business Backup servers are also invoiced beginning the 1st day of declared DR mode.

3.9 *95th Percentile Bandwidth Monitoring Procedures (beginning the first (1st) day of Declared Business Backup + Cloud Recover).* For Clients who use Provider's Datacenter Service (including co-location, dedicated and shared hosting, etc.), bandwidth is calculated in the following manner: Input and output bandwidth usage is sampled at regular five (5) minute intervals, twenty-four (24) hours per day. The total amount of traffic during the five (5) minute interval is divided by three hundred (300) seconds to get a "per second" sample. To calculate the chargeable usage, the sample data (input and output combined) is sorted in descending order. The top five percent (5%) of all of the sample data is discarded. This represents thirty-six (36) hours of bursting during a thirty-one (31)-day month. Bandwidth is billed at the very next number below the discarded numbers. **Provider will use commercially reasonable efforts to provide bandwidth usage updates via email to Client's designated contact every seven (7) days.**

3.10 Provider Backup Services will continue to be employed for backups while on VDR platform, allowing for a planned fail-back to your production environment.

3.11 Client will provide all software licensing for server recovery platforms.

3.12 Subject to the MSA, Client has sole and exclusive control and responsibility for the determination of what data is sent to Provider and remains on Provider's vault.

3.13 Client shall provide and incur the cost for the hardware, supported operating system, Internet access and appropriate network connectivity that is needed for the software provided by Provider (the "Software") to operate properly. At the request of Provider, Client shall upgrade any third party software in a timely manner. Client may refuse to upgrade third party software in the event that Client's existing third party software supplier does not authorize such upgrade, provided, however, PROVIDER HEREBY DISCLAIMS ANY AND ALL LIABILITY OR HARM ASSOCIATED WITH ANY FAILURE OF ANY SERVICES, SOFTWARE, HARDWARE OR ANY OTHER FAILURE RELATED, DIRECTLY OR INDIRECTLY, TO THE FAILURE OF CLIENT TO UPGRADE PROVIDER OR THIRD PARTY SOFTWARE IN A TIMELY MANNER.

3.14 Client shall perform regular backups using the Software, communicate any errors promptly to Provider and also monitor backups and work with Provider to resolve any noted errors.

3.15 Client shall be responsible for ensuring the communication services and equipment used to connect to the

Provider Services are reliable and agrees to provide a technical environment for the required access to and use of the Software and the Services, which environment meets the standard system requirements as determined by Provider from time to time.

3.16 Client shall designate an on-site coordinator to manage day-to-day support and interactions with Provider and be responsible for addressing training, implementation and support issues related to the Services. Client is also responsible for notifying Provider of any changes in authorized personnel who can request additions, removals or other Service activities and shall notify Provider of any changes in servers, tasks, retention schedules or technical environment so that the vaulted data may be adjusted.

3.17 If Client designates a consultant to coordinate backup and recovery activities, Client shall be responsible for the actions or breaches of the consultant and shall notify Provider promptly of any change of consultants.

3.18 Provider shall provide Client the following support services ("Support Services") in connection with the Backup Service: Monday to Friday, from 8:00 a.m. to 6 p.m. CST: (i) problem reporting, tracing and monitoring by Internet electronic mail; (ii) telephone support for problem determination, verification, and resolution (or instruction as to work around, as applicable) on a call-back basis; (iii) commercially reasonable efforts to diagnose and resolve defects and errors in the Services; and (iv) upgrades to the Services as may be developed in Provider's sole discretion. Support services do not include the provision of or support for products other than the Services. Fees for additional services beyond basic service rates and installation charges are listed below in the Professional Services and Other Fees table.

3.18 Provider shall use reasonable commercial efforts to provide Client access to the Services. Client acknowledges and agrees that actual access to Client's data may be delayed if Client's technical environment does not comply with the minimum requirements specified in the installation notes for the Software provided to Client including, but not limited to bandwidth availability, system I/O and processor speed. Provider shall have no obligation to provide any Services to Client if Client has: (i) deleted or modified the Software or the database tables or procedures created or maintained therein or (ii) failed to maintain the minimum technology standards required as noted in the installation notes of the Software.

3.19 A list of optional services and associated fees beyond basic service rates and installation fees can be found in the Business Backup Professional Services and Other Fees Table.

Business Backup + Cloud Recover Table

Description of Service	Fees
Declaration Fee	\$50.00
Windows Remote Desktop VDR Server Setup	\$175.00 per hour + materials
Windows Remote Desktop VDR Server Monthly	As stated above in Annex 2 Section 2.2
Per User License Cost	\$5.03/user/month
Server Recovery Project Cost	\$175.00 per hour + materials
Bandwidth (1 Mbps Monthly Minimum)* *Bandwidth overages in any given month will be billed in 1 Mbps increments.	\$150

4. DR POWERED BY ZERTO SERVICES

4.1 Provider is responsible for the Provider hardware operation and Provider operating system support. Any additional support during server recovery and operation that may be needed is billable by Provider at a rate of one hundred seventy-five dollars (\$175) per hour, unless otherwise noted. Administrative services are billed in fifteen (15) minute increments with no minimums.

4.2 Subject to the MSA, Client has sole and exclusive control and responsibility for the determination of what data is sent to Provider and remains on the Replication & DR powered by Zerto environment.

4.3 Exclusive of the fees set forth in this Proposal, Client shall provide and incur the costs associated for the source machine that is intended to be replicated in the event of a failover.

4.4 Client shall perform regular replication testing using the Replication & DR powered by Zerto service, communicate any errors promptly to Provider and also monitor replication results and work with Provider to resolve any noted errors.

4.5 Client shall be responsible for ensuring the communication services and equipment used to connect to the Replication & DR powered by Zerto services are reliable and agrees to provide a technical environment for the required access to and use of the Services, which environment meets the standard system requirements as determined by Provider from time to time.

4.6 Client shall designate an on-site coordinator to manage day-to-day support and interactions with Provider and be responsible for addressing training, implementation and support issues related to the Services. Client is also responsible for notifying Provider of any changes in authorized personnel who can request additions, removals or other Service activities and shall notify Provider of any changes in servers, tasks, retention schedules or technical environment so that the vaulted data may be adjusted.

4.7 If Client designates a consultant to coordinate Replication & DR powered by Zerto Services activities, Client shall be responsible for the actions or breaches of the consultant and shall notify Provider promptly of any change of consultants.

4.8 Provider shall provide Client the following support services ("Support Services") in connection with the Replication & DR powered by Zerto Service: Monday to Friday, from 8:00 a.m. to 6 p.m. CST: (i) problem reporting, tracing and monitoring by Internet electronic mail; (ii) telephone support for problem determination, verification, and resolution (or instruction as to work around, as applicable) on a call-back basis; (iii) commercially reasonable efforts to diagnose and resolve defects and errors in the Services; and (iv) upgrades to the Services as may be developed in Provider's sole discretion. Support services do not include the provision of or support for products other than the Services. Fees for additional services beyond basic service rates and installation charges are listed below in the Professional Services and Other Fees table.

4.9 Provider shall use reasonable commercial efforts to provide Client access to the Services. Client acknowledges and agrees that actual access to Client's data may be delayed if Client's technical environment does not comply with the minimum requirements specified in the installation notes for the Software provided to Client including, but not limited to bandwidth availability, system I/O and processor speed. Provider shall have no obligation to provide any Services to Client if Client has: (i) deleted or modified the Software or the database tables or procedures created or maintained therein or (ii) failed to maintain the minimum technology standards required as noted in the installation notes of the Software.

4.10 Client shall be responsible for declaration of a disaster.

4.11 After the initial setup, Client shall be responsible for ensuring that continuity is maintained and for conducting all fail-over testing of Replication & DR powered by Zerto.

4.12 Provider makes no guarantees for the integrity or usability of replicated data when using Replication & DR powered by Zerto.

4.13 Provider disclaims all liability with respect to any data loss as a result of Client performing a failover test.

4.14 Client is not entitled to a credit for Provider's failure to meet any SLAs resulting from Client's failure to properly configure the Services. Replication & DR powered by Zerto is not a full disaster recovery solution; it is intended to be a component in a Client managed and executed disaster recovery and failover plan.

4.15 Client hereby acknowledges and agrees to Zerto's EULA located at <https://www.zerto.com/zerto-terms-and-conditions-product/>.

5. BURSTABLE BANDWIDTH SERVICES.

5.1 *95th Percentile Bandwidth Monitoring Procedures.* For Clients who use Provider's Datacenter Service (including co-location, dedicated and shared hosting, etc.), bandwidth is calculated in the following manner: Input and output bandwidth usage is sampled at regular five (5) minute intervals, twenty-four (24) hours per day. The total amount of traffic during the five (5) minute interval is divided by three hundred (300) seconds to get a "per second" sample. To calculate the chargeable usage, the sample data (input and output combined) is sorted in descending order. The top five percent (5%) of all of the sample data is discarded. This represents thirty-six (36) hours of bursting during a thirty-one (31)-day month. Bandwidth is billed at the very next number below the discarded numbers.

5.2 Provider will use commercially reasonable efforts to provide bandwidth usage updates via email to Client's designated contact every seven (7) days.

6. VIRTUAL SERVICES.

6.1 Pricing does not include server hardware or software costs unless otherwise noted.

6.2 Custom configuration is not included

6.3 Additional hours and administrative services are billed at one hundred seventy-five dollars (\$175) per hour, unless otherwise noted. Administrative services are billed in fifteen (15) minute increments with no minimums.

7. DATA CENTER SERVICES.

7.1 Pricing does not include server hardware or software costs unless otherwise noted.

7.2 Actual time will be charged for installation and configuration at one hundred seventy-five dollars (\$175) per hour, unless otherwise noted. Administrative services are billed in fifteen (15) minute increments with no minimums.

7.3 Additional hours and administrative services are billed at one hundred seventy-five dollars (\$175) per hour, unless otherwise noted. Administrative services are billed in 15 minute increments with no minimums.

7.4 *Client Data Center Equipment and Client Conduct.* Client shall comply with Provider Policies with respect to replacing Client Data Center Equipment and making connections thereto. Client may not make any construction changes or alterations in the Technology Center. Client shall ensure that neither it nor the Client Data Center Equipment shall cause any injury or damage to, or interference with, any person or property, including, without limitation, the Technology Center or any equipment which may from time to time be located in the Technology Center. Where any interference occurs between the Client Data Center Equipment and Provider equipment or that of a third party, Provider may make a determination of which party is responsible for such interference and, if Provider determines that Client is so responsible, Client shall take whatever action is required to eliminate the interference and shall comply with any direction given by Provider in this respect. Client shall maintain the Client Data Center Equipment in compliance with the manufacturer's specifications, applicable laws, rules, ordinances and regulations, and with applicable rules and regulations adopted by us and of which Client has received written notice, except to the extent Provider undertake to provide maintenance services for such Client Data Center Equipment pursuant to the MSA or any Exhibit thereto. IN THE EVENT THAT IT BECOMES DESIRABLE TO RELOCATE THE CLIENT DATA CENTER EQUIPMENT TO ANOTHER AREA WITHIN THE DESIGNATED TECHNOLOGY CENTER, PROVIDER SHALL PROVIDE CLIENT WITH AT LEAST THIRTY (30) CALENDAR DAYS' PRIOR WRITTEN NOTICE. CLIENT WILL COOPERATE IN GOOD FAITH WITH US TO FACILITATE SUCH RELOCATION, PROVIDED THAT SUCH RELOCATION IS BASED ON PROVIDER'S REASONABLE BUSINESS NEEDS (INCLUDING THE NEEDS OF PROVIDER'S OTHER CLIENTS), THE EXPANSION OF THE SPACE REQUIREMENTS OF CLIENT OR OTHERWISE. PROVIDER SHALL BE SOLELY RESPONSIBLE FOR ANY COSTS AND EXPENSES INCURRED BY US IN CONNECTION WITH ANY SUCH RELOCATION AND WILL USE COMMERCIALY REASONABLE EFFORTS, IN COOPERATION WITH CLIENT, TO MINIMIZE AND AVOID ANY INTERRUPTION TO THE SERVICES. NO RELOCATION MAY OCCUR WITHOUT THE MUTUAL WRITTEN CONSENT OF BOTH PARTIES, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD.

7.5 *Rules of Conduct for Colocation (not fully managed).* For Client's granted physical access to the Technology Center, such access shall at all times be subject to adherence to these standards for security and rules of conduct. Physical access to the collocation side of the Technology Center shall be limited to Client's authorized personnel, and then only to such employees or consultants of Client or technicians/vendors of Client Data Center Equipment located in the Technology Center (each a "Client Representative") which are reasonably necessary and appropriate in order to service, maintain, or replace Client Data Center Equipment. Any Client Representative accessing the Technology Center shall be deemed to agree to comply with any security and authentication processes reasonably implemented by us (including biometric security) to document access to the Technology Center and shall provide, upon request, positive photo identification. Upon Provider's request, Client shall identify the name of each Client Representative(s) who are authorized to gain access to the Technology Center or who have accessed the Technology Center. In all cases, Client shall defend, indemnify and hold us harmless from any claims or actions by

Client or Client Representative employees or agents allowed on Provider's premises. If there is a less invasive way for Client to make modifications, installations or adjustments giving rise to the need for physical access to the Technology Center, Client shall use such less invasive way in order to achieve such modifications, installations or adjustments. In the event any operation in the Technology Center ceases to function properly immediately after any Client Representative has physical access thereto, such malfunction shall be deemed to be caused by the Client Representative, and Provider shall not be deemed to be in violation of Provider's obligations under this MSA unless the Client can demonstrate by clear and convincing evidence that the malfunction or failure of the Client Data Center Equipment or software is due exclusively to Provider's actions or inactions. Client agrees to indemnify, defend and hold harmless us, Provider's agents, employees, successors and assigns, from and against any and all liability for any injury to, or death of, any person or persons or damage to property in any way arising out of, or connection with, the condition, use or access to Provider's Technology Center, excepting, however, liability caused by any defect in the Technology Center which Provider is obliged to repair and which Provider has neglected or refused to repair within a reasonable time after receipt of notice thereof. Client is responsible for the conduct of all Client Representatives while in the Technology Center. All such persons shall at all times conform to the highest standards of professional behavior, and shall not engage in any acts of sabotage, vandalism, horseplay or harassment. Client Representatives shall not access, attempt to access, or interfere with the operation of any equipment in the Technology Center other than that of Client. Client is responsible for all actions of Client Representatives that violate these provisions or cause damages to Provider or Provider's other clients. Provider reserves the right to bar access to any Client employee or agent or Client Representative who violates the provisions of this MSA or who causes damage to us or Provider's clients, or any equipment in the Technology Center.

7.6 *Excessive Power Usage*. If Client's combined A and B side power usages exceeds 80% utilization of allocated power for the A or B side ("Overage"), Client will be invoiced for the Overage at an equivalent power drop rate per the monthly recurring charges listed in the Business Services Agreement. Determination of power usage will occur when measurements of power consumption are taken on a quarterly basis through the use of industry recognized power metering tools. Quarterly power consumption reports can be provided upon Client request.

8. APPLICATION HOSTING SERVICES.

8.1 Actual time will be charged for installation and configuration at one hundred seventy-five dollars (\$175) per hour, unless otherwise noted. Administrative services are billed in fifteen (15) minute increments with no minimums.

8.2 Additional hours and administrative services are billed at one hundred seventy-five dollars (\$175) per hour, unless otherwise noted. Administrative services are billed in fifteen (15) minute increments with no minimums.

8.3 Changes to 90-day backup retention or additional storage could result in additional fees.

9. BUSINESS CONTINUITY CENTER SERVICES.

9.1 Workstations for end-user use are not included. Clients will need to provide any workstations, printers, fax and office supplies required. Provider can assist in finding a drop-ship arrangement for workstations if necessary.

9.2 Long distance phone charges are applicable and will be charged at the standard rate.

9.3 Additional hours for administration services are billed at one hundred seventy-five dollars (\$175) per hour, unless otherwise noted. Administrative services are billed in fifteen (15) minute increments with no minimums. 9.4 Upon declaration, a seven (7)-day minimum usage of the business continuity Services is required.

9.5 *Emergency Declarations*. (a) At the time of an emergency, Client will contact Provider to declare an emergency. (b) When Provider accepts the declaration, Client will be assessed the declaration fee quoted in the Business Backup + Cloud Recover Table. (c) The recovery project will then be queued on a first-come, first-served basis against other recovery projects that may have been declared. (d) Work will begin immediately on the project if no other projects are queued ahead of it or when projects ahead of it are finalized. (e) Provider does NOT oversubscribe BCC cubicles. Cubicles are dedicated to specific Client throughout the term of contract. (f) If Client cancels its emergency declaration and no work has been started on the recovery project, Provider will refund 50% of the declaration fee.

9.6 *Testing*. (a) Provider allows testing of the recovery plan for a period of forty-eight (48) hours once per six (6) months on a non-cumulative basis. (b) Declaration fees will be charged during a test. (c) Provider will charge hourly for the involvement of engineers to help test the recovery plan. (d) Provider has final approval of testing schedules

and requires a thirty (30)-day notice to initiate and allocate necessary resources to facilitate the test. (e) If testing beyond the forty-eight (48)-hour period is required, the Client's applicable declaration fee will be billed to allow for another forty-eight (48)-hour testing session. Likewise, if it is required to test your platform more than twice a year, the standard declaration fee will provide for another forty-eight (48)-hour testing session. (f) If another client declares a disaster and requests use of the facility, Provider may immediately cancel and/or terminate Client's testing, and upon request of Client will reschedule such Client testing as soon as reasonably practicable.

10. PROVIDER SENTINEL SERVICES.

10.1 Workstations for end-user use are not included. Clients will need to provide any workstations, printers, fax and office supplies required. Provider can assist in finding a drop-ship arrangement for workstations if necessary.

Long distance phone charges are applicable and will be charged at the standard rate.

10.2 Additional hours for administration services are billed at one hundred seventy-five dollars (\$175) per hour, unless otherwise noted. Administrative services are billed in fifteen (15) minute increments with no minimums.

10.3 Upon declaration, a seven (7)-day minimum usage of the business continuity Services is required.

11. HARDWARE AND SOFTWARE SERVICES.

11.1 Installation and configuration are estimated. Actual time will be charged for installation and configuration at one hundred seventy-five dollars (\$175) per hour, unless otherwise noted. Administrative services are billed in fifteen (15) minute increments with no minimums.

11.2 Additional hours for administration services are billed at one hundred seventy-five dollars (\$175) per hour, unless otherwise noted. Administrative services are billed in fifteen (15) minute increments with no minimums.

11.3 Full payment of Fees will be made by Client to Provider net thirty (30) days from the date of receipt of an invoice.

11.4 All maintenance, warranty claims and Equipment exchanges shall be conducted by Client directly with original equipment manufacturer.

11.5 Title of ownership for Equipment shall pass to Client upon final payment.

11.6 The Equipment shall be delivered F.O.B. shipping point, and Client shall be responsible for all shipping, handling, insurance and related costs.

12. MANAGED SERVICES.

12.1 Pricing is based on initial assessment. Client may incur a charge for any information omitted during the initial assessment, whether intentional or accidental, that requires additional Provider services. Additionally, pricing for Services provided assume no significant changes to the client environment, client data, or client infrastructure. If in the sole discretion of Provider, such significant changes occur during the term of the Agreement, the parties agree that Service activities and the associated price will be revised as mutually agreed to accommodate such changes.

12.2 Additional hours for administration services are billed at one hundred seventy-five dollars (\$175) per hour, unless otherwise noted. Administrative services are billed in fifteen (15) minute increments with no minimums. Client will be billed for reasonable and customary related travel expenses that may be incurred as part of the Services provided by Provider.

12.3 *CLIENT OBLIGATIONS.* Client must: (a) use the equipment in conjunction with the Services provided by Provider (hereinafter "Equipment") (b) provide Provider and its contractors with access to the Equipment (physical and logical) at all times and all hours (c) report detected Equipment failures and provide information requested by Provider, its contractors, Provider's designated point of contact, that is necessary or useful for Provider to perform its obligations hereunder (d) provide Provider and its contractors with access to Client facilities, overhead and under floor cable ducts, installation sites and Equipment as may be necessary or useful for Provider to perform its obligations hereunder, including but not limited to the Equipment (e) endorse Client's name upon any Uniform Commercial Code filings reasonably necessary to protect the interests of Provider, its contractors or assignees, if any, in the Equipment. Consistent with this obligation, Client hereby authorizes Provider or its assignee to endorse Client's name upon any such Uniform Commercial Code filings (f) obtain, as may be necessary, all permits, licenses, variances and other authorizations required by state and local jurisdictions for installation and operation of the

Equipment (g) provide adequate building, space, circuitry, and power in accordance with the standards established by Provider or the Equipment manufacturer for proper installation and operation of the Equipment located on Client premise (h) provide back-up power to the Equipment in the event of a power failure, interruption or outage, if Client desires such back-up power for Equipment located on Client premise (i) provide a well-lighted and safe working area that complies with all local safety standards and regulations for Provider employees and its contractors (j) ensure that any unit of Equipment is free of any encumbrances at the time of an exchange or removal, and remove all external attachments or objects from the unit of Equipment to be replaced before the time of exchange. Client gives up all rights to any such items not removed (k) not enter into any contract obligation or any other act or omission (either before or after agreeing to these terms) inconsistent with its obligations under these terms and conditions (l) if applicable, maintain appropriate client-specific configuration of any software (including appropriate upgrades or back-ups) related to Equipment (m) have sole and exclusive control and responsibility for the determination of what data is sent to Provider and/or remains on Provider's infrastructure (n) provide and incur the cost for additional hardware, supported operating system, Internet access and appropriate network connectivity that is needed for the Equipment and software provided by Provider (the "Software") to operate properly. Provider shall upgrade the third party software necessary to provide managed Services as purchased in the Business Service Agreement in a timely manner. Client may refuse to allow Provider to upgrade this third party software in the event that Client's existing third party software supplier does not authorize such upgrade, provided, however, PROVIDER HEREBY DISCLAIMS ANY AND ALL LIABILITY OR HARM ASSOCIATED WITH ANY FAILURE OF ANY SERVICES, SOFTWARE, HARDWARE OR ANY OTHER FAILURE RELATED, DIRECTLY OR INDIRECTLY, TO THE FAILURE OF CLIENT TO UPGRADE PROVIDER OR THIRD PARTY SOFTWARE IN A TIMELY MANNER (o) ensure the communication services and hardware used to connect to the Provider Services are reliable and agrees to provide a technical environment for the required access to and use of the Equipment, Software, and the Services, which environment meets the standard system requirements as determined by Provider from time to time (p) designate an on-site coordinator to manage interactions with Provider and be responsible for addressing training, implementation and support issues related to the Services. Client is also responsible for notifying Provider of any changes in authorized personnel who can request additions, removals or other Service activities and shall notify Provider of any changes in servers, tasks, retention schedules or technical environment so that the data may be adjusted (q) if Client designates a consultant to coordinate Services activities, Client shall be responsible for the actions or breaches of the consultant and shall notify Provider promptly of any change of consultants. (r) secure the premises and any and all Provider Equipment located on their premises. Client understands that, should it request or make any changes to Provider Equipment or Services, that such changes may result in a lower level of security and may allow unsecured access to its network. In the event of any such change, Client acknowledges and agrees that it shall assume all risks and liabilities associated with or resulting from such changes. Any change of services requires that Client initiate a service order that is reviewed and approved by Provider. (s) communicate any issues promptly to Provider and also work with Provider to resolve any noted issues.

12.4 PROVIDER OBLIGATIONS. Provider is responsible for: (a) conducting an initial assessment of the Client's environment to prepare a working proposal in the form of a Statement of Work, which document does not constitute a contract between the parties (b) providing Professional installation of services (c) providing post installation testing and verification of services and (d) using reasonable efforts to perform inspection, testing, and repair of Equipment or Services in accordance with the Agreement without undue delay or undue impact to Client's business. Provider is NOT responsible for (a) electrical work external to the Equipment or otherwise considered in-house wiring, (b) repair or replacement of failed Equipment caused by factors outside of Equipment, such as fire, accident, misuse, vandalism, water, lightening, or failure of its installation side to conform to Provider and/or Equipment manufacture specifications, (c) repair or replacement of Equipment when the Client used the Equipment for purposes other than the intended purpose, (d) repair of damage caused by the maintenance repairs performed by a person other than an Provider employee or contractor authorized by Provider, (e) relocation, alteration, additions, or removals of Equipment, parts, or features not furnished by Provider or use of Equipment with other hardware that fails to conform to Provider's specifications or (f) power or back-up power to or from the Equipment.

12.5 Provider shall provide Client the support services in connection with the managed services as described in the Business Service Agreement. Sections 12.3 and 12.4 above indicate which party is responsible for certain listed

processes, activities, and tasks as part of the Managed services solution. Subject to the terms and conditions of the agreements and **Annex 2**, each Party shall endeavor to perform its respective responsibilities in connection with the Managed services solution. Unless otherwise noted, if responsibility is shared, Provider will have the responsibility for completing the task and Client shall have the responsibility for providing information and/or decision-making authority. It is not the intent of the Sections 12.3 and 12.4 to identify and/or define every processes, activity, or task to be performed by Provider and/or Client in connection with the Managed services solutions.

12.6 Client's failure to perform its respective responsibilities in a timely manner shall relieve Provider of any and all liability that may result from such failure.

12.7 Provider does not represent or warrant that the Services provided under this proposal comply with Clients' compliance related obligations under any rules, regulations, applicable laws or similar requirements. Provider may, upon Client request, provide documentation to assist Client in its compliance related obligations.

12.8 Provider shall use reasonable commercial efforts to provide Client access to the Services. Client acknowledges and agrees that actual access to Client's data may be delayed if Client's technical environment does not comply with the minimum requirements specified in the installation notes for the Software provided to Client including, but not limited to bandwidth availability, system I/O, and processor speed. Provider shall have no obligation to provide any Services to Client if Client has: (i) deleted or modified the Software or the database tables or procedures created or maintained therein or (ii) failed to maintain the minimum technology standards required as noted in the installation notes of the Software.

12.9 *Client Premise Equipment (CPE)*. Title to and/or ownership of any CPE provided to Client by Provider and/or its licensors under a rental option shall remain with Provider or such licensors as appropriate. Client agrees not to tamper with, modify, make error corrections, or otherwise alter any CPE provided to Client under a lease or rental option, nor permit third parties not authorized by Provider or the CPE vendor to do the same. All such leased or rented CPE must be returned to Provider upon termination of the Services for any reason. Client must contact Provider within thirty (30) days of such termination (unless contacted earlier by Provider) to schedule pickup of CPE, or Client shall be deemed to have purchased such CPE and shall be invoiced for the replacement cost of such CPE.

12.10 *Control and Use of CPE*. Client agrees that it shall be bound by any vendor specific license terms and conditions related to any CPE. Where required by a vendor(s), such license terms shall be attached hereto as License Attachments to this Business Service Agreement (the "License Attachment(s)"), and made a part of the Agreement. Client acknowledges receipt of any such applicable License Attachment(s) and its responsibility to comply with the terms of such License Attachment(s) and assume all liability for compliance with such terms, including but not limited to, (a) informing all Client end-users of the terms of the License Attachment(s); (b) monitoring use of the CPE to ensure compliance with the terms thereof; and (c) maintaining the distribution and security of any user identification and/or passwords necessary to access any CPE. Provider disclaims all liability to vendors for breaches of such License Attachment(s) by Client.

12.11 *Title and Risk of Loss of CPE*. Title to Equipment remains with Provider or its assignee. Risk of loss of CPE or damage to any CPE, provided to Client on a rental basis as an integral part of Provider Managed service and is assumed by Client, except when such damage is caused solely by Provider in the installation or maintenance of such CPE. Provider retains title and all rights to such CPE.

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12.12 *Insurance of CPE.* Client will, at its own expense, obtain and maintain, during the term of the MSA, insurance coverage as set forth in the Terms and Conditions: Data Center. Client will obtain and maintain the required coverage with insurers with A.M. Best ratings of not less than A-. Insurers must be authorized to do business in all jurisdictions where work is performed under this agreement. Provider will be named as an additional insured on all liability policies. Each policy will contain a waiver of subrogation in favor of Provider. Client will provide a certificate of insurance to Provider within fifteen (15) days after execution demonstrating all required coverages are in force and will not be canceled without first giving Provider prior written notice according to policy provisions. All policies will be primary to any insurance or self-insurance Provider may maintain for acts or omissions of Client or anyone for whom Client is responsible. The required insurance coverage provided by Client pursuant to this Agreement may not be construed as a limitation on Client responsibility or liability or as a cap on damages. (This Section applies to Equipment only).

12.13 *Moves of CPE.* Client shall not move, from the street address at which it is located, any item of CPE maintained under this Agreement without Provider's prior written consent.