

Attachment "D"
Service Addendum
Managed Backup Services Terms and Conditions

- 1. SERVICE OFFERING.** Level365 Holdings LLC agrees to provide the Managed Backup services ("Services") referenced in this agreement through its applicable subsidiaries and affiliates (herein, "Level365"). This Agreement (as defined below) between you ("you" may also be referred to as "Customer") and Level365 sets forth the legal rights and obligations governing Level365 provisioning or delivering Services to you and your use of those Services. Managed Backup Services are provided by Level365 pursuant to the Master Service Agreement ("MSA"), which are incorporated herein by reference, in addition to these terms and conditions. Please review the MSA set forth at www.level365.com, under the heading "Terms and Conditions." This Agreement consists of the terms and conditions set forth herein, the MSA, and any other applicable terms and conditions for other Level365 Services ordered or used by you, which are listed at <http://www.level365.com> (collectively, and as applicable, the "Terms and Conditions"), along with any applicable tariffs, which are fully incorporated herein (collectively, the "Agreement"). For any Tariffed Services, in the event of a conflict between the Terms and Conditions and a tariff, the tariff shall control unless cancelled, upon which the Terms and Conditions shall control. In the event of any inconsistency between the terms and conditions contained herein and the MSA, and only to the extent of the inconsistency, these terms and conditions shall control. In the event of any inconsistency between the terms contained herein and other applicable documents, and only to the extent of the inconsistency, the additional terms set forth in such other applicable documents shall control. For example, to the extent early termination charges for a product are detailed in the other Product Terms and Conditions located at www.level365.com, those terms shall control to the extent inconsistent with the terms contained herein. These Terms and Conditions shall govern all Managed Backup Services ordered by you and provided by Level365, including additional Managed Backup Services added to your existing account. Your acceptance herein and/or use of the Services constitutes acceptance of these Terms and Conditions.
- 2. TERM/TERMINATION.** This Agreement shall become binding and effective upon the earlier of your acceptance or your first payment for Services, and shall continue on a month-to-month basis until such time as terminated in accordance with the terms hereof. Either party may terminate the agreement and your subscription at any time for any reason or no reason upon 30 business days notice; provided that, in the event you have agreed to a minimum term commitment, if you terminate Service prior to the expiration of the committed term, or if Level365 terminates the Agreement for cause (including non-payment), then you will be subject to an early termination charge of fifty percent (50%) of the monthly recurring charges (MRC) associated with the Services for the remaining months in the term or any renewal term. Unless you notify Level365 at least thirty (30) business days prior to the end of any committed term or renewal term of your intention not to renew the Services, the term for the Services shall automatically renew for identical successive terms.
- 3. RATES AND PAYMENT.** You agree to pay Level365 the then-current monthly charges for the Service in accordance with the Managed Services Pricing Terms, including any overage rates for additional resources utilized by Customer in excess of Customer's configuration allocation, at such rates as established by Level365 from time to time. You may find information regarding current rates by calling (317) 810-0024 or visiting our website at www.level365.com. Charges for Managed Backup Services do not include costs associated with connecting through an available Internet Broadband connection. Notwithstanding the foregoing, if Customer has executed a Service Order Agreement ("Service Order"), then the rates established in the Service Order will be valid during the initial Term and any auto-renewal term, subject to any overage charges for additional resources, as specified above.
- 4. SERVICE AND SERVICE USE.**

 - 4.1. Service Description/Upgrades.**

 - 4.1.1. Description.** Managed Backup Service is an enterprise-class managed data backup and recovery solution. Additional product descriptions, features, and pricing are set forth at <http://www.level365.com>.
 - 4.1.2. Billing for Upgrades.** Additional charges apply for upgrades or increase in backup capacity which result in additional resources to Customer's backup configuration. Billing for additional resources will be effective as of the date of the upgrade. Billing for reductions in backup resources will become effective on the next billing cycle after the change has been made. In any billing cycle in which backup capacity or configuration upgrades are performed, Customer will be billed the applicable rate for the highest level of resources selected by Customer within the billing cycle. If Customer has committed to a minimum Service Term, then Customer may not reduce below the committed baseline level as agreed in the SOA.
 - 4.2. Packages.** Customers may order Managed Backup Services by going through a custom configuration process, or by selecting pre-defined Managed Backup Packages. Managed Backup Packages may be subject to minimum term commitment as detailed in the Service Order Agreement. Services purchased under minimum term commitments are subject to early termination charges as set forth above in Section B above.
 - 4.3. Acceptable Use Policy.** Use of the Services is subject to the Level365 Acceptable Use Policy. You agree to be bound by the Level365 Acceptable Use Policy ("AUP") found at <http://www.level365.com> and which is incorporated by reference herein. You acknowledge that you have read the AUP and agree to be bound by the current version of the AUP, which may be updated from time to time. In addition to, and without limiting the terms of the AUP, Customer may not cycle through IP addresses for the purpose of spamming or other improper or illegal uses.
- 5. Limitations and Additional Requirements.**

 - 5.1.** Customer is solely responsible for the encryption and additional backing up of all Customer data. Level365 does not have or need access to any Customer data.
 - 5.2.** Level365 will not be liable for any losses or damages, including but not limited to loss of Customer data, due to any changes made by Customer to its backup configuration or other use of the Service.
 - 5.3.** Level365 will notify Customer when software updates are required. The notification shall be sent to the email address provided on Customer's account. LEVEL365 will not be liable for any losses or damages resulting from Customer's failure to perform updates. Further, Level365 may in its sole discretion, perform updates as needed to protect Level365's network and servers.
 - 5.4.** Customer must respond in a timely manner to email alerts from Level365 monitoring. Level365 reserves the right to shutdown or restart Customer's failed backups or data restoration attempts in the event Customer does not respond to Level365 alerts and escalations. Level365 will not be liable for any losses or damages incurred by Customer due to Customer's failure to respond to Level365 alerts.
 - 5.5.** Customer agrees to use one of the provided encryption protocols for all customer backup activities. It is the customer's responsibility to choose an encryption password and to maintain the password in a secure fashion. Customer acknowledges that Level365 cannot restore data for which the customer has lost the associated password.

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6. **Software License.** As part of the provision of the Services, Level365 will provide Customer with the agent software (the "Software"), which must be installed on the Customer's system. Customer's use of the Software is subject to the terms and conditions of the End User License Agreement set forth within the backup agent, and incorporated herein, and Customer specifically agrees to such terms and conditions.
7. **Customer Responsibilities.**
 - 7.1. **General Responsibilities.** Customer will perform regular backups using the agent Software provided by Level365 to hardware that Level365 owns and maintains at one of Level365's data center. Customer acknowledges that Level365's provision of the Services does not include the requirement or option to purchase the hardware utilized in connection with the Services, during or after termination of this Agreement. Customer will report any errors in executing such backups promptly by fax or e-mail to Level365. Customer shall implement reasonable security and environmental precautions to ensure a high level of system availability and data protection and recovery.
 - 7.2. **Customer Covenant.** Customer further covenants that it shall not place any data on a backup server that: (a) infringes on the intellectual property rights of any third party or any rights of publicity or privacy; (b) violates any law, statute, ordinance or regulation (including without limitation the laws and regulations governing export control, unfair competition, antidiscrimination or false advertising); (c) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (d) is obscene, child pornographic or indecent; or (e) contains any viruses, trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information. Customer shall defend, indemnify and hold Level365 and its third party suppliers harmless against any third party claim, action, suit or proceeding alleging any breach of the covenants contained herein.
8. **Termination for Cause.** If Customer defaults in the performance of or compliance with any of its material obligations under the Agreement and such default has not been remedied or cured within thirty (30) days after written notice of such default, Level365 may immediately terminate the Agreement in addition to its other rights and remedies under law. Level365 may also terminate this Agreement, effective immediately upon written notice to Customer, if Customer breaches its obligations under the Customer covenant or use restrictions in the End User License Agreement.
9. **Effects of Termination.** Upon termination or expiration of the Agreement for any reason, all licensed rights granted in the Agreement will immediately cease to exist, and Customer must promptly discontinue all use of the Services, erase all copies of the Software from Customer's system and certify in writing to Level365 that it has fully complied with these requirements. In addition, upon Customer's request and payment of the applicable fee to be agreed between the parties, the Customer's data can be exported to a mobile device and returned to Customer.
10. **Warranty.** The sole and exclusive warranty is that the Services provided under the Agreement shall be performed in substantial compliance with Level365's standard specifications. Notwithstanding the foregoing, the security mechanisms implemented by Level365 have inherent limitations and Customer is solely responsible for determining that this mechanism sufficiently meets Customer's security and operational needs.
11. **Disclaimer.** EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 5, LEVEL365 EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES AND SOFTWARE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. LEVEL365 DOES NOT WARRANT THAT CUSTOMER'S USE OF THE SERVICES OR SOFTWARE WILL BE ERROR-FREE OR UNINTERRUPTED. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTY IN SECTION 10.
12. **Limitation of Liability.** IN NO EVENT WILL LEVEL365 OR ITS THIRD PARTY SUPPLIERS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THE AGREEMENT, THE SERVICES OR THE SOFTWARE. LEVEL365 AND ITS THIRD PARTY SUPPLIERS ALSO SHALL NOT HAVE ANY LIABILITY FOR ANY PROGRAMS OR DATA USED WITH THE SOFTWARE, INCLUDING WITHOUT LIMITATION ANY LOSS OF PROGRAMS OR DATA OF ANY KIND OR THE COSTS OF RECOVERING SUCH DATA. THE TOTAL CUMULATIVE LIABILITY OF LEVEL365 AND ITS THIRD PARTY SUPPLIERS IN CONNECTION WITH THIS AGREEMENT AND THE SOFTWARE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF TOTAL FEES PAID FOR THE SERVICES AND SOFTWARE BY CUSTOMER DURING THE PERIOD OF THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURRED. CUSTOMER ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT LEVEL365 WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. THIS PARAGRAPH SHALL BE INTERPRETED IN THE BROADEST SENSE TO LIMIT THE LIABILITY OF LEVEL365 AND ITS SUBCONTRACTOR(S).
13. **Force Majeure.** Level365's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, acts of God, governmental restrictions, power failures, or damage or destruction of any network facilities or servers, shall not be deemed a breach of this Agreement.
14. **Assignment.** Customer may not assign or transfer, by operation of law or otherwise, any of its rights under this Agreement (including its licenses with respect to the Software) to any third party without LEVEL365's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void.
15. **Survival.** Sections 5 through 12 above shall survive any termination or expiration of the Agreement.