



**SUPPLEMENT - Client Services for XBack Services
TO THE
MASTER SERVICE AGREEMENT**

1.

This Supplement – Client Services for XBack to the Master Service Agreement (“Client Supplement”) is entered into effective as of the date set forth in the signature block (“Effective Date”) of the Client Service Order or written quote for purchase of Services (as defined below) and/or goods (collectively referred to herein as “Service Order”) by and between Xirtix Consulting, LLC (“Service Provider”) and the client identified and signing the Service Order (“Client”) for the provision of certain services (“Services”), as set forth therein, to Client by Service Provider and its Affiliates. Service Provider’s and Client’s “Affiliates” shall include, but is not limited to all of its parents, subsidiaries, direct and indirect parent entities, related entities, partners, members, managers, joint venturers, officers, directors, employees, agents, consultants, trustees, trustors, administrators, estates, representatives, beneficiaries, predecessors, successors, and assigns.

As used in this Client Supplement and in any document incorporated into the Client Supplement by reference, “Agreement” means the Master Service Agreement by and between the parties (“MSA”), its attachments, other documents referred to herein by reference, including, without limitation, the Service Order accepted by Service Provider pursuant to the terms hereof and any and all supplements. If any ambiguity, inconsistency, or conflict exists or arises between the provisions of this Client Supplement and any of the provisions of the MSA, the provisions of the MSA shall govern.

If either of the parties agree to terminate the Supplement for any reason set forth herein, Client understands that backup services up to and including offsite storage will terminate. Client understands that data will no longer be backed up locally or replicated and stored off site. Client agrees to migrate its backup processes and offsite data to new services in accordance with the procedures set forth in Section 16 below.

It is understood that any and all Services requested by Client that fall outside of the terms of this Supplement will be quoted and billed as separate, individual Services in accordance with Service Provider’s normal service rates as defined under a separate agreement.

2. **Services Provided Under Contract**

Service Provider agrees to monitor and manage certain backup services and cloud services (“Services”) for client data as listed in the Service Order. Service Provider grants Client a right to receive the Services. Service Provider agrees that the Services will be for the non-exclusive use by the Client. Service Provider may place Service Provider services in the environment as necessary to provide Services.

- a. The core software and hardware used for offsite replication and Disaster recovery, (“Cloud Services”) is located on an infrastructure that is provided by a hosting company (“Hosting Company”).
- b. Hosting Company may upgrade and update allocated resources (collectively referred to herein as “Updates”) to the Services. Some of the Updates will occur automatically, while others may require Client to schedule and implement the Updates. The Updates may also mean that Client needs to upgrade its hosted services in order to make efficient use of the Services. In the event Client will need to upgrade its hosted services, Service Provider will provide Client with advance notification upon notice from Hosting Company.
- c. Service Provider recognizes that Client may have legitimate business reasons for not upgrading to an updated version of the Services as soon as the version becomes available. However, Service Provider will not support earlier versions of the Services indefinitely. When an earlier version of the Services is used by Client is at end-of-life, Service Provider may remove Client’s access to the earlier version of the Services and upgrade Client to an updated version of the Services.
- d. Allocated Resources
Service Provider will provide an allocated pool of resources in accordance with the Service ORder. Increases in allocated resources will be added to the price list as requested or required at the beginning of the month when Service Provider provisions said resources.
- e. Disaster Resources

In the event Client requests disaster resources ("XBack Cloud DR"), Service Provider will provide Client these resources in accordance with the Service Order and Service Provider will bill Client in arrears any fees associated with these resources.

7. Conditions of Use

The Services provided to Client are non-exclusive, non-transferable, and are for Client's internal business use only. Client's right to use the Services is subject to the following conditions. Client may not:

- a. transfer to any other person any of its rights to use the Services;
- b. sell, rent or lease the Services;
- c. Make the Services available to anyone who is not an Authorized User. An "Authorized User" is defined as an employee of Client, or of a person to whom Client has outsourced services, who is authorized to access the Services as either a named or concurrent user.
- d. Use the Services in a way that violates any criminal or civil law.

8. Acceptable Use Policy

Neither Client nor Authorized Users may use the Services:

- a. in a way prohibited by law, regulation, governmental order or decree;
- b. to violate the rights of others;
- c. to use the Services to try to gain unauthorized access to or disrupt any service, data, account or network by any means;
- d. to falsify any protocol or email header information (e.g., "spoofing");
- e. to spam or distribute malware;
- f. in a way that could harm the Services or impair anyone else's use of the Services; or
- g. for any high-risk use (where failure or fault of the Services could lead to death or serious bodily injury of any person, or to cause severe physical or environmental damage).

9. Client Data Ownership

- a. Client must provide all data ("Client Data") for use in the Services, and Service Provider is not obliged to modify or add to the Client Data. Client is solely responsible for the content and accuracy of the Client Data.
- b. The Client Data belongs to Client, and Service Provider makes no claim to any right of ownership in it.
- c. Service Provider may use the Client Data strictly as necessary to carry out its obligations under this Supplement, and for no other purpose. However, Service Provider may observe and report back to Client on Client's usage of the Client Data, and make recommendations for improved usage of the Services.

10. Data Backup Considerations

1. The XBack Service operates at the guest level of the operating system. The system backups guest operating systems and volumes. The service does not backup the Host infrastructure.
2. Service provider is not responsible for the availability of data that is impacted due to:
 - a. Accidental Exclusion of Data as a result of permissions changes or data relocated from the defined volumes in the agreement
 - b. Deliberate Exclusion of Data that the Service Provider has been directed to not include.
 - c. Inadvertent or Deliberate exclusion of volumes and operating systems and guests that are not defined in this agreement.
 - d. All Data that is backed up will be communicated to the client and to Xirtix Consulting through the standard ticketing system. Negligence on the part of the client in communicating, in writing, data outside of the Supplement that needs to be added to the Supplement

11. Backup Data Retention

1. If Xirtix provides data backup or management of Client's backup systems, Xirtix will make commercially reasonable efforts to complete each backup occurring within the defined retention period of your Service Order. In no instance shall this period be longer than one year.
2. Backed up data is like a snapshot of files at a specific point in time and that snapshot is retained for the periods defined in your Service Order. A restoration from a backup will replace only the files contained in the then current retention period. For backups performed outside of Aldridge Data Centers, Client agrees to complete all recommended and necessary steps to ensure successful data backup. Certain exceptions, including but not limited to backup exceeding time window, files open, backup client not accessible, backup system failure, or inability to restore from backup, may from time-to-time cause interruption to any backup service. Accordingly, Aldridge does not warrant the validity or availability of the data that is being backed up.

12. Archiving

1. Client acknowledges that data backup and continuity services are not the same as data archiving services. Data backups are used to restore data in case it is corrupted or destroyed within the backup retention period. In contrast, data archives store information that is not needed for everyday operations but may occasionally need to be accessed, is still important and necessary for future reference, or must be retained for regulatory compliance. Client assumes complete responsibility and control for archiving Client's data.

13. Data Restoration:

1. Service Provider will be notified of a need for restoration through the raising of a Service Request by contacting the Service Department or emailing our Service Desk. This request will be addressed in accordance with the Client's normal SLA. Restore times are dependent on the amount of data to be restored; the more data needs to be recovered, the longer the restore process will be. There are no guaranteed times for the transfer and restoration of this data.
2. Data consistency can be defined as Crash Consistent "CC" or VSS Consistent "VSS". VSS consistent data is data that is backed up using agents that are 'Data Aware'. Crash Consistent is a backup consistent with 'unplugging' the system. Certain applications, such as SQL and Exchange use specific agents to achieve the VSS state. Items without these agents may be Crash Consistent.

14. Data Disasters:

- a. Client understands that the XBack Cloud Replication is a Disaster solution, not a failover solution. The utilization of the XBack Cloud Replication transfers the production systems out of the client premises. Once these systems are live, the systems cannot return to the client premises until all Data has been replicated back to the client premise. Service Provider provides no other SLA other than best efforts on returning the systems back to the production environment.
- b. Client understands that the XBack Cloud Replication is limited in connectivity to the connectivity provided by the client's existing infrastructure.
- c. Client agrees to the development of a "Run Book" to provide a specific guideline of the roles and responsibilities during a data disaster. Paramount in this Run Book is the designation of a single person or a 'call tree' of individuals that can call a Disaster. Service Provider is exempt from stated SLA's unless this run book has been completed and agreed upon by Service Provider. Fees for the development of this documentation is included in the Pricing Schedule and are billed monthly, in arrears and due on receipt.
- d. Client understands that local replica servers and DR Servers use asynchronous replication which prevents the possibility of 100% real time data availability in the event of a failover or disaster.
- e. Data disasters are unique events. Fees for these services these events are included billed at our standard current pricing. Schedule and are billed monthly, in arrears and due on receipt.

15. Client Responsibilities

- a. Client must provide Service Provider with all information, access, and full good faith cooperation reasonably necessary to enable Service Provider to deliver the Services, and must do anything that is identified by Service Provider as Client's responsibility. If Client fails in its responsibilities set forth herein, Service Provider will be relieved of its obligations to the extent that the obligations are dependent upon Client's performance.
- b. Client agrees to maintain proper licensing for all software used in the Service that are not provided by the Service Provider and Hosting Company.
- c. Client agrees that all Authorized Users will use the Services in accordance with this Supplement.
- d. Client must have sufficient internet bandwidth for functionality of the Services. Properly configured bandwidth as required for transport of the backed up data must be available 100% of the time during the required transmission period and must be of sufficient size and capacity to get the data off site. Failure to have this service available as described may result in loss of off-site data on behalf of the Client. Client Agrees to have sufficient bandwidth such that data replication can be completed at a minimum of once every 24 hours.
- e. Client must maintain sufficient computing resources, local storage and internal network bandwidth for the proper functioning of local (on-site) components of the XBack Services.
- f. Client understands that offsite replication is dependent also on the rate of change of data. Service Provider will be responsible for maintaining only the data that is contained in or successfully transferred to the remote vault site.
- g. Service Provider shall not be responsible if the Services do not perform due to Client's bandwidth or other hardware and software deficiencies, conflicts or limitations.

16. Service Availability and Limitation Liability

Service Provider will use commercially reasonable efforts to arrange that the Services are available each month. The Services will be deemed unavailable if (i) the Client is unable to transmit and receive data to or from the Hosting Company; and (ii) such inability has been communicated to the Provider in sufficient detail to allow the Service Provider to open a case file in respect thereof. Services shall not be deemed unavailable (without limitation) in the event of any of the following:

- a. Any circumstances whatsoever which are not within the reasonable control of Service Provider or Hosting Company; Force majeure events (e.g. war, strike, weather event such as flood, tornado, and hurricane; etc.);
- b. Virus activity and hacking attempts;
- c. In accordance with a court order or any requirements of any authority or other competent local authority;
- d. Periods of scheduled or emergency maintenance on Provider-provided infrastructure of which the Client has been notified;
- e. Client being suspended or disabled under any of the terms of set forth in this Supplement
- f. Failure of the Client's or Authorized User's connection to the Hosting Company's network (e.g. via the public internet or the Client's own network) or related problem beyond the Hosting Company's network demarcation point (i.e. the extension from the Hosting Company's infrastructure to the router located in the Hosting Company's data center that provides the outside interface for each of Hosting Company's WAN connections to the backbone providers);
- g. Inconsistencies in the environment or unavailability that result from changes in the Clients source environment, including either intentional or accidental connection or disconnections to and from the environment; Failure or malfunction of equipment, software, or other technology not owned or controlled by Service Provider, Client or Hosting Company;
- h. A malfunction that results from any action or inactions of Client;
- i. A malfunction that results from anyone gaining access to the Services by means of Client's passwords or equipment;

In no event shall Service Provider be held liable for indirect, special, incidental or consequential damages arising out of service provided hereunder, including but not limited to loss of profits or revenue, loss of use of equipment, lost data, costs of substitute equipment, or other costs. In no event shall Service Provider be liable for failures of the Hosting Company.

Client's sole and exclusive remedy for any unavailability or non-performance of Services is the prompt and professional resolution of the failure by Service Provider or termination of the Supplement, as set forth below.

17. Service Disabling

- a. If the Services are infected, hacked, or are compromised in any way, or if it is determined by the Hosting Company that there is a potential threat to the hosting network or any other customers, the Hosting Company will make commercial reasonable efforts to notify the Service Provider and may in its sole discretion, disable the Services until the Service Provider takes the appropriate actions to resolve the issue.
- b. The Service Provider may disable the Services at any time if the Provider reasonably believes that the Client has violated the Service Provider's Acceptable Use Policy as set forth herein.

18. Termination of Supplement.

If either party terminates this Supplement, as hereinafter provided, the Service Provider will assist Client in the orderly termination of Services, including timely transfer of the Services to another designated provider. Client agrees to pay Service Provider any additional fees, pro-rata billing past the contract termination date and standard time and materials billing rates + costs for rendering such assistance.

a. Termination by Client

Client may terminate this Supplement upon 90 days written notice to Service Provider. If Client so terminates this Supplement, then at Client's election, Client will either (i) pay to Service Provider immediately upon cancellation an amount equal to the outstanding remaining fees payable by Client to Service Provider under this Supplement; or (ii) assume all of Service Provider's remaining obligations under its agreements with Hosting Company providing hosting company allows such an arrangement. If Client elects to proceed under (ii) above, Service Provider agrees to immediately assign to Client upon cancellation all of Service Provider's rights and interests under its agreements with Hosting Company and to do such other acts and things as may be reasonably necessary or required to transfer such agreements to Client.

b. Termination by Service Provider

Service Provider may terminate this Supplement with 90 days prior written notice to Client. If Service Provider so terminates this Supplement, then at Client's election, Service Provider agrees to assign to Client all of Service Provider's rights and interests under its agreements with Hosting Company and to do such other acts and things as may be necessary or required to transfer such agreements to Client.

c. Data Deletion upon Termination

UPON THE TERMINATION FOR ANY REASON, SERVICE PROVIDER WILL DELETE ALL OF CLIENT'S DATA AND SOFTWARE STORED IN THE CLOUD BY SERVICE PROVIDER. THE CLIENT IS RESPONSIBLE FOR MIGRATING CLIENT'S DATA AND SOFTWARE RESIDING ON SERVICE PROVIDER'S INFRASTRUCTURE PRIOR TO THE TERMINATION OF THIS SUPPLEMENT.

Client acknowledges that it takes an average of 60 – 90 days to migrate Client's data stored by Service Provider to an alternate hosting company and Client hereby releases, discharges, and holds harmless Service Provider for any loss of data due to Client's failure to provide the sufficient time to migrate said data.

d. Software License Discontinuance

Upon the termination of the Supplement and Client's termination of the Services under agreement with the Hosting Company, Client will immediately uninstall and immediately discontinue all use of the software provided by the Hosting Company and Service Provider.

19. Acceptance of Supplement

This Supplement covers only those Services described herein.