

**SUPPLEMENT – CLIENT SERVICES FOR BACKUP****TO THE MASTER SERVICE AGREEMENT****1. Preamble**

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. As used herein, “Service Order” has the same meaning as set forth in the MSA, and includes any written quote accepted by Client.

**NOTICE:** 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 18 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 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, 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.

### **3. Payment Terms**

All invoices for Services provided under this Supplement are due upon receipt. Payment not received within thirty (30) days of the date of the invoice is past due. Service Provider reserves the right to suspend Services when an invoice becomes sixty (60) days past due. Monthly recurring fees are billed in advance. Usage-based fees, including but not limited to additional allocated resources and disaster recovery resources, are billed in arrears. All payment terms are subject to the provisions of the MSA.

### **4. Term and Renewal**

The term of this Supplement shall be as set forth in the Service Order (“Service Term”). Upon expiration of the Service Term, this Supplement shall automatically renew on a year-to-year basis unless either party delivers written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current Service Term or renewal period. The term of this Supplement shall be subject to and governed by the term provisions of the MSA.

### **5. Confidentiality**

All confidentiality obligations of the parties with respect to information exchanged in connection with this Supplement, including Client Data, shall be governed by the Nondisclosure provisions of the MSA. Service Provider shall not disclose Client Data to any third party except as necessary to perform the Services, as required by applicable law, or as authorized in writing by Client. Service Provider’s obligations under this Section survive termination of this Supplement.

### **6. Security**

Service Provider shall implement and maintain commercially reasonable administrative, physical, and technical safeguards to protect Client Data stored or transmitted through the XBack Services. Such safeguards shall be appropriate to the nature of the data and consistent with industry standards for managed backup and disaster recovery services. Service Provider’s security obligations under this Supplement are limited to those systems and environments under its direct management. Client is solely responsible for the security of its own systems, endpoints, credentials, and network infrastructure. In the event of a security incident affecting Client Data, the parties’ respective rights and obligations shall be governed by the Data Breach Liability provisions of the MSA.

### **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**

Client’s and all Authorized Users’ use of the XBack Services is subject to the Acceptable Use Policy set forth in Section 15) of the Master Service Agreement, which is incorporated herein by reference. In addition to the prohibitions set forth in the MSA, neither Client nor Authorized Users may use the XBack Services for any high-risk use where failure or fault of the Services could lead to death or serious bodily injury of any person, or cause severe physical or environmental damage. Service Provider may disable the XBack Services immediately upon discovery of a material violation of the MSA Acceptable Use Policy or the additional restrictions set forth herein, consistent with Section 17 of this Supplement.

### **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**

- a. The XBack Service operates at the guest level of the operating system. The service backs up guest operating systems and volumes. The service does not back up the host infrastructure.
- b. Service Provider is not responsible for the availability of data that is impacted due to:
  - 1. accidental exclusion of data as a result of permissions changes or data relocated from the defined volumes in the Service Order;
  - 2. deliberate exclusion of data that Service Provider has been directed not to include;
  - 3. inadvertent or deliberate exclusion of volumes, operating systems, and guests that are not defined in this Supplement; or
  - 4. Client’s failure to communicate in writing, through the standard ticketing system, data outside of this Supplement that needs to be added to the Supplement.

### **11. Backup Data Retention**

- a. If Service Provider provides data backup or management of Client’s backup systems, Service Provider will make commercially reasonable efforts to complete each backup occurring within the defined retention period of the Service Order. In no instance shall this period be longer than one (1) year.

b. 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 the Service Order. A restoration from a backup will replace only the files contained in the then-current retention period. 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, Service Provider does not warrant the validity or availability of the data that is being backed up.

c. **Backup Testing.** Service Provider strongly recommends, and Client is encouraged to authorize, periodic restore tests to verify the validity and recoverability of backed-up data. Client acknowledges that testing the entire backup stack is not practicable; accordingly, restore testing under this Section consists of spot testing of a representative subset of backed-up data. Where specified in the Service Order, Service Provider will conduct spot restore tests on a twice-yearly basis. Client acknowledges that a positive spot test result for a subset of data does not guarantee the recoverability of all backed-up data. Service Provider's liability for any failure to recover data from an untested or partially tested backup is subject to the limitations set forth in Section 16 of this Supplement and MSA Section 13.

## 12. Archiving

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

a. Service Provider will be notified of a need for restoration through the raising of a Service Request by contacting the Service Department or emailing the 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 that needs to be recovered, the longer the restore process will be. There are no guaranteed times for the transfer and restoration of data.

b. 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 XBack Cloud Replication is a disaster solution, not a failover solution. The utilization of 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 premises. Service Provider provides no SLA other than best efforts on returning the systems back to the production environment.

b. Client understands that XBack Cloud Replication is limited in connectivity to the connectivity provided by Client's existing infrastructure.

c. Client agrees to the development of a "Run Book" to provide specific guidelines for 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 authorized to declare a Disaster. Service Provider is exempt from stated SLAs

unless this Run Book has been completed and agreed upon by Service Provider. Fees for the development of this documentation are billed monthly in arrears and are due upon 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. All fees for disaster response services are billed at Service Provider's then-current standard service rates, billed in arrears upon completion of services, and due upon 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 such obligations are dependent upon Client's performance.
- b.** Client agrees to maintain proper licensing for all software used in the Services that is not provided by Service Provider or 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 Client. Client agrees to have sufficient bandwidth such that data replication can be completed at a minimum of once every twenty-four (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 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 of 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 Service Provider in sufficient detail to allow Service Provider to open a case file in respect thereof. Services shall not be deemed unavailable in the event of any of the following:

- a.** any circumstances whatsoever that are not within the reasonable control of Service Provider or Hosting Company, including force majeure events (e.g., war, strike, flood, tornado, hurricane, or other weather events);
- b.** virus activity and hacking attempts;
- c.** compliance with a court order or any requirements of any governmental or competent local authority;

- d. periods of scheduled or emergency maintenance on Service Provider-provided infrastructure of which Client has been notified;
- e. Client being suspended or disabled under any of the terms set forth in this Supplement;
- f. failure of Client's or Authorized User's connection to the Hosting Company's network (e.g., via the public internet or Client's own network) or related problems beyond the Hosting Company's network demarcation point;
- g. inconsistencies in the environment or unavailability resulting from changes in Client's source environment, including either intentional or accidental connection or disconnection to and from the environment, or failure or malfunction of equipment, software, or other technology not owned or controlled by Service Provider, Client, or Hosting Company;
- h. a malfunction resulting from any action or inaction of Client; or
- i. a malfunction resulting 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 SERVICES 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. SERVICE PROVIDER'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS SUPPLEMENT SHALL BE SUBJECT TO AND GOVERNED BY THE LIMITATION OF LIABILITY PROVISIONS SET FORTH IN THE MSA.**

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 this Supplement, as set forth in Section 18 below.

### **17. Service Disabling**

- a. If the Services are infected, hacked, or 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 commercially reasonable efforts to notify Service Provider and may, in its sole discretion, disable the Services until Service Provider takes the appropriate actions to resolve the issue.
- b. Service Provider may disable the Services at any time if Service Provider reasonably believes that Client has violated Service Provider's Acceptable Use Policy as set forth in Section 8 of this Supplement.

### **18. Termination of Supplement**

If either party terminates this Supplement, as hereinafter provided, 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 plus costs for rendering such assistance.

- a. **Termination by Client.** Client may terminate this Supplement upon ninety (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, provided Hosting Company permits such an arrangement. If Client elects to proceed under option (ii) and Hosting Company does not permit such assignment within thirty (30) days of Client's election, Client shall be deemed to have elected option

(i) and all outstanding remaining fees shall be immediately due and payable. If Hosting Company permits assignment, 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 ninety (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 TERMINATION FOR ANY REASON, SERVICE PROVIDER WILL DELETE ALL OF CLIENT'S DATA AND SOFTWARE STORED IN THE CLOUD BY SERVICE PROVIDER. 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 sixty (60) to ninety (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 sufficient time to migrate said data.

**d. Software License Discontinuance.** Upon the termination of this Supplement and Client's termination of the Services under its agreement with the Hosting Company, Client will immediately uninstall and 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. Client's execution of a Service Order for Services covered by this Supplement, or Client's acceptance or use of such Services, constitutes Client's agreement to be bound by the terms of this Supplement, whether or not Client has separately signed this Supplement. By purchasing or activating any Service covered herein, Client acknowledges that it has had the opportunity to review this Supplement and agrees to its terms in their entirety. Service Provider reserves the right to amend this Supplement from time to time in its sole discretion. The most current version of this Supplement is published at [www.xirtix.com/about-us/termsandconditions](http://www.xirtix.com/about-us/termsandconditions) and supersedes all prior versions. Continued use of Services following publication of an updated Supplement constitutes Client's acceptance of the amended terms.

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