

Service Specific Terms and Conditions for the Provision of Managed Backup Software Services

These Specific Terms and Conditions for Managed Backup Software Services form Your Agreement with the Service Provider. Together with the Standard Terms and Conditions and the Order Form.

In line with the Managed Backup Software supplier terms and conditions to the Service Provider, the Service Provider is unable to accept any changes, additions or deletions to these Service Specific Terms.

1. Interpretation

1.1. In this agreement the following words will have the following definitions:

Devices means (whether physical or virtual) a server, system, workstation, computer, mobile device, or end point upon which or through which the Software is accessed or used and/or on which the Software is installed.

Documentation means the then-current official user documentation prepared and provided to You on the use of the Software and Services, which documentation the Service Provider may update from time to time.

Fair Use Policy means up to 2TB (2000GB) of storage per server. Excess storage over and above 2TB (2000GB) storage per server, pooled across Your backup estate will incur additional monthly fees at the rate detailed on Your Order Form.

Sales Order means Your Order Form for the Services.

Services means the Managed Backup Software services as detailed on the Order Form.

Software Provider means the Service Provider's supplier of software.

Software means the object code versions of the product and any other downloadable software provided by under this Agreement, together with the updates, new releases or versions, and modifications or enhancements, owned and licensed by the Service Provider's supplier pursuant to this Agreement.

Support means the maintenance or support for the Software as detailed in the Order Form.

Term means the Minimum Period as defined on the Order Form or Standard terms and Conditions.

User means an individual authorized by You to use the Software, Services, and Documentation, for whom You have purchased a license or to whom You have supplied a user identification and password. User(s) may only include Your employees, consultants, and contractors.

Usage means the quantity of the Software or Services used during the relevant period.

Viruses mean any malicious code, Trojan horses, malware, spam, viruses, or other destructive technology.

Your Data or Data means data and files, including Personal Data, communicated, processed, stored, or submitted by You or Your Users in connection with Your or Your User's through the Software or Services.

2. Provision of Services

- 2.1. License. Upon payment of the fees and subject to Your continuous compliance with the terms and conditions of this Agreement, the Software Provider hereby grants You a limited, revocable, non-exclusive, non-transferable license for the applicable Term to internally use the Application Services, Software, and Documentation, subject to all of the terms of the Agreement. You may provide, make available to, or permit Your Users to use or access the Application Services, the Software, or Documentation.
- 2.2. Services Delivery; Updates and Modifications. You agree that the Service Provider may deliver the Services or Software to You with the assistance of its Software Provider, Affiliates, licensors, and service providers. You further agree that the Software Provider may update or modify the Services or Software and Documentation or provide alternative Services or Software and Documentation at any time, including, without limitation, to reflect changes in, among other things, laws, regulations, technology, industry practices, patterns of system use, or availability of a third-party program. The Software Provider will use commercially reasonable efforts to provide alternative Software or Documentation that does not materially reduce the level of performance, functionality, or security of the Software during the Term.
- 2.3. The Services are subject to the Fair Use Policy.

3. Obligations

- 3.1. Restrictions. You may not do or assist or enable any third party to do any of the following: (i) provide, make available to, or permit individuals other than Your Users to use or access the Services, the Software, or Documentation, either in whole or part, except under the terms expressly set forth in this Agreement; (ii) copy, reproduce, republish, upload, post, or transmit the Services, Software, or Documentation (except for back-up or archival purposes, which may not be used for transfer, distribution, or sale, or installation on Your Devices); (iii) license, sell, resell, rent, lease, transfer, sublicense, distribute, or otherwise transfer rights to the Services, Software, or Documentation; (iv) modify, translate, reverse engineer, decompile, disassemble, create derivative works of, or otherwise attempt to derive the source code of the Services, Software, or Documentation; (v) create, market, distribute add-ons or enhancements or incorporate into another product the Services, Software, or Documentation without prior written consent of the Service Provider and/or Software Provider; (vi) remove any proprietary notices or labels on the Services, Software, or Documentation, unless authorized in writing by the Service Provider



and/or Software Provider; (vii) license or purchase the Services, Software, or Documentation if You (or any of Your Users) are a direct competitor (or an agent of a direct competitor) of the Service Provider and/or Software Provider; (viii) use the Services, Software, or Documentation for the purposes of monitoring the availability, performance, or functionality of the Services or Software, or (ix) for any other benchmarking or competitive purposes; (x) use the Services, Software, or Documentation to violate any rights of third parties, including, without limitation, privacy rights, or storing or transmitting infringing, libelous, unlawful, or tortious material or to store or transmit material in violation of any applicable laws; (xi) use the Services or Software to store or transmit Viruses; (xii) interfere with, impair, or disrupt the integrity or performance of the Services or any other third party's use of the Services or any software, hardware, equipment or network; (xiii) use the Services in a manner that results in excessive use, bandwidth, or storage; or (xiv) alter, circumvent, or provide the means to alter or circumvent the Services or Software, including seeking any back end or unauthorized access or circumvention of the technical limitations or usage limits; and/or (xv) attempt to avoid any recurring fees. Any such prohibited use shall immediately terminate Your license to the Services and Software. The Services and Software are intended only for use with public domain or properly licensed third-party materials. All responsibility for obtaining such a license is Yours, and the Service Provider and Software Provider shall not be responsible for Your failure to do so.

- 3.2. Use of Software or Services. You and Your Users' use of the Services or Software shall not exceed your rights to use the Services or Software set forth in the Agreement and applicable Sales Orders. You are responsible for Your and Your Users' use of the Services and Software, including any unauthorised usage. The Service Provider and/or Software Provider may monitor use of the Services and Software by all Users at any time. In addition, the Service provider and/or Software Provider, or its designated representatives, will have the right upon reasonable notice, during regular business hours, to access and review your books and records (including electronically) for the purpose of verifying Your compliance with the terms and conditions of this Agreement, including any use limitations.
- 3.3. Your Obligations. You acknowledge, agree, and warrant that: (i) You are and will be responsible for Your and Your Users' activity and compliance with this Agreement, and if You become aware of any violation, You will immediately terminate the offending party's access to the Software and Documentation and notify the Service Provider; (ii) You and Your Users will comply with all applicable local, state, federal, and international laws; (iii) You will establish a constant internet connection and electrical supply for the use of the Services, use the Services and Software only in accordance with the applicable Documentation, ensure that the Software is installed on a supported platform as set forth in the applicable Documentation, and use the Services and Software only with public domain or properly licensed third party materials; (iv) You will install the latest version of the Software on Devices accessing or using the Services; (v) You are legally able to process and provide Your Data to the Service Provider and the Software Provider and its Affiliates, including obtaining appropriate consents or rights for such processing; (vi) You have the right to access and use Your infrastructure, including any system or network, to obtain or provide the Services and Software and will be solely responsible for the accuracy, security, quality, integrity, and legality of the same; and (vii) You will keep your registration information, billing information, passwords and technical data accurate, complete, secure and current for as long as You subscribe to the Services, Software and Documentation.
- 3.4. You agree to indemnify, defend, and hold harmless the Service Provider and the Software Provider, and its and their directors, officers, employees, and agents from and against any claims, liabilities, damages, costs, and expenses (including attorneys' fees and expenses) arising out of or due to: (i) Your Data; (ii) Your (or Your Users') breach of this Agreement; (iii) Your (or Your User's) use of the Services, Software, Documentation, or Content in violation of third party rights, including any intellectual property or privacy rights, or any applicable laws; or (iv) Your (or Your User's) misuse of the Services, Software, Documentation, Content, or Software Provider Marks.
- 3.5. By accepting this Agreement either by signing the Order Form that references the Service Specific Terms for the provision of Managed backup Software Services, or by signing these terms below or by utilising the Managed Backup Software Service You agree to all the terms and conditions under the End User License Agreement (EULA) found here: <https://www.netcentrix.com/legal/end-user-license-agreement>.

3. Proprietary Rights

- 3.1. Ownership of Intellectual Property. The Application Services, Software, Software Provider Content, Software Provider Marks and Documentation are licensed, not sold. Use of "purchase" in conjunction with licenses under this Agreement does not imply a transfer of ownership. Except for the limited rights expressly granted by the Service Provider and Software Provider to You under this Agreement, You acknowledge and agree that all right, title and interest in and to all copyrights, trademarks, patents, trade secrets, intellectual property (including without limitation algorithms, business processes, improvements, enhancements, modifications, derivative works, and information collected and analysed in connection with the Services) and other proprietary rights arising out of or relating to the Services, the Software, Software Provider Content, Software Provider Marks, and Documentation, and the provision of them, belong exclusively to the Software Provider or its suppliers or licensors. All right, title, and interest in and to content which may be accessed through the Services, Software, and Documentation is the property of the respective owner and may be protected by applicable intellectual property laws and treaties. This Agreement gives You no rights to such content, including use of the same.



- 3.2. You hereby grant the Software Provider a royalty-free, fully paid, worldwide, exclusive, transferable, sub-licensable, irrevocable and perpetual license to use or incorporate into its products, Services, and Software any information, data, suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the Services, Software, or Documentation. There are no implied rights to the Services, Software, Documentation, Software Provider Content, or Software Provider Marks.
- 3.3. Ownership of Your Data. You and Your Users retain all right, title, and interest in and to all copyright, trademark, patent, trade secret, intellectual property, and other proprietary rights in and to Your Data. The Service Provider and Software Providers right to access and use the same are limited to those expressly granted in this Agreement. No other rights with respect to Your Data are implied.
- 3.4. Use of Your Marks. If You have used our Services or Software for 90 days, You agree that the Software Provider may display the current versions of Your Marks (as they are displayed on Your website) on its website to identify You as a customer. Accordingly, You grant the Software Provider a worldwide, royalty-free license to use the Marks for the purposes of marketing and promotion during the Term of your Agreement. You may provide us with any guidelines associated with Your Marks and we will use reasonable efforts to comply with them. You may withdraw this approval at any time by contacting the Service Provider.

4. Term

- 4.1. The Agreement will begin on the Service Commencement Date and the Term is as defined on the Order Form and/or Standard Terms and Conditions.
- 4.2. You acknowledge and agree that it is your responsibility to retrieve Your Data within thirty (30) business days of the termination of this Agreement for any reason. You acknowledge and agree that if you do not retrieve Your Data within that timeframe the Service Provider and /or Software Provider has the right to delete Your Data, including any and all copies thereof and that once it is deleted, Your Data cannot be recovered.

5. Charges

- 5.1. The charges relating to the Managed Backup Software Service are detailed on the Order Form and the payment terms are as detailed within the Standard Terms and Conditions.
- 5.2. You agree to a minimum commitment volume at the quantity of Managed Backup Software Services agreed on the Order Form over the length of the Minimum Period. If during the Minimum Period Your usage falls below the minimum commitment, the Service Provider reserves the right to invoice You based upon the agreed rate for the minimum commitment volume.
- 5.3. **This Section is specific to the Netcentrix Cloud Continuity for Servers Service**
Netcentrix Cloud Continuity for Servers requires Azure resource which will be scoped, set-up and charged at an additional monthly rate based on consumption. If You have selected Netcentrix Cloud Continuity for Servers and require Disaster Recovery failover testing, this will be completed as separate project work at an additional one-off charge.

6. Data

- 6.1. The Service Provider and/or Software Provider may remove Your Data or any other data, information, or content of data or files used, stored, processed or otherwise by You or Your Users in conjunction with the Managed Backup Software Service that they, in their sole discretion, believes to be or is: (a) a Virus; (b) illegal, libelous, abusive, threatening, harmful, vulgar, pornographic, or obscene; (c) used for the purpose of spamming, chain letters, or dissemination of objectionable material; (d) used or capable of use to cause offense, defame or harass; (e) in violation of this Agreement in any way; or (f) used or capable of use to circumvent any security, encryption, data protection, use restriction or other similar feature of the Software or Services; or (g) infringing the intellectual property rights or any other rights of any third party.
- 6.2. You agree that You and Your Users are responsible for maintaining and protecting backups of Your Data directly or indirectly processed using the Services and Software and that the Service Provider is not responsible for exportation of, the failure to store, the loss, or the corruption of Your Data.
- 6.3. You hereby grant to the Service Provider and Software Provider a nonexclusive, worldwide, royalty-free, fully-paid, transferable license to use and process Your Data to assist with the necessary operation and function of the Services and Software, to improve products and services and Your and Your Users' experience with them, and for any purpose set forth in this Agreement or pursuant to the Data Processing Addendum or Privacy Notice, which are incorporated in this Agreement by this reference and which may be updated or revised from time to time.
- 6.4. You represent and warrant that, with regard to processing of Personal Data, You and Your Users are the data controller that determines the purpose and manner in which Personal Data is or will be processed, and the Service Provider is the data processor that performs the processing.
- 6.5. Each party shall comply with its respective obligations under applicable data protection laws. Each party shall maintain appropriate administrative, physical, technical and organizational measures that ensure an appropriate level of security for Confidential Information and Personal Data.
- 6.6. You are responsible for ensuring that the security of the Services is appropriate for Your intended use and the storage, hosting, or processing of Personal Data and any other categories of data.
- 6.7. The Software Provider employs physical, technical and administrative safeguards to help secure the Software and Services against accidental or unauthorised loss, access, or disclosure. You understand that no system of data transmission, storage or retrieval can be made entirely impenetrable or free from vulnerabilities, and despite all measures employed, the Software



and Services are not guaranteed against all security threats or other vulnerabilities. You agree that You use the Software and Services at your own risk.

- 6.8. You agree to: (i) change passwords and other access credentials related to the Software or Services on a regular basis and immediately upon becoming aware of any unauthorised access to, or use or compromise of, the Software or Services, and require Your Users to do the same; and (ii) promptly apply any updates, upgrades, modifications or other enhancements that the Service Provider and/or Software Provider determines are necessary or appropriate to maintain the security, confidentiality, integrity, availability or performance of the Software or Services, and cause Your Users to do the same.

- 6.9. **This Section is specific to the [Netcentrix Cloud Backup for Servers Service](#)**

in addition to the other terms and conditions herein, You expressly acknowledge and agree that Your data may not be available or restorable if (1) You utilise the services in excess of the amount you ordered; (2) copies of Your data were not completed for any reason; (3) You attempt to back up devices, files, folders, or drives not supported by the services as set forth in the documentation; (4) You deselect or delete a device, file, folder, or drive from your account, from Your device, or from being backed up by the services; (5) You modify your operating system in a manner that breaks compatibility or inhibits the functionality of the services or software; (6) Your computer is unable to access the internet or the Software Provider's infrastructure; (7) You change your internet bandwidth which causes the Service to fail (8) You fail to comply with the agreement or documentation; or (9) You terminate or fail to renew your services.

By signing below You confirm that You have read these Service Specific Terms and Conditions for the Provision of Managed backup Software Services and agree to be bound by them, together with the Netcentrix Standard Terms and Conditions set out in or deemed to form part of this Agreement and the Charges detailed within the Order Form.

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