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## Managed Back Up Agreement

### **SERVICES**

Burgess shall establish an online storage and backup account (the "User Account") to receive, via the Internet, and store User files (the "User Files"). Burgess can provide an Encryption Key or Password for use in connection with the Services and for access to User Files. The Software shall be designed to permit access to User Files only with a valid Encryption Key or Password.

### **USER RESPONSIBILITIES**

User is responsible for defining what files they want included in their back up for the initial set up and providing the list of files to Vendor. User is also responsible for notifying Vendor when there are additional files that they want added to their back up. In addition, User must notify Vendor when there are file configuration changes or equipment changes that may affect their backup.

User shall be responsible for preventing the misuse or misappropriation of any Encryption Key or Password and shall maintain the confidentiality and security of any Encryption Key or Password. In the event of any misuse or misappropriation of any Encryption Key or Password, User will be solely responsible therefore. User shall bear all risk of loss of User Files while in transit to or from. **USER ACKNOWLEDGES THAT WITHOUT THE CORRECT ENCRYPTION KEY, USER FILES WILL REMAIN ENCRYPTED AND INACCESSIBLE. BURGESS SHALL HAVE NO LIABILITY FOR ANY DAMAGES SUFFERED DUE TO MISUSE, MISAPPROPRIATION, LOSS OR THEFT OF USER'S ENCRYPTION KEY or PASSWORD.**

### **FEES**

In exchange for the License and the Services provided by Burgess under this Agreement, User shall pay Burgess in advance a monthly fee based on the service plan User has selected. If Burgess does not receive written notice of a request for service termination by User, User acknowledges and understands that Burgess will continue to charge User for the Services as long as User's account remains active regardless if the Services are used or not.

### **OVERAGE CHARGES**

User acknowledges that at the end of each billing period, a fee is charged for online storage consumed. Such fee shall be calculated based on incremental Gigabytes used multiplied by the implied price per Gigabyte, rounded up to the nearest Gigabyte.

### **SOFTWARE, DOCUMENTATION AND SERVICES PROPERTY OF BURGESS**

The Software, Documentation and the Services are the exclusive property of Burgess, or the third parties from whom Burgess has secured the right to use materials contained in the Software, Documentation and the Services. Burgess and such third parties shall retain all right and title, to the extent of their respective interests, to all proprietary rights in the Software, Documentation and the Services, and to any other intellectual property owned or otherwise provided by Burgess. User shall have no right to use the Software, Documentation or the Services for any purpose other than as set forth in this Agreement. User shall not challenge, or assist any other person or entity in challenging, Burgess's right, title, and/or interest in the Software, Documentation and the Services.

***USER FILES PROPERTY OF USER***

All User Files are and shall remain the exclusive property of User. User shall retain all right and title in and to the User Files, including any proprietary rights in the User Files. Burgess shall not transfer, sell, disclose, license, alter or otherwise use the User Files other than to provide the Services as contemplated by this Agreement. Burgess shall have the right to make copies of User Files stored in connection with the Services, however, Burgess is not obligated to archive such copies and will utilize them only for backup purposes.

***TERM***

This Agreement shall continue for a period of twelve months. If no notification is received as detailed above, the Agreement will automatically renew for another twelve-month period.

***TERMINATION BY USER***

User may terminate this Agreement at any time by providing Burgess with written notice of User's intent to terminate use of the Service. At the time of termination, the User's access to User Account and any of User Files stored by the Service may be permanently terminated. Burgess shall not provide a refund for any unused portion of the Services paid in advance by User.

***TERMINATION BY BURGESS***

Burgess may terminate this Agreement, including all licenses granted hereunder, with or without cause upon thirty (30) days written notice. Should Burgess opt to terminate the Agreement without cause, Burgess agrees to allow User access to User Account and User Files for not less than Five (5) Days following notification of termination. Burgess also agrees to provide a refund for any unused portion of the Services paid in advance by User. Should Burgess terminate with cause, no refund shall be due to the User.

DISPOSITION OF DATA ON TERMINATION. USER UNDERSTANDS THAT ALL USER FILES STORED BY BURGESS UNDER THIS AGREEMENT SHALL BE DELETED ON OR AFTER FIVE (5) DAYS FROM THE TERMINATION DATE OF THIS AGREEMENT (THE "TERMINATION PERIOD"). USER ACKNOWLEDGES THAT AFTER THE TERMINATION PERIOD, USER FILES WILL NO LONGER BE ACCESSIBLE TO USER.

***LIMITATION OF LIABILITY***

UNLESS A RESULT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, VENDOR SHALL NOT BE LIABLE TO CLIENT FOR LOSS OF PROFIT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OR ANY BREACH OF THIS AGREEMENT OR OF OBLIGATIONS UNDER THIS AGREEMENT OR FOR ANY CLAIM MADE AGAINST CLIENT BY ANY OTHER PARTY. IN NO EVENT SHALL VENDOR'S LIABILITY HEREUNDER EXCEED THE AGGREGATE AMOUNT OF THE FEES PAYABLE BY CLIENT TO THE VENDOR.

***CONFIDENTIALITY***

During the term of this agreement and after the term, Vendor may not use for any purpose other than for the benefit of Client, or divulge to any third party, any trade secrets, processes, techniques, designs, know-how or other confidential information of Client, including without limitation information about Client customers, former customers, staff, financial data, business records and activities under this agreement. Both during and after the term, Vendor shall maintain the strict confidentiality of the Client's confidential information using the same degree of care as the Vendor affords to its own

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confidential information of a similar nature which it desires not to be published or disseminated, and in no event less than reasonable care, to prevent the unauthorized use or disclosure of the Client's confidential information.

***FORCE MAJEUR***

Neither party shall be liable for any failure or delay in the performance of any of its respective obligations (other than the payment of fees) if prevented from doing so by a cause or causes beyond its reasonable control (a "Force Majeure Event"). Without limiting the generality of the foregoing, Force Majeure Events include: fires, floods, terrorism, strikes, blackouts, war, restraints of government, utility or communications failures or interruptions, failures of third party vendors, Internet slow-downs or failures, computer hackers or other causes that are beyond a party's reasonable control. Failure to meet due dates or time schedules resulting from a Force Majeure Event shall extend the due dates or time schedules for reasonable periods of time as determined by Burgess in good faith.