

Unitrends Cloud Backup for Office 365 Customer Terms & Conditions (U.S.)

Last updated: November 14, 2019

These Unitrends, Inc. (“Unitrends”) Terms and Conditions (the “Terms and Conditions”) apply to any and all orders placed by a Unitrends channel partner (“Unitrends Partner”) on behalf of an end-customer (“Customer”) through an order form (the “Order Form”). All offers and sales of services and products offered by Unitrends for Unitrends Cloud Backup for Office 365 through a Unitrends Partner are subject to and expressly conditioned on these Terms and Conditions, any exhibits thereto, the Order Form and any other written or electronic agreements executed by Unitrends and Customer (or on Customer’s behalf) that reference or are executed pursuant to these Terms and Conditions (collectively, the “Agreement”). The effective date of the Agreement (the “Effective Date”) will be the date that Unitrends accepts an order for Services (defined below) as set forth in the Order Form placed by a Unitrends Partner. Unitrends and Customer are sometimes referred to herein individually as a “Party” and together as the “Parties.”

By using or receiving the Services, Customer agrees to all of the terms and conditions of these Unitrends Terms and Conditions, including the limitations on liability set forth herein and the provisions governing Unitrends’s ability to modify these Terms and Conditions set forth in Section 12.10. IF CUSTOMER DOES NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN, CUSTOMER IS NOT PERMITTED TO USE THE SERVICES. Customer may authorize a Unitrends Partner to accept these Terms and Conditions and any Agreement hereunder on Customer’s behalf and Customer will be bound thereby as if these Terms and Conditions or such Agreement were directly executed by Customer.

RECITALS

Unitrends makes available its Unitrends Cloud Backup for Office 365 product on a software as a service basis (the “Services”). Unitrends provides Unitrends Cloud Backup for Office 365 product only to Customers that license software and/or services (the “Provider Offerings”) under an agreement (each, a “Provider Agreement”) with certain service providers or licensors (each, a “Provider” and collectively, the “Providers”).

Customer has contracted with (or desires to contract with) Provider for the purpose of receiving the Provider Offerings; and

Customer desires to engage Unitrends to provide the Services and to act on Customer’s behalf with respect to certain aspects of Customer’s utilization of such Provider Offerings, and Unitrends desires to provide such Services in accordance with and pursuant to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Definitions. For the purposes of this Agreement, the following terms will have the following meanings:

1.1 “Confidential Information” means all information disclosed (whether in oral, written, or other tangible or intangible form) by a Party to the other Party concerning or related to this Agreement (whether before, on or after the Effective Date), which the receiving Party knows or should know, given the facts and circumstances surrounding the disclosure of the information, is confidential information of the disclosing Party. Confidential Information includes, but is not limited to, the pricing terms under this Agreement, an Order Form or an applicable Partner Contract, the Intellectual Property Rights of Unitrends, any Customer Data, Unitrends Cloud Backup for Office 365, components of the business plans, the Services, the Software, inventions, design plans, any proprietary software or technology of Unitrends, financial plans, computer programs, know-how, customer information, strategies and other similar information. Notwithstanding the foregoing, Confidential Information will not include information that: (a) is in or enters the public domain without breach of this Agreement through no fault of the receiving Party; (b) the receiving Party can reasonably demonstrate was in its possession prior to first receiving it from the disclosing Party; (c) the receiving Party can demonstrate was developed by the receiving Party independently and without use of or reference to the Confidential Information; or (d) the receiving Party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation.

1.2 “Customer Data” means any and all information, emails, data, text, audio, video, images or other content (a) provided by Customer or a User to Unitrends or a Unitrends Partner in connection with the use of the Provider Offerings, Unitrends Site or Unitrends Cloud Backup for Office 365 provided hereunder, or (b) provided to, hosted, stored, and/or accessed by Unitrends in connection with the provision of Services.

1.3 “Documentation” means Unitrends’s product and services descriptions, user instructions and other documentation relating to Unitrends Cloud Backup for Office 365 which Unitrends may provide via the Unitrends Site or directly to Customer from time to time.

1.4 “Intellectual Property Rights” means patents, copyrights, moral rights, trademarks, trade secrets, trade dress and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing.

1.5 “Person” means an individual, partnership, limited liability company, association, corporation or other entity.

1.6 “Partner Contract” means an agreement between a Unitrends Partner and Customer pursuant to which such Unitrends Partner makes Unitrends Cloud Backup for Office 365 available to Customer.

1.7 “Unitrends Cloud Backup for Office 365” means the Services, the Software and any other technology used by Unitrends in the provision and operation of the Services or supplied by Unitrends to Customer in connection with the provision or receipt of Services, including the Unitrends Site.

1.8 “Unitrends Site” means the Unitrends website at www.Unitrends.com, or any successor website thereto.

1.9 “Software” means the Unitrends proprietary software provided by Unitrends to Customer in connection with the provision of the Services as further described in the Documentation for an applicable Service.

1.10 “User” means any employee, contractor, or agent of Customer who is authorized by Customer to use the Services or otherwise makes use of or receives the Services, or whose data is processed or accessed by the Services.

Appointment; Access to Systems; Microsoft Terms.

2.1 Appointment. Customer hereby authorizes Unitrends to perform the Services purchased from a Unitrends Partner in accordance with the terms and conditions of this Agreement and the applicable Order Form. To the extent required by Provider, Customer hereby appoints Unitrends as its partner of record and delegated administrator with respect to any applicable Provider Offering.

2.2 Access to Customer’s Systems and Information. Customer will grant to Unitrends access to Customer’s systems and online hosted accounts as required for Unitrends to provide the Services (including administrative-level access). Customer will provide Unitrends with any passwords or other keys required for Customer to grant the access set forth herein. Customer represents and warrants that it has obtained and will obtain all required consents and authorizations from Users, and has taken and will take all other steps, necessary to ensure that Unitrends’s provision of the Services complies with applicable law, including obtaining an applicable consent and authorization from Users permitting Unitrends to access and use Users’ email and system credentials. Customer will provide Unitrends and, if applicable, the Unitrends Partner with any other additional information as necessary to enable Unitrends to perform the Services, including the number of Users included in the Services, the date on which Customer requires the performance of and access to the Services, and any other instructions or requirements pertinent to Customer’s access to and use of the Services. Customer is responsible for providing complete and accurate information to Unitrends and any applicable Unitrends Partner. In order to use the Services, Customer’s computer hardware, software and internet connectivity must meet certain minimum requirements as

may be specified in the Documentation provided from time to time. Unitrends bears no liability or responsibility if Customer cannot access or receive the Services due to a failure to meet such minimum requirements.

2.3 Purchases through a Unitrends Partner. Customer must purchase access to and use of Unitrends Cloud Backup for Office 365 through a Unitrends Partner pursuant to a Partner Contract. Unitrends's provision of the Services to Customer is contingent upon Unitrends's receipt of Customer's consent to this Agreement regardless of whether Customer has entered into any Partner Contract. Unitrends shall have no obligation to provide Services to Customer until Unitrends obtains Customer's consent to this Agreement.

2.4 Agreement to Microsoft Terms. IF THE SERVICES ARE INTENDED FOR USE IN CONNECTION WITH PROVIDER OFFERINGS PROVIDED BY MICROSOFT CORPORATION ("MICROSOFT"), CUSTOMER UNDERSTANDS AND AGREES THAT AS PART OF THE SERVICES PROVIDED HEREUNDER, UNITRENDS MAY REGISTER CUSTOMER FOR USE OF CERTAIN CLOUD COMPUTING SERVICES OFFERED BY MICROSOFT, AND THAT AS A CONDITION TO CUSTOMER'S RECEIPT OF SERVICES HEREUNDER, AND BY AGREEING TO THE TERMS OF THIS AGREEMENT, CUSTOMER HEREBY (A) AGREES TO THE TERMS OF THE APPLICABLE MICROSOFT ONLINE SUBSCRIPTION AGREEMENT FOR MICROSOFT OFFICE 365 AND (B) AUTHORIZES UNITRENDS TO REGISTER CUSTOMER FOR SUCH SERVICES ON CUSTOMER'S BEHALF (INCLUDING WITHOUT LIMITATION, IF CUSTOMER IS LOCATED IN THE EUROPEAN ECONOMIC AREA, TO NOT OPT-OUT OF MICROSOFT'S "STANDARD CONTRACTUAL CLAUSES"). CLIENT HEREBY CONSENTS TO BE BOUND BY ALL TERMS AND CONDITIONS OF SUCH SUBSCRIPTION AGREEMENT, INCLUDING ALL PAYMENT TERMS AND FEES APPLICABLE TO SUCH SUBSCRIPTION. FOR THE AVOIDANCE OF DOUBT, SUCH MICROSOFT ONLINE SUBSCRIPTION AGREEMENT FOR MICROSOFT OFFICE 365 SHALL CONSTITUTE A "PROVIDER AGREEMENT" AS DEFINED HEREUNDER. THE AUTHORIZATION SET FORTH IN THIS SECTION 2.4 SHALL BE VALID REGARDLESS OF WHETHER CUSTOMER HAS PURCHASED THE SERVICES DIRECTLY FROM UNITRENDS OR THROUGH A UNITRENDS PARTNER.

Customer Data, Data Protection, and Confidentiality.

3.1 Customer Data. As between Unitrends and Customer, Customer is the sole owner of the Customer Data; provided, however, that Unitrends may monitor, collect, use and store anonymous or aggregate information regarding use of the Services solely for Unitrends's business purposes (including, but not limited to, enhancing the Services and creating new features and services). All Customer Data will be deemed Confidential Information of Customer subject to the terms of this Agreement. Customer hereby consents to Unitrends's use of and access to the Customer Data to provide the Services to Customer. Unitrends may use or disclose Customer Data (a) to provide the Services (including, as applicable, to a Unitrends Partner or Provider), (b) as requested to fulfill obligations under this Agreement, or (c) to comply with any request of a governmental or regulatory body (including subpoenas or court orders). Customer acknowledges that it bears sole responsibility for adequate security,

protection and backup of the Customer Data on any equipment and systems (including Provider systems) not owned or controlled by Unitrends.

3.2 Data Protection. For the purposes of the Services, Unitrends is a “processor”, as defined in the European Data Protection Directive (Directive 95/46/EC). Unitrends will only access, collect, use, store, disclose, delete, destroy, or otherwise process (“Process”) information directly relating to an identified natural person obtained pursuant to this Agreement (“Personal Data”) where Customer has consented to such Processing or where such Processing is required to provide the Services or is otherwise permitted or required under any applicable law, government order, or court request. Unitrends Processes Personal Data in countries around the world, including without limitation the United States. Unitrends will establish and maintain administrative, physical, technical and organizational safeguards to (a) avoid unauthorized or unlawful Processing of Personal Data and accidental loss, destruction of or damage to Personal Data; and (b) ensure the security of Personal Data. Unitrends will notify Customer if Unitrends becomes aware of the loss or compromise of, or damage to, any Personal Data which it is Processing as part of the Services. Customer will ensure that all individuals whose Personal Data is Processed by Unitrends have been notified of, Unitrends’s data processing pursuant to the Services and as detailed in this Agreement and the Unitrends Privacy Policy and that any Personal Data provided is accurate, complete, up to date, relevant and not misleading.

Where reasonably technically feasible, Unitrends will carry out any lawful request from Customers to access and to amend, transfer, or delete all or any part of the Personal Data and will cooperate with and assist Customers in permitting individuals to exercise their rights under applicable data protection law. Unitrends will permit Customer to take reasonable steps to monitor compliance by Unitrends with its obligations under this clause, including by inspecting Unitrends’s data processing facilities, procedures and documentation.

3.2 Confidentiality. Each Party will, during the Term of this Agreement and thereafter, maintain in confidence the Confidential Information of the other Party and will not use such Confidential Information except as expressly permitted herein. Each Party will use the same degree of care in protecting such Confidential Information as such Party uses to protect its own confidential information from unauthorized use or disclosure, but in no event less than reasonable care. Each Party will use such Confidential Information solely for the purpose of carrying out its respective obligations under this Agreement. In addition, each Party: (a) will not reproduce such Confidential Information, in any form, except as required to accomplish its obligations under this Agreement; and (b) will only disclose such Confidential Information to its employees, consultants and third-party service providers who have a need to know such Confidential Information in order to perform their duties relating to this Agreement and have been informed of the obligation to preserve the confidentiality of such information prior to receiving such information. Confidential Information will be the property of the disclosing Party during the Term of this Agreement and afterwards in perpetuity, subject only to the exceptions expressly stated in this Agreement.

3.3 Security. Unitrends has established, and will maintain during the Term, commercially reasonable administrative, physical and technical safeguards for the protection of the Customer Data.

Proprietary Rights. As between Unitrends and Customer, Unitrends or its licensors own and reserve all right, other than the limited rights explicitly granted to Customer under this Agreement, title, and interest in and to Unitrends Cloud Backup for Office 365, including without limitation any Unitrends proprietary software or technology utilized in the provision or use of the Services, and all Intellectual Property Rights therein. Customer acknowledges that (a) all right, title and interest in and to the Services, including Unitrends Cloud Backup for Office 365 and Documentation provided in connection therewith, and all Intellectual Property Rights embodied therein or associated therewith, are and shall remain with Unitrends or its third party licensors; (b) no right or interest in Unitrends Cloud Backup for Office 365 is conveyed other than the limited licenses granted herein; (c) Unitrends Cloud Backup for Office 365 is protected by copyright and other intellectual property laws; and (d) Unitrends Cloud Backup for Office 365 embodies valuable confidential and secret information of Unitrends or its licensors, the development of which required the expenditure of considerable time and money. Customer will not take or encourage any action during or after the Term of this Agreement that will in any way impair the rights of Unitrends in and to Unitrends Cloud Backup for Office 365, any proprietary software or technology of Unitrends, or any Intellectual Property Rights in and to any of the foregoing.

Unitrends Services.

5.1 Provision of Services. Unitrends will, subject to all other terms and conditions of this Agreement, use commercially reasonable efforts to provide the Services in material accordance with the applicable Documentation for such Services. Customer acknowledges that Unitrends provides the Services to Customer for Customer's own business operations and not for re-sale or redistribution.

5.2 Access to and Use of the Software. During the Term of the Agreement, Unitrends grants to Customer a limited, nonexclusive, nontransferable right to permit and enable Users to access and use Unitrends Cloud Backup for Office 365 solely in connection with the Services provided under the Agreement and to use the Documentation in connection with Customer's exercise of such right. Except for the limited licenses granted hereunder, Unitrends reserves all rights not expressly granted and no such additional rights may be implied.

Customer's Obligations and Acknowledgements.

6.1 Cooperation. Customer understands and agrees that Customer's full, reasonable cooperation is required in order for Unitrends to properly, efficiently and effectively perform the Services hereunder. Customer agrees to comply with all of Unitrends's and any applicable Unitrends Partner's reasonable requests made in connection with the provision of Services to Customer hereunder. Customer understands and agrees that failure to so cooperate with

Unitrends or an applicable Unitrends Partner could result in Unitrends's inability to properly, efficiently and effectively perform the Services hereunder and shall be deemed a material breach of this Agreement by Customer hereunder. Unitrends's provision of the Services is subject to (a) delays due to unanticipated Customer requests, complications with Customer's systems, programs, accounts and data, and other unforeseen circumstances beyond the reasonable control of Unitrends, (b) Customer's cooperation (including the cooperation of third parties under such Customer's control) with Unitrends and applicable Unitrends Partners, as well as (c) Customer's compliance with this Agreement. Unitrends shall have no liability whatsoever for any delays, deficiencies or failures that occur in the performance of Services as a result of Customer's failure to so cooperate. Customer hereby consents to receive communications from Unitrends (via email or other means) regarding Unitrends's performance of the Services.

6.2 Compliance with Provider Agreement and Partner Contract. Customer will comply with all terms and conditions set forth in each Provider Agreement and, to the extent applicable, the terms and conditions set forth in any Partner Contract. Unitrends will have no responsibility or liability for Customer's breach of any Provider Agreement and/or Partner Contract. CUSTOMER ACKNOWLEDGE AND AGREES THAT IN THE PROVISION OF SERVICES TO CUSTOMER, UNITRENDS MAY PROVIDE THE APPLICABLE PROVIDER WITH CUSTOMER DATA (INCLUDING PERSONALLY IDENTIFIABLE AND FINANCIAL INFORMATION, SUCH AS CREDIT CARD INFORMATION) IN ORDER TO REGISTER CUSTOMER FOR THE PROVIDER OFFERINGS, AND THAT SUCH PROVIDER SHALL HAVE THE RIGHT TO INVOICE CUSTOMER AND/OR AUTOMATICALLY CHARGE CUSTOMER'S CREDIT CARD PROVIDED TO SUCH PROVIDER FOR CUSTOMER'S USE OF THE PROVIDER OFFERINGS IN ACCORDANCE WITH THE TERMS OF THE APPLICABLE PROVIDER AGREEMENT.

6.3 Compliance with Law. Customer will comply with all applicable laws, rules, regulations and orders relating to its performance and receipt of Services under this Agreement (including, without limitation (a) those concerning the exporting, importing and re-exporting of computer software and the protection of privacy and personal information (including, without limitation, the Australian Privacy Act 1988 (Cth), even if it is not an organisation bound by the Act), (b) laws and policies related to unsolicited, commercial e-mails (SPAM) or any illegal, objectionable or offensive activities, and (c) laws and policies applicable to Customer's processing and storage of Customer Data in connection with Customer's use of the Services).

6.4 Obligations Regarding Customer Data. Customer is solely responsible for, and will indemnify Unitrends against any Liabilities related to: (a) ensuring that the Customer Data complies with all applicable laws, rules, regulations, and policies; (b) any claims arising from or relating to the Customer Data; and (c) properly handling and processing notices sent to Customer by any person claiming that any Customer Data violates such person's rights.

6.5 Changes to Services. Unitrends may introduce new Services and/or alter existing Services without prior notice to Customers, Users or others, including revising the user interface, features, and functionality of the Services as part of improvements or other necessary changes to the Services during the Term. Unitrends may also update or revise the Documentation during the Term. Unitrends will have the right, in its sole discretion, to discontinue some or all of the Services, or to change some or all of the Services, upon notification to Customer of any such discontinuation or change.

6.6 Use of the Unitrends Intellectual Property Rights. Customer will not, and will not encourage or permit any User or other Person to: (a) use Unitrends Cloud Backup for Office 365 in any manner or for any purpose other than as expressly permitted by this Agreement; (b) access or use Unitrends Cloud Backup for Office 365 in a way intended to avoid incurring fees to be paid to Unitrends pursuant to this Agreement; (c) access or use Unitrends Cloud Backup for Office 365 in any way that violates this Agreement or any applicable laws, rules, or regulations; (d) modify, alter, tamper with, repair or otherwise create derivative works of any software, technology, content or any Intellectual Property Rights of Unitrends included in or used to provide Unitrends Cloud Backup for Office 365; or (e) reverse engineer, disassemble or decompile Unitrends Cloud Backup for Office 365 or any software or technology of Unitrends included in or used to provide the Services, or (f) attempt to discover or recreate Unitrends Cloud Backup for Office 365 or any software, technology or Intellectual Property Rights of Unitrends.

6.7 Third Party Products and Services. Except as otherwise expressly provided under this Agreement, Customer is solely responsible for obtaining and maintaining, at its sole cost and expense, hardware, equipment, third party software, and any warranties and support and maintenance services related to each of the foregoing, and all Internet browsers and connections required to access or use any of the Provider Offerings or Unitrends Cloud Backup for Office 365. Without limiting the foregoing, Customer must obtain and maintain, and pay all charges, taxes and other costs and fees related to, Internet access, telephone, computer, and other equipment, and any communications or other charges incurred by Customer to access and use Unitrends Cloud Backup for Office 365.

6.8 Responsibility for Other Parties. Customer will be liable for any action that it permits, assists or facilitates any of its affiliates, officers, directors, employees, contractors, representatives, agents, Users, or other Person (each, a "Customer Party," and collectively, "Customer Parties") to take related to this Agreement, the Customer Data, the use of any Provider Offerings, or the use of Unitrends Cloud Backup for Office 365. Customer will ensure that all Customer Parties comply with Customer's obligations under this Agreement.

6.9 Notification of Unauthorized Use. Customer will immediately notify Unitrends in writing of any unauthorized use of Unitrends Cloud Backup for Office 365 or breach of this Agreement that comes to Customer's attention. In the event of any unauthorized use by any third party that obtained access to Unitrends Cloud Backup for Office 365 directly or indirectly through Customer, Customer will take all steps necessary to terminate such unauthorized use and will

provide Unitrends such cooperation and assistance as requested by Unitrends in connection with Unitrends' actions to stop or prevent unauthorized use of Unitrends Cloud Backup for Office 365.

6.10 Limited Use of Unitrends Cloud Backup for Office 365. Customer's access to Unitrends Cloud Backup for Office 365 shall be limited to the purpose of using and receiving the Services for Customer's personal use (or the use of the entity that Customer's represents). Customer may not access and use Unitrends Cloud Backup for Office 365 for the purpose of developing (or intending to develop) a product or service that contains substantially similar capabilities or functionalities as, or that otherwise competes with the Software and Services.

6.11 Passwords. Customer is responsible for protecting and safeguarding any keys, certificates, passwords, access codes, user IDs or other credentials and login information (collectively, "Passwords") that have been provided to Customer or that are generated in connection with Customer's use of Unitrends Cloud Backup for Office 365. Customer will not disclose or make available Passwords other than to authorized Users, if applicable, and shall use all commercially reasonable efforts to prevent unauthorized access to, or use of, the Passwords or Unitrends Cloud Backup for Office 365. Customer is fully responsible for all activities that occur in connection with the Passwords.

6.12 Downtime. Unitrends may suspend or limit access to Unitrends Cloud Backup for Office 365 for the duration of any scheduled or unscheduled downtime or unavailability of any portion or all of Unitrends Cloud Backup for Office 365 for any reason, including as a result of power outages, system failures, maintenance, upgrades or other interruptions.

6.13 Suspension, Limitation or Termination. Unitrends may, without liability to Customer, immediately suspend, terminate or limit access to Unitrends Cloud Backup for Office 365 at any time in the event (a) Unitrends determines that Unitrends Cloud Backup for Office 365 is being used in violation of applicable federal, state or local law or ordinance, this Agreement, or any agreement or policy applicable to Unitrends Cloud Backup for Office 365; (b) Unitrends determines that Unitrends Cloud Backup for Office 365 is being used in an unauthorized or fraudulent manner or that Customer has submitted fraudulent or inaccurate information to Unitrends, a Provider or a Unitrends Partner; (c) Unitrends determines that Customer's use of Unitrends Cloud Backup for Office 365 adversely affects Unitrends's equipment or service to others; (d) Unitrends is prohibited by an order of a court or other governmental agency from providing the Services; (e) of a denial of service attack or any other event which Unitrends determines, in its sole discretion, may create a risk to the Services or to any other customers if the Services were not suspended; (f) of a security incident or other disaster that impacts the Services or the security of Customer Data; or (g) a Unitrends Partner's failure to pay Unitrends any Fees applicable to Customer's use of Unitrends Cloud Backup for Office 365. Unitrends shall have no liability for any damages, liabilities or losses as a result of any suspension, limitation or termination of Customer's use of the Services in accordance with this Section 6.13.

6.14 Postings Regarding the Services. Customer grants Unitrends perpetual, irrevocable, royalty-free, non-exclusive, worldwide, sublicensable permission to use, edit, reproduce, distribute, display, and publish at any time, in whole or in part and in any media, and at Unitrends's discretion (including, without limitation, publication on the Internet) any comments, reviews, or other postings made by Customer regarding Unitrends or the Services, whether to Unitrends directly, on any third party websites, or otherwise ("Postings"). Customer acknowledges and agrees that Postings may include, but are not limited to, Customer's username, statements, and employer name, and agrees to provide additional appropriate testimonial affidavits and supporting information and documentation at Unitrends's request. Customer represents and warrants such Postings reflect Customer's honest beliefs and real experience in connection with Unitrends or the Services, are made voluntarily, and are provided without compensation to Customer. Customer waives, releases, and discharges Unitrends and its employees, officers, affiliates, licensees, successors, assigns, agents, customers, and suppliers from any and all claims Customer may now or later have (whether related to copyright, right of privacy, right of publicity, performer rights, tort, contract, statute or otherwise) by reason of any use, edit, reproduction, distribution, display, or publication of the Postings by Unitrends or by any third party authorized to do so by Unitrends. Customer will not to assert (a) any ownership or other right or interest in the Postings or (b) any claim for compensation related to the Postings or the use, reproduction, distribution, or publication thereof. Customer may withdraw Customer's permission to Unitrends to use, edit, reproduce, distribute, display, or publish Postings at any time by contacting Unitrends at support@Unitrends.com, provided that such withdrawal shall only apply to Postings which Unitrends can easily remove from the Unitrends Site or other websites, and shall not apply to any printed materials or publications in circulation or ordered for circulation at the time of such withdrawal.

Fees. All fees, costs and expenses due and payable by Customer for use or receipt of the Services ("Fees") and corresponding payment terms and conditions are established between Customer and a Unitrends Partner as set forth in the applicable Partner Contract and are independent of any amounts due and owing from the Unitrends Partner to Unitrends with respect to such Services. Unitrends will not be responsible or liable to Customer for any disputes arising out of or related to the invoicing, billing, collection, payment or non-payment of any amounts paid or owed pursuant to a Partner Contract. Customer acknowledges that Unitrends may terminate this Agreement or suspend Services in the event that the applicable Unitrends Partner fails to pay Unitrends any amounts that are due and payable from the Unitrends Partner to Unitrends arising out of Customer's use or receipt of the Services without regard to whether Customer has or has not paid the Unitrends Partner for such Services.

Representations and Warranties; Disclaimer.

8.1 Warranty. Each Party represents and warrants that: (a) it is validly existing and in good standing under the laws of its country or state of incorporation; (b) it has full corporate power and authority to execute, deliver and perform its obligations under this Agreement; (c) its

execution and delivery of this Agreement and its performance of its obligations under this Agreement will not result in its breach of or default under any agreement or arrangement by which it is bound; (d) the person entering into this Agreement on its behalf has been duly authorized and empowered to enter into this Agreement; and (e) this Agreement is valid, binding and enforceable against it in accordance with its terms.

8.2 Disclaimers. EXCEPT AS REQUIRED OF UNITRENDS UNDER THE CONSUMER GUARANTEES (AS TO WHICH SEE SECTION 8.3 BELOW), SECTION 8.1 AND TO THE FULLEST EXTENT PERMITTED BY LAW, UNITRENDS CLOUD BACKUP FOR OFFICE 365 IS PROVIDED “AS IS.” , UNITRENDS AND ITS AFFILIATES MAKE NO (AND HEREBY DISCLAIM ALL) WARRANTIES OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING, WITH RESPECT TO UNITRENDS CLOUD BACKUP FOR OFFICE 365, ANY AND ALL (A) WARRANTIES OF MERCHANTABILITY, (B) WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT SUCH PARTY KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE), (C) ANY WARRANTY THAT UNITRENDS CLOUD BACKUP FOR OFFICE 365 WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT THE CUSTOMER DATA WILL NOT BE LOST OR DAMAGED, AND (D) WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE. THIS DISCLAIMER AND EXCLUSION WILL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.

8.3 Consumer Guarantees. The Australian Consumer Law (as embodied in Schedule 2 to the Competition and Consumer Act 2010 (Cth) (ACL) may require that certain guarantees must be given by Unitrends to Customer in relation to the supply by Unitrends of goods or services to Customer (Consumer Guarantees).

8.4 Contracting out: If this Agreement is subject to New Zealand law, then the Customer agrees that the Services are supplied by Unitrends and acquired by the Customer in trade in terms of sections 2 and 43 of the New Zealand Consumer Guarantees Act 1993 and that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply to the Customer. The Customer agrees and acknowledges that it is fair and reasonable, in all circumstances, for the Customer to be bound by the terms set out in this Section 8.4.

Limitation of Liability. EXCEPT TO THE EXTENT UNITRENDS’S LIABILITY ARISES FROM UNITRENDS’S FAILURE TO COMPLY WITH THE CONSUMER GUARANTEES (AS TO WHICH, SEE SECTION 8.3 ABOVE), AND TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL UNITRENDS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, ANY INTERRUPTION OF BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY PRODUCTS, SERVICES OR SOFTWARE PROVIDED BY UNITRENDS, INCLUDING UNITRENDS CLOUD BACKUP FOR OFFICE 365, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF UNITRENDS HAS BEEN ADVISED

OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER UNITRENDS NOR ANY OF ITS AFFILIATES WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) CUSTOMER'S INABILITY TO USE THE SERVICES AS A RESULT OF (I) THE TERMINATION OR SUSPENSION OF A PROVIDER AGREEMENT OR PARTNER AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO ANY PROVIDER OFFERINGS, OR (II) ANY DOWNTIME OF ALL OR A PORTION OF UNITRENDS CLOUD BACKUP FOR OFFICE 365 OR PROVIDER OFFERINGS FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY CUSTOMER IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO UNITRENDS CLOUD BACKUP FOR OFFICE 365; (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE OR LOSS OF ANY CUSTOMER DATA OR OTHER DATA; OR (E) CUSTOMER'S RECEIPT OF SERVICES UNDER ANY PROVIDER AGREEMENT OR PARTNER AGREEMENT. IN ANY CASE, UNITRENDS AND ITS AFFILIATES' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER TO UNITRENDS OR TO AN APPLICABLE UNITRENDS PARTNER FOR THE PERFORMANCE BY UNITRENDS OF THE SERVICES THAT GAVE RISE TO THE CLAIM DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM. THIS SECTION WILL BE GIVEN FULL EFFECT EVEN IF ANY REMEDY SPECIFIED IN THIS AGREEMENT IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

Indemnification.

10.1 General. In addition to all other indemnification obligations set forth in other sections of this Agreement, Customer, at its sole expense, will defend, indemnify and hold harmless Unitrends and its directors, officers, employees, contractors, agents, successors and assigns (collectively, the "Unitrends Indemnitees") from and against any and all actual or threatened suits, actions, proceedings (at law or in equity), claims (groundless or otherwise), damages, payments, deficiencies, fines, judgments, settlements, liabilities, losses, costs and expenses (including, but not limited to, reasonable attorney fees, costs, penalties, interest and disbursements) (collectively, "Liabilities") resulting from any claim (including third party claims), suit, action, or proceeding against any Unitrends Indemnitee, whether successful or not, resulting from or arising in connection with: (a) Customer's use of Unitrends Cloud Backup for Office 365; (b) any breach of a Provider Agreement, Partner Contract or other agreement to which Customer or a Customer Party is subject; (c) a Customer Party's use of the Customer Data, any Provider Offerings, or Unitrends Cloud Backup for Office 365; (d) any breach of this Agreement or violation of applicable law by Customer or any Customer Party; (e) the Customer Data (including the creation, use, distribution, development, disclosure, design, operation, production, advertising or marketing of the Customer Data) or the combination of the Customer Data with other applications, content or processes, including any claim that any Customer Data infringes, misappropriates or otherwise violates the rights of any third party; (f) a dispute or claim arising out of or related to a Provider Agreement, Partner Contract or Customer's use of any Provider Offering; (g) the negligence or willful

misconduct of Customer or any Customer Party; or (e) Customer's failure to obtain any required consents or authorizations from Users as described in Section 2.2 of this Agreement.

10.2 Process. Unitrends will reasonably notify Customer of any claim subject to the indemnification obligations set forth in this Agreement, but the failure of Unitrends to so notify Customer will only affect Customers' indemnification obligations hereunder to the extent that such failure materially prejudices Customer's ability to defend the subject claim. Provided that Customer promptly investigates and defends any such claim, Customer will have control over the defense and settlement thereof at its sole cost and expense. Notwithstanding the foregoing, Customer will not settle or compromise any claim in a manner that does not fully release Unitrends from such claim or results in a restriction on or admission by Unitrends or subjects Unitrends to any additional obligations. In the event that Unitrends determines, in its sole discretion, that Customer has failed to promptly investigate or rigorously defend any claim for which Customer has an obligation to indemnify, Unitrends will have the right to defend and settle such claim at Customer's cost and expense.

Term; Termination; Effect of Termination.

11.1 Term. Customer will be bound for the entire Term of this Agreement. "Term" is defined as the period of time beginning on the Effective Date and ending on the date set forth in the quote, statement of work, purchase order, or other document that describes the commercial terms, services and/or deliverables licensed under the Agreement, or, if later, the expiration date of any Order Form. If the Order Form does not contain a termination date, the Term shall be deemed to end on the later of the three-year anniversary of the Effective Date and the expiration date of any Order Form. Except as otherwise specified in an Order Form, at the end of any Term, subscriptions will automatically renew for additional Terms equal to the greater of the expiring Term length or three (3) years, unless either party gives the other party notice of non-renewal at least 30 days and no more than 60 days before the end of the relevant Term. Except as otherwise specified in an Order Form, pricing during any automatic renewal Term will be the same as that during the immediately preceding Term plus an increase not to exceed five percent (5%) plus any increase in the Consumer Price Index published by the U.S. Bureau of Labor Statistics during the immediately prior year, in Unitrends's sole discretion.

11.2 Termination. In the event of termination under this Section 11.2 by Unitrends for any reason other than for Customer's material breach of this Agreement, Unitrends will (a) perform all Services (other than subscription-based Services) under Order Forms received and accepted prior to such termination date; and (b) perform all subscription-based Services under Order Forms received and accepted prior to such termination date for the duration of the then-current subscription term set forth in the applicable Order Form (without renewal) or a period of ninety (90) days (whichever is shorter). Without limiting the foregoing, removal of Unitrends as Customer's partner of record with respect to a Provider Offering or any failure by Customer to timely pay the Fees will constitute a material breach of this Agreement.

11.3 Effect of Termination. Upon any expiration or termination of this Agreement for any reason, (a) any and all liabilities accrued prior to the date of such expiration or termination will survive (including the payment of Fees for Services performed), (b) each Party will

promptly provide the other Party with all Confidential Information then in its possession or destroy all copies of such Confidential Information, at the disclosing Party's sole discretion and direction, and (c) Customer will promptly discontinue use of Unitrends Cloud Backup for Office 365. The following sections will survive any expiration or termination of this Agreement: Sections 1, 3, 4, 7, 8, 9, 10, 11.3, and 12.

General Provisions.

12.1 Entire Agreement. This Agreement, the Order Form or any other terms and conditions referenced in these this Agreement (collectively, “Additional Policies”) are the entire agreement of the Parties regarding the subject matter hereof, superseding all other agreements between them, whether oral or written, regarding the subject matter hereof.

12.2 Governing Law; Venue; Dispute Resolution. This Agreement will be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, without resort to its conflict of law provisions. The Parties agree that any action at law or in equity arising out of or relating to this Agreement will be filed only in the state and federal courts located in Boston, Massachusetts, and the Parties hereby irrevocably and unconditionally consent and submit to the exclusive jurisdiction of such courts over any suit, action or proceeding arising out of this Agreement.

12.3 Assignment. Neither this Agreement nor any right or duty under this Agreement may be transferred, assigned or delegated by Customer, by operation of law or otherwise, without the prior written consent of Unitrends, and any attempted transfer, assignment or delegation without such consent will be void and without effect. Unitrends may freely assign this Agreement and any right or duty under this Agreement to an affiliate or other Person including by operation of law, change of control, merger, reorganization, or sale of stock or all or substantially all of its assets. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the Parties and their respective representatives, heirs, administrators, successors and permitted assigns.

12.4 Relationship of the Parties. Neither Party will, for any purpose, be deemed to be an employee, representative, owner or partner of the other Party; and, the relationship between the Parties will only be that of independent contractors. Neither Party will have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other Party, whether express or implied, or to bind the other Party in any respect whatsoever.

12.5 References. Neither Party may disclose the specific terms of this Agreement or issue a public statement or press release regarding this Agreement without the prior consent of the other Party. Notwithstanding the foregoing, Unitrends may, during the Term of this Agreement, identify Customer as a customer or user of the Services and display Customer’s logo and/or other branding materials on Unitrends’ website and other marketing materials.

12.6 Nonwaiver. The failure of either Party to insist upon or enforce strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be construed as a waiver or relinquishment to any extent of such Party’s right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will remain in full force and effect.

12.7 Severability. If any provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other provisions of this Agreement will nonetheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner adverse to any Party. Upon such determination that any provision is invalid, illegal, or incapable of being enforced, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled.

12.8 Notice. Any notice, demand or communication required or permitted to be given by any provision of this Agreement will be deemed to have been sufficiently given or served for all purposes if: (a) delivered personally; (b) deposited with a pre-paid messenger, express or air courier or similar courier; or (c) transmitted by telecopier, facsimile, email or other communication equipment that transmits a facsimile of the notice to like equipment that receives and reproduces such notice. Notices will be addressed to a Party at the Party's address, facsimile number or email address as set forth in an applicable Order Form. Notices will be deemed to have been received (i) in the case of personal delivery, upon receipt, (ii) in the case of messenger, express or air courier or similar courier, two days after being deposited, and (iii) in the case of telecopier, facsimile, email or other communication equipment, the day of receipt as evidenced by a telecopier, facsimile, email or similar communication equipment confirmation statement. Further, either Party may change its contact information by notice in accordance with this Section.

12.9 Force Majeure. In the event that either Party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the reasonable control of the Party invoking this provision, the affected Party's performance will be excused and the time for performance will be extended for the period of delay or inability to perform due to such occurrence; provided, that the affected Party: (a) provides the other Party prompt notice of the nature and expected duration of the event, (b) uses commercially reasonable efforts to address and mitigate the cause and effect of such event, (c) provides periodic notice of relevant developments, and (d) provides prompt notice of the end of such event.

12.10 Modifications to the Terms and Conditions. Unitrends may modify the terms and conditions of this Agreement or any Additional Policies at any time by posting a revised version of these Terms and Conditions and the Additional Policies on the Unitrends Site. Unless otherwise set forth in this Agreement, the revised terms shall be effective upon the earlier of (a) ten (10) days after posting and/or notifying Customer of the changes; or (b) upon Customer's acceptance if Unitrends provides a mechanism for the acceptance of the revised terms, such as a click-through confirmation or acceptance button. By continuing to use or receive the Services after the effective date of any revisions to these Terms and Conditions or any Additional Policies, Customer agrees to be bound by the revised Terms and Conditions or any revised Additional Policies. It is Customer's responsibility to check the Unitrends Site regularly for changes to these Terms and Conditions or the Additional Policies, as applicable.

If Customer disagrees with such modifications, Customer's sole and exclusive remedy shall be to terminate this Agreement in accordance with Section 11 herein.