



## Supplementary terms for the supply of Managed Backup Services

The Services set out in these Supplementary Terms shall be supplied by Apex Computing to the Customer on the terms and conditions set out in Apex Computing's General Terms and Conditions and those of these Supplementary Terms.

### 1. SUPPLEMENTARY DEFINITIONS

- 1.1 'Backup Agent' means a software utility which either resides on Workstations or Servers or is a Cloud-Based Utility for the purpose of enabling backups.
- 1.2 'Cloud-Based Utility' means an ancillary third party provided service, including backup and backup monitoring which will be used by Apex Computing in support of the Managed Backup Services.
- 1.3 'Configuration' means the configuration of the backup.
- 1.4 'Data Centre' means a remote data storage facility.
- 1.5 'Data Security Event' means a breach of the security of the Customer's infrastructure resulting in loss or damage, including loss of user-names, passwords, Personal Data; crypto-locking or other Malware-related damage.
- 1.6 'Emergency Maintenance' means any period of maintenance for which, due to reasons beyond its reasonable control, Apex Computing is unable to provide prior notice of.
- 1.7 'End User' means a user of the IT Equipment.
- 1.8 'Hours of Cover' means the hours of cover set out in the Service Schedule, unless amended on the Order.
- 1.9 'IT Equipment' means Servers, virtual Servers and Workstations.
- 1.10 'Managed Backup Services' means services that provide data backup for Servers and Microsoft 365 accounts.
- 1.11 'Planned Maintenance' means any period of maintenance for which Apex Computing has provided prior notice.
- 1.12 'Server' means IT Equipment which functions as a server, including physical and virtual servers.
- 1.13 'Service Desk' means Apex Computing's dedicated team of qualified support technicians.
- 1.14 'Site' means Customer's Site at which IT Equipment is located, as set out in the Order.
- 1.15 'Workstation' means IT Equipment which functions as a desktop workstation or laptop computer.

### 2. TERM

- 2.1 This Agreement shall come into effect on the Commencement Date and shall run for the Minimum Term as set out in the Order.
- 2.2 Unless terminated by in accordance with clause 9, this Agreement shall continue to run after the expiry of the Minimum Term (or subsequent Additional Term) for an Additional Term.
- 2.3 Apex Computing shall, not less than thirty days prior to the end of the Minimum Term or any Additional Term thereafter, notify the Customer of changes to Charges and any other changes to the terms of this Agreement. In the event that:
  - 2.3.1 The Customer serves notice to terminate this Agreement in accordance with clause 9 hereof, this Agreement shall terminate at the end of the Minimum Term or any Additional Term; or

- 2.3.2 The Customer notifies Apex Computing of acceptance of changes, the Agreement shall continue in force for the duration of an Additional Term; or
- 2.3.3 The Customer fails to notify Apex Computing of acceptance of changes and fails to serve notice to terminate, such failures to notify Apex Computing shall imply that the changes have been accepted and the Agreement shall continue in force for the duration of an Additional Term.

2.4 The duration of any Additional Term shall be the same as the Minimum Term, unless otherwise set out on the Order.

### **3. PROVISION OF SERVICES**

- 3.1 Managed Backup Services are provided to enhance the security of the Customer's data. Managed Backup Services will be provided by Apex Computing remotely. For the avoidance of doubt, Managed Backup Services do not include the provision or support of network connectivity outside of the Customer's Site, which is required to enable the Services.
- 3.2 The Services comprise Managed Backup Services which are described in the Service Schedule. Apex Computing shall use reasonable endeavours to provide the Managed Backup Services 24 x 7 x 365. The Services include:
  - 3.2.1 Server Backup;
  - 3.2.2 Workstation Backup;
  - 3.2.3 Server disaster recovery;
  - 3.2.4 Microsoft 365 cloud backup;as set out on the Order.
- 3.3 Certain Managed Backup Services provided by Apex Computing rely upon Cloud-Based Utilities and:
  - 3.3.1 Apex Computing shall use reasonable endeavours to provide the Cloud-Based Utilities 24 x 7 x 365;
  - 3.3.2 Apex Computing cannot guarantee and does not warrant that the Cloud-Based Utilities will be free from interruptions, including:
    - a) Interruption of the Cloud-Based Utilities for operational reasons and temporary degradation of the quality of the Cloud-Based Utilities;
    - b) Interruption of the connection of the Cloud-Based Utilities to other network services provided either by Apex Computing or a third party; and
    - c) Any such interruption of the Cloud-Based Utilities referred to in this sub-clause shall not constitute a breach of this Agreement.

Although Apex Computing will use reasonable endeavours to ensure the accuracy and quality of the Backup Agents, such Backup Agents are provided on an "as is" basis and Apex Computing does not make any representations as to the accuracy, comprehensiveness, completeness, quality, currency, error-free nature, compatibility, security or fitness for the Customer's purpose of the Backup Agents.

### **4. ACCEPTABLE USE**

- 4.1 The Customer agrees to use the Managed Backup Services in accordance with the provisions of this Agreement, any relevant Service literature and all other reasonable instructions issued by Apex Computing from time to time.
- 4.2 The Customer agrees to ensure that the Services is not used by its End Users to:
  - 4.2.1 Store materials or data breach of the rights of third parties, including but not limited to those of quiet enjoyment, privacy and copyright;
  - 4.2.2 Carry out any fraudulent, criminal or otherwise illegal activity;

- 4.2.3 Act in any way which threatens the security or integrity of the Managed Backup Services.
- 4.2.4 Connect to the Managed Backup Services insecure equipment or services able to be exploited by others to carry out actions which constitute a breach of this Agreement.
- 4.3 The Customer agrees to immediately disconnect (and subsequently secure prior to reconnection) equipment generating data which contravenes this Agreement upon becoming aware of the same and / or once notified of such activity by Apex Computing.

The Customer agrees, subject to the provisions of the General Terms and Conditions to indemnify Apex Computing against all costs, damages, expenses or other liabilities arising from any third-party claim which arises from the Customer's breach of this clause 4.

## **5. THE CUSTOMER'S OBLIGATIONS**

- 5.1 During the term of this Agreement, the Customer shall:
- 5.2 Pay all additional Charges levied by Apex Computing, including those arising from storage-volume-based components of the Services.
- 5.3 Shall ensure that user-names, passwords and personal identification numbers are kept secure and:
  - 5.3.1 Change passwords as appropriate when employees leave;
  - 5.3.2 Use strong passwords;
  - 5.3.3 Not remove or otherwise circumvent any security measures applied or advised by Apex Computing;
  - 5.3.4 Immediately notify Apex Computing in the event that, or there is reasonable suspicion that such information has become known to any unauthorised person.
- 5.4 Accept that it is the Customer's sole responsibility to take all reasonable steps, including the implementation of anti-Malware systems, security updates, firewalls and staff training, to prevent the introduction of Malware into the IT Equipment.
- 5.5 Be responsible for providing external network connectivity, including access to the Public Internet, as required for the correct functioning of the IT Equipment and any Cloud-Based Utilities provided by Apex Computing.

## **6. APEX COMPUTING'S OBLIGATIONS**

During the term of this Agreement, and subject to the performance by the Customer of its obligations hereunder, Apex Computing shall:

- 6.1 Provide the Managed Backup Services set out in the Order and described in the Service Schedule, subject to any service limitations set out in the Order and Service Schedule.
- 6.2 During the Hours of Cover, make available a Service Desk that shall provide support and guidance in the use of the Services and manage the resolution of all Managed Backup Services-related Incidents raised by the Customer.
- 6.3 Monitor the performance of the Managed Backup Services.
- 6.4 Respond to Incidents raised by the Customer and make reasonable endeavours to repair any Incident that is within the Backup Service or directly caused by Apex Computing, its employees, agents, subcontractors or suppliers.
- 6.5 Proactively respond to Incidents reported by the Managed Backup Services and make reasonable endeavours to repair any Incident that is within the Services.

## **7. Clause Intentionally Unused**

## **8. GENERAL**

Apex Computing may perform any Planned Maintenance that may limit the availability of the Cloud-Based Utilities. Planned Maintenance will be scheduled to minimise disruption to the Customer. The Customer will be notified where possible prior to such Planned Maintenance taking place.

Apex Computing may be unable to provide prior notice of Emergency Maintenance, but will endeavour to minimise the impact of any such maintenance on the Customer.

- 8.1 If Apex Computing carries out work in response to an Incident reported by the Customer and Apex Computing subsequently determines that such Incident either was not present or was caused by an act or omission of the Customer, Apex Computing shall be entitled to charge the Customer at its prevailing rate.

If the Customer suffers a Data Security Event and subsequently requests assistance from Apex Computing, it is the Customer's sole responsibility to ensure that such request for assistance will not breach the terms of any cyber-insurance policy that the Customer has in place, prior to requesting assistance from Apex Computing.

- 8.2 The Customer hereby consents to Apex Computing and its sub-contractors accessing Servers and Workstations that are backed up under the terms of this Agreement, for the sole purpose of providing the Services.

## **9. TERMINATION**

- 9.1 In addition to the provisions of clause 11 of the General Terms and Conditions, this Agreement may also be terminated:

- 9.1.1 By either party by giving the other not less than thirty days' notice in writing to terminate at the end of the Minimum Term or at any Additional Term thereafter;
  - 9.1.2 By the Customer giving thirty days' notice in writing if Apex Computing makes a change to the Services which is materially disadvantageous to the Customer (for the avoidance of doubt, not including changes to Charges) PROVIDED THAT such notice is given within twenty eight days of the effective date of the change and such change does not arise from a statutory requirement issued by government, a regulatory body or other competent authority.

## **10. CHARGES AND PAYMENT**

- 10.1 Invoices for Recurring Charges shall be raised in advance of the relevant period. The invoicing period is set out in the Order.
- 10.2 Invoices for additional services, including any usage-based Charges, set-up and installation Charges will be raised in arrears.
- 10.3 Apex Computing shall commence charging for the Managed Backup Services from the RFS Date, regardless of the date on which the Customer commences use of the Managed Backup Services. If the RFS Date does not correspond with Apex Computing's invoicing period as set out in the Order, Apex Computing shall charge the Customer at a pro-rata rate for the first invoicing period.
- 10.4 The Customer acknowledges that the Charges for the Minimum Term are calculated by Apex Computing in consideration inter alia of the setup costs to be incurred by Apex Computing and the length of the Minimum Term offered.
- 10.5 The Customer agrees that it shall be liable for Early Termination Charges if this Agreement is terminated by:
  - 10.5.1 The Customer terminating this Agreement for convenience prior to the end of the Minimum Term or Additional Term, whereupon the Customer shall be liable for the Recurring Charges payable for the remainder of the current term;
  - 10.5.2 Apex Computing terminating this Agreement prior to the end of the Minimum Term or Additional Term by reason of the Customer's un-remedied breach of the terms of this Agreement, whereupon the Customer shall be liable for the Recurring Charges payable for the remainder of the current term.

10.6 The Customer shall not be liable for termination Charges if this Agreement is terminated by:

- 10.6.1 The Customer at the end of the Minimum Term or any Additional Term thereafter PROVIDED THAT the Customer properly serves written notice to terminate, in accordance with clause 9 hereof;
- 10.6.2 Apex Computing at any time if it can no longer provide the Services or part thereof;
- 10.6.3 The Customer by reason of Apex Computing's un-remedied or repeated breach of the terms of this Agreement;
- 10.6.4 A right of termination arises under the provisions of sub-clause 9.1.2.

## **11. LIMITATIONS AND EXCLUSIONS**

11.1 In addition to the terms set out in clause 12 of the General Terms and Conditions, Apex Computing shall also be entitled to suspend the provision of Services, in whole or part, without notice due to Apex Computing being required by governmental, emergency service, regulatory body or other competent authority to suspend Services.

In the event of data loss by the Customer (whether caused by a Data Security Event or any other reason), Apex Computing's responsibility shall be limited to restoration of the latest backup of the applicable data.

11.2 This Agreement does not include:

- 11.2.1 Recovery of Customer data whose loss can be reasonably attributed to accidental deletion, mis-use or negligence by the Customer;
- 11.2.2 The recovery of Customer's data that results from Malware infection.

Apex Computing may at its sole discretion provide any of the excluded services listed in this sub-clause 11.3, and charge for the supply thereof at its prevailing rates.

## **Service Schedule**

The following Service Schedule sets out all of the Services that may be provided by Apex Computing within these Supplementary Terms. The actual Services to be provided under the terms of this Agreement are listed on the Order.

### **1. Server and Workstation Backup and Recovery**

Apex Computing provides a number of backup and recovery options. The options selected are set out on the Order. Options include:

- Backup to a resilient backup appliance which is located at the Customer's Site
- Backup to a resilient backup appliance which is located at the Customer's Site, an image of which is backed up in Apex Computing's Data Centre
- Backup to a resilient backup appliance which is located at the Customer's Site with a parallel backup.
- Cloud-based backup with backup data held at either Apex Computing's Data Centre or at a location specified and under the responsibility of, the Customer

1.1 Dependent on the options selected, backups can be made at image (Server, virtual Server or Workstation) or file / folder level.

1.2 Backups are encrypted at rest and during transmission.

1.3 Data restores will be carried out by Apex Computing during the Hours of Cover on a Fair Use basis and are only initiated when requested by an authorised Customer representative:

- The recovery point objective will be no later than the time of the backup prior to the system failure that resulted in the request for restoration
- Data can be restored at various levels depending on the service and configuration which may include and granular restore, image, folder or file level, as requested by the Customer

#### 1.4 Test Data Restore

If requested by the Customer, Apex Computing will perform Test Data Restores of backed-up data to ensure that backups are functioning correctly. This will be implemented by Apex Computing agreeing with the Customer a test target and carrying out the test restore at an agreed time. Apex Computing shall be entitled to charge the Customer at its prevailing rate for each Test Data Restore carried out.

## 2. Disaster Recovery

Some of the backup and recovery options offered by Apex Computing include facilities to manually (that is, the recovery mode is active-passive) spin up a disaster recovery server in the event a 'disaster' at the Customer's Site. Dependent on the options selected, the disaster recovery server may be located:

- On the Customer's Site-based resilient backup appliance
- On the Customer's Site-based resilient backup appliance, with backup at Apex Computing's Data Centre
- At Apex Computing's Data Centre, where such service will be available for a number of days, as set out on the Order

If the Customer's server becomes unavailable for use, Apex Computing will either:

- Initiate failover to the backup appliance at the Customer's Site; or
- Initiate failover to a disaster recovery server within its Data Centre and provide temporary access to the Customer's End Users until such time as access to the server is restored

#### 2.1 The recovery point objective will be determined by the backup and recovery option selected.

#### 2.2 The recovery time objective will be determined by the Hours of Cover.

#### 2.3 Test Data Restore

If requested by the Customer, Apex Computing will perform Test Data Restores of backed-up data to ensure that backups are functioning correctly. This will be implemented by Apex Computing agreeing with the Customer a test target and carrying out the test restore at an agreed time. Apex Computing shall be entitled to charge the Customer at its prevailing rate for each Test Data Restore carried out.

## 3. Backup Service for Microsoft 365

Apex Computing's Backup Service for Microsoft 365 protects the Customer against loss of data that is held within Microsoft's cloud infrastructure. Unexpected data loss can typically be due to user error or occur if an End User subscription expires, and Apex Computing's service, in addition to providing the Customer with additional control over its data, mitigates the risk of such data loss.

Apex Computing will back-up the Customer's Microsoft 365 data based on the number of End Users and storage capacity set out on the Order.

#### 3.1 Microsoft 365 backups include:

- OneDrive file and folder data backups (documents), per End User
- Exchange data, including emails, email attachments, notes, deleted items, contacts (excluding photographs), tasks and calendar events (including attendees, recurrence, attachments and notes)
- SharePoint primary, custom, group and team site collections; folders, document libraries and sets; site assets, templates and pages
- Groups (including conversations, plans, files, sites and calendar)
- Teams (including wiki and chat)

- Audit logs, data controls and export capabilities
- The Backup and Recovery Service is managed by Apex Computing.

3.2 The backup system will automatically notify Apex Computing of backup success or failure.

3.3 Backups are encrypted at rest and during transmission.

Backup data will be retained using our default retention periods unless requested or specified on the order form, which may increase costs.

3.4 Data restoration:

- Data restores will only be initiated by Apex Computing when requested by an authorised representative of the Customer or as part of remediation or service restoration as required.
- Apex Computing will use reasonable endeavours to restore data at the level of granularity (including image, directory or file level) requested by the Customer
- Apex Computing will use reasonable endeavours to restore data to the location that is specified by the Customer

3.5 Whilst Apex Computing shall execute automatic backups and monitor the performance of the backup service 24 x 7 x 365, Apex Computing will carry out the following activities during the Hours of Cover:

- Respond to Customer requests for data restores
- Respond to and investigate any Incidents that arise in the service which cannot be remediated automatically, whether raised by the Customer or by Apex Computing's monitoring agents

3.6 Test Data Restore

If requested by the Customer, Apex Computing will perform Test Data Restores of backed-up data to ensure that backups are functioning correctly. This will be implemented by Apex Computing agreeing with the Customer a test target (for example a mailbox or SharePoint Site) and carrying out the test restore at an agreed time. Apex Computing shall be entitled to charge the Customer at its prevailing rate for each Test Data Restore carried out.

**4. Change Request Processing**

4.1 Change Requests that are limited to changes to the backup Configuration of the existing Services may result in Charges being made for the implementation of the Change Request. Such chargeable Change Requests will be subject to a quotation and Order.

4.2 Change Requests for backups for additional End Users, Workstations or Servers will be subject to a change to the Recurring Charges, may be subject to implementation Charges and will be subject to an additional Order.

4.3 Apex Computing shall process a Change Request made by the Customer as follows:

- Apex Computing shall verify the Change Request, notify the Customer of its response and raise a quotation
- Provided that Apex Computing agrees with the Change Request, Apex Computing shall implement the change on the Customer's acceptance of the quotation
- If Apex Computing does not agree with the Change Request, Apex Computing will explain the reasons, including any associated risks, to the Customer and offer to provide consultancy services to the Customer, with the objective of finding an alternative solution. Consultancy is chargeable at Apex Computing's prevailing rate
- Apex Computing will notify the Customer of the timescale for implementing the agreed Change Request

**5. Service Desk**

5.1 During the Working Day, Apex Computing's Service Desk provides support and assistance in the use of the Managed Backup Services, including the following:

- Management of the prompt resolution of Incidents arising within the Managed Backup Services which are identified by Apex Computing's monitoring system
- Management of the prompt resolution of Incidents arising within the Managed Backup Services which are raised by the Customer
- Escalation management if required in the event of protracted issue resolution
- Management of Change Requests made by the Customer
- Monitoring the Backup Service for availability

5.2 The Customer shall raise Incident reports by one of the following methods:

- Via Email: [servicedesk @ apexcomputing.co.uk](mailto:servicedesk@apexcomputing.co.uk)
- By Telephone to Apex Computing's Service Desk: 0161 233 0099

5.3 The Service Desk is available from 9am to 5pm Monday to Friday, excluding bank and public holidays.

5.4 Apex Computing shall aim to make an initial response to the Customer's request for assistance within the timescales set out in the SLA Document.

## 6. Complaint Handling

6.1 If dissatisfied with any Services-related matter, the Customer should make a complaint using the following escalation path. If the complaint remains unresolved, the Customer should escalate to the next level in the escalation path:

| Escalation Level | Role         | Contact Details   |
|------------------|--------------|---|
| 1                | Service Desk | <a href="mailto:servicedesk@apexcomputing.co.uk">servicedesk@apexcomputing.co.uk</a><br>0161 233 0099 |
| 2                | Complaints   | <a href="mailto:complaints@apexcomputing.co.uk">complaints@apexcomputing.co.uk</a><br>0161 233 0099   |

6.2 Formal complaints can be made by e-mail or telephone, and will be responded to within three Working Days.