Master services agreement

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Australia

Who is this article for?

Incydr Professional, Enterprise, Gov F2, and Horizon

Incydr Basic, Advanced, and Gov F1

CrashPlan Cloud

CrashPlan for Small Business

Instructor

Retired product plans

Find your product plan in the Code42 console on the Account menu.

Certified Very Favorable Terms by TermScout

See Code42's TermScout Rating

For an independent review and summary of this Master Services Agreement, see our TermScout rating.

Effective September 14, 2021

By using any of the Offerings you agree to this Master Services Agreement ("Agreement"). If you do not agree to this Agreement, you must not use any of the Offerings. "You" means the entity that you represent (or your Affiliates and Authorized Users). "Code42" means Code42 Software, Inc. This Agreement governs your use of all of the Offerings in your Order and is effective as of the date you first use any of the Offerings. This Agreement expires at the end of the last Subscription Term for the Order under which you accepted this Agreement.

Code42 secures the collaboration culture from insider risk by accelerating your ability to detect, investigate, and respond to data loss. This two-minute video provides an overview of our Incydr product. All of your data is encrypted in transit and at rest using AES 256-bit encryption. We permanently delete all of your data at the end of your subscription.

Security is core to what we do. Our security control framework is based on ISO 27001 and NIST 800-53 security control standards, and our infrastructure and operations are regularly audited by independent third parties. We are ISO 27001 certified, and we undergo an annual SOC 2 Type II audit conducted by an independent auditor. We adhere to GDPR requirements, perform penetration testing regularly, and maintain business continuity and disaster recovery plans and procedures. Our security program is trusted by more than 50,000 organizations, including some of the world's largest technology companies and some of the most recognized names in business and education.

1. Definitions

1.1 "Affiliate" means, for a party at a given time, an entity that is directly controlled by, under common control with, or controls that party, where "control" means an ownership, voting or similar interest representing more than 50% of the total interests then outstanding of that entity.

1.2 "Authorized Users" means your and your Affiliates' employees, contractors, and service providers.

1.3 "Cloud Services" means the cloud-based service Offerings that Code42 provides to you.

1.4 "Customer Data" means any of your data that Code42 receives through the Software or Cloud Services.

1.5 "Documentation" means the information about using the Software or Cloud Services that Code42 makes available at https://support.code42.com.

1.6 "Intellectual Property Rights" means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, patents, patent applications, and moral rights, whether registered or unregistered.

1.7 "Offerings" means all products and services that Code42 provides to you under this Agreement.

1.8 "Order" means an ordering document, signed Quote or online submission that you issue to Code42, or a Code42 authorized reseller, in response to a Quote.

1.9 "Quote" means Code42's written or website description of the Offerings and applicable terms.

1.10 "Service Level Agreement" means the service level agreement available at https://support.code42.com/Terms_and_conditions/Legal_terms_and_conditions/Service_level_agreement.

1.11 "Software" means the commercial software (including updates and upgrades provided through support) in object code format that Code42 provides to you directly or through a third-party application distribution service.

1.12 "Subscription Term" means the term during which you may use the Offerings.

1.13 "Support Policy" means the enterprise support policy available at https://support.code42.com/Terms_and_conditions/Code42_customer_support_resources/Code42_enterprise_support_policy or the Small Business support policy available at https://support.code42.com/Terms_and_conditions/Code42_customer_support_resources/CrashPlan_for_Small_Business_support_policy, whichever applies to your Offering.

1.14 "Technical Services" means the standard service Offerings described at https://www.code42.com/professional-services/.

2. Customer use of the Offerings

2.1 Authorized Users. You may allow your Authorized Users to use the Cloud Services and Software under this Agreement. You are responsible for your Authorized Users' compliance with this Agreement.

2.2 Software and Cloud Services. Code42 grants you a nonexclusive, non-sublicensable, non-transferable (except as set forth in section 12.1 (General: Assignment)), worldwide license to use the Software, Cloud Services and Documentation during the Subscription Term solely for your bona fide internal business purposes. You must only use the Software and Cloud Services for up to the number of Authorized Users or devices listed on your Quote and in accordance with the Documentation. You may copy the Software and Documentation as necessary to install and run the Software, and for backup and archiving. Code42 will provide the Cloud Services in accordance with the applicable Documentation and Service Level Agreement. You will reasonably cooperate with Code42 to resolve any issues relating to your use of the Software and Cloud Services. To use the Cloud Services, you must create login credentials (e.g. a username and password). You are responsible for all activity occurring under your login credentials and will notify Code42 as soon as possible if you believe there has been any unauthorized use of your login credentials.

2.3 Other Offerings. Code42 will provide support services in accordance with the Support Policy. If you purchase other Offerings, including Instructor and education services, Code42 will provide those Offerings in accordance with the terms applicable to the Offering available at https://support.code42.com/Terms_And_Conditions ("Offering Description").

2.4 Restrictions. You will not (A) permit anyone other than your Authorized Users to use the Offerings; (B) use the Offerings for the benefit of any third party other than your Authorized Users; (C) use the Offerings except as permitted under this Agreement; (D) decompile, reverse engineer, modify or create a derivative work of the Offerings (to the extent this restriction is not prohibited by law); (E) attempt to test the vulnerability of, gain unauthorized access to, or circumvent limitations on the use of, the Offerings or their related systems or networks; (F) interfere with the performance of the Offerings; (G) remove any copyright or other proprietary notices in the Offerings; or (H) access the Offerings for the purpose of developing or operating products or services in competition with the Offerings.

2.5 Evaluation Use. Code42 may make an Offering or a new feature or functionality available to you on an evaluation or beta basis ("Evaluation Offering"). Each Evaluation Offering is provided "AS IS" without Service Level Agreement, support or warranty of any kind. You must only use an Evaluation Offering for evaluation purposes during the evaluation period set by Code42.

3. Intellectual property

3.1 Customer Ownership. As between you and Code42, you retain all right, title and interest in and to the Customer Data and all related Intellectual Property Rights. During the term of this Agreement, Code42 will use your Customer Data solely to perform under this Agreement. Code42's rights to use the Customer Data are only those expressly granted in this Agreement.

3.2 Code42 Ownership. As between you and Code42, Code42 retains all right, title and interest in and to the Offerings and all related Intellectual Property Rights. Your rights to use the Offerings are only those expressly granted in this Agreement. All Software is licensed and not sold, even if Code42 uses words like "sale" or "purchase" in sales materials.

3.3 Feedback. If you provide any suggestions to Code42 regarding the Offerings, Code42 may use the suggestions and incorporate them into the Offerings without compensation or restriction.

3.4 Open Source Software. "Open Source Software" means the software components that Code42 provides in the Software under separate license terms that are found either in the open_source_licenses.txt file (or similar file) provided within the Software or at http://support.code42.com/Terms_And_Conditions/Open_Source_Licenses. Open Source Software is licensed to you under its own applicable license terms. These license terms are consistent with the license granted in section 2.2 (Customer Use of the Offerings: Software and Cloud Services) and take precedence over this Agreement to the extent that this Agreement imposes greater restrictions on you. If required, Code42 makes the Open Source Software source code and modifications (the "Source Files") available to you on the Code42 website or on written request. You will send requests with your name and address to Code42 at the address in section 12.6 (General: Notice) specifying: Attention: General Counsel - Open Source Files Request. This offer to obtain a copy of the Source Files is valid for three years from the date you acquired the Software containing the Open Source Software.

4. Security and data processing

4.1 Code42 Obligations. Code42 will provide the Software and Cloud Services in accordance with the Information Security Addendum available at https://support.code42.com/Terms_and_conditions/Legal_terms_and_conditions/Information_security _addendum. Code42 will process your Customer Data in accordance with the Data Processing Addendum available at https://support.code42.com/Terms_and_conditions/Legal_terms_and_conditions/Data_processing_add endum. Following the expiration of your Subscription Term and unless prohibited by applicable law, Code42 will delete any Customer Data in accordance with the applicable Documentation. If you request, Code42 will provide written certification that Code42 deleted your Customer Data.

4.2 Customer Obligations. You are responsible for providing notices, obtaining consents, and satisfying any other requirements for Code42 to use the Customer Data to perform under this Agreement. You will not provide Code42 with any data that is regulated by the United States Health Insurance Portability and Accountability Act unless you have entered into a business associate agreement with Code42.

4.3 Code42 Data.

(A) The Offerings are designed to detect and identify data loss events by collecting and analyzing data pertaining to the modification and movement of computer files. This includes browser upload activity, connected device activity, machine-generated file activity and metadata about other file transfer methods ("Metadata"). Because you, not Code42, determine which types of data exist on your systems, and because your endpoint environment is unique in configurations and naming conventions, Metadata could potentially include personal data. Code42 uses the Metadata and Offering usage data to analyze, characterize, attribute and identify data loss events, which results in generalized product improvements. "Service Data" means these generalized product improvements and aggregated information about the performance of the Offerings, such as the frequency of feature usage, technical performance metrics and product configuration. Code42 uses Service Data to: (1) analyze trends and performance, (2) improve the functionality of, and develop, the Offerings and new products, and (3) permit you to use other applications that use the data. Service Data is accessed only by Code42, and Code42 will not provide Service Data to any third party to use for its own purposes. Service Data does not identify you, your users, or any personal data. Service Data is not your Confidential Information or Customer Data.

(B) Code42 also collects account-related data during your purchase and use of the Offerings ("Administrative Data"). Administrative Data never includes Customer Data. Code42 uses Administrative Data to provide the Offerings, bill you for the Offerings, advise you of new Code42 products and service, and comply with Code42's contractual obligations and applicable law. Code42 is an independent controller of the Administrative Data and will process the Administrative Data under the Code42 privacy statement available at: https://www.code42.com/privacy-statement.

5. Ordering and payment

5.1 Money Back Guarantee. This section does not apply to any CrashPlan for Small Business Offering. If you are not completely satisfied with your initial purchase of any Cloud Service Offering, you may terminate that subscription for convenience by providing written notice to Code42 during the first 60 days of the Subscription Term. Code42 will promptly refund you the amount that Code42 received for the unused portion of the Subscription Term for the terminated Offering. This termination right only applies to your initial purchase of a specific Cloud Service Offering (and not to any renewal, staggered deployment or expansion order) and only if you purchased Code42's deployment services available for the Offering.

5.2 Orders. You may purchase Offerings directly from Code42 or through a Code42 authorized reseller. Purchase orders do not need to be signed to be valid and enforceable. No non-negotiated terms or conditions of any Order, purchase order, invoice, acknowledgment or other business form used in connection with any purchase from Code42 (including subsequent purchases from Code42 of additional subscription terms under new agreements) will have any effect on the terms of any agreement regardless of either party's failure to object to such terms or conditions. Each party rejects all additional or conflicting terms or conditions. No Order is binding on Code42 until Code42 delivers an ordered Offering to you by making Cloud Services available and sending license keys to the email address associated with your account. All Orders are non-refundable and non-cancelable except as expressly provided in this Agreement.

5.3 Reseller Orders. If you purchase through a Code42 authorized reseller, sections 5.4 (Ordering and Payment: Affiliate Orders), 5.5 (Ordering and Payment: Payment), and 5.6 (Ordering and Payment: Taxes) will not apply to that purchase. If Code42 provides you a refund under this Agreement, Code42 will issue the refund to your authorized reseller. Code42 will require the authorized reseller to refund you based on the amount the authorized reseller received from you for the refunded portion of the Offering.

5.4 Affiliate Orders. Your Affiliates whom you identify in an email sent to Code42 at PO@code42.com may submit Orders as "you" to Code42 under this Agreement. You will place Orders with Code42 or its Affiliate as indicated on the Quote. If you place an Order with a Code42 Affiliate, then that Affiliate will act as "Code42" for sections 5.4 (Ordering and Payment: Payment), and 5.5 (Ordering and Payment: Taxes). Each party is responsible for its Affiliate's compliance with this Agreement.

5.5 Payment. Code42 will invoice you for the fees stated on your Quote after accepting your Order. You will pay all fees in the amount and currency specified on your invoice within 30 days of electronic transmission of the invoice to the email address you have provided. You will pay any delinquent amounts within 30 days of Code42's written notice identifying a delinquency, and if you do not or if you have not paid prior fees in accordance with this section, then Code42 may suspend your access to the Offerings and terminate this Agreement. Code42 will not exercise its suspension rights under this section if you are disputing the applicable charges reasonably and in good faith, you are cooperating diligently to resolve the dispute, and you have paid any undisputed fees in accordance with this section.

5.6 Taxes. All fees owed under this Agreement are exclusive of any Taxes. "Taxes" means any sales, VAT, GST (Goods and Services Tax), use, gross receipts, business and occupation, and other taxes (other than taxes on Code42's income), export and import fees, customs duties, and similar charges imposed by any government or other authority. You will pay or reimburse Code42 for all Taxes arising out of the transactions occurring under this Agreement. If you are required to pay or withhold any Tax for

payments due under this Agreement, you will gross up your payments to Code42 so that Code42 receives all sums due in full and free from any deductions. Code42 can rely on the name and address you provide to Code42 as being the place of supply for sales tax, income tax, and VAT purposes. If you are tax exempt, you will provide exemption certificates for the applicable taxing authorities.

6. Modifications

This Agreement incorporates by reference all of the documents that this Agreement identifies as applicable to your ordered Offerings ("Ancillary Documents"). Ancillary Documents may include the Documentation, Service Level Agreement, Information Security Addendum, Data Processing Addendum, Support Policy, and Offering Descriptions. Because the Offerings are continually evolving, Code42 may update any of the Ancillary Documents from time to time, and the Ancillary Document applicable at any time is the then-current version. Code42 will provide you with 30 days' written notice if any update to an Ancillary Document will materially and adversely affect your use of an Offering or Code42's obligations to you, and in that case you may elect in writing to terminate the affected Offering within 60 days of the notice date. If you terminate the Offering, Code42 will refund the amount that Code42 received for the unused portion of the Subscription Term for the terminated Offering.

7. Warranties

7.1 Cloud Services Warranty. Code42 warrants that the Cloud Services will substantially conform to the applicable Documentation during the Subscription Term. This warranty only applies if the Cloud Services are used in unmodified form in accordance with the Documentation. Code42 will correct any reproducible error that you identify. If Code42 determines that it cannot correct the error, Code42 will refund to you the amount that Code42 received for the unused portion of the Subscription Term after the date you notified Code42 of the breach for that Cloud Services Offering, in which case your rights to use the Cloud Service will terminate. Code42 will do this at its own expense and as its sole obligation and your sole remedy for breach of this Cloud Services warranty.

7.2 Technical Services Warranty. Code42 warrants that it will perform Technical Services in a workmanlike manner in accordance with the standards of the industry. If you provide written notice to Code42 within 10 business days after any alleged breach of this warranty, Code42 will correct that breach or terminate that Technical Service and refund to you the amount that Code42 received for that Technical Service. Code42 will do this at its own expense and as its sole obligation and your sole remedy for breach of this Technical Services warranty.

7.3 Disclaimer. The express warranties set forth in section 7 (Warranties) are in lieu of all other warranties. To the extent permitted by law, Code42 disclaims all other warranties, whether express, implied or statutory (including any implied warranties of merchantability, fitness for a particular purpose, title or noninfringement), and any warranties arising from usage of trade, course of dealing or course of performance. Code42 does not warrant that the Offerings will meet your requirements or

that they will be accurate or operate without interruption or error. You have not relied on any promise, warranty, or representation not expressly provided in this Agreement.

8. Mutual Indemnification

8.1 Code42 Indemnification.

(A) Subject to the remainder of section 8.1 (Mutual Indemnification: Code42 Indemnification), Code42 will defend you against any unaffiliated third party suit or proceeding (1) that the Software or Cloud Services infringe any patent, trademark or copyright, or misappropriate a trade secret, of that third party ("Infringement Claim"), or (2) arising from Code42's failure to comply with applicable laws with respect to Customer Data (together with an Infringement Claim, "Indemnified Claim"). Code42 will indemnify you from the damages finally awarded against you to that third party by a court of competent jurisdiction or agreed to in settlement. Code42's obligations only apply if you: (i) promptly notify Code42 of the Indemnified Claim in writing, (ii) allow Code42 sole control over the defense for the claim and any settlement negotiations, and (iii) reasonably cooperate in response to Code42's requests for assistance. You may not settle or compromise any Indemnified Claim without Code42's prior written consent.

(B) If Software or Cloud Service become, or in Code42's opinion is likely to become, the subject of an Infringement Claim, Code42 will at its option and expense do one of the following: (1) procure the rights necessary for you to make continued use of the affected Software or Cloud Service; (2) replace or modify the affected Software or Cloud Service to make it non-infringing; or (3) terminate your right to use the affected Software or Cloud Service, and upon your certified deletion of any affected Software, refund you the amount that Code42 received for the unused portion of the Subscription Term for the terminated Software and Cloud Services Offering. Nothing in this section 8.1(B) (Mutual Indemnification: Code42 Indemnification) will limit Code42's obligation under section 8.1(A) (Mutual Indemnification: Code42 Indemnification) to defend and indemnify you, provided that you replace any allegedly infringing Software upon Code42's making alternate Software available to you and you discontinue using any allegedly infringing Software upon receiving Code42's notice terminating your license to use the Software.

(C) Code42 will not have any obligation under section 8.1(A) (Mutual Indemnification: Code42 Indemnification) with respect to any claim based on (1) a combination of Software or Cloud Services with non-Code42 products; (2) continued use of an infringing version of the Software after Code42 has provided you a noninfringing version or terminated your right to use the affected Software or Cloud Service under section 8.1(B) (Mutual Indemnification: Code42 Indemnification); or (3) any modification to the Software by anyone other than Code42.

(D) This section 8.1 (Mutual Indemnification: Code42 Indemnification) is your sole exclusive remedy and Code42's entire liability for any Indemnified Claim.

8.2 Customer Indemnification. You will defend Code42 against any unaffiliated third party suit or proceeding (A) that the Customer Data infringes any patent, trademark or copyright, or misappropriates a trade secret, of that third party; or (B) arising from your failure to comply with applicable laws with respect to Customer Data ("Customer Data Claim"). You will indemnify Code42 from the damages finally awarded against Code42 to that third party by a court of competent jurisdiction or agreed to in settlement. Your obligations only apply if Code42: (a) promptly notifies you of the Customer Data Claim in writing, (b) allows you sole control over the defense for the claim and any settlement negotiations, and (c) reasonably cooperates in response to your requests for assistance. Code42 may not settle or compromise any Customer Data Claim without your prior written consent. This section 8.2 (Mutual Indemnification: Customer Indemnification) is Code42's sole exclusive remedy and your entire liability for any Customer Data Claim.

9. Limitations of liability

9.1 Exclusion of Damages. Neither Code42 nor you are liable for any lost profits or business opportunities, loss of use, business interruption, or any indirect, punitive, special, incidental or consequential damages under any theory of liability. This exclusion applies regardless of whether Code42 or you have been advised of the possibility of those damages and regardless of whether any remedy in this Agreement fails of its essential purpose.

9.2 Cap on Monetary Liability. The maximum aggregate liability for Code42 or you for claims related to this Agreement will not exceed an amount equal to the total fees paid or payable to Code42 for your use of the Offerings in the 12 months prior to the event giving rise to the claim.

9.3 Exclusions. The exclusions and limitations in section 9 (Limitations of Liability) will not apply to: (A) either party's violation of the other party's Intellectual Property Rights; (B) either party's obligations in section 8 (Mutual Indemnification); (C) your payment obligations under section 5 (Orders and Payment); (D) either party's liability for death or personal injury caused by its negligence; or (E) any liability that cannot be excluded under applicable law.

10. Confidential information

10.1 Obligations. "Confidential Information" means non-public information provided in connection with this Agreement that is labeled "confidential" or the like, or is provided under circumstances reasonably indicating its confidentiality. Code42's Confidential Information includes this Agreement, your pricing, and product roadmaps. Your Confidential Information includes your Customer Data. A party ("recipient") may use Confidential Information of the other party ("discloser") solely to exercise its rights

and perform its obligations under this Agreement. Code42 and you will each protect the other party's Confidential Information in the same manner as it protects its own Confidential Information of a similar nature, but in any event with not less than reasonable care. Code42 will process your Customer Data in accordance with the Information Security Addendum.

10.2 Exclusions. The recipient's obligations under section 10.1 (Confidential Information: Obligations) will terminate with respect to any Confidential Information that the recipient can show: (A) was already rightfully known to the recipient without any obligation of confidentiality at the time of disclosure; (B) was disclosed to the recipient by a third party who had the right to make the disclosure without any confidentiality restrictions; (C) was at the time of disclosure, or through no fault of the recipient has become, generally available to the public; or (D) was independently developed by the recipient without access to or use of the discloser's Confidential Information.

10.3 Permitted Disclosures. The recipient may disclose Confidential Information only to its employees, professional advisors, service providers or contractors who have a need to know the Confidential Information and who are under a similar duty of confidentiality. The recipient may also disclose Confidential Information to the extent required by law or regulation, in which case the recipient will notify the discloser as soon as practicable if permitted by law or regulation. At the discloser's request and expense, the recipient will take reasonable steps to contest and to limit the scope of any required disclosure.

10.4 Remedies. The discloser may seek an injunction to prevent the actual or threatened unauthorized disclosure of Confidential Information.

11. Term and termination

11.1 Term. This Agreement will remain in effect until the later of (A) the end of the period identified in the preamble or (B) the termination or expiration of all Orders accepted under this Agreement. Either party may terminate this Agreement before the end of the term if expressly permitted by this Agreement. The Subscription Term and any renewal is described in the applicable Quote. Each Subscription Term is a continuous and non-divisible commitment for the full duration of the Subscription Term. If you place an Order after the start date stated on your Quote, Code42 may adjust your start date as described in the Quote, in which case your Subscription Term will be described on your invoice.

11.2 Termination

(A) For Convenience. Either party may terminate this Agreement upon written notice if there are no Orders then in effect.

(B) For Breach. If the other party materially breaches this Agreement and does not cure the breach within 30 days of receiving written notice describing the breach from the other party, the non-breaching party may terminate this Agreement immediately by written notice while the breach remains uncured. Termination under this section will also terminate any Orders then in effect. If you terminate under this section for Code42's uncured breach, then Code42 will promptly refund the amount that Code42 received for the unused portion of the Subscription Term for the terminated Offering.

(C) For Insolvency. Either party may terminate this Agreement effective immediately by written notice if the other party (A) becomes insolvent, admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or (B) becomes subject to control of a trustee, receiver or similar authority, or to any bankruptcy or insolvency proceeding. Termination under this section will also terminate any Orders then in effect.

11.3 Effect of Expiration or Termination. Upon termination or expiration of an Order, you will stop using and Code42 will stop providing the applicable Software or Cloud Services. Upon request following termination or expiration of this Agreement, Code42 and you will each delete any Confidential Information of the other party.

11.4 Survival. The following sections will survive termination or expiration of this Agreement: 3 (Intellectual Property); 4 (Security and Data Processing); 5.4 (Ordering and Payment: Payment); 7.3 (Warranties: Disclaimer); 8 (Mutual Indemnification); 9 (Limitations of Liability); 10 (Confidentiality); 11 (Term and Termination); and 12 (General).

12. General

12.1 Assignment. Neither party may assign its rights or obligations under this Agreement or any Order, by operation of law or otherwise, without the prior written consent of the other party. But either party may assign this Agreement without consent to its Affiliates or to any successor or assign that has acquired substantially all of its business relating to this Agreement. This Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns. Any purported assignment in violation of this section is void.

12.2 Governing Law and Venue. If you are domiciled in North America, this Agreement is governed by the laws of the State of New York without regard to its principles of conflicts of law, and any dispute arising out of this Agreement will be exclusively resolved in the State or Federal courts located in Hennepin County, Minnesota. If you are domiciled outside of North America, this Agreement is governed by the laws of England and Wales without regard to its principles of conflicts of law, and any

dispute arising out of this Agreement will be exclusively resolved in the English courts. The 1980 U.N. Convention on Contracts for the International Sale of Goods will not apply.

12.3 Compliance with Laws. Each party will comply with any statutes and regulations that apply to it in its performance under this Agreement.

12.4 Export Compliance. The Offerings are of United States origin, are provided subject to the U.S. Export Administration Regulations, and may be subject to export control laws. You are not, and are not acting on behalf of: (A) any person who is a citizen, national, or resident of, or who is controlled by, the government of any country to which the United States has prohibited export transactions; or (B) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List. You are not subject, either directly or indirectly, to any order issued by any agency of the United States government revoking or denying, in whole or in part, your United States export privileges.

12.5 U.S. Government Rights. Code42 provides the Offerings, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Offerings include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Code42 to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

12.6 Notice. All notices will be in writing and deemed given the second business day after mailing if sent by a recognized overnight courier (receipt requested). Code42 will send notices to you at the address in your Quote. You will send notices to Code42 at: Code42 Software, Inc., 100 Washington Ave., 20th Floor, Minneapolis, MN 55401, United States of America, Attention: Legal Department. Except for notices of termination or indemnification, notices may also be delivered by email and are effective the business day after sending. Code42 will email billing-related notices to the billing contact that you designate. Code42 will email Offering-related notices to the system administrator that you designate. You will email all notices to Code42 at legal@code42.com.

12.7 Force Majeure. Neither party will be liable for any delay or failure to perform any obligations under this Agreement or any Order (except for payment obligations), due to any cause beyond its reasonable control including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications or other utility failures, supply failures by third party service providers (including

internet service provider failures or delays, or denial of service attacks), earthquakes, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism or war.

12.8 Entire Agreement. This Agreement includes any separately executed agreements between you and Code42 relating to this Agreement, each of which is incorporated by reference. The Agreement as it may be modified from time to time is the entire agreement of the parties regarding your purchase and use of the Offerings. The Agreement supersedes all prior or contemporaneous communications, understandings and agreements, whether written or oral, between the parties regarding its subject matter. In the event of a conflict, the descending order of precedence is: (A) the Quote, (B) the body of this Agreement, and (C) the applicable Ancillary Document.

12.9 Counterparts. Each party may sign this agreement using an electronic or handwritten signature, which are of equal effect, whether on original or electronic copies.

12.10 Waiver and Amendment. The waiver of a breach of any provision of the Agreement will not constitute a waiver of any other provision or any later breach. Any modification of this Agreement must be in writing and signed by the party against whom the modification will be enforced.

12.11 Relationship of the Parties. The parties are independent contractors. Nothing in this Agreement creates a partnership, joint venture or agency relationship. Neither party has any authority to assume or create any obligation of any kind in the name of or on behalf of the other party.

12.12 Third Party Rights. Other than as expressly provided in the Agreement, the Agreement does not create any rights for any person who is not a party to it, and no person who is not a party to the Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it.

12.13 Severability. If any provision of the Agreement is held to be invalid or unenforceable, the remaining provisions of the Agreement will remain in force to the maximum extent feasible or permitted by law.

12.14 Construction. The Offerings will be provided in the English language. The words "include" and "including" mean "including but not limited to." Section headings are for convenience only and are not to be used in interpreting this Agreement.

12.15 Country Specific Provisions. The following country-specific terms replace or supplement the identified provisions of this Agreement if you are domiciled in the applicable country.

Australia

Replace section 2.4(D) (Customer Use of the Offerings: Restrictions) with the following:

"decompile, reverse engineer, modify or create a derivative work of the Offerings (to the extent this restriction is not prohibited by law, and subject to any rights under the Australian Copyright Act 1968 (Cth) that cannot be excluded by agreement);"

Supplement section 4 (Security and Data Processing) with the following additional section:

"4.4 Privacy. You represent and warrant that your access, collection, use, relocation, storage and disposal of Customer Data, and the receipt, processing and use of Customer Data by Code42 in performing its obligations in accordance with this Agreement, shall comply with all applicable data privacy laws, including the Australian Privacy Act 1988 (Cth) and the Australian Privacy Principles contained in Schedule 1 of the Australian Privacy Act 1988 (Cth). You must, and must ensure that your Authorized Users, comply with the requirements of any such data privacy laws, and not do or omit to do anything in connection with the Customer Data that will cause Code42 to breach any such data privacy laws. You warrant that you have provided the appropriate notifications and procured the necessary consents to allow Code42 to collect any personal information required for this Agreement and to use that personal information as contemplated by this Agreement and in accordance with such data privacy laws.

Code42 stores your Customer Data which may contain personal information (as the term is defined in the Australian Privacy Act 1988 (Cth)) on your behalf, as agent for you. For additional information on Code42's privacy practices, please visit our privacy statement at https://www.code42.com/privacy-statement/."

Supplement section 5 (Ordering and Payment) with the following additional section:

"5.6 GST. In this section 5.8, the expressions "Consideration", "GST", "Input Tax Credit", "Net Amount", "Recipient", "Supply", "Tax Invoice" and "Taxable Supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) ("GST Act"), and "Supplier" means any party treated by the GST Act as making a Supply under this Agreement. Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Agreement are exclusive of GST. If GST is imposed on any Supply made under or in accordance with this Agreement, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment. Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Agreement. If this Agreement requires a party (the "First Party") to pay for, reimburse, set off or contribute to any expense, loss or outgoing ("Reimbursable Expense") suffered or incurred by the other party (the "Other Party"), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of: (i) the amount of the Reimbursable Expense net of

Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense ("Net Amount"); and (ii) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply, such that after the Other Party meets the GST liability, it retains the Net Amount."

Sections 7.3 (Warranties: Disclaimer), 8.1(D) (Mutual Indemnification: Code42 Indemnification), and 9 (Limitations of Liability) are each subject to the Australian Consumer Law and to section 7.4 (Warranties: Australian Consumer Law).

Supplement section 7 (Warranties) with the following additional section:

"7.4 Australian Consumer Law. The supply of the Offerings under this Agreement may be subject to the Australian Consumer Law, Schedule 2 of the Australian Competition and Consumer Act 2010 (Cth) ("Australian Consumer Law"). Where this is the case, the following statement applies in respect of any failure to comply with the consumer guarantees under the Australian Consumer Law:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on you by the Australian Consumer Law or any other applicable law that cannot be excluded, restricted or modified by agreement. Subject to the preceding sentence, any condition, warranty, guarantee, right or liability which would otherwise be implied in this Agreement or imposed by law is excluded. To the fullest extent permitted by law, Code42's liability for any breach of any consumer guarantee, right or remedy conferred by the Australian Consumer Law which cannot be excluded is limited, at Code42's option, to: (i) in the case of goods, any one or more of the following: (1) the replacement of the goods or the supply of equivalent goods; (2) the repair of the goods; (3) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (4) the payment of the cost of having the goods repaired; or (ii) in the case of services: supplying the applicable service again or the payment of the cost of having that service provided again."

Add the following to the end of the last sentence of section 5.2 (Ordering and Payment: Orders):

" or the Australian Consumer Law."

Replace the first two sentences of section 12.2 (General: Governing Law and Venue) with the following:

"This Agreement is governed by and must be construed in accordance with the laws of New South Wales, Australia without regard to its principles of conflicts of law, and any dispute arising out of this Agreement will be exclusively resolved in the courts of New South Wales, Australia and the Commonwealth of Australia, and you and Code42 submit to the exclusive jurisdiction of those courts."

End of Agreement