



Managed Backup and Continuity Services Agreement

Version 2024.1

Contents

Agreement.....	3
The Aggregate Set of Agreements between Client and WPG Consulting.....	3
Managed Backup and Continuity Service.....	4
General Terms.....	4
Security.....	4
License.....	4
Use.....	5
Equipment.....	5
Warranty and Limitation of Liability.....	6
Service Suspension and Data Forfeiture.....	7
Termination.....	7
Governance.....	7

Agreement

This Managed Backup and Continuity Services Agreement is part of an aggregate set of agreements which, combined together by reference, create one integrated contract (the “Agreement”) between WPG Consulting (“we,” or “us,” including “our,” and “WPG Consulting”) and Client (“you,” including “your,” or “Client”). Each of WPG Consulting and Client may also be referred to as a Party and collectively as the Parties.

For any Quotes, Quotations, Proposals, Statements of Work, Sales Orders or Service Order (“SO”) agreements executed by you (individually and collectively, “Engagements”), this document and all the applicable documents listed in the tables immediately below (“Included Agreements”) are legally integrated as if fully set forth as one Agreement.

Upon each Engagement renewal, this Agreement, but not the terms of any ongoing Engagement, will be superseded by the terms and conditions set forth in the then currently published version of the Agreement available online as of the date on which your services are renewed (the “Renewal Terms”). If you do not agree to the Renewal Terms, you may decline to renew your services.

The Aggregate Set of Agreements between Client and WPG Consulting, the Included Agreements

Applicable Agreements Integrated into All Engagements	Available Online at
Master Services Agreement	https://wpgc.io/legal/msa/
Services Guide Agreement	https://wpgc.io/legal/service-agreement/
Service Level Agreement (“SLA”)	https://wpgc.io/legal/sla/
Standard Rates Agreement	https://wpgc.io/legal/rates/
Domain Name Registration and Renewal Agreement	https://wpgc.io/legal/DNR/
A current and submitted Client Information Form, available online	https://wpgc.io/legal/forms/

Included Agreements Integrated into Specific Engagements, as Applicable	Available Online at
Monitoring Services Guide Agreement <i>(applies to Engagements which include Managed Services)</i>	https://wpgc.io/legal/monitor-agreement/
WPG Consulting IT Architecture for Business Optimization <i>(applies to Engagements which include Managed Services)</i>	https://wpgc.io/legal/IT-architecture/
Managed Backup and Continuity Services Agreement <i>(applies to Engagements which include Managed Backup and Continuity Services)</i>	https://wpgc.io/legal/backup/
Acceptable Use Policy Agreement <i>(applies to Engagements which include WPG Consulting Cloud Hosting or Connectivity Services)</i>	https://wpgc.io/legal/aup/
Microsoft End User License Agreement <i>(applies to Engagements which include WPG Consulting Cloud Hosting Services)</i>	https://wpgc.io/legal/ms-eula/
Hosted VoIP Agreement <i>(applies to Engagements which include Hosted VoIP Services)</i>	https://wpgc.io/legal/hosted-voip/

Managed Backup and Continuity Services

The following additional special terms and conditions apply when Managed Backup and Continuity Services (“Backup Service”) is accepted on your Service Order.

General Terms

1. Headings and other formatting elements of this document are included and placed for the convenience of the reader. The text and emphasis of headings and other formatting elements used in this document are explicitly not incorporated into the agreement terms.
2. WPG Consulting and its affiliates (“WPG Consulting”) will provide Backup Service during the term of the applicable Service Order consisting of off-site automated data protection, backup, and recovery services as described in the Services Guide AND in connection with your use of Proprietary Software or with your use of Proprietary Hosted Services (collectively, “Software”).
3. Premium Cloud Backup and Continuity, Standard Cloud Backup and Recovery, and Basic Cloud Backup and Restore services are provided in connection with your use of Software AND a Backup Disaster Recovery Device (“BDR”) or Local Storage Device (“LSD”).
4. Backup Protection for WPG Consulting Cloud Servers, Managed Backup for Microsoft Azure Virtual Machines, and Managed Backup for Microsoft Office 365 Exchange Online and SharePoint Online services are provided in connection with your use of Software AND cloud-based storage services.

Security

5. WPG Consulting agrees to hold confidential all of your data in its possession, exercising the same degree of care that a company utilizing industry-accepted business practices would exercise with similar data of its own.
6. WPG Consulting will implement reasonable security and environmental precautions to promote an appropriate level of system availability and data protection and recovery.

License

7. WPG Consulting grants you a non-exclusive, non-transferable license to use the Software solely for your internal business purposes and in accordance with this Agreement.
8. WPG Consulting does not convey any intellectual property rights of ownership of the Software, including all copyrights and other intellectual property rights vested in the Software, and all modifications to the Software (including derivative works), and changes to the Software made during the Agreement. In no event will title to all or any part of the Software pass to you.
9. You agree that, as between the Parties, the Software (in whole or part) remains the exclusive property of WPG Consulting and may not be copied or used except as expressly authorized by this Agreement. Any rights not expressly granted to you under this Agreement are retained by WPG Consulting.

10. You acknowledge and agree that you are acquiring only the right to use the Software, unless the Backup Service agreed to also includes a BDR or LSD, during the term of the Agreement, and you will not, and will not permit others to modify, customize, reverse engineer, reverse assemble, or reverse compile the Software or any part thereof.
11. When the Software used in the service is produced or manufactured by an entity other than WPG Consulting, and you interact with the Software, you agree to separately obtain and independently adhere to all applicable terms of use of the Software, as may be published and periodically updated by the Software manufacturer.

Use

12. You are responsible for any communication costs associated with the connection between your site and WPG Consulting's Data Center, between your site and third-party data services, between your hosted infrastructure and WPG Consulting's Data Center, and between your hosted infrastructure and third-party data services.
13. You must implement reasonable security and environmental precautions to ensure a high level of system availability and data protection and recovery.
14. You covenant and agree that you will not place any data in WPG Consulting's offsite storage that (i) infringes the intellectual property rights or privacy rights of any third party, (ii) violates any law, statute, ordinance or regulation, (iii) is defamatory, libelous, unlawfully threatening or harassing, (iv) is obscene, or contains any viruses, Trojan horses, malware, worms, time bombs, cancel bots or other programming routines that are intended to or have the effect of damaging, detrimentally interfering with, surreptitiously intercepting, or expropriating any system, data or personal information. You will defend, indemnify and hold WPG Consulting harmless against any third-party claim, suit or proceeding alleging any breach of these covenants.
15. WPG Consulting reserves the right to limit or restrict off-site data retention if, as determined by WPG Consulting, you engage in any activity or use the off-site retention in a manner that: (i) adversely impacts WPG Consulting; (ii) results in excessive bandwidth or storage usage; or (iii) harms, disrupts, or otherwise diminishes the WPG Consulting brand, services, network, or computer system.

Equipment

16. WPG Consulting's Backup Services may include the provision of a BDR or LSD or other hardware utilized in connection with the service. Any backup device deployed to you ("Equipment") in conjunction with the Service is your property for all purposes including any and all personal property tax liabilities.
17. Your purchasing the BDR or LSD does not negate the provisions of licensing and use of the Software and Intellectual Property.
18. In the event that any BDR or LSD is damaged or destroyed, WPG Consulting will, at your expense, deliver and install a replacement BDR or LSD containing the most recent offsite backup that was successfully uploaded to WPG Consulting's offsite data center.
19. You will obtain and keep current insurance against loss or liability connected with your hardware, including the BDR or LSD, and your data. You will provide proof thereof to WPG Consulting

upon request. You are responsible for all costs of insurance and deductible amounts for any claims.

Warranty and Limitation of Liability

20. You acknowledge that you are responsible for determining whether the Backup Service is appropriate for your data protection needs.
21. You agree to contact WPG Consulting immediately if you believe that the BDR, LSD, or the Software is not functioning according to standard written specifications.
22. You acknowledge that many factors contribute to successful recovery of data and agree that WPG Consulting cannot guarantee recovery of any data and that any assistance provided by WPG Consulting in recovering data is provided on a best-efforts basis.
23. WPG Consulting's sole warranty is that the Backup Service substantially complies with any standard specifications provided in writing by WPG Consulting. Your sole and exclusive remedy, and WPG Consulting's entire liability under this Agreement is limited to the following: (i) WPG Consulting will use reasonable commercial efforts to correct any substantial noncompliance with the above warranty; and (ii) if such non-compliance cannot be corrected after using commercially reasonable efforts, you may terminate the Agreement and receive a refund of any amounts paid since the time of the non-compliance.
24. EXCEPT FOR THE LIMITED WARRANTY IN THE PARAGRAPH IMMEDIATELY ABOVE, WPG CONSULTING MAKES NO WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE BACKUP SERVICE, THE BDR, THE LSD, OR THE SOFTWARE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, WORKMANLIKE EFFORT, AND NEGLIGENCE. YOU ACKNOWLEDGE YOU HAVE RELIED ON NO WARRANTIES WITH RESPECT TO THE BACKUP SERVICE, THE BDR, THE LSD, OR THE SOFTWARE IN ENTERING INTO THIS AGREEMENT.

IN NO EVENT WILL WPG CONSULTING BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL, ECONOMIC, EXPECTANCY, RELIANCE, RESTITUTIONARY, OR PROPERTY DAMAGES WHATSOEVER, INCLUDING ANY DAMAGES FOR LOSS OF DATA, LOST BUSINESS PROFITS, LOST REVENUE, BUSINESS INTERRUPTION, OR OTHER PECUNIARY LOSS ARISING FROM OR RELATING TO THE AGREEMENT. FURTHER, IN NO EVENT SHALL WPG CONSULTING'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THE AGREEMENT EXCEED THE AMOUNT OF FEES AND AMOUNTS YOU PAID UNDER THE BACKUP SERVICE AGREEMENT. YOU ACKNOWLEDGE THAT THE AMOUNTS PAID UNDER THE BACKUP SERVICE AGREEMENT REFLECT THE ALLOCATION OF RISK SET FORTH IN THE AGREEMENT AND THAT WPG CONSULTING WOULD NOT ENTER INTO THE AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. NO CLAIM MAY BE ASSERTED BY EITHER PARTY AGAINST THE OTHER WITH RESPECT TO ANY EVENT, ACT, OR OMISSION THAT OCCURRED MORE THAN ONE YEAR PRIOR TO SUCH CLAIM BEING ASSERTED.

25. YOU HEREBY COVENANT NOT TO SUE, AND YOU WAIVE, DISCHARGE, AND RELEASE WPG CONSULTING FROM ANY AND ALL LIABILITY FOR ANY AND ALL LOSS OR DAMAGE TO YOUR ELECTRONIC DATA ARISING OUT OF, CAUSED BY, OR RELATED IN ANY WAY TO HOW YOU BACKED UP THE ELECTRONIC DATA.

26. You release WPG Consulting from any liability for loss of productivity resulting from or concurrent with the failover as part of this Agreement.

Service Suspension and Data Forfeiture

27. WPG Consulting may suspend Backup Service if you do not pay all amounts due on or before the due date of each related invoice. If payment is not received, WPG Consulting will notify you of non-payment and that your service will be suspended. If payment is still not received within thirty (30) days following the non-payment notice, WPG Consulting may suspend service without further notice. If WPG Consulting does not receive payment within sixty (60) days of the non-payment notice, WPG Consulting may terminate your services, remove stored data without additional notice, and is under no obligation to provide the forfeited data in any form nor via any means.

Termination

28. Upon termination, you must promptly pay any amounts due and owing to WPG Consulting and return the Software. If Software has been installed on a device, you must promptly uninstall the Software and at WPG Consulting's sole discretion, either destroy or return all Software copies and documentation. You will certify to WPG Consulting in writing within five (5) business days following the termination date that you have so complied and that no Software is being used or retained on any of your computers or storage devices.
29. If any Rented Equipment is related to the Services in this Backup Services Agreement, your obligation with respect to such Rented Equipment shall be solely governed by the Equipment Rental Agreement as specified in the Master Services Agreement governing this Service.
30. You understand that upon termination all your data, including any data maintained in an WPG Consulting data center, will be deleted.

Governance

31. This Agreement is not governed by the United Nations Convention on the International Sale of Goods, the application of which is expressly excluded.
32. The BDR, LSD, and the Software are subject to the customs and export control laws and regulations of the United States and may be subject to the customs and export laws and regulations of the country in which the products are manufactured or received. If the BDR, LSD, or Software is licensed for use outside of the United States, you agree to comply fully with all relevant export laws and regulations of the United States and the country or territory in which the Proprietary Software is used, to assure that neither the Software, nor any direct product thereof, are exported, directly or indirectly, in violation of such laws. Under United States law, the BDR and Software may not be sold, leased or otherwise transferred to restricted countries, or used by a restricted end-user or an end-user engaged in activities related to weapons of mass destruction.
33. If you are a branch or agency of the United States Government, the following provision applies: As defined in FAR section 2.101, DFAR section 252.227-7014(a)(1) and DFAR section 252.227-7014(a)(5) or otherwise, all Software and accompanying documentation provided by WPG Consulting are "commercial items," "commercial computer software," and/or "commercial computer

software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure, or distribution thereof by or for the US. Government is governed solely by the terms of the Agreement and is prohibited except to the extent expressly permitted by the terms of the Agreement.

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