



## TERMS AND CONDITIONS – VENDOR SPECIFIC

By this Backup and Disaster Recovery Services Agreement (“Agreement”), Xari Group Pty Ltd (“Xari Group”) and the client identified as (“Client”) agree as follows:

### 1. Term.

This Agreement is effective upon the nominated contract start date of this document, and shall remain in force for a period of years as chosen by the client (see page 4). The Agreement automatically renews for a subsequent one-year term beginning on the day immediately following the end of the Initial Term unless either party gives the other sixty days’ prior written notice of its intent not to renew this Agreement.

### 2. Fees.

Client shall pay Xari Group the monthly fees detailed in the proposal and is payable in Australian dollars within seven (7) days of invoice. Adjustments for additional server appliances and/or software and/or additional offsite storage will be applied in a prorated manner on the next billing cycle during the Agreement.

### 3. Services Provided.

An appliance that acts as a local storage device which syncs to the cloud and also acts as a stand-by virtual server in the event of server failure.

- a) Incremental backups will be done on the BDR, and will be as frequent as every 5 minutes and no less than every 4 hours. Incremental backups will then be replicated and synced offsite. Frequency and success of incremental backups and offsite synchronisation will be dependent on any and/or all of different circumstances. Such circumstances are out of Xari Group’s control and will not be reflective of Xari Group management services as outlined in Section
- b) Secure cloud storage is provided at an Australian data centre.
- c) Day-to-day data restoration of files, file folders, emails or email stores, SQL databases, and SharePoint.
- d) Full data recovery from the secure data centre with the most recent information stored offsite - in the event of total catastrophe, where the onsite server are lost. Please note this will be

chargeable at our senior hourly rate of \$225ex per hour (additional charges apply for after-hours service).

3.5 Critical system(s) virtualisation and full data recovery from the local BDR and/or secure data centres; Whichever is the most recent information stored in the event of total catastrophe, dependent on whether the onsite server and/or BDR are lost.

3.6. Full management, monitoring, local and offsite storage, regular testing of BDR functionality.

3.7. Services under this Agreement shall be provided to client from Monday to Friday 8:30 a.m. to 5:00 p.m. excluding public holidays. Client will be charged After Hours Rates for Services provided before 8:30 a.m. and after 5:00 p.m. weekdays, and on Services provided over weekends and during official holidays, unless otherwise stated in writing.

### 4. Security.

All data is fully encrypted locally, during transmission offsite, and while stored offsite. All data stored offsite will be in an encrypted format, on [specify servers/databases/workstations] in a highly secure data centre.

4.1. Data is encrypted using 256-bit AES and SSL key-based encryption technology, with individually assigned pass phrases. 256-bit AES encrypted data cannot be read, accessed, and/or recovered without the corresponding pass phrases; Pass phrase(s) are the responsibility of the Client to maintain and safeguard; unless otherwise specified by compliance regulations.

4.2. The onsite BDR unit communicates with off-site remote servers using SSL (Secure Socket Layers) technology. As a result, the online backup of data is encrypted twice. It is encrypted at all times using the 256-bit AES encryption, and it is encrypted again while it’s being sent over the Internet.

4.3. Data stored off-site remains encrypted at all times.

### 5. Data Deduplication and Compression.

Data deduplication and compression occurs prior to data storage and transmit using state-of-the-art technology. This ensures that backups are completed in a shorter timeframe, less storage space is used on the BDR appliance and at the off-site data centres. This also lowers the bandwidth needed to transfer

data off-site, making data transfer times more manageable.

## 6. Backup Frequency.

Servers, workstations, databases, and/or any other protected machines can be backed up as frequently as every 5 minutes. Retention policies will be customised to create as many archived versions of data and full recovery points as needed, specified, and agreed upon between Client and Xari Group. Off-site backup frequency is continuous by default, and may be customised to meet Internet bandwidth limitations and/or compliance regulations. Off-site backup frequency is ultimately dependent on total data size, data changes, and available Internet bandwidth.

## 7. Smart Data Transport.

Data transmission can easily be configured to minimise Internet bandwidth consumption. The onsite BDR and propriety offsite data transfer system leverages advanced bandwidth throttling to schedule Internet bandwidth used depending on the time of day, customisable for each day of the week. This allows bandwidth to be limited during business hours to maintain network functionality and maximize bandwidth during off-peak hours to efficiently transfer data offsite.

## 8. Remote Storage provided at a high availability Data Centre in Australia.

Highly redundant storage in a secure, Tier 3 data centre in Sydney, Australia.

## 9. Remote Storage and Base Remote Backup Image Creation.

- a) Your data is stored (in encrypted form) in a secure off-site data centre located in Sydney, Australia.
- b) The initial backup will be sent via a SATA II drive to the primary remote storage facility. There is approximately a 2-week turnaround time to seed the initial backup off-site. Incremental backups will occur during the off-site seeding process and will collapse into the main backup once the off-site transfer is complete. Applicable setup fees will apply as outlined in the Solutions Proposal.

## 10. Recovery Time Objective (RTO)

When a service ticket is created for BDR issues, Xari Group will react as follows.

- a) Xari Group will attempt to resolve access, backup, and/or retrieval problems over the phone on the first call within 4 hours of the first request. Restoration of a file, file folder, email or an entire

mailbox can be done through our helpdesk; In the event this is needed, please call our help desk for assistance immediately.

## 11. Offsite Virtualisation

- a) In a disaster where all staff should lose access to data, Xari Group will configure a new virtual server using the BDR appliance where possible. Staff can work from this instance as a temporary solution while the server is restored. There is an additional cost for this service.
- b) Once the replacement server is installed or the existing server has been fixed, the BDR can be used to restore the most current data, applications, and operating systems to the new server(s) regardless of hardware.

## 12. Ownership of the Data.

The backup data being stored on the NAS and at the Data Centre remains the sole property of the Client. If the Client chooses to terminate services, Xari Group will assist Client in the orderly termination of services and retrieval of data for the client. The Client agrees to pay Xari Group the actual costs of rendering such assistance.

## 13. Catastrophe Service

In the event of a catastrophe, fees for the "Disaster Recovery Service" will be \$150ex per hour plus all applicable freight, shipment or travel costs. Additionally, any service required to provide access to that data is included. Fees for the "Instant Off-Site Virtualisation" are included in monthly fees, and will grant virtual machine access for up to 25 days. Applicable fees for virtualisation exceeding 25 days will be advised on requirement.

## 14. Loaned Equipment

The Client agrees that the BDR unit utilised by Xari Group, in the execution of this service shall remain the property of Xari Group, and must be returned if requested. Client further agrees to cease the use of any technology that remains the property of Xari Group upon termination of this agreement. If the BDR unit is stolen, damaged or destroyed, the client must pay current market prices at the time of the loss for a replacement unit.

## 15. Interference.

The Client shall not, directly or indirectly, during the term of this Agreement and for twelve (12) months following its termination, induce or influence any

employee of Xari Group or any other person or entity to terminate their relationship with Xari Group.

## 16. Warranty.

Xari Group warrants that the work will be performed to the best of its ability and in accordance with reasonable and customary practices prevailing at the time for its business.

- a) As long as the monthly fees are current, the BDR unit is fully warranted and no additional charges will be incurred for hardware failure. Firmware and software updates are also included.
- b) The BDR units cannot be modified in any way or the warranty and the management agreements are voided. This includes adding software applications to the BDR itself, adding memory and/or hard drives, etc
- c) All warranties, whether statutory, express or implied, including any warranties of quality, durability, fitness for particular purpose, merchantability, continuous use, design, compliance with applicable law, performance or error-free operation are disclaimed in their entirety.

## 17. Confidentiality.

Each party shall treat the information received from the other party that is designated as confidential ("Confidential Information") as a trade secret and strictly confidential. Xari Group designates the Deliverables, all information relating to the Deliverables and the financial terms of this Agreement as confidential. Both parties shall:

- i. restrict disclosure of Confidential Information to employees and agents solely on a "need to know" basis;
- ii. advise employees and agents of their confidentiality obligations;
- iii. use commercially reasonable means to comply with the confidentiality obligations of this Agreement; and
- iv. notify the other of any unauthorized possession or use of that party's Confidential Information as soon as practicable after receiving notice of same.

Notwithstanding the foregoing, neither party shall be obligated to preserve the confidentiality of any information which:

- i. was previously known;
- ii. is a matter of public knowledge;
- iii. was or is independently developed;

- iv. is released for disclosure with written consent; or
- v. is received from a third party to whom the information was disclosed without restriction.

## 18. Equipment and Facilities.

The Client agrees that Xari Group may utilise certain items of The Client's equipment and may gain access to certain parts of The Client's facilities. The Client retains title and ownership in all of The Client's equipment owned by The Client and utilised by Xari Group, and must grant authority for Xari Group to access The Client's facility. Facility access may be denied for any reason at any time, however if access to facilities is denied, The Client understands that Xari Group may be unable to perform their duties adequately and if such a situation should exist, Xari Group will not be held responsible.

## 19. Passwords

Xari Group acknowledges that it must have access to any and all systems and resources to perform their duties under this agreement. As such, it must have access to any and all passwords. Bear in mind that the backup data will always be encrypted and not accessible to anyone who does not have the password. If the encryption password is lost, the backup data will be inaccessible.

## 20. Termination and Additional Remedies

This Agreement may be terminated by The Client upon ninety (90) days' written notice if Xari Group:

- a) Fails to fulfil in any material respect its obligations under this Agreement and does not cure such failure within thirty (30) days' of receipt of such written notice.
- b) Breaches any material term or condition of this Agreement and fails to remedy such breach within thirty (30) days' of receipt of such written notice.
- c) Terminates or suspends its business operations, unless it is succeeded by a permitted assignee under this Agreement.

Xari Group, reserves the right to terminate this agreement with The Client for any reason. If either party terminates this Agreement, Xari Group will assist the Client in the orderly termination of services, including timely transfer of the services to another designated provider. Client agrees to pay Xari Group the actual costs of rendering such assistance.

**21. No Third-Party Beneficiary.**

Client shall not subcontract, assign, subrogate or transfer any interest, obligation or right under this Agreement without prior written consent from Xari Group, and any such attempt shall be null and void. Any dissolution, merger, consolidation, reorganisation or transfer of a majority of the assets or stock of Client shall constitute an attempted assignment of this Agreement. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.

**22. Jurisdiction.**

This Agreement shall be governed by the state and Federal laws applicable in Queensland, Australia. Any dispute, claim, or controversy arising out of or relating to the subject matter of this Agreement shall be settled by mediation.

**23. Force Majeure & Malicious Acts**

Xari Group shall not be liable for any loss, damage or failure due to causes beyond its control, including strikes, riots, earthquakes, epidemics, wars, fires, floods, weather, power failure, telecommunications and/or internet interruptions, the failure or closure of a financial institution, computer malfunctions, acts of God or any other failure, interruption or error not directly caused, or reasonably anticipated, by Xari Group.

**24. Limited Liability.**

**25.** For the purposes of calculating availability, Xari Group shall not be responsible for failures to provide service for any if the following exclusions exist:

- a) Problems caused by resources on the clients network that interfere with the service.
- b) Changes made to the client network not communicated to Xari Group.
- c) Loss of internet connectivity to the client site for any reason.
- d) Service failures that result from any actions or inactions of the Client contrary to IT Service's recommendations.

**26. Additional Costs & Exclusions**

- a) In addition to other items listed in this document, fees do not include the cost of new or replacement hardware, software, cabling or other equipment that may be required to perform services under this agreement.
- b) On occasion, the Client may request that Xari Group purchase spare parts, other equipment, supplies, accessories or software; in that case, Client shall be responsible to and agrees to reimburse Xari Group for all such costs or expenses incurred. No purchase will be made without prior Client approval or request.
- c) Shipping charges of any kind.
- d) Cost of any 3rd party Vendor or Manufacturer support or incident fees of any kind.
- e) Training of any kind.
- f) Parking Fees will be billed to Client if no free parking is available.