

CODE42 SOFTWARE, INC.

MASTER SERVICES AGREEMENT

By both parties executing this agreement in writing 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**” or “**Ordering Activity**” means the undersigned Ordering Activity under GSA Schedule contracts. “**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.

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 (A) you, (B) your Affiliates, and (C) your and your Affiliate’s 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 data that you provide to Code42 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/Administrator> and <https://support.code42.com/CrashPlan>.
- 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 “Offering Description”** means the terms applicable to an Offering available at <https://support.code42.com/Terms and conditions/Code42 customer support resources/Code42 enterprise support policy>, <https://support.code42.com/Terms and conditions/Code42 customer support resources/Code42 University policies> or <https://www.code42.com/professional-services/>.
- 1.9 “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.
- 1.10 “Service Level Agreement”** means the service level agreement available at <https://support.code42.com/Terms and conditions/Legal terms and conditions/Cloud storage 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.
- 1.12 “Subscription Term”** means the term during which you may use the Offerings.
- 1.13 “Technical Services”** means the standard service offerings described at <https://www.code42.com/professional-services/>.
- 1.14 “Quote”** means Code42’s written or website description of the Offerings and applicable terms.

2. CUSTOMER USE OF THE OFFERINGS.

- 2.1 Authorized Users.** You may allow your Authorized Users to use the Cloud Services and Software as “you” 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 internal business purposes. You must only use the Software and Cloud Services for up to the number of 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. If you purchase other Offerings, including support, appliance maintenance, hardware and education services, Code42 will provide those Offerings in accordance with the 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; or (G) remove any copyright or other proprietary notices in 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 indemnification, Service Level Agreement, support or warranty of any kind. You must only use an Evaluation Offering in a non-production environment 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. You grant Code42 a royalty-free, non-exclusive, non-transferable (except as set forth in section 12.1 (General: Assignment)), sub-licensable, worldwide right to use Customer Data solely to provide the Offerings to you 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, you grant Code42 a royalty-free, non-exclusive, transferable, sub-licensable, worldwide, perpetual, irrevocable license to use the suggestions and incorporate them into the Offerings. Code42 acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

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 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 at https://support.code42.com/Terms_and_conditions/Legal_terms_and_conditions/Data_processing_addendum. Following

the expiration of your Subscription Term, 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 its obligations 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) Code42 collects de-identified information and aggregated information about the use and performance of the Software and Cloud Services (“**Service Data**”). Service Data may include information about the frequency of feature usage, technical performance metrics, product configuration, and file usage patterns. Service Data never includes Customer Data. Code42 owns the Service Data and uses it to improve the Offerings and create new products.

(B) Code42 also collects account-related data during your purchase and use of the offerings (“**Administrative Data**”). Administrative Data never includes Customer Data. Code42 owns the Administrative Data and uses it 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 policy available at: <https://www.code42.com/privacy-policy>.

5. ORDERING AND PAYMENT

5.1 Orders. You may purchase Offerings directly from Code42 or through a Code42 authorized reseller. If you purchase through a Code42 authorized reseller, sections 5.2 (Ordering and Payment: Affiliate Orders), 5.3 (Ordering and Payment: Payment), 5.5 (Ordering and Payment: Disputed Payments), 5.6 (Ordering and Payment: Taxes) and 5.7 (Ordering and Payment: Delivery) will not apply to that purchase. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement. The Subscription Term is a continuous and non-divisible commitment for the full duration of the Subscription Term. Except as required by applicable law and regulations, all Orders are non-refundable and non-cancelable except as expressly provided in this Agreement.

5.2 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 5.3 (Ordering and Payment: Payment), 5.5 (Ordering and Payment: Disputed Payments), 5.6 (Ordering and Payment: Taxes) and 5.7 (Ordering and Payment: Delivery). Each party is responsible for its Affiliate’s compliance with this Agreement.

5.3 Payment. Code42 will invoice you for the fees stated on your Quote in accordance with the GSA Schedule Pricelist after accepting your Order. You will pay all applicable and valid fees in the amount and currency specified on your invoice within 30 days of the invoice receipt date. You will pay any delinquent amounts within 30 days of Code42’s written notice identifying a delinquency.

5.4 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 Software or 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 Software or Cloud Services offering. This termination right only applies to your initial purchase of a specific Software or 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.

5.5 Reserved.

5.6 Taxes. Code42 shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the Offerings) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

5.7 Delivery. When Code42 accepts your Order, Code42 will make cloud services available to you and deliver license keys to you by email to the address associated with your account. Code42 will provide any physical goods to the carrier listed on the Quote for shipment to you. Shipping and delivery terms for physical goods are Ex Works Code42’s regional

fulfillment facility (INCOTERMS 2010). You are the importer of record if Code42 ships physical goods to you in a country in which Code42 does not have a physical presence.

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 and Offering Descriptions. Because the Offerings are continually evolving, Code42 may update any of the Ancillary Documents from time to time so long as the update is not material (as defined in 48 CFR § 552.212-4(w)(1)(vi)), and the Ancillary Document applicable at any time is the then-current version. Code42 will notify you in writing if any update to an Ancillary Document is material, and in that case you and Code42 may amend the Agreement to incorporate the change or you may elect in writing to terminate the affected Offering. If you terminate the Offering, Code42 will refund the portion of the fees applicable to the unused portion of the Subscription Term for the terminated Offering.

7. WARRANTIES

7.1 Software and Cloud Services Warranty. Code42 warrants that the Software and Cloud Services will substantially conform to the applicable Documentation for a period of 120 days following notice of availability for electronic download or access (“**Warranty Period**”). This warranty only applies if the Software and Cloud Services were properly installed and used in unmodified form in accordance with the Documentation. For any reproducible error identified in writing during the Warranty Period, Code42 will either replace that Software or Cloud Service or correct the error. If Code42 determines that it cannot correct the error or replace the Software or Cloud Service, 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 Software or Cloud Services offering, in which case your rights to use that Software or 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 Software and 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.**

8. INDEMNIFICATION

8.1 Code42 Indemnification.

(A) Subject to the remainder of section 8.1 (Indemnification: Code42 Indemnification), Code42 will defend you against any unaffiliated third party claim that the Software or Cloud Services infringe any patent, trademark or copyright, or misappropriate a trade secret, of that third party under the laws of (1) the United States, (2) Canada, (3) the United Kingdom, (4) Australia, and (5) any European Economic Area member state (“**Infringement Claim**”). Code42 will indemnify you from the resulting costs and 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: (a) promptly notify Code42 of the Infringement Claim in writing, (b) allow Code42 sole control over the defense for the claim and any settlement negotiations, and (c) reasonably cooperate in response to Code42’s requests for assistance. You may not settle or compromise any Infringement Claim without Code42’s prior written consent. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

(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 portion of the fees applicable to 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) (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) (Indemnification: Code42 Indemnification) with respect to any claim based on (1) a combination of Software or Cloud Services with non-Code42 products or Customer Data; (2) continued use of an infringing version of the Software after Code42 has provided you a noninfringing version under section 8.1(B) (Mutual Indemnification: Code42 Indemnification); (3) any modification to the Software by anyone other than Code42; or (4) any Software or Cloud Services provided on a no charge, beta or evaluation basis.

(D) This section 8.1 (Indemnification: Code42 Indemnification) is your sole exclusive remedy and Code42's entire liability for any infringement claims or actions.

8.2 Reserved.

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, 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 fails of its essential purpose.

9.2 Cap on Monetary Liability. The maximum aggregate liability for Code42 or you for claims under this Agreement will not exceed an amount equal to the contract price, including total fees paid or payable to Code42 for your use of the Offerings.

9.3 Reserved.

9.4 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 or its licensor'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; (E) Fraud; or (F) 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 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. Code 42 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.

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. Code42 recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by Code42.

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 and 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 Reserved.

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 in accordance with the Contract Disputes Act and Federal Acquisition Regulation if expressly permitted by this Agreement. The Subscription Term and any renewal is described in the applicable Quote. 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. When you are an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Code42 shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

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 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); 5.3 (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. This Agreement is governed by the Federal laws of the United States. 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). 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: General Counsel. 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. . Excusable delays shall be governed by FAR 52.212-4(f).

12.8 Entire Agreement. The Agreement as it may be modified from time to time by both parties in writing, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), is the entire agreement of the parties regarding its subject matter. 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 Agreement, and (C) the applicable Ancillary Document. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

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 word “including” means “including but not limited to.” Section headings are for convenience only and are not to be used in interpreting this Agreement.

End of Agreement