

Acceptance and Definitions

By signing up for the backup and restore service through the DiscusWare, LLC website, you agree to observe the terms and conditions stated in this document (the “Agreement”). If you do not accept all of these terms and conditions, then please do not sign up for the service.

For purposes of this Agreement, “Customer” means you, the person who is signing up for the service described herein or the organization on whose behalf you are signing up for these services, and “DiscusWare” means DiscusWare, LLC.

Term

This Agreement shall be effective when DiscusWare receives a service order to configure backups for the Customer's server. It shall remain in effect until it is terminated, canceled, or let to expire in accordance with the terms stated herein.

From time to time, DiscusWare may desire to make changes to the scope, terms, conditions, and/or pricing of the services generally provided under this Agreement. In this case, DiscusWare will notify the Customer that this Agreement is being replaced by a new agreement and indicate the last day that the Services will be provided under the present Agreement. The Customer will have the option to continue receiving the Services under the terms of the new agreement, by entering into that new agreement with DiscusWare, or to let this Agreement expire and thereby cease receiving the Services.

Services Provided

DiscusWare operates a “backup server” which is a computer system that regularly obtains a copy of data stored on the Customer's server and stores this backup copy on one or more computer systems on DiscusWare's network. DiscusWare will perform the following services (hereinafter, “Services”):

- (1) To install onto the Customer's site a backup script, SSH public key, or similar, so as to allow access to the Customer's data on the Customer's server by the DiscusWare backup server. This step must be successfully completed before any other services under this Agreement can commence. If it is unable to complete this step, DiscusWare may terminate this Agreement immediately and without further obligation to Customer, as defined later in the section entitled “Termination.”
- (2) To configure the backup server so that, on a daily basis, the backup server synchronizes its backup of the Customer's data with the data that exists on the Customer's server at that time.
- (3) To store a complete copy of the Customer's data on the backup server, with each retention period being reached when this Agreement has been in force long enough to permit the gathering of such data, according to the following retention schedule:
 - (a) Each daily backup is stored for seven days
 - (b) Once weekly archiving the oldest daily backup for 5 weeks as a “weekly” backup
 - (c) Once monthly archiving the latest weekly backup for 3 months as a “monthly” backup
- (4) To report to the Customer on a daily basis whether that day's backup was successful or not. For successful backups, to report the total size of that day's backup, and the total disk space used by all backups. This report will be an automatically generated message sent via electronic mail.
- (5) Upon the request of the Customer, to provide files from a backup, in part or in whole, to that Customer. This activity is called a “restore.” The method of providing these files shall be sending a compressed archive (e.g., “zip” file) containing the requested files to the Customer either via electronic mail or by uploading the archive to a server to which the Customer provides login credentials. Or, if a full restore of a Discus Professional discussion board is requested, the files will be assembled into a format compatible with the Backup Manager interface of the latest official version of Discus Professional available at the time of the restore. The method of requesting a restore shall be an electronic mail or support ticket submitted by the Customer.

Customer Responsibility

The setup, configuration, and ongoing operation of the Service can be monitored by DiscusWare, but it is the responsibility of the Customer to ensure that the Service is configured in a way that is compatible with the Customer's server hosting arrangements and that the Service backs up all desired data. It is the responsibility of the Customer to document for DiscusWare which data on the Customer's server is to be backed up. Absent any specific requirements noted on the service order, DiscusWare will back up the components of a Discus discussion board, and the MySQL database tables for that discussion board if any. It is the sole responsibility of Customer to verify that the backup is configured to capture all desired files and to inform DiscusWare of any changes to the configuration of the Customer's website that may necessitate changes to the configuration of the backup system.

Service Level Agreement

DiscusWare warrants that the Service will be available to obtain backups on each calendar day of each month. This service level warranty does not specify the time of day during which the Service will obtain the backups nor does it guarantee that every attempt to back up data will succeed. Should DiscusWare violate this service level warranty, the Customer will be entitled to a credit of 10% (ten percent) of the monthly fee for each calendar day on which a backup is not attempted, up to a maximum of 50% (fifty percent) of the monthly recurring fee. This credit shall appear on the invoice covering the month when the service level warranty was violated.

DiscusWare warrants that it will be available to service restore requests during business days, which are each Monday through Friday that are not federal holidays or state of Wisconsin holidays. Any request for a restore submitted between 8:00 AM and 5:00 PM, central time, on a business day, will be processed on that same business day or the next business day. Requests for restores submitted outside of these hours will be processed on the first or second business day after the request is made. This service level is not a guarantee that the files will be restored within this time frame or that the results of a restore will be satisfactory, as technical factors may cause a delay or failure in providing restored files to the Customer.

DiscusWare will configure its backup server to employ redundant components to safeguard the Customer's backed-up data, including RAID protection of all physical disks storing Customer data and prompt replacement or repair of any condition that causes degradation of that protection. In the case that data is lost for any reason, DiscusWare will inform the Customer of the potential data loss, and provide a credit equal to the amount due for the recurring monthly fee for the month in which data was lost.

Service Rates

Unless otherwise agreed by the parties, service rates are based on the total storage size of the Customer's backups on the DiscusWare backup server. The Customer's use is reported to the Customer each day and is billed based on the actual usage at the end of each calendar month. The amount due is determined based on each gigabyte or fraction thereof. For the purpose of billing and reporting, 1 GB = 1024 MB (one gigabyte equals one thousand twenty-four megabytes).

Storage rates for the Service are as follows:

Storage Use	Monthly Fee
0-2 GB	\$6.99
Each additional GB	\$1.00

Within any three consecutive calendar months, one restore is provided free of charge per Customer. This one free restore is per Customer, not per site backed up, even if the Customer has multiple sites subscribed to the Service. For each additional restore, a charge of \$24.95 (twenty-four dollars and ninety-five cents) shall apply if 2 GB (two gigabytes) or less is restored, or \$49.95 (forty-nine dollars and ninety-five cents) for more than 2 GB (two gigabytes). Restores will be billed on the next monthly invoice. The Customer must pre-pay for any restore that would cause that Customer's outstanding balance to exceed \$75.00 (seventy-five dollars).

Introductory/Trial Period

DiscusWare may offer, at its discretion, to a Customer a 30 (thirty) day, no-obligation trial period during which time the Customer may evaluate the Service. This trial period shall start with the date that DiscusWare completes the setup upon receiving a service order form submitted by the Customer, and end at 11:59 PM (eleven fifty-nine PM), central time, 30 (thirty) calendar days thereafter.

It is the Customer's responsibility to inform DiscusWare, by placing a new order for the Services and providing payment details, should the Customer wish to continue receiving the Service after this trial period. DiscusWare may remind the Customer to place an order for the Services prior to expiration, and the Customer consents to receive such reminders until said expiration or until Customer cancels the Service. If the Customer does not place a new order for these Services prior to the expiration of the free trial period, this Agreement is automatically canceled, and DiscusWare may remove all stored copies of the Customer's data from its backup server immediately.

During the free trial period, the following terms shall supersede those of the master Agreement:

- (1) Either DiscusWare or the Customer may cancel the Service immediately by providing notice to the other in writing or via electronic mail. Cancellation during the free trial period shall allow DiscusWare to remove all stored copies of the Customer's data from the backup server immediately.
- (2) Any request for a restore during the free trial period, except for the first request for a restore, will be serviced only after pre-payment of the restoration fee defined previously in "Service Rates."
- (3) DiscusWare is not obligated to honor the response times or any other obligation pledged in the "Service Level Agreement" section to any Customer during that Customer's free trial period.

Security and Privacy

DiscusWare will undertake reasonable measures to safeguard the Customer's data and respect the Customer's privacy as described in the following:

- (1) DiscusWare agrees to use best practices to safeguard the Customer's data as it is transported and stored on the backup server. This includes, where possible, encryption of the data in transit. The backup server will reside on an isolated network that does not offer Internet services, and that is accessible only to authorized DiscusWare employees. DiscusWare will ensure that the backup server and supporting infrastructure are kept up-to-date with the latest security patches.
- (2) DiscusWare agrees to access the Customer's data only as is necessary to ensure that the backup system is working correctly and that the terms of this Agreement are being upheld. General statistical information, such as the amount of data transferred or stored, will also be collected for billing purposes. Other than this, DiscusWare agrees not to inspect or otherwise access the Customer's data except as needed to satisfy restore and other requests made by the Customer.
- (3) Upon receiving a court order to inspect or disclose data from a court having jurisdiction to provide such an order, DiscusWare will notify the Customer, unless the court order forbids such a notification, and will provide any data as ordered. The Customer agrees to indemnify, defend and hold DiscusWare and its employees and members harmless against any and all claims, costs, suits, and damages, including attorneys fees, arising in connection with any proceedings concerning disclosure of Customer's data as described in this paragraph, excluding any claims or liabilities arising out of the sole negligence or willful misconduct of DiscusWare or its employees.

Service Interruption

DiscusWare shall not be liable for interruption of the Service if such interruption is due to circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of, interruption or delay in telecommunications or third party services, failure of third party software or hardware or inability to obtain supplies or power used in or equipment needed for provision of the Services. During such interruptions, DiscusWare is released from the warranties stated in this Agreement and is released from providing any refunds or credits to Customers for violating those warranties. DiscusWare will restart the Service as soon as possible following the interruption.

Failed Backups

Should a scheduled backup of a Customer's site fail for any reason, the backup system shall automatically open a technical support ticket to DiscusWare's support division. DiscusWare support will investigate the matter on the same or next business day after this support ticket is opened. Should the problem be with any process or hardware managed by DiscusWare, steps to repair the problem shall be initiated as soon as possible. In the case that re-attempting the backup results in a successful backup that generates a success notification to the Customer, the support ticket shall be automatically closed.

Should DiscusWare determine that the failure was caused by a problem with the Customer's server configuration, DiscusWare will notify the Customer of the failure. Continued failed backups that occur while waiting for a resolution of a problem with the Customer's site or configuration shall not require additional support tickets or entitle the Customer to any refund under the Service Level Agreement. A Customer's failure to rectify a problem that results in the failure of 14 (fourteen) or more consecutive backups shall be treated as a termination of this Agreement by the Customer.

Size of Backups

Without the prior authorization of DiscusWare, the Customer agrees not to allow the size of its backed-up data to exceed a total size of 20 GB (twenty gigabytes), implement a change causing the size of the daily site download to exceed 5 GB (five gigabytes), or consume more than 40 GB (forty gigabytes) on the DiscusWare backup server. Should the Customer exceed these limits, or if for any reason continuing to service that Customer's account would cause a disruption to other Customers also using the Service, DiscusWare may immediately cease providing the Service upon providing notification to the Customer.

Backed Up Content

The Customer agrees to use the Service only to back up lawful content. The Customer agrees not to use the Service to back up content that is illegal in the United States of America, including without limitation, child pornography, pirated computer programs, computer viruses, and the like. Should prohibited content be discovered, DiscusWare may immediately cancel the Service to the offending Customer and immediately delete all backup copies of the Customer's site that may have been stored.

Taxes

Customer will be responsible for and will pay all taxes and similar fees, now in force or enacted in the future, imposed on these services (except income taxes). Taxes will be itemized on each monthly invoice.

Refund and Disputes

All payments to DiscusWare are nonrefundable. This includes all fees, regardless of usage. Any overcharges or billing disputes must be reported within 30 (thirty) days of the date the disputed charge occurred.

Payment

Around the beginning of each calendar month, DiscusWare will submit to the Customer an invoice for all charges incurred by the Customer during the previous calendar month. This invoice will be submitted by electronic mail to the last known electronic mail address provided by the Customer. Unless alternate arrangements are agreed to by both parties, all services must be paid for by credit card. Customer authorizes DiscusWare to charge the Customer's credit card to pay for any charges that may apply to Customer's account. The Customer agrees to maintain current and accurate billing information.

If a credit card charge is declined for any reason, an administrative fee of \$10.00 (ten dollars) will be assessed and an electronic mail message will be sent to Customer. After 72 (seventy-two) hours, the credit card will be charged and if again declined, an invoice for the balance due will be sent to the Customer with DUE ON RECEIPT payment terms. At this time the payment will be considered late.

If the Customer disputes a charge with his or her credit card issuer that, in the sole discretion of DiscusWare, is a valid charge in accordance with this Agreement, the Customer agrees to pay an administrative fee of \$100.00 (one hundred dollars). The disputed charge will also be considered late.

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Interest accruing at the rate of 1.5% (one and one half percent) per month, or 18% (eighteen percent) per annum, applies to all payments more than 30 (thirty) days overdue, with interest accruing from the due date of the invoice. The Customer shall additionally responsible for any and all costs of collection, including without limitation attorney's fees, should collection or legal action be required for to collect balances more than 90 (ninety) days overdue.

DiscusWare is released from its obligation to provide Services under this Agreement to any Customer with an outstanding late payment. DiscusWare may terminate this Agreement without refund for any Customer with a payment that is more than thirty (30) days overdue.

Cancellation

Customer may cancel its registration with the Service by submitting a ticket within the DiscusWare website "Contact Us" or technical support section. Cancellation must be requested at least 10 (ten) days prior to the start of the next billing term and becomes effective at the beginning of that next billing term. Any cancellation not conforming to this requirement will result in the assessment of the regularly scheduled monthly fees for the next billing term.

DiscusWare may decline to continue providing the Service to the Customer by providing notice to the Customer at least 10 (ten) days prior to the next billing term.

Termination

This Agreement may be immediately terminated if DiscusWare determines that it is will not be able to provide the Service to the Customer for any reason, including without limitation the inability to access the Customer's server or retrieve the data for any reason. If this termination occurs prior to a successful backup of the Customer's data, then any monies paid by Customer, if any, shall be promptly refunded.

DiscusWare may terminate service at any time, without notice, if, in the sole judgment of DiscusWare, the Customer is in violation of this Agreement. No refunds will be issued as a result of a violation termination.

If this Agreement is canceled, terminated, or allowed to expire, DiscusWare will retain the Customer's most recent backup data on its server for a minimum of 7 (seven) days from the date of termination without charge to the Customer, unless this Agreement is terminated under a provision that allows DiscusWare to delete the data immediately. After this 7 (seven) day period has expired, or sooner if requested by the Customer, DiscusWare will remove all backups of the Customer data from its system. Once DiscusWare deletes the Customer's data as provided for under this Agreement, DiscusWare is technically unable, and therefore not obligated, to service any restore requests for the Customer's data.

During the above described period in which this Agreement has been terminated but data is retained, any Customer requests for a restore shall be serviced only after the Customer prepays an administrative fee of \$200.00 (two hundred dollars) plus \$150.00 (one hundred fifty dollars) per hour or fraction thereof, for all time spent in servicing that restore request. Any time spent by DiscusWare in any activity related to the restore request, including uploading the data to the Customer's site, shall be billable.

Upon termination, it is the sole responsibility of the Customer to remove any access that was granted to DiscusWare in order to allow access to the Customer's computer system to perform the Service. DiscusWare is under no obligation to provide assistance, documentation, or support for any such activities.

Neither termination, cancellation, nor expiration of this Agreement will relieve the Customer of its then-accrued payment obligation.

LIMITED WARRANTY

EXCEPT AS EXPRESSLY STATED IN THE "SERVICE LEVEL AGREEMENT" SECTION OF THIS AGREEMENT, THERE IS NO WARRANTY FOR THE SERVICE, TO THE EXTENT PERMITTED BY APPLICABLE LAW. DISCUSWARE PROVIDES THE SERVICE "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICE IS WITH THE CUSTOMER.

LIMITATION OF LIABILITY

DISCUSWARE DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING, BUT NOT LIMITED TO, ANY LIABILITY FOR THE SERVICE NOT BEING AVAILABLE FOR USE OR FOR LOST OR CORRUPTED DATA OR SOFTWARE. DISCUSWARE WILL NOT BE LIABLE FOR LOST PROFITS, LOSS OF BUSINESS OR ANY OTHER CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY EXCEPT AS EXPRESSLY PROVIDED HEREIN. CUSTOMER AGREES THAT FOR ANY LIABILITY RELATED TO THE PURCHASE FROM DISCUSWARE OF ANY PRODUCT OR SERVICE, DISCUSWARE IS NOT LIABLE FOR ANY AMOUNT OF DAMAGES THAT EXCEED THE AMOUNT INVOICED FOR THE APPLICABLE PRODUCTS OR SERVICES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE REMEDIES SET FORTH IN THIS AGREEMENT SHALL APPLY EVEN IF SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE. SHOULD THE OTHER LIMITATIONS ON LIABILITY STATED IN THIS AGREEMENT FAIL, THEN DUE TO THE DIFFICULTY IN FORESEEING ALL POSSIBLE DAMAGES, THE MAXIMUM DAMAGES FOR WHICH DISCUSWARE WILL BE LIABLE UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID BY THE CUSTOMER TO EFFECT THIS AGREEMENT, AS LIQUIDATED DAMAGES NOT AS A PENALTY.

IF THE DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY PROVIDED ABOVE CANNOT BE GIVEN LOCAL LEGAL EFFECT ACCORDING TO THEIR TERMS, REVIEWING COURTS SHALL APPLY LOCAL LAW THAT MOST CLOSELY APPROXIMATES AN ABSOLUTE WAIVER OF ALL CIVIL LIABILITY IN CONNECTION WITH THE SERVICE.

THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

Waiver

A waiver on the part of any party hereto of any rights or interests of any party under this Agreement shall not constitute the waiver of any other rights or interests or any subsequent waiver of such rights or interests. The failure of any party at any time to require performance by the other party under any provision of this Agreement shall not affect the right of such party to require full performance from the other party at any time thereafter.

Scope

In the event that any provision of this Agreement is declared invalid or void by statute or judicial decision, such action shall not invalidate the entire Agreement. It is the express intention of the parties that all other provisions not declared invalid or void shall remain in full force and effect. In the event that any provision of this Agreement is declared invalid or void, this Agreement shall immediately terminate, with Customer to pay its then-accrued payment obligation within fifteen (15) days of said termination.

Jurisdiction

The execution, interpretation, performance and termination of this Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. Both the Customer and DiscusWare submit to the jurisdiction of the courts of the State of Wisconsin. Both the Customer and DiscusWare agree to commence any litigation that may arise hereunder in the courts located in the Judicial District of Dane County in the State of Wisconsin.

Entire Agreement

This Agreement and all other agreements, exhibits, and schedules referred to in this Agreement constitute the final, complete, and exclusive statement of the terms of the Agreement between the parties pertaining to the subject matter of this Agreement and supersede all prior and contemporaneous understandings or Agreements of the parties. This Agreement may not be contradicted by evidence of any prior or contemporaneous statements or agreements. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation, understanding, agreement, commitment or warranty outside those expressly set forth in this Agreement.