



800 Westchester Ave.
Suite N-501
Rye Brook, NY 10573
800-405-2200

1. **Minimum Requirements:** Cloud Computing operates over a broadband connection. The speed of the underlying connection, the processing speed of the computer and the local software or operating systems used will affect the performance of the service. In order for Broadview to deliver its expected level of service with Cloud Computing, Customer must meet the following requirements. To the extent these requirements are not met, the service may not perform as anticipated and/or Broadview may not provide Technical Support, neither of which shall be grounds for termination.
 - a. **Broadband:** The minimum bandwidth requirement for Cloud Computing is 80kbps per user.
 - b. **Operating Systems:** Broadview does support Microsoft and Linux server operating systems. Broadview does not support any version of Windows that is: (1) no longer supported by Microsoft, (2) on limited product support, (3) in the process of being phased out, or (4) any "beta" version not yet released for general use. Broadview does not support any other end user (e.g. client) oriented operating systems such as Linux, Unix, MacOS, etc. Customer's PC performance must meet the minimum requirements for the Operating System used.
 - c. **Internet Browsers and E-Mail Clients:** Broadview will only provide technical assistance for Microsoft Internet Explorer 6 or later releases. Broadview will only support the general configuration of Microsoft Outlook 2010, 2013, 2016 and Broadview Webmail platforms.
2. **No Ownership of Customer Data:** Broadview represents that all Customer data is the exclusive property of the Customer and makes no claim of ownership of Customer's data. In the event of the expiration or proper termination of this Agreement, Broadview agrees to return Customer's applications and data in a commercially reasonable manner. Customer is responsible for all hardware, software and IT support necessary for the return of applications and data, setup of such applications and data, and continued maintenance thereof. Broadview shall not be liable for any lost data or interruption of service.
3. **Litigation Hold:** Other than the backup and/or recovery procedures outlined herein, Broadview shall have no obligation to store or avoid the destruction of data pursuant to the Federal Rules of Civil Procedure, including but not limited to Rule 26 thereof, or other similar state law, regulation, or judicial order. In the event that Customer reasonably believes or is notified that a hold on the destruction of data is or may be required, Customer may provide a written request to preserve its data on a going forward basis. The request shall indicate the scope of the data to be preserved and Customer agrees to limit the scope to the extent possible. Should Customer make a preservation request, which Broadview accepts, subject to the terms set forth below, Broadview shall preserve Customer's data. It shall be Customer's sole responsibility to review the preserved data and determine whether any particular preserved file or data is pertinent to Customer's needs. Additional fees may apply for all labor, additional hardware, additional tapes or other media, and/or other items that may be necessary to comply with such request. Broadview may require a deposit or prepayment to insure payment of such additional fees. Broadview does not provide legal advice and Customer is strongly



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encouraged to engage counsel. Customer agrees to work with Broadview in order to limit any disruption to Broadview's normal business operations. In the event Broadview determines in its sole discretion that a data preservation request is or may be too burdensome, Broadview may terminate this Agreement immediately.

4. **ADDITIONAL LIMITATION OF LIABILITY IN CONNECTION WITH DATA STORAGE.** CUSTOMER EXPRESSLY AGREES THAT BROADVIEW ASSUMES NO RESPONSIBILITY FOR THE DELETION OF OR FAILURE TO BACKUP OR RESTORE DATA BELONGING TO CUSTOMER. DATA THAT IS DAMAGED OR CORRUPTED IN ANY WAY PRIOR TO BEING BACKED UP WILL BE BACKED UP WITH THE IDENTICAL DAMAGED CHARACTERISTICS. NEITHER BROADVIEW NOR ANYONE ELSE INVOLVED IN CREATING, DELIVERING OR MAINTAINING THE SERVICES PROVIDED HEREUNDER SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF MISUSE OF THE SERVICE OR INABILITY TO USE THE SERVICE OR OUT OF ANY BREACH OF ANY WARRANTY. IN NO EVENT WILL BROADVIEW'S LIABILITY FOR ANY CLAIM, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE THREE (3) MONTH PERIOD PRECEDING THE EVENT FORMING THE BASIS OF THE CLAIM, EVEN IF BROADVIEW HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BROADVIEW MAKES NO WARRANTY OR REPRESENTATION WITH RESPECT TO THE QUALITY, DESIGN, STABILITY, OR IT'S PERFORMANCE OF ITS SERVICES AND PRODUCTS.
5. IF CUSTOMER DESIRES ADDITIONAL LIABILITY COVERAGE, IT SHALL BE ITS RESPONSIBILITY TO SECURE IT FROM AN INSURANCE CARRIER OR OTHER AGENCY OF ITS CHOICE, AT ITS SOLE EXPENSE.
6. **Export Controls.** Customer may not download or otherwise export or re-export the software or any underlying information technology except in full compliance with all United States and other applicable laws and regulations.
7. **Scheduled Maintenance:** Broadview will perform Windows and Office updates on the second Tuesday of each month in accordance with Microsoft best practices. Hardware systems maintenance shall occur on a regular basis, but no less than once per month on each piece of hardware operated by Broadview in accordance with the manufacturer's specifications. Line of business applications are not included in Scheduled Maintenance unless included in a document provided by Customer and acknowledged by Broadview in writing. An additional fee may be charged by Broadview for such service. Customer owned hardware is not included in Scheduled Maintenance.
8. **Emergency Maintenance:** Circumstances may dictate that Emergency Maintenance be performed with minimal or no notice to Customer in order to protect the stability of Customer's applications and the integrity of Customer's data. Broadview shall not be responsible for any interruption of service or loss of data during such Emergency Maintenance procedures.



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9. Backup Services:

Broadview shall use all commercially reasonable efforts to backup Customer's files, data and email on a regular basis according to the snapshot and retention frequency by service below. Customer should note that the backup is a snapshot of the Customer's data on a given date, and should a new file be saved or an existing file edited since that snapshot was taken, but prior to the next snapshot interval, Broadview will be unable to restore it. Broadview shall not be liable for any lost data or its inability to restore Customer's data.

A. Broadview HVD and Public Cloud Servers

1. Nightly Volume Shadow Copy (customer self-service recovery) 24 hrs.
2. Nightly filer snapshots, kept for a minimum of 7 days.
3. Weekly filer snapshots, kept for a minimum of 5 weeks.
4. Restoration requests will be accommodated with best effort and may result in a professional services billing instance, depending on incident severity and desired turn-time.

B. Broadview HVD Stand-alone Line of Business Servers

1. Nightly filer snapshots, kept for a minimum of 7 days.
2. Weekly filer snapshots, kept for a minimum of 5 weeks.
3. Restoration requests will be accommodated with best effort and may result in a professional services billing instance, depending on incident severity and desired turn-time. Bare-metal restores are not available.

C. Broadview Private Cloud Servers

1. Private Cloud snapshot management is client-controlled; therefore considered the client's responsibility with regard to frequency and restoration.
2. Automated nightly storage pool snapshots are provisioned as part of Client provisioning as an option. Any changes to the desired automated snapshot selection and/or media can be requested via a support request.
3. Dedicated vFiler clients are client-managed; therefore, snapshot management and restoration are considered the client's responsibility.

D. Broadview Hosted Exchange

1. Mailbox items are recoverable for up to 14 calendar days after they have been removed from the Deleted Items folder
2. Restores are performed for disaster recovery of the mailbox databases only. The restoration is based upon the most recent available backup data.
3. Customers that archive their mailboxes may restore archived mailbox items indefinitely provided the customer has access to the archived data.
4. An optional Email Journaling service is available if more long-term retention is required or desired. This service setup and configuration may incur a professional services billing instance, depending on the scope requested.



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Note: In situations where either an application or service provides the option for client-initiated backups or other replication options, it will be the responsibility of the client to initiate and manage that process.

10. **Overages.** Customer is encouraged to purchase sufficient storage to anticipate its future storage needs. To the extent insufficient storage is purchased, Customer may experience data loss. Broadview accepts no responsibility for lost data resulting from insufficient data capacity.
11. **Limitations.** Customer acknowledges and agrees that the service is being offered subject to the following limitations and conditions:
 - a. Customer shall not make any attempt to, resell, distribute, adapt, modify, decompile or reverse engineer the software, or otherwise discover the source code, underlying processes, or algorithms of the software.
 - b. Customer shall not use the service to store photographs, pseudo-photographs, films, articles, sound recordings, messages, or any other material that may be stored in a computer that may be described as indecent, obscene, or otherwise illegal, including without limitation any material that would constitute a violation of a third party's intellectual property rights.
 - c. Customer is solely responsible for the integrity of any data targeted for backup. Broadview offers the Broadview Data Back-Up and Storage - Clients and Broadview Data Back-Up and Storage - Server products on an "as is - where is" basis and will restore data in the same format and in the state in which it was backed up. For example, if Broadview backs up a corrupt file and a restore becomes necessary, that restored file will also be corrupt.
 - d. Customer shall not use the Broadview Data Back-Up and Storage - Clients and Broadview Data Back-Up and Storage - Server products on any computer that, through a malfunction or misuse, could directly or indirectly cause personal injury, death, physical damage or destruction.
12. **Restore.** Broadview will make commercially reasonable efforts to ensure the successful and timely backup and restoration of all Customer data for which it provides backup and recovery services.
13. **Usernames and Passwords.** Broadview may require Customer to establish a username and password to protect its account and data. Customer is solely responsible for any consequences and/or damages that arise, whether in whole or part, if Customer's account is compromised.
14. **Demarcation:** Customer acknowledges that Cloud Computing is a hosted applications product delivered over a broadband connection. Broadview accepts no responsibility for Customer's LAN, PCs, non-Broadview provided broadband connection, desktop, applications not hosted by Broadview, or any other items beyond the Cloud Computing service provided. Cloud Computing contains server side virus protection, but does not



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protect Customer's internal network from viruses, spyware, cookies, or other items which may inhibit the performance of Customer's network and/or applications.

15. **Technical Support:** Broadview provides technical support for Cloud Computing 24 hours a day, 7 days a week, 365 days a year. Broadview may not be able to provide technical support for line of business applications. An additional fee may be required in those cases in which Broadview can provide support for line of business applications. Technical support does not include consulting services or training on applications. Broadview shall not provide technical support arising from or related to an unauthorized use of the service, including but not limited to a failure to meet the minimum requirements set forth in paragraph 1 above or in violation of the Acceptable Use and Privacy Policy. Broadview shall not provide technical support for any equipment or hardware not provided by Broadview. It is Customer's responsibility to contact the manufacturer to obtain assistance in programming or configuring any hardware or equipment not provided by Broadview. Where Customer's internet connectivity is supplied by a party other than Broadview, Broadview does not provide technical support for any internet connectivity or network issues that Customer may experience in attempting to access the Broadview network. If Customer's internet connection is not functional for any reason, the data files may not accurately or completely reach Broadview's facilities or equipment. Broadview cannot be responsible for the operation or functioning of Customer's non-Broadview provided internet connection, nor the reliability of the data files being received over said connection. Should a Customer encounter any such issues, it is the Customer's sole responsibility to resolve them. It is Customer's responsibility to contact the manufacturer to obtain assistance in programming or configuring any non-Broadview provided hardware or equipment.
16. **User Count:** The number of users provided in this Agreement is a good faith estimate only. The actual number of users will vary according to Customer's requests for additional service or deletion of service. User accepts new service when it is entered into Broadview's billing system.
17. **Line of Business Software:** To the extent Customer has requested that Broadview manage its licensed software on Broadview's servers, the following paragraph shall apply. Customer agrees that it is paying a monthly recurring charge to, in part, lease all or a portion of a server or servers on a month to month basis as necessary to manage the software. Customer acknowledges that it has paid all necessary and appropriate licensing fees and has a valid license for the software. Customer acknowledges that Broadview is not renting, sublicensing, assigning, loaning, reselling, transferring, or distributing the software in violation of any end user license agreement between Customer and the licensor. In the event of any breach of the end user license agreement, Customer agrees to hold harmless, defend and indemnify Broadview pursuant to the terms and conditions of the Agreement.
18. **User Acceptance Testing:** Customer understands and accepts that all services requested in this Service Order are subject to user acceptance testing. The rates, terms and conditions of service may be altered or amended following testing as may be necessary.



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Any such alterations or amendments shall be set forth in writing and approved by Customer prior to the Effective Date.

19. Service Level Agreement (SLA)

- a. **Network:** Broadview warrants that the network will be available 99.99% of the time in a given month; excluding scheduled maintenance. Upon experiencing downtime, Customer shall be eligible to receive a credit equal to five percent (5%) of the monthly recurring fee (MRC) for each thirty (30) minutes of downtime (up to a maximum of 100% of the MRCs for the affected Service). Network uptime includes the functioning of all Broadview network, infrastructure including routers, switches and cabling, but does not include services or software running on Customer's server. Network downtime exists when Customer is unable to transit or receive data, and Broadview records such failure in the Broadview Trouble Ticket System based on Customer opening a Trouble Ticket. Network downtime is measured from the time Customer opens the Trouble Ticket until the time Customer is once again able to transmit and receive data.
- b. **Infrastructure:** Broadview warrants that the critical infrastructure systems, including power and HVAC, will be available 99.99% of the time in a given month, excluding scheduled maintenance. Upon experiencing downtime, Customer shall be eligible to request a credit equal to five percent (5%) of the MRC for each thirty (30) minutes of downtime (up to a maximum of 100% of the MRCs for the affected Service). Critical infrastructure includes all power and HVAC infrastructure including UPS', PDU's and cabling, but does not include the power supplies on Customer's servers. Infrastructure downtime exists when a particular server is shut down due to power or heat problems and Broadview records such failure in the Broadview Trouble Ticket System based on Customer opening a Trouble Ticket. Infrastructure downtime is measured from the time Customer opens a Trouble Ticket regarding server downtime until the time the power or heat problem is resolved. This warranty excludes the time required to rebuild or replace a failed Customer component.
- c. **Hardware:** Broadview warrants the functioning of all leased hardware components and will replace any failed component at no cost to Customer. Hardware replacement will begin once Broadview identifies the cause of the problem. Broadview will use commercially reasonable efforts to effectuate any needed hardware replacement within four (4) hours of problem identification. In the event it takes Broadview more than four (4) hours to replace faulty hardware, Customer shall be eligible to request a credit equal to five percent (5%) of the MRC per additional hour of downtime (up to a maximum of 100% of the MRCs for the affected Service). Hardware is defined as the processor(s), RAM, hard disk(s), motherboard, NIC card and other related hardware included under the server lease. This warranty excludes the time required to rebuild RAID array(s) and the reloading of certain operating systems and applications.



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- a. **Definitions.**
 - i. "Client Software" means software that allows a Device to access or utilize the services or functionality provided by the Server Software.
 - ii. "Device" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," or other electronic device.
 - iii. "Server Software" means software that provides services or functionality on a computer acting as a server.
 - iv. "Redistribution Software" means the software described in subparagraph d ("Use of Redistribution Software") below.
 - b. **Ownership of Software Products.** The Software Products are licensed to Broadview from an affiliate of Microsoft. All title and intellectual property rights in and to the Software Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the Software Products) are owned by Microsoft or its suppliers. The Software Products are protected by copyright laws and international copyright treaties, as well as other intellectual laws and treaties. Your possession, access, or use of the Software Products does not transfer any ownership of the Software Products or any intellectual property to you.
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- h. **Termination.** Without prejudice to any other rights, Broadview may terminate your rights to use the Software Products if you fail to comply with these terms and conditions. In the event of termination or cancellation, you must stop using and/or accessing the Software Products, and destroy all copies of the Software Products and all of its component parts.
- i. **PrivateCloud Early Cancellation Fee:**
Customer shall be subject to an Early Cancellation Fee for each terminated Service in an amount equal to the Monthly Recurring Charge (MRC) for the Broadview PrivateCloud Service multiplied by the number of years (or part thereof) remaining in the then-current Term. Bare Metal Cloud Cancellations (or any physical hardware deployment) will be charged the Monthly Recurring Charge multiplied by the number of months remaining in the then-current term..
- j. **NO WARRANTIES, LIABILITIES, OR REMEDIES BY MICROSOFT.** ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY BROADVIEW AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.



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