

BACKUP AND DISASTER RECOVERY SERVICES AGREEMENT

By this Backup and Disaster Recovery Services Agreement ("Agreement"), R.K. Black, Inc. ("RK Black") and the client identified as ("Client") agree as follows:

- 1. Term.** This Agreement is effective upon the date signed, and shall remain in force for a period of three years. 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 RK Black the monthly fees of \$XXX.00 as detailed in the proposal ABC123 and is payable in U.S. dollars within thirty (30) days of invoice. Adjustments for additional server(s) and/or workstation(s) or additional offsite storage will be applied in a prorated manner on the next billing cycle during the Agreement.
- 3. Services Provided** An on-site Network Attached Storage (NAS) unit that acts as a local storage device and stand-by server in the event of server and/or workstation failure. **(a)** Incremental backups done on the NAS as frequently as every 5 minutes. **(b)** Secure Remote (Off-site) Storage provided at a hardened data center. **(c)** Day to day data restoration of files, file folders, emails or email stores, SQL databases, and SharePoint. **(c)** Full data recovery from the secure data center with the most recent information stored offsite - in the event of total catastrophe, where the on-site server and NAS are lost. **(d)** Full management, monitoring, and testing of the NAS and remote storage.
- 4. Security** All data is fully encrypted during transmit off-site and while stored off-site. All data is stored off-site, in encrypted form, on multiple servers in a highly secure data center facility. **(a)** Each file is encrypted using 256-bit AES and SSL key-based encryption technology. 256-bit AES encrypted data cannot be read without the corresponding keys, so encrypted data cannot be misused. **(b)** The on-site NAS 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. **(c)** 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 on-site NAS and at the off-site data centers, and needed bandwidth to transfer data off-site remains manageable.
- 6. Backup Frequency** Servers and/or workstations can be backed up as frequently as every 5 minutes. Retention policies can be customized to create as many archived versions of data and full recovery points as needed. Off-site backup frequency is continuous by default, and may be customized to meet Internet bandwidth limitations. Off-site backup frequency is ultimately depended on total data size, data changes, and available Internet bandwidth. Client must have a minimum upload bandwidth of 1.5 MB per terabyte of device storage capabilities to ensure timely off-site synchronization. RK Black is abstained from all responsibility of maintaining off-site backup if this requirement is not met.
- 7. Retention** Retention policies can be set at a high level of customization for the on-site NAS. The off-site data retention policy is 30 days. The off-site retention policy can be increased on a case-by-case basis that will include an increase in cost for the Client. RK Black retains the right to change the off-site retention policy with two (2) weeks written notice to Client.
- 8. Smart Data Transport** Data transmission can easily be configured to minimize Internet bandwidth consumption. The on-site NAS and propriety off-site data transfer system leverages advanced bandwidth throttling to schedule Internet bandwidth used depending on the time of day, customized 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 off-site.
- 9. Remote Storage provided at a high availability Data Center in Texas** Highly redundant storage in multiple redundant cluster nodes at a hardened data center. **(a)** Connectivity provided by multiple providers with

automatic failover capabilities. **(b)** Facilities power is supplemented with both battery backup and diesel generation capabilities. **(c)** Full physical security at the facility including global biometric authentication access methodology to track all authenticated data center personnel and prohibit the entry of any unauthorized persons. **(e)** Fire suppression and environmental control provided.

10. **Remote Storage and Base Remote Backup Image Creation (a)** Your data is stored (in encrypted form) in a secure off-site data center, located in Texas. **(b)** The initial backup will be sent via a SATA II drive to the primary remote storage facility. There is an approximately 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.

11. **Recovery Time Objective (RTO)** RK Black will log all retrieval activities from the Client. **(a)** RK Black will attempt to resolve access, backup, or retrieval problems over the phone on first call within 24 hours of the first request. We can restore a file, file folder, email or an entire mailbox as needed. Please call our help desk for assistance. **(b)** In a disaster, where you should lose your entire office, we will have a new NAS imaged, with the most current backup information-which is usually the previous day's data. It will be shipped out via next-business day air transportation to a location of your choice. When the NAS arrives, it is ready to be used as a virtual server. There is an additional cost for this service as declared in Section 13. **(c)** The NAS can also be used to perform a bare metal restore to dissimilar hardware which means that when a new server arrives, the NAS can be used to restore the most current data to the new server(s) and/or workstation(s) regardless of hardware.

12. **Off-Site Virtualization** In a disaster where you should lose your physical servers and NAS, servers and/or workstations may be virtualized off-site. **(a)** Servers can be virtualized in the off-site data center. There is an additional cost for this service as declared in Section 13. **(b)** Public IP and/or VPN access will be given to connect to remote virtual machines. Virtual machines can also be accessed using VNC and/or RDP.

13. **Ownership of the Data** The backup data being stored on the NAS and at the Data Center remains the sole property of the Client. If the Client chooses to terminate services, RK Black will assist Client in the orderly termination of services. This could involve copying the backup image to an external drive which can be synchronized with the data on the NAS. The Client agrees to pay RK Black the actual costs of rendering such assistance.

14. **Catastrophe Service** In the event of a catastrophe, fees for the "Disaster Recovery Service" will be \$XXX plus all applicable freight and shipment costs to deliver a new NAS that will contain the most current data loaded at the Data Center. Additionally, any service required to provide access to that data is included. The fees noted in clause 2 will remain in effect and cover the costs associated with the new NAS. Fees for the "Off-Site Virtualization Service" are \$XXX for up to 30 days access to virtualized machines.

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

16. **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 RK Black or any other person or entity to terminate their relationship with RK Black.

17. **Warranty** RK Black 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 NAS unit is fully warranted and no additional charges will be incurred for hardware failure. Firmware and software updates are also included. **(b)** The NAS units cannot be modified in any way or the warranty and the management agreements are voided. This includes adding software applications to the NAS itself, adding memory and/or hard drives, etc. **(c)** NAS replacement parts will be shipped next business day air transportation and prepaid by RK Black. **(d)** 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.

18. **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. RK Black 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.

19. **Equipment and Facilities** The Client agrees that RK Black may utilize 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 utilized by RK Black, and must grant authority for RK Black 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 RK Black may be unable to perform their duties adequately and if such a situation should exist, RK Black will be held harmless.

20. **Passwords** RK Black 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.

21. **Termination and Additional Remedies** This Agreement may be terminated by The Client upon sixty (60) days' written notice if RK Black: **(a)** Fails to fulfill 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. RK Black, Inc. reserves the right to terminate this agreement with The Client for any reason. If either party terminates this Agreement, RK Black will assist Client in the orderly termination of services, including timely transfer of the services to another designated provider. Client agrees to pay RK Black the actual costs of rendering such assistance.

22. **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 RK Black, and any such attempt shall be null and void. Any dissolution, merger, consolidation, reorganization 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.

23. **Jurisdiction** This Agreement shall be governed by the state and Federal laws applicable in Connecticut, U.S.A. Any dispute, claim, or controversy arising out of or relating to the subject matter of this Agreement shall be settled by mediation. The parties will select a mediator in a mutually agreed up manner. At all times during the mediation process, including the selection of the mediator, the parties will act in good faith to attempt to settle their dispute. At all times during the mediation process, the mediator will maintain impartial, though he/she may give his/her views, opinions or settlement proposals as a means to move the dispute toward resolution. However, the mediator's views, opinions, proposals, etc. shall not be deemed to be legal advice. The parties agree that any settlement agreement that they may enter into during the mediation process is fully binding and enforceable by any Court with jurisdiction of the dispute thereof.

24. **Force Majeure & Malicious Acts** RK Black 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 RK Black.

25. **Limited Liability.** For the purposes of calculating availability, RK Black 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 RK Black.

(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. **Taxes.** Client shall be solely responsible for any taxes or similar charges arising out of this Agreement, including all applicable Federal, State or local sales taxes, customs, duties, use taxes, value-added taxes, excise charges or brokerage fees. Client shall also be solely responsible for assessing and remitting payment for any such items to the appropriate authorities.

27. **Travel Charges** Client is responsible for travel charges equal to 0.5 hours of the normal hourly rate for each on site visit by RK Black.

Signatures

By signing this Contract, the Parties hereto agree to all terms, conditions and covenants contained herein and that they are authorized to make such decisions for their respective organizations. The Parties acknowledge that this is a legally binding Contract and the Parties fully acknowledge that they each have accepted this Contract of their own free will and that the signing of this document was not the result of coercion or duress and that both Parties sought and received, or had the opportunity to seek and receive, the advice of legal counsel, of their choice, prior to signing this Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Service Agreement to be signed by their duly authorized representatives as of the date set forth below.

Client

R.K. Black, Inc.

Signature:

Signature:

Title:

Title:

Date:

Date:

WAIVER OF BACKUP SERVICE

By signing the waiver below, the Client acknowledges that they have been presented with the information contained herein and have made an informed decision to decline RK Black's backup service. As such, Client will not receive any of the above stated service and RK Black is abstained from all legal responsibility to ensure integrity or completion of any onsite or offsite backup from any backup solution vendor.

IN WITNESS WHEREOF, the parties hereto have caused this Service Waiver to be signed by their duly authorized representatives as of the date set forth below.

Client

R.K. Black, Inc.

Signature:

Signature:

Title:

Title:

Date:

Date: