



## **Services Attachment for Backup and Disaster Recovery Services**

This Service Attachment is between ATS Communications, Inc. a California company (sometimes referred to as “we,” “us,” “our,” OR “Provider”), and the Client found on the applicable Order (sometimes referred to as “you,” or “your,”) and, together with the Order, Master Services Agreement, and other relevant Service Attachments or Descriptions, forms the Agreement between the parties the terms to which the parties agree to be bound.

The parties further agree as follows:

Provider will deliver only the Services itemized in the Services section of the Order. The following is a list of available Managed Services. Additional Services may be added only by entering into a new Order including those Services.

### **DATA BACKUP AND RECOVERY SERVICE**

To the extent ordered by Client, Provider will perform the following services relate to backup and disaster recovery:

#### **Local Backups**

Description:

- Using customer provider hardware and software (backup software), backups will be performed on a nightly basis.

Hardware and Software

- The Client owns the hardware and software agents (backup software) used to perform the backups.

Provider responsibility:

- If the Client subscribes to Monthly or Quarterly Server Maintenance, Provider will review the backups during Maintenance and notify the client of backup failures.

Client responsibility:

- Monitor the USB backups on a daily
- Rotate external USB drives
- Pull monthly and yearly USB drives out of the rotation
- Replace all USB drives as necessary to minimize USB drive failures
- Notify the Provider of any failures
- If requested, perform simple on-site tasks (e.g., powering down and rebooting hardware).

#### **Remote Backup**

Description

- Provider, through its Third-Party Service Providers will make its best effort to ensure the protection and recovery of Client’s information. Data files are backed up via a third-party client-side desktop/server software application (the “Application”), encrypted, and then sent to a storage server at third-party vendor’s data center facility. There is no local copy of the backed-up data. Data files can be restored from the cloud but the server itself cannot be recovered or “booted” in the cloud. Therefore, this service is not considered a disaster recovery solution.

#### Hardware and software

- There is no additional hardware required.
- All data is backed up via a third-party client-side desktop/server software application (the “Application”)

#### Provider responsibility

- Monitor the backups daily
- Notify the Client of any failures
- Work with third-party to resolve backup failures

#### Client responsibility

- If requested, perform simple on-site tasks (e.g., powering down and rebooting hardware).

#### **Cloud Backup** Description

- Provider, through its Third-Party Service Providers will make its best effort to ensure the protection and recovery of Client’s information. Data is backed up via a third-party client-side desktop/server application, encrypted, stored locally on a Provider owned storage device (“Provider Owned Storage”), and then sent to a ‘-party owned storage server at the Third-Party Services Provider’s data center facility. Offsite Backup copies will have 1year retention unless specified in Order or Service Description.

#### Hardware and Software

- The Provider owns the hardware (storage device) and includes third-party software agents used to perform the backups. Upon termination of these Services, Provider will repossess the backup hardware and remove the Application from Client systems.

#### Provider Responsibility

- Monitor the status of all scheduled backup jobs.
- Notify Client of Provider Owned Storage failures and corrective actions.
- Perform additional remote responsibilities to manage Provider Owned Storage.
- Provide remote administrative services of Data Backup Service as requested by Client.
- Contact Client should user intervention be required, such as power cycling servers and/or Provider Owned Storage.

#### Client responsibility

- If requested, perform simple on-site tasks (e.g., powering down and rebooting hardware).

## **Backup Hardware**

Client may select one of the following two options for any backup appliance hardware to be deployed at Client's location in order to facilitate the delivery of Services under this Service Attachment:

Rental Hardware – Upon Client's request, Provider will provide to Client network equipment on a rental basis to facilitate the data backup process ("Provider-Supplied Backup"). Client will incur an additional monthly rental charge for any Provider-Supplied Backup as well as an additional, one-time equipment installation and setup charges. The MSA terms pertaining to Provider-owned Equipment apply to all such hardware.

IF CLIENT CHOOSES A NON-PROVIDER-SUPPLIED BACKUP SOLUTION, PROVIDER CANNOT GUARANTEE ANY OUTCOMES. CLIENT SHALL BE SOLELY RESPONSIBLE FOR ANY RESULTING OUTCOMES FOR NOT USING THE PROVIDER-SUPPLIED BACKUP SOLUTION, PROVIDER MAY CHANGE THE PROVIDER-SUPPLIED BACKUP AT ANY TIME.

Client-Owned Hardware – Provider will assist Client in identifying network backup equipment that Client will purchase. If Client chooses this option, PROVIDER WILL MAKE BEST EFFORTS TO MONITOR the backup jobs or support Client's technical support requests but is under no obligation to undertake such monitoring or resolve technical issues if it is unable to do so for any reason.

## **Support Services**

Provider will deliver support for the Services 24 hours per day, seven days per week, 365 days per year. In connection with the Services that are within the scope of this Service Attachment, we will provide to your designated administrator(s), technical contacts or users (1) management of the Services by individuals trained in the Services you have selected, and (2) phone and e-mail support 24 hours per day, 7 days per week, 365 days per year.

## **Setup**

Provider will install the Hardware and Application, schedule all backup routines, program appropriate alerts, and ensure a successful initial backup. For all optional plugin services, Provider similarly will install the plugin, set up the applicable schedules, and ensure a successful initial backup.

In the event Client has a large initial backup or limited Internet connectivity; Provider, at its discretion, can require a seed backup to be performed either before online backups can occur, upon any relevant, significant changes to the environment to be covered by the Services (including, without limitation, if new local storage is introduced), or whenever, in Client's or Provider's reasonable discretion, a new baseline backup must be saved. Seed backups are billed at the rate specified in the attached Order.

## **File Recovery Services**

To the extent Ordered by Client, Provider will:

- Create and modify up to the number of backup jobs listed in the Order.
- Monitor up to the number of backup jobs listed in the Order.
- Monitor the status of all scheduled and on-demand backup jobs.

- Notify Client by email of backup drive failures and corrective actions.
- Remotely perform up to the number of Client-requested restore operations listed in the Order
- Perform additional remote responsibilities to manage Client's backup drive and physical inventory.
- Facilitate the ordering of new backup drives as requested by Client.
- Provide remote administrative services as requested by Client.
- Contact Client should user intervention be required, such as cycling of backup drives.

### **File Backup**

- Provider will work with Client to develop a comprehensive disaster-recovery plan that incorporates the Services to be delivered under this Service Attachment.
- If Client experiences an event precipitating a major, multi-user loss of data, Client may notify Provider that a data loss event has occurred.

### **CLIENT OPERATING ENVIRONMENT**

Unless otherwise agreed in writing by the parties, Client must ensure the availability of Client's network, IP WAN connection, and all component systems to be backed up by the Provider backup Service.

In addition, unless otherwise agreed in writing by the parties, Client also must define appropriate backup sets and schedules for those systems to be backed up before Provider may commence delivery of Services under this Attachment. Provider cannot and does not guarantee to successfully back up all open files.

Unless otherwise specifically agreed by the parties, Provider is not obligated to perform any data forensic or restoration operations under this Attachment.

### **CONFIDENTIALITY AND DATA SECURITY**

For confidentiality and security reasons, data transmitted is neither opened nor read by any of the Provider backup processes. Therefore, unless otherwise agreed by the parties, Client must ensure that data integrity, including virus checking, is maintained with respect to Client's own data.

IMPORTANT: Upon installation of or access to the Software, Client must select encryption level and encryption keys. Provider will deliver the keys to Client and will endeavor to retain secure copies of those keys. However, loss of the encryption keys by Client may delay or prevent recovery of Client's backup data.

### **SERVICE FEES AND SUPPORTED DEVICES**

#### **Setup Fee**

Prior to the delivery of the Services, Provider will charge a Setup Fee in order to connect to Client's environment and to deploy any software or hardware required in order to deliver the Services under this Service Attachment. Provider will identify the Setup Fee in an initial invoice, and Client shall pay the Setup Fee, as set forth in the MSA. Provider shall have no obligation to continue with the delivery of any Services under this Service Attachment until it receives payment for the Setup Fee.

#### **Service Fee**

Provider will conduct a monthly inventory of the environment to be covered by the Services and will determine (1) the total number of client installations and optional plugins covered within the scope of this Service Attachment (collectively, "Backup Units"), and (2) the volume, if any, of offsite data-storage capacity required to back up Client Data (defined below) rounded to the nearest gigabyte.

If the number of Backup Units determined by Provider in any month is greater than the number of Backup Units determined at the beginning of the preceding month, Provider (1) will include in its next invoice charges for all additional Backup Units placed in service during the preceding month, and (2) will increase the number of Backup Units invoiced in future months, unless and until Provider determines that the number of Backup Units has decreased.

Client shall pay Service Fees specified in the Order. Any devices backed up via the Services must be limited to equipment accessed only by Client's employees, consultants, contractors or agents who are authorized to use the Services. Client shall not allow any third parties to access any devices connecting to Services within the scope of this Service Attachment.

The fees to be charged will be based on actual number of Backup Units added to the scope of this Service Attachment, as directed by Client, and on the actual volume of any offsite data-storage capacity required to back up Client Data (defined below) rounded to the nearest gigabyte, subject to a required monthly minimum of the greater of (1) 50 GB, or (2) the data volume identified in the first month's invoice for Services. In addition, under no circumstances during the Term (defined below) may the total number of Backup Units decrease to less than the number of Backup Units indicated on the first month's invoice for Services. Provider's invoices will be based on at least that number, notwithstanding any actual decreases in those numbers. Client shall pay all such charges as set forth in the MSA. The Fees for the Service are stated in the Order.

#### **Adjustments to Service Fee Rates**

In addition to any fee increase resulting from changes to the number of Backup Units or offsite data storage volumes, at any time after the parties sign this Service Attachment, Provider may deliver an updated Fee Schedule identifying any new or modified Service Fee Rates that it will begin charging for any Services provided to Client under this Service Attachment. Provider shall give Client no less than thirty (30) days' notice of any such Fee Schedule updates. Following its receipt of such notice, if any rates previously charged under this Service Attachment will have increased more than 10% over the rates charged during the last 12 months, then Client may terminate this Service Attachment without incurring any additional charges or penalties, if any, that it ordinarily would incur for such termination.

#### **PROVIDER OBLIGATIONS AND WARRANTY**

In addition to delivery of the Services, Provider accepts the following obligations under this Service Attachment:

##### **Data Security and Privacy**

In addition to its other confidentiality obligations under this Service Attachment, Provider shall not use, edit or disclose to any party other than Client any electronic data or information stored by Provider, or transmitted to Provider, using the Services ("Client Data"). Provider further shall maintain the security

and integrity of any Client Data under Provider's direct control, in accordance with any parameters described in this Service Attachment.

As between Provider and Client, all Client Data is owned exclusively by Client. Client Data constitutes Confidential Information subject to the terms of the MSA. Provider may access Client's User accounts, including Client Data, solely to respond to service or technical problems or otherwise at Client's request.

### **Maintenance Windows**

Routine server and application maintenance and upgrades will occur during scheduled maintenance windows, and some applications, systems or devices may be unavailable or non-responsive during such times.

### **Warranty**

Provider warrants that the Services will be performed materially in accordance with the service documentation previously provided for the Services in a professional and workmanlike manner.

The online documentation for the Services is incorporated as a part of this Service Attachment. We reserve the right at any time to modify the online documentation by posting any changes at the above URL, at which time the modified documentation will supersede and replace in its entirety any prior online documentation. However, we further warrant that the functionality of the Services will not materially decrease from that available as of the Service Start Date (defined below).

HOWEVER, PROVIDEAR DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF YOUR PRIVACY, CONFIDENTIAL INFORMATION, AND PROPERTY. WE HAVE NO OBLIGATION TO PROVIDE SECURITY OTHER THAN AS STATED IN THIS SERVICE ATTACHMENT. WHILE THE SERVICES ARE DESIGNED TO IMPROVE THE PROBABILITY OF THE PROTECTION AND RECOVERY OF INFORMATION COMPARED TO THE CLIENT'S CURRENT METHODS EMPLOYED, PROVIDER MAKES NO CLAIMS OR WARRANTIES THAT DATA BACK-UPS AND DATA / SERVER / DESKTOP RECOVERIES USING THE SERVICES WILL BE ERROR FREE OR THAT ALL RECOVERIES CAN BE PERFORMED WITHIN A CERTAIN TIME FRAME.

IN ADDITION, CLIENT ACKNOWLEDGES THAT THIS AGREEMENT CONVEYS NO WARRANTIES, EXPRESS OR IMPLIED, BY ANY THIRD-PARTY VENDORS OF SOFTWARE PRODUCTS MADE AVAILABLE TO CLIENT BY PROVIDER AND THAT THOSE VENDORS DISCLAIM ANY AND ALL LIABILITY, WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL, ARISING FROM THE SERVICES.

### **ADDITIONAL CLIENT OBLIGATIONS**

#### **Hardware Equipment**

Client equipment must be maintained under manufacturer's warranty or maintenance contract or is in working order. Provider is not responsible for client equipment that is not maintained under manufacturer's warranty or maintenance contract or that is otherwise out of order. All fees, warranties, and liabilities against Provider assumes equipment is under manufactures warranty or maintenance contracts or is in working order.

Provider in its reasonable opinion and supported by manufacturer information, may designate certain equipment as obsolete or defective, and therefore exclude it from coverage under this Agreement.

#### **Minor On-Site Tasks**

Provider may occasionally ask you to perform simple on-site tasks (e.g., powering down and rebooting a computer). Client agrees to cooperate with all reasonable requests.

#### **Server Upgrades or Repair**

Provider will authorize all server upgrades or repairs. Client agrees not to perform any of these actions without notifying Provider.

#### **Software Media**

Client shall obtain and supply all necessary software media with installation keys (if any) upon request.

Except for any software provided by Provider in connection with the Services, you are solely responsible for obtaining all required software licenses, including all client access licenses, if any, for the software products installed on your computers.

### **TERM**

#### **Term**

This Service Attachment is effective on the date specified on the Order (the "Service Start Date"). Unless properly terminated by either party, this agreement will remain in effect through the end of the term specified on the Order (the "Initial Term").

#### **Renewal**

"RENEWAL" MEANS THE EXTENSION OF ANY INITIAL TERM SPECIFIED ON AN ORDER FOR AN ADDITIONAL TWELVE (12) MONTH PERIOD FOLLOWING THE EXPIRATION OF THE INITIAL TERM, OR IN THE CASE OF A SUBSEQUENT RENEWAL, A RENEWAL TERM. THIS SERVICE ATTACHMENT WILL RENEW AUTOMATICALLY UPON THE EXPIRATION OF THE INITIAL TERM OR A RENEWAL TERM UNLESS ONE PARTY PROVIDES WRITTEN NOTICE TO THE OTHER PARTY OF ITS INTENT TO TERMINATE AT LEAST SIXTY (60) DAYS PRIOR TO THE EXPIRATION OF THE INITIAL TERM OR OF THE THEN-CURRENT RENEWAL TERM.

CLIENT MAY CANCEL AN AUTOMATIC RENEWAL BY CONTACTING PROVIDER.

#### **Month-to-Month Services**

If the Order specifies no Initial Term with respect to any or all Services, then we will deliver those Services on a month-to-month basis. We will continue to do so until one party provides written notice to the other party of its intent to terminate those Services, in which case we will cease delivering those Services at the end of the next calendar month following receipt such written notice is received by the other party.

#### **Early Termination by Client With Cause**

Client may terminate this agreement for cause following sixty (60) days' advance, written notice delivered to Provider upon the occurrence of any of the following:

- We fail to fulfill in any material respect our obligations under this agreement and fail to cure such failure within thirty (30) days following our receipt of your written notice.
- We terminate or suspend our business operations (unless succeeded by a permitted assignee under this agreement)

### **Early Termination by Client Without Cause**

If Client has satisfied all of your obligations under this Service Attachment, then no sooner than ninety (90) days following the Service Start Date, you may terminate this Service Attachment without cause during the Initial Term upon sixty (60) days' advance, written notice, provided that you pay us a termination fee equal to fifty percent (50%) of the recurring, Monthly Service Fees remaining to be paid from the effective termination date through the end of the Initial Term, based on the prices identified on the Order then in effect.

You may terminate this Service Attachment without cause following the Initial Term upon sixty (60) days' advance, written notice, without paying an early termination fee.

### **Termination by Provider**

We may elect to terminate this Service Attachment upon thirty (30) days' advance, written notice, with or without cause. Provider has the right to terminate this Service Attachment for less than ninety (90) days for illegal Client conduct. Provider may suspend the Services upon ten (10) days if Client violates a third-parties end user license agreement regarding provided software. Provider may suspend the Services upon fifteen (15) days if Client's action or inaction hinder Provider from providing the contracted Services.

### **Effect of Termination**

As long as Client is current with payment of: (i) the Fees under this Agreement, (ii) the Fees under any Project Services Attachment or Statement of Work for Off-Boarding, and/or (iii) the Termination Fee prior to transitioning the Services away from Provider's control, then if either party terminates this Service Attachment, Provider will assist Client in the orderly termination of services, including timely transfer of the Services to another designated provider. Client shall pay Provider at our then prevailing rates for any such assistance. Termination of this Service Attachment for any reason by either party immediately nullifies all access to our services. Provider will immediately uninstall any affected software from Client's devices, and Client hereby consent to such uninstall procedures.

Upon request by Client, Provider may provide Client a copy of Client Data in exchange for a data-copy fee invoiced at Provider's then prevailing rates, not including the cost of any media used to store the data. After thirty (30) days following termination of this Agreement by either party for any reason, Provider shall have no obligation to maintain or provide any Client Data and shall thereafter, unless legally prohibited, delete all Client Data on its systems or otherwise in its possession or under its control.

Provider may audit Client regarding any third-party services. Provider may increase any Fees for Off-boarding that are passed to the Provider for those third-party services Client used or purchased while using the Service.

Client agrees that upon Termination or Off-Boarding, Client shall pay all remaining third-party service fees and any additional third-party termination fees.