

Managed-IT Backup Agreement

In addition to the standard terms and conditions contained in the Managed-IT Service Agreement between CNS and Client (“**Agreement**”), of which this Schedule (Schedule B) is a part of, Client agrees that the following terms and conditions apply with respect to the Data Backup and Recovery Service provided by CNS to Client. If there is any inconsistency between this Schedule and the Agreement, this Schedule shall control.

Statement of Confidentiality

This document contains trade secrets and information that is company sensitive, proprietary, and confidential, the disclosure of which would provide a competitive advantage to others. Therefore, this document shall not be disclosed, used, or duplicated, in whole or in part, for any purpose other than to evaluate the requirements herein.

Terms and Rates

- 1) **Term:** This Agreement is effective upon the date signed and coordinates with the CNS Managed-IT Service Agreement term of service signed by Client.
 - a) **Election Not to Renew:** Either of the Parties may elect not to renew this agreement, by providing notice to the other party at least 30 business days before the end of the term. In the event of a termination, CNS will retain Client’s server data for 30 days after the last date of service. After 30 days, access to the CNS backup cloud interface is disabled and all data stored on the local appliance and in the cloud will be deleted. It is Client’s responsibility to obtain the historical backup data from CNS upon contract termination.
- 2) **Monthly Service Rate:** The total monthly service charge listed on the Gold or Platinum Managed-IT Service Agreement.
 - a) **Device Billing:** CNS will assess Client’s environment and deploy a Barracuda Server Backup Appliance that will fit Client’s storage needs. If Client outgrows the appliance, CNS will upgrade Client to a larger appliance. CNS will work with Client to migrate data and configuration from the smaller appliance to the new appliance. Any change in storage appliance will change the monthly backup rate.

Managed-IT Backup Support Services

- 3) **Managed-IT Backup Support Overview:** CNS works to ensure the successful and timely back up and restoration of all Client data for which CNS provides Backup and Recovery services. The purpose of the Backup Service Agreement is to outline the data protection and management that CNS is providing for Client’s Server(s) and Hypervisor level backups. A Barracuda Server Backup Appliance will be leased to Client for a monthly fee. The appliance will take and hold a local copy of Client’s data, as well as replicate data to the Barracuda Cloud. Barracuda hosts seven data centers worldwide for fast replication and disaster recovery. Data replicated to Barracuda’s cloud are stored twice on separate hardware for redundancy. Data leaving the local appliance are encrypted in-transit and stored encrypted at rest with AES 256-bit encryption unique to the customer.
- 4) **Support Hours:** Support hours listed on this Agreement coordinate with the CNS Managed-IT Service Agreement. Simple file or directory restoration is covered under the CNS Managed-IT Service Agreement, Mon-Fri 7:00am – 5:00pm (PST). Restoration outside of these hours may constitute a billable event.

- 5) Cloud Interface:** For clients that own their own Barracuda Unit the designated Client approver(s) will have access to the CNS backup cloud interface which provides real time local and offsite backup status. Login and access to the portal will be provided upon request after the signing of agreement. CNS Clients on CNS' Shared backup solution can request status backup snapshot at any time.
- 6) Services Provided**
- a) Backup:
 - i) Full local backup and restore
 - ii) Inline, block-level, source-and target-based deduplication and compression
 - iii) Built-in WAN acceleration
 - iv) Cloud or site-to-site replication
 - v) Real-time inline replication to offsite storage
 - vi) 256-bit AES of data in transit and at rest to remote locations
 - vii) VMware Changed Block Tracking (CBT)
 - b) Retention
 - i) 30-day Local Retention
 - ii) Offsite retention of 12 monthly and 7 yearly revisions
 - c) Recovery
 - i) Physical-to-Virtual (P2V) restores
 - ii) Bare metal restores for Windows and Linux environments
 - iii) Rapid VM recovery with LiveBoot for VMware, and Cloud LiveBoot for VMware and Microsoft Hyper-V environments
 - iv) Granular file recovery for VMware and Hyper-V
 - v) File revision history
 - vi) Granular Microsoft Exchange message-level recovery
 - vii) VMware CBT restores
 - d) Full monitoring and support
 - i) Any failure or issue with Client's backup will automatically create a help desk ticket that will be worked by our CNS team.
 - ii) Health Status monitoring of all backups
 - iii) All restore requests will be handled by our help desk team and will follow our standard SLAs.
 - e) Instant replacement
 - i) Next business day shipping on hardware replacements
 - ii) Hardware refresh every four years keeping Client on the latest platform at no additional cost
 - iii) Disaster recovery service preloads most recent data and configuration settings onto a replacement unit for emergency restores in the event of complete site disaster
- 7) Major incident recovery services:** Major incident recovery services such as recovery services after a complete server hardware failure, a failure resulting from third party vendors updating a system, a failure caused by force majeure, theft, vandalism, etc., are not covered under the CNS Managed-IT Service Agreement and will constitute a billable event, both to recover the data from offsite as well as to restore any services.
- 8) Backup Schedule and Source Drive information:** As soon as reasonably possible after the Effective Date of this Agreement, CNS will help define and create backup jobs based on input provided by Client, including data backup selections, job scheduling, job frequency, and backup retention time frames. Attachment A written description will be provided to Client, for Client's review and written approval (i.e., signature), specifying which servers are currently on the backup program, what the backup schedule is, and which directories/volumes and special services (i.e., SQL database or Exchange mail

data store) are being protected. The signed written approval shall be captioned "Attachment A" to this Agreement and shall be incorporated herein by reference. Client is required to notify CNS of any additions or changes to Client's data storage systems moving forward through CNS' support email ticketing system "Help@cns-service.com"; such as changes, addition or removal of data Sources, etc. This Backup Schedule and Source Drive information will be updated and will require a signature by Client any time a modification to the backup schedule is made. Only the designated Client approver(s) may request changes to the backup schedule.

Conditions

- 9) Local Data Recovery:** CNS cannot guarantee or control all factors surrounding server availability and therefore cannot guarantee 100% of the point-in time backups. Multiple server backups are taken daily, CNS will maintain a 70% or higher backup availability. Many factors influence when a backup can occur, such as running processes, power outages, ISP outages, server reboots, etc. CNS can increase the number of backups that occur during a 24-hour period. Increasing the number of backups can impact drive space and may cause Client to upgrade Client's unit.
- 10) Offsite Data:** Offsite data restore is not guaranteed for the first 30 days until CNS is able to replicate 100% of Client's data from the onsite appliance to the Barracuda Cloud. Offsite replication can be impacted by factors such as bandwidth and data change rate. CNS will maintain a threshold of 48 hours. If a major event should occur, Client's data may be up to 48 hours old. If the available bandwidth at the Client location is unable to accommodate offsite replication, these services may not be available or may be terminated.
- 11) Ownership of the Data:** The data residing on CNS local equipment and within its Data Center remain the sole property of Client. If Client chooses to terminate services, CNS will assist Client in the orderly removal of backup equipment and software from the servers and the transfer of any backup data to a designated location. Client agrees to pay CNS the actual costs of rendering such assistance.
- 12) Limitation of Liability:** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW NEITHER CNS NOR CLIENT WILL BE HELD LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY TYPE, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOST DATA, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, OR ARISING OUT OF THE RESULTS OR OPERATION OF ANY SYSTEM RESULTING FROM IMPLEMENTATION OF ANY RECOMMENDED PLAN OR DESIGN, EVEN IF CNS OR CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGE, AND EVEN IF CNS OR CLIENT ASSERTS OR ESTABLISHES A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL CNS BE LIABLE TO CLIENT FOR ANY AMOUNT IN EXCESS OF THE TOTAL OF ALL FEES PAID TO CNS BY CLIENT UNDER THIS AGREEMENT AND ALL OTHER AGREEMENTS RELATING TO DATA BACKUP, ARCHIVING, STORAGE, RECOVERY, AND THE LIKE. THIS LIMITATION OF LIABILITY APPLIES TO ALL TYPES OF LEGAL THEORIES, INCLUDING CONTRACT, TORT, PROFESSIONAL LIABILITY, PRODUCT LIABILITY, WARRANTY, OR ANY OTHER THEORY.
- 13) Indemnification By Client:** To the fullest extent permitted by applicable law Client shall at all times defend, indemnify, and hold CNS harmless against and from all losses, liability, expenses, and other detriments of every nature and description to which Client may be subjected by reason of any act or omission of CNS, its employees, subcontractors, consultants, agents, officers, and directors where such loss, liability, expense, or other detriment arises out of or is in connection with the performance of the work and services, including, but not limited to, personal injury (including death) and loss of or damage to property of Client or others. This defense and indemnity shall not extend to any claims, damages, losses, or expenses which are due to the sole negligence of CNS.

- 14) Excluded Services:** Services rendered under this Agreement do not include:
- a) The LSU hardware replacement cost and the cost associated with hardware replacement due to damage, theft, or destruction.
 - b) Backing up of local data that may reside on desktop, laptop, tablet, cell phone, or non-company (non-Client) assets.
- 15) Mutual Indemnification:** To the fullest extent permitted by applicable law, (a) CNS agrees to defend, indemnify, and hold harmless Client (including its officers, directors and employees) against all damages, liabilities, or costs to the extent caused by the negligent performance of professional services by CNS under this Agreement, and (b) Client agrees to defend, indemnify, and hold harmless CNS (including its officers, directors, and employees) against all damages, liabilities or costs to the extent caused by the negligence of Client, its contractors, subcontractors, consultants, employees, or anyone acting on Client's behalf or for Client's benefit in connection with the Server Data Backup. Neither CNS nor Client shall be obligated to indemnify the other in any manner whatsoever for the other party's negligence.
- 16) Confidentiality:** Neither of the Parties shall disclose any proprietary or confidential information obtained from the other unless so directed by a court of law or government authority. Client agrees not to disclose rate(s), term(s), or any information regarding this Agreement without the prior written consent of CNS.
- 17) Equipment & Facilities:** Client agrees CNS may utilize certain items of Client's equipment and may gain access to certain Client's facilities. Client retains title and ownership in all Client's equipment owned by Client and utilized by CNS, and must grant authority for CNS to access Client's facility. Facility access may be denied for any reason at any time; however, if access to facilities is denied, Client understands CNS may be unable to perform its duties adequately and, accordingly, if such a situation should arise, CNS shall be held harmless.
- 18) Passwords:** CNS acknowledges it must have access to any and all systems and resources to perform its duties under this agreement. As such, CNS must have access to any and all passwords.
- 19) Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the state of California, without reference to conflicts of law principles. In the event of any dispute, claim, or controversy relating to or arising from this Agreement, or any breach, threatened breach, or alleged breach thereof, the Parties hereby expressly waive and relinquish any and all right to a trial by jury on any issue, matter, claim, cause, or controversy pertaining thereto.

Termination for Breach: Except as otherwise provided in this Agreement, either of the Parties may, upon notice to the other, terminate this Agreement if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof from the non-breaching Party. For the avoidance of doubt, termination of this Agreement shall be effective only if (i) the non-breaching Party provides notice of breach to the other Party, (ii) such breach is not cured within thirty (30) days, and (iii) the non-breaching Party then provides the other Party notice of termination upon expiration of such cure period. The effective date of termination shall be the date of receipt of such notice of termination by the breaching Party.

Acceptance

This Software or Services Agreement (“**Agreement**”) is made by and between either an individual or an entity (“**You**” or “**Company**”) and Capital Network Solutions, Inc. (“**CNS**”), and it shall be effective as of the date that You accept this Agreement (“**Effective Date**”).

By Accepting this Agreement -- either by indicating your acceptance, by executing or approving a quote order that references this agreement, or by utilizing the services (defined above) -- You agree to this Agreement. Once accepted by You, this Agreement is a legally binding Contract between You and CNS and sets forth the terms that govern the service or license to You hereunder.

CNS reserves the right in its sole discretion to modify this Agreement from time to time and will provide reasonable notice of any such modifications by posting the most up-to-date version on CNS’ website. Modifications, if any, shall apply prospectively and only after notice has been given. Your continued use of the Services and Software following modification shall constitute Your acceptance of the modification(s).