



## Cost Consulting Backup Service Agreement

This Backup Service Agreement (hereinafter the "Agreement") is between the following parties:

\_\_\_\_\_, with its principal office \_\_\_\_\_  
(hereinafter "Client"), and Cost Computer Consulting, a wholly owned subsidiary of Cost Consulting Companies, LLC, with a principal office at 2175 Canterbury Cove, Germantown Tennessee 38139 (hereinafter the "Consultant").

### 1. SERVICES.

The Consultant shall provide the following services to Client on the following:

- **Backup** - The Client may backup up their data on Cost Consulting Companies' file server.
- **Storage of Data** - This data will **NOT** be stored "Out of State". All normal precautions will be taken to protect this data.

\_\_\_\_\_  
Clients Initials - Showing acceptance of "Storage of Data".

- **Software** - This Agreement includes one software package for each computer(s) covered in this Agreement to complete the backup of the primary data. This backup software is the property of the Consultant and may not be copied or altered.
- **Restores** - You are entitled to six (6) Technician supported restores per year. This is per restore, not per file(s) being restored.
- **Pricing** - The following chart is the price per Gigabyte of data per month on Cost Consulting Companies' file server, per backup license issued. (Clients with an Annual Agreement will receive a 30% discount on these prices.)

On CCC Server	Pricing per Month
0 to 1.99 GB	\$26.00
0 to 2.99 GB	\$39.00
0 to 4.99 GB	\$58.50
More	Please Call

### 2. INVOICING.

An invoice showing payment terms, software used, service rendered, and equipment covered is attached and is incorporated into this Agreement.

Invoices will be submitted by the Consultant for payment by Client. Payment is due upon receipt and is considered past due ten (10) business days from receipt of invoice unless otherwise noted on the invoice or previous written agreement between the consultant and the client has been reached. If Client has any valid reason for disputing any portion of an invoice, Client will so notify the Consultant within five (5) business days of receipt of invoice by Client, and if no such notification is given, the invoice will be deemed valid. The portion of the Consultant's invoice that is not in dispute shall be paid in accordance with the procedures set forth herein.

A finance charge of 1.5% per month on the unpaid amount of an invoice, or the maximum amount allowed by law, will be charged on accounts that are ten (10) business days past the past due date. Payments by Client will

thereafter be applied first to accrued interest and then to the principal unpaid balance. Any attorney fees, court costs, or other costs incurred in collection of delinquent accounts shall be paid by Client. If payment of invoices is not current, the Consultant may suspend performing further work.

### **3. REIMBURSABLE COSTS.**

Client shall reimburse the Consultant all costs incurred in connection with the Services rendered. Reimbursable costs include, but are not limited to subcontractors, materials, computer costs, telephone, copies, delivery, travel cost, etc. that are attributable to a project or service (the "Reimbursable Costs"). Travel costs are defined as air travel, lodging, meals and incidentals, ground transportation, and are only incurred when travel is in excess of 25 miles from Germantown TN. The Consultant shall provide to Client substantiation of Reimbursable Costs incurred.

### **4. TAXES.**

All amounts payable pursuant to this Agreement are exclusive of taxes. Accordingly, there will be added to any such amount payable by Client the monetary sum equal to any and all current and future applicable taxes, however designated, incurred as a result of or otherwise in connection with this Agreement or the Services, including without limitation state and local privilege, excise, sales, services, withholding, and use taxes and any taxes or other amounts in lieu thereof paid or payable by Client. The Consultant serves as an independent contractor and will be responsible for all income taxes. If Client does not pay such taxes, the Consultant may make such payments and Client will reimburse the Consultant for those payments. Client will hold the Consultant harmless for any payments made by Client pursuant to this Section

### **5. CHANGES.**

Client may, with the approval of the Consultant, issue written directions within the general scope of any Services to be ordered. Such changes (the "Change Order") may be for additional hours, work or the Consultant may be directed to change the direction of the work covered in section 1, but no change will be allowed unless agreed to by the Consultant in writing.

### **6. LIMITATION OF LIABILITY.**

In no event shall the Consultant be liable, in contract, warranty, or tort (including negligence whether active, passive or imputed), product liability, strict liability, or any other theory for any indirect, incidental, special, punitive or consequential damages arising out of the use or inability to use the Services or performance of any related services, even if the Consultant has been advised of the possibility of such damages. To the maximum extent permitted by applicable law, in no event shall the aggregate liability of the Consultant whether in contract, warranty, tort (including negligence whether active, passive or imputed), product liability, strict liability, or any other theory for any indirect, incidental, special, punitive or consequential damages arising out of the use or inability to use the Services or performance of any related services, exceed the amount The Client actually paid to, the Consultant for the Services. The Client hereby releases the Consultant from any and all obligations, liabilities, and claim in excess of this limitation. The Client also agrees, regardless of any statute or law to the contrary, that any claim or cause of action arising out of or relating to this Agreement must be filed within one (1) year after such claim of action arose or be forever barred.

### **7. WARRANTIES AND REPRESENTATIONS.**

The Consultant does not make and hereby disclaims, and the Client hereby waives, any representations or warranties, arising by law or otherwise, regarding the Services described in the Agreement, or any portion thereof, including, without limitation, plied warranties of merchantability, fitness for a particular purpose, non-infringement, or arising from course of dealing, course of performance or usage in trade. Without limiting the foregoing, the Consultant specifically does not warrant the Services described herein (a) against failure of performance including, without limitation, any failure due to computer hardware or communication systems, or (b) any economic or other benefit that the Client might obtain through its participation in this Agreement. With respect to any equipment supplied, only the manufacturer's warranty, if any, shall apply to any repair or maintenance, unless expressly set forth to the contrary in this Agreement.

THIS SECTION SETS FORTH THE ONLY WARRANTIES PROVIDED BY THE CONSULTANT CONCERNING THE SERVICES AND RELATED WORK PRODUCT. THIS WARRANTY IS MADE EXPRESSLY.

#### **8. CONFIDENTIALITY.**

Each Party agrees that the Confidential Information of the other party will be held in confidence to the same extent and the same manner as each party protects its own Confidential Information, but each Party agrees that in no event will less than reasonable care be used. Each Party shall, however, be permitted to disclose relevant aspects of such Confidential Information to its officers or employees on a need-to-know basis, and provided they have undertaken to protect the Confidential Information to the same extent as required under this Agreement. "Confidential Information" shall mean each Party's trade secrets, financial information, formulas, specifications, programs, instructions, technical know-how, methods of operation, testing benchmarks, any other information identified by Party as Confidential Information, and any other information that should reasonably be understood to be confidential or proprietary. The Confidential Information referred to in this Section shall not apply in the following cases: If it was already known to the other party, if it was disclosed without obligation to keep the information confidential, if it was publicly known or became publicly known through no-fault of the receiving party, if it was independently developed by the receiving party without use of the other Party's Confidential Information, or if it is required to be disclosed by court of competent jurisdiction and in that case, the disclosing party shall be granted a reasonable opportunity to obtain a protective order.

#### **9. CLIENTS RIGHTS.**

The Client retains all rights to any documents, graphs, spreadsheets, photographs, publications and/or written data of any kind used on the Clients File Server(s), Computer(s), or Web site. The negatives, digital images and/or written data remain the indefinite property of the Client. Reproduction, publication or public display of these pictures, except for use on the Client's File Server(s), Computer(s), or Web site, is strictly prohibited without the prior written consent of the Client.

#### **10. DEFAULT.**

"Default" shall mean non-payment according to Payment Terms of Agreement. In the event of Default on the part of the Client, the Consultant may cease all further performance under the Agreement and shall not be liable for any losses or damage suffered by the Client as a result of the Consultant's cessation of services. After such Default, the Consultant shall not be obligated to provide any additional Services unless mutually agreed to in writing between the parties. In the event the Client believes the Consultant is in default or breach of this Agreement, the Client shall provide the Consultant with timely written notice the default or breach and expressly identify the nature of the default or breach in that notice. Further, the Consultant shall have ten (10) days to cure ("Cure Period") that default or breach, failing which, this Agreement shall automatically terminate without any further obligation by one party to the Notwithstanding the above, the Consultant shall be entitled to full payment for all services and equipment provided to the Client as of the expiration of the Cure Period.

#### **11. CANCELING THE AGREEMENT.**

Once this Agreement has been executed, the Client may cancel this Agreement with a thirty-day notice. This notice can be in writing and/or Email. The Thirty days start once the Consultant responses to the notice.

#### **12. FORCE MAJURE.**

The Consultant shall be excused from performance to the extent that performance is prevented, delayed, or obstructed by causes beyond the Consultant's reasonable control, including delays in performance be the Client, acts of Nature (fire, storm, floods, earth-quakes), civil disturbances, disruption of telecommunications, power or essential services.

#### **13. STANDARD OF CARE.**

Industry Standards: The Consultant warrants that the services describe above, shall be performed by personnel possessing competency consistent with applicable industry standards. No other representation, express or implied, and no warranty or guarantee are included or intended in this Agreement. Furthermore, no guarantee is made as to the efficacy or value of any services performed or software used or developed. The Client agrees that the Consultant, its agents or its employees, shall be not be liable for: (1) loss or damage resulting from fire or theft, (2) defective repairs or damage during repairs, (3) any damage or loss of computer data whatsoever, either to person or property, whether caused by negligence or otherwise.

Software Licensing: The Consultant does not support the use of unlicensed software. All backup software used by the Consultant, is licensed by the Consultant for the use by the Consultant.

Risk of Data Loss: Client assumes all risk of data loss from any and all causes or in any way related to or resulting from fire, theft, Flood, earth-quakes, natural disaster, civil disturbance, or disruptions of or related to telecommunications, power, repair or service of computer hardware, software or other equipment. Client hereby releases Consultant from any claim or liability related to data loss for any reason whatsoever.

### 13. ARBITRATION

Any controversy or claim arising out of or relating to this Agreement or the breach hereof, including any claim based upon or rising from an alleged tort, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect on the date of this Agreement, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration hearing and all proceedings therewith shall take place in Memphis, Tennessee. The arbitration hearing shall be commenced within ninety (90) days of the filing of a Demand for Arbitration by either party, and the award shall be render within thirty (30) days of the conclusion of such hearing.

### 14. INDEMNIFICATION

Client shall indemnify and hold harmless Consultant from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of any kind, including reasonable attorney's fees, caused by or arising out of, or contributed to, in whole or in part, by reasons of any act, omission, professional error, fault, mistake or negligence of Consultant, its employees, agents, representatives or subcontractors in connection with or incidental to the performance of this agreement.

IN WITNESS WHEREOF, Client and Consultant have duly executed this Agreement.

Consultant:  
**Cost Computer Consulting**

Client:  
\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Edward Alan Cost

Name: \_\_\_\_\_

Title: CFO / CIO

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_