

RECITALS

WHEREAS, Data Restoration Services, Inc. (DRS) is engaged in the business of providing electronic data backup services;

WHEREAS, DRS and Customer have agreed that DRS will provide Customer with certain backup services and software to assist Customer in the storage of electronic data, under the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the fee paid by Customer to DRS and the Services provided by DRS to Customer, the premises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Services. DRS agrees to provide to Customer secure offsite storage of electronic data, which data shall be backed up, uploaded, and downloaded using software (as described in more detail below) furnished by DRS. The costs for such services shall be at the rates set forth in the Fee Arrangement paragraph set forth below. The data shall be transferred via the internet using the Customer's internet connection.
2. Grant of Software License. DRS hereby grants Customer a non-exclusive, non-transferable license ("License") to use the software which DRS provides to Customer for the backing up, uploading, downloading, and transferring of electronic data for which DRS will store for Customer, and such license shall continue for so long as this Agreement is in effect and Customer is not in default under any of the terms hereof. Such software includes server software ("Server Software"), which is the software necessary for DRS to communicate with Customer, and customer software ("Customer Software"), which is the software necessary for Customer's computers to access DRS' services through the Server Software (the Server Software and Customer Software may be collectively referred to as the "Software"). DRS will provide the Software to Customer upon execution of this Agreement for Customer to install. If Customer requests, DRS will assist Customer with the installation of the Software for an additional fee of \$150.00 per hour.
3. Use of License. Customer may install and use the Client Software on each individual computer in which Customer intends to use in its practice of storing data electronically. Customer shall obtain the prior written approval of DRS for each computer in which the Client Software is to be installed before such Software is installed. Any other use of the Software is strictly prohibited. Customer may not use, copy, modify, translate, adapt, disclose or transfer the Software or any copy, in whole or in part, without express written consent to do so from DRS. Customer agrees not to make any attempt to decompile, disassemble or reverse engineer the Software or otherwise discover or derive the source code or underlying processes, ideas, structure, organization or algorithms of the Software.
4. Term. This Agreement will renew automatically without notice unless cancelled with 30 days notice by either party in writing, delivered by certified mail. Cancellation by the Customer prior to the end of the current term shall incur a fee of 10% of the remaining term.
5. Fee Arrangement. During the term of this Agreement, the monthly fees charged shall be based on the total amount of data transferred for such month, which shall include, without limitation, data sent to DRS and data restored to the Customer. Payments shall be made on a monthly, quarterly, or annual basis. Customer shall make prompt payment upon receipt. Acceptance by DRS of any partial payment by Customer shall not constitute a waiver on the part of DRS of its rights to collect the full balance owed. DRS reserves the right to adjust its fees as it deems appropriate; provided, however, DRS shall provide Customer with thirty (30) days notice of such change before the change shall become effective.
6. Password Security. It is the sole responsibility of Customer to document and secure its security password. DRS shall not be held responsible or liable for the loss of Customer's security password. Customer understands that without the security password the encrypted stored data cannot be retrieved, possibly causing injury or damage to Customer, and Customer agrees that DRS shall not be responsible or liable in any way for any such injury or damage caused thereby or related thereto.

7. Duplicate Data. In the event that data which has been transferred to and store by DRS is later amended, changed, or revised, DRS agrees to maintain all versions of such data for a period of thirty (30) days after the date of the last revision. After such thirty (30) day period, DRS will maintain only the most recent version of such data, purging and permanently deleting from storage all pervious versions of such duplicate data, unless Customer provides written notification to DRS in each instance that it does not wish for such data to be purged and permanently deleted. DRS reserves the right to charge additional fees for any duplicate data which Customer wishes for DRS to store.

8. Costs of Collection. If DRS is required to use a collection agency or attorney to collect money owed by Customer or to assert any right that DRS may have against Customer, Customer agrees to pay the reasonable costs of collection or other action. These costs shall include, but are not limited to, the costs of a collection agency, reasonable attorneys' fees and arbitration and court costs.

9. Stored Data. Any stored data will remain confidential, however, will not be transmitted for future client recovery without settlement of claims or charges by DRS.

10. Warranties: Disclaimer. DRS expressly disclaims any warranty, either express or implied, and Customer acknowledges that neither DRS nor its agents have made any representations or promises with respect to the Services except as expressly set forth in this Agreement, and no rights, easements or licenses are acquired by Customer by implication or otherwise except as expressly set forth herein. The use of the Services by Customer shall be conclusive evidence that the Customer has accepted the Services "AS IS" or "AS AVAILABLE". Furthermore, DRS does not warrant that the functions contained in the Software and/or Services will meet the Customer's requirements, nor that the operation of the Software and/or Services will be available, uninterrupted or error-free and that defects will be corrected. Finally, DRS does not warrant that all servers shall be free of viruses or other harmful components. Customer shall assume the risk thereof. Furthermore, both parties acknowledge and agree that DRS shall not be responsible for any data that cannot be transmitted to or received by DRS. Furthermore, DRS shall not be liable for loss of data due to an Act of God, technical deficiencies, etc. which DRS has no control over.

11. Termination. Either party may terminate this Agreement upon thirty (30) days written notice to the other party. Upon termination, Customer shall not be entitled to any refund of any prepaid fees and shall be obligated to pay any outstanding amounts due to DRS. In addition, within such thirty (30) day period after notification of termination of this Agreement, Customer shall make provision for alternate storage of its electronic data and shall remove all DRS Software from its computers and destroy any form of such Software in its possession. Upon the expiration of the of the thirty (30) day notification period, DRS may purge and permanently delete all Customer data in which DRS had been storing.

12. Time of Essence. It is expressly provided with respect to all aspects of this Agreement that time is of the essence.

13. Benefit. This Agreement shall be binding on and inure to the benefit of the parties, their respective heirs, legal representatives, successors, and assigns.

14. Assignment. This Agreement shall not be assigned or modified without the express written consent of both of the parties hereto. Before an assignment of this Agreement (and the Software License granted herein) is consented to by DRS, the proposed assignee shall agree in writing to be bound by all the terms and conditions of this Agreement, and Customer shall agree to immediately, upon such assignment, delete permanently the Software from all of Customer's computers.

15. Applicable Law. This Agreement shall be interpreted under the laws of the State of South Carolina. Furthermore, the parties agree to venue in Horry County, South Carolina.

16. Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not, in any way, be affected or impaired thereby.

17. Notices. All notices, requests, demands, and other communications under this Agreement, or any of the documents attached hereto, shall be in writing and shall be deemed given on the date of service if served personally or by overnight express courier service on the party to whom notice is to be given or by certified mail, postage prepaid, and properly addressed as follows:

Data Restoration Services, Inc.
P.O. Box 31149
Myrtle Beach, SC 29588

With Copy to:
Bret H. Davis, Esquire
Davis Law Firm, P.A.
Post Office Box 70517
Myrtle Beach, SC 29572

Any party may change its address for purposes of this Section by giving the other party written notice of the new address in the manner set forth above.

18. Remedies Cumulative. The remedies specifically enumerated hereunder are not exclusive of, but in addition to any other remedies available at law or equity. The exercise of any remedy specified hereunder shall not preclude the pursuit of any additional available remedy.

19. Entire Agreement. This instrument and the exhibits attached hereto, which by this reference are incorporated herein, set forth the entire Agreement between the parties with respect to the subject matter of this Agreement. All negotiations relative to the matters contemplated by this Agreement are merged herein and there are no other understandings or agreements relating to the matters and the things herein set forth, other than those incorporated in this Agreement.