

[Place Your Company Logo Here]

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (“Agreement”) is hereby entered into this ___ day of _____, 201_ (“Effective Date”) by and between **Your Company Name**, a **Your Company Business Type**, ex. **Wisconsin LLC** with its principal place of business at **Your Business Address** (“Company”) and _____, a _____, whose principal place of business is located at _____ (“Client”). Company and Client may hereinafter be collectively referred to as the “Parties,” each a “Party.” Other capitalized terms shall have the meanings set forth below, including in the definitions set forth in Section 16.

1. SERVICES.

1.1 **Backup Services.** Company is a provider of a data backup service, including both proprietary and third-party software solutions, cloud storage, all in a form as Company makes generally available to its customers, and as revised or modified by Company from time to time in its sole discretion (collectively, and including any related support or other services provided by Company hereunder, the “**Services**”). For the avoidance of doubt, Client may not resell Services under this Agreement.

1.2 **Fees and Pricing.** Fees will be \$__ per month plus applicable taxes. Pricing for Services shall be in accordance with the terms of Exhibit A hereto (the “**Pricing Exhibit.**”) Fees will be based on the number of computers or systems being backed up in accordance with Client’s fee schedule. Client commits to the level of Services provided initially (i.e., in the first month of the Initial Term) under this Agreement. Additional Services may be added at any time during the Term of this Agreement, and in such event charges for such Additional Services will commence on the day added. Services may be removed, but Client’s monthly fee for Services will remain greater than or equal to the initial level until the end of the Initial Term. For example, if Client selects three (3) server backups at a cost of \$120 per month, for a total of \$360 per month, and then cancels one of the backups six months into the Term, Client will pay \$360 per month for months six through twelve of the Term, and \$240 per month thereafter.

1.3 **Covered Equipment.** Services will only be provided for then-covered computer equipment. A listing of such covered equipment is available to the Client during the term of this Agreement at Company’s

web site, or in backup status reports emailed by Company to Client.

1.4 **Coverage and Support.** Company’s technicians will work with Clients to install and configure backups on covered equipment as requested by the Client. The backup status of all covered equipment is monitored regularly during normal support hours. Company will provide weekly e-mail reports to Client detailing the backup status of all covered equipment. Support related to the restoration of backed up data is further detailed in Exhibit B (the “**Support Exhibit**”).

1.5 **Licenses.** Use of any software or products related to the Services, including both Company’s software and third-party software, is subject to execution by Client of then-current software license agreements, as the same may be updated from time to time by Company or other licensors. Use of the StorageCraft software also requires Client to comply with the following terms: (i) STORAGECRAFT DISCLAIMERS, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES AND LIABILITY FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, OR CONSEQUENTIAL, ARISING FROM THE USE OF THE STORAGECRAFT SOFTWARE, EXCEPT AS MAY OTHERWISE BE PROVIDED IN ANY AGREEMENT BETWEEN STORAGECRAFT AND THE APPLICABLE PARTY; and (ii) use of the StorageCraft software is governed by the applicable end user license agreement, regardless of method of installation, including manual, silent, unattended, or “push” installation.

1.6 **Nature of Relationship.** The Parties’ relationship is non-exclusive. Client may obtain similar services from any third party, and Company may perform any service for any third party without any restriction hereunder.

1.7 **Performance by Company’s Affiliates or Subcontractors.** Client agrees, acknowledges, and understands that actual performance of the Services may be made by Affiliates of Company and that Company has the right from time to time to subcontract any or all of the Services to third-party providers. For purposes of this Agreement, performance of the Services by any Affiliate of Company or by any third-party provider engaged by Company shall be deemed performance by Company itself.

2. SERVICE AVAILABILITY

2.1 **Service Level Agreement.** The Services will be accessible at least 99.9% of the time within any given twelve (12) month period, excluding periods of inaccessibility due to or arising from (i) scheduled maintenance periods; (ii) circumstances outside of the control of Company, including Force Majeure events as defined below, non-performance by Client or any of Client's agents or third-party providers, failure of performance of common carriers, interchange carriers, local exchange carriers, Internet service providers, or a failure of a data center vendor or other vendor of Company to comply with its service level obligations.

2.2 **Remedy.** In the event of an unscheduled outage that exceeds the limit defined above, when computed on an annual basis from a point in time, Company's liability shall be limited to Client's prorated charges for the outage time. Client must notify Company at support@gillware.com within thirty (30) calendar days of the unscheduled outage that exceeds the previously defined accessibility threshold. After receiving notification of the outage Company will provide a credit for the excess outage (subject to the conditions above) on Client's next invoice. Once such credit is given, computation of excess outage time shall begin anew, starting with the day following the previous outage. **This Section states Client's sole remedy for, and Company's sole obligation for, any outage or failure to provide Services.**

3. **TERM.**

3.1 **Term.** The Term of this Agreement shall commence upon the execution of this Agreement and shall continue for one (1) year ("**Initial Term**"). The Agreement shall automatically renew for recurring one (1) year terms (each a "**Renewal Term**") unless either Party provides notice at least sixty (60) days before the commencement of any Renewal Term. The Initial Term and any Renewal Terms are referred to collectively as the "**Term.**"

4. **CONTENT.**

4.1 **Content Obligations.** Any files, materials, data, text, audio, video, images or other content in any form provided by Client to Company for storage ("Content") are solely the responsibility of Client. Company does not control, verify, or endorse the Content that Client place on the Service. Client hereby grants Company and its contractors or agents the right to transmit, use and disclose Content posted on the Service solely to the extent necessary to provide the Service, as otherwise permitted by this Agreement, or to comply with any request of a governmental or regulatory body (including subpoenas or court orders), as otherwise required by law, or to respond to an emergency which Company believes in good faith requires Company to disclose information to assist in preventing the death or serious bodily injury of any person.

5. **SERVICE FEES.**

5.1 **Fees.** Client shall pay for the Services invoiced under this Agreement in accordance with the "Fees" set forth in the Pricing Exhibit.

5.2 **Taxes.** Client shall pay all sales, use, excise, and other taxes assessed as a result of the Services provided under this Agreement. Client will promptly reimburse Company for any taxes subject to this provision in the event Company is required to or does pay such taxes. Notwithstanding the foregoing, Client shall not be responsible for paying any taxes upon the real, personal, or intangible property of Company, or upon the net income or profits of Company.

5.3 **Invoices.** Company shall invoice Client for amounts due hereunder (including all applicable Fees and taxes) at the Client address set forth above, or another address if requested by Client. Client shall pay invoice amounts within thirty (30) days of the date of invoice.

5.4 **Late Payments.** Client's payment for Services shall be deemed late when Client fails to remit payment within thirty (30) days of the date of invoice. Any late payment shall bear interest at the rate of one and one half percent (1½ %) per month or the maximum rate allowed under law, whichever is lower, or fraction thereof, from the due date until paid in full. Any unpaid amounts due shall bear interest from the due date until paid. Notwithstanding any other provision under this Agreement, if any invoice or portion thereof is not paid within forty-five (45) days of the date of invoice, Company may, ten (10) business days after providing notification via email, at its option (i) cease providing the Service and delete all Content, and/or (ii) refuse any requests to restore any Content. Such interruption or cessation shall not relieve Client from its obligation to pay the undisputed amounts due and owing. **IN THE EVENT COMPANY TAKES ANY ACTION PURSUANT TO THIS SECTION, IT SHALL HAVE NO LIABILITY TO CLIENT OR ANYONE CLAIMING THROUGH CLIENT.** Client agrees to reimburse Company its reasonable expenses, including attorney and other fees, incurred in collecting any amounts due and owing to Company.

5.5 **Audit Rights.** During the Term, Company will have the right, during normal business hours and upon at least ten (10) business days' prior notice, to inspect and audit Client's records to the extent necessary to confirm the accuracy of the Fees charged to Client by Company. Client will promptly pay to Company any amounts shown by any such audit to be owing. Such audits will be conducted no more than once in any period of twelve (12) consecutive months.

6. **TERMINATION.**

6.1 **For Cause.** In the event either Party fails to perform any of its material obligations under this Agreement, including paying any amount due, and the defaulting Party fails to substantially cure such default within sixty (60) days after receiving written notice from the non-defaulting Party specifying the nature of the default, then the non-defaulting Party may, by giving written notice to the other Party, terminate this Agreement or the applicable Services as of the date specified in such notice of termination. Notwithstanding the foregoing, Client shall pay Company for Services already performed prior to the date of termination.

6.2 **For Insolvency.** Subject to the provisions of Title XI, United States Code, if either Party becomes or is declared insolvent or bankrupt, is subject to any proceedings relating to its liquidation, insolvency, or for the appointment of a receiver or similar officer for it, makes an assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, renewal, or readjustment of all or substantially all of its obligations, then the other Party, by giving written notice to such Party, may terminate this Agreement as of the date specified in such notice of termination.

7. **LIMITATION OF LIABILITY AND NATURE OF AVAILABLE DAMAGES.**

7.1 **LIMITATION OF LIABILITY.** EXCEPT WITH RESPECT TO AMOUNTS CLIENT IS OBLIGATED TO PAY UNDER THIS AGREEMENT IN ACCORDANCE WITH SECTION 5 IN NO EVENT SHALL COMPANY, ITS AFFILIATES, SUBCONTRACTORS, SUPPLIERS OR LICENSORS (INCLUDING COMPANY'S LICENSOR STORAGECRAFT) OR THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES, BE LIABLE TO CLIENT FOR ANY REASON, WHETHER IN CONTRACT OR IN TORT, FOR ANY DAMAGES ARISING OUT OF OR BASED UPON THIS AGREEMENT IN AN AMOUNT EXCEEDING THE FEES PAID DURING THE PRECEDING THREE MONTHS BY CLIENT TO COMPANY PURSUANT TO THIS AGREEMENT, REGARDLESS OF THE FORM IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT.

7.2 **NATURE OF AVAILABLE DAMAGES.** IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES, OR THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES, BE LIABLE TO THE OTHER PARTY UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR EXEMPLARY, PUNITIVE, INDIRECT, SPECIAL, LOST PROFITS, CONSEQUENTIAL OR SIMILAR DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES

REGARDLESS OF WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. **INDEMNITY.**

8.1 **Indemnity by Client.** Client shall defend, at its own expense, and indemnify and hold Company, Company's Affiliates, and Company's directors, officers, licensors, suppliers, subcontractors, employees, and agents harmless from and against any claim based on: (i) a violation by Client or its Affiliates of this Agreement or any Federal, state, or other laws or regulations; (ii) any allegation that any Content violates applicable law or this Agreement, or violates or infringes a patent, trademark, copyright, or other intellectual property right, or misappropriates a trade secret (to the extent that such misappropriation is not the result of Company's actions); (iii) the Services or any software provided by Company with or relating to the Services, including any claims based on warranty, contract, tort, strict liability, patent, equity, copyright infringement, or misappropriation of intellectual property. Company will reasonably notify Client of any such claim or demand that is subject to Client's indemnification obligation.

9. **LAW AND VENUE.**

9.1 **Choice of Law.** The validity, construction, and interpretation of this Agreement and the rights, duties, and obligations of the Parties hereto shall be governed by the laws of Wisconsin.

9.2 **Venue and Jurisdiction.** The Parties hereby irrevocably consent to venue and the personal jurisdiction (to the fullest extent permitted by applicable law) of the state and federal courts located in Dane County, Wisconsin for the resolution of any disputes arising hereunder.

10. **REPRESENTATIONS and WARRANTIES.**

10.1 **Client Warranties; Reliance.** Client represents and warrants that it is an entity validly existing and in good standing under the laws applicable to it, that it has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement, and that performance of this Agreement will not violate any law or breach any other agreement. Client further represents and warrants that it has the right and authority to transmit the Content to Company and direct its disposition in accordance with the terms of this Agreement. Company will perform the Services set forth in this Agreement on the basis of data, information, and instructions furnished by Client. Company shall be entitled to rely upon any such data, information, or instructions provided by Client. If any error results from incorrect data, information, or instructions supplied by Client, Company shall not be liable for any damages or delays arising therefrom and Client shall be responsible for discovering and reporting such error and supplying the

data, information, or instructions necessary to correct such error. Client is ultimately responsible for the adequacy and accuracy of all Content or data provided to Company by Client.

10.2 **Disclaimer of Warranties.** COMPANY PROVIDES THE SERVICE “AS IS,” “WITH ALL FAULTS” AND “AS AVAILABLE.” TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY MAKES NO (AND SPECIFICALLY DISCLAIMS ALL) REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF HARMFUL COMPONENTS, THAT THE CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED, OR ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING OUT OF ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. SOME JURISDICTIONS DO NOT ALLOW THE FOREGOING EXCLUSIONS. IN SUCH AN EVENT SUCH EXCLUSION WILL NOT APPLY SOLELY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

11. **CONFIDENTIALITY.**

11.1 **Nondisclosure of Confidential Information.** All Confidential Information (as defined in Section 16.2) supplied by a Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”) shall remain solely and exclusively the property of the Disclosing Party. Except as expressly authorized herein, as may reasonably be required to perform the Services or by prior written consent of the Disclosing Party, which consent may be withheld in the Disclosing Party’s sole discretion, each Receiving Party shall use at least the same degree of care in safeguarding the other Party’s Confidential Information as it uses in safeguarding its own Confidential Information. Company’s current practice as of execution of this Agreement is for data to be compressed and encrypted on the computer/server prior to transmission and sent via Secure Socket Layer (SSL) for storage in encrypted form of servers. Files are replicated to two separate storage servers before the software client receives confirmation of receipt. Each Party shall be responsible for any unauthorized use or disclosure of any of the other Party’s Confidential Information received by it and its Affiliates and their respective employees, agents, representatives and consultants. If Client has reason to believe that Confidential Information has been accessed by an unauthorized party, compromised, or otherwise breached, Client should contact Company’s technical support department at 877-624-7206 x3.

11.2 **Disclosures.** Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party’s Confidential Information to the extent that the Receiving Party is required by law or any applicable governmental authority to do so; provided, however, that in such event, to the extent permitted by applicable law, the Receiving Party shall notify the Disclosing Party and shall cooperate with the Disclosing Party in any attempt to contest or limit such required disclosure, at the Disclosing Party’s sole expense.

11.3 **Explicitly-Included Information.** Without limiting the generality of Confidential Information, Company’s information, including computer programs and software, documentation, methodologies, training aids and manuals, and procedures, belonging exclusively to Company shall be treated as Confidential Information and Client shall not disclose, sell, assign, lease, or otherwise make available any such information to any third party or entity, other than its employees who require such information to perform their duties, and shall remain the property of Company, eligible for reuse/resale.

11.4 **Ownership.** Confidential Information will remain the property of the Disclosing Party, eligible for reuse/resale by the Disclosing Party.

11.5 **Company Knowhow.** Client acknowledges that it has no rights in any software, hardware, systems, documentation, guidelines, procedures, methodologies, and similar related materials or processes, or any modifications thereof, provided by Company (the “**Knowhow**”), except with respect to Client’s use of the same during the Term as part of Client’s access and use of the Services. Any intellectual property developed by Company in the course of performance of this Agreement shall be the proprietary property of Company and shall be owned exclusively by Company, and Client shall receive a royalty-free, nonexclusive, irrevocable right and license to use such proprietary software during the Term of this Agreement.

11.6 **Client Equipment.** Company acknowledges that it has no rights in any software, hardware, systems, documentation, guidelines, procedures, and similar related materials or processes, or any modifications thereof, provided by Client, except with respect to Company’s use of the same in providing the Services during the Term. Client shall, at Client’s sole cost, take whatever action is necessary for Company to be provided with nonexclusive rights and/or licenses to use software provided by Client for use by Company in providing the Services.

12. **BUSINESS CONTINUITY.**

12.1 **Force Majeure.** Notwithstanding any provision contained in this Agreement, neither Party shall be liable to the other to the extent fulfillment or performance of any terms or provisions of this Agreement

is delayed or prevented by revolution or other civil disorders; wars; acts of enemies; strikes; labor disputes; electrical equipment or availability failure; fires; floods; acts of God; federal, state or municipal action; statute; ordinance or regulation; or, without limiting the foregoing, any other causes not within its control, and which by the exercise of reasonable diligence it is unable to prevent, whether of the class of causes hereinbefore enumerated or not (each, a “**Force Majeure Event**”). This clause shall not apply to the payment of any sums due under this Agreement by either Party to the other.

13. SECURITY OF CONTENT.

13.1 Transmission of Data. The expense and risk of loss associated with transportation and transmission of data or Content between Company and Client shall be borne by Client. Client shall be responsible for submitting Content to Company.

13.2 Security Measures. Client will promptly handle and resolve any notices and claims relating to the Content, including any notices sent to it by any person claiming that any Content violates any person's rights, such as take-down notices pursuant to the Digital Millennium Copyright Act and any other notices; and will maintain appropriate security, protection and backup copies of the Content, which may include Client's use of additional encryption technology to protect the Content from unauthorized access. **Company will have no liability of any kind as a result of the deletion of, correction of, destruction of, damage to, loss of or failure to store or encrypt any Content.** Client must keep its account and passwords confidential and not authorize any third party to access or use the Service on its behalf, unless Company provides an approved mechanism for such use. **Company will not be liable for any loss or damage arising from any unauthorized use of accounts due to Client's failure to comply with the terms of this Agreement.**

13.3 Suspension of Services. Company reserves the right, to temporarily suspend or terminate Client's access to the Service at any time in Company's sole discretion, without incurring liability of any kind. For example, Company may suspend or terminate access to or use of the Service for: (a) the actual or suspected violation of this Agreement; (b) the use of the Services in a manner that may cause Company to have legal liability or disrupt others' use of the Services; (c) the suspicion or detection of any malicious code, virus or other harmful code by Client or in the Content; (d) scheduled downtime and recurring downtime; (e) use of excessive storage capacity or bandwidth; or (f) unplanned technical problems and outages.

13.4 Acceptable Use. Client must not use the Services to harm others or the Services, nor permit such use by anyone accessing the Services on Client's behalf. For example, Client must not damage, disable,

overburden, or impair the Services (or any network connected to the Services); use any unauthorized means to modify, reroute, or gain access to the Services or attempt to carry out these activities; or use any automated process (such as a bot, a spider, or periodic caching of information stored by Company) to access or use the Services. Use of the Services to store illegal Content is prohibited.

14. MODIFICATIONS.

14.1 Modifications to Services. Company reserves the right, in its sole discretion, to make necessary unscheduled deployments of changes, updates or enhancements to the Services at any time. **Company may add or remove functionalities or features, and may suspend or stop a particular Service altogether.**

14.2 Modifications to Agreement. Company may modify this Agreement at any time upon thirty (30) days' written notice to Client. If Client wishes to terminate this Agreement as a result of such modification, it may do so by sending written notice to Company prior to the effective date of the modification; the failure to provide such notice will be deemed acceptance of the modified terms.

15. MISCELLANEOUS

15.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior negotiations, agreements, and undertakings, whether written or oral, between the Parties with respect to such matter. This Agreement may be amended only by an instrument in writing referencing this Agreement and executed by the Parties or their permitted assignees. Notwithstanding anything to the contrary, any additional purchase orders or business forms provided by Client hereunder shall have no effect and may not alter any terms of this Agreement.

15.2 References. In this Agreement, “include” and “including” shall mean respectively, “includes, without limitation” and “including, without limitation.”

15.3 Assignment. Except as otherwise set forth by the applicable end user license agreements, neither Party may assign this Agreement or any rights, obligations, or benefits under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, provided, however, that either Party may freely assign this Agreement without the prior written consent of the other Party (i) in connection with a merger, corporate reorganization, or sale of all or substantially all of its assets, stock, or securities, or (ii) to any Entity which is a successor to all or substantially all of the assets or the business of the applicable Party. Any permitted assignee must assume the obligations of the assignor by written instrument. Any

assignment in contravention of this Section 15.3 shall be void. This Agreement shall bind, benefit and be enforceable by and against the Parties and their respective successors and assigns. No third party shall be considered a beneficiary of this Agreement or entitled to any rights under this Agreement.

15.4 **Relationship of Parties.** The Parties intend to create an independent contractor relationship and nothing contained in this Agreement shall be construed to make either Client or Company joint ventures, principals, partners, agents, or employees of the other. No officer, director, employee, agent, affiliate, or contractor retained by Company to perform work on Client's behalf under this Agreement shall be deemed to be an employee, agent, or contractor of Client. Neither Party shall have any right, power or authority, express or implied, to bind the other.

15.5 **Notices.** Except as otherwise specified in the Agreement, all notices, requests, approvals, consents, and other communications required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by i) first class U.S. mail, registered or certified, return receipt requested, postage pre-paid; or ii) U.S. express mail, or other, similar overnight courier service to the address of the other Party first written above, or such other address as may be clearly requested by a Party in writing to the other Party. Notices shall be deemed given on the day actually received by the Party to whom the notice is addressed.

15.6 **Section Headings.** Section headings in this Agreement are for reference purposes only and shall not affect the interpretation or meaning of this Agreement nor be construed as part of this Agreement.

15.7 **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original document but all such counterparts together shall constitute one binding agreement.

15.8 **Waiver.** No delay or omission by either Party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any Party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the Party waiving its rights.

15.9 **Severability.** If any provision of this Agreement is held for any reason by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect and the provision found to be contrary to law shall be deemed modified to the most limited extent required in order to cause such provision to be in accordance with applicable law while most fully carrying out the intent of the applicable provision as set forth herein.

15.10 **Survival.** Any Section of this Agreement shall survive to the extent required for the performance of such provision in accordance with the terms hereof.

15.11 **No Third Party Beneficiaries.** Each Party intends that this Agreement shall not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the Client and Company.

15.12 **Construction.** Company and Client each acknowledge that the limitations and exclusions contained in this Agreement have been the subject of active and complete negotiation between the Parties and represent the Parties' agreement based upon the level of risk to Client and Company associated with their respective obligations under this Agreement and the payments to be made to Company and the charges to be incurred by Company pursuant to this Agreement. The Parties agree that the terms and conditions of this Agreement shall not be construed in favor of or against either Party by reason of the extent to which either Party or its professional advisors participated in the preparation of this document.

16. **DEFINITIONS.** As used in this Agreement and the attachments hereto (collectively, the "**Documents**"), the following terms shall have the following meanings with such definitions to be applicable to both the singular and plural use of the terms.

16.1 "**Affiliate**" shall mean, with respect to a Party, any entity at any time Controlling, Controlled by, or under common Control with, such Party, but only as long as such entity meets these requirements.

16.2 "**Confidential Information**" shall mean, with respect to either party, this Agreement, together with all confidential business or technical information or materials of such party; provided, however, that Confidential Information shall not include information or materials that the Receiving Party can demonstrate: (i) was known to the Receiving Party prior to the Effective Date free of any obligation of nondisclosure; (ii) was generally known or available to the public prior to the date of disclosure to the Receiving Party or subsequently became generally known or available to the public through no fault of the Receiving Party; (iii) was lawfully received by the Receiving Party from a third party free of any obligation of nondisclosure; or (iv) is or was independently developed by the Receiving Party without reference to any Confidential Information of the Disclosing Party.

16.3 "**Control**" shall mean the direct or indirect ownership of 50% or more of the capital stock, or other ownership interest if not a corporation, of any entity or the possession, directly or indirectly, of the power to direct the management and policies of such entity by ownership of voting securities, by contract, or otherwise.

“Controlling” shall mean having Control of any entity and
“Controlled” shall mean being the subject of Control by
another entity.

16.4 “Entity” means a corporation,
partnership, sole proprietorship, limited liability
company, joint venture, or other form of organization, and
includes the Parties hereto.

AGREED AND ASSENTED TO BY:

CLIENT

By: _____

Print Name: _____

Title: _____

Date: _____

Enter Your Company Name:

By: _____

Print Name: _____

Title: _____

Date: _____

Exhibit A:

Pricing Exhibit

Each month Company will invoice Client for the software backup licenses then in use in accordance with the per-license monthly fees set forth in the table below. If a license is procured mid-month, Company will invoice Client only for the portion of the month following the procurement date. For example, if Client purchases a license on September 23, they would only be invoiced for the 23rd through the 30th, then for the full monthly fee for each month thereafter. Software licenses can be cancelled at any time upon notification to Company, subject to payment of license fees. Licenses cancelled mid-month are charged for the full month.

Table 1.	
	Price/month/license
StorageCraft Licensing	
server	\$120
virtual server	\$100
small business server	\$100
desktop	\$120
Headstart Restore	\$20
Shadow Stream	\$20
Granular Exchange	\$25
Gillware Licensing	
File-based backup	\$10
Additional cloud storage	\$0.10/GB per month
Virtual Recovery Environments (VRE)	
Value VRE	\$25/month
Standard VRE	\$35/month
Performance VRE	\$45/month
On-demand Virtualization license	\$50/server/month

Exhibit B

Support Exhibit

Phone, email, and chat support is available Monday through Friday, 7:30 AM to 5:30 PM Central time. If support is required outside of these hours, Company charges a \$100/hour fee. Company will use reasonable efforts to resolve material and replicable errors in Company’s backup Services on covered equipment. In the event there is a data loss event and a need to restore data from a backup in Company’s possession, Company will make commercially reasonable efforts to restore the data as soon as practicable during normal support hours, and in accordance with the table below.

Backup Solution Description	Primary Resolution Strategy	Secondary Resolution Strategy	Tertiary Resolution Strategy	Response Time *during normal support hours	Resolution Time
Full-image backup w/ on-premise BDR	Restore from on-premise BDR	Transfer offsite backup to external storage device and ship to Client*	na	within 1hr of notification to Company	reasonable efforts
Full-image backup w/ on-premise external/NAS device	Restore from on-premise external/NAS device	Transfer offsite backup to external storage device and ship to Client*	na	within 1hr of notification to Company	reasonable efforts
Full-image backup w/ offsite virtualization	Restore from on-premise backup	Restore to offsite virtual environment	Transfer offsite backup to external storage device and ship to Client*	within 1hr of notification to Company	reasonable efforts
File-based backup to offsite storage	Restore from offsite backup	na	na	within 1hr of notification to Company	reasonable efforts

*Client will be invoiced by Company for the cost of the external drive and shipping.