

# Innovative Business Systems, Inc.

## IBS BRS Terms and Conditions

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Innovative Business Systems, Inc. (hereinafter referred to as "IBS") and Customer (hereinafter referred to as "Customer") agree to the following IBS Backup and Recovery Solution (IBS BRS) Terms and Conditions (hereinafter referred to as the "Agreement").

### 1. Services Provided

- a. An on-site Network Attached Storage (NAS) unit that acts as a local storage device and stand-by server in the event of server failure.
- b. Incremental backups done on the NAS at the frequency you select.
- c. Secure Remote (Off-site) Storage provided at a hardened Data Center.
- d. Day to day data restoration of files, file folders emails or email stores.
- e. Full recovery of data with the previous day's data being the most current information provided from the offsite data center- in the event of total catastrophe, where the server and NAS on site are lost.
- f. Full management of the NAS and remote storage.

### 2. Security

- a. Data is encrypted before it leaves your servers with an encryption key. The data is then encrypted again for its transit over the Internet. Files are then stored, in encrypted form, on multiple servers in high security facilities.
- b. Each file is encrypted using 256-bit AES encryption technology. 256AES Encrypted data cannot be read without the corresponding keys, so encrypted data cannot be misused, even if it's stolen.
- c. In addition, our software communicates with the remote servers using SSL (Secure Socket Layers) technology. As a result, the online backup of data is encrypted twice. It is encrypted at all times using the 256-bit AES encryption, and it is encrypted again while it's being sent over the Internet.
- d. Your data is never hosted at the remote Data Center. This is done because we do not want anyone to have access to the data, for security purposes.

### 3. File compression

Before files are encrypted they are compressed on the NAS using state-of-the-art compression technology. This compression ensures that the time it takes to do backups is shorter and because each file is significantly smaller, less storage space is used on the remote servers.

### 4. Backup Frequency

Our service can protect your data as frequently as every 15 minutes, every day. This provides hundreds of additional backup copies vs. tape backup allowing multiple restore points to recover the most current version of your data just prior to the data loss event. Off-site backup frequencies will be dependent on image sizes and internet bandwidth available.

### 5. Smart Data Transport

Data transmission can easily be configured to minimize bandwidth consumption. Our NAS leverages Adaptive Bandwidth Throttling, which allows us to set a limit on outbound bandwidth used. (E.g. assuming a 768Kpbs outbound connection, adaptive bandwidth throttling can be set with a maximum at 512Kpbs). We can therefore exercise fine control over the data imaging and

transmission processes.

**6. Remote Storage provided at two XO high availability Data Centers in Phoenix and Baltimore.**

- a. Highly redundant storage with backup images stored at the data centers on a SAN at the primary facility, then replicated to the secondary facility.
- b. Connectivity provided by multiple providers with automatic failover capabilities.
- c. Facilities provide two fiber optic network drops for our backbone.
- d. Full physical security at each facility including security cameras, and key card access.
- e. Network is secured with high-end redundant, automatic failover firewalls.
- f. Fire suppression and environmental control provided.
- g. Automatic backup power provided by on-site generators.

**7. Retention Periods:**

**On the local Network Attached Storage (NAS) unit:**

1. Base image
2. Monthly synthetics (all)
3. Weekly synthetics (for last 5 weeks)
4. Daily synthetics (for last 14 days)
5. Intra-day incrementals (for last 2 days-whatever frequency you select)

**At the remote storage facility:**

1. Current Image: one daily backup is sent offsite depending on the bandwidth availability.
2. Archiving: Same as the NAS retention period noted above. Bear in mind, retrieval of the data at the data center is done by imaging a NAS with one selected image and sending it to the location you specify (there is an additional cost for this service).

**8. Remote Storage and Base Remote Backup Image Creation**

- a. Your data is stored (in encrypted form) in two secure online data backup centers, located hundreds of miles apart from each other.
- b. The BASE IMAGE will be sent via a SATA II drive to the primary remote storage facility. There is generally a three-week turnaround time required for this base image transfer to occur. Incremental backups will occur in the meantime and they will collapse into the base image when the transfer is complete.

**9. Minimum Remote Storage Requirements**

- a. Remote storage is provided in increments of 1GB with a 100GB minimum storage requirement for billing purposes only. Remote storage is tracked on a monthly basis, based on the daily average of the data on the servers being backed up.

**10. Routine retrieval testing.**

- a. The integrity of backups is checked as they occur and are tested for recovery on a monthly basis.

**11. Recovery Time Objective (RTO)**

- a. IBS will log all retrieval activities from the Customer.
- b. IBS will attempt to resolve access, backup, or retrieval problems over the phone on first call within eight (8) business hours of the first request. We can restore a file, file folder, email or an entire mailbox as needed. Please call our help desk for assistance.
- c. In a disaster, where you should lose your entire office, we will have a new NAS imaged, with the most current backup information-which is usually the previous day's data. It will be shipped out via next-business day air transportation to a location of your choice. When the NAS arrives, it is ready to be used as a virtual server. There is an additional cost for this service which can be billed separately or debited from a separate available service agreement balance, should one exist.
- d. The NAS can also be used to perform a bare metal restore to dissimilar hardware which

means that when a new server arrives, the NAS can be used to restore the most current data to that new server regardless of the server hardware.

## 12. Ownership of the Data

The backup data being stored on the NAS and at the Data Center remains the sole property of the Customer. If the Customer chooses to terminate services, IBS will assist Customer in the orderly termination of services. This could involve copying the backup image to an external drive which can be synchronized with the data on the NAS. The Customer agrees to pay IBS the actual costs of rendering such assistance.

## 13. Term of Agreement

This Agreement is effective upon the date accepted, and shall remain in force for a period of three years. The Service Agreement automatically renews for a subsequent one year term beginning on the day immediately following the end of the Initial Term unless either party gives the other thirty days' prior written notice of its intent not to renew this Agreement.

- a. This Agreement may be terminated by either Party upon sixty (60) days' written notice if the other Party:
  - i. Fails to fulfill in any material respect its obligations under this Agreement and does not cure such failure within thirty (30) days' of receipt of such written notice.
  - ii. Breaches any material term or condition of this Agreement and fails to remedy such breach within thirty (30) days' of receipt of such written notice.
  - iii. Terminates or suspends its business operations, unless it is succeeded by a permitted assignee under this Agreement.
- b. If either party terminates this Agreement, IBS will assist Customer in the orderly termination of services, including timely transfer of the services to another designated provider. Customer agrees to pay IBS the actual costs of rendering such assistance.

## 14. Fees and Payment Schedule

- a. A Start Up fee of \$250 per server is required to set up the Network Attached Storage device, configure the back up and send the base image off site.
- b. Monthly recurring fees for a stand-by server and off-site remote storage to our data centers will be \$.65 per GB per month for a minimum of 150GB. This includes a full warranty of the NAS, and management of the backup device.
- c. The Customer is invoiced on a monthly basis, and the invoice is due and payable with net 10 day terms. Services will be suspended if payment is not received within 5 days following date due.
- d. In the event of a catastrophe, fees for the "Disaster Recovery Service" will be a minimum of \$500.00 plus all applicable freight and shipment costs to deliver a new NAS that will contain the most current data loaded at the Data Center. Additionally, any service required to provide access to that data is NOT included. The fees noted in 14 a, b and c will remain in effect and cover the costs associated with the new NAS.
- e. The backup data being stored on the NAS and at the Data Center remains the sole property of the Customer. If the Customer chooses to terminate services, IBS will assist Customer in the orderly termination of services. This could involve copying the backup image to an external drive. Customer agrees to pay IBS the actual costs of rendering such assistance.

***It is understood that any and all Services requested by Customer that fall outside of the terms of this Agreement will be considered Projects, and will be quoted and billed as separate, individual Services.***

## 15. Taxes

It is understood that any Federal, State or Local Taxes applicable shall be added to each invoice for services or materials rendered under this Agreement. Customer shall pay any such taxes unless a valid exemption certificate is furnished to IBS for the state of use.

## **16. Limitation of Liability**

In no event shall IBS be held liable for indirect, special, incidental or consequential damages arising out of service provided hereunder, including but not limited to loss of profits or revenue, loss of use of equipment, lost data, costs of substitute equipment, or other costs.

## **17. Indemnification**

The Customer shall at all times indemnify and save IBS harmless against and from all losses, liability, expenses, and other detriments of every nature and description to which The Customer may be subjected by reason of any act or omission of IBS, its subcontractors, consultants, agents, officers, directors, and employees where such loss, liability, expense or other detriment arises out of or in connection with the performance of the work, including, but not limited to, personal injury (including death) and loss of or damage to property of The Customer or others. This indemnity shall not extend to any claims, damages, losses and expenses which are due to the sole negligence of IBS.

## **18. Excluded Services**

Service rendered under this Agreement does not include:

- a. The NAS 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 and laptop machines. This agreement encompasses Windows 200x Servers only.

## **19. Force Majeure & Malicious Acts**

This agreement is designed to cover the support needs of The Customer during normal operating conditions. IBS shall not be liable for damages, delay, or default in performance if such delay or default is caused by conditions beyond its control including, but not limited to acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, and/or any other cause beyond the reasonable control of either party.

Furthermore, damage and/or significant problems that result from anomalies and/or abnormal circumstances such as fire, flood, electrical surges, deliberate malicious acts, theft, acts of God, wars, insurrections, and/or any other cause beyond the reasonable control of either party fall outside the terms of this agreement.

## **20. Loaned Equipment**

The Customer agrees that the NAS unit utilized by IBS, in the execution of this service shall remain the property of IBS, and must be returned if requested. Customer further agrees to cease the use of any technology that remains the property of IBS upon termination of this agreement. If the NAS unit is stolen, damaged or destroyed, the Customer must pay full market replacement value.

## **21. Confidentiality**

Neither party shall disclose any proprietary or confidential information obtained from the other unless so directed by a court of law or government authority. The Customer agrees not to disclose rate(s), term(s), or any information regarding this Agreement without the prior written consent of IBS.

## **22. Equipment & Facilities**

The Customer agrees that IBS may utilize certain items of The Customer's equipment and may gain access to certain The Customer facilities. The Customer retains title and ownership in all of The Customer's equipment owned by The Customer and utilized by IBS, and must grant authority for IBS to access The Customer's facility. Facility access may be denied for any reason at any time, however if access to facilities is denied, The Customer understands that IBS may be unable to perform their duties adequately and if such a situation should exist, IBS will be held harmless.

### **23. Passwords**

IBS acknowledges that it must have access to any and all systems and resources to perform their duties under this agreement. As such, it must have access to any and all passwords. Bear in mind that the backup data will always be encrypted and not accessible to anyone who does not have the password. If the encryption password is lost, the backup data will be inaccessible.

### **24. Warranty**

- a. IBS warrants that the work will be performed to the best of its ability and in accordance with commercially reasonable practices prevailing at the time for its business.
- b. As long as the monthly fees are current, the NAS unit is fully warranted and no additional charges will be incurred for hardware failure. Firmware updates are also included.
- c. The NAS units cannot be modified in any way or the warranty and the management agreements are voided. This includes adding software applications to the NAS itself, adding memory or hard drives.
- d. NAS replacement parts will be shipped next business day air transportation and prepaid by Service Provider.
- e. No other warranties exist, expressed or implied.

### **25. Performance Guarantee**

- a. If at any time within the first year of usage of the solution a file restore is attempted by IBS staff and is not successfully restored within 24 hours, IBS will offer a \$500 credit to the customer's account toward any IBS service.

### **26. No Third Party Beneficiary**

All of the provisions of this Agreement are solely for the benefit of the parties hereto, and none of the other provisions of this entire Agreement shall inure to the benefit of any person not a party to the Agreement, and third parties shall have no rights hereunder.

### **27. Entire Agreement**

- a. This Agreement is the exclusive statement of the agreement of the parties with respect to its subject matter and supersedes all prior agreements, negotiations, representations, proposals, and awards, written or oral, relating to its subject matter.
- b. The Customer and IBS agree that in the event any term, covenant or condition herein contained is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant or condition shall in no way affect any other term, covenant or condition herein contained. Headings, titles and paragraph captions are inserted in the Agreement for convenience, are descriptive only and shall not be deemed to add to or detract from or otherwise modify the meaning of the paragraphs.

### **28. Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. In the event of any dispute, claim, or controversy relating to or arising from this Contract, 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.

In any dispute regarding the enforcement of this Agreement, the prevailing party shall be entitled to recover all costs and fees, including attorneys' fees, incurred by such prevailing party in enforcing the terms of this Agreement.

Customer agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of this Agreement must be filed within one (1) year after such claim or cause of action arises.

\*NOTE: Acceptance of a quote/proposal using the digital signature capability of IBS's quoting system Order Porter feature conforms to the ESA (Electronic Signature Act) to provide an official, legal digital signature and binds IBS and Customer to adhere to the Terms and Conditions contained herein.