

Abtech StorTrust Managed Disaster Recovery Agreement

This ABTECH STORTRUST MANAGED DISASTER RECOVERY AGREEMENT is made and entered into between Abtech Technologies, Inc. and any of Abtech's subsidiaries, DBAs, agents, successors, or parent companies ("Abtech") and Client to establish the specific terms and conditions that govern the Service relationship between both parties.

Upon mutual written consent, Client and Abtech may add Amendments, Exhibits, and Schedules (each an "Addendum" and collectively "Addenda") that define more specific services and additional terms and conditions as Client and Abtech agree to. This Abtech StorTrust Managed Disaster Recovery Agreement and any Addenda (collectively "Disaster Recovery Agreement") shall automatically (whether or not explicitly stated) incorporate by reference, as if fully set forth therein as a full and binding part of this Disaster Recovery Agreement, the Abtech Master Services Agreement ("MSA"). A copy of the MSA may be downloaded at <http://www.abtechtechnologies.com/contract-agreements>.

1. DEFINITIONS

The definitions in this section shall apply to this Disaster Recovery Agreement. Any capitalized term used but not defined herein shall have the meaning as set forth in the MSA.

- **Authorized Contract Administrator ("Administrator"):** Client designated administrator who may make changes to this Disaster Recovery Agreement, declare a disaster verbally via an Abtech supplied code word, or request, authorize, and commit Client to Projects.
- **Authorized User:** Any user designated by the Administrator who may place a Service Request.
- **Cloud Core:** Offsite backup target managed by Abtech where Local Appliance or Client software stores a second copy of Client's data and where Disaster Recovery Services will be provisioned after the declaration of a Disaster Event that cannot be accommodated by the Local Appliance. Cloud Core may be hosted on a partner's infrastructure.
- **Covered Hardware:** Any unique physical device, including but not limited to desktops, servers, laptops, tablets, networking device, portable device, storage (disk, tape, or fixed media), or peripheral which is detailed in the Onboarding Document and accepted by Abtech for or on which Abtech agrees to provide Disaster Recovery Services.
- **Covered Software:** Any unique intellectual property, including but not limited to operating systems, databases, applications, updates, tools, diagnostics, firmware, patches, fixes, and documentation thereof which is detailed in the Onboarding Document and accepted by Abtech for or on which Abtech agrees to provide Disaster Recovery Services.
- **Covered Environment:** The complete Client environment initially listed in Schedule B: Covered Environment and if applicable which will be superseded by the Onboarding Document which includes Covered Hardware, Covered Software, and Authorized Users for or on which Abtech agrees to provide Disaster Recovery Services.
- **Cyber Recovery:** Disaster Recovery Services and Disaster Recovery Services Technology may include Cyber Recovery hosting if purchased as a service by Client. Cyber Recovery includes hosted virtual machines to accommodate Dell EMC technology purchased by Client or bundled into Client MMC as detailed in Schedule C: Pricing. As a security application, all management including but not limited to day-to-day management, receiving and reviewing alerts, remediation of alerts or security issues, configuration, updates, etc. Application support requests that are not directly related to Abtech's hosting is provided by the OEM. At Client's request, if a security issue requires restoration of data from the Cyber Recovery environment, Abtech will assist in restoring the data over the network or shipping the data to Client location in a NAS.
- **Disaster Event:** A situation as determined by Client that requires the use of Disaster Recovery Services served from the Local Appliance or Cloud Core.
- **Disaster Recovery Services:** The performance of a series of reactive and proactive Disaster Recovery Services, either onsite or remote, as outlined in Schedule A: Service Summary performed in the Covered Environment that focuses solely on the IT requirements of Client's business continuance plan. Disaster Recovery Services may or may not include Spin Up on Local Appliance or Cloud Core. In some cases, StorTrust may only be a backup target for an existing Local Appliance or Client software and all language in this Agreement regarding Spin-up will not apply.
- **Disaster Recovery Services Technology:** Technology such as software, hardware, appliances, cloud services, or hosted hardware that is owned or licensed by either Abtech or Abtech technology partners that Client is granted a right to use for the duration of this Disaster Recovery Agreement.
- **Local Appliance:** Disaster Recovery Services Technology that is located at Client's site. The Local Appliance is the local backup target for Disaster Recovery Services and from which Client may restore data. Local Appliance when leased includes backup software licensing and operating system in the MMC. Local Appliance when sold includes operating environment but does not include backup software licensing. Backup software licensing for purchased Local Appliance is included in the MMC.
- **Monthly Management Charge (MMC):** Monthly fee paid to Abtech by Client in consideration of for Disaster Recovery Services and detailed in Schedule A. The MMC is the minimum monthly invoiced amount charged to Client for up to the amount of data estimated in the Storage Allocation. The MMC may increase as data beyond the initial Storage Allocation is surpassed by growing data or the addition of more Client devices needing Disaster Recovery Services.
- **Onboarding Document:** If applicable a document produced by Abtech that itemizes Covered Hardware, Covered Software, schedules for service delivery (including but not limited to patch, downtime, and backup windows), site access data, escalation plan, etc. Once completed, the Onboarding Document will become part of this Disaster Recovery Agreement and will supersede the Schedule B to define the Covered Environment.
- **Period of Maintenance (PoM):** The designated time during the day in which Authorized Users shall make Service Requests and within which Abtech shall deliver Disaster Recovery Services.
- **Project:** Any service beyond that detailed in Schedule A: including but not limited to backup validations and restoration of data. Projects are not part of the Disaster Recovery Services and are invoiced to Client separately.
- **Service Request:** A request made by an Authorized User to Abtech for Disaster Recovery Services. Service Requests shall be made through the Abtech toll free service request telephone number, via email sent to the Abtech Helpdesk email account, or via the Abtech Client Portal. A Service Request to Spin Up the Covered Environment in the Cloud Core must be made by the Administrator by using the code word as authorization.
- **Service Start Date:** The first of either (a) the date that Client data is put on seed device or Local Appliance, (b) 14 days after Abtech ships either device, or (c) sixty (60) days after execution of Agreement.
- **Spin Up:** the provisioning of a virtual server for Client to conduct day-to-day computing. Spin up happens on the Cloud Core but if a sufficient Local Appliance is purchased or leased spin up of some or all Covered Environment may be available on the Local Appliance. In some cases, StorTrust may only be a backup target for an existing Local Appliance or Client software and all language in this Agreement regarding Spin-up will not apply.
- **Storage Allocation:** The amount of data at Client site that may be backed up to the supplied Local Appliance and the Cloud Core (if applicable). Client may back up and store the amount protected raw data (including data for retention purposes) as specified by Client during the Onboarding up to the amount detailed in Schedule C: Pricing. The Storage Allocation is the basis for the minimum Monthly Management Charge paid by Client for Disaster Recovery Services.

2. SERVICE DESCRIPTION

2.1 In consideration of Client's payment of the Monthly Management Charge, Abtech shall provide and perform Disaster Recovery Services for the Covered Environment for any amount of data up to the Storage Allocation.

3. SUITABILITY OF COVERED ENVIRONMENT

3.1 In order for Client's Covered Environment to qualify for Disaster Recovery Services some minimum standards may apply. Such standards shall be discussed before and during Onboarding. Items in the Covered Environment that do not meet these standards will be identified, presented to Client, and Abtech and Client shall determine if the device will be provided the Disaster Recovery Services on a good faith basis or not.

3.2 Should the Covered Environment not meet the minimum standards, all Disaster Recovery Services shall be performed on a good faith effort basis. Abtech shall make no guarantees regarding the ability of Abtech's engineers or technologies to provide Disaster Recovery Services to any item of the Covered Environment that does not meet the minimum standards. Abtech's may be required to, and without breach, delay in providing Disaster Recovery Services on any item in the Covered Environment that does not meet these minimum standards until such minimum standards are met and after which Disaster Recovery Services on those items will resume.

3.3 In the event of data restoration Client to provide hardware that is compatible with and can accept the operating environment, applications, and data.

3.4 Client shall provide Abtech full and free access to Covered Environment both physically and remotely. Client agrees to allow the installation of Disaster Recovery Services Technology on Client's network as necessary to allow for the performance of Disaster Recovery Services. Client agrees that any restrictions regarding full and free access to Covered Environment or installation of managed service technology may hinder Abtech's ability to perform Disaster Recovery Services and that any Disaster Recovery Services provided to Covered Environment with such restrictions shall be performed on a good faith basis. Abtech may be required to, and without being deemed to be breach, delay in providing Disaster Recovery Services on any part of the Covered Environment with restricted access until such access is given and after which Disaster Recovery Service on those items will resume. Abtech shall make no guarantees regarding the ability of Abtech's engineers or technologies to back up any part of the Covered Environment that is considered to be restricted.

4. EXCLUDED SERVICES

4.1 Service rendered under this Disaster Recovery Agreement does not include any service not explicitly stated in Schedule A, including but not limited to the following out of scope tasks:

- a) Any service that changes or is the result of a change to the Covered Environment including but not limited to hardware or software installations, relocations, moves, or adding more storage or servers, service or repair made necessary by the alteration, upgrading, configuration, or modification of Covered Environment by Client, manufacturer, or any other party including Abtech.
- b) Disaster Recovery Services to any user, equipment, software, or location that is not included in Schedules B and C, in the Onboarding Document, or any equipment or software not in a known working state.
- c) Day to day management of Client's environment as it pertains to this Disaster Recovery Service, including but not limited to: scheduling of backup, verification of completed backups, validation of backup integrity, configuration of Disaster Recovery Services Technologies, restoration of data from the Local Appliance, security, management of space used on the Local Appliance or Cloud Core, etc.
- d) The handling, transport, or storage of backup media or other Disaster Recovery Services Technologies
- e) Additional training beyond that which is training given to Client during the Onboarding
- f) Additional testing of the Disaster Recovery Service beyond the quantity of tests included in Schedule A
- g) Establishing, documenting, or administering any business continuance activities outside of the Disaster Recovery Service
- h) Providing networking at Client site or bandwidth to Cloud Core
- i) Costs required to bring Client's environment up to the minimum standards
- j) Restoration of data beyond the scope of this Disaster Recovery Agreement, including but not limited to data loss prior to the Disaster Recovery Service starting or during the installation of Disaster Recovery Service Technology
- k) Any additional services required to accommodate Client's regulatory requirements (including but not limited to HIPAA, PCI, or Sarbanes-Oxley) to bring Client and Abtech into compliance
- l) Performance of any system administration task beyond Spin Up of the virtualized environment and arranging the access to those servers such that Client can use their specific knowledge of their unique environment to complete the recovery.
- m) Outbound data communications costs from Client site to Cloud Core

4.2 Client understands and agrees that any request which is beyond the scope of this Disaster Recovery Agreement is considered a Project. Client may elect to have Abtech perform these Projects and will be invoiced at Abtech's then current consulting rates. Additional materials, supplies, and equipment may also be required which may be quoted to Client upon Client's request. Project Services and products will be provided only after Client's written acceptance of Abtech's written estimate and shall be invoiced separately from the MMC.

5. FEES AND PAYMENT

5.1 First payment of MMC according to the Payment Schedule shall be due upon delivery of the seed device to Client site (or if no seed device is required, when Client data is sent to Cloud Core) and must be received prior to commencement of Disaster Recovery Services. MMC fees are due in advance of providing Disaster Recovery services and will be invoiced to Client thirty (30) days prior to the date that the next payment is due. If applicable, any Onboarding fees will be invoiced after the Onboarding of Client has been completed.

5.2 Payment method will be Automated Clearing House (ACH) payment, or by bank or company check. Checks returned for insufficient funds shall be assessed the maximum late fee as limited by state law. Late payments shall accrue 1.5% interest for every day that payment is late.

5.3 Client shall pay all applicable state and local sales and use taxes (notwithstanding their designation as excise or privilege taxes) in connection with Abtech's performance of Disaster Recovery Services to Client.

5.4 Client understands and agrees that the Onboarding fees and MMC to provide Disaster Recovery Service for the Covered Environment was calculated in good faith and based on information given to Abtech by Client. Client agrees that if this information is inaccurate then Client will pay the corrected fees and MMC.

5.5 Client understands that at some time the Covered Environment will grow beyond the Storage Allocation and licensing as an average. When this happens, Client agrees and authorizes Abtech to:

- a) continue to back up beyond the Storage Allocation and allocate additional storage on the Cloud Core to accommodate the overage. Client agrees that any data backed up beyond the Storage Allocation will incur additional backup fees per additional TB rounded up to the nearest 1TB increment for the remainder of the term at the then current Abtech rate. Abtech will attempt to give reasonable notice to Client prior to growth exceeding the Storage Allocation so Client may pare back data but will increase the Storage Allocation by at least 1TB if remaining space is 5% or less remaining of the original contracted amount.
- b) pay additional monthly license fees where Client uses software licenses provided by Abtech as part of this Disaster Recovery Agreement and Client adds physical servers or virtual host servers to the Covered Environment.

5.6 If the growth of stored data exceeds the physical disk drive capacity of a supplied Local Appliance, the Local Appliance storage will need to be upgraded in order to continue the service. Abtech will provide costs for this upgrade at this time. As a physical limitation of disk capacity cannot be remedied without the upgrading the Local Appliance hardware, Client understands that the upgrade will need to be purchased and installed before backing up or restoring new data can be resumed.

5.6.1 Notwithstanding the foregoing, any software or other “as a Service”-style subscription service provided by a third party and resold by Abtech will be assessed monthly by Abtech and charged to Client as used and as appropriate (including but not limited to per: user, MB/GB/TB, Mb/Gb, tier, transaction, license, bandwidth, increment of time, etc.). The resulting additional charges will be added to the next invoice(s) for as long as that level of use persists. Once deployed, subscription software or “as a Service”-style subscriptions may not be decreased or canceled until the longer of the end of the term or manufacturer policy. Abtech will notify Client 30 days prior to the next monthly invoice if pricing increases per license due to OEM policies. If Client does not agree with price increase, Client may terminate the software portion of this Disaster Recovery Agreement so affected with a 30-day notice.

5.7 Client agrees to pay Abtech for any goods delivered or service rendered regardless if such good or service provided the results Client expected. If an invoice for Disaster Recovery Services or other charges under this Disaster Recovery Agreement, or an invoice for other products or services provided to Client by Abtech under a different agreement with Abtech remains unpaid following five (5) days from the payment due date Abtech may suspend performance of its obligations under this Disaster Recovery Agreement until all past due amounts are paid without liability to Client. All charges are accepted as correct and payable by Client unless disputed in good faith and in writing within 30 days of the invoice.

5.8 Client agrees that failure to pay invoices is a material breach of the Disaster Recovery Agreement and is subject to the termination remedies in Section 6.

5.9 Any Client action or inaction (pausing service, Client network or power outages, restarting Disaster Recovery Services after suspension, etc.) that requires a reseeding of the Cloud Core will be considered a Project. Reseeding due to Abtech issues will be provided at no charge.

6. TERM AND TERMINATION

6.1 This Disaster Recovery Agreement shall commence on the Service Start Date when accepted by Abtech and will continue until the Contract Renewal Date. Disaster Recovery Agreement will automatically renew for an additional full term unless Client notifies Abtech in writing of its intent not to renew in full or in part no less than sixty (60) days’ notice before the end of the term.

6.2 Notwithstanding the foregoing, either party may terminate this Disaster Recovery Agreement or any Addendum immediately if the other party: (a) experiences a Change of Control; (b) experiences a Bankruptcy Event unless it is succeeded by a permitted assignee under this Disaster Recovery Agreement; (c) fails to fulfill in any material respect its obligations or breaches any material term or condition under this Disaster Recovery Agreement and does not cure such failure within thirty (30) days of receipt of written notice; (d) is no longer in the commercial interest of Abtech to continue the Disaster Recovery Agreement or any Addendum.

6.3 Upon termination of this Disaster Recovery Agreement and any Addenda for any reason (including the expiration of this Disaster Recovery Agreement by its terms for the termination of the Disaster Recovery Agreement for cause):

6.3.1 Client shall permit Abtech to remove all Abtech property, leased Local Appliance, Disaster Recovery Services Technology, and supplies by Abtech within fifteen (15) days from date of termination. Failure to return these items within the time allotted will result in further invoices until such time that the items are received by Abtech. Abtech is responsible for any damage in transit from Client back to Abtech. Client to put any Abtech owned equipment under Client insurance policy to cover for damage while at Client site

6.3.2 Client shall pay to Abtech within ten (10) days of the termination date all charges due, including, if any, liquidated damages.

6.3.3 Abtech shall assist Client with the termination or transfer of Disaster Recovery Services by allowing Client to keep the Local Appliance with Client data for fifteen (15) days or purchase allow Client to purchase the Local Appliance at the then current purchase price. Abtech shall remove all Client data from Cloud Core within fifteen (15) days of termination of the Disaster Recovery Agreement.

6.3.4 If Client has purchased the Local Appliance, Client shall allow physical or remote access to the Local Appliance to Abtech for the removal of Disaster Recovery Services Technology.

6.3.5 Abtech will cancel software or “as a Service”-style accounts within 15 days of termination unless otherwise arranged by Client in writing. Once deleted or canceled, Client data may not be recoverable.

6.4 If termination by either party results from any reason besides Abtech’s failure under 6.2(c) or 6.2(d), Client agrees that it would be difficult to ascertain the damages to Abtech of such termination, and that Client shall pay Abtech all MMC for the remainder of the term as liquidated damages, and not as a penalty.

6.5 If termination by either party results from Abtech’s failure under 6.2(c) or 6.2(d), Abtech agrees to refund any pre-paid amount from Client for Disaster Recovery Services minus the charges to provide such Disaster Recovery Services to Client up to the last date that Abtech provides Disaster Recovery Services to Client.

6.6 Termination of Agreement does not terminate Client’s obligation to accept and pay for any hardware or software sold by Abtech and purchased by Client in association with Agreement and which is intended to become property of Client. Hardware and software sales are final.

7. Provision of Service and Technology

7.1 Subject to this Disaster Recovery Agreement, Abtech agrees to provide Client access to Disaster Recovery Services Technology to facilitate the Disaster Recovery Services providing the Cloud Core can accommodate Client’s computing load if another client is already using the Disaster Recovery Service.

7.2 Client acknowledges and agrees that Client has a non-exclusive, non-transferable license to use Disaster Recovery Services Technology during the term of this Agreement. Abtech and its technology partners shall retain all rights of ownership of the Disaster Recovery Services Technology, all copyrights and other intellectual property, and all modifications and changes to the technology. In no event shall title to all or any part of the Disaster Recovery Services Technology pass to Client and all such Disaster Recovery Services Technology shall remain the exclusive property of Abtech and/or its technology partners, with the exception of the Local Appliance hardware should Client choose to purchase the Local Appliance rather than lease. If Client has chosen to purchase rather than lease Local Appliance, then any repair or replacement of Disaster Recovery Services Technology will be the responsibility of Client under original manufacturer warranty or any post-warranty service.

7.3 It shall be the primary responsibility of Client to ensure the security of their system, data, programs, and files. Client shall implement reasonable, industry standard security and environmental precautions for the Covered Environment and Disaster Recovery Services Technology to ensure a high level of availability, data protection, and recovery. Transfer of Client data is across the public internet and encryption is highly recommended for security. Encryption, though not enable by default, is available through the Disaster Recovery Service and may be installed during Onboarding at no additional cost to Client. The implementation of encryption in Client’s overall security strategy and it subsequent management is the responsibility of Client. The safeguarding of encryption keys are the responsibility of Client and Abtech cannot recover lost encryption keys. Due to the inherent nature of encryption technology, if Client loses encryption keys, data will not be recoverable. A reliable and verified system backup procedure shall be the responsibility of Client.

7.4 Client understands that Covered Environment when hosted on Abtech’s Disaster Recovery Services Technology may perform or function differently than when hosted at Client site. It is the responsibility of Client to verify during a scheduled test that the functionality of the Covered Environment provides the basic service needed for Client to perform basic day to day activities during a Disaster Event and reconfigure accordingly. Client must provide an adequate amount of bandwidth for Disaster Recovery Services to perform correctly; this may require additional bandwidth as the Covered Environment grows. Client agrees that if, despite Abtech’s efforts to schedule a test of the Disaster Recovery Services Technology within 90-days of the Start Date, Client does not accommodate the test,

that (a) Client waives the right to the test, (b) Client accepts that they are satisfied that the Disaster Recovery Services meets Clients expectations, (c) Abtech has fulfilled its duties to test without breach, (d) should Client have a multi-year Agreement Client will retain the right to test again within 90 days of the anniversary date, and (e) should Client again not accommodate the test this section will again apply.

7.5 Disaster Recovery Services and Disaster Recovery Services Technology are for Client's sole internal business use under the terms of this Disaster Recovery Agreement. Client shall not and shall not let others modify, customize, reverse engineer, reverse assemble, or reverse compile Disaster Recovery Services Technology.

7.6 Client acknowledges and agrees that Client shall not place any data on Disaster Recovery Services Technology that a) infringes the intellectual property rights or privacy right of any third party, b) violates any law, statute, ordinance, or regulation, c) is defamatory, libelous, unlawfully threatening or harassing, d) is obscene, e) contains any malicious software, code, or programming routines including but not limited to: Trojan horses, malware, viruses, spyware, root kits, bots, spam, worms, or any other such technology that may damage, interfere, intercept, or expropriate any system, data, or personal information.

7.7 Abtech may disclose to third parties any Client data in which Abtech has a good faith belief that disclosure is necessary to (a) comply with a law, regulation, or compulsory legal request; (b) protect the safety of any person from death or serious bodily injury; (c) protect the property rights of Abtech or our Disaster Recovery Service Technology Partners; or (d) prevent fraud or abuse. Abtech shall notify Client of any such request prior to releasing Client information.

7.8 Client is responsible for notifying Abtech of any regulations regarding the data stored (HIPAA, PCI, Sarbanes-Oxley, etc) and shall assume any additional costs to achieve regulatory compliance.

7.9 Client agrees that violation of this Section 7 is a material breach of the Disaster Recovery Agreement and subject to the termination remedies of Section 6. Client agrees to defend, indemnify and hold Abtech and its Disaster Recovery Service Technology partners harmless against any third party action or fines that arise from Client's violation of this Section 7. Section 5.2, 5.4, 5.7, 7.2, 7.5, 7.6, 7.7, 7.8, and 7.9 shall survive termination of this Disaster Recovery Agreement.

8. ACCEPTANCE

8.1 Each party to this Disaster Recovery Agreement represents that it is a sophisticated commercial party capable of understanding all terms of this Disaster Recovery Agreement, that it has had the opportunity to review this Disaster Recovery Agreement with its counsel, and that it enters this Disaster Recovery Agreement with full knowledge of the terms of the Disaster Recovery Agreement.

8.2 Client acknowledges that it has read this Disaster Recovery Agreement and MSA, understands and agrees to be bound by its terms. This Disaster Recovery Agreement is the complete and exclusive statement of the agreement between the parties may not be modified or altered except by mutual written agreement, and signed by both parties.

8.3 Client agrees that this Agreement is accepted when (a) both parties physically or digitally sign an Abtech Service Order that references the Agreement; (b) both parties electronically sign an Abtech Service Order via a purchasing portal or website; (c) Client electronically signs or accepts an Abtech Service Order via a purchasing portal or website and Abtech accepts it in writing; or (d) Abtech accepts in writing a transactional document (eg. purchase order, purchase requisition, etc.) that explicitly references the Service Order or the Disaster Recovery Agreement and any Addenda.