

StorTrust S3 Cloud Archive Service Agreement

This ABTECH STORTRUST CLOUD ARCHIVE SERVICE 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 Cloud Archive 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 Cloud Archive Agreement and any Addenda (collectively "Cloud Archive 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 Cloud Archive 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 Cloud Archive 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 Cloud Archive Agreement or request, authorize, and commit Client to Projects.
- **Authorized User:** Any user designated by the Administrator who may place a Service Request.
- **Cloud Core:** cloud storage location where Client stores object data. Cloud Core may be hosted on Abtech's or a partner's infrastructure.
- **Cloud Archive Service:** The provision of storage space as per this Agreement on the Cloud Core.
- **Cloud Archive Service 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 Cloud Archive Agreement.
- **Term Management Charge (TMC):** Term fee paid to Abtech by Client in consideration of and for Cloud Archive. The TMC is the minimum invoiced amount charged to Client for up to the amount of data estimated in the Storage Allocation. The TMC may increase as data beyond the initial Storage Allocation is surpassed by growing data or the addition of more Client devices needing Cloud Archive Service.
- **Period of Maintenance (PoM):** The designated time during the day in which Authorized Users shall make Service Requests and within which Abtech shall deliver Cloud Archive Service.
- **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 Cloud Archive Service are invoiced to Client separately.
- **Service Request:** A request made by an Authorized User to Abtech for Cloud Archive Service assistance. 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. Service Requests are invoiced at Abtech's then current consulting rates and are paid via credit card or a pre-paid service retainer prior to assistance.
- **Service Start Date:** The first of either (a) the date that Client data is put on the Cloud Core or (b) sixty (60) days after execution of Agreement.
- **Storage Allocation:** The amount of data at Client site that may be stored on the Cloud Core. The Storage Allocation is the basis for the minimum TMC paid by Client for Cloud Archive Service.

2. SERVICE DESCRIPTION

2.1 In consideration of Client's payment of the TMC, Abtech shall provide Cloud Archive Service for any amount of data up to the Storage Allocation.

3. SUITABILITY OF CLIENT ENVIRONMENT

3.1 In order for Client to qualify for Cloud Archive Service some minimum standards may apply. Such standards shall be discussed before and during the term. Items in the Client's 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 Cloud Archive Service on a good faith basis or not.

3.2 Should the Client environment not meet the minimum standards, all Cloud Archive Service 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 Cloud Archive Service to any item of Client's environment that does not meet the minimum standards. Abtech's may be required to, and without breach, delay in providing Cloud Archive Service on any item in the Client environment that does not meet these minimum standards until such minimum standards are met and after which Cloud Archive Service on those items will resume.

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

4. EXCLUDED SERVICES

4.1 Services rendered under this Cloud Archive 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 Client's 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 environment by Client, manufacturer, or any other party including Abtech.
- b) Day to day administration or management of Client's environment as it pertains to this Cloud Archive Agreement, including but not limited to: scheduling of backup, verification of completed backups, validation of backup integrity, configuration of Cloud Archive Technologies, restoration of data, security, management of space used on Client hardware or Cloud Core, etc.
- c) The handling, transport, or storage of backup media
- d) Additional training beyond that which is training given to Client during initial configuration.
- e) Establishing, documenting, or administering any business continuance activities.
- f) Providing networking at Client site or bandwidth to Cloud Core or costs thereof
- g) Costs required to bring Client's environment up to the minimum standards
- h) Restoration of data
- i) 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

4.2 Client understands and agrees that any request which is beyond the scope of this Cloud Archive Agreement is considered a separate 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 TMC.

5. FEES AND PAYMENT

5.1 First payment according to the Payment Schedule shall be prior to the Start Date. TMC fees are due in advance of providing Cloud Archive Service 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 month 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 Cloud Archive Service to Client.

5.4 This section left blank.

5.5 Client understands that at some time the client's environment will grow beyond the Storage Allocation and licensing as an overage. When this happens, Client agrees and authorizes Abtech to:

a) continue to store data beyond the Storage Allocation and allocate additional storage on the Cloud Core to accommodate the overage. Client agrees that any data stored beyond the Storage Allocation will incur additional fees per additional TB rounded up to the nearest 1TB increment for the remainder of the term at the then current Abtech rate.

b) pay additional monthly license fees where Client uses software licenses provided by Abtech as part of this Cloud Archive Agreement and Client adds physical servers or virtual host servers to the Client environment.

5.6 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 subscription may not be decreased or canceled until the longer of the end of the term or manufacturer policy.

5.7 Client agrees to pay Abtech for any service rendered regardless if such service provide the results Client expected. If an invoice for Cloud Archive Service, other charges Cloud Archive 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 Cloud Archive 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 Cloud Archive Agreement and is subject to the termination remedies in Section 6.

6. TERM AND TERMINATION

6.1 This Cloud Archive Agreement shall commence on the Service Start Date when accepted by Abtech and will continue until the Contract Renewal Date. Cloud Archive 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 Cloud 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 Cloud Archive Agreement; (c) fails to fulfill in any material respect its obligations or breaches any material term or condition under this Cloud Archive 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 Cloud Archive Agreement or any Addendum.

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

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

6.3.2 Abtech shall remove all Client data from Cloud Core within fifteen (15) days of termination of the Cloud Archive Agreement.

6.3.3 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 TMC 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 Cloud Archive Service minus the charges to provide such Cloud Archive Service to Client up to the last date that Abtech provides Cloud Service 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 Cloud Archive Agreement, Abtech agrees as its sole responsibility is to provide Client access to Cloud Core.

7.2 Client acknowledges and agrees that Client has a non-exclusive, non-transferable license to use Cloud Archive Service Technology during the term of this Agreement. Abtech and its technology partners shall retain all rights of ownership of the Cloud Archive Service 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 Cloud Archive Service Technology pass to Client and all such Cloud Archive Service Technology shall remain the exclusive property of Abtech and/or its technology partners.

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 their environment and Cloud Archive Service 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.

7.4 Client understands that data when hosted on Cloud Archive Service 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 data provides the basic service needed for Client to perform basic day to day activities and reconfigure accordingly. Client must provide an adequate amount of bandwidth for Cloud Archive Service to perform correctly; this may require additional bandwidth as the Client environment grows. It is Client's sole responsibility to monitor and manage storage use.

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

7.6 Client acknowledges and agrees that Client shall not place any data on Cloud Archive Service 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 Cloud Archive 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 Cloud Archive Agreement and subject to the termination remedies of Section 6. Client agrees to defend, indemnify and hold Abtech and its Cloud Archive Service Technology partners harmless against any third party action or fines that arise from Client's violation of this Section 7. Section 5.2, 5.7, 7.2, 7.5, 7.6, 7.7, 7.8, and 7.9 shall survive termination of this Cloud Archive Agreement.

8. ACCEPTANCE

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

8.2 Client acknowledges that it has read this Cloud Archive Agreement and MSA, understands and agrees to be bound by its terms. This Cloud Archive 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 (e.g. purchase order, purchase requisition, etc.) that explicitly references the Service Order or the Cloud Archive Agreement and any Addenda.