

Res-Q Automated Backup

A service of Bengal Computer Solutions

COMPUTER BACKUP SERVICE AGREEMENT

This Agreement, made the _____ day of _____ 20__

BETWEEN: 351861 B.C. Ltd
dba BENGAL COMPUTER SOLUTIONS
1012 Southover Lane
Victoria, BC V8Y 3C3

("Res-Q Servicing Dealer" hereinafter called "RSD")

AND: _____

(hereinafter called "CUSTOMER")

WITNESSETH AS FOLLOWS:

The Customer and RSD agree that RSD shall furnish at the applicable location, Backup Service on equipment listed and described, in accordance with the provisions described herein and any additional Terms and Conditions described in this agreement and attached Schedule(s).

SITE: _____

CONTACT: _____
PHONE: _____ Ext: _____
EMAIL: _____

SERVICE TYPE: A B C D
CUSTOMER #: _____
COMMENCEMENT DATE: _____ 20__
INITIAL TERM OF AGREEMENT: one year
ADDITIONAL COVERAGES: _____

FEE: In consideration of the above mentioned service the sum of \$ 12.95 (US) per month shall be invoiced and paid in advance on a monthly *quarterly* *annual* basis. Interest at the rate of 2% per month will be charged on overdue accounts.

**The additional terms and conditions following are incorporated
in and made part of this agreement**

TERMS AND CONDITIONS OF AGREEMENT

RSD agrees, in consideration of the payment in advance of the total amount indicated on the current invoice for backup services, to provide backup services for the equipment listed in this agreement in accordance with the following provisions:

I. SERVICE TYPE AND SCOPE OF BACKUP SERVICE

A. Full Onsite & Professional Edition Automated Service - RSD equipment

This type of backup coverage provides for the making of periodic backup copies of program and data files stored on the hard drive(s) of the listed equipment. Backups will include one or more onsite backups per month, performed at the Customer's site by a RSD Field Representative, using portable backup equipment provided by RSD. Onsite backups will include all available files on designated hard drives; RSD will not perform onsite backups based on individual or grouped file inclusions or exclusions. In addition, automated backups of modified files will be performed unattended each selected day or night, using software and remote facilities provided by RSD. Automated backups may exclude individual files or groups of files at the discretion of RSD. Customer is responsible for providing and maintaining compatible communication equipment (modem, cable, etc.), compatible interface and onsite backup software for RSD portable backup equipment, and all costs associated with these, including the cost of backup media.

B. Full Onsite & Professional Edition Automated Service - Customer equipment

This backup coverage provides all services listed in Section A, except that the Customer is responsible for providing and maintaining backup hardware and software to be used by RSD Field Representatives in the performance of onsite backups.

C. Professional Edition Automated Service

This type of backup coverage provides for the making of periodic backup copies of program and data files stored on the hard drive(s) of the listed equipment. Backups will consist of automated backups of modified files only, and will be performed unattended each selected day or night, using software and remote facilities provided by RSD. Automated backups may exclude individual files or groups of files at the discretion of RSD. Customer is responsible for providing and maintaining compatible communication equipment (modem, cable, etc.) for the backup service and all costs associated with this.

D. Personal Edition Automated Service

This backup coverage provides equivalent service to Section C, except that the Customer is licensed to use only the *Personal Edition* version of provided backup software and is allocated remote storage space in accordance with the requirements of a "personal" account, as determined by RSD. No onsite backup option is available with this coverage.

General Backup Service Provisions:

Customer agrees that RSD shall have full unrestricted access to the equipment and backup media to provide service thereon and that Customer shall provide a safe place in which to perform such service.

Backups include testing and or verification, storage and rotation of backup media, and other equipment or services as outlined in the attached schedule(s). Backup scheduling and service specifics will be based on the individual needs of the Customer, availability of RSD Field Service personnel and other relevant factors as determined by RSD.

For onsite service packages, in addition to periodic backups, RSD agrees to provide emergency call service and restoration of files during the service hours and period of service coverage defined herein. These services will be performed at the service location address indicated, at extra charge to the Customer.

For equipment that is located in excess of 25 kilometers from the RSD's service office, the monthly backup agreement rate does not include travel expenses for RSD's Field Representatives. All necessary travel expenses (transportation, meals and accommodations) incurred in the provision of backup or restoration service to remote locations will be invoiced to the Customer separately, and in addition to the regular monthly backup agreement charge.

Services outside the scope of this Agreement include but are not limited to the following:

- 1) Services for electrical or cabling work to facilitate installation of communication equipment;
- 2) Services on equipment or other devices not specifically identified in this agreement;
- 3) Services rendered or work performed on equipment when Customer's software or hardware is determined to have caused a problem;
- 4) Services required for the installation or relocation of equipment or the furnishing of materials necessary for the installation or relocation of said equipment;
- 5) Services for the repair of damage resulting from accident, fire, lightning, flood, earthquake, transportation, neglect, misuse, abuse, failure of electrical power, air conditioning, humidity control or causes other than ordinary use;
- 6) Services required as a result of alterations, modifications or maintenance being performed on the equipment or software by parties other than RSD;
- 7) Services for additions or modifications to the equipment or software requested by Customer;
- 8) Services which are impractical for RSD to render because of the equipment being connected by mechanical or electrical means to other devices not specified in this agreement;
- 9) Services required as a result of the use of Customer's or RSD's backup equipment for purposes other than RSD backups;
- 10) Restoration of files or technical support relating to restoration of files other than as outlined in Section I(A) through I(D) above.

Customer agrees that any charges for services and materials outside the scope of this Agreement will be at RSD's applicable time and material rate and terms then in effect.

II. SERVICE HOURS

For the basic period backup charge, service as defined in Section I, Service Type and Scope of Backup Agreement, shall be available during the basic period of service which is defined as the hours of 8:30 a.m. until 5:00 p.m., Monday through Friday except for legal holidays.

III. EXTENDED PERIOD COVERAGE

Subject to availability, the Customer may purchase extended periods of coverage subject to rates and policies then in effect. Emergency call service will then be provided at no additional cost during agreed upon "Extended Period" coverage (excluding legal holidays).

Any extended periods of coverage selected are shown on the face of this agreement, including appropriate charges.

A prerequisite for the selection of any extended period of coverage is the selection of coverage for the basic period (8:30 a.m. to 5:00 p.m. Monday through Friday, except for legal holidays).

The customer may change his selected periods of coverage by giving RSD thirty (30) days prior written notice.

IV. CHARGES

Backup agreement rates and other charges are those in effect on the date of execution of this agreement by RSD and listed in whole or in part on the attached schedule(s). Backup charges shall be billed in advance and shall be due and payable upon presentation of the invoice. Customers using automatic or pre-authorized credit card or debit billing will be charged monthly in advance.

In the event that charges are not paid in full prior to the commencement of a service period (a contract month or a contract year), RSD may, at its option, cease providing backup or restoration services without prejudice to RSD's other remedies against the Customer. Failure to pay charges in accordance with the terms will be considered a breach of this agreement and RSD may, at its option, terminate the agreement as a result of such breach without prejudice to RSD's other remedies against the Customer.

An interest charge of 2% per month is chargeable and payable on all overdue accounts.

Any applicable tax in effect at the time of rendering services hereunder, based upon or measured by the proceeds of the service rendered by RSD, or any part thereof will be added to other charges specified.

Any rate increases levied by RSD to the Customer must be given in writing thirty (30) days prior to the completion of the initial term, or any subsequent term of service. Any increase would take effect at the completion of the term in which written notification was given.

V. SERVICE PROVISION AND USE OF SOFTWARE

Onsite backups will be performed monthly on the anniversary of the commencement date, unless otherwise specified and agreed to by the customer and RSD. Onsite backups will be performed using software supplied by the Customer or available as part of the Customer's computer operating system. In the event that Customer's software is insufficient or unsuitable, RSD may provide and use their own onsite backup software at their discretion and at extra cost to the Customer. In the event that the onsite backup date occurs on a weekend or legal holiday, the onsite backup will instead be performed on the next regular business day following the holiday. Extended periods of coverage do not apply to regular onsite backups. In the event that Customer defers or requests rescheduling of the onsite backup or for any reason denies access to RSD employees for this purpose, RSD will not be liable for either the performance or non-performance of or any consequences resulting from the non-performance of said backup.

Automated backups will be performed using software supplied by RSD and in accordance with the service rate schedule attached. RSD may also provide additional software to aid in the performance of onsite backups. Customer is licensed to use one copy of this software, only on the computer system on which RSD representatives have installed the software, and only for the purpose of performing backups under this agreement. Customer's license to use the software is valid only while the Customer's backup service agreement is in effect and their account with RSD is in good standing. *Customer is required to have all RSD-provided software removed, at Customer's expense, immediately upon termination of this agreement.*

VI. TERM

This agreement shall remain in effect for an initial period of one (1) year from the commencement date specified on the face of this agreement, unless otherwise specified on the face of the agreement. This agreement will automatically renew itself for continuing periods of one (1) year upon completion of the original term unless notice of termination is given in writing by one party to the other, ninety (90) days prior to the renewal date, provided that in the event of earlier termination the Customer shall pay a premium (computed as forty percent of the monthly backup agreement charge

multiplied by the number of months left to run in the contract at termination time), such early termination premium to be considered diminishing liquidated damages arising out of this agreement expressed as a percentage of the total monthly cost to the Customer of the services to be provided herein.

By written notice to the other, either the Customer or RSD may terminate this agreement at any time for failure of the other to comply with its terms and conditions, provided that a period of sixty (60) days be given to rectify any such failure after delivery of written notice of such failure.

VII. ELIGIBILITY FOR BACKUP AGREEMENT

All equipment to be included under this agreement and listed in the equipment schedule of this agreement is subject to inspection by RSD to be in good working condition. RSD will inspect the equipment without charge to the Customer, and will advise in writing of any difficulties, which RSD may require to be repaired at Customer's expense prior to commencement of this agreement.

VIII. ACCESS TO CUSTOMER PREMISES AND EQUIPMENT

Customer shall provide unrestricted access to a safe working environment for RSD Field Representatives during scheduled times for the purpose of performing onsite backups and any other related maintenance or services necessary to the completion of the backups. In the event that Customer is unable or unwilling to provide RSD with unrestricted access to the premises or equipment at the scheduled backup time, RSD may at its sole discretion elect to skip that scheduled backup without affecting their liability or responsibility to provide usable backups. Customer shall then assume responsibility for any consequences resulting from RSD's inability to perform the scheduled backup. Customer may reschedule the backup at an alternate time at additional Customer expense.

IX. GENERAL PROVISIONS

RSD shall make every effort to provide prompt, competent service, but shall not be liable for failure to provide the services herein if due to causes or conditions beyond RSD's reasonable control, including Customer's inability or unwillingness to provide access to the equipment at the scheduled backup time. In any event, RSD's liability for damages with respect to this agreement shall be limited to the charge for service provided herein and RSD shall not be liable for any special, indirect or consequential damages whatsoever.

This agreement shall be governed by the laws of the province in which it is executed.

This represents the entire agreement between the parties, and nothing else expressed or implied will be honoured by either party unless accepted by both parties in writing.

