



a division of
NEXTGEN COMPUTERS
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NEXTGEN COMPUTERS
REMOTE BACKUP CONTRACT AGREEMENT

This AGREEMENT entered into this ____ day of _____, 200__

By Subscriber,
And NEXTGEN COMPUTERS

NEXTGEN COMPUTERS agrees to provide the equipment and services described herein at: _____

PAYMENT: The subscriber agrees to pay NEXTGEN COMPUTERS, the amounts shown, in advance.

Installation fee:	\$_____ per hour
Equipment/Software Rental, Monthly:	\$_____
Backup Service:	\$_____ Per Month 1 st computer, \$_____ each additional computer per month
Technical Consulting and Support:	\$75.00 Per Hour non-network computers, \$90.00 Per hour, minimum 1 hour on networked computers.
Data Recovery and Transfer:	\$_____ Per Hour
Initial Deposit First Month:	\$_____ on 1 st computer plus \$_____ for each additional computer.
Other:	\$_____

Monthly invoice will be sent by MAIL/FAX/E-MAIL on or near the 20th of the month for next month's service and is due upon receipt. Monthly payments must be made by the 10th of the following month and is subject to a 2% late fee. Service can be cut off for non-payment by the 10th of the following month.

Term of Service Agreement: One Year From Above Date Automatically Renewed

All work not specifically quoted or included herein will be billed at NEXTGEN COMPUTERS current rate for service work. All work shall be bound by the Terms and Conditions of this Agreement. The monthly amounts may be payable quarterly, in advance, for the period of this Agreement, and any renewals of this Agreement. All charges herein are subject to existing and future federal, state, and local taxes. Such taxes, if any, are payable by the Subscriber. All amounts are due within ten (10) days of invoice. All amounts not paid within ten (10) days may be charged a service fee of two (2%) percent per month and/or a re-billing fee. In the event it shall become necessary for NEXTGEN COMPUTERS to institute legal proceedings or employ a collection agency to collect moneys due as part of this Agreement, including service fees, the Subscriber shall also pay

reasonable attorney or collection agency fees and expenses.

TERMS AND CONDITIONS

1. **BACKUP SERVICE:** NEXTGEN COMPUTERS agrees to offer to provide an initial full backup of the subscribers computer(s) DATA FILES ONLY, NO PROGRAM FILES, and then provide partial backups of the clients DATA FILES ONLY, NO PROGRAM FILES, when initiated by subscriber. NEXTGEN COMPUTERS will store these data files for the subscriber for at least one (1) year. Upon the request of the subscriber, NEXTGEN COMPUTERS will locate and transfer these files to the subscriber's computer, within 48 hours. Subscriber, at an additional charge may also request emergency service, within 4 hours. If SUBSRIBER declines NEXTGEN COMPUTERS offer to provide a full backup of DATA FILES ONLY, NO PROGRAM FILES, SUBSCRIBER understands that it is SUBSCRIBERS responsibility to do so.
2. **TERM OF AGREEMENT:** This Agreement shall be the period specified above, from the date of this Agreement. This Agreement shall be automatically renewable at the option of both parties for periods of the same length the first such renewal period to commence upon the date of expiration of the initial Agreement, unless either party shall notify the other in writing of the intent to cancel. In the event of renewal, the Subscriber shall pay the same amounts as set forth above, subject to any increases in rates as specified in Section 6.
3. **LIMITATION OF WARRANTY LIABILITY:** NEXTGEN COMPUTERS warrants and represents that the equipment provided will be free from defects in material and workmanship for a period of 90 days after installation. The obligation of NEXTGEN COMPUTERS under the warranty is limited to the repair or replacement, at NEXTGEN COMPUTERS option, of a non-conforming product, part or component thereof, except consumable accessories, within a reasonable time after notification. The Subscriber's remedies are limited to NEXTGEN COMPUTERS obligations stated herein, subject to the "EXCLUSIVE REMEDY" set forth in paragraph 4 herein. This warranty extends only to the Subscriber. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS. NEXTGEN COMPUTERS has not made and makes no guarantee or warranty, including implied warranty or merchantability or fitness, that the system, equipment, or services supplied will avert, avoid or prevent the loss of data or information or the consequences therefrom, which the system or service is designed to provide. It is mutually understood and agreed that in executing this Agreement, Subscriber is not relying on any advice or advertisement of NEXTGEN COMPUTERS. Subscriber agrees that any representation, promise, condition, inducement or warranty, express or implied, including those of merchantability and fitness, not included in writing in this Agreement shall not be binding upon any "party." The Subscriber assumes all risk for loss or damage to the Subscriber's equipment and data files except as specified herein.
4. **EXCLUSIVE REMEDY:** Because of the nature of the services rendered and the system as a whole, it is impractical and extremely difficult to fix the actual damages, if any, which may result from failure on the part of NEXTGEN COMPUTERS to perform its responsibilities under this contract. Subscriber does not desire this contract to provide full liability for loss, damage or injury due directly or indirectly to occurrences, or consequences therefrom, which the service or system is designed to deter or avert. In the event NEXTGEN COMPUTERS should be found liable for loss, damage or injury due to a failure of the equipment or services provided under this Agreement or the equipment in any respect, its liability shall be limited to \$50.00, as the agreed upon liquidated damages and not as a penalty. Such liquidated damages is the exclusive remedy for any failure of services or equipment, and the provisions of this paragraph shall apply if loss, damage or injury, irrespective of cause or origin, results directly or indirectly to a person or property from the performance or nonperformance of any obligation of NEXTGEN COMPUTERS from negligence, active or otherwise, of NEXTGEN COMPUTERS, its agents or employees. It is intended and expressly agreed that the purpose of the preceding provisions are to set an upper limit to the amount recoverable by Subscriber and to fix liability of NEXTGEN COMPUTERS at a specific sum of \$50.00. If Subscriber desires additional liability coverage, it shall be his responsibility to secure it from an insurance carrier or other agency of his choice, at his own expense. Subscriber shall bring no suit against NEXTGEN

COMPUTERS more than one (1) year after the accrual of the cause of action therefore.

5. **ALTERATIONS TO EQUIPMENT:** The subscriber agrees not to tamper with, alter, adjust, add to, disturb, move, remove or otherwise interfere with the systems described herein, nor permit the same to be done by others. If there is a breach of the foregoing obligation, Subscriber will pay NEXTGEN COMPUTERS an additional amount for any repairs that are necessary to maintain the integrity of the system. Subscriber hereby authorizes and empowers NEXTGEN COMPUTERS, its agents or employees, to make any changes in, or alterations to, the equipment at the request of the Subscriber at an additional expense to the Subscriber.
6. **INCREASES IN SERVICE FEES:** Notwithstanding the terms and conditions set forth herein, after the expiration of the initial term of this Agreement, NEXTGEN COMPUTERS may, at any time, increase the fees and charges upon giving the Subscriber notice in writing. In event Subscriber shall be unwilling to pay the increased monthly charge, the Subscriber may terminate this Agreement upon giving notice in writing to NEXTGEN COMPUTERS. Failure to notify NEXTGEN COMPUTERS will constitute Subscriber's consent to the increase and all other terms and conditions of the Agreement shall remain in full force and effect.
7. **COMMUNICATIONS CIRCUITS:** Subscriber is responsible for the cost and maintenance of all telephone or other communication circuits required for dutiful transmission and system access. All data files are transmitted over communication company circuits, which are wholly beyond the control and jurisdiction of NEXTGEN COMPUTERS and are maintained by the Communications Company. If these communication circuits are not functional for any reason, the data files may not accurately or completely reach NEXTGEN COMPUTERS facility or equipment. NEXTGEN COMPUTERS cannot be responsible for the continued operation or neither functioning of these communication circuits nor the reliability of the data files being received over them.
8. **DEFAULT AND TERMINATION:** This Agreement may be terminated by either party for breach of contract of the other party, provided written notice of such breach is given and such breach is not cured within thirty (30) days of receipt of such notice. Upon the curing of such breach of contract, the party claiming such breach shall give written notice that the breach has been cured and that the Agreement continues in full force and duration. This Agreement may also be terminated upon notice of NEXTGEN COMPUTERS, in the event NEXTGEN COMPUTERS computer equipment, communication circuits, or other equipment are destroyed by fire, other catastrophe, or by any other means or is so substantially damaged that it is impractical to continue the service to the Subscriber. This Agreement may also be suspended upon written notice of the Subscriber that the system of the Subscriber has been destroyed or damaged by fire or other catastrophe and that the system must be replaced or repaired. The Agreement shall resume upon repair or replacement of the Subscriber's system.
9. **WARRANTY OF SUBSCRIBER:** The individual signing this Agreement for the Subscriber warrants that he has the authority to sign this Agreement and permit the installation of equipment and systems described herein, as well as the authority to contract for the services provided herein.
10. **COMPLETE AGREEMENT:** This document, with specified addenda, is a complete agreement. Any representation, promise, condition, inducement or warranty, express or implied, verbal or written, unless expressed in writing in this Agreement or any Addendum thereto, shall not bind either party and the terms and conditions hereof apply as printed without alteration or qualification except as specifically endorsed thereon in writing. A judicial determination nullifying any clause or condition herein shall not be deemed to nullify the balance of this Agreement, which shall remain in full force and effect.
11. **PASSWORD SECURITY:** It is the FULL responsibility of SUBSCRIBER to write down the password that SUBSCRIBER chose during initial installation of service. NEXTGEN COMPUTERS will not be held responsible of loss of password and does NOT maintain client passwords. SUBSCRIBER understands

that without the password, the encrypted stored data cannot be retrieved and shall not hold NEXTGEN COMPUTERS responsible in any way for any losses of any kind whatsoever.

SIGNATURE CONSTITUTES ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

Subscriber: _____

Signature: _____

Name and Title: _____

Nextgen Computers Signature: _____

This Agreement shall not be binding upon NEXTGEN COMPUTERS unless accepted by an officer of NEXTGEN COMPUTERS. In the event of Non-Approval, the sole liability of NEXTGEN COMPUTERS shall be to refund to the subscriber any amount that has been paid by Subscriber as part of this Agreement.