

# **Business Archives Data Vaulting**

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## **ONLINE BACKUP SERVICE SUBSCRIPTION AGREEMENT**

NOTE TO SUBSCRIBER: CAREFULLY READ THE FOLLOWING LEGAL AGREEMENT.

1. USE OF THIS Service (the "Service") consists of the right of a Subscriber of the Service ("Subscriber") to electronically transmit and store computer data using either a private data communications network, or the Internet into a location maintained by Business Archive Data Vaulting ("BADV") and to retrieve said data should they be required. The Service is made available by BADV to Subscriber during the period Subscriber maintains a paid subscription to the Service. Subscriber must be a currently licensed user of BADV's software for Services where software is required to provision access.
2. These terms and any additional Operating Rules published by BADV from time to time constitute the entire and only agreement (collectively, the "Agreement") between BADV and Subscriber (including Subscriber's designated users) with respect to the Service and supersede all other communications and agreements with regard to the subject matter hereof. Upon notice published over the Service, BADV may modify this Agreement, the Operating Rules or prices, and may discontinue or revise any or all other aspects of the Service at its sole discretion and without advance notice. Unless otherwise agreed, Subscriber's right to use the Service or to designate users is not transferable and is subject to any limits established by BADV.
3. Subscriber shall pay in advance any registration or service fees and other charges incurred by Subscriber or Subscriber's designated users at the rates in effect for the billing period in which those charges are incurred. For situations where credit card payment is utilized, Subscriber shall maintain a current authorization for BADV to debit Subscriber's credit card account for such amounts. In addition, Subscriber shall provide BADV a current street address and Internet e-mail address for future communications and shall notify BADV of any change of address. Subscriber shall pay all applicable taxes related to use of the Service by Subscriber or Subscriber's designated users. For situations where the Subscriber's credit card issuing financial institution has been notified of a payment dispute, said Subscriber agrees that proof of Service usage by Subscriber constitutes Subscriber authorization to submit payment request to Credit Card issuing financial institution. BADV may, in addition, at its sole discretion and without notice to the Subscriber, (a) suspend its performance under this Agreement and deny Subscriber's and Subscriber's designated users' access to and use of the Service until Subscriber is back in good standing, or (b) terminate this Agreement and Subscriber's and Subscriber's designated users' access to and the use of the Service. Further, BADV may cancel the Service to Subscriber without cause upon thirty (30) days prior written notice. Subscriber must provide BADV with written notice of Subscriber's intent to terminate use of the Service. At the time of cancellation, the Subscriber's access to any of Subscriber's data stored by the Service may be permanently terminated. BADV will not provide a refund for any unused portion of the Services paid in advance by Subscriber.
4. No bailment or similar obligation is created between Subscriber (and/or Subscriber's designated users) and BADV with respect to Subscriber's stored data. Subscriber is solely responsible for maintaining the confidentiality of Passwords, including restricting the use of the Password by Subscriber's designated users. Subscriber shall be responsible for all use of the Service accessed through Subscriber's Password. **BADV SHALL NOT HAVE ANY RESPONSIBILITY OR OBLIGATION TO SUBSCRIBER, SUBSCRIBER'S DESIGNATED USERS, OR OTHER USERS OF THE SERVICE TO MONITOR, SUPERVISE OR OVERSEE THE CONTENTS OF FILES STORED ON THE SERVICE. BADV IS NOT RESPONSIBLE**

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FOR PROVIDING SUBSCRIBER WITH PASSWORDS IN THE EVENT OF A FORGOTTEN PASSWORD. WITHOUT THE CORRECT PASSWORD, SUBSCRIBER'S DATA WILL REMAIN ENCRYPTED AND INACCESSIBLE.

5. Subscriber shall not use the Service for storage, possession or transmission of any information, the possession, creation or transmission of which violates any state, local or federal law, including without limitation, stolen materials, obscene materials or child pornography. SUBSCRIBER'S BACKUP FILES MAINTAINED BY BADV ARE SUBJECT TO EXAMINATION BY LAW ENFORCEMENT OFFICIALS OR OTHERS WITHOUT SUBSCRIBER'S CONSENT UPON PRESENTATION TO SUBSCRIBER OR BADV OF A SEARCH WARRANT OR SUBPOENA.

6. Subscriber agrees to indemnify BADV against liability for use of Subscriber's account which liability is a direct result of Subscriber's misuse or negligent use of its account(s).

7. INSTALLATION: It is the User's responsibility to correctly install and configure the Program. BADV can assist the User with the installation and configuration, via phone support, at a rate of \$100 per hour.

8. BADV may make copies of all files stored as part of the back up and recovery of servers utilized in connection with some of the Services. BADV is not obligated to archive such copies and will utilize them only for backup purposes. They will not be accessible to Subscriber.

9. Subscriber is responsible for and must provide all telephone and other equipment and services necessary to access the Service. Subscriber should maintain a primary electronic file of all materials stored in the Service. Subscriber should not utilize the service as a substitute for primary electronic file maintenance.

10. SUBSCRIBER EXPRESSLY AGREES THAT USE OF THE SERVICE IS AT SUBSCRIBER'S SOLE RISK. NEITHER BADV NOR ANY OF ITS LICENSORS, EMPLOYEES, OR AGENTS WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE; NOR BADV OR ANY OF ITS LICENSORS, EMPLOYEES OR AGENTS MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICE. THE SERVICE IS MADE AVAILABLE ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION, OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT. NEITHER BADV NOR ANYONE ELSE INVOLVED IN CREATING, DELIVERING OR MAINTAINING THE SERVICE SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF USE OF THE SERVICE OR INABILITY TO USE THE SERVICE OR OUT OF ANY BREACH OF ANY WARRANTY. IN NO EVENT WILL BADV'S LIABILITY FOR ANY CLAIM, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID BY SUBSCRIBER, IF ANY, FOR THE SERVICE FOR THE TWELVE MONTH PERIOD PRECEDING THE EVENT FORMING THE BASIS OF THE CLAIM.

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11. The provisions of paragraphs 4, 6, 7, and 9 are for the benefit of Subscriber and its respective Suppliers, Licensors, Employees, and Agents; and each shall have the right to assert and enforce such provisions directly on its own behalf.

12. This agreement is, and shall be governed by and construed in accordance with the law of the State of Florida applicable to agreements made and performed in Florida.

13. Notwithstanding any acknowledgment of a Subscriber purchase order by BADV, any provision or condition in any purchase order, voucher, letter or other memorandum of the Subscriber which is in any way inconsistent with, or adds to, the provisions of this agreement is null and void. Neither the course of conduct between parties nor trade practice shall act to modify the provisions of this Agreement. If any provision of this Agreement is determined to be invalid, all other provisions shall remain in full force and effect. The provisions of paragraph 9 and 12 and all obligations of and restrictions on Subscriber and its designated users shall survive any termination of this Agreement.