BACKUP COMPUTING IT SERVICES AGREEMENT

THIS agreement is entered into on <u>DATEYEAR</u> in Lake Stevens, WA and <u>XXX, XXX</u> between Backup Computing and <u>XXX</u> (Party B) upon mutual agreement in connection with the consulting services to be provided.

Summary Scope of Services

- Provide its experience and skills in Computers, Servers, Desktops, and Network administration to provide consulting services to Party B.

- Provide services that may include training, IT management, equipment configuration, associated network or information services, and any other forms of services as agreed upon by the Parties.

- Help organize, configure, troubleshoot, maintain, and install PC hardware, servers, and network resources. Help establish good IT practices and processes for handling data and software.

- Assist in development and/or deployment of website(s), data, and other software.

- Provide or recommend data security practices for data backup, anti-virus, firewalls, and password protection.

Fees and Charges

- **Billing Increments** On-Site support is a one hour minimum billing and then billed in 15 minute increments, All other support including email, phone, or remote will be billed in 15 minute increments.

- **Plan choice**

  All Plans include:
  - ✓ Autotask Endpoint Management <u>automatic</u> updates, monitoring, reporting services.
    Note: there are additional updates and serving that will need to be performed regularly on covered workstations and servers, this will be completed by the customer, uses included service hours or billed at the hourly rate.
  - ✓ Autotask Remote Access available to the customer for anywhere remote access.
  - ✓ Webroot Secure Anywhere, sandboxing, AND DNS Anywhere included for customer content filtering, malicious DNS filtering, and other security tasks. Basic configurations provided at no charge, customization of DNS filtering will be billed at the hourly remote rate.

  Plan Choice for Party B, rates per current IT support agreement pricing sheet (Attachment).

  ☐   **BASIC PLAN**

  ☐   **DELUXE PLAN**

  Party B Initials: _____

- **Late Payments** fees of 1% per month may apply if payment is not received in a timely manner. Backup Computing issues at the beginning of each month for the prior months services. Payment is requested by either the end of the current month or 20 days from receipt of invoice whatever is later.

- **Other Services** Datto Backup Services, Datto Networking and Wi-Fi services are handled

separately and custom fitted to the needs of each customer. Support services beyond regular monitoring for networking and backup are counted against the included hours.

- **Taxes** Client shall be solely responsible for any taxes or similar charges arising out of this Agreement, including all applicable Federal, State or local sales taxes, customs, duties, use taxes, value-added taxes, excise charges or brokerage fees. Client shall also be solely responsible for assessing and remitting payment for any such items to the appropriate authorities.

Responsibilities and Terms

1. **Access** To facilitate the full cooperation between the Parties and to help Backup Computing more effectively provide consulting services to Party B, Party B shall provide Backup Computing reasonable access to computer systems and network equipment; provide Backup Computing with necessary licenses and software to perform desired activities; and provide access to user information as necessary to complete the agree tasks.

2. **Litigation** If Party B is involved in any litigation or arbitration cases, or is subject to punishment by the relevant government authorities, or there is likelihood for any of the aforesaid events to arise, Party B shall timely report the relevant details to Backup Computing.

3. **Agreement In Effect** This Agreement shall come into effect upon the signature and seals of the Parties and this Agreement will automatically renew monthly unless terminated or changed in writing by either party.

4. **Supplemental Agreements** Matters not covered herein may be agreed upon by the Parties in a written supplemental agreement. The words filled in the blanks in this Agreement and its appendix shall have equal effect as the words in print.

5. **Two Originals** This Agreement (and its appendix) is written in 2 originals of equal legal effect with each Party holding 1 of them.

6. **Limited Warranty** Backup Computing warrants that the work will be performed to the best of its ability and in accordance with reasonable and customary practices prevailing at the time for its business. ALL WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF QUALITY, DURABILITY, FITNESS FOR PARTICULAR PURPOSE, MERCHANTABILITY, CONTINUOUS USE, DESIGN, COMPLIANCE WITH APPLICABLE LAW, PERFORMANCE OR ERROR-FREE OPERATION ARE DISCLAIMED IN THEIR ENTIRETY.

   This limited warranty gives You specific legal rights, and you may also have other rights, which vary from jurisdiction to jurisdiction. If You believe that the Service does not conform to the warranty described above, contact Customer Service. Backup Computing's exclusive liability and Your sole remedy for breach of this limited warranty shall be either re-performance of the specific service which failed free of charge or, at Your sole discretion, refund of any fees paid by You for the period in which the specific service component failed to conform to this limited warranty. Some jurisdictions do not allow the exclusion or limitation of relief, incidental or consequential damages, so the above limitation or exclusion may not apply to You.

7. **LIMITATION OF LIABILITY**: Backup Computing AND ITS LICENSOR'S CUMULATIVE LIABILITY TO YOU AND ALL OTHER PARTIES FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE USE OF THE SERVICE OR ANY FAILURE OR DELAY IN DELIVERING THE SERVICE SHALL NOT EXCEED THE TOTAL FEES PAID BY YOU DURING THE PERIOD OF THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURRED. Backup Computing AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR OTHER INDIRECT DAMAGES, OR FOR LOST PROFITS OR LOST DATA ARISING OUT OF THE USE OR INABILITY

TO USE THE SERVICE OR ANY DATA SUPPLIED THEREWITH OR ANY FAILURE OR DELAY IN DELIVERING THE SERVICE, EVEN IF Backup Computing HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

For the purposes of calculating availability, Backup Computing shall not be responsible for failures to provide service for any if the following exclusions exist: (a) Problems caused by resources on the clients network that interfere with the service. (b) Changes made to the client network not communicated to Backup Computing. (c) Loss of internet connectivity to the client site for any reason. (d) Service failures that result from any actions or inactions of the Client contrary to IT Service's recommendations.

Some jurisdictions do not allow the exclusion or limitation of special, incidental, consequential, indirect or exemplary damages, or the limitation of liability to specified amounts, so the above limitation or exclusion may not apply to You.

8. **Acts Beyond Backup Computing's Control**: Backup Computing shall not be deemed to be in breach of this Agreement if its obligations are delayed or prevented by any reason of any act of God, war, fire, natural disaster, accident, riots, acts of government, shortage of materials or supplies, failure of any transportation or communication system, non-performance of any of Your agents or Your third party providers (including, without limitation, the failure or performance of common carriers, interchange carriers, local exchange carriers, internet service providers, suppliers, subcontractors) or any other cause beyond its reasonable control.

9. **Notice of Claim and Filing of Suit**: You must present any claim in writing to Backup Computing within a reasonable time, and in no event longer than sixty (60) days after the event for which the claim is presented. No action may be maintained against Backup Computing for loss, damage or destruction of data transmitted, unless timely written claim has been given as provided above, and unless such action is commenced within nine (9) months after the date on which such written claim delivered in accordance with the foregoing, has been received by Backup Computing.

10. **Confidentiality** Each party shall treat the information received from the other party (without regard to the medium on which such information may be recorded, whether written, visual, audio, graphic, computerized or otherwise) that is designated as confidential ("Confidential Information") as a trade secret and strictly confidential. Backup Computing designates the Deliverables, all information relating to the Deliverables and the financial terms of this Agreement as confidential. Both parties shall: (i) restrict disclosure of Confidential Information to employees and agents solely on a "need to know" basis; (ii) advise employees and agents of their confidentiality obligations; (iii) use commercially reasonable means to comply with the confidentiality obligations of this Agreement; and (iv) notify the other of any unauthorized possession or use of that party's Confidential Information as soon as practicable after receiving notice of same. Notwithstanding the foregoing, neither party shall be obligated to preserve the confidentiality of any information which: (i) was previously known; (ii) is a matter of public knowledge; (iii) was or is independently developed; (iv) is released for disclosure with written consent; or (v) is received from a third party to whom the information was disclosed without restriction.

    Backup Computing may comply with any subpoena or similar order related to data on the server located within a Backup Computing authorized facility, provided that Backup Computing notifies You promptly upon receipt thereof, unless such notice is prohibited by law. You shall pay Backup Computing' reasonable charges for such compliance.

11. **Termination and Additional Remedies** This Agreement may be terminated by The Client upon sixty (60) days' written notice if Backup Computing: (a) Fails to fulfill in any material respect its obligations under this Agreement and does not cure such failure within thirty (30) days' of receipt of such written notice. (b) Breaches any material term or condition of this Agreement and fails to remedy such breach within thirty (30) days' of receipt of such written notice. (c) Terminates or suspends its business operations, unless it is succeeded by a permitted assignee under this Agreement. Backup Computing reserves the right to terminate

this agreement with The Client for any reason. If either party terminates this Agreement, Backup Computing will assist Client in the orderly termination of services, including timely transfer of the services to another designated provider. Client agrees to pay Backup Computing the actual costs of rendering such assistance.

12. **No Third Party Beneficiary** Client shall not subcontract, assign, subrogate or transfer any interest, obligation or right under this Agreement without prior written consent from Backup Computing, and any such attempt shall be null and void. Any dissolution, merger, consolidation, reorganization or transfer of a majority of the assets or stock of Client shall constitute an attempted assignment of this Agreement. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.

13. **Indemnification** You agree to fully indemnify and hold harmless Backup Computing and its employees and agents for any liability, cost or expense (including litigation expenses and reasonable attorneys' fees) arising out of (i) Backup Computing (and its providers) possession of Your data, or (ii) Your breach of the terms and conditions of this Agreement.

14. **Modification**: Backup Computing may modify any aspect of this Agreement upon 30 days prior notice. Should You wish to terminate the Service as a result of such modification, you may do so by sending a Termination Notice any time prior to the effective date of such modification; no Early Termination Fees will apply. Otherwise such modification will remain in effect for the remaining Term. You acknowledge that you have the authority to enter in to this Agreement on behalf of your company and that you may authorize other individuals to purchase additional services. This Agreement binds any of Your authorized users, as well as your heirs, executors, successors, and assigns and cannot be changed orally.

15. **Jurisdiction**: This Agreement is governed by the laws of the State of Washington, excluding its conflicts of laws principles. You hereby submit to the exclusive jurisdiction of the federal and state courts of the State of Washington; provided, however, that Backup Computing shall have the right to institute judicial proceedings against You or anyone acting by, through or under You, in other jurisdictions in order to enforce Backup Computing's rights hereunder through reformation of contract, specific performance, injunction or similar equitable relief. Each party hereby irrevocably waives any and all rights to a jury trial and any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding relating to this Agreement in Everett, Washington and further irrevocably waives any claim that Everett, Washington not a convenient forum for any such suit, action or proceeding.

16. **Mediation**: Any dispute, claim, or controversy arising out of or relating to the subject matter of this Agreement shall be settled by mediation. The parties will select a mediator in a mutually agreed on manner. At all times during the mediation process, including the selection of the mediator, the parties will act in good faith to attempt to settle their dispute. At all times during the mediation process, the mediator will maintain impartial, though he/she may give his/her views, opinions or settlement proposals as a means to move the dispute toward resolution. However, the mediator's views, opinions, proposals, etc. shall not be deemed to be legal advice. The parties agree that any settlement agreement that they may enter into during the mediation process is fully binding and enforceable by any Court with jurisdiction of the dispute thereof.

17. **Wholeness**: This Agreement and any supplemental agreements with respect to the Service constitute the entire understanding between Backup Computing and You with respect to subject matter hereof. Terms and conditions as set forth in any purchase order which differ from, conflict with, or are not included in this Agreement, shall not become part of this Agreement unless specifically accepted by Backup Computing in writing.

Signatures of Authorized Representatives

By signing this Agreement, the Parties hereto agree to all terms, conditions and covenants contained herein and that they are authorized to make such decisions for their respective organizations. The Parties acknowledge that this is a legally binding Agreement and the Parties fully acknowledge that they each have accepted this Agreement of their own free will and that the signing of this document was not the result of coercion or duress and that both Parties sought and received, or had the opportunity to seek and receive, the advice of legal counsel, of their choice, prior to signing this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Service Agreement to be signed by their duly authorized representatives as of the

Party A:

M Paris Templin
Backup Computing
PO Box 666
Marysville WA 98270

M Paris Templin

Date: _____

Party B:

Company Name and Address

Signed: _____

Date: _____

Attachment A: General Work Specifications

As or if requested Backup Computing will perform service on your computers. For each computer we may perform the following:

- Updating Antivirus and Antispyware software, checks and removal as needed.

- Installation of Windows Updates and Patches

- Update Scripting checks and confirmation of installations

- Check for unnecessary files, programs, registry entries, and temporary files.

- Performance check of computer hardware

- Review Windows System Log Files

- Verify network connectivity and performance, troubleshooting of any issues.

- Computer cleaning

- Verify UPS are working properly (w/ Staff)

- Check the proper functioning of backup systems and configuring remote data backup

- Verify network printers and scanners

- Networking Equipment Support and Advising

- Reporting of maintenance and status (by email)

- Updating client software drivers as needed.

- Maintaining network login and Internet connection security

Additional services included

- Professional on-demand helpdesk support

- Parts, new hardware, and software provided at near cost + tax.

- Remote support (and software). All software and access methods are fully secured using industry standard encryption, VPN tunnels, SSL technology or other methods.

- Priority response to service requests

- Detailed record keeping on invoice.

- Remote access support and software configuration using Autotask Endpoint Management.