



Subscription Agreement

TERMS & CONDITIONS

1. **Description of Services.** Utility Backup Solutions, LLC, (the “**Company**”) will provide the SaaS BackupGrid Backup and Recovery Service and / or the Connected Backup Service (either, or both, the “**Service**”) to the individual or entity signing the signature page (the “**Signature Page**”) attached here to with the Company (the “**Customer**”), with the specific Service, account features and related costs designated on the Signature Page. The software (the “**Software**”) and the LiveVault software agent (the “**Agent**”) used by the Company to provide the Service are owned by Iron Mountain Information Management, Inc. (“**Iron Mountain**”), and are licensed to the Company by Iron Mountain pursuant to a Partner Agreement (the “**Partner Agreement**”) between Iron Mountain and the Company. Certain technical aspects of the Service are more fully described in the Company’s service level agreement (“**SLA**”), a copy of which is attached hereto.

2. **License Grant.** The Customer is hereby granted a limited nonexclusive license to: (i) install the Software on the Customer’s computer systems/network equal to the number and type of Agents downloaded (Customers will be charged one amount for all data protected across all servers where Agents have been downloaded and installed) by Customer; (ii) install PC-based software on a PC only and not on a server; (iii) use the Software in object-code/executable form only for the Customer’s internal business needs; (iv) use the applicable installation guide(s), service description(s), technical specifications, on-line help files and user manuals for the Software provided by Iron Mountain (the “**Documentation**”) to support the use of the Software and/or the Service; and (v) make a commercially reasonable number of copies of the Software in object-code/executable form only, for nonproductive backup disaster recovery purposes; provided, however, that the Customer shall not remove, and shall reproduce, all copyright notices and proprietary legends on each such copy. The Company may suspend or terminate the foregoing license if the Customer breaches this Agreement.

3. **Onsite Installation.** : If the Customer selects services that require a TurboRestore Appliance (a “**TRA**”) to be installed on-site at the Customer’s premises, the TRA will remain the property of Iron Mountain. The Customer shall provide to the Company, at no cost to the Company, adequate security to protect the TRA from theft, loss, damage, or misuse. The Company reserves the right to replace the TRA for maintenance or other service related purposes. Upon receiving a new TRA, the Customer shall be responsible for packing, shipping and handling of the original TRA for return to Iron Mountain at the Customer’s expense within two (2) business weeks. The following charges will apply for a delayed return, or a lost or stolen TRA.

- Delays over two (2) business weeks: \$750 per business week, rounded to the closest business week
- Lost/Damaged TRA: One time fee of \$1,500 per TRA
- The Customer shall be responsible for returning any TRA in its possession to Iron Mountain in good working condition upon termination of the services. The Customer shall obtain from its landlord (and/or any relevant entity) any agreement that may be reasonably necessary to allow the Company, on behalf of Iron Mountain, the right to enter the Customer’s premises and access and/or possess the TRA in a timely manner.

Network Attached Storage Restores (“**NAS Restores**”) shall be provided to the Company upon request for \$3,000 per request. If a request requires multiple NAS devices, then the total fee shall include an

additional charge of \$3,000 for each extra NAS device. This charge includes a two (2) week rental of the NAS device, commencing upon date of shipment. An additional rental fee shall be charged to the Customer in the event the furnished NAS device is not returned to Iron Mountain by the expiration of the two (2) week rental period, at the flat rate of \$500 for each additional thirty (30) day period or portion thereof. Neither Iron Mountain nor the Company have any responsibility to arrange for return shipment.

With respect to the Connected Backup Service, should Customer require Protected Data to be written to compact disks ("CD(s)") and / or digital versatile disks ("DVD(s)"), the fees shall be thirty (\$30.00) US Dollars per CD/DVD plus shipping and handling.

4. **Account Password/Security.** The Customer is entirely responsible for maintaining the confidentiality of its password and account, and the Customer is solely responsible for any and all activities that occur under its account. The Customer agrees to notify the Company immediately of any unauthorized use of its account or any other breach of security. The Company shall not be liable for any loss that the Customer may incur as a result of a third party using its password or account, either with or without its knowledge. The Customer may be held liable for losses incurred by the Company or another party due to a third party using the Customer's account or password.

5. **Payment Information.** As part of the registration process and this Agreement, the Company will collect certain additional information related to billing and payment matters ("**Payment Information**"). Such Payment Information will include a valid debit card or credit card number with available credit sufficient to pay the applicable subscription fees, an election of a preferred billing frequency, and other information as required by the Company. All Payment Information provided by or on behalf of the Customer must be current, complete and accurate, and the Customer is solely responsible for updating such Payment Information as necessary. The Customer hereby authorizes the Company, from time to time, to take steps to determine whether the debit card or credit card number provided is valid. The Company reserves the right to terminate this Agreement immediately in the event any Payment Information is found to be inaccurate, incomplete or not current at any time. The Company shall not be responsible for any overdraft charge or other fees that may be incurred by the Company's use of the Customer's debit card or credit card.

6. **Trial and Promotional Offers.** From time to time, the Company may offer certain trial and/or promotional offers. The Company reserves the right to discontinue or modify coupons, credits, trials and promotional offers at its discretion and without notice. Any such trial or promotional offers may not be combined with other coupons, credits, trials, promotions or any other discounts, and are limited to one (1) per Customer.

7. **License Restrictions.** Customer may only use the Software and/or Service in accordance with those rights specifically granted in this Agreement. Without limiting the foregoing, the Customer agrees ***not*** to (i) attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code of the Software or any portion thereof; (ii) modify, port, translate, localize or create derivative works of the Software; (iii) use the Software in a way that (a) infringes on the intellectual property rights of any third party or any rights of publicity or privacy; (b) violates any law, statute, ordinance or regulation (including but not limited to the laws and regulations governing export/import control, unfair competition, anti-discrimination and/or false advertising); (c) vaults defamatory, trade libelous, unlawfully threatening, or unlawfully harassing data; (d) vaults obscene, pornographic or indecent data in violation of applicable law; or (e) propagates any virus, worms, Trojan horses or other programming routine intended to damage any system or data; (iv) use the Software and/or Service in any application that may involve risks of death, personal injury, severe property damage or environmental damage, or in any life support

applications, devices or systems; and/or (v) use a total number of licenses in excess of the total Seats allocated to the Customer.

8. **Previous Versions.** From time to time, the Company may notify Customer by phone and/or email that upgrades or updates to the Agent have become available, and will provide access to such upgrades or updates. It is the responsibility of the Customer to obtain and install all such upgrades and updates. If the Customer elects not to install the latest upgrades and updates, then the Company shall only provide maintenance service for the immediately prior of the previous versions of the Software, and only for a period of one (1) year commencing immediately upon the commercial availability of each subsequent update and upgrade.

9. **Intellectual Property.** The Company (or its suppliers and licensors) shall have sole and exclusive ownership of all right, title, and interest in and to the Software, Service, Documentation and all copies thereof including all derivations, modifications and enhancements thereto (including but not limited to ownership of all intellectual property rights). This Agreement does not provide the Customer with title or ownership of the Software, Service and/or Documentation, but only a right of limited use. The Customer agrees to inform the Company immediately of any infringement or other improper action with respect to the Company's intellectual property, or the intellectual property rights of the Company that comes to the Customer's attention.

10. **General Warranty.** Subject to the Customer's compliance with all the Customer's material obligations in this Agreement, the Company warrants, represents and undertakes that (i) it has the right, power and authority to license the Software upon the terms and conditions of this Agreement; (ii) the Software is materially free of potentially damaging programming errors with reference to data, programs and systems software; (iii) it shall conform with Section 20 "Privacy and Data Protection" below; (iv) the media upon which the Software is stored is materially free from defects in materials, design and workmanship for ninety (90) calendar days from initial shipment date; (v) the Software and the media on which the Software is delivered to the Customer do not contain or include any code or program which causes, directly or indirectly, in whole or in part, any material corruption, deterioration, alteration or other adverse change to the Software or any other software or hardware of the Customer, or cause damage or loss of computer files. To the best of the Company's knowledge, the Software does not contain any program routine, device, or other undisclosed feature, including, without limitation, a time bomb, software lock, drop-dead device, malicious logic, worm, Trojan horse, error, defect or trap door, that is capable of deleting, disabling, deactivating, interfering with, or otherwise harming the Software, the Customer's databases or hardware, data, or computer programs or codes, or that is capable of providing access or produce modifications. If a claim is made or appears possible regarding the above, the Company may, at its option, secure for the Customer the right to continue to use the Software, modify or replace the Software so it is non-infringing, or, if neither of the foregoing options is available, in the Company's reasonable judgment, the Company may require the Customer to return the Software for a refund or credit, at the Company's sole option, equal to the portion of previously paid fees allocable to the remaining term as specified by the Customer during the registration process.

11. **NO FURTHER WARRANTIES.** EXCEPT AS EXPRESSLY SPECIFIED IN SECTION 10, NEITHER THE COMPANY NOR ANY THIRD PARTIES SHALL HAVE ANY LIABILITY FOR THE SOFTWARE OR ANY SERVICES PROVIDED IN FURTHERANCE OF THIS AGREEMENT; THE COMPANY (INCLUDING ITS SUPPLIERS AND LICENSORS) MAKES AND CUSTOMER RECEIVES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR ANY OTHER COMMUNICATION; AND THE COMPANY SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

12. **EXCLUSION OF CONSEQUENTIAL DAMAGES.** IN NO EVENT SHALL THE COMPANY, IRON MOUNTAIN OR THE CUSTOMER BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE AND/OR INCIDENTAL DAMAGES, WHATSOEVER, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY POTENTIAL LOSS OR DAMAGE.

13. **LIMITATION OF LIABILITY.** THE COMPANY SHALL NOT BE LIABLE FOR ANY LOSSES OR DAMAGES UNLESS THE LOSSES OR DAMAGES ARE DUE TO THE COMPANY'S FAILURE TO USE REASONABLE CARE. IF THE COMPANY IS FOUND LIABLE, THE AMOUNT OF THE COMPANY'S MAXIMUM LIABILITY FOR ANY AND ALL LOSSES AND/OR DAMAGES (IN CONTRACT, TORT, OR OTHERWISE) SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES PAID TO THE COMPANY FOR THE SERVICE WITHIN THE PRIOR SIX (6) MONTHS FROM WHICH THE CLAIM ARISES.

14. **ESSENTIAL PURPOSE.** THE LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES STATED HEREIN SHALL APPLY REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. BOTH PARTIES HEREUNDER SPECIFICALLY ACKNOWLEDGE THAT THESE LIMITATIONS OF LIABILITY ARE REFLECTED IN THE PRICING.

15. **No Assignment.** Neither this Agreement, nor any of the rights granted or duties undertaken, may be assigned by the Customer without the prior written consent of the Company.

16. **Government End-User Notice.** The Software is a "Commercial Item," as that term is defined at 48 C.F.R. § 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. § 12.212 and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. §§ 12.212, 227.7202-1 through 227.7202-4, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end-users (a) only as Commercial Items and (b) with only those rights as are granted to all other end-users pursuant to the terms and conditions herein.

17. **Export Restrictions.** The Customer acknowledges that the Software and Service are subject to United States export control laws. The Customer shall comply with all applicable export laws, obtain all applicable export licenses and will not export or re-export any part of the Software to any country in violation of such restrictions or any country that may be subject to an embargo by the United States. Both parties specifically agree that the U.N. Convention on the International Sale of Goods shall not apply to, and all action performed in furtherance of, this Agreement.

18. **Audit.** During the term of this Agreement, the Customer will maintain records reasonably required to verify its compliance with this Agreement. Upon at least thirty (30) calendar days notice to the Customer, and not less than twelve (12) months since a prior audit, the Company may audit and inspect the applicable records of the Customer, at the Customer's principal place of business, during the Customer's normal business hours and in such a manner as to avoid unreasonable interference with the Customer's business operations. In the event that the Company determines that the Customer has underpaid any payment due under this Agreement, the Company shall notify the Customer in writing of this alleged discrepancy. In the event that such audit discloses an undisputed underpayment by the Customer in excess of five percent (5%) in any audit period, the Customer shall reimburse the Company for such audit expenses and underpayment. Any undisputed underpayment by the Customer shall be paid to the Company (plus interest at the lesser of one and a half percent (1.5%) per month or the highest rate permitted by law), within thirty (30) calendar days of such determination.

19. **Ownership of Customer Data.** The Customer warrants that it is the owner or legal custodian of the data (“Data”) it will backup according to this Agreement, and has provided the necessary notices and obtained the necessary consents and authorizations to enable storage and/or access of the Customer’s Data and direct its disposition in accordance with the terms of this Agreement. The Customer shall reimburse the Company for any expenses reasonably incurred by the Company (including reasonable legal fees) by reason of the Company’s compliance with the instructions of the Customer in the event of a dispute concerning the ownership, custody of, or disposition of the Customer’s Data stored by the Customer with the Company.

20. **Privacy and Data Protection.** The Customer acknowledges that the Agent or Service may be used to process information regulated by privacy or data protection laws. THE CUSTOMER EXPRESSLY RECOGNIZES THAT THE COMPANY AND THE COMPANY’S LICENSOR DO NOT CREATE, OPERATE, CONTROL OR ENDORSE ANY DATA, INFORMATION, OR THIRD-PARTY PRODUCTS PROCESSED BY THE SOFTWARE OR SERVICES PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO, INFORMATION OBTAINED. THE COMPANY AND THE COMPANY’S LICENSOR SHALL NOT BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY COST OR DAMAGE ARISING EITHER DIRECTLY OR INDIRECTLY FROM ANY LOSS OR BREACH OF SECURITY OF DATA. The Company shall act only on the instructions of the Customer in processing any personal Data. The Customer hereby instructs the Company to take such steps in the processing of personal Data as are reasonably necessary to the performance of the Company’s obligations under this Agreement, and agrees that such instructions constitute its full and complete determination as to the means by which personal Data shall be processed by the Company. To the extent that any privacy or data protection laws impose an obligation upon the Company or the Company’s licensor to comply with an individual’s request for access to or correction of their personal Data, the Customer agrees that it shall satisfy such obligations. The Company agrees that it shall forward any such individual requests that it receives to the Customer and reasonably assist the Customer in their satisfaction. The Company agrees that it shall:

- a. not use personal Data except for the purpose of delivering the Agent or Service as instructed by this Agreement;
- b. upon termination of this Agreement, return personal Data to the Customer or destroy the personal Data in accordance with the Customer’s instructions;
- c. implement security measures reasonably designed to safeguard personal Data against unauthorized access, loss, destruction, damage, or disclosure; and
- d. provide reasonable support to the Customer in complying with any legally mandated request or demand made by any court or governmental authority responsible for enforcing privacy or data protection laws.

The Customer agrees that the use of the Agent or Service in accordance with the measures expressly specified in this Agreement will not cause the Company or the Company’s licensor to violate any laws regarding security, privacy, or transfer of protected data.

21. **Term and Termination.**

- a. **Term.** The term of this Agreement shall commence at the effective date listed on the Signature Page (the “Effective Date”). The Agreement shall be in effect for one year from the Effective Date and will automatically renew with the same terms for successive one year periods (in both cases, a “Term”) unless the Customer notifies the Company in writing no more than 30 days prior to the end of any Term that Customer wishes to cancel the Agreement. Customers that

so notify the Company of their intent to cancel the service will not be subject to any cancellation fees or penalties

b. **Termination for Cause.** The Company reserves the right to terminate this Agreement immediately if the Customer breaches any of its material obligations under this Agreement.

c. **Effect of Termination.** Cancellations effected more than 30 days before the end of the Agreement shall result in early termination fees equal to fifty percent (50%) of the base rate otherwise payable for the remaining contract term. In the case of early contract terminations for the Customer who has pre-paid for an annual or longer commitment, that Customer shall be entitled to a refund equal to fifty percent (50%) of the implied monthly base rate multiplied against the number of full months still remaining in the contract term. Upon any termination of this Agreement, the Customer will immediately discontinue all access to and use of the Services, and the Company will immediately delete all of Customer's backups stored at the data centers. The Company shall not be liable for any damages resulting from a termination of this Agreement as provided for herein; provided, however, the termination of this Agreement shall not affect any claim arising prior to such termination.

22. **Subscription Fees.** The Customer is responsible for all subscription fees, and hereby authorizes the Company to obtain payment of all such subscription fees in accordance with the terms of the subscription service specified on the schedule attached, and as modified from time-to-time if Customer elects to change its subscription level or account features. The Customer shall also be responsible for all applicable taxes (withholding tax, sales tax, services tax, value-added tax (VAT), goods and services tax (GST), etc.) or duties imposed by any government entity or collecting agency EXCEPT those taxes based on the Company's net income.

23. **Indemnification.** The Customer hereby agrees, at its sole expense, to indemnify, defend and hold the Company harmless from and against any loss, cost, damages, liability or expense arising out of or relating to (i) a third-party claim, suit, proceeding, action or allegation of infringement based on information, data, files or other content submitted by the Customer or otherwise related to the Customer's access to and/or use of the Service; or (ii) any fraud or manipulation, or other breach of this Agreement by the Customer.

24. **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.

25. **Applicable Law.** The Customer agrees that the laws of the state of California, without regard to conflicts of laws provisions, will govern this Agreement and any dispute that may arise between the Customer and the Company.