



VAR AGREEMENT

This Value Added Reseller Agreement (hereinafter referred to as "Agreement"), made on this _____ day of _____, 20____, is by and between USA Data Services LLP, located at P. O. Box 1625, West Memphis, AR 72303 (hereinafter referred to as "USADS"), and _____ the undersigned reseller, located at _____, (hereinafter referred to as "Reseller").

WHEREAS, USADS owns or maintains the rights to market and sell certain computer software for offsite internet transfer and storage of electronic data; and owns and maintains or leases the location, equipment, and data networking services to provide such offsite storage; with said software, equipment, products, and services to be sold and marketed under the USADS trademarked name of The Back-Up Safe (hereinafter referred to as "the Product");

WHEREAS, reseller desires a business relationship with USADS to market and sell the Product in accordance with and subject to, all of the provisions of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the adequacy and sufficiency of which are hereby acknowledged, USADS and Reseller hereby agree as follows:

Section 1. Appointment of Reseller.

USADS hereby grants Reseller the authority to sell, market, and support the Product including all associated aspects of the Product.

USADS shall maintain the right to make direct sales of any of its products and services, including but not limited to the Product, and to appoint agents or other representatives to sell, market and support the same without notice or liability to Reseller.

Section 2. Grant of Rights, Marketing, and Non-Compete

I. Granting of Rights - USADS hereby grants to Reseller a limited, non-exclusive license to use, reproduce, support, demonstrate, market and distribute the Product, including the right to sublicense the Product, related software and services of USADS to customers of Reseller.

Reseller acknowledges that is has no right under this Agreement to establish a third party agreement to use, reproduce, support, demonstrate, market and distribute the Product, related software, and services of USADS including the right to sublicense the Product, related software, and services of USADS, except as set forth in this agreement.

Reseller understands and accepts that the software provided for use in the services of the Product is provided expressly for the purpose of facilitating and customizing the needs of the customer to the services being purchased and that the reseller does not have the right to resell the software or the services provided by the Product independently of one another, without prior written approval of USADS, should such circumstances be presented.

Reseller acknowledges and agrees with USADS that, all improvements, updates, modifications or enhancements to the Product, whether or not conceived or made in the course of, or as a result of Reseller's performance under this Agreement, are and shall remain the exclusive property of USADS, and any

developments or expenditures made by Reseller in connection with the Product, related software, and services of USADS, shall not give or vest Reseller with any right, title or interest in the Product, related software, and/or services USADS.

Reseller acknowledges that nothing contained in this Agreement shall be construed as creating a joint venture, partnership or employment relationship between USADS and Reseller.

Reseller acknowledges neither party shall have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other beyond what is granted and expressed under the terms and conditions of this agreement and the terms and conditions of the Service License Agreement provided to the customer.

Reseller understands and agrees that no other customary method of trade or other regular practice or action, dealing either within the computer software industry, or any other technology-related industry, shall be used to modify, interpret, supplement or alter in any manner the express terms set forth in this Agreement.

II. Marketing - USADS hereby grants Reseller a limited, non-exclusive right to utilize USADS trademarks specified in Exhibit A and attached, hereto in connection with and as deemed necessary by the Reseller for the advertising, promotion and sale of the Product.

Reseller shall always indicate that USADS is the owner of such trademarks.

Reseller agrees that it shall not (a) remove or alter any copyright notices or trademark symbols on the Product, related software, and/or services offered by USADS, (b) reverse engineer, decompile, disassemble, or restructure the Product and/or any of its related components and software, or (c) export or re-export the Product, related software, and/or services of USADS to any country, person or entity subject to U.S. export restrictions, without the appropriate licenses, consents, and written approval of USADS prior to taking such action.

Reseller agrees, subject to the terms and conditions of this Agreement, to use reasonable and available commercial efforts to promote, market, sell and support the Product and USADS including but not limited to the following actions:

1. Prominently display a minimum of one table top, wall, or window poster provided by USADS, and
2. Add a link to USADS's website on Reseller's web page, provided Reseller operates such.

Reseller may develop and utilize its own marketing materials to sell, display, and promote the Product, related software, and services provided by USADS, to the extent of the relationship with USADS and in accordance with the terms and conditions of this agreement.

Any materials developed by Reseller to market, promote, and display the Product, related software, and the services of USADS, must prominently bear the name of the Product and USADS, and must be approved by an authorized representative of USADS prior to implementation.

III. Non-Compete - Reseller agrees to refrain from direct communication with competitors of USADS regarding the Product, related software, and services of USADS including but not limited to features, performance benchmarks, user feedback, product marketing, sales information, compensation, and any other information readily available or not, to a third party. This restriction shall apply to information that may or may not be considered confidential.

Upon termination or expiration of this agreement, neither Reseller, nor any of its agents, employees, or associates, shall thereafter establish, create, perform, manufacture, advertise, market, distribute and/or sell a product and/or service similar to, or exactly matching the Product, related software, and services provided by USADS, whether provided entirely or partially by Reseller, or by another party, for a period of twelve

months from the date of termination or expiration of this Agreement, and subject to all the other terms and conditions hereof.

After expiration or termination of this Agreement, reseller shall immediately cease all activities pertaining to the marketing, sales, technical support and other representation as an agent of USADS under the terms and conditions of this agreement.

Upon expiration or termination of this Agreement, Reseller shall immediately cease all use of USADS trademarks, and will not create or use any trademark which is confusingly similar to any of USADS Trademarks.

Section 3. Representations and Warranties of USADS.

USADS represents and warrants to Reseller as follows:

1. USADS shall: (a) supply all necessary information regarding the Product, to Reseller for marketing and sale in accordance with this Agreement including any upgrades or enhancements thereto or new releases thereof, and (b) make reasonable efforts to provide Reseller with relevant sales and marketing information and support.
2. USADS has the full right, power and authority to enter into and to perform this Agreement. The execution, delivery and performance of this Agreement by USADS has been duly authorized through all necessary corporate action taken by USADS, and this Agreement constitutes a valid and binding obligation of USADS enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally.

Section 4. Representations and Warranties of Reseller.

Reseller represents and warrants to USADS as follows:

1. Reseller (a) is familiar with the market for the Product and is qualified to sell and provide support for the Product, (b) will use its best efforts to maintain USADS's good reputation and will not misrepresent or disparage the Product and/or USADS, and (c) will designate at least one employee or agent who will be responsible for coordinating all aspects of the marketing, sales, and technical support of the Product by the Reseller, and (d) will cause such person to provide periodic reports to USADS, and be available for periodic telephone conferences or visits by USADS personnel regarding the marketing, sales and technical support of the Product.
2. Reseller has the full right, power and authority to enter into and to perform this Agreement. The execution, delivery and performance of this Agreement by Reseller has been duly authorized by all necessary corporate action by Reseller, and this Agreement constitutes a valid and binding obligation of Reseller enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally.

Section 5. Payments to Reseller.

Payments by USADS to Reseller hereunder shall be made as follows:

1. All payments under this Agreement shall be made in accordance with this section and Exhibit B of this agreement. Any additional terms of payment shall be agreed upon in advance and approved in writing by a duly authorized representative of USADS, prior to taking any such actions for

payment, with the terms and conditions of such actions and compensation set forth and made an exhibit to this agreement.

2. The payments to Reseller hereunder do not include any taxes, duties or similar fees that may be collectable or withheld pursuant to applicable law.
3. Except as otherwise specified herein, all payments to Reseller will be made in U.S. dollars, free of any currency controls or other restrictions.

USADS shall pay all import duties, customs fees, sales, use, withholding and value added taxes for any Products and Services sold or sublicensed pursuant to this Agreement.

Section 6. Termination of Agreement

Either party herein shall have the right to terminate this Agreement by providing 10 calendar days' written notice to the other party for any reason.

Section 7. Hours of Operation, Billing, and Technical Support

Technical support for the Products and Services shall be provided by the parties as set forth below:

1. USADS Support and Hours of Operation - USADS's technical support staff is available by phone 7 days a week, 24 hours per day. The USADS sales staff is available by phone Monday through Friday, from 6 a.m. to 6 p.m. (CST). All other billing and administrative support services of USADS are available Monday through Friday, from 8:00 a.m. to 5:00 p.m. (CST). In general, USADS will respond to all inquiries for sales, service, or technical support within 1 hour during the operating hours indicated in this sub-paragraph of Section 7.
2. Customer Billing for the Product – Reseller agrees that USADS will establish and collect all applicable initial and recurring user fees pertaining to the Product including but not limited to its installation and use as outlined and specified in Exhibit A.
3. Billing by Reseller – USADS and Reseller agree that USADS will not be responsible for establishing and/or collecting fees and/or expenses associated with any actions, products, and/or services provided by Reseller to the customer outside the scope of the Product and this Agreement. Said services include but are not limited to, any and all work performed by Reseller for the customer, specifically that performed beyond the normal and limited scope of actions required under this agreement to market and sell the Product to the customer. All support, services, equipment, and materials provided by Reseller beyond the terms of this agreement are subject to the terms and conditions of Reseller's business relationship with the customer, either existing or to be established, outside and separate from the terms, conditions, and confines of this agreement. Reseller agrees to hold harmless and blameless USADS against any actions taken against the Reseller or USADS, by a customer utilizing the services of the Product, for actions taken by the Reseller outside the scope of this agreement.
4. Reseller's Technical Ability - Reseller acknowledges and confirms that it has the technical expertise and resources to field and answer its customers calls for technical support regarding the Product.
5. Reseller's Technical Support Responsibilities - Reseller agrees to represent itself to their customers as the initial contact for providing answers to basic technical questions arising during the Reseller's normal hours of operation. USADS acknowledges that all unanswerable technical questions, all non-technical questions, and all questions arising during hours outside of the Reseller's normally supported hours of operation, may be referred to the toll free technical support and sales numbers of USADS.

6. The following methods may be used to contact USADS and/or receive Technical Support:
- a. Technical Support by phone: Call 866-652-1089.
 - b. Technical Support by E-Mail: support@usadataservices.com
 - c. Sales Support by phone: Call 866-652-1087
 - d. Sales Support by E-mail: sales@usadataservices.com
 - e. FAQ's page at www.usadataservices.com offers answers to commonly asked technical support questions

Section 8. Discontinuation of Products and Services.

USADS may, at any time discontinue the sales and use of the Product and/or any other services of USADS without incurring any liability to Reseller. Should such actions take place, USADS shall use reasonable efforts to notify Reseller in advance of the discontinuation of the Product and and/or related services of USADS.

Section 9. Indemnification.

USADS shall indemnify and hold harmless Reseller and its directors, officers, employees and agents from any claims, suits, losses, liabilities, damages, court judgments or awards and the associated costs and expenses (including attorney's fees) (collectively, "Losses"), incurred in connection with:

1. Any actual infringement by the Product of any patent, copyright, trade secret, trademark, or other proprietary rights of a third party, or
2. USADS's breach of any term or condition of the Product software agreement.

Reseller agrees to promptly provide USADS with a written notice and copy of any claim that Reseller receives and believes falls within the scope of this section.

Should the use of the Product, related software, and/or other services provided by USADS be enjoined in connection with items 1 or 2 of this section, or in the event USADS wishes to minimize its potential liability there under, USADS may, at its option:

- (a) substitute a fully equivalent non-infringing replacement of the Product and any related software or services, or
- (b) modify the infringing portion of the Product, related software, and/or services so that it no longer infringes but remains functionally equivalent.

In the event that USADS is unable to effect any of the actions contemplated by the foregoing clauses (a) or (b), USADS shall provide Reseller with written notice of such inability and Reseller shall cease all sales of the Product and any related software, support, and/or services.

The indemnification contemplated by this Section shall not apply to infringement arising solely from modifications made to the Product, related software, and/or services provided by USADS, and as such Reseller agrees to indemnify and hold harmless USADS and its directors, officers, employees and agents from and against any and all actions and losses incurred in connection with any actual or alleged, intentional or unintentional infringement by the Product and related software, of any patent, copyright, trade secret, trademark, mask work right or other proprietary rights of a third party in the event such infringement arises because of the creation of any unauthorized work or action by Reseller, or by Reseller's breach of any term or condition of this Agreement.

UDADS may, at its own expense, assist in such defense if it so chooses, provided that Reseller shall control such defense and all negotiations in connection with the settlement of any such claim and USADS shall, in the event of a settlement, provide Reseller with a release from the indemnification provided for hereunder.

Both USADS and Reseller maintain the responsibility to notify the other party in a timely fashion of any correspondence it receives, and believes falls within the scope of this section.

Section 10. Non-Disclosure of Confidential Information

Reseller acknowledges that the Product, related software, and the services provided by USADS, constitute proprietary technology and business/trade secrets of USADS and its licensing parties.

Accordingly, Reseller agrees that, except as agreed to in writing by USADS and in connection with the marketing, sales and support of the Product, Reseller shall not, and shall use reasonable efforts to cause its employees and agents not to:

(a) disclose or otherwise disseminate to any individual, partnership, corporation, limited liability company, association, business trust, joint venture or other entity of any kind or nature any information relating to the Product, software, and services of USADS, including but not limited to source or object codes, patents, systems, trademarks, design, methodologies, processes, content, know-how, authorship, applications and compatibility with other software and documentation, or

(b) reproduce, copy or modify the Product, software, and services of USADS in whole or in part, for distribution to any individual, partnership, corporation, limited liability company, association, business trust, joint venture or other entity of any kind or nature except as required and allowed hereunder and within the terms of this agreement.

Section 11. No Warranties

USADS DISCLAIMS ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, WITH REGARD TO THE PRODUCT, RELATED SOFTWARE, AND/OR SERVICES OF USADS, AND THE PROVISION OF OR FAILURE TO PROVIDE TECHNICAL SUPPORT, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 12. Limitation of Liability

IN NO EVENT SHALL USADS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR ANY OTHER MONETARY OR FINANCIAL LOSS, ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT, RELATED SOFTWARE, AND/OR SERVICES OF USADS, OR THE FAILURE TO PROVIDE TECHNICAL SUPPORT, EVEN IF USADS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Section 13. Injunctive Relief

Reseller acknowledges that any harm which might result to USADS's business as a result of any non-compliance by Reseller with any of the provisions of this Agreement could possibly be largely irreparable. In the event of a breach or threatened breach of Reseller's duties and obligations under this Agreement, Reseller agrees that USADS shall be entitled, in addition to any other legal or equitable remedies it may have, including any right to damages that it may suffer, to temporary, preliminary and permanent injunctive relief restraining such breach or threatened breach. Reseller agrees that if there is a question as to the enforceability of any of the provisions of this Agreement, Reseller will not engage in any conduct inconsistent with or contrary thereto until after the question has been resolved by an arbitrator, mediator or final judgment of a court of competent jurisdiction.

Section 14. Severability

The parties herein intend that each section of this Agreement should be viewed as separate and divisible, and in the event that any section, provision, agreement or condition of this Agreement shall be held to be invalid, void, or unenforceable, such section, provision, covenant or condition shall be enforced to the maximum extent permitted under applicable law and the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 15 Governing Law, Jurisdiction, Venue

This Agreement and the performance hereunder shall be governed by, and construed in accordance with, the laws of the State of Tennessee, without giving effect to such State's rules governing the conflicts of laws. In addition, each of the parties hereto irrevocably consents to the exclusive jurisdiction of the courts of the State of Tennessee, County of Shelby, and of any federal court located in the State of Tennessee, County of Shelby, in connection with any action or proceeding arising out of or relating to, or a breach of, this Agreement, or any document or instrument delivered in connection with this Agreement.

Section 16 Assignment

This Agreement may not be assigned, transferred, or sold to a person, company, or other entity without the prior written consent of the USADS.

Section 17 Amendments

This Agreement may only be modified or amended in writing. All amendments shall be signed and acknowledged by USADS and Reseller. Once signed, said amendments shall be considered a binding addition to this Agreement.

Section 18 Notices

All notices, claims, requests, demands and other correspondence hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or if sent by a nationally recognized overnight courier, or by registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

If sent to USADS:

USA Data Services LLP
P. O. Box 1625
West Memphis, AR 72303

Attention: Mr. Lou Hazel, President and CEO

If sent to Reseller:

To the address set forth on page one of this agreement.

Section 19. Headings and Pronouns

The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of names and pronouns shall include the plural and vice versa.

Section 20. Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter contained herein and supersedes any and all other prior or contemporary agreements, arrangements and understandings, either oral or in writing, between the parties hereto with respect to the subject matter hereof. Each party to this Agreement acknowledges and represents that no representations, warranties, covenants, conditions, inducements, promises or agreements, oral or otherwise, other than as set forth herein, have been made by either party hereto or anyone acting on behalf of either party.

Section 21. Counterparts

This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Value Added Reseller Agreement as of the date specified below.

for USA Data Services LLP:

By: _____ Date: _____

Print name: _____ Title: _____

for RESELLER:

Initial each page of this document in the lower left corner and sign below.

By: _____ Date: _____

Print name: _____ Title: _____

Fax all pages of this agreement to USADS at the fax number shown below. The signature page of this agreement will be signed by the appropriate authority at USADS and a completed copy will be faxed to you as evidence that the agreement has been initiated.

Also, mail two copies of the entire agreement with all of the appropriate pages initialed and signed on each copy to the address below and an authorized authority of USADS will sign each agreement and return an authentic copy to you for your records.

USA Data Services LLP
P. O. Box 1625
West Memphis, AR 72303

Attention: Dennis Webb, CIO

Fax No.: 870-735-2964

USA 
Data Services

**The
Back-up SafeTM**

Exhibit B – Reseller Compensation Schedule

- New Customer Sign-up.
 - ❖ For each new customer that Reseller signs up for the services of the Product, Reseller will receive a one time payment of \$100.00
 - ❖ Payment will be made at the beginning of the first month wherein the customer begins their monthly payments, beyond the free trial offer.

- Monthly Royalty
 - ❖ For each monthly payment received from each customer signed up for the services of the Product by the Reseller, the Reseller will receive a royalty payment equal to 10% of the monthly fee paid by the customer.
 - ❖ Payment shall be made to Reseller at the end of the month during which the customer's monthly payment is received.

- Non-Payment
 - ❖ There shall be no royalty payment made to Reseller for any customer account that is in arrears, suspension, or has been cancelled.
 - ❖ Royalty payments of accounts in good standing shall end during the same month that the VAR Agreement is terminated or cancelled.