

## **GRANITE BACKUP SERVICE AGREEMENT**

### **1. Provision of Services.**

Company agrees to provide services to You in accordance with the Shared Exchange Hosting Service Level Agreement in return for your payment for Company's services, your execution and compliance with this agreement, and your compliance with Granite Backup Software Use – Terms and Conditions.

Provision of Company's services shall commence once Company has received both Your payment for Company's services and this Service Agreement (Agreement) duly executed by You.

### **2. Agreement Term.**

The Agreement Term is either the Initial Term or Renewal Term as defined herein. The Initial Term is defined as the time period from the date of your initial payment and execution of this Agreement, whichever occurs later, through the remainder of the calendar month in which this Agreement was executed. The Renewal Term is defined as one calendar month beginning at the end of any prior Agreement Term.

### **3. Automatic Renewal.**

This Agreement shall renew automatically at the end of the prior Agreement term unless terminated in accordance with this Agreement either by You or by the Company. We reserve the right to modify the Service Agreement at any time without notice. When a new Agreement term begins, the then current Service Agreement shall apply. Please review this agreement from time to time so that you will be apprised of any changes (<http://www.granitebackup.com/legal>).

### **4. Termination without Cause.**

You may terminate this Agreement at any time, for any reason, by emailing us at [customerservice@unigrep.com](mailto:customerservice@unigrep.com) or calling us at 281-261-6699.

THE COMPANY SHALL NOT BE REQUIRED TO REFUND TO YOU AMOUNTS ALREADY PAID FOR THE MONTH IN WHICH YOU TERMINATE THE AGREEMENT. TERMINATION OF YOUR ACCOUNT WILL NOT CANCEL OR WAIVE ANY FEES OWED TO THE COMPANY PRIOR TO OR AT ACCOUNT TERMINATION. YOUR DATA AND ACCOUNT SETTINGS ARE IRREVOCABLY DELETED AFTER ACCOUNT TERMINATION. SECURING ALL NEEDED DATA FROM YOUR ACCOUNT PRIOR TO ACCOUNT SHALL BE SOLELY YOUR RESPONSIBILITY.

The Company may terminate this Agreement without cause at any time, for any reason, by providing written or electronic mail notice of termination to your email contact address no less than fifteen (15) calendar days prior to the service termination. If the effective date of the

termination occurs prior to the end of the Agreement Term, Company shall refund or not charge You the monthly fees for the month in which Services terminate.

## **5. Payment Terms.**

You agree to be billed at the beginning of the Agreement Term via your credit card for all recurring and one-time charges, including but not limited to late fees and termination charges, for all Company's services ordered by You and for any fees You owe to the Company. You further agree to be billed for any additional services ordered at the time the additional services are ordered and also at the beginning of each Renewal Term

You understand and agree that You are responsible for monitoring and maintaining your accounts within all plan-specified usage limits. In the event your usage exceeds these limits for your account, Company will issue warnings to the contact e-mail on your account. If you continue to exceed these limits for your account, You agree the Company may charge You for such excess usage via your credit card at the then-published price on the Company's web site. The Company may also increase the limits for your account and charge you accordingly for future periods of service. Usage and associated charges for excess usage shall be determined based solely by the Company's statistical information.

## **6. Taxes.**

The Company shall not be liable for taxes and other governmental fees and assessments to be paid which are related to purchases made from You or from the Company's server. You agree that You shall be solely responsible for all taxes, fees, and assessments of any nature associated with products or services sold through the use of or with the aid of services provided to You by the Company.

## **7. Limited Warranty; Limitation of Damages.**

THE COMPANY PROVIDES SERVICES AS IS AND WITH ALL RISKS. YOU EXPRESSLY AGREE THAT USE OF THE COMPANY'S SERVICES IS AT YOUR OWN RISK.

The Company, its agents, affiliates, vendors and the like do not represent or warrant that the Services will be uninterrupted or error free; neither do they make any warranty as to the results that may be obtained from the use of the Services or as to the accuracy, reliability, or content of any information service or merchandise contained in or provided through the Services. The Company expressly disclaims the warranties of merchantability and fitness for a particular purpose and all warranties not expressly contained in this Agreement. You and the Company agree that the terms of this Agreement shall not be altered due to custom or usage or due to the parties' course of dealing or course of performance under this Agreement.

The Company, its agents, affiliates and vendors shall not be liable for any indirect, incidental, special, punitive or consequential damages, including but not limited to damages for lost profits, business interruption, loss of programs or information, and the like, that result from the use or

inability to use the Services; from mistakes, omissions, interruptions, deletion of files or directories, errors, defects, delays in operation, or transmission; or for any failure of performance regardless of whether the Company has been advised of such damages or their possibility, or whether the above events are limited to acts of God, communication failure, theft, destruction, or unauthorized access to the Company's records, programs, or the Services, whether in contract, tort or otherwise.

You agree that the Company's total liability and your sole remedy for any non-accessibility to the Services or other downtime is limited to the penalties listed in the Shared Exchange Hosting Service Level Agreement, however, in no event shall the Company's liability exceed the total aggregate amount paid by You to the Company under this Agreement, including all fees, attorney fees, and costs.

### **8. Patents, Copyrights, Trademarks, and Other Intellectual and Proprietary Rights.**

Except for rights expressly granted herein, this Agreement does not transfer any intellectual or other property or proprietary right to You. You agree that all right, title, and interest in any product or service provided to You is solely the property of the Company. These products and services are only for Your use in connection with Company's services provided to You as outlined in this Agreement.

### **9. Hardware, Equipment, and Software.**

You are responsible for and must provide all phones, phone services, computers, software, hardware, and other services necessary to access Company servers. Company makes no representations, warranties, or assurances that your equipment will be compatible with Company services.

### **10. Age and Capacity.**

You expressly represent and warrant that You and any person to whom You grant access to your Company account have reached the age of eighteen and that You are not subject to any limitation on your ability to enter into this Agreement.

### **11. Indemnification.**

You agree that you shall defend, indemnify, save, and hold Company harmless from any and all demands, liabilities, losses, costs, and claims, including reasonable attorneys' fees, asserted against Company, its agents, servants, officers, and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by You, your agents, employees, or assigns Without limiting the foregoing, You agree to defend, indemnify, and hold harmless Company against liabilities arising out of:

i) any injury to person or property caused by any products sold or otherwise distributed in connection with Company services provided to you;

i) any material supplied by You infringing or allegedly infringing on the property rights of a third part;

iii) copyright infringement; and

iv) any defective product which You sold or distributed by means of Company services.

## **12. Miscellaneous.**

*Governing Law; Jurisdiction; Forum.* This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho without regard to its conflicts of laws or its principles. You agree, in the event any claim or suit is brought in connection with the Company's provision of the Services to You, to submit to the jurisdiction of the State of Idaho, and agree to the courts of Clearwater County, Idaho, as the appropriate forum.

*Severability.* In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not effect any of the other provisions of this Agreement, and this Agreement shall be construed as if such provision(s) had never been contained herein, provided that such provision(s) shall be curtailed, limited, or eliminated only to the extent necessary to remove the invalidity, illegality, or unenforceability.

*Waiver; No Oral Modification.* No waiver by the Company of any breach by You of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of this Agreement. No waiver shall be effective unless it is in writing signed by the parties hereto, and then only to the extent expressly set forth in such writing. No modification of this Agreement shall be effective unless it is in writing and signed by the parties hereto, and then only to the extent set forth in such writing.

*No Assignment.* No benefit or duty under this Agreement shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so shall be void.

*Entire Agreement; Third Party.* This Agreement constitutes the entire agreement for provision of the Services to You and supersedes all other prior agreements and understandings, both written and oral, between You and the Company with respect to the Services. You understand and agree that the Company and You intend to include, as the sole third party beneficiaries of this Agreement, Company's software vendors, with all rights and remedies available as if such vendors were a party to this Agreement.