

# SAMPLE DATA PROCESSING SERVICES AGREEMENT

## Agreement No. [COMPLETE]

**!!!! This is a sample format only and it is not intended to be a legal document. Alter it to suit your needs and have your legal counsel review and approve the final agreement !!!!**

This Agreement confirms the arrangements between [COMPLETE] (hereafter known as Backup Institution or Service) and [COMPLETE] (hereafter known as Lessee Institution) for the business continuity services itemized as follows:

### 1.0 Purpose Of Agreement

- 1.1. The purpose of this Agreement is to state the terms and conditions under which Backup Institution or Service will provide emergency electronic data processing backup facilities and services -- as defined below -- to the Lessee Institution.
- 1.2. Using the Backup Institution or Service's personnel, facilities, supplies furniture, and equipment, Backup Institution or Service will provide Lessee Institution with:
  - A designated area or areas in Backup Institution or Service's facility for the processing of the Lessee Institution's electronic data processing functions affected by the disaster. This area is described in Section 10.0 of this Agreement.
  - Furniture, equipment and supplies that will be made available to Lessee Institution by Backup Institution or Service for Lessee Institution's use after a Declaration of Disaster. This list is part of Section 10.0 of this Agreement.
  - A designated secure area or areas within Backup Institution or Service's vault for the storage of Lessee Institution's electronic data processing media and records.
- 1.3. Backup Institution or Service is responsible for the services listed in this agreement -- and these services only. Backup Institution or Service assumes no responsibility for its inability to perform, due to the Lessee Institution's failure to provide appropriate records, guidance and/or direction.

### 2.0 Definition & Declaration Of Disaster

- 2.1. A disaster is any event -- whether an act of God or otherwise -- that will significantly affect any or all of the Lessee Institution's operations.
- 2.2. A Declaration of Disaster is notification by an authorized representative of Lessee Institution to an authorized representative of Backup Institution or Service that a Disaster has occurred and that Lessee Institution is exercising its rights under this Agreement to use the designated facilities, equipment and supplies of Backup Institution or Service.
- 2.3. Authorized representatives of Backup Institution or Service are:
  - [COMPLETE]
  - [COMPLETE]
  - [COMPLETE]
  - [COMPLETE]
- 2.4. Authorized representatives of the Lessee Institution are:

- [COMPLETE]
- [COMPLETE]
- [COMPLETE]
- [COMPLETE]

2.5. Either party may notify the other, in writing, at any time of a change in authorized representatives as indicated in Section 3.4 of this agreement.

### **3.0 Term Of Agreement, Changes & Cancellation**

- 3.1. The minimum initial term of this agreement is one (1) year; thereafter, automatic renewals are for a period of one (1) year, and shall continue in full force and effect thereafter until it is terminated by 30 days' written notice by either party to the other.
- 3.2. After a Declaration of Disaster by Lessee Institution, Lessee Institution shall be entitled to the use of the designated personnel, facilities, furniture, equipment and supplies of Backup Institution or Service listed in Section 10.0 of this Agreement for (60) sixty days. This time period may be extended upon the mutual consent of the parties. Backup Institution or Service shall make any arrangements that are reasonably necessary to assure Lessee Institution has access to and the use of the designated personnel, facilities, furniture, equipment and supplies.
- 3.3. This Agreement includes the provision of reestablishing business operations by Backup Institution or Service to Lessee Institution: Yes \_\_\_\_\_ No \_\_\_\_\_ [COMPLETE] (Both parties initial the appropriate box). If the "Yes" box is initialed, a Service Agreement is attached to this Agreement and incorporated by this reference.
- 3.4. Any notice or correspondence required by this agreement shall be delivered personally, by certified United States Mail, by e-mail with receipt or by facsimile transmission as follows:

***Correspondence to Backup Institution or Service: [COMPLETE]***

Name:  
 Address:  
 C/S/Z:  
 Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

***Correspondence to the Lessee Institution: [COMPLETE]***

Name:  
 Address:  
 C/S/Z:  
 Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

### **4.0 Changes In Equipment & Testing**

- 4.1. Each institution shall notify the other institution, in writing, of any EDP equipment changes likely to affect either institution's performance under this Agreement. Such notice shall be made as indicated in Section 3.4 of this Agreement, at least (90) ninety days prior to a change causing the configuration of its backup equipment, policies and procedures to be incompatible with the other institution.
- 4.2. Backup Institution or Service shall make available to Lessee Institution at least \_\_\_\_\_ [COMPLETE] consecutive hours of testing time on its equipment each

[MONTH/QUARTER/SIX MONTHS/YEAR], as a means of assuring that such equipment remains compatible for the purposes of this Agreement. The dates and hours to be made available for such testing will be mutually agreed upon by both institutions, and each institution will agree upon (1) one week's prior notice for confirmation of the test(s).

- 4.3. Lessee Institution may request from Backup Institution or Service an additional \_\_\_\_\_ [COMPLETE] consecutive hours of testing time each [MONTH/QUARTER/SIX MONTHS/YEAR], and such additional time shall be made available by Backup Institution or Service within (1) one week of this request.

## **5.0 Confidentiality & Security**

- 5.1. All statistical, financial and personnel data -- as well as security codes and customer lists relating to the business of each party which are confidential -- shall be kept in the strictest confidence by the other party and its employees, unless authorized for release by the affected party, or is compelled to be released by legal process. However, the foregoing obligation does not apply to any data, codes and customer lists which have become publicly available or that are rightfully obtained from third parties.
- 5.2. Lessee Institution agrees to utilize Backup Institution or Service's security procedures in effect at the time of any use of Backup Institution or Service's personnel, facilities, supplies furniture, and equipment.

## **6.0 Compensation**

- 6.1. Lessee Institution shall pay to Backup Institution or Service \$\_\_\_\_\_ [COMPLETE] upon the signing of this Agreement and \$\_\_\_\_\_ [COMPLETE] per month/year for the use of the designated electronic data processing recovery area described in Section 10.0 of this Agreement.
- 6.2. Lessee Institution shall pay Backup Institution or Service \$\_\_\_\_\_ [COMPLETE] per day for use of the designated facilities, furniture, equipment and supplies after the Declaration of Disaster, in addition to reimbursing Backup Institution or Service for any repair or replacement costs incurred as a result of any physical damage to or disabling of its equipment, except for damage or disablement due to normal use.
- 6.3. Lessee Institution shall pay Backup Institution or Service the actual cost of telephone charges, fax charges, copy charges, charges for miscellaneous supplies not listed in Section 10.0 of this Agreement and other third-party charges incurred by Backup Institution or Service as a result of Lessee Institution's use of the designated facilities, furniture, equipment and supplies after the Declaration of Disaster.
- 6.4. Lessee Institution shall compensate Backup Institution or Service for the use of Backup Institution or Service's employees to perform work for Lessee Institution after the Declaration of Disaster at the hourly rates set forth in Section 10.0 of this Agreement. Backup Institution or Service shall provide at least (1) EDP Manager to be present upon its premises at all times that this Agreement is activated.

## **7.0 Excuse For Nonperformance**

- 7.1. Backup Institution or Service will be excused from performance under the terms of this Agreement if an authorized representative of Backup Institution or Service notifies an authorized representative of Lessee Institution that Backup Institution or Service will not

be able to perform because Backup Institution or Service's designated facilities have also been rendered unusable as a result of a Disaster.

- 7.2. "Force Majeure". None of the parties shall be deemed to be in default if performance of the obligations required by this agreement is delayed or becomes impossible because of any act of God, or earthquake, fire, strike, sickness, accident, civil commotion, epidemic, act of government, its agencies or officers, computer failure, or any legitimate cause beyond the control of the parties.

## 8.0 Attorney Fees & Costs

- 8.1. If any action at law or inequity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

## 9.0 Governing Law, Entirety Of Agreement & Partial Invalidity

- 9.1. This Agreement shall be governed by the laws of the State of [COMPLETE]. It constitutes the entire Agreement between the parties regarding its subject matter. If any provision in this Agreement is held by any court to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force.
- 9.2. Each institution and its officers, employees, and/or agents are not liable to the other institution, except for acts of willful misconduct or gross negligence by its officers, employees, and/or agents, in connection with the performance of this agreement. Each institution agrees to defend, indemnify and hold the other institution harmless from any loss, cost, expense, including attorneys' fees, that it suffers or incurs as a result of any claim or action made by a third party, arising out of this agreement.

## 10.0 Services & Fees

- 10.1. **Personnel:** Required Backup Institution or Service's personnel shall be compensated by Lessee Institution at a rate equal to one and one-half (1 1/2) times the hourly rate of the position. Backup Institution or Service shall be responsible for the accurate calculation and payment of appropriate taxes and benefits to its employees. [COMPLETE: Describe other personnel needs here]
- 10.2. **Facilities:** Required use of Backup Institution or Service's facilities shall be calculated at a daily rate for: [COMPLETE]
- |   |    |
|---|----|
| EDP recovery site                       | \$ |
| Lobby (@ _____ square feet)             | \$ |
| Parking (@ _____ spaces)                | \$ |
| Secure vault (@ _____ containers)       | \$ |
| Unsecured storage (@ _____ square feet) | \$ |
- [COMPLETE: Describe other facility needs here]
- 10.3. **Equipment:** Required use of Backup Institution or Service's equipment shall be calculated at a daily rate for: [COMPLETE]
- |                               |    |
|-------------------------------|----|
| Computers (@ _____ per setup) | \$ |
|-------------------------------|----|
- (Includes workspace, printer, monitor, CPU, keyboard and necessary cables)  
[COMPLETE: Include any software or specialty items or configurations here]

Copy machines (@ _____ machines)	\$	
FAX machines (@ _____ machines)	\$	
FAX lines (@ _____ lines)	\$	
Internet connection (@ _____ connection)		\$
Microfilmer (@ _____ per machine)	\$	
Microfiche (@ _____ per machine)	\$	
Proof machine (@ _____ per machine)	\$	
Reader (@ _____ per machine)	\$	
Scanner (image) (@ _____ scanner)	\$	
Sorter (@ _____ per machine)	\$	
Telephones (@ _____ phones)	\$	
Telephone lines (@ _____ lines)	\$	
Typewriters (@ _____ machines)	\$	
Vehicles (@ _____ per vehicle)	\$	
(Mileage @ 36.5 cpm)		

[COMPLETE: Describe other equipment needs here]

10.4. **Furniture:** Required use of Backup Institution or Service's furniture shall be calculated at a daily rate for: [COMPLETE]

Chairs (@ _____ chairs)	\$
Desks (@ _____ desks)	\$
Tables (@ _____ tables)	\$

[COMPLETE: Describe other furniture needs here]

10.5. **Supplies:** Required use of Backup Institution or Service's supplies shall be calculated at a daily rate for: [COMPLETE]

All general office supplies	\$
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[COMPLETE: Describe other supply needs here]

Executed at [COMPLETE], County of [COMPLETE], State of [COMPLETE] on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

"Backup Institution or Service"

By: \_\_\_\_\_ Title: \_\_\_\_\_

Executed at [COMPLETE], County of [COMPLETE], State of [COMPLETE] on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

"Lessee Institution"

By: \_\_\_\_\_ Title: \_\_\_\_\_