

## **Abtech StorTrust Managed Cloud Backup Agreement**

This ABTECH STORTRUST MANAGED CLOUD BACKUP AGREEMENT is made and entered into as of this 1<sup>st</sup> of May, 2017 between Abtech Technologies, Inc. and any of Abtech's subsidiaries, DBAs, agents, successors, or parent companies ("Abtech") and William S. Hart Union High School District ("Client") to establish the specific terms and conditions that govern the Service relationship between both parties.

Upon mutual written consent, Client and Abtech may add Amendments, Exhibits, and Schedules (each an "Addendum" and collectively "Addenda") that define more specific services and additional terms and conditions as Client and Abtech agree to. This Abtech StorTrust Managed Cloud Backup Agreement and any Addenda (collectively "Cloud Backup Agreement") shall automatically (whether or not explicitly stated) incorporate by reference, as if fully set forth therein as a full and binding part of this Cloud Backup Agreement, the Abtech Master Services Agreement ("MSA"). A copy of the MSA may be downloaded at <http://www.abtechtechnologies.com/contract-agreements>.

Client agrees to have read this Cloud Backup Agreement, the Addenda, and the MSA prior to execution and once all are executed be bound thereto. When executed, this and each Addendum will form a separate and complete agreement between both parties and will replace any other agreements or communications regarding that subject matter.

### **1. DEFINITIONS**

The definitions in this section shall apply to this Cloud Backup Agreement. Any capitalized term used but not defined herein shall have the meaning as set forth in the MSA.

- **Authorized Contract Administrator ("Administrator"):** Client designated administrator who may make changes to this Cloud Backup Agreement, declare a disaster verbally via an Abtech supplied code word, or request, authorize, and commit Client to Projects.
- **Authorized User:** Any user designated by the Administrator who may place a Service Request.
- **Cloud Core:** Offsite backup target managed by Abtech where Local Appliance stores a second copy of Client's data and where Cloud Backup Services will be provisioned after the declaration of a Disaster Event that cannot be accommodated by the Local Appliance.
- **Covered Hardware:** Any unique physical device, including but not limited to desktops, servers, laptops, tablets, networking device, portable device, storage (disk, tape, or fixed media), or peripheral which is detailed in the Onboarding Document and accepted by Abtech for or on which Abtech agrees to provide Cloud Backup Services.
- **Covered Software:** Any unique intellectual property, including but not limited to operating systems, databases, applications, updates, tools, diagnostics, firmware, patches, fixes, and documentation thereof which is detailed in the Onboarding Document and accepted by Abtech for or on which Abtech agrees to provide Cloud Backup Services.
- **Covered Environment:** The complete Client environment initially listed in Schedule B: Covered Environment and if applicable which will be superseded by the Onboarding Document which includes Covered Hardware, Covered Software, and Authorized Users for or on which Abtech agrees to provide Cloud Backup Services.
- **Disaster Event:** A situation as determined by Client that requires the use of Cloud Backup Services served from the Local Appliance or Cloud Core.
- **Cloud Backup Services:** The performance of a series of reactive and proactive Cloud Backup Services, either onsite or remote, as outlined in Schedule A: Service Summary performed in the Covered Environment that focuses solely on the IT requirements of Client's business continuance plan. Cloud Backup Services does not include Spin Up on Cloud Core. In some cases, StorTrust may only be a backup target for an existing Local Appliance and this Agreement will only be applicable to the Cloud Backup Services as hosted on the Cloud Core.
- **Cloud Backup Services Technology:** Technology such as software, hardware, appliances, cloud services, or hosted hardware that is owned or licensed by either Abtech or Abtech technology partners that Client is granted a right to use for the duration of this Cloud Backup Agreement.
- **Local Appliance:** Cloud Backup Services Technology that is located at Client's site. The Local Appliance is the local backup target for the Cloud Backup Services and from which Client may restore data. Local Appliance when leased includes backup software licensing and operating system in the MMC. Local Appliance when sold includes operating environment but does not include backup software licensing. Backup software licensing for purchased Local Appliance is included in the MMC.
- **Monthly Management Charge (MMC):** Monthly fee paid to Abtech by Client in consideration of Service and detailed in Schedule A. The MMC is the minimum monthly invoiced amount charged to Client for up to the amount of data estimated in the Storage Allocation. The MMC may increase as data beyond the initial Storage Allocation is surpassed by growing data or the addition of more Client devices needing Cloud Backup Services.
- **Onboarding Document:** If applicable a document produced by Abtech that itemizes Covered Hardware, Covered Software, schedules for service delivery (including but not limited to patch, downtime, and backup windows), site access data, escalation plan, etc. Once completed, the Onboarding Document will become part of this Cloud Backup Agreement and will supersede the Schedule B to define the Covered Environment.
- **Period of Maintenance (PoM):** The designated time during the day in which Authorized Users shall make Service Requests and within which Abtech shall deliver Cloud Backup Services.
- **Project:** Any service beyond that detailed in Schedule A: including but not limited to backup validations and restoration of data. Projects are not part of the Cloud Backup Services and are invoiced to Client separately.
- **Service Request:** A request made by an Authorized User to Abtech for Cloud Backup Services. Service Requests shall be made through the Abtech toll free service request telephone number, via email sent to the Abtech Helpdesk email account, or via the Abtech Client Portal. A Service Request to Spin Up the Covered Environment in the Secure Site must be made by the Administrator by using the code word as authorization.
- **Service Start Date:** The first of either (a) the date that Client data is put on seed device or Local Appliance or (b) 14 days after Abtech ships either device..
- **Spin Up:** the provisioning of a virtual server for Client to conduct day-to-day computing. Spin up happens on the Cloud Core but if a sufficient Local Appliance is purchased or leased spin up of some or all Covered Environment may be available on the Local Appliance.
- **Storage Allocation:** The amount of data at Client site that may be backed up to the supplied Local Appliance and the Cloud Core (if applicable). Client may back up and store the amount protected raw data (including data for retention purposes) as specified by Client during the Onboarding up to the amount detailed in Schedule C: Pricing. The Storage Allocation is the basis for the minimum Monthly Management Charge paid by Client for Cloud Backup Services.

### **2. SERVICE DESCRIPTION**

**2.1** In consideration of Client's payment of the Monthly Management Charge, Abtech shall provide and perform Cloud Backup Services for the Covered Environment for any amount of data up to the Storage Allocation.

### **3. SUITABILITY OF COVERED ENVIRONMENT**

**3.1** In order for Client's Covered Environment to qualify for Cloud Backup Services some minimum standards may apply. Such standards shall be discussed before and during Onboarding. Items in the Covered Environment that do not meet these standards will be identified, presented to Client, and Abtech and Client shall determine if the device will be provided the Cloud Backup Services on a good faith basis or not.

**3.2** Should the Covered Environment not meet the minimum standards, all Cloud Backup Services shall be performed on a good faith effort basis. Abtech shall make no guarantees regarding the ability of Abtech's engineers or technologies to provide Cloud Backup Services to any item of the Covered Environment that does not meet the minimum standards. Abtech's may be required to, and without breach, delay in providing Cloud Backup Services on any item in the Covered Environment that does not meet these minimum standards until such minimum standards are met and after which Cloud Backup Services on those items will resume.

**3.3** In the event of data restoration Client to provide hardware that is compatible with and can accept the operating environment, applications, and data.

**3.4** Client shall provide Abtech full and free access to Covered Environment both physically and remotely. Client agrees to allow the installation of Cloud Backup Services Technology on Client's network as necessary to allow for the performance of Cloud Backup Services. Client agrees that any restrictions regarding full and free access to Covered Environment or installation of managed service technology may hinder Abtech's ability to perform Cloud Backup Services and that any Cloud Backup Services provided to Covered Environment with such restrictions shall be performed on a good faith basis. Abtech may be required to, and without being deemed to be breach, delay in providing Cloud Backup Services on any part of the Covered Environment with restricted access until such access is given and after which Cloud Backup Service on those items will resume. Abtech shall make no guarantees regarding the ability of Abtech's engineers or technologies to back up any part of the Covered Environment that is considered to be restricted.

#### **4. EXCLUDED SERVICES**

**4.1** Service rendered under this Cloud Backup Agreement does not include any service not explicitly stated in Schedule A, including but not limited to the following out of scope tasks:

- a) Any service that changes or is the result of a change to the Covered Environment including but not limited to hardware or software installations, relocations, moves, or adding more storage or servers, service or repair made necessary by the alteration, upgrading, configuration, or modification of Covered Environment by Client, manufacturer, or any other party including Abtech.
- b) Cloud Backup Services to any user, equipment, software, or location that is not included in Schedules B and C, in the Onboarding Document, or any equipment or software not in a known working state.
- c) Day to day management of Client's environment as it pertains to this Cloud Backup Service, including but not limited to: scheduling of backup, verification of completed backups, validation of backup integrity, configuration of Cloud Backup Services Technologies, restoration of data from the Local Appliance,
- d) The handling, transport, or storage of backup media or other Cloud Backup Services Technologies
- e) Additional training beyond that which is training given to Client during the Onboarding
- f) Additional testing of the Cloud Backup Service beyond the quantity of tests included in Schedule A
- g) Establishing, documenting, or administering any business continuance activities outside of the Cloud Backup Service
- h) Providing networking at Client site or bandwidth to Cloud Core
- i) Costs required to bring Client's environment up to the minimum standards
- j) Restoration of data beyond the scope of this Cloud Backup Agreement, including but not limited to data loss prior to the Cloud Backup Service starting or during the installation of Cloud Backup Service Technology
- k) Any additional services required to accommodate Client's regulatory requirements (including but not limited to HIPAA, PCI, or Sarbanes-Oxley) to bring Client and Abtech into compliance
- l) Performance of any system administration task beyond Spin Up of the virtualized environment and arranging the access to those servers such that Client can use their specific knowledge of their unique environment to complete the recovery.
- m) Outbound data communications costs from Client site to Cloud Core

**4.2** Client understands and agrees that any request which is beyond the scope of this Cloud Backup Agreement is considered a Project. Client may elect to have Abtech perform these Projects and will be invoiced at Abtech's then current consulting rates. Additional materials, supplies, and equipment may also be required which may be quoted to Client upon Client's request. Project Services and products will be provided only after Client's written acceptance of Abtech's written estimate and shall be invoiced separately from the MMC.

#### **5. FEES AND PAYMENT**

**5.1** First month's payment of MMC shall be due upon delivery of the seed device to Client site and must be received prior to commencement of the Service. Subsequent MMC fees will be invoiced to Client on a monthly basis, and will become due and payable on the first day of each month in advance of Cloud Backup Services rendered. If applicable, any Onboarding fees will be invoiced after the Onboarding of Client has been completed.

**5.2** Payment method will be Automated Clearing House (ACH) payment, or by bank or company check. Checks returned for insufficient funds shall be assessed the maximum late fee as limited by state law. After payment for undisputed invoices has been past due for 30 days, late payments shall accrue 1.5% interest for every day that payment is late thereafter or to the extent allowable by law. Payment shall not be unreasonable withheld and all disputes will be made in good faith.

**5.3** Client shall pay all applicable state and local sales and use taxes (notwithstanding their designation as excise or privilege taxes) in connection with Abtech's performance of Services to Client.

**5.4** Client understands and agrees that the Onboarding fees and MMC to provide Cloud Backup Service for the Covered Environment was calculated in good faith and based on information given to Abtech by Client. Client agrees that if this information is inaccurate then Client will pay the corrected fees and MMC.

**5.5** Client understands that at some time the Covered Environment will grow beyond the Storage Allocation and licensing as an overage. When this happens, Client agrees and authorizes Abtech to:

- a) Continue to back up beyond the Storage Allocation and allocate additional storage on the Cloud Core to accommodate the overage. Client agrees that any data backed up beyond the Storage Allocation will incur additional backup fees of \$125 per additional TB rounded up to the nearest 1TB increment and for the remainder of the term. Abtech will attempt to give reasonable notice to Client prior to growth exceeding the Storage Allocation so Client may pare back data but will increase the Storage Allocation by at least 1TB if remaining space is 5% or less remaining of the original contracted amount.
- b) Pay additional monthly license fees where Client uses software licenses provided by Abtech as part of this Cloud Backup Agreement and Client adds physical servers or virtual host servers to the Covered Environment.

**5.6** If the growth of stored data exceeds the physical disk drive capacity of a supplied Local Appliance, the Local Appliance storage will need to be upgraded in order to continue the service. Abtech will provide costs for this upgrade at this time. As a physical limitation of disk capacity cannot be remedied without the upgrading the Local Appliance hardware, Client understands that the upgrade will need to be purchased and installed before backing up or restoring new data can be resumed.

**5.7** Client agrees to pay Abtech for any goods delivered or service rendered regardless if such good or service provided the results Client expected, unless the undesirable result was due to Abtech's intentional deceit or a grossly negligent act of Abtech. If an undisputed invoice for Cloud Backup Services or other undisputed charges under this Cloud Backup Agreement, or an undisputed invoice for other products or Services provided to Client by Abtech under a different

agreement with Abtech remains unpaid following five (5) days from the payment due date Abtech may suspend performance of its obligations under this Cloud Backup Agreement until all undisputed past due amounts are paid without liability to Client.

**5.8** Client agrees that failure to pay invoices is a material breach of the Cloud Backup Agreement and is subject to the termination remedies in Section 6.

**5.9** Restarting Service after suspension will require a reseeding of the Cloud Core as a Project.

## **6. TERM AND TERMINATION**

**6.1** This Cloud Backup Agreement shall commence on the Service Start Date when countersigned by Abtech. Regardless of date of the execution of the Cloud Backup Agreement, Cloud Backup Services and payment for such Cloud Backup Services will continue for thirty-six (36) months from Service Start Date in Schedule C: Pricing. Cloud Backup Services may renew by written mutual consent of both parties for one (1) additional two-year term, or to the extent allowed by law.

**6.2** Notwithstanding the foregoing, either party may terminate this Cloud Backup Agreement or any Addendum immediately if the other party: (a) experiences a Change of Control; (b) experiences a Bankruptcy Event unless it is succeeded by a permitted assignee under this Cloud Backup Agreement; (c) fails to fulfill in any material respect its obligations or breaches any material term or condition under this Cloud Backup Agreement and does not cure such failure within thirty (30) days of receipt of written notice; (d) is no longer in the commercial interest of Abtech or Client to continue the Cloud Backup Agreement or any Addendum.

**6.3** Upon termination of this Cloud Backup Agreement and any Addenda for any reason (including the expiration of this Cloud Backup Agreement by its terms for the termination of the Cloud Backup Agreement for cause):

**6.3.1** Client shall permit Abtech to remove all Abtech property, leased Local Appliance, Cloud Backup Services Technology, and supplies by Abtech within fifteen (15) days from date of termination. Failure to return these items within the time allotted will result in further invoices until such time that the items are received by Abtech. Abtech is responsible for any damage in transit from Client back to Abtech. Client to put any Abtech owned equipment under Client insurance policy to cover for damage while at Client site

**6.3.2** Client shall pay to Abtech within fifteen (15) days of the termination date all undisputed charges due, including, if any, liquidated damages.

**6.3.3** Abtech shall assist Client with the termination or transfer of Cloud Backup Services by allowing Client to keep the Local Appliance with Client data for fifteen (15) days or purchase allow Client to purchase the Local Appliance at the then current purchase price. Abtech shall remove all Client data from Secure Site within fifteen (15) days of termination of the Cloud Backup Agreement.

**6.3.4** If Client has purchased the Local Appliance, Client shall allow physical or remote access to the Local Appliance to Abtech for the removal of Cloud Backup Services Technology.

**6.4** If termination by either party results from Abtech's failure under 6.2(c) or 6.2(d), Abtech agrees to refund any pre-paid amount from Client for Services minus the charges to provide such Cloud Backup Services to Client up to the last date that Abtech provides Cloud Backup Services to Client.

## **7. Provision of Service and Technology**

**7.1** Subject to this Cloud Backup Agreement, Abtech agrees to provide Client access to Cloud Backup Services Technology to facilitate the Cloud Backup Services providing the Cloud Core can accommodate Client's computing load if another client is already using the Cloud Backup Service.

**7.2** Client acknowledges and agrees that Client has a non-exclusive, non-transferable license to use Cloud Backup Services Technology during the term of this Agreement. Abtech and its technology partners shall retain all rights of ownership of the Cloud Backup Services Technology, all copyrights and other intellectual property, and all modifications and changes to the technology. In no event shall title to all or any part of the Cloud Backup Services Technology pass to Client and all such Cloud Backup Services Technology shall remain the exclusive property of Abtech and/or its technology partners, with the exception of the Local Appliance hardware should Client choose to purchase the Local Appliance rather than lease. If Client has chosen to purchase rather than lease Local Appliance, then any repair or replacement of Cloud Backup Services Technology will be the responsibility of Client under original manufacturer warranty or any post-warranty service.

**7.3** It shall be the primary responsibility of Client to ensure the security of their system, data, programs, and files. Client shall implement reasonable, industry standard security and environmental precautions for the Covered Environment and Cloud Backup Services Technology to ensure a high level of availability, data protection, and recovery. Transfer of Client data is across the public internet and encryption is highly recommended for security. Encryption, though not enable by default, is available through the Cloud Backup Service and may be installed during Onboarding at no additional cost to Client. The implementation of encryption in Client's overall security strategy and it subsequent management is the responsibility of Client. The safeguarding of encryption keys are the responsibility of Client and Abtech cannot recover lost encryption keys. Due to the inherent nature of encryption technology, if Client loses encryption keys, data will not be recoverable. A reliable and verified system backup procedure shall be the responsibility of Client.

**7.4** Client understands that Covered Environment when hosted on Abtech's Cloud Backup Services Technology may perform or function differently than when hosted at Client site. It is the responsibility of Client to verify during a scheduled test that the functionality of the Covered Environment provides the basic service needed for Client to perform basic day to day activities during a Disaster Event and reconfigure accordingly. Client must provide an adequate amount of bandwidth for Cloud Backup Services to perform correctly; this may require additional bandwidth as the Covered Environment grows. Client agrees that if, despite Abtech's efforts to schedule a test of the Cloud Backup Services Technology within 90-days of the Start Date, Client does not accommodate the test, that (a) Client waives the right to the test, (b) Client accepts that they are satisfied that the Cloud Backup Services meets Client's expectations, (c) Abtech has fulfilled its duties to test without breach, (d) should Client have a multi-year Agreement Client will retain the right to test again within 90 days of the anniversary date, and (e) should Client again not accommodate the test this section will again apply.

**7.5** Cloud Backup Services and Cloud Backup Services Technology are for Client's sole internal business use under the terms of this Cloud Backup Agreement. Client shall not and shall not let others modify, customize, reverse engineer, reverse assemble, or reverse compile Cloud Backup Services Technology.

**7.6** Client acknowledges and agrees that Client shall not place any data on Cloud Backup Services Technology that a) infringes the intellectual property rights or privacy right of any third party, b) violates any law, statute, ordinance, or regulation, c) is defamatory, libelous, unlawfully threatening or harassing, d) is obscene, e) contains any malicious software, code, or programming routines including but not limited to: Trojan horses, malware, viruses, spyware, root kits, bots, spam, worms, or any other such technology that may damage, interfere, intercept, or expropriate any system, data, or personal information.

**7.7** Abtech may disclose to third parties any Client data in which Abtech has a good faith belief that disclosure is necessary to (a) comply with a law, regulation, or compulsory legal request; (b) protect the safety of any person from death or serious bodily injury; (c) protect the property rights of Abtech or our Cloud Backup Service Technology Partners; or (d) prevent fraud or abuse. Abtech shall notify Client of any such request prior to releasing Client information.

**7.8** Client is responsible for notifying Abtech of any regulations regarding the data stored (HIPAA, PCI, Sarbanes-Oxley, etc) and shall assume any additional costs to achieve regulatory compliance.

**7.9** Client agrees that violation of this Section 7 is a material breach of the Cloud Backup Agreement and subject to the termination remedies of Section 6. Client agrees to defend, indemnify and hold Abtech and its Cloud Backup Service Technology partners harmless against any third party action or fines that arise from Client's violation of this Section 7. Section 5.2, 5.4, 5.7, 7.2, 7.5, 7.6, 7.7, 7.8, and 7.9 shall survive termination of this Cloud Backup Agreement.

## **8. ACCEPTANCE**

**8.1** Each party to this Cloud Backup Agreement represents that it is a sophisticated commercial party capable of understanding all terms of this Cloud Backup Agreement, that it has had the opportunity to review this Cloud Backup Agreement with its counsel, and that it enters this Cloud Backup Agreement with full knowledge of the terms of the Cloud Backup Agreement.

**8.2** Client acknowledges that it has read this Cloud Backup Agreement and MSA, understands and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties. This Cloud Backup Agreement may not be modified or altered except by mutual written agreement, and signed by both parties.

Agreed to:  
  
Abtech Technologies, Inc.  
  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Agreed to:  
  
("Client")  
  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## **Schedule A: Services Summary – Abtech StorTrust Managed Cloud Backup Services**

Abtech's Cloud Backup Services are subject to the terms and conditions contained in this Cloud Backup Agreement and Master Service Agreement. Abtech hereby agrees to provide to Client a Cloud Backup Service as defined below for the Covered Environment.

### **This Cloud Backup Service may include the following:**

#### **1) Onboarding (Appendix 1)**

- a. Planning: During the planning phase of the Onboarding service, Abtech will evaluate the Covered Environment, compliance with the minimum requirements for suitability of the service. Abtech will also work with Client's team to determine the Contract Administrator, Authorized Users, remote access, and escalation procedures.
- b. Preliminary Report: Provide a summary of findings, advising Client of any limitations of Cloud Backup Service due to security, non-compliance of minimum requirements to receive Cloud Backup Service, and/or any changes to the environment to receive Cloud Backup Services.

#### **2) Backup**

- a. Seeding/Initial Backup: Abtech to configure the Local Appliance to copy the data to the Cloud Core either via a physical device that is transported to Abtech's datacenter to be restored to Abtech's Cloud Core or via the Internet. Onboarding is assuming a single seed of all protected data at one time. Multiple seeds or breaking up a single environment into staged seedings may be requested as a Project.
- b. Backup Scheduling: Abtech to schedule back up of Client data to the Local Appliance and Cloud Core as per the schedule and retention policy agreed to between Client and Abtech.
- c. Retention: The Storage Allocation has been sized for a one (1) month data retention.

#### **3) Monitoring**

- a. Abtech to use industry standard monitoring tools to verify that the Cloud Core is functional and available.
- b. As monitoring does not include the verification of the completion of backups or validation of the backups Abtech can make no guarantee that backup data has not been corrupted or is in any particular usable state for recovery. Abtech strongly recommends performing a data restoration check once per quarter or assign this task to Abtech as a Project.

#### **4) Restoration**

- a. Restoration from the Local Appliance or the Cloud Core can be performed at any time.

#### **5) Call-in Technical Support**

The Period of Maintenance for Call-In Technical Support during which Client may call Abtech is as follows: for configuration support and questions during normal business hours: M-F 8AM-5PM PST; After-hours and weekend Call-in Technical Support available at hourly rates and minimums as outlined in Schedule C. If Client is using StorTrust as a backup target only, Call-in Technical Support begins at the Cloud Core firewall and back, all support for backup software, operating system, hardware, etc. are responsibility of Client.

## Schedule B: Covered Environment

Covered Systems and Storage - Local Backup					
Physical Hosts:		Virtual Hosts:		Virtual Machines:	
Hypervisor:					
Total Storage:		16TB			
Operating Systems:					
Supplied Appliance		Existing AppAssure/Rapid Recovery Appliance			

Covered Systems and Storage - Cloud Backup					
Physical:		Virtual Hosts:		Virtual Machines:	
Hypervisor:					
Total Storage:		16TB			
Operating Systems:					
Maximum Provisioned VM's during Disaster:		N/A			

Special Requirements

### **Schedule C: Pricing – Abtech StorTrust Managed Cloud Backup Services**

<b>Client Name:</b>	<b>William S. Hart Union High School District</b>		
<b>Service Start Date:</b>	04/15/2017	<b>Contract Renewal Date:</b>	04/15/2020
<b>StorTrust Contract Number:</b>	ST029		
<b>Storage Allocation:</b>	Up to: 16TB	<b>Appliance Capacity:</b>	Existing
		<b>Additional Locations</b>	
<b>Location(s) and phone #:</b>	21380 Centre Point Parkway, Santa Clarita, CA, 91350 (661)259-0033		
	<b>Primary Contact</b>	<b>Secondary Contact</b>	<b>Licensing Contact</b>
<b>Client Contacts:</b>	Brian Sunde		
<b>Contact E-mail:</b>	bsunde@hartdistrict.org		

#### **Summary of Monthly Charges**

Service	Description	Qty	Price	Extended Price Monthly
StorTrust Storage	MMC: Up to 16TB total capacity	1		2,000.00
<b>Monthly MMC Total:</b>				<b>\$2,000.00</b>

#### **Summary of One Time Charges**

Service	Description	Qty	Price	Extended Price
Onboarding	Implementation and data seeding process. Configuration of backup and replication. Administrator Training. Testing of solution.	1		1,200.00
<b>Total:</b>				<b>\$1,200.00</b>

All remediation services as well as any additional support services outside the scope of service as defined in Schedule A: will be billed at the following rates:

Additional Services Outside of Agreement	Abtech Business Hours	Outside Business Hours	Abtech Holidays*
Helpdesk/NOC - Remote/Telephone:	\$200/hour	\$250/hour	\$300/hour
Minimum:	15 minute increments	1 Hour	1 Hour
Helpdesk/NOC – Onsite, portal to portal:	\$200/hour	\$250/hour	\$300/hour
Minimum:	2 Hours plus travel	2 Hours plus travel	2 Hours plus travel
Hardware Support - Onsite, portal to portal:	\$200/hour	\$250/hour	\$300/hour
Minimum:	2 Hours plus travel	2 Hours plus travel	2 Hours plus travel
Consultant/DBA – Remote/Telephone:	\$250/hour	\$300/hour	\$350/hour
Minimum:	1 Hour	1 Hour	1 Hour
Consultant - Onsite, portal to portal:	\$250/hour	\$300/hour	\$350/hour
Minimum:	2 Hours plus travel	2 Hours plus travel	2 Hours plus travel

\*Abtech Observed Holidays schedule for current year available upon request.

## Appendix 1: Statement of Work for StorTrust Onboarding Project

### Project Summary and Goals

In summary, the implementation will consist of the following phases:

- An initial discovery to understand and document the hardware, software and networking environments;
- Guiding Client through installing and configuring the external seeding device, connecting it to a network. Also included will be the seeding process for the StorTrust Cloud Core backup.

Upon completion of the service, it is intended that Client will have:

- The backup data seeded to the StorTrust Cloud Core
- Have knowledge of configuring and monitoring their backups
- Contact information
- A file with StorTrust critical information in it. Changes to the configurations, Covered Environment, and any other documentation needed to recover Client in the Cloud Core is the responsibility of Client.

### 1. Scope of Work

Abtech will deliver the Service in the following Phases:

Phase	Description	Performed By	Location	After Hours
1.0	Pre-Implementation			
1.1	<p>Project Kick-off</p> <ul style="list-style-type: none"><li>• At least 2 weeks prior to implementation start, have conference call with Client stakeholders to<ul style="list-style-type: none"><li>○ Review the project Scope and approach</li><li>○ Discuss service readiness of environment:<ul style="list-style-type: none"><li>▪ Verify status, configuration, and accessibility of existing environment</li></ul></li><li>○ Plan and schedule the installation and configuration tasks<ul style="list-style-type: none"><li>▪ Establish 2 alternate service dates at least 1 week apart</li><li>▪ Alternate service date 1: _____</li><li>▪ Alternate service date 2: _____</li></ul></li></ul></li><li>• Assign the pre-installation responsibilities between Client and Abtech</li><li>• Exchange contact, procedural, and schedule information between Client and Abtech.</li></ul>	Abtech & Client	Remote	N
1.2	<p>Environment Review</p> <ul style="list-style-type: none"><li>• <u>Physical</u>: rack space, power, cooling, access from receiving, network drops, cables as defined in Client responsibilities below</li></ul>	Client	Onsite	N



	<ul style="list-style-type: none"> <li>• <u>Seeding Device</u>: Client has received the StorTrust Seeding Device</li> <li>• Abtech available to do these tasks as an optional expansion of the project</li> </ul>			
1.3	<p>Kick-off Follow Up</p> <ul style="list-style-type: none"> <li>• At least 1 week prior to project beginning, have conference call with Client to verify that: <ul style="list-style-type: none"> <li>○ All pre-installation responsibilities have been completed</li> <li>○ Environment is ready for service</li> <li>○ Service date is acceptable or needs to be moved to one of the alternate service dates</li> <li>○ If Client uses Dell AppAssure, Abtech to log into AppAssure server to verify functionality</li> </ul> </li> </ul>	Abtech & Client	Remote	N
	<u>Completion criteria for this phase</u> : Shipment of integrated and pre-configured seeding device to Client site.			
<b>2.0</b>	<b>Implementation</b>			
2.1	<p>Cloud Core Seeding Process:</p> <ul style="list-style-type: none"> <li>• Abtech will monitor initial backups</li> <li>• Once backups are complete, Abtech will detach the seeding device from the Local Appliance</li> <li>• Upon instruction from Abtech, Client will package the seeding device in packaging provided by Abtech and send it to Abtech using the preconfigured shipping label provided by Abtech</li> <li>• Upon receipt of the seeding appliance, Abtech will seed the StorTrust Cloud Core from the seeding appliance and initiate replication from Client's Local Appliance</li> <li>• Verify that Client can recover a file from the StorTrust Cloud Core</li> </ul>	Abtech	Remotely & Onsite	N
	<u>Completion criteria for this phase</u> : Client verifies that they have been able to recover a file from the StorTrust Cloud Core			
<b>3.0</b>	<b>Post-Implementation</b>			
3.1	<p>Post-Implementation Review:</p> <p>Meeting between Abtech and Client to review implementation, answer any configuration or usage questions, discuss future of solution, and plan any post-implementation support</p>	Abtech & Client	Remote	N
3.2	<p>Post-Implementation Support</p> <p>Call-in technical support to answer "how to" questions in the new environment (for duration of contract)</p>	Abtech & Client	Remote	N

All phases of the project have been completed and the SOW has been met.

Client Sign-off: \_\_\_\_\_ Date \_\_\_\_\_

By signing "Client Sign-Off", Client agrees that the tasks have been completed to Client's technical satisfaction or as near to Client's technical satisfaction as circumstances and unforeseen events could reasonably allow. Client agrees that each signed off phase can be invoiced by Abtech and Client will pay the invoice within the established payment terms.

## 2. Scope Boundaries

The Service is limited as follows:

<b>In terms of</b>	Existing Local Appliance	<b>this Service is limited to</b>	1
<b>In terms of</b>	Storage Capacity TB	<b>this Service is limited to</b>	16
<b>In terms of</b>	Seeding device	<b>this Service is limited to</b>	1

Any Service requested of Abtech personnel to perform consulting or labor above and beyond the Scope or Scope Boundaries may require additional consulting hours to complete. A revised quotation and Scope of Work will be created and work will begin once a Client purchase order has been received.

## 3. Client Responsibilities

Client will provide and have available at the time that Abtech's team is onsite:

1. Two full, validated backups prior to work commencing
2. Necessary rack space for Local Appliance and, if necessary, the seeding device.
3. The following network connections:
  - a. One 100baseT or better auto-negotiate connection for StorTrust console port.
  - b. One or more Gigabit auto-negotiate connection(s) for StorTrust production backup network. NOTE: Abtech highly recommends that at least two production network connections be installed for redundancy and throughput. For Local Appliances over 10TB in capacity, at least two network connections are required and four preferred.
  - c. If applicable, one management console port connection and at least one production connection for the seeding appliance.
4. Necessary IP network information to configure the network connections specified above.
5. Necessary power connections for the Local Appliance 100-240 VAC. The hardware uses 2 x C13 connections as standard per system. Abtech can provide either NEMA 5-15P (standard parallel blade plug) or C13/C14 (computer power connection) power cables for the Local Appliance.
6. Scheduled time for adequate seeding. Client realizes that the StorTrust software may have a noticeable impact on their environment as it gathers the necessary data for backup. Client will work with Abtech to fit the performance requirements into their production environment. Frequent backup cycles may not be possible due to restrictions in Client's environment.
7. Any key Client personnel available for the duration of the project
8. VPN connection to Local Appliance and seeding device for configuration and/or troubleshooting.
9. Client is responsible for all their own operating system, application, and virtualization software and/or firmware licensing.
10. Once the DR environment has been deemed ready for testing, Client shall be responsible for running the actual DR tests. Any problems other than those associated with the hardware infrastructure provided by Abtech shall be Client's responsibility to resolve.
11. Coordinate with Client network provider in order to configure the network infrastructure

12. Client responsible for remote network switch configurations
13. Work with Abtech personnel as required on this project.
14. Abtech will need to access the Local Appliance in one of the following manners and will be agreed upon during Onboarding:
  1. Abtech to install a monitoring application on the Local Appliance and which allows remote access. Such remote access will not allow Abtech access to unencrypted Client data.
  2. Abtech to install an SMTP relay from the Local Appliance to forward emails to Abtech.
  3. Client agrees to be responsible for all monitoring Local Appliance and responding to any alerts. Client understands that failure to act on any alert message could result in the loss of functionality and/or data on the Local Appliance.

Any deviation from Client responsibilities may cause delay, additional hours to be invoiced, or a postponement of the entire project.

# ABTECH MASTER SERVICE AGREEMENT

This MASTER SERVICE AGREEMENT ("Agreement") is made between Abtech Technologies, Inc. and any of Abtech's subsidiaries, DBAs, agents, successors, or parent companies ("Abtech") and William S. Hart Union High School District and its affiliates, subsidiaries, DBAs, divisions, branches, departments, agents, successors, or parent companies thereof ("Client") to establish the general terms and conditions that govern the service relationship between both parties.

Upon mutual written consent, Client and Abtech may add Addenda, Amendments, Exhibits, additional Agreements, and Schedules (each an "Addendum" and collectively "Addenda") that define more specific services and additional terms and conditions as Client and Abtech agree to. Each Addendum once duly executed by the parties shall automatically (whether or not explicitly stated) incorporate by reference, as if fully set forth therein as a full and binding part of the Addendum, all the terms and conditions of this Agreement.

## 1. DEFINITIONS

1.1 Bankruptcy Event means a party: (i) ceases conducting its business in the normal course; (ii) becomes insolvent or becomes unable to meet its obligations as they become due; (iii) makes a general assignment for the benefit of its creditors; (iv) petitions, applies for, or suffers or permits with or without its consent the appointment of a custodian, receiver, trustee in bankruptcy or similar officer for all or any substantial part of its business or assets; or (v) avails itself or becomes subject to any proceeding under the U.S. Bankruptcy Code or any similar state, federal or foreign law relating to bankruptcy, insolvency, reorganization, receivership, arrangement or adjustment of debts, dissolution or liquidation, if the proceeding is not dismissed within sixty (60) days after it commences.

1.2 Change of Control means a party sells more than fifty (50) percent of its voting stock or a substantial part of the operating assets relating to the activities contemplated in this Agreement in one transaction or a series of related transactions, other than to an Affiliate of that party. Change of Control excludes the transfer of Abtech or Client to heirs upon the death of the shareholder(s).

1.3 Documentation means help files, written instruction manuals, or reference materials supplied by either Abtech, Client, or another third party who owns the Intellectual Property Rights of such Documentation which is licensed to either Client or Abtech for use to assist in providing service to Client.

1.4 Intellectual Property Rights means all rights of a person or entity in, to, or arising out of: (i) any patent or any application therefore and any and all reissues, divisions, continuations, renewals, extensions, and continuations-in-part thereof; (ii) trademarks; (iii) trade secrets; (iv) copyrights, copyright registrations, mask works, mask work registrations, and applications therefore recognized by the United States or any country in the world.

1.5 Intellectual Property means any copyrighted material, including but not limited to any and all computer software and code, assemblers, compilers, operating environments, utilities, passcodes, fixes, diagnostics, firmware, tools, source code (but only if source code is specifically licensed under this Agreement), object code or other executable code including associated data files, data (including image and sound data), design tools, user interfaces, templates, menus, buttons and icons, and related Documentation.

## 2. NATURE OF OUR RELATIONSHIP

2.1 Except as detailed in section 4.5, the parties are acting herein and shall remain as independent contractors and nothing contained herein shall be construed to create a partnership, joint venture, or agency relationship between the parties. Neither party shall have the authority to bind, create, or assume any legal obligations for other party in any respect. Neither party is or will claim itself to be an agent, legal representative, partner, joint venture participant, franchisee or employee of the other party. Each party is responsible for the direction and control of its own employees. Each party will pay all applicable payroll taxes, employee benefits, insurance requirements or similar obligations relating to its own employees.

## 3. CONFIDENTIAL INFORMATION

Confidential Information includes, but is not limited to, the terms of this Agreement, all customer names, Documentation, strategies, pricing, information, data, drawings, benchmark tests, business practices, interfaces, specifications, trade secrets, source code (if any is provided) or any other proprietary information supplied by one party to the other and marked as "confidential information" on the documentation, accompanying transactional document, letters, or email at the time it is provided or within a reasonable time afterward.

3.1 Both parties acknowledge that the other party's Confidential Information constitutes valuable proprietary information and trade secrets and each party agrees that the other party shall use, commercialize or disclose the other's Confidential Information only as permitted by this Agreement. Each party will not allow the other party's Confidential Information to be disclosed, directly or indirectly, to any unauthorized third party without the other party's prior written consent. Each party agrees to exercise due care in protecting the other's Confidential Information from unauthorized use and disclosure at least to the same extent it protects its own Confidential Information. The foregoing restrictions do not apply to Confidential Information that is: (i) at the time of disclosure is already in the public domain (ii) made publicly available through no fault of the receiving party, (iii) obtained by the receiving party from third parties without restrictions on disclosure, (iv) independently developed by the receiving party without reference to the other's Confidential Information. In the event a receiving party is required to disclose by order of a court or other governmental entity with competent jurisdiction the Confidential Information of the disclosing party, the receiving party will prior to any disclosure notify the disclosing party in writing of any such order in order to permit the disclosing party a meaningful opportunity to limit or prevent disclosure of its Confidential Information and any Confidential Information so disclosed shall be only to the extent minimally necessary to comply with such order and shall remain confidential.

3.2 Each party shall protect the other party's Confidential Information of a technical nature (including source code, if any) in perpetuity and each party shall protect business, financial and other non-technical Confidential Information during the term of this Agreement and for three (3) years thereafter.

3.3 In the event of actual or threatened breach of the provisions of this Section (including for these purposes, the use of the Internal Reference Copy or other Intellectual Property beyond its permitted use), in addition to any other remedies available at law or in equity, the aggrieved party will be entitled to immediate injunctive and other equitable relief, without necessity of posting bond or showing actual damage or irreparable harm.

## 4. INTELLECTUAL PROPERTY NON-INFRINGEMENT WARRANTY & INDEMNITY

4.1 Each party represents and warrants, to the best of its knowledge and belief and solely for the benefit of the other party, that any Intellectual Property or other Confidential Information provided to the other party will not infringe the Intellectual Property Rights of any third party in the United States or any country that is a member of the Berne Convention at the time of the alleged infringement. Client represents and warrants that they are the legal owner or lawful licensee of the Intellectual Property that Abtech performs services on or with and that all systems are legally configured and licensed. Client represents and warrants that they have the legal right to allow Abtech to use any Intellectual Property to perform the contracted services. Abtech shall not be held responsible or liable for omissions or errors in any Documentation or Intellectual Property produced by the Client or other parties.

4.2 Each party will defend, indemnify and hold harmless the other party from any claim arising from that party's material breach of the non-infringement warranty described in Section 4.1 above. If given prompt notice of such a claim and the ability to control its defense, the indemnifying party will pay any damages, costs, expenses (including reasonable legal fees) and settlements entered into with its approval in satisfaction of the claim. Each party will cooperate with the other party in any such proceedings. Neither party is obligated to indemnify the other with respect to claims resulting from any modifications to Intellectual Property by employees and consultants of the party seeking indemnification. If indemnifying party does not defend the claim in a timely manner, the indemnified party shall have the full rights to defend, pay, or settle such claim on indemnifying party's behalf and indemnifying party shall pay any judgment or settlement of the claim and reimburse indemnified party for its costs and expenses (including, but not limited to reasonable attorneys' fees and other legal fees) in connection with the claim.

4.3 Under no circumstances will Abtech agree to supply, distribute, procure, download or otherwise obtain on behalf of Client any Intellectual Property owned by any third party. Client agrees, upon request, to provide proof of valid ownership of license for any Intellectual Property that any of Abtech's employees, agents or representatives are requested to load onto Client's computer system in the performance of service to Client. Abtech's employees, agents and representatives will not load or reload any unauthorized Intellectual Property. If Client has instructed Abtech to load Client licensed Intellectual Property of any third party, with the intent of parallel use of transferred Intellectual Property during the transition of one system to another, permission must be granted by the Original Equipment Manufacturer ("OEM") and all OEM Intellectual Property policies must be respected.

4.4 If service requires Intellectual Property that is not owned or licensed by Client, Client agrees to procure the right to use of said Intellectual Property prior to Abtech performing services either on or with it. If Client elects to not procure the use said Intellectual Property, then Client agrees that Abtech has fulfilled the service delivery obligation of this Agreement or Addendum to Client's satisfaction, regardless of the outcome of the service call.

4.5 In order to fulfill the Agreement with Client, Client agrees to allow Abtech, its employees, agents, and/or contractors, to act on Client's behalf and solely for Client's benefit, to use third party Intellectual Property that the Client has legal access to and is licensed to use. Client agrees to allow Abtech to use Client's third party Intellectual Property to perform service on Client owned or licensed equipment or Intellectual Property, including but not limited to downloading from a Licensor's electronic distribution facility for Intellectual Property with Client credentials, installing, executing, updating, patching, fixing, troubleshooting, or repairing equipment or Intellectual Property. Client agrees to indemnify Abtech and not hold Abtech liable in the event of any claim of Intellectual Property or license infringement made by the original manufacturer or other third party.

4.6 Client agrees to comply with any third party agreement, including but not limited to end user license agreements ("EULA"), service agreements, terms and conditions, etc. of any technology that Abtech performs services on. Such agreements are executed between Client and manufacturer and as such Abtech shall not be a party to those agreements. Client is solely responsible for any payments, fees, or renewals owed to the manufacturer. In the event that Abtech as a reseller of the manufacturer or Client is using Abtech infrastructure as a service which generate manufacturer fees, Abtech's sole responsibility will be to invoice those fees and pay the manufacturer.

## **5. GOOD FAITH AND WARRANTY**

5.1 Abtech agrees to use good faith efforts based on industry standards and practices to complete a service or deliver goods to as close to Client's satisfaction as is technically reasonable and without undue delay.

5.2 Except for services delivered directly by Abtech employees, Client understands that Abtech is not the manufacturer of resold products and the only warranties offered are those of the manufacturer, not Abtech. Warranty remedies offered by manufacturer are Client's exclusive remedies. ABTECH HEREBY EXPRESSLY DISCLAIMS TO THE MAXIMUM EXTENT ALLOWED BY LAW ALL WARRANTIES EXPRESSED OR IMPLIED, RELATED TO THIRD-PARTY VENDOR PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF NONINFRINGEMENT. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY MANUFACTURER WARRANTY.

5.3 Client understands and agrees that due to the inherently complicated nature of computing environments, limitations and compatibility of hardware and software, the shared nature of all service with other clients, or variables beyond the control of Abtech, that Abtech cannot warrant or guarantee availability or that Abtech's recommendations, solutions, efforts, availability, or any service may produce results desired by Client or achieve an intended goal and as such are provided on an "as is" basis. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, ABTECH HEREBY EXPRESSLY DISCLAIMS TO THE MAXIMUM EXTENT ALLOWED BY LAW ALL WARRANTIES EXPRESSED OR IMPLIED, RELATED TO RECOMMENDATIONS, SOLUTIONS, EFFORTS, AVAILABILITY, ACCESS, OR SERVICE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF NONINFRINGEMENT. WITHOUT LIMITING THE FOREGOING, ABTECH DOES NOT WARRANT THE SERVICES, EQUIPMENT, OR LICENSED SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, FREE OF LATENCY OR DELAY, OR THAT THE SERVICES, EQUIPMENT OR LICENSED SOFTWARE WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES.

## **6. LIMITATION OF LIABILITY**

6.2 Except as otherwise provided for herein, Abtech and its shareholders, directors, officers, and employees shall not be liable to Client or any other person for any claim of damage arising, directly or indirectly from the furnishing of services or products pursuant to this Agreement or from interruption or loss of use thereof, or from any other cause. Under no circumstances shall Abtech and its shareholders, directors, officers, and employees be liable for any indirect, punitive, special, exemplary, consequential, or incidental damages, including but not limited to: loss of real or anticipated profits, loss of business use, loss of data, or other economic loss in connection with the services to be rendered hereunder, even if the parties acknowledge the possibility of such damages.

6.3 Abtech shall not be considered in default hereunder due to any failure in its performance of this Agreement should such failure arise out of causes beyond its control and without its fault or gross negligence. Such causes shall include but are not limited to as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or degradation of electricity, communication lines or telephone service.

## **7. MUTUAL INDEMNIFICATION**

7.1 Abtech shall indemnify and hold Client, and the respective employees and agents of any of them, harmless against any and all third party claims, liabilities, losses, damages and causes of action relating to personal injury, death or property damage arising out of the intentional or grossly negligent acts or omissions of Abtech in the performance or nonperformance by Abtech of this Agreement; provided, however, that Abtech shall not be responsible for injury attributable to the acts or omissions of Client, or its shareholders, directors, officers, and employees or of other subscription holders.

7.2 Client shall indemnify and hold Abtech, and Abtech's shareholders, directors, officers, and employees, harmless against any and all claims, liabilities, losses, damages, and causes of action relating to personal injury, death, or property damage arising out of the intentional or negligent acts or omissions of Client in the performance or nonperformance by Client of this Agreement; provided, however, that Client shall not be responsible for injury attributable to the acts or omissions of Abtech, its shareholders, directors, officers, and employees.

## **8. SECURITY AND DATA**

Abtech shall make all good faith efforts to safeguard and protect equipment, programs, Documentation, and files from damage, loss, or corruption while performing all services but cannot warrant or guarantee complete security. It shall be the primary responsibility of Client to ensure the security of their system, data, programs, and files. Transfer of Client data may be across the public internet and encryption is highly recommended for security. A reliable and verified system backup procedure shall be the responsibility of Client. Client shall have at a minimum, two (2) verified current system backups available prior to Abtech performing any task on Client equipment or Intellectual Property, or the installation of any hardware provided to Client by Abtech, regardless if Abtech personnel are involved in the services to implement such hardware or not. Abtech will not be responsible for loss of data under any circumstance, including but not limited to damage, total or partial loss, corruption, or inaccuracy. If access to data is temporarily disrupted due to the gross negligence or willful misconduct of Abtech, Abtech shall, at its own expense and as Client's sole remedy, restore Client data from Client's verified current system backup.

## **9. TERM AND TERMINATION**

9.1 This Agreement will commence on the earlier of a) the date Abtech countersigns it or b) if this Agreement is incorporated into another document by reference then the date that Abtech executes the referencing document, and will continue until terminated by either party in accordance with Sections 9.1 and 9.2. This Agreement may be terminated only after the termination of all Addenda under the termination clauses specific to each individual Addendum. If all such Addenda have been terminated and no Addenda remain in force, then this Agreement may be terminated by either party with sixty (60) days' notice. Sections 3, 4, 5, 6, 7, 8, 11, 12, 13.1, and 13.4, and any section stating an explicit duration will survive the termination of this Agreement.

9.2 Notwithstanding the foregoing, either party may terminate this Agreement or Addenda if the other party: (i) experiences a Change of Control; (ii) experiences a Bankruptcy Event; or (iii) is in material breach of the Agreement and fails to correct the breach or to commence corrective action reasonably acceptable to the aggrieved party and proceed with due diligence to completion within thirty (30) days of written notification.

## **10. NON-ASSIGNMENT**

10.1 This Agreement or any rights under this Agreement may not be assigned or otherwise transferred by Client, directly or indirectly, in whole or in part, whether de facto, voluntary or by operation of law, or otherwise, including by way of transfer or sale of a controlling interest in Client's stock or voting securities, sale of assets, transfer or expansion of Client's computer operations or beneficial use of Intellectual Property, or by merger, reorganization, consolidation or joint venture or the like, or to an affiliate or to any third party, without the prior written consent of Abtech. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective permitted successors and assigns. Abtech is at all times free to assign its obligations under this Agreement to one of its affiliates upon written notice. Abtech may assign without Client's consent any revenue stream derived from this Agreement.

## **11. NON-SOLICITATION AND NO HIRING**

11.1 Each party acknowledges and agrees that the employees and key consultants of the other party are a valuable asset to such other party and are difficult and costly to replace. Accordingly, during the term of this Agreement and for two (2) years thereafter, neither party shall, either directly or indirectly, without the other party's prior written consent, hire, solicit or attempt to solicit the services as an employee or consultant of such other party with whom it became acquainted as a result of the relationship under this Agreement. The foregoing restriction on solicitation shall not preclude either party from placing advertisements for employment in publications of general circulation.

11.2 In the event of a violation of any of the provisions of this Section 11 by Client, the parties agree that it would be impractical or extremely difficult to ascertain the actual damages suffered by Abtech. The parties having made diligent but unsuccessful attempts to ascertain the actual damages Abtech would suffer in the event Client violated any of the provisions of this Section 11 agree that a reasonable estimate of actual damages shall be computed as follows:

11.3 Client shall pay to Abtech a sum equal to one and one-half (1 ½) times the annual salary or compensation that would have been paid to any person solicited or offered employment in violation of this Section 11.

11.4 Client shall pay to Abtech a sum equal to three (3) times the annual salary or compensation that would have been paid to any person solicited or offered employment in violation of this Section 11 where such person accepts said employment.

## **12. GOVERNING LAW & DISPUTE RESOLUTION**

12.1 Governing Law. This Agreement shall be governed by the laws of the State of California, without giving effect to principles of conflicts of law thereof. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

12.2 Jurisdiction and Arbitration. Any dispute, controversy or claim arising out of or under this Agreement shall be submitted by the parties to conclusive and binding arbitration in San Diego, California in accordance with the rules of JAMS/Endispute. The decision of such arbitration shall be final for all purposes and may be enforced in an appropriate court in accordance with California law. Such claims shall be submitted to final and binding arbitration within one (1) year after the claim arose, or be barred. For these purposes, a claim for breach of confidentiality, infringement of a party's Intellectual Property Rights or violation of any Intellectual Property license restrictions imposed by this Agreement will be deemed to arise on the date that an executive officer of the aggrieved party discovers or should have reasonably discovered the events giving rise to the claim. Arbitration will be conducted according to JAMS/Endispute's Streamlined Arbitration Rules and Procedures in effect at the time of filing for arbitration. The parties will cooperate with JAMS/Endispute and each other in selecting a single arbitrator who shall be a former judge with substantial experience in resolving business disputes with particular experience in resolving disputes involving computer services. The arbitrator shall not be empowered to award damages in excess of, or inconsistent with, the liability limitations contained in this Agreement. Both parties will share the costs and fees of the arbitrators equally. Each party will bear its own costs and expenses of the proceeding. Each party agrees to arbitrate any issue concerning the types of claims that are subject to arbitration. This Agreement involves interstate commerce subject to jurisdiction under the Arbitration Act. This Section may be enforced by any court of competent jurisdiction. This Section shall not preclude either party from seeking equitable and/or legal relief in any court of competent jurisdiction to enforce each party's Intellectual Property Rights (including confidentiality restrictions) or any Intellectual Property license "scope of use" provisions of this Agreement.

## **13. MISCELLANEOUS**

13.1 Severability. If any term, condition, or provision in this Agreement is determined by a court or other tribunal of competent jurisdiction to be invalid, unlawful or unenforceable, it is both parties' intentions that the offending provision be conformed to the minimum requirements of the law while reasonably

preserving both parties’ original intent. In case any provision of this Agreement shall be invalid, illegal or unenforceable, such provision shall be severed from this Agreement. The validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

13.2 Entire Agreement. When signed by each party’s authorized representative, this Agreement and each Addendum will form a separate and complete agreement between both parties. This Agreement and each Addendum will contain the entire and exclusive agreement and supersede all previous communications, representations, understandings and agreements, either oral or written, between both parties with respect to that subject matter. This Agreement supersedes, and cannot be varied, contradicted or supplemented by evidence of any prior or contemporaneous discussions, correspondence, or oral or written agreement of any kind except for any Addenda executed pursuant and consistent with this Agreement. Any extraneous communications, including web site materials, are specifically excluded from this Agreement.

13.3 Standard Terms & Amendment. Client may issue transactional documents including but not limited to purchase orders, purchase agreements, or invoices however any terms or conditions contained in those documents will not supplement, waive, modify, or contradict any provision of this Agreement. Any amendment or modification of any provision of this Agreement must be in writing and signed by each party’s authorized representative. Any attempt at modification that does not adhere strictly to that standard is null and void. Notwithstanding the foregoing, Abtech reserves the right to amend or replace its support policies, price lists, product release dates or other terms or conditions of this Agreement prospectively upon reasonable advance notice. If Client disagrees with any such amendment proposed by Abtech, Client may, as its exclusive remedy, terminate this Agreement upon written notice.

13.4 Waiver. Waiver of any provision of this Agreement or of a party’s rights or remedies under this Agreement must be in writing to be effective. Waiver of any provision hereof does not implicitly waive any other provision hereof. Failure, neglect or delay by a party to enforce any provision of this Agreement or its rights or remedies at any time, will not be construed or be deemed to be a waiver of such party’s rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement. Waiver of any provision shall not preclude a party from enforcing the provision on future occasions.

13.5 Communications. Client agrees to allow Abtech to contact Client for reasons including but not limited quality control, surveys, promotions, specials, notification of service interruption, announcements, or general follow up either by telephone, fax, email, or onsite meetings. Abtech shall remove Client from any email list upon Client’s request.

13.6 Notices. All notices under this Agreement must be in writing and shall be effective if (a) delivered in person, (b) sent by registered mail return receipt requested, (c) sent by overnight air courier, (d) sent by certified mail, postage prepaid to the address below, or (e) email with confirmed receipt at the email address below:

<u>If to Abtech:</u>  Abtech Technologies Attn: Dana Collins 2042 Corte Del Nogal, #D Carlsbad, CA 92011-1438 notices@abtechtechnologies.com	<u>If to Client:</u>  _____  Attention: _____  _____  _____
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Either Party may change its address by giving written notice to the other Party in the manner prescribed in this provision.

13.7 Public Announcements. Both parties must mutually agree on reasonable public announcements regarding this relationship

13.8 Sophistication of the Parties. Each party to this Agreement represents that it is a sophisticated commercial party capable of understanding all of the terms of this Agreement, that it has had an opportunity to review this Agreement with its counsel, and that it enters this Agreement with full knowledge of the terms of the Agreement. Client agrees to have read the Agreement prior to execution and once executed be bound to this Agreement.

**14. ACCEPTANCE**

14.1 Each party to this Agreement represents that it is a sophisticated commercial party capable of understanding all terms of this Agreement, that it has had the opportunity to review this Agreement with its counsel, and that it enters this Agreement with full knowledge of the terms of the Agreement.

14.2 Client agrees that it has read this Agreement and any Addenda prior to execution and once are all are executed be bound hereto.

Agreed to:	Agreed to (Client):
Abtech Technologies, Inc.	
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

## **Addendum No. 1 to Master Subscription Agreement for California Assembly Bill 1584 Compliance**

This Addendum No. 1 is entered into between William S. Hart Union High School District ("LEA") and Abtech Technologies, Inc. ("Service Provider") on 1 April 2017 ("Effective Date").

**WHEREAS**, the LEA and the Service Provider entered into an agreement for technology services titled Abtech StorTrust Managed Cloud Backup Agreement ("Technology Services Agreement") on 1 April 2017;

**WHEREAS**, the LEA is a California public entity subject to all state and federal laws governing education, including but not limited to California Assembly Bill 1584 ("AB 1584"), the California Education Code, the Children's Online Privacy and Protection Act ("COPPA"), and the Family Educational Rights and Privacy Act ("FERPA");

**WHEREAS**, AB 1584 requires, in part, that any agreement entered into, renewed or amended after January 1, 2015 between a local education agency and a third-party service provider must include certain terms; and

**WHEREAS**, the LEA and the Service Provider desire to have the Technology Services Agreement and the services provided comply with AB 1584.

**NOW, THEREFORE**, the Parties agree as follows:

1. The terms and conditions of the Technology Services Agreement are incorporated herein by reference.
2. The term of this Addendum shall expire on the termination date stated in the Technology Services Agreement or in any addenda to such Technology Services Agreement, whichever controls.
3. Pupil records<sup>1</sup> obtained by Service Provider from LEA continue to be the property of and under the control of the LEA.
4. The procedures by which pupils may retain possession and control of their own pupil-generated content are outlined as follows: All data will be encrypted by the school district prior to being replicated off site. The school district has sole access to the encryption key at all times.
5. The options by which a pupil may transfer pupil-generated content to a personal account include: All data will be encrypted by the school district prior to be replicated off site, therefore this is not applicable.

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<sup>1</sup> Pupil records include any Service Data (as defined in the Technology Services Agreement) directly related to a pupil that is maintained by the LEA or acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other LEA employees. Pupil records does not include de-identified information (information that cannot be used to identify an individual pupil) used by the third party (1) to improve educational products for adaptive learning purposes and for customized pupil learning; (2) to demonstrate the effectiveness of the operator's products in the marketing of those products; or (3) for the development and improvement of educational sites, services, or applications.



6. Parents, legal guardians, or eligible pupils may review personally identifiable information in the pupil's records and correct erroneous information by the following protocol: All data will be encrypted by the school district prior to be replicated off site, therefore this is not applicable.

7. Service Provider shall take actions to ensure the security and confidentiality of pupil records, including but not limited to designating and training responsible individuals on ensuring the security and confidentiality of pupil records, by the following measures: All data will be encrypted by the school district prior to be replicated off site, therefore this is not applicable.

8. In the event of an unauthorized disclosure of a pupil's records, Service Provider shall report to an affected parent, legal guardian, or eligible pupil pursuant to the following procedure: Disclosure of data can only be carried out by the school district staff, because they are the only individuals with access to the encryption key, therefore this is not applicable.

9. Service Provider shall not use any information in a pupil record for any purpose other than those required or specifically permitted by the Technology Services Agreement.

10. Service Provider certifies that Service Data containing a pupil's records shall not be retained or available to the Service Provider upon completion of the Service Data deletion process as described in Service Provider's Data Deletion Policy available on the Site, except for a case where a pupil chooses to establish or maintain an account with Service Provider for the purpose of storing pupil-generated content, either by retaining possession and control of their own pupil-generated content, or by transferring pupil-generated content to a personal account. Such certification will be enforced through the following procedure: Pupil's records shall not be retained or available to Abtech upon completion of the terms of the contract termination, by either party. All encrypted data will be removed by Abtech's systems and returned to the school district to use or destroy as they require.

11. LEA agrees to work with Service Provider to ensure compliance with FERPA and the Parties will ensure compliance through the following procedure: Abtech does not have access to any viewable pupil records, therefore any requests to view students' education records must be responded to by the school district as they are the only party with the ability to decrypt the data held on our systems.

**IN WITNESS WHEREOF**, parties execute this Addendum on the dates set forth below.

For LEA

For Service Provider

Name:

Name: Dana Collins

Title:

Title: President

Signature:

Signature:

CB54433979BB428  
*Dana Collins*  
DocuSigned By: Dana Collins

Date:

Date:

3/23/2017