

SAMPLE

ONLINE DATA BACKUP SERVICE AGREEMENT

THIS AGREEMENT is made and entered into this <<insert day>> day of <<insert month>>, <<insert year>>

BETWEEN:

- (1) <<Name of Service Provider>> a company registered in England & Wales under number <<Company Registration Number>> whose registered office is at <<Registered Office>> ("the Service Provider")
- (2) <<Name of Client>> a company registered in England & Wales under number <<Company Registration Number>> whose registered office is at <<Registered Office>> ("the Client")

WHEREAS

- (A) The Service Provider provides backup services to clients
- (B) The Client carries on a business and wishes to use those services for its business operations

IT IS AGREED as follows:

1. Definitions and Interpretation

- 1.1 In this Agreement, unless otherwise requires, each of the following expressions has the meaning set out below:

"Additional Services" are any services (other than the Backup Service) that the Service Provider makes commercially available from time to time to the Client, including any data recovery, disaster recovery, network monitoring, or remote access services

"Agreed Amount" means the amount payable by the Client to the Service Provider for the Backup Service to the Agreed Amount stated in Schedule 1

"Backup" means the process of copying the Data from a Client Computer or Server to the Service Provider's Server for storage using the Service Provider Software

"Backup Service" means the backup and retrieval services to be provided to the Client for business continuity purposes by the Service Provider in accordance with Clause 2 and described in Schedule 1) using the Service Provider Software

“Client Computer”

the
pe
pr
pu
Se
fo

(either a workstation, terminal, server or other computer system) the Client from time to time for the purpose of running the Service Provider Software, and for the storage of Client Data to the Service Provider, and for the retrieval of Client Data upon its Retrieval

“Commencement Date”

th

“Confidential Information”

al
pa
(i)
as
di
bu
kn
or
po
th
re
th
de
re
ju

information received or obtained by a party in confidence; (i) is confidential of the other party and not generally known; (ii) is otherwise clearly identified as confidential by its nature and/or the circumstances of its disclosure; and (iii) is not to infer that it is such, information that: a) is or becomes publicly known; b) is or becomes known by any act or omission of the receiving party; c) was in the other party's lawful possession; d) is lawfully disclosed to the receiving party by a third party without the consent of the disclosing party; e) is independently developed by the receiving party, which independent development is proven by written evidence; or f) is required by law, by any court of competent jurisdiction or by any regulatory or administrative body

“Data”

an
Pr
C
du

personal data, as defined by the Data Protection Act 1998, or other information of the Client, including, but not limited to, copied, from the Client Computer

“Data Protection Legislation”

m
th
in
la
20
Se
Eu
Ac
an
an

legislation in force from time to time in the United Kingdom, including, but not limited to, the UK GDPR (the retained EU law), the EU General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018 of the law of England and Wales, the Privacy and Electronic Communications Regulations 2003 as amended, and any other legislation made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended

“Encryption Key”

th
[g
Se
re

which shall be known only to Client, and which shall be used by Client using Service Provider Software to encrypt and decrypt Client Data by Service Provider] to access and retrieve Client Data from the Service Provider Server

F

**“Maintenance
Period”**

**“Non-excused
Outage”**

“Outage”

“Retrieval”

“Service Credits”

**“Service Provider
Server”**

**“Service Provider
Software”**

“Term”

"Website"

S

A

M

P

L

E

month for planned maintenance, upgrade of the Backup Service, or any other reason, subject to the following limitations: a) only the first [2] hours of such outage shall aggregate in any calendar week (Monday to Sunday); b) only the first [6] hours of such outage in any calendar month shall count; and c) the Service Provider shall give notice to the Client of any such outage at least [72 hours] prior to its occurrence.

An outage will not be a “Maintenance Period”:
caused by work or actions by the Service Provider or any third party which is not planned maintenance, configuration changes or upgrade of the Backup Service; or
caused by configuration changes or upgrade of the Backup Service within the above limitations

calendar month which is not Excused Outage.

An Outage occurs when the Backup Service is unavailable for any time that the Client is prevented from using it.

Retrieval is the delivery to any Client of Data using the Backup Service in accordance with Schedule 1.

Service Credits are any sums payable or allowable to the Client in respect of an Outage, subject to the limits on such sums.

Service Provider Server is any hardware and software system/s and network/s owned, leased, managed, provided or supplied to it by a third party which the Service Provider uses to provide the Backup Service, [the Service Provider may also use ancillary functions (but not including the Service Provider's own)]

Service Provider Software is desktop software, media, associated documentation and other information, and any updates or modifications to them, supplied by the Service Provider in accordance with the Licence for the use of the Service Provider's internet services for the purpose of providing the Backup Service.

Term is the period of [six][twelve] months and thereafter, commencing on the date specified by either party in accordance with the Licence.

Website is any website [at which text, graphics, data, images and other information are stored electronically and] access to which is provided to organisations and the general public, and from which the Client may download information.

S

A

M

P

L

E

- 1.2 Unless the context requires otherwise, a reference in this Agreement to:
- 1.2.1 "writing", and any communication, includes any communication in any form, including electronic, by any means of transmission or similar means;
 - 1.2.2 a statute or regulation, means that statute or provision as amended or replaced from time to time;
 - 1.2.3 "this Agreement" means this Agreement and each of the Schedules as amended or replaced from time to time, and a Schedule is a Schedule to this Agreement (other than the relevant Schedule); and
 - 1.2.5 a "party" or "parties" means the parties to this Agreement.
- 1.3 In this Agreement:
- 1.3.1 The headings and titles only and have no effect upon the interpretation of this Agreement;
 - 1.3.2 Words impacting include the plural and vice versa;
 - 1.3.3 A reference to a gender includes a reference to the other genders;
 - 1.3.4 A reference to a person includes a natural person, corporate or unincorporated (whether or not having separate legal personality);
 - 1.3.5 A reference to the Service Provider includes its respective employees and agents.

2. Services

- 2.1 The Service Provider shall provide the Backup Service from the Commencement Date to the Termination Date, as specified in, and subject to, all of the other provisions of this Agreement. .
- 2.2 The use by the Client of the Backup Service shall be as specified and limited by, and subject to, the conditions and other provisions of this Agreement.
- 2.3 This Agreement does not prevent the Client from requesting any Additional Services but if the Client requests any Additional Services, the Service Provider shall use its reasonable endeavours to provide such services on its then current standard terms and conditions.

3. Licence

- 3.1 The Service Provider shall grant to the Client a non-exclusive licence to use the Backup Service as part of the Backup Service and the Service Provider Software granted by the Service Provider to the Client.
- 3.2 Accordingly, the Service Provider shall [has granted] OR [has granted] the Licence to the Client on the terms set out [in Schedule 2] OR [in a separate licence agreement between the Service Provider and the Client] and all of the other provisions of this Agreement.

4. Service Provider's Obligations

- The Service Provider:
- 4.1 shall provide the Backup Service with reasonable skill and care;

S

4.2 shall provide the Backup Service to the Client to the same standard as is generally adopted by other providers of similar services in the United Kingdom;

4.3 shall use all reasonable endeavours to maintain and make available the Backup Service;

4.4 without prejudice to clause 4.3, does not undertake or warrant that:

4.4.1 Client's Data is not lost, corrupted, damaged, or stored by it, entirely free from corruption, loss, or damage, and will in its entirety be accessible or retrievable to, the Client, or that it will not be inaccessible;

4.4.2 the Service Provider meets Client's requirements;

4.4.3 the operation of the Backup Service or Software will be uninterrupted or error-free; or

4.4.4 the Backup Service, when stored on the Service Provider Server, will

4.4.4.1 operate in accordance with the Service Level Agreement;
4.4.4.2 be available for use outside of the Scheduled Outage time.

4.5 shall not have any liability or responsibility, in relation to matters which the Client expressly undertakes, warrants, or agrees, of, in this Agreement;

4.6 may enter into any agreement with third parties to provide to such others similar services to the Backup Service;

4.7 shall be entitled to terminate the Backup Service from time to time, subject to the terms of clause 2.2.

5. Client's Obligations and Limitations

In relation to this Agreement, the Client shall be bound to the Backup Service:

5.1 the Client undertake

5.1.1 not transmit, store, or otherwise use any Data or other material that infringes the Intellectual Property rights of third parties, or is illegal, tortious, defamatory, obscene, or otherwise in violation of applicable laws, rights, or is otherwise threatening, harassing, or abusive;

5.1.2 not transmit, store, or otherwise use any Data or other material that requires the Service Provider to store by Service Provider any Data or other material on behalf of any party without first obtaining any necessary consent of the Client or as may be required by any applicable legal measure or obligation;

5.1.3 generally comply with applicable Data Protection Legislation;

5.1.4 in particular comply with applicable Data Protection Legislation and any other applicable laws or regulations relating to the transmission, storage, and retrieval of Data for the Backup Service;

5.1.5 not knowingly transmit, store, or otherwise use any Data or other material that contains harmful programs, code, files or other malicious content, viruses, worms or time bombs;

A

M

P

L

E

S

5.1.6 not use the
any jurisdiction

purposes or in any way which in
or has any unlawful effect;

5.1.7 comply with
arrangement
Service Pro
Website];

guidelines, policies, procedures,
issued from time to time by the
the Client] **OR** [placed on the

5.1.8 not to interfere
computer sy
Service;

pt to gain unauthorized access to,
works connected to the Backup

5.1.9 not attempt
accounts of
services pro

cess to the Backup Service or the
service Provider who use similar
vider; and

5.1.10 fulfil all oth
Agreement i

d responsibilities set out in this
anner.

5.2 the Client assumes

r:

5.2.1 selecting th
business ne

l deciding whether it meets its

5.2.2 completing
Service Pro
using the Se

ding, installing and activating the
activation of the Backup Service

5.2.3 Backing-up

ires a Backup of it;

5.2.4 using a Clie
Service;

the purpose of using the Backup

5.2.5 establishing
computer e
services, fac
links, power
the purpose

telecommunications, internet and
a, storage media, arrangements,
cluding, but not limited to, telecoms
, switches, firewall) necessary for
vice;

5.2.6 implementin
potentially c
antivirus sof

policies and procedures for opening
(and is encouraged to install
s or computers);

5.2.7 the consequ
devices and
or malicious

to Service Provider Server storage
smitting Data containing any virus

5.2.8 loss or corr
any of the S

Data unless due to any breach of
ons under this Agreement;

5.2.9 the supply,
not included

upport of all necessary resources
ce;

5.2.10 Encryption k

by Client;

5.2.11 all security a
the Backup
codes, audit

and appropriate to Client's use of
hout limitation, passwords, pass
ods and procedures;

5.2.12 all results it

Service;

5.2.13 the integrity
is to be res

Data that is to be Backed up and
the defect in the integrity or the

A

M

P

L

E

suitability of
Provider's ob

5.2.14 its use of t
Service Prov
to any breac
Agreement.

ny breach of any of the Service
ement; and

software unless any failure of the
e consequence of such use is due
e Provider's obligations under this

6. Charges and Payment

6.1 The Client shall pa
advance for that pe
and use of Backup,

6.2 All Fee amounts an
exclusive of Value A
invoice(s) at the app

6.3 The Service Provid
the Fee set out in S

6.4 Each invoice will b
invoice date. If the
days after the due o
of the Service Provid

6.4.1 the Service
of the Back
and

6.4.2 the Client sh
rate of [4]%
time to time
date until ac
after judgm
overdue amo

6.5 The Service Provid
time to time incre
Commencement Da
percentage of that i
the percentage incr
up to that anniversa

chedule 3 [quarterly][annually] in
in consideration for the provision
e.

or referred to in this Agreement are
be added to the Service Provider's

quarterly][annually] in advance for

the Client [30][10] days after the
not received payment within [five]
ce to any other rights or remedies

or temporarily suspend provision
voice concerned remains unpaid;

and on the overdue amount at the
Name Of Bank]'s base rate from
ue on a daily basis from the due
erdue amount, whether before or
ay the interest together with the

provisions of Clause 12.2.2, from
ct from any anniversary of the
ays' prior notice provided that the
urrent rate of Fee is no more than
Index for the twelve month period

7. Personal Data

7.1 The Client warrant
Service:

7.1.1 all personal
transmitted
possession
and

7.1.2 at all approp
any and a
Legislation.

7.2 If and in so far a
Provider involves it
the Client which is

in connection with the Backup

sed by the Client or disclosed or
Provider will be properly in the
ed and transmitted by the Client;

will maintain and have maintained
n(s) under the Data Protection

Backup Services by the Service
obtained from and/or on behalf of
ice Provider shall only do so with

S

A

M

P

L

E

the consent of the
Legislation, the terms
given by the Client
the ¹Data Processing
the Service Provider
before the date of the

7.3 If there is any con
provisions(s) of this
Agreement on the o

7.2 The Client shall ens
Data Protection Le
personal data to the
store and deal with

7.3 Each party shall t
against unauthorise
accidental loss, des

8. Confidentiality

Each party may receive or
other party under this Ag
Information in confidence
Confidential Information a
Information for any purpo
divulge the other's Confide
to know it. Each party sh
Confidential Information to
employees or agents in vio

9. Indemnity by Client to Se

Subject to Clause 10.3, th
Provider against and hold
proceedings, and all los
limitation legal costs) asso
connection with either the
possession of Data by th
breach by the Client of any
Agreement, unless, and to
the Service Provider's oblig

10. Service Provider Warrant

10.1 Subject to Clauses
Provider Software
with its specificatio
Provider Software p

dance with the Data Protection
any lawful instructions reasonably
on and subject to the provisions of
the purpose of such processing by
and the Client entered into on or

in Clause 7.2 and/or any other
e hand and the Data Processing
l prevail.

of personal data complies with the
entitled to transfer the relevant
at the Service Provider may lawfully
cordance with this Agreement.

ical and organisational measures
ing of the personal data or its

information of the other party from that
shall hold the other's Confidential
by law, not make that other's
ty, or use the other's Confidential
ementation of this Agreement, or
of its employees who do not need
steps to ensure that the other's
not disclosed or distributed by its
Agreement.

defend and indemnify the Service
third party claims, actions, and
es and costs (including without
any of the same arise out of or in
cess to the Backup Service, or
suant to this Agreement, or any
or other terms or conditions of this
e arise from any breach of any of
nent.

provider warrants that the Service
perform substantially in accordance
manual provided with the Service
r used on the Client Computer and

¹ Where the Client is to transfer any "pers
for the Client (as both expressions are de
requires them to have first entered into an

vider who will then carry out "processing"
egislation), the Data Protection Legislation
processing agreement for that purpose.

S

A

M

P

L

E

with the operating system and the hardware designed.

- 10.2 If the Client notifies the Service Provider Software of any significant errors or defects in the Backup Service during the warranty period (being ninety (90) days from the date upon which the Service Provider Software or any part thereof is first supplied to the Client, the Service Provider will repair or replace the Service Provider Software at reasonable time or (at its sole discretion) at the Client's expense, previously paid by the Client. This will not be the Client's sole remedy for any errors or defects in the operation of Clause 10.1 or for any errors or defects in the operation of the Backup Service.

- 10.3 Service Provider undertakes to indemnify Client against any claims by third parties arising out of the Client's use of, or reliance on, the Backup Service to the extent that the Client has no liability to indemnify Client for any claims arising out of the Client's use of Service Provider Software or to Client's reliance on any instructions given by Service Provider.

11. Liability

- 11.1 The Client accepts that the Service Provider does not take fully into account the limits of the Service Provider's liability (set out below) for the Backup Service, the Client's Agreement.

- 11.2 The Service Provider acknowledges that the Client has a legitimate commercial interest in the Backup Service being avoided or minimised and that the Client is entitled to a remedy for any Non-excused Outages, and the Service Provider will accordingly be liable to the Client for any and all Non-excused Outage Service Credits (as defined in the Client's Agreement) and the Service Provider will have no further financial liability to the Client for any and all Non-excused Outage Service Credits as its exclusive remedy in that calendar month.

- 11.3 Occurrence of any Non-excused Outage within the scope of the Backup Service and according to the Client's Agreement will not have any financial or other liability for any and all Non-excused Outage Service Credits.

- 11.4 Except as expressly stated in the Client's Agreement, the Service Provider gives no warranties or guarantees, representations, and all warranties, representations, and all conditions and any other terms, conditions, and any other terms are hereby excluded to the fullest extent permitted by applicable law.

- 11.5 Nothing in this Agreement excludes the liability of the Service Provider for:

11.5.1 death or personal injury caused by the Service Provider's negligence; or

11.5.2 direct damage caused by either by any breach of this Agreement or by the Service Provider limited to the extent of the Client's Agreement; or

11.5.3 fraud or fraudulent misrepresentation.

11.6 Subject to clause
whether in contract
or for negligent or ir

11.6.1 loss of business or
corruption of
special, or in

11.6.2 any other special
expense.

11.7 Subject to Clause 1
Agreement (exclud
(including negligenc
misrepresentation,
limited in the aggre
total amount]]>> pai
period up to the dat

11.8 The limitations and

12. Period and Termination of

12.1 This Agreement shall continue from that date [30] days' prior [three][six][twelve] months of that initial period,

12.2 Without affecting any right or obligation of the parties under the Agreement or at law

12.2.1 the Service effect by giving payment to p

12.2.2 if the Service
change to t
affect the C
purposes, o
clause 6.5 o
30 days af
terminate thi

12.2.3 either party
giving written

12.2.3.1

12.2.3.2

12.2.3.3

12.2.3.4

_____ hereby excludes all liability, negligence or breach of statutory duty), in, or otherwise, for:

loss of anticipated savings, loss or
in each case whether it is direct,
loss or damage; and

sequential loss, damage, cost or

Service Provider for breach of this indemnity at clause 10.3) or tort (duty), or for negligent or innocent non-compliance with this Agreement, shall be [the total amount] times the total amount] OR [the cost of the Backup Service during the 12 month

11 are cumulative.

the Commencement Date, and shall remain in effect from and until either party gives at least thirty (30) days notice to the other party at the end of the first initial term or on any anniversary of the end of the term specified in this clause.

available to either party under this
liabilities of either party:

the this Agreement with immediate
Client fails by the due date for
this Agreement;

Client pursuant to clause 4.7 of a
t would materially and adversely
p Service for business continuity
er notifies the Client pursuant to
, the Client may at any time within
service Provider's notice elect to
iate effect;

Agreement with immediate effect by
if the other party:

or continuing breach of any of its Agreement and fails to remedy the (e of remedy) within 30 days after

us period of [30] days been able to
as a result of Force Majeure; or

pay its debts within the meaning of
s 268 of the Insolvency Act 1986;

legal proceedings concerning its trading, or commits an act of audited bankrupt or enters into

S

compulsory or voluntary, other than an amalgamation or reconstruction, agreement with its creditors or petitions in bankruptcy or if a trustee, receiver, liquidator or general officer is appointed over its assets.

12.3 On any termination of the Agreement, the Client shall delete/return to the Service Provider, unless the parties agree otherwise, all copies of the Client's Data or other items in its possession, without incurring any liability for loss or damage for doing so.

Client shall cease to use and shall delete all copies of the Client's Data or other items in its possession, without incurring any liability for loss or damage for doing so.

13. Waiver and Rights and Remedies

No failure or delay by a party in exercising its rights or remedies shall be deemed to be a waiver of any other rights or remedies.

Nothing in this Agreement shall prejudice or restrict its rights. No failure or delay by a party in exercising its rights or remedies shall be deemed to be a waiver of any other rights or remedies.

14. Force Majeure

Subject to Clause 12.2.3, the Service Provider shall not be liable for any failure or delay in performing its obligations under the Agreement where Force Majeure occurs. The Service Provider shall be entitled to a reasonable extension of time for performance.

Subject to Clause 12.2.3, the Service Provider shall not be liable for any failure or delay in performing its obligations under the Agreement where Force Majeure occurs. The Service Provider shall be entitled to a reasonable extension of time for performance.

15. Severance

In the event that one or more provisions of this Agreement are found to be unlawful, invalid or otherwise unenforceable, those provision(s) shall be deemed severed from the remainder of this Agreement and the remainder shall remain valid and enforceable.

In the event that one or more provisions of this Agreement are found to be unlawful, invalid or otherwise unenforceable, those provision(s) shall be deemed severed from the remainder of this Agreement and the remainder shall remain valid and enforceable.

16. Assignment

16.1 This Agreement is personal to the Client and it agrees not to assign, sub-license, or otherwise transfer its rights or obligations hereunder without the written consent of the Service Provider, which consent shall not be unreasonably withheld.

16.1 This Agreement is personal to the Client and it agrees not to assign, sub-license, or otherwise transfer its rights or obligations hereunder without the written consent of the Service Provider, which consent shall not be unreasonably withheld.

16.2 The Client's right to use the Backup Service is personal to it, and it agrees not to assign, sub-license, or otherwise transfer its rights or obligations hereunder without the written consent of the Service Provider, which consent shall not be unreasonably withheld.

16.2 The Client's right to use the Backup Service is personal to it, and it agrees not to assign, sub-license, or otherwise transfer its rights or obligations hereunder without the written consent of the Service Provider, which consent shall not be unreasonably withheld.

16.3 Neither party may assign, sub-license, or otherwise transfer its rights or obligations hereunder without the written consent of the other party, which consent shall not be unreasonably withheld.

16.3 Neither party may assign, sub-license, or otherwise transfer its rights or obligations hereunder without the written consent of the other party, which consent shall not be unreasonably withheld.

17. Third Party Rights

No part of this Agreement shall be construed to create or confer any rights or obligations on any third parties and the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

No part of this Agreement shall be construed to create or confer any rights or obligations on any third parties and the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

A

M

P

L

E

18. No Partnership or Agency

Nothing in this Agreement shall be deemed to constitute a partnership, joint venture, agency, or other relationship between the parties other than the contractual relationship created by this Agreement.

19. Notices

19.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, an authorized officer of the party giving the notice.

19.2 Notices shall be delivered to the addressee by the following methods:

19.2.1 when delivered in person, by registered mail or other messenger (including overnight delivery), during business hours of the recipient; or

19.2.2 when sent, by email and a successful transmission receipt is received; or

19.2.3 on the fifth business day after mailing, if mailed by national express mail.

In each case notice shall be deemed to have been given to the most recent address or e-mail address, notified to the other party.

20. Dispute Resolution (Arbitration)

20.1 The parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations with their appointed representatives who have the authority to settle the dispute.

20.2 If negotiations under this clause fail, the parties will attempt to resolve the dispute in good faith through an Alternative Dispute Resolution ("ADR") procedure.

20.3 If the ADR procedure does not resolve the matter within 21 days of receipt of a written notice of the dispute, or if either party will not participate in the ADR procedure, the matter may be referred to arbitration by either party.

20.4 The seat of the arbitration shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and the Rules for Arbitration of the International Chamber of Commerce. If the parties are unable to agree on the arbitrator, either party may, upon the request of the other party, apply to the President or Deputy President of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be applicable.

20.5 Nothing in this Clause shall prevent either party or its affiliates from pursuing any legal action in any court of competent jurisdiction.

20.6 The parties hereby agree that the award of the arbitrator or arbitrators shall be final and binding on both parties.

21. Entire Agreement

21.1 This Agreement constitutes the entire agreement and understanding between the parties.

S

the parties, and s
respect to its sub
instrument in writin
parties.

s agreement between them with
not be modified except by an
authorised representatives of the

21.2 Each party acknow
any representation,
or negligently) exce
or given fraudulently

his Agreement, it does not rely on
other provision (made innocently
in this Agreement except if made

21.3 Except as express
provided under this
rights or remedies p

reement, the rights and remedies
tion to, and not exclusive of, any

21.4 Except as expressl
warranties or guar
Backup Service, an
all conditions, und
implied by statute,
are hereby exclude
applicable law

ent, the Service Provider gives no
representations concerning the
arantees and representations, and
and any other terms whatsoever
e, course of dealing or otherwise,
to the fullest extent permitted by

22. Governing Law and Juris

22.1 This Agreement (in
therefrom or assoc
accordance with, th

ual matters and obligations arising
e governed by, and construed in
ales.

22.2 Subject to the pro
controversy, proce
Agreement (includi
therefrom or associ
of England and Wa

(dispute resolution), any dispute,
een the parties relating to this
matters and obligations arising
within the jurisdiction of the courts

A

M

P

L

E

S

The Backup Service provided by the Service Provider comprises the storage, restoration and retrieval of Data within the scope of, the Specification attached to the Licence, and the Service Provider Software set out in Annex 1, and all other terms of the Agreement.

1. The Backup Service provided by the Service Provider shall comprise the storage of the Agreed Amount of online Data from the Service Provider's Server and Retrieval of that Data from the Service Provider's Server stores [a single copy][two separate copies] for data security, the secondary copy is stored on a separate server at a separate location from the server storing the primary copy.]
2. The Backup Service operates using an internet control product comprising the Service Provider Software on one or more Client Computers which interact with the Service Provider Software on the Service Provider Server. The Client Computers connect to the Service Provider Server via the internet and managed by the Service Provider Software. [All or part of the Backup Service may be provided by a third-party provider, including the Backup Service.]
3. The Agreed Amount of online Data which has been purchased by, and is available to, the Client shall be <<insert % of the time %>> of the time in each calendar month less any Excused Outage. The first calendar month begins on the Commencement Date. The Service Provider has no obligation to make the Backup Service available during the first calendar month if there is any Non-excused Outage.
4. Client's Backup of Data will be effected by means of the Service Provider Software and the Client effecting a Backup up on the first and each succeeding calendar month. The Data which will be Backed up [and deleted on any Backup] will be as specified in Annex 1 (Specification of Data).
5. The Backup Service will be available to Client <<insert % of the time %>> of the time in each calendar month. The first calendar month begins on the Commencement Date. The Service Provider has no obligation to make the Backup Service available during the first calendar month if there is any Non-excused Outage.
6. If there is any Non-excused Outage, Service Provider will allow or pay to Client Service Credit for that Non-excused Outage for that Non-excused Outage:
 - 6.1 the total of Service Credit for that Non-excused Outage shall not exceed the Maximum Monthly Service Credit Amount shall be set out in paragraph 7 below
 - 6.2 the total of all Service Credit for that Non-excused Outage shall not exceed the Maximum Monthly Service Credit Amount shall be set out in paragraph 7 below

A

M

P

L

E

comprises the following offsite backup, storage, restoration and retrieval of Data within the scope of, the Specification attached to the Licence, and the Service Provider Software set out in Annex 1, and all other terms of the Agreement.

the Term to store Data (up to the Agreed Amount) on the Service Provider Server and Retrieval of that Data from the Service Provider Server stores [a single copy][two separate copies] for data security, the secondary copy is stored on a separate server at a separate location from the server storing the primary copy.]

using an internet control product comprising the Service Provider Software on one or more Client Computers which interact with the Service Provider Software on the Service Provider Server. The Client Computers connect to the Service Provider Server via the internet and managed by the Service Provider Software. [All or part of the Backup Service may be provided by a third-party provider, including the Backup Service.]

of Data which has been purchased by, and is available to, the Client shall be <<insert % of the time %>> of the time in each calendar month less any Excused Outage. The first calendar month begins on the Commencement Date. The Service Provider has no obligation to make the Backup Service available during the first calendar month if there is any Non-excused Outage.

be Backed up will be effected by means of the Service Provider Software and the Client effecting a Backup up on the first and each succeeding calendar month. The Data which will be Backed up [and deleted on any Backup] will be as specified in Annex 1 (Specification of Data).

le to Client <<insert % of the time %>> of the time in each calendar month. The first calendar month begins on the Commencement Date. The Service Provider has no obligation to make the Backup Service available during the first calendar month if there is any Non-excused Outage.

ndar month, Service Provider will allow or pay to Client Service Credit for that Non-excused Outage for that Non-excused Outage:

- 6.1 the total of Service Credit for that Non-excused Outage shall not exceed the Maximum Monthly Service Credit Amount shall be set out in paragraph 7 below
- 6.2 the total of all Service Credit for that Non-excused Outage shall not exceed the Maximum Monthly Service Credit Amount shall be set out in paragraph 7 below

alendar month will not exceed the Maximum Monthly Service Credit Amount shall be set out in paragraph 7 below

succeeding period of 12 calendar months.

months (the first of the Maximum Annual Credit Amount shall

Commencement Date) will not exceed the Maximum Annual Service

7. Subject to paragraph 6 above, if in any calendar month there is/are any period(s) of outage exceeding [1] hour, the Service Credit shall be [insert multiple of amount of daily fee payable by Client for that day. For this purpose the portion of the fee payable for any day is deemed to be one [90th] OR [180th] OR [twelve] month period in

night to midnight) in any calendar month there is/are any period(s) of outage cumulatively exceeding [1] hour, the Service Credit shall be [insert multiple of amount of daily fee payable by Client for that day. For this purpose the portion of the fee payable for any day is deemed to be payable for the [three] OR [six] month period in

8. Subject to any limits on time

Specification:

- 8.1 Backups, and storage, shall be selected and scheduled by the Service Provider Software such that the Service Provider Software does not

the Service Provider Server, are selected and scheduled by the Client using the Service Provider Software. Backups shall run automatically by the Service Provider Software as scheduled; and

- 8.2 A Retrieval is performed on demand. It is not pre-scheduled or scheduled. It is subject to the limitations on scope and other limits set forth in the Service Provider Software. Retrieval is effected by using the Service Provider Software to transfer Data from the Service Provider Server to a Client

as and when Client has a need for Data. Retrieval is subject to the limitations on scope and other limits set forth in the Service Provider Software. Retrieval is effected by using the Service Provider Software to transfer Data from the Service Provider Server to a Client

9. Service Provider is not responsible for

- 9.1 either loss of data or corruption of data occurring between each Backup;

either loss of data or corruption of data occurring between each Backup;

- 9.2 Client's deletion or modification of Data;

- 9.3 delay in or failure of Data transmission due to any factors, equipment, facilities, or service provided or managed by the Service Provider or for which the Service Provider is not responsible, including slow transmission speed, transmission size or capacity, route of internet connection.

delay in or failure of Data transmission due to any factors, equipment, facilities, or service provided or managed by the Service Provider or for which the Service Provider is not responsible, including slow transmission speed, transmission size or capacity, route of internet connection.

10. Service Provider Server is configured to detect and report Data loss or corruption to the Service Provider Server and detect

Service Provider Server is configured to protect the Service Provider Server and detect Data loss or corruption to the Service Provider Server and detect

[Service Provider will deal with Data loss or corruption by deleting files containing Data being lost or corrupted. The anti-virus software operates automatically to [remove] [and] [or] [quarantine] infected Client files]..

policy and preferences with infected Data. The anti-virus software operates automatically to [remove] [and] [or] [quarantine] infected Client files]..

[Service Provider will inform Client of Data loss or corruption. Service Provider will not attempt deletion, re

ected infection in such Data] [but Service Provider will not attempt deletion, re

11. Service Provider does not warrant the accuracy, completeness, or Client Data transmission or reception. Client is solely responsible for the accuracy, licensing, integrity, content

Backup Service, content of Data, or Client Data transmission or reception. Service Provider is a mere conduit. Client is solely responsible for the accuracy, licensing, integrity, content of Data (including without limitation Data Backup scheduling and transfers).

Annex

ification

Delete as appropriate:

[Standard Copy Backup. A backup that does not delete any Data previously Backed up and does not mark each file as archived or otherwise modified.]

OR

[Standard Daily Backup. A backup that copies all selected files that have been modified on the day the backup is performed. [It does not delete any Data previously Backed up and does not mark as archived or otherwise modified.]

OR

[Standard Incremental Backup. A backup that copies all of the Data that has been modified since the last incremental Backup. [It does not delete any Data previously Backed up and does not mark as archived or otherwise modified.]

OR

[Archival Backup. An archival backup that copies all of the Data whether or not it has been modified since the last backup. [It does not delete any previously Backed up Data.]

[The following limits apply to the backup: <<insert details of limits on times and/or days>>]

Delete as appropriate:

[The following applies to the backup:]

[The Client shall be responsible for the integrity and the suitability of the Data to be retrieved by the Service Provider. [Insert details.]

[Retrieval may be performed during the following times and/or on the following days: <<insert details of times and/or days>>]

[Speed of transmission from the Server to Client Computer during any Retrieval will be dependent on the limitations of the Service Provider and the demand of the Server for retrieving data at the time].]

that copies all selected files. [It does not delete any Data previously Backed up and does not mark as having been Backed up.]

that copies all selected files that have been modified on the day the backup is performed. [It does not delete any Data previously Backed up and does not mark as archived or otherwise modified.] However the files are not marked as archived or otherwise modified.]

Incremental Backup that copies all of the Data that has been modified since the last incremental Backup. [It does not delete any Data previously Backed up and does not mark as archived or otherwise modified.]

all of the Data whether or not it has been modified since the last backup and deletes all previously Backed up Data.]

may be performed: <<insert details of limits on times and/or days>>]

grity and the suitability of the Data to be retrieved by the Service Provider. [Insert details.]

ring the following times and/or on the following days: <<insert details of times and/or days>>]

ver to Client Computer during any Retrieval will be dependent on the limitations of the Service Provider and the demand of the Server for retrieving data at the time].]

S

The following shall apply in connection with the terms of the Agreement

Delete as appropriate:

EITHER

[The terms of the Licence of the Service Provider Software are set out in a separate agreement in writing between the Service Provider and the Client dated <<insert date>>. Any expressions used in that agreement shall bear the same meaning in that agreement as they bear in this Agreement shall bear the same meaning in that agreement]

OR

[The following are the terms of the Licence of the Service Provider Software:

1. The Licence is non-exclusive
2. At all times, all Intellectual Property rights in the Service Provider Software are controlled solely by Service Provider Software and copyright in the Service Provider Software is exclusively retained by Service Provider. Client acknowledges that in the Service Provider Software Agreement it will not have any right or interest in the Intellectual Property rights in the Service Provider Software
3. Save as expressly set out in the Service Provider Software, Client may not use or access the Service Provider Software in any way, without the express written permission of Service Provider
4. Client is permitted, solely in connection with carrying out Backups and Retrievals as permitted in this Agreement to do the following ("the Permitted Use"):
 - 4.1 download a copy of the Service Provider Software from the Website;
 - 4.2 save the Service Provider Software on <<insert number of Client devices>> Computers which are under Client's control and use it on that same total number>>Client Computers, subject to the following:
 - 4.3 transfer the Service Provider Software from any Client Computer to any other Client Computer provided that at any one time it is used on no more than the <<insert number of Client devices>> Client Computers;
 - 4.4 make a backup copy of the Service Provider Software for its own Backup purposes. That backup must be a complete copy and must not contain any change to the Service Provider Software or any other material comprising the Service Provider Software or any other material comprising the Service Provider Software unchanged in the backup copy of the Service Provider Software

[Note: The following copyright notice shall be included in or with the Service Provider Software] *Service Provider copyright notice to be included in or with the Service Provider Software:*

"© [insert name of Service Provider] [under licence from [insert name of third party owner]]"

A

M

P

L

E

- 4.5 use the manuals, documents, and other information which are part of the Service Provider Software;
- 4.6 use the Service Provider Software for any unlawful purposes.
5. Client is not permitted to:
- 5.1 use the Service Provider Software on any Client Computer which permits electronic access to the Service Provider Software (whether such access forms part of a LAN, WAN or other network);
- 5.2 do any of the following in relation to the Service Provider Software:
- 5.2.1 rent, lease, loan, or otherwise make available to any third party (except as expressly provided in this Agreement);
- 5.2.2 decompile, disassemble, or reverse engineer it except, in the absence of a written agreement, as may be permitted by the applicable Copyright, Database, or Patent Laws; or
- 5.2.3 create derivative works of the Service Provider Software;
- 5.3 except as expressly provided in this Agreement, use, reproduce, or deal in the Service Provider Software;
- 5.4 transfer any of the rights or obligations under the Licence to any other person whether on a permanent or temporary basis. If Client transfers the Service Provider Software to another person, the Licence will automatically terminate without prejudice to any other rights and remedies Service Provider may have in respect of such unauthorised use;
- 5.5 use the Service Provider Software on any Client Computer on which there is a computer virus or other malware, whether the virus is capable of causing any damage to the Service Provider Software;
- 5.6 do, authorise, or permit any third party to do, any act which is outside the scope of the Licence.
6. Any and all rights in relation to the Service Provider Software not expressly granted in this Agreement are hereby reserved to Service Provider.
7. The Licence shall commence on the Agreement Date and shall continue until the termination of the Term in any other manner.
8. Upon termination of the Licence, Client shall destroy all copies of the Service Provider Software on any Client Computer under its control.
9. In the event that Client loses the Encryption Key, Client will be able to access Client's Backup Service. Service Provider will not be liable in any way for the loss of the Encryption Key.]

Fee

The Fee for each succeeding period of [twelve] calendar months (the first of which begins on the Commencement Date) shall be payable [monthly] **OR** [quarterly] **OR** [annually] in advance is £<< >>

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF
SERVICE PROVIDER]

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF C