

BACKUP SERVICES TERMS

These Backup Services Terms apply to the Agreement between the Customer and the Company where Backup Services are purchased. These Backup Services Terms apply in addition to the General Terms and Conditions in relation to the Backup Services only.

1. Definitions

1.1 All terms in capitals used herein shall have the meaning given to them below unless defined otherwise in the main terms of the Agreement

“Customer Data” means any information or data provided by the Customer or Authorised Users to the Company or Provider in connection with the Backup Services;

“EULA” means the end user licence agreement of the Provider that applies to use of the Backup Services in addition to these Backup Services Terms;

“Inappropriate Content” means material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or illegal under any applicable law;

“Provider” means the company, named in the EULA, who provides the Backup Services to the Customer on behalf of the Company;

“Term” means any term set out in a Purchase Order for the provision of the Backup Services.

2. Appointment

2.1 The Customer appoints the Company to supply the Backup Services to the Customer using the Provider in accordance with the terms of the Agreement.

3. Supply of the Backup Services

3.1 The Backup Services shall commence on the Effective Date set out in the Purchase Order for the Backup Services and shall (subject to any provisions on termination) continue for the Term set out in the Purchase Order, for the Backup Services.

3.2 The Customer agrees to comply with the EULA. The Customer shall be bound by any changes made to the EULA, from time to time, upon being notified of such changes. The Backup Services will be supplied by the Provider subject to the terms of the EULA and use of the Backup Services by the Customer is subject to the EULA at all times.

3.3 The Company and the Customer both acknowledge and agree that in the event of a conflict arising between the terms of the EULA and these Backup Services Terms the terms of the EULA shall prevail.

4. Usage Restrictions

- 4.1 The Company offers various storage capacity options. The Customer must select an option that allows sufficient storage capacity for its anticipated usage of the Backup Services or the Customer may use the Service on a “pay-per-usage” model for which there is no storage capacity limit and the Customer shall be charged on the basis of storage capacity actually used. The option chosen by the Customer shall be set out in the Purchase Order.
- 4.2 Once the Backup Services are activated the Customer must keep usage under review and not at any time exceed the chosen storage capacity. If the Customer needs additional capacity, it can upgrade the selected storage capacity.
- 4.3 Throughput (total uploads and downloads) in any month must not exceed twice the selected storage capacity (so if for example selected storage capacity is 2TB, the throughput limit would be 4TB per month) or, where “pay-per-usage” has been selected, twice the average storage capacity used during the relevant month. This is based on an assumption of 95% upload and 5% download, and the Company may impose an alternative throughput limit if the Customer’s usage profile is materially different to this. The throughput limit does not apply to any uploads during set-up or downloads during a full restore.
- 4.4 The Company reserves the right to impose controls to prevent the usage limits being exceeded, in which case the Company may in the event that:
 - 4.4.1 The storage capacity limit is reached, be unable to upload further data until it deletes some stored data or upgrade storage capacity; and
 - 4.4.2 The throughput limit is reached, be unable to upload or download data until the following month (unless the Customer upgrades storage capacity). The Company will not be responsible for any losses the Customer suffers as a result of being unable to store or recover data as a result of usage limits being exceeded.
- 4.5 If the Customer exceeds the relevant storage capacity limit or throughput limit in any month the Company reserves the right to charge additional fees, being the difference between the Fees applicable to the package the Customer selected and the fees applicable to the least expensive package which would have provided sufficient storage capacity or throughput limit for the Customer actual usage.

5. **Obligations of the Company**

The Company shall:

- 5.1 Provide the Backup Services to the Customer as set out in the SOW.
- 5.2 Provide the Backup Services with reasonable skill and care.
- 5.3 Where delivery of the Backup Services is prevented or delayed by any act or omission of the Customer or failure of the Customer to perform any of its obligations, without limiting its other rights or remedies, have the right to suspend performance of the Backup Services until the Customer remedies its default, and to rely on the Customer’s default to relieve the Company from the performance of any of its obligations to the extent that the default prevents or delays performance of any of the Company’s obligations. Furthermore, the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company’s failure or delay to perform any of its obligations and the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by it arising directly or indirectly from the Customer’s default.

6. **Obligations of the Customer**

The Customer shall:

- 6.1 Ensure before entering into the Agreement that the description of the Backup Services out in the SOW is complete and accurate.

- 6.2 Perform any tasks allocated to it in the SOW.
- 6.3 Provide or arrange such reasonable support, assistance, materials and equipment (which shall be at the Customer's expense) as the Company may reasonably require to enable it to properly provide the Backup Services and so that the Company is not delayed in performing its obligations under the Agreement.
- 6.4 Provide the Company promptly with information the Company reasonably requires so that the Provider is not delayed in performing its obligations under the Agreement. The Customer acknowledges that the Company's ability to provide the Backup Services is dependent upon the Customer's full and timely co-operation as well as the accuracy and completeness of Customer Data.
- 6.5 Ensure that Customer Data does not infringe any applicable laws, regulations or third party rights (including, without limitation, IPRs) and that Customer Data does not include any Inappropriate Content.
- 6.6 Comply with the EULA when using the Backup Services.
- 6.7 Maintains its own backups of all Customer Data.

7. Fees, Invoicing and Payment

- 7.1 All Fees shall be calculated as set out in in the Purchase Order.
- 7.2 The Company shall invoice the Customer the Fees for the provision of the Backup Services as set out in the Purchase Order.
- 7.3 The Customer shall pay the Company all Fees as set out in the Purchase Order.
- 7.4 The Company may increase any ongoing Fees once in any 12 month period of the term. The Company shall give the Customer as least 60 days notice in writing of any proposed increase in the Fees. If such increase is not acceptable to the Customer it must notify the Company in writing within 30 days of the date of the notice that it wishes to terminate the Services and such termination notice shall be effective on the expiry of the 60 day notice period, unless the parties agree otherwise in writing.

8. Intellectual Property

- 8.1 All existing and future IPRs included in the provision of the Backup Services, (excluding all Customer Data) shall vest solely and exclusively in the Company or the Provider where it provides any Backup Services on behalf of the Company to the Customer. The Customer shall have no title, right or interest whether legal or beneficial in the Backup Services or any IPRs including any source code contained therein.
- 8.2 The Customer shall retain sole ownership of all rights, title and interest in and to Customer Data and its pre-existing IPR and shall have the sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data and its pre-existing IPR. The Customer grants the Company a non-exclusive, licence to use Customer Data, Customer pre-existing IPR and any third party owned item to the extent required for the Company to provide the Backup Services.
- 8.3 The Customer acknowledges and agrees that the Provider may use Customer Data to monitor and analyse the use of the Backup Services for the purposes of invoicing the Company, statistical analysis, benchmarking, research, improving the Backup Services and for any other lawful purpose.

8.4 Once the Backup Services are activated, the Customer must keep usage under review and not at any time exceed the chosen storage capacity. If the Customer needs additional capacity, it can upgrade the selected storage capacity.

9. **Term and Termination**

9.1 The Backup Services shall commence on the Effective Date set out in the Purchase Order for the Backup Services and shall continue for the Term set out in the Purchase Order or until earlier termination under the terms of the Agreement.

10. **Miscellaneous**

10.1 In the event of any inconsistency between the content of these Backup Services Terms and the remainder of the terms of the Agreement, the Order Form shall prevail followed by these Backup Services Terms, the General Terms and Conditions and then any schedules referred to in the Agreement in their numerical order.