

## Terms & Conditions

By clicking on the "I agree to the terms of use" box, or if you use this service but did not come to it directly through **backup4business**, by doing so you accept that you are creating a legal agreement on the terms and conditions below, and that this Agreement is a valid, legally binding and enforceable as it would have been had you been present to sign a document. If you do not wish to accept the terms and conditions detailed below, do not click on the "I agree to the terms of use" box and do not use the service. In order to use the software and services provided by **backup4business**, you must accept the terms and conditions below and you accept that any use of any part of the software or services, will create a legally binding contract on the terms and conditions below.

### END USER LICENCE AGREEMENT

All Intellectual Property in this Software, and any updates and supplements to it and any associated Documentation and Manuals ("the Software") is owned and controlled by **backup4business Ltd** ("the Owner") under license from its software suppliers. You may not use or access the Software, copy or modify it in any way without the express written permission of the Owner. The Owner offers you a non-exclusive licence on the terms of this Agreement.

#### 1. DEFINITIONS

1.1 In this Licence unless the context otherwise requires:

"the Owner" means Backup 4 Business Limited whose Registered Office is at St James House, Vicar Lane, Sheffield S1 2EX

"Agreement" means these terms and conditions under which you are being granted a licence to access the Software, Manuals, Documentation and Backup Services as set out herein

"Backup" means the process of transferring Data from your Computer to the Owner's Server for storage

"Backup Services" means the services offered by the Owner for Data storage in accordance with the terms of this Agreement

"the Owner's Server" means the computer system, owned by the Owner, supplied by an internet service provider or supplied by another third party and used to provide the Owner's Backup Services, its Web Site and other ancillary functions

"Your Computer" means the laptop, desktop personal computer, server that you use

"Data" means any programs, data or other information copied, or to be copied from Your Computer for storage during a Backup

"Encryption Key" means the special unique code which shall be known only to you, which you will be given to access and retrieve your data

"Intellectual Property" means all vested contingent and future intellectual property rights including but not limited to copyright, trademarks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications for the protection or registration or these rights and all renewals

and extensions thereof existing in any part of the world whether now known or in the future created to which the Owner may be entitled

"The Manuals" means the documentation, in whatever form supplied, on how to use the Software

"The Service" means the on-line Backup services

"The Software" means the computer program and all of the contents of the files, disk(s), CD-ROM(s) or other media provided under this Agreement, including but not limited to (i) Owner's or third party computer information or software; (ii) related explanatory written materials or files ("Documentation"); and (iii) fonts; and (iv) upgrades, modified versions, updates, additions, and copies of the Software, if any, supplied and licensed to you by the Owner (collectively, "Updates") to enable your Data to be stored on the Owner's Server

"The Subscription Fee" means the monthly or annual amount payable (if any) for The Backup Services

"Web Site" means a site at which text, graphics, data, files and information are stored electronically and access to which is made available to organisations and the general public via the Internet

## 2. LICENCE

In accordance with the terms of this Licence you are permitted to:

2.1 Download the Software and use it on a computer or computers which is or are under your control;

2.2 Make a backup copy of the Software for individual backup purposes only in support of the permitted use. The copies must reproduce and include the owner's copyright notice in the form of;

"© Backup 4 Business Ltd 2006 under licence from its suppliers"

2.3 Use the Manuals and Documentation in connection with the permitted use of the Software;

2.4 You are not permitted;

2.4.1 to rent, lease, sub-licence, loan, copy (except as expressly provided in this Agreement), modify, adapt, merge, translate, reverse engineer, decompile, disassemble or create derivative works based on the whole or any part of the Software;

2.4.2 except as expressly provided in this Agreement, to use, reproduce or deal in the Software (including without limitation in Manuals and Documentation relating thereto) in any way ;

2.4.3 transfer the Software, the Manuals, the Documentation and/or this Agreement to any individual or entity whether on a permanent or temporary basis. If you transfer possession of any copy of the Software to another person, the licence granted by this Agreement is automatically terminated without prejudice to any other rights and remedies the Owner may have in respect of such unauthorised use.

2.5 Notwithstanding the generality of clause 2.4 above any and all rights not expressly granted in accordance with the terms of this Agreement are hereby reserved to the Owner

### 3. TERM

3.1 The term of this licence (“the Term”) shall be for a minimum of 3 Months (unless a written longer term is agreed as an annex to this Agreement, signed by both parties) and shall commence upon your acceptance of the terms of this Agreement and shall continue unless and until terminated by either party in accordance with the following provisions. For the avoidance of doubt you shall not be entitled to access or use the Service, Software, Manuals or Documentation unless and until you have accepted the terms of this Agreement.

3.2 If you are the original registered user, the Software is being supplied to you on the basis that you have downloaded and installed the trial Software and created a backup account. At the end of the evaluation period, which runs from the day that you install the Software, the Software will cease to function and this licence will be suspended. In order to continue using the Software, you will need to purchase a subscription and register your backup account.

3.3 This licence (unless suspended in accordance with this Clause 3.1 above) is effective until you terminate it by destroying the Software Documentation and Manual together with all copies or as otherwise provided under the terms of this Agreement. It will also be revoked without further formality if you fail to abide by the terms of this Agreement or fail to pay the subscription charges when they fall due.

3.4 Upon termination or revocation (by whatever means) you agree to destroy the Software, Documentation and Manuals, including any electronic copies stored on any Computer under your control and the Owner shall have the right without the need for notice or any other formality to delete your stored Data without liability for loss or damage.

3.5 Subject always to the terms of this Agreement the Term shall continue unless terminated by either party giving to the other not less than one month's prior written notice to expire on the day the subscription fee is due and payable.

### 4. OWNERSHIP

The Owner shall at all times (during or after the expiry of the Term whether by effluxion of time or otherwise) retain ownership of the Software, Manuals and Documentation and subsequent copies thereof regardless of form. The Owner's warranties and support service under this Agreement are available only to the original registered user.

### 5. SERVICE LEVEL

5.1 The Owner warrants to make all reasonable endeavours to ensure that the Service is available for use and that in any event that the Service will be available for not less than 98% of the time in any given month excluding periods of maintenance.

5.2 Where you suffer any major Data loss the Owner will make all reasonable efforts to work with you and your contractors to ensure that you can restore from the Backup provided that your account with Backup4Business is in good standing.

5.3 The Owner reserves the right to suspend the availability of the service for periods of up to 24 hours in order to carry out maintenance works and or improve the service, provided that you are notified of the intended suspension no less than 48 hours in advance.

## 6. WARRANTIES AND DISCLAIMERS

6.1 The Owner warrants that the Software will during the Term perform substantially in accordance with its specification as described in the Manual and as displayed at [www.backup4business.com](http://www.backup4business.com) (provided that the Software is properly used on the Computer and with the operating system for which it was designed).

6.2 If the Owner is notified of significant errors during the warranty period (being ninety (90) days from the date upon which the Software or any part thereof is first supplied to you) it will repair or replace the Software within a reasonable time or (at its sole discretion) provide or authorise a refund of a percentage of the subscription fee.

6.3 The above represents your sole remedies for any breach of the Owner's warranties, which are given only to the original registered user.

6.4 The express terms of this Agreement are in lieu of all warranties, conditions, undertakings, terms and obligations implied by statute, common law, trade usage, course of dealing or otherwise all of which are hereby excluded to the fullest extent permitted by law.

6.5 The Owner does not warrant that the Software will meet your requirements or that the operation of the Software will be uninterrupted or error-free or that defects in the Software will be corrected. You shall load and use the Software at your own risk and you warrant to the Owner that at no time will you use the Software on your Computer on which there is a computer virus of any type regardless of whether the virus is capable of causing any damage. The entire risk arising out of use or performance of the Software and any support services remains with you.

6.6 You warrant to the Owner that at all appropriate or material times you will maintain and have maintained a registration under the Data Protection Act 1998 as the same may be varied and amended from time to time.

## 7. PRICING

7.1 The price for the Service will be the price shown within the relevant subscription rate applicable from time to time and stipulated on the **backup4business** website [www.backup4business.com](http://www.backup4business.com)

7.2 You acknowledge that the price shown within the relevant subscription rate is subject to change and is dependent upon the Backup Service package selected and the amount of data that is being stored.

7.3 The Owner shall be entitled to increase the charges for the Services following the expiry of the minimum term as stated in clause 3.1 above by serving not less than twenty eight days written notice on you.

7.4 You acknowledge that on termination of this Agreement before all Data is returned to you must immediately pay all outstanding charges at the date of termination and any charges for the provision of such retrievable by a portable disk.

## 8. SUPPORT

8.1 Telephone support is available between the hours of 09:00 and 17:00 Monday to Friday excluding public holidays.

8.2 the Owner will provide unlimited email support to you provided your account is in good order.

## 9. EXCLUSIONS

To the maximum extent permitted by applicable law, in no event shall the Owner or its suppliers be liable for any special, incidental, indirect, punitive or consequential damages whatsoever (including but not limited to, damages for: loss of profits, loss of confidential or other information, business interruption, personal injury, loss of privacy, failure to meet any duty (including of good faith or of reasonable care), negligence, and any other pecuniary or other loss whatsoever) arising out of or in any way related to the use of or inability to use the Backup Services components or the support services, or the provision of or failure to provide support services, or otherwise under or in connection with any provision of this End User Agreement, even if the Owner or any supplier has been advised of the possibility of such damages.

## 10 LIMITATION OF LIABILITY AND REMEDIES

10.1 The Owner does not seek to exclude its liability for death of personal injury clause by negligence caused by its negligence or for any fraud or fraudulent mis-representation.

10.2 The Owner shall have no liability to you in respect of any failure or delay by its to provide the Services in accordance with this Agreement where such failure or delay is attributable to any failure or delay by you to comply with your obligations under this Agreement.

10.3 The total aggregate liability of the Owner to you for all money claims in connection with the provision of the Services or otherwise arising out connection with the Services or this Agreement shall be limited to the amount of the charges paid or payable by you for the provision of the Services giving rise to the claim in question.

10.4 The Owner shall not be liable to you for loss of profit loss of anticipated profit loss of revenue damage to reputation damage to goodwill loss of business loss of savings or anticipated savings or any form of indirect consequential or incidental loss, any loss or damage arising as a result of any loss or of corruption to data and any loss or damage arising out of an inability to restore data due to the loss of or damage to any Encryption Key.

## 11. ACCEPTABLE USE

11.1 You may use the Backup Services only for lawful purposes. You may not use, and shall take all reasonable steps to ensure that no other person uses the Backup Service;

11.1.1 in a way that does not comply with the terms of any laws applicable to you or that is in any way unlawful or fraudulent or has any unlawful or fraudulent purpose or effect;

11.1.2 to store, send, knowingly receive, upload, download, use or re-use any material which is abusive, indecent, defamatory, criminally obscene or menacing, or in breach of any copyright, confidence, privacy or any other rights

11.1.3 to store send or upload any material that contains viruses, trojan horses, worms, time bombs or any other harmful programs

11.2 you hereby agree to fully indemnify the Owner from and against any and all costs losses and damages (including without limitation our legal costs on an indemnity basis) incurred by or in respect of any breach by you of the terms of this Agreement including without limitation these Acceptable Use provisions as set out in this clause 11.

11.3 you agree to fully indemnify the Owner from any claim or loss in the instance that the Owner is required, for any legal reason to allow access to the police or other authorised body to your data on our server.

## 12 FORCE MAJEURE

Except in respect of payment liabilities, neither party to this agreement will be liable for failure or delay in performance of its obligations under this Agreement due to reasons beyond its reasonably control including: acts of war, acts of God, earthquake, flood, riot, embargo, government act or failure of the Internet, provided that the delayed party gives the other party prompt notice for such cause.

## 13. ENTIRE AGREEMENT

13.1 This Agreement constitutes the entire agreement between the parties and with the exception of any fraudulent misrepresentations, supersedes all prior oral or written agreements, understandings or arrangements between them relating to the subject matter of this Agreement.

13.2 Nothing in this Agreement shall create or be deemed to create a partnership nor the relationship of employer and employee nor principal and agent between the parties.

13.3 The Owner reserves the right to make changes to any part of this Agreement by serving not less than twenty eight days written (email) notice on you.

## 14. LAW

This Agreement shall be governed by English law, and any disputes in relation to it will be subject to the exclusive jurisdiction of the English courts.

## 15. IMPORTANT NOTICE

YOU WILL HAVE THE SOLE RESPONSIBILITY FOR YOUR ENCRYPTION KEY WHICH WILL ALLOW YOU AND ONLY YOU ACCESS TO, AND RETRIEVAL OF, YOUR DATA STORED ON THE OWNER'S SERVERS. THE OWNER WILL NOT BE LIABLE IN ANY WAY FOR ANY LOSS OR DAMAGES ARISING OUT OF YOUR LOSS OF THE ENCRYPTION KEY. IN THE EVENT THAT YOU LOSE YOUR ENCRYPTION KEY NEITHER YOU NOR THE OWNER WILL BE ABLE TO ACCESS YOUR DATA.

If you accept the terms of this Agreement click "I AGREE TO THE TERMS OF USE"

