



*Safe and secure online data protection*

End User Agreement

between

Secure Backup Limited

and

[END USER]

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## **1. THE SERVICE**

- 1.1. The Service is an online data backup service comprising of a client program (the Software) installed on your computer / server and an online storage platform where your data is backed up to on a scheduled basis. This is more fully described in Schedule A
- 1.2. Secure Backup Limited is the authorised reseller of the Service and that the Service and the Software are used with the permission of and under licence from the owner of the Software..

## **2. SOFTWARE LICENCE**

- 2.1. In consideration of you paying the fee for the Service, Secure Backup grants to the End User a non-exclusive, non-transferable limited fixed term sub-licence to use the Software from the Commencement Date up to the Renewal Date on the terms and conditions set out in the Agreement.
- 2.2. You must only use the Software for your own purposes and only in accordance with these Service Terms and Conditions.
- 2.3. You must not:
  - (a) alter or modify the Software; or
  - (b) reverse engineer, dis-assemble, decompile, examine or attempt to reconstruct the Software or otherwise attempt to discover any source code or underlying ideas, structure or organisation or algorithms or trade secret related to the Software; or
  - (c) remove, obscure or alter any notice of patent copyright, restricted rights, trade secrets, trademarks or other proprietary right related to the Software; or
  - (d) make any copies of the Software; or
  - (e) sub-license the Software, or sell, lend, rent, lease, transfer, gift, assign or otherwise dispose of all or any portion of the Software or any interest in the same; or
  - (f) permit any third party to use the Software; or
  - (g) restrict or interfere or disrupt other End Users' use of the Service.
- 2.4. You must notify us if you become aware of any unauthorised use of the whole or any part of the Software by any person.

### **3. PRICING**

All pricing is in accordance with Secure Backup's published price list then applying with any changes to the price list notified 60 days in advance. All pricing is GST exclusive.

### **4. PAYMENT**

- 4.1. End User will pay 6 monthly or yearly in advance for accepted orders for the Service.
- 4.2. On acceptance of an order Secure Backup will provide a GST invoice to the End User.
- 4.3. End User shall pay Secure Backup all amounts invoiced by 10 working days from invoice date for orders for 6 months service in advance without setoff or deduction for any reason whatsoever;
- 4.4. The Service is provided for the fixed term specified in this Agreement and Secure Backup's pricing for the fixed term is based on the provision of the Service for the full term of the fixed term period. Therefore cancellation by End User of the Service does not entitle the End User to a refund of the unused portion of the fixed term.
- 4.5. Without prejudice to Secure Backup Limited other remedies, in the event of non payment of an invoice or any other sums owing to Secure Backup by End User, Secure Backup will be entitled to without necessarily further correspondence or demand:
  - (a) charge interest on overdue invoices at the rate of 2% per annum above the overdraft rate of Secure Backup's bank, calculated from the due date for payment down to the date of actual payment in full, payments going first to interest and then principal;
  - (b) suspend or terminate the Service; and
  - (c) recover from the End User the full costs of collection of overdue amounts, including reasonable legal fees and expense together with interest at the rate set in this Agreement on amounts awarded to Secure Backup and on the collection costs.

### **5. OWNERSHIP OF DATA**

- 5.1. All data that you backup using the Service is and shall remain your (the End User) property and nothing in these Service Terms and Conditions shall operate to transfer any ownership rights in your data to Secure Backup or anyone claiming through Secure Backup.

### **6. END USER OBLIGATIONS**

- 6.1. You are responsible for all activity occurring under your user account, and for your own computer hardware and software, and for the security of your own computer networks, internet and telecommunication services.
- 6.2. You are responsible for:
  - (a) all content or data sent using the Service;

- (b) selecting the data to be backed up using the Service, and for verifying that the correct data has been selected;
  - (c) maintaining an adequate internet connection and service to allow the Service to operate; and
  - (d) installing the Software, selecting the backup period and ensuring that the Software is kept operational.
- 6.3. You must abide by all applicable national and international laws and regulations in connection with your use of the Service, including those related to data privacy and the transmission of technical or personal data.
- 6.4. We are not responsible for problems caused by the operating characteristics of your computer hardware or operating system, or your Internet service.
- 7.5. You grant Secure Backup the right to access your computer system for the purpose of providing the Service and s.252 of the Crimes Act 1961.
- 7.6. In the event you retain Secure Backup to install the Software required to operate the Service, you agree that the provisions of this Agreement apply to the installation of the Software.

## **7. WARRANTIES**

- 7.1. Secure Backup Limited warrants that for a period of ninety 90 days after the date of delivery to the End User, Services will be free from defects in materials and workmanship under normal use and service.
- 7.2. To the extent permitted by law, Secure Backup Limited:
- (a) disclaims all other warranties with respect to the Services, either express or implied, including but not limited to any implied warranties relating to quality, fitness for any particular purpose or ability to achieve a particular result;
  - (b) makes no warranty that the Services are error free or that use of the Services will be uninterrupted and the End User acknowledges and agrees that the existence of such errors shall not constitute a breach of this Agreement; and
  - (c) does not give any warranty in respect of third party products (but Secure Backup will pass on to the End User the benefit of any third party warranty supplied by a third party manufacturer or supplier).
- 7.3. The warranties in this clause 9 shall not apply to the extent that the defect, error or breach arose or was exacerbated as a result of:
- (a) incorrect use, operation or corruption of the Service or Software;
  - (b) any unauthorised modification or alteration of the Service or Software;
  - (c) the use of the Service or Software with other software or on equipment not specified as compatible with the Service by Black Box Backup;
  - (d) any third party failure for example but without limitation, power or telecommunications failure.
- 7.4. The warranties in this clause 9, to the extent permitted by law, are subject to the limits and exclusions of liability set out in clause 10.

## 8. LIABILITY

- 10.1 If End User is acquiring the Services for the purposes of a business End User agrees that the End User's general rights at law in connection with the Services will to the extent permitted by law be determined by the terms of this Agreement only. In particular, End User agrees that the provisions of the Consumer Guarantees Act 1993 will not apply to the Services provided under this Agreement.
- 10.2 To the extent permitted by law and without limiting any other provision of this Agreement limiting Secure Backup's liability Secure Backup is not liable for:
- a) any damage, harm or loss suffered by End User howsoever caused including without limitation misrepresentation, consequential loss, loss of profits, reparations, costs or loss of business; or
  - b) failure to perform if the failure results from power, communications, software, firmware or hardware failure or any kind.
- 10.3 In no event will Secure Backup Limited be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of Secure Backup whether such damages were reasonably foreseeable or actually foreseen.
- 10.4 Secure Backup Limited's maximum total cumulative liability to the End User under this Agreement or otherwise for any cause whatsoever (whether in the form of the additional cost of remedial services or otherwise) for any one event or series of connected events will be limited to the amounts actually paid to Secure Backup for the Services by the End User over the 6 (six) months preceding the event giving rise to liability.
- 10.5 No action regardless of form may be brought against Secure Backup Limited more than two years after the cause of action arose.
- 10.6 The limits and exclusions in this clause 10 shall not apply to clause 11.
- 10.7 The parties hereby acknowledge and agree that the limitations contained in this clause 10 are reasonable in light of all the circumstances.
- 10.8 The End User acknowledges that Secure Backup does not host the backup or have access to the End User's data backed up using the Service. Secure Backup is merely a licensee of the Software and resells the Services. Secure Backup's role does not extend beyond installation of the Software and arranging the initial back up.

## 9. TERMINATION

- 9.1. Without limiting Secure Backup's rights to payment as set out in clause 5, this Agreement may be terminated by one party ('First Party') by notice to the other Party ('Second Party'):
- (a) if the Second Party breaches any of its obligations under this Agreement and fails to remedy the breach within 30 days after notice from the First Party specifying the breach and requiring it to be remedied;
  - (b) if the Second Party goes into liquidation or has receiver or manager or statutory manager or its equivalent appointed over its assets or becomes insolvent or ceases to carry on business or makes any composition or arrangement with its creditors, other than for restructuring its business;
  - (c) if an event of force majeure continues for a period of more than 3 months.

9.2. This Agreement may be terminated by Secure Backup by notice to the End User if:

- (a) the End User breaches clause 9 or commits any other breach or infringement of the Intellectual Property Rights, which breach shall be deemed to be unable to be remedied; or
- (b) the End User permanently discontinues the use of the Services.
- (c) the End User does not pay the fees for the Service by the due date for payment.

9.3. Termination of this Agreement shall not affect any accrued rights or liabilities of either party nor prevent any party from pursuing additional or alternative remedies provided by law.

## **10.END USER ENCRYPTION KEY**

10.1. End User files are encrypted with an encryption algorithm, called 256-bit AES, when backed up to the server.

10.2. End User will be issued with an Encryption Key to allow End User to decrypt End User's data.

10.3. It is End User's responsibility to change End User's initial Encryption Key, so that no-one but you has a record of it.

**Caution:** We do not store End User's Encryption Key. If End User forgets End User's Encryption Key, End User's backups will become inaccessible – End User will not be able to access End User's data on our servers.