



MANAGEMENT INFORMATION CENTRE LIMITED

ONLINE DATA BACKUP SERVICE AGREEMENT

Customer Details Schedule

Agreement number	
Customer	
Address	
Registered/Principal Office (if different)	
Telephone	
Invoice Address	
Commencement Date	
Initial Period	

The Customer has agreed to purchase and Management Information Centre Limited has agreed to supply the Backup Services in accordance with the terms and conditions of this Agreement

As signed for and on behalf of Management Information Centre Limited	As signed for and on behalf of <i>Customer name</i>
Authorised Signatory	Authorised Signatory
Name (print)	Name (print)
Date	Date

1. Definitions and Interpretation

1.1 In this Agreement, the following expressions shall have the following meanings:

“Additional Services”	Any services (other than the Backup Service) that the Company makes commercially available from time to time including, by way of example but not limitation any data recovery, support, hosting services, network monitoring or support services
“Agreed Amount”	online backup space up to the Agreed Amount stated in Schedule 1
“Backup”	the process of transferring the Data from a Customer Computer to the Company Server for storage using the Company Software
“Backup Service”	the online data backup and retrieval services to be provided for the Customer's business continuity purposes by the Company (referred to in clause 2 and described in Schedule 1) during the Term using the Company Software
“Company”	Management Information Centre Limited, whose registered office is at 22 Wycombe End, Beaconsfield, Buckinghamshire HP9 1NB
“Company Server”	the computer hardware and software system/s and network/s owned by the Company or supplied to it by a third party/ies and used by it to provide the Backup Service, and any other ancillary functions (but not including the Company Software)
“Company Software”	the personal computer desktop software, media, associated documentation, manuals and other information, and any updates and supplements to them, supplied by the Company for use by the Customer in accordance with the Licence to enable it to access related internet services for the purpose of it using the Backup Service
“Customer”	the company, organisation or firm detailed on the Customer Details Schedule
“Customer Computer”	the computer equipment (either a workstation, terminal, personal computer, server or other computer system) provided and used by the Customer from time to time for the purpose of this Agreement for running the Company Software, for transmitting Data to the Company, and for recovering and saving Data upon its Retrieval
“Commencement Date”	means the date set out in the Customer Details Schedule
“Confidential Information”	all Data and any other information received or obtained by a party that is proprietary or confidential of the other party and (i) is clearly labelled as such; (ii) is otherwise clearly identified as such; or (iii) from its nature and/or the circumstances of its disclosure it is reasonable to infer that it is such, but not including information that: a) is or becomes publicly known other than through any act or omission of the receiving or obtaining party; b) was in the other party's lawful possession before the disclosure; c) is lawfully disclosed to the receiving or obtaining party by a third party without restriction on disclosure; d) is independently developed by the receiving or obtaining party, which independent development can be shown by written evidence; or e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body

“Data”	any data (including any personal data as defined by the Data Protection Legislation), programs, or other information of the Customer copied, or to be copied, from the Customer Computer during a Backup
“Data Protection Legislation”	(i) the General Data Protection Regulation (EU) 2016/679 (GDPR) and any national implementing law, regulations and secondary legislation, as amended or updated from time to time in the UK and (ii) any successor legislation to the GDPR or the Data Protection Act 1998.
“Encryption Key”	the special unique code which shall be known only to the Customer, given to the Customer by Company to access and retrieve its Data stored on the Company Server
“Excused Outage”	any Outage in a calendar month where the Customer is unable to use the Backup Service due to its full or partial unavailability or non-function which is, or is caused by, a) a Maintenance Period; b) Force Majeure affecting the Company; c) any act or omission of the Customer; or d) any failure, incorrect functioning or non-functioning of or fault in any computer, telecommunications, equipment, software, facilities or services of the Customer or for which the Customer is solely responsible under this Agreement
“Fee”	the fee payable by the Customer for the Backup Services as set out in Schedule 3, as the same is amended from time to time in accordance with the terms of this agreement
“Force Majeure”	event, circumstance, or cause beyond reasonable control of: a) the party whose obligations are affected by such event, circumstance, or cause (including, without limitation, strike, lock-out or other industrial action (whether involving the workforce of Company or any other party), failure of a utility service or transport or telecommunications network, , act of God, acts of war, riot, civil unrest, acts of terrorism, malicious damage, compliance with any law,, rule or regulation, governmental action or direction, accident, breakdown of plant or machinery, hardware or software failure, power failure, fire, flood, storms, earthquake, theft, or default of suppliers or sub-contractors); or b) where Company's performance of its obligations is affected by such event, circumstance, or cause, the failure of Customer Computer or other equipment or facilities for which Customer is responsible
“Intellectual Property”	any and all registered or unregistered intellectual property rights which now or in the future may subsist in any territory including but not limited to patents, trade marks, service marks, designs, trade secrets, business and company names, copyrights, database rights, know-how, rights in designs and inventions, and the right to sue for past infringements of any of the foregoing rights to which the Company may be entitled
“Internet”	means the global data network comprising interconnected networks using the TCP/IP protocol suite
“Licence”	the licence (referred to at Clause 3) granted by the Company to the Customer of the Company Software the terms of which comprise those set out in a separate licence document between the Company and the Customer and all other applicable terms of this Agreement

"Maintenance Period "	any Outage in a calendar month for planned maintenance, configuration changes or upgrade of the Backup Service, which is within the following limitations: a) only the first [●] hours of such Outage in aggregate in any calendar week (Monday to Sunday) shall count; b) only the first [●] hours of such Outage in aggregate in any calendar month shall count; and c) the Company has given notice to the Customer of any such Outage period at least 72 hours prior to its commencement. Accordingly the following will not be a "Maintenance Period": <ul style="list-style-type: none"> (i) any Outage caused by work or actions by the Company or any third party which is not planned maintenance, configuration changes or upgrade of the Backup Service; or (ii) maintenance, configuration changes or upgrade which is not within the above limitations
"Non-excused Outage"	any Outage in any calendar month which is not Excused Outage
"Outage"	any period(s) during which the Backup Service is unavailable for use by the Customer during any time that the Customer is permitted by this Agreement to use it
"Retrieval"	restoration and retrieval by Customer of Data using the Backup Service, as detailed in Schedule 1
"Service Credits"	the service credit sums payable or allowable to the Customer referred to in Schedule 1 subject to the limits on such sums referred to in Schedule 1
"Term"	an initial period of twelve months and thereafter, unless and until terminated by either party in accordance with the provisions of the Agreement

1.2 Unless the context otherwise requires, any reference in this Agreement to:

- 1.2.1 "writing", and any similar expression, includes any communication effected by electronic or facsimile transmission or similar means;
- 1.2.2 a statute or a provision of a statute is to that statute or provision as amended or re-enacted at the relevant time;
- 1.2.3 "this Agreement" is to this Agreement and each of the Schedules as amended or supplemented at the relevant time, and a Schedule is a schedule to this Agreement;
- 1.2.4 a Clause or paragraph is to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule; and
- 1.2.5 a "party" or the "parties" is to the parties to this Agreement.

1.3 In this Agreement:

- 1.3.1 The headings are for convenience only and have no effect upon the interpretation of this Agreement;
- 1.3.2 Words imparting the singular number include the plural and vice versa;
- 1.3.3 A reference to one gender includes a reference to the other genders;
- 1.3.4 A reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); and
- 1.3.5 A reference to the Customer or the Company includes its respective employees and contractors.

2. Services

- 2.1 The Company shall provide the Backup Service from the Commencement Date for the duration of the Term, as specified in, and subject, to all of the terms, conditions and other provisions of this Agreement.

- 2.2 The use by the Customer of the Backup Service shall be as specified and limited by, and subject to, all of the said terms, conditions and other provisions of this Agreement.
- 2.3 This Agreement does not include supply of any Additional Services but if the Customer requests any Additional Services, the Company shall use reasonable endeavours to offer such requested services on its then current standard terms and conditions.

3. Licence

- 3.1 The Company Software may only be used by the Customer as part of the Backup Service and under a licence of the Company Software granted by the Company ("Licence").
- 3.2 Accordingly, the Company hereby grants the Licence to the Customer on and subject to the terms set out in a separate licence document in writing between the Company and the Customer and all other applicable terms of this Agreement.

4. Company's Obligations

The Company:

- 4.1 shall provide the Backup Service with all reasonable skill and care;
- 4.2 shall provide the Backup Service to at least the same standard as is generally adopted by other commercial 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 Sub-Clauses 4.1 to 4.3, does not undertake or warrant that:
 - 4.4.1 Customer's Data shall be transferred to it, or stored by it, entirely free from corruption, loss or damage, or that it will in its entirety be accessible or capable of retrieval by, or transferrable to, the Customer, or that it will be inaccessible by third parties,
 - 4.4.2 the Company Software will meet Customer's requirements;
 - 4.4.3 the operation of the Company Software will be uninterrupted or error-free; or
 - 4.4.4 the Backup Service, and in particular the Company Server, will
 - 4.4.4.1 operate entirely error-free; or
 - 4.4.4.2 be available during any Excused Outage time.
- 4.5 shall not have any obligation or duty, and shall not bear any liability or responsibility, in relation to any of those matters which the Customer expressly undertakes, warrants, or bears responsibility of, in this Agreement;
- 4.6 may enter into any agreement(s) with others to provide to such others similar services to the Backup Service; and
- 4.7 shall be entitled to make any changes to the Backup Service from time to time, subject to the provisions of Clause 12.2.2.

5. Customer's Obligations

In relation to this Agreement and use of and access to the Backup Service:

- 5.1 the Customer undertakes to Company to:
 - 5.1.1 not transmit, store, receive, upload, download, use, or re-use any Data or other material that, in any jurisdiction, does or may infringe the Intellectual Property or other rights of third parties, or is illegal, tortious, defamatory, libellous, or breaches another's confidentiality or privacy rights, or is abusive, indecent, defamatory, criminally obscene or threatening, or is otherwise unlawful;

- 5.1.2 not transmit to Company for storage by Company any personal or other data of another party without first obtaining any consent of that party required by law to be obtained for that purpose;
 - 5.1.3 comply with the Data Protection Legislation;
 - 5.1.4 not knowingly Backup, or store or transmit, any material that contains software viruses or any other harmful programs, code, files or programs, such as trojan horses, worms or time bombs;
 - 5.1.5 comply with all such laws and regulations as are applicable to Customer's transmission, storage, and retrieval of Data using the Backup Service;
 - 5.1.6 not use the Backup Service for any purposes or in any way which in any jurisdiction is illegal or fraudulent or has any unlawful effect;
 - 5.1.7 comply with the Company's guidelines, policies, procedures, arrangements and any instructions issued from time to time by the Company notified by it to the Customer;
 - 5.1.8 not to interfere with, disrupt, or attempt to gain unauthorised access to, computer systems, servers or networks connected to the Backup Service;
 - 5.1.9 not attempt to gain unauthorised access to the Backup Service or the accounts of other Customers of the Company who use similar services provided by the Company; and
 - 5.1.10 that in connection with the Backup Service all personal data and other data used by the Customer or disclosed or transmitted by it to the Company will be properly in the possession of, and properly disclosed and transmitted by the Customer;
 - 5.1.11 fulfil all other Customer obligations and responsibilities set out in this Agreement in a timely and efficient manner.
- 5.2 the Customer assumes the sole responsibility for:
- 5.2.1 selecting the Backup Service and deciding whether it meets its business needs;
 - 5.2.2 completing the process of downloading, installing and activating the Company Software and initial activation of the Backup Service using the Company Software;
 - 5.2.3 Backing-up its Data whenever it requires a Backup of it;
 - 5.2.4 using a Customer Computer suitable for the purpose of using the Backup Service;
 - 5.2.5 establishing and maintaining all telecommunications, internet and computer equipment, software, data, storage media, arrangements, services, facilities and resources (including, but not limited to, telecoms links, power, modem, router, cabling, switches, firewall) necessary for the purpose of using the Backup Service;
 - 5.2.6 implementing Customer's own internal policies and procedures for opening potentially dangerous attachments (and is encouraged to install antivirus software on all access points or computers);
 - 5.2.7 the consequences to the Customer and to Company Server storage devices and media of the Customer transmitting Data containing any virus or malicious code;
 - 5.2.8 loss or corruption of or damage to Data unless due to any breach of any of the Company's obligations under this Agreement;
 - 5.2.9 the supply, operation, control and support of all necessary resources not included within the Backup Service;
 - 5.2.10 Encryption Key received or obtained by Customer;
 - 5.2.11 all security arrangements necessary and appropriate to Customer's use of the Backup Service including, without limitation, passwords, pass codes, audit controls, operating methods and procedures;
 - 5.2.12 all results it obtains from the Backup Service;

- 5.2.13 the integrity and the suitability of the Data that is to be Backed up and is to be restored by Customer unless the defect in the integrity or the suitability of the Data is due to any breach of any of the Company's obligations under this Agreement; and
- 5.2.14 its use of the Company Software unless any failure of the Company Software or adverse consequence of such use is due to any breach of any of the Company's obligations under this Agreement.

6. Charges and payment

- 6.1 The Customer shall pay the Fee set out in Schedule 3 in advance in accordance with the payment profile set out in Schedule 3. The Fee shall be in consideration for the provision and use of Backup, Retrieval and the Licence.
- 6.2 All Fee amounts and other amounts stated or referred to in this Agreement are exclusive of Value Added Tax, which shall be added to the Company's invoice(s) at the appropriate rate.
- 6.3 The Company will issue invoices in advance for the Fee as set out in Schedule 3.
- 6.4 Each invoice will be due and payable by the Customer 14 days after the invoice date. If the Company has not received payment within five working days after the due date, and without prejudice to any other rights or remedies of the Company:
 - 6.4.1 the Company may terminate or temporarily suspend provision of the Backup Service while the invoice concerned remains unpaid; and
 - 6.4.2 the Customer shall pay interest on demand on the overdue amount at the rate of 5% per annum above Lloyds Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 6.5 Subject to sub-clause 6.6, the Company shall not be entitled to vary the Fee during the first 12 months of this Agreement. Thereafter, the Company shall be entitled to vary the Fee not more than once in each successive period of twelve months upon giving not less than 60 prior days written notice of fee variations to the Customer. Subject to clause 6.6, the fee variation described in this clause 6.5 shall take effect 60 days after the date of the written notice.
- 6.6 Upon receipt of any notice of variation to the Fee issued by the Company in accordance with clause 6.5, the Customer shall be entitled to terminate the Agreement by giving three months' notice in writing to the Company, provided that such notice may only be given within 30 days of receipt of a notice of increase to the fee pursuant to clause 6.5. For the avoidance of doubt, in the event that the Customer serves notice of termination in accordance with this clause then the variation to the fee shall not take effect.
- 6.7 On each anniversary of the Commencement Date, the Company shall be entitled to increase the Service Fee by 5% or an amount equal to the percentage increase in the Retail Prices Index over the preceding 12 month period whichever is the greater.

7. Data Protection

- 7.1 The Company and the Customer acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Company is the data processor.
- 7.2 The Company and the Customer will comply with the Data Protection Legislation.
- 7.3 Schedule 4 sets out, in accordance with Data Protection Legislation, the scope, nature and purpose of the processing by the Company; the duration of the processing; the types of personal data to be processed (**Personal Data**); and the categories of data subject.
- 7.4 The Company shall, in relation to any Personal Data processed in connection with the Agreement:
 - a. process that Personal Data only on written instructions of the Customer.
 - b. keep the Personal Data confidential.

- c. comply with the Customer's [Privacy standard OR Data protection policy] [data retention guidelines].
 - d. not transfer any Personal Data outside of the European Economic Area without the Customer's prior written consent.
 - e. assist the Customer in responding to any data subject access request and to ensure compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or regulators.
 - f. notify the Customer immediately on becoming aware of a Personal Data breach or communication which relates to the Customer's or Company's compliance with the Data Protection Legislation.
 - g. at the written request of the Customer, return Personal Data and any copies thereof to the Customer on termination of the Agreement unless required by the Data Protection Legislation to store the Personal Data.
 - h. maintain complete and accurate records and information to demonstrate compliance with this clause 7 and allow for audits by the Customer or the Customer's designated auditor.
- 7.5 The Company shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures. Such measures may include, where appropriate:
- a. pseudonymising and encrypting Personal Data.
 - b. ensuring confidentiality, integrity, availability and resilience of its systems and services.
 - c. ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident.
 - d. regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it.

8. Confidentiality

Each party may receive or obtain Confidential Information of the other party from that other party under this Agreement. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make that other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement, or divulge the other's Confidential Information to any of its employees who do not need to know it. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

9. Indemnity by Customer to Company

Subject to Clause 10.3, the Customer undertakes to defend and indemnify the Company against and hold it harmless from any third party claims, actions, and proceedings, and all losses, damages, expenses and costs (including without limitation legal costs) associated therewith, where any of the same arise out of or in connection with either the Customer's use of or access to the Backup Service, or possession of Data by the Company pursuant to this Agreement, or any breach by the Customer of any warranty, undertaking or other terms or conditions of this Agreement, unless, and to the extent that, the same arise from any breach of any of the Company's obligations under this Agreement.

10. Company Warranty and Indemnity

- 10.1 Subject to Clauses 4 and 5, the Company warrants that the Company Software will during the Term perform substantially in accordance with its specification as described in the manual provided with the Company Software provided that it is properly used on the Customer Computer and with the operating system for which it was designed.
- 10.2 If the Customer notifies the Company of significant errors or defects in the Company Software during the warranty period (being ninety (90) days from the date upon which the Company Software or any part thereof is first supplied to the Customer), the Company will repair or replace the Company Software within a reasonable time or (at its sole discretion) provide or authorise a refund of any Fee previously paid by the Customer. This will be the Customer's sole remedy for any breach of Clause 10.1 or for any errors or defects in the Company Software or its operation.
- 10.3 Company undertakes that it has good title to or a right to licence the Company Software and further undertakes to indemnify Customer against any claims by third parties of infringement of Intellectual Property arising out of Customer's use of, or Company's provision of, the Backup Service to the Customer, provided that Company shall have no liability to indemnify Customer if the alleged infringement is attributable either to modification by anyone other than Company of any of the Company Software or to Customer's use of Company Software contrary to any instructions given by Company.

11. Liability

- 11.1 The Customer accepts that the level of the Fee takes fully into account the limits of the Company's entire financial liability (set out below) for the Backup Service, the Customer's use of it, and for anything else in connection with this Agreement.
- 11.2 The Company acknowledges that the Customer has a legitimate commercial interest in the Non-excused Outages being avoided or minimised and that the Customer should have an appropriate remedy for any Non-excused Outages, and the Company will accordingly be liable to the Customer for Service Credits (as set out in Schedule 1) for any and all Non-excused Outage in any calendar month, but the Company will have no further financial liability to the Customer for any or all Non-excused Outage in that calendar month. The Customer accordingly accepts Service Credits as its exclusive remedy available for any and all Non-excused Outage.
- 11.3 Occurrence of any Excused Outage is not within the scope of the Backup Service and accordingly the Company will not have any financial or other liability for any Excused Outage.
- 11.4 Except as expressly set out in this Agreement the Company gives no warranties or guarantees and makes no representations concerning the Backup Service, and all such warranties, guarantees, representations, and all conditions and any other terms whatsoever implied by statute or otherwise, are hereby excluded from this Agreement to the fullest extent permitted by applicable law.
- 11.5 Nothing in this Agreement limits or excludes the liability of the Company for:
 - 11.5.1 death or personal injury caused by the Company's negligence; or
 - 11.5.2 direct damage to property caused either by any breach of this Agreement by, or negligence of, the Company limited to £100,000 for any one event or series of events; or
 - 11.5.3 fraud or fraudulent misrepresentation.
- 11.6 Subject to clause 11.5, the Company hereby excludes all liability, whether in contract, tort (including for negligence or breach of statutory duty), or for negligent or innocent misrepresentation, or otherwise, for:
 - 11.6.1 loss of business, revenue or profits, loss of anticipated savings, loss or corruption of or damage to data, in each case whether it is direct, special, or indirect or consequential loss or damage; and
 - 11.6.2 any other special, indirect or consequential loss, damage, cost or expense.
- 11.7 Subject to Clause 11.5, any liability of the Company for breach of this Agreement (excluding liability under the indemnity at clause 10.3) or tort (including negligence or breach of statutory duty), or for negligent or innocent misrepresentation, or otherwise in connection with this Agreement, shall be limited in the aggregate to the total amount

paid by the Customer for the Backup Service during the 12 month period up to the date the liability arose.

- 11.8 The limitations and exclusions in this clause 11 are cumulative.

12. Period and termination of Agreement

- 12.1 This Agreement shall come into force on the Commencement Date, and shall continue from that date for the Term unless and until either party gives at least 90 days' prior written notice expiring either at the end of the first initial twelve month period of the Term or on any anniversary of the end of that initial period, subject to the provisions in this clause.
- 12.2 Without affecting any other right or remedy available to either party under this Agreement or at law or any accrued rights or liabilities of either party:
- 12.2.1 the Company may terminate this Agreement with immediate effect by giving written notice if the Customer fails by the due date for payment to pay any sums due under this Agreement;
- 12.2.2 if the Company notifies the Customer pursuant to clause 4.7 of a change to the Backup Service that would materially and adversely affect the Customer's use of the Backup Service for business continuity purposes the Customer may at any time within 30 days after the date of the Company's notice elect to terminate this Agreement with immediate effect;
- 12.2.3 either party may terminate this Agreement with immediate effect by giving written notice to the other party if the other party:
- 12.2.3.1 commits a material or continuing breach of any of its obligations under this Agreement and fails to remedy the breach (if it is capable of remedy) within 30 days after written notice; or
- 12.2.3.2 has not for a continuous period of 30 days been able to perform its obligations as a result of Force Majeure; or
- 12.2.3.3 is generally unable to pay its debts within the meaning of section 123 or Section 268 of the Insolvency Act 1986; or
- 12.2.3.4 is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction, or makes an arrangement with its creditors or petitions for an administration order or if a trustee, receiver, administrative receiver or general officer is appointed over all or any part of its assets.
- 12.3 On any termination of this Agreement, the Customer shall cease to use and shall delete/return to the Company all property of the Company, and, unless the parties have previously agreed otherwise, the Company may, without notice to the Customer, delete or dispose of the Customer's Data or other items in its possession without thereby incurring any liability for loss or damage for doing so.

13. Waiver and rights and remedies

No failure or delay by a party to enforce its rights will prejudice or restrict its rights. No waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

14. Force majeure

Subject to Clause 12.2.3.2, no party shall be liable for any failure or delay in performing its obligations where such failure or delay results from Force Majeure. Where Force Majeure occurs, the affected party shall be entitled to a reasonable extension of time for performing those obligations.

15. Severance

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

16. Assignment

- 16.1 This Agreement is personal to the parties.
- 16.2 The Customer's right to use the Backup Service is personal to it, and it agrees not to make available to any other person or to resell or make any commercial use of the Backup Service.
- 16.3 Neither party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder without the written consent of the other party, such consent not to be unreasonably withheld.

17. Third party rights

No part of this Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

18. No partnership or agency

Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency, or other fiduciary relationship between the parties other than the contractual relationship expressly provided for in 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, a duly authorised officer of the party giving the notice.
 - 19.2 Notices shall be deemed to have been duly given:
 - 19.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - 19.2.2 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid.
- In each case notices shall be addressed 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 between their appointed representatives who have the authority to settle such disputes.
- 20.2 If negotiations under sub-Clause 20.1 do not resolve the matter within 21 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.
- 20.3 If the ADR procedure under sub-Clause 20.2 does not resolve the matter within 28 days of the initiation of that procedure, or if either party will not participate in the ADR procedure, the dispute may be referred to arbitration by either party.
- 20.4 The seat of the arbitration under sub-Clause 20.3 shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the parties. In the event that the parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either party may, upon giving written notice to

the other party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.

- 20.5 Nothing in this Clause 20 shall prohibit either party or its affiliates from applying to a court for interim injunctive relief.

21. Entire Agreement

- 21.1 This Agreement contains the entire agreement and understanding between the parties, and supersedes any previous agreement between them with respect to its subject matter and it may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.
- 21.2 Each party acknowledges that in entering this Agreement, it does not rely on any representation, warranty, assurance or other provision (made innocently or negligently) except as expressly provided in this Agreement except if made or given fraudulently.
- 21.3 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 21.4 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.

22. Governing law and jurisdiction

- 22.1 This Agreement (including any non-contractual matters and obligations arising there from or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 22.2 Subject to the provisions of Clause 21 (dispute resolution), any dispute, controversy, proceedings or claim between the parties relating to this Agreement (including any non-contractual matters and obligations arising there from or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

SCHEDULE 1

The Backup Service

The Backup Service provided by Company comprises the following offsite backup, storage, restoration and retrieval of data services and facilities as detailed in, and within the scope of, the Specification (set out below), subject both to the terms of the Licence of the Company Software set out in a separate licence document and to all other terms of the Agreement:

1. The Backup Service provides the capability during the Term to store Data (up to the Agreed Amount of online space) on Company Server and Retrieval of that Data from the Company Server. *The Company Server stores a single copy of Data.*
2. The Backup Service operates via the internet using an internet control product comprising the Company Software installed on one or more Customer Computers which interact with the Company Server. The Company Software on Customer Computers connect to a server network infrastructure that is deployed on the internet and managed by Company. All or portions of the Backup Service may be provided by a third-party provider, including but not limited to, the storage of Data Backed up via the Backup Service.
3. The Agreed Amount of online space for Backup of Data which has been purchased by, and is available to, Customer is ● gigabytes but if additional space is available the Customer may purchase such additional space at such additional price as the Company quotes.
4. Customer's Backup of Data which the Customer wishes to be backed up will be effected by the Company Server which will make and store a copy of that Data when the Company Server is accessed by the Customer by means of the Company Software and the Customer effects a Backup of that Data. The Data which will be Backed up on the first and each subsequent occasion that the Customer conducts a Backup and the previously Backed up Data which will be deleted on any Backup will be as specified below (in the Specification)
5. The Backup Service will be operational and available to Customer [●98]% of the time in each calendar month less any Excused Outage in that month. (The first calendar month begins on the Commencement Date.) The Company has no obligation to make the Backup Service available during the period of any Excused Outage.
6. If there is any Non-excused Outage in any calendar month, Company will allow or pay to Customer Service Credit sums calculated as set out in paragraph 7 below for that Non-excused Outage, subject to the following limits for Service Credit sums for Non-excused Outage:
 - 6.1 the total of Service Credit sums for any calendar month will not exceed the Maximum Monthly Service Credit Amount. The Maximum Monthly Service Credit Amount shall be £●; and
 - 6.2 the total of all Service Credit sums for each succeeding period of 12 calendar months (the first of which begins on the Commencement Date) will not exceed the Maximum Annual Service Credit Amount. The Maximum Annual Service Credit Amount shall be £●.
7. Subject to paragraph 6 above, if on any day (midnight to midnight) in any calendar month there is/are any period/s of Non-excused Outage cumulatively exceeding [●1] hour, the Service Credit sum for that day shall be ● times the portion of the Fee payable by Customer for that day. For this purpose the portion of the Fee deemed to be payable for any day is deemed to be one 365th of the total Fee payable for the twelve month period in which that day falls.
8. Subject to any limits on times or days set out in the Specification:
 - 8.1 Backups, and storage of the Data on the Company Server, are selected and scheduled in advance by Customer using the Company Software such that the Backup is then run automatically by the Company Software on the days and at the times scheduled; and
 - 8.2 A Retrieval is performed manually by Customer as and when Customer has a need for it. It is not pre-scheduled or initiated or run automatically. It is subject to the limitations on scope and other limits set out in the Specification. Retrieval is effected by using the Company Software to initiate transmission of Data from the Company Server to a Customer Computer.

9. Company is not responsible for:
 - 9.1 either loss of data or absence of backup of it occurring between each Backup; or
 - 9.2 Customer's deletion or failure to store data; or
 - 9.3 delay in or failure of any Backup or Retrieval due to any factors, equipment, facilities, or services which are not provided or managed by the Company or for which it is not responsible, including slow transmission speed, transmission failure or defect, inadequate transmission size or capacity, route of internet connection, and instability or failure of internet connection.
10. Company Server includes antivirus software in order to protect the Company Server and detect viruses and other malicious code. Company will deal in accordance with its policy and preferences with infected files containing Data being Backed up.
11. Company does not monitor use of the Backup Service, content of Data, or Customer Data transmission or storage and Company is a mere conduit. Customer accordingly is solely responsible in relation to Data (including without limitation Data licensing, integrity, content, dissemination, format, Backup scheduling and transfers).

The Specification

Insert relevant service description and specification applicable to the customer

eg standard copy back up/ standard daily backup/standard incremental backup

SCHEDULE 2

Licence of the Company Software

The following shall apply in conjunction with all other terms of the Agreement

The terms of the Licence of the Company Software are set out in a separate agreement in writing between the Company and the Customer dated ● insert date.

Any expressions used in that agreement which are defined in this Agreement shall bear the same meaning in that agreement.

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SCHEDULE 3

Fee

The Fee for each succeeding period of twelve calendar months (the first of which begins on the Commencement Date, payable ~~[quarterly]~~ / ~~[annually]~~ delete as appropriate in advance is £●.

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SCHEDULE 4

Personal Data Processing by the Company

Details to be completed in consultation with the Customer

Description	Details
Subject matter of the processing	
Duration of the processing	
Nature and purpose of the processing	
Type of Personal Data	
Categories of Data Subject	
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	