

Terms and Conditions for Backup Services
(April 2008)

1. Terms and Conditions

1.1 BY ACCEPTING THESE TERMS YOU AGREE THAT YOU ARE ENTERING INTO A LEGALLY BINDING CONTRACT WHICH IS AS VALD AND ENFORCEABLE AS IF YOU HAD SIGNED A DOCUMENT IN PERSON. TO USE THE SOFTWARE OR SERVICE YOU MUST ACCEPT THESE TERMS AND CONDITIONS AND YOU AGREE THAT BY ORDERING, DOWNLOADING OR USING ANY PART OF THE SOFTWARE OR SERVICE, (AS DEFINED BELOW,) WILL CREATE A LEGALLY BINDING CONTRACT.

1.2 These Terms and Conditions exist alongside the Service Level Agreement ("SLA") which may provide additional guarantees and remedies for you in the event of non-performance of the Service. The SLA applies strictly to Business Users (as defined below) and only where such Users meet the additional conditions set out herein. The terms of the End User Licence Agreement ("EULA") set out further restrictions on the use of the Software.

1.3 If you have ordered the 30 day free trial or any other free evaluation period of the Software and Service these Terms and Conditions do not apply to you in full. You should refer to read Clause 9 which sets out the terms of your use of the Software and Service.

Definitions

In this Agreement and the Schedule unless the context otherwise requires:

"Backup" means the transfer and copying of Data from your personal computer or server to our Server for storage using the Software and the Services.

"Business User" means that you are using the Software and Services during the course of or incidental to a business of which you are the owner proprietor partner director officer shareholder employee or agent.

"Contract" means these terms and conditions, the manuals and documentation the SLA (if applicable) and the EULA.

"Data" means any data programmes or other information or material whatsoever

"Data Processor" shall have the same meaning as defined in the Data Protection Act 1988.

"Documentation" means any manuals or other written materials or files

"EULA" means the End User Licence Agreement" relating to the use of the Software and the Services

"Installation Service" means the service provided by us to install and configure the Software to enable you to access and use the Services.

"Personal Data" shall have the same meaning as defined in the Data Protection Act 1988

"Services" means the on-line Data Backup service and other services provided by us in accordance with the terms of this Contract and the Schedule.

"SLA" means the Service Level Agreement relating to the provision of the Service by us. "Software" means the Supported247.com computer programme (or alternative software having similar functionality) and all files disks or CD-ROMs provided by us to you under this Contract including (but not limited to) our or any third party software, Documentation or Updates .

"Supported247.com" or "us" or "we" is a trading name of Acorn Limited (company registration number 2898971) whose registered office is at Acorn House, Manor Road, Beckenham, Kent BR3 5LE "Updates" means in relation to the Software any upgrades, modified versions, updates, additions or copies supplied from time to time by us to you under this Contract "User" means you.

2. Software and Services

2.1 Supported247.com shall make the Software available for download and provide the Services in consideration of the payment by you of the fees in accordance with Clause 4.

2.2 The use of the Software will be subject to the terms of the EULA, which you will be deemed to accept on installation of the Software. You may use the Software only in conjunction with the Service and in accordance with this Contract and the EULA. You have no right to use the Software or Services after termination of this Contract.

2.3 You may copy and use the Software only for the purpose of utilising the Service or evaluating the Software pursuant to Clause 9 . Any other use is strictly prohibited. You agree not to attempt to disassemble decompile or reverse engineer the Software or otherwise discover the source code or underlying processes or algorithms

2.4 Your use of the Software and Service is subject to you obtaining and maintaining at your cost a suitable internet connection over HTTP & HTTPS ports and/or a direct connection from your computer to our servers over a leased line or equivalent connection. We will not be responsible for any connectivity failure whatsoever relating to leased lines, fibre optic connections, SDSL connections, ADSL connections, direct private connections, local or external Ethernet connections, public internet connections or any other connections linking you to our network and this will be treated as an event outside our control in accordance with Clause 12.

2.5 Your use of the Services is subject to the terms of the Contract. In particular if you reach the storage limit you will receive an error report stating that you have reached your storage limit and are advised to upgrade. You will not be able to Backup any additional data. You should contact us on +44 (0) 845 0562969 or email support@supported247.com in order to upgrade your account. A one-off upgrade fee will be charged.

2.6 The Data stored using the Services may include Personal Data and we may act as a Data Processor on your behalf. We shall comply with the obligations set out in the seventh data protection principle. It is your responsibility to ensure that where necessary you have adequate consents from data subjects in relation to the processing to be carried out by us including the storage of personal data outside the European Union. You warrant that you have and/or will obtain all such consents. Where you are a Business User, you will indemnify and keep us indemnified from and against any liability and/or damages including costs on demand arising from any breach of this warranty.

2.7.1 The Software and Services are provided for lawful purposes only. You warrant that you will not and will take all reasonable steps to ensure that no other legal person shall :

(a) Backup Data that may involve a risk of death or personal injury (including life support applications devices or systems) ;

(b) Backup Data (i) in breach of the intellectual property rights of any third party or any other contractual right (ii) which violates any law, statute or regulation (iii) which is defamatory or otherwise unlawful (iv) which is obscene, pornographic or indecent or (v) which contains any virus or other potentially harmful programming routine (whether intentionally or not).

2.7.2. In the event that we become aware of any use of the Software in breach of this Clause we may, in our absolute discretion, delete any Data which in our reasonable opinion is in breach of Clause 2.7.1 and/or terminate this Contract forthwith and without notice. Where you are a Business User, you will indemnify and keep us indemnified from and against any liability and/or damages including costs on demand arising from any breach of this warranty.

3 Installation Service

3.1 If you require our Installation Service you will provide us with all the information reasonably required by us to perform the Installation Service including the location where the Installation Service will be provided.

3.2 The fees for the Installation Service including the scope and timescale shall be agreed in writing by you and us and paid by you in advance failing which we shall have no obligation to perform the Installation Service (unless you hold a credit account with us and we agree to charge the fee to that account).

3.3 We will use reasonable endeavours to meet any dates agreed for the performance of the Installation Services but time shall not be of the essence. Upon completion of the Installation Service you will provide to us details of the Data to be the subject of the Backup and agree the schedule for the Installation Services. Upon completion of the Installation Service it is your responsibility to make any necessary changes to your technical configuration or Data management and we will have no obligation to monitor your Backups to determine whether any changes are required.

3.4. It is your responsibility to notify us if there are any changes to the locations if you wish to use our services to reconfigure the Software to incorporate the changes. Any additional assistance will be charged to you.

4. Pricing and Payment

4.1 The fees payable by you for the Software and the Services will be the fees shown on our website that apply to your use of the Service. All fees are payable in advance unless otherwise agreed with us in writing without any deduction or set-off. We may amend our fees from time to time and amendments will be posted on our website. Any amendment will take place with immediate effect unless you have paid fees in advance when the amendment will not take effect until your Contract is due for renewal in accordance with Clause 5.1 except where you amend the level of storage available to you under the Contract in accordance with Clause 2.5

4.2 Payment of the fees for setting up the Service and the initial twelve month term are due in advance on the date of order by credit and/or debit card in accordance with Clause 5.1 unless otherwise agreed by us in writing or where you have an approved business credit account with us which we agree to charge. Payment can be made by cheque or bank transfer. All orders and online accounts will only be activated once your payment has cleared unless otherwise agreed by us in writing.

4.3 All renewal fees payable by you for the Software and Services after the initial one month term shall be paid monthly in advance in accordance with Clause 5.1 unless otherwise agreed by us in writing.

4.4 All fees referred to are exclusive of and net of any taxes duties or such other additional sums including but without prejudice to the generality of the foregoing value added tax.

4.5 Should you fail to pay the fee in full on the due date for any reason we:

(a) may suspend or cancel your account or order or, in the case of any failure to pay renewal fees, the Contract shall terminate in accordance with Clause 5.4. (a);

(b) may cancel or reduce any discount or other incentive offered to you;

4.6. Interest is payable on all late payments as set out in the Late Payment of Commercial Debts (Interest) Act 1998 calculated (on a daily basis) from the date of our invoice until payment is received by us in full (as well after as before any judgment).

4.7 If you have a business credit account with us we may withdraw it or reduce your credit limit or bring forward your due date for payment at any time in our absolute discretion without notice.

5. Term and Termination

5.1 The term of this Contract shall be for a minimum of twelve (12) months (unless a longer term is agreed as part of a specific agreement between you and us. Any such agreement must be in writing and signed by our authorised representative) and shall commence upon your acceptance of the terms of this Contract and shall continue for twelve months and thereafter (subject to payment by you of the renewal fees) unless and until terminated by either party in accordance with the provisions of this Contract. On the anniversary of each twelve month term the Contract will be automatically renewed for a further twelve (12) month term and you will be liable to pay us the renewal fees.

5.2 This Contract may be terminated by you

(a) If you serve notice in writing on us within the first thirty (30) days after placing your order. On our acceptance of your notice you will be entitled to receive a refund of any fees paid by you. Until your notice is received and accepted by us you will remain bound by the Contract and liable for any fees;

(b) If you serve notice in writing on us no later than thirty (30) days prior to the anniversary of each twelve (12) month term. On our acceptance of your notice the Contract will terminate on the anniversary of the twelve month term. You will not be entitled to any refund of any fees paid by you. Until your notice is received and accepted by us you will remain bound by the Contract and liable for any fees and;

(c) If you serve notice in writing on us that we are in breach of the Contract specifying the breach in reasonable detail and we do not remedy such breach within thirty

(30) days of receipt of your notice (provided such breach is capable of remedy). In the event of termination you will be entitled to receive a refund of any advanced fees paid by you beyond the 30 days.

5.3 Any notice served under Clause 5.2 must be in writing. Any notice given must be sent to us at 223-225 High Street, London, SE13 6LY or by facsimile transmission ("fax") to +44 (0) 208 378 1235. To be valid any notice must include your full account details and username. You must retain a transmission slip confirming the date and time of the transmission of the fax in the event of any dispute.

5.4. In addition to any other provisions for termination as herein provided we may by notice in writing to you terminate this Contract if any of the following events shall occur, viz.:

(a) if you are in breach of any term, condition or provision of this Contract and fail to remedy such breach (if capable of remedy) within 30 days of having received written notice of such breach from us;

(b) if you being a body corporate, shall present a petition or have a petition presented by a creditor for your winding up, or shall convene a meeting to pass a resolution for voluntary winding up, or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation); shall call a meeting of your creditors, or shall have a receiver of all or any of your undertakings or assets appointed, or shall be deemed by the relevant statutory provisions under the applicable law to be unable to pay your debts or being an individual or partnership shall have a petition presented for your bankruptcy or be adjudged bankrupt or shall be deemed by the relevant statutory provisions under the applicable law to be unable to pay your debts.

5.5 Following termination of the Contract for whatever reason:

(a) You will have no further right to use the Software and must delete it from all computer equipment under your control and destroy any other copies including Updates in whole or in part in any form, including copies on your hard and backup disks;

(b) You will have no right to access the Services and we shall have the right to delete your stored Data without liability for loss or damage;

(c) We shall have the right to remove and destroy all of your Data Backups created by your use of the Service 30 days after the termination date of the Contract.

5.6 Upon termination or expiry, you shall comply with Clause 5.5 above and shall pay to us all costs and expenses, including legal and other fees incurred and all arrears of fees, charges or other payments arising in respect of the Software, this Contract or otherwise.

5.7 Termination or expiry, howsoever or whenever occasioned shall be subject to any rights and remedies we may have under this Contract or in law.

6. SLA 6.1 The SLA will apply to your use of the Software and Services provided (a) you are a Business User; (b) you agree to a minimum term of twelve (12) months Contract; (c) you are not in breach of the terms of the Contract; and (d) all fees relating to your use of the Software and Service are paid up to date.

6.2 The SLA forms part of this Contract and where applicable you should refer to it for information about minimum service levels and your remedies. The rights set out in the SLA are in addition to your rights set out in this Contract, however, where you are entitled to recover under both the SLA and these Terms you shall only be entitled to recover once in respect of the same loss, and your total recovery shall be limited in accordance with Clause 8 of these Terms.

7. Warranty

7.1 We warrant that the Software will perform in all material respects in accordance with the help file that accompanies the Software (provided always that the Software is properly used and with the operating system for which it was designed).

7.2 In the event that you discover a material error which substantially affects your use of the Software and you notify us of the error within 90 days from the date of the Contract (the "warranty period") we shall at our sole option either refund your fee or use all reasonable endeavours to correct by patch or new release (at our option) that part of the

Software which does not so comply PROVIDED THAT such non-compliance has not been caused by any modification, variation or addition to the Software not performed by us or caused by its incorrect use, abuse or corruption of the Software or by use of the Software with other software or on equipment with which it is incompatible AND PROVIDED THAT you are not in breach of any term of this Contract.

7.3 To the extent permitted by the applicable law, we disclaim all other warranties with respect to the Software, either express or implied, including but not limited to any implied warranties of merchantability or fitness for any particular purpose.

7.4 Although we do not warrant that the Software supplied hereunder shall be free from all known viruses we have used commercially reasonable efforts to check for the most commonly known viruses but you are solely responsible for virus scanning the Software.

8. Liability

8.1 We shall not be liable to you for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Contract, the Software or the Services, their use or otherwise, except to the extent to which it is unlawful to exclude such liability under the applicable law.

8.2 Not with standing the generality of Clause 8.1 above, we expressly exclude liability for any indirect, special, incidental or consequential loss or damage which may arise in respect of the Software or the Services, their use or in respect of equipment or property, or for loss of profit, business, revenue, goodwill or anticipated savings and in particular;

(a) caused by your failure to configure the Software to meet your needs (you may for example set your own retention periods within the Software and we will have no liability to you where Data is deleted following the expiry of these retention periods);

(b) caused by the loss of Data which was not backed up using the Software ;

(c) caused by any failure of your hardware or software, or any other hardware or software installed on or connected to your computer or server;

(c) caused by anything beyond our reasonable control including (but not limited to) failures relating to leased lines, fibre optic connections, SDSL connections, ADSL connections, direct private connections, local or external ethernet connections, public internet connections or any other connections linking you to our network; or

(d) during any Evaluation Period pursuant to Clause 9.

8.3 We do not exclude liability for death or personal injury to the extent only that the same arises as a result of our negligence or that of our employees, agents or authorized representatives.

8.4 In circumstances where you are a Business User our maximum total liability to you in respect of all losses (whether arising in contract, tort, negligence, breach of statutory duty or otherwise) arising in the month of the breach act omission or default complained of shall not exceed the total of the fees paid by you to us under the Contract in respect of the Services (excluding any setup or installation charges) in the relevant month. Where you pay annually in advance, the relevant limit shall be 1/12 of the annual fee.

9. Evaluation Period

9.1 Where you have requested a trial of the Software your use of the Software and Services shall be limited to 30 days from the date of your order (the "Evaluation Period"). During the Evaluation Period your use shall be solely for the purpose of evaluating the Software and Services to determine whether it meets your requirements.

9.2 You must not use the Software and Services during any Evaluation Period as a sole back up of your valuable or business critical Data or applications. We accept no liability whatsoever for your use of the Software and Services during the Evaluation Period and give no warranties, representations or undertakings in respect of the Software and Services during this period, save as required by law. .

9.3 At the end of the Evaluation Period your right to use the Software and Services shall terminate and, unless you enter into a Contract with us in respect of the Software and Services, you shall have no further right to use either of them.

9.4 Use of the Software and Services during the Evaluation Period shall be subject to the terms of this Contract and the EULA (but not the SLA).

10. Updates and support

10.1 We may from time to time release Updates to the Software which will be available for download from our website without charge. You will be informed by email when an Update is available. You undertake to replace the current version of the Software with the Updated version as soon as reasonably practicable following receipt of the email. We will not provide support for any older versions of the Software once a new version has been released. We shall have no liability to you whatsoever for any error contained in a version of the Software which has been replaced.

10.2 Our office hours, for sales, accounts and support helpdesk, are from 08:00am to 20:00 Mon-Fri GMT (excluding national holidays) and 08:30 to 17:30 GMT on Saturdays. You can contact us on +44 (0)845 0562969. If you have requested extended support hours you will be provided with an Out of Hours number which will connect you directly to our on call service engineer. You may log a support call by email or via our online help desk 24 hours a day. However if your call is outside our business hours (and you do not have extended support) we will not respond to your call until we are next open for business. All email requests for support must be sent to supportdesk@supported247.com

10.3 You may also log a call directly on our support website <http://helpdesk.supported247.com> using the user name and password you entered during the signup process. If your call is outside our business hours we will not respond to your call until we are next open for business.

10.4 The installation and configuration of the Software is your responsibility as are any problems which may arise from incorrect configuration. We do not provide ongoing support and maintenance for the configuration of the Software. This is your sole responsibility. If you want us to monitor the Backups on a regular basis then we can provide this service for an additional fee, such fee to be agreed and paid by you in advance of the support being provided.

11. Entire Agreement

11.1 This Contract shall constitute the entire agreement and understanding between the parties with respect to all matters which are referred to in it and shall supersede any previous agreement(s) between the parties in relation to the matters referred to in the Contract.

11.2 Where conflict exists between the terms of the Contract and the SLA, this Contract shall be deemed to override the SLA. Where conflict exists between this Contract and the EULA, the EULA shall be deemed to override this Contract.

12. Force Majeure

We shall be under no liability to you in respect of anything which, apart from this provision, may constitute breach of this Contract arising by reason of force majeure, namely, circumstances beyond our control which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; inability to supply the Software, materials, breakdown of equipment and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties hereto and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties hereto or any other employer).

13. **Severability** In the event that any of these terms, conditions or provisions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

14. Headings

The headings of the terms and conditions herein contained are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Contract.

15. Assignment

You shall not assign or otherwise transfer all or part of the Software or this Contract without our prior written consent.

16. Waiver

Any failure or neglect by us to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of our rights hereunder nor in any way affect the validity of the whole or any part of this Contract nor prejudice our rights to take subsequent action.

17. Governing Law The Contract will be construed in accordance with and governed by the laws of England and each party agrees to submit to the exclusive jurisdiction of the Courts of England.

The Service

1.1. Off-site Backup Services using the Software The Software can backup data from third party software (including: File & Application Data Backup, System State Backup, Microsoft Exchange Server Backup, Lotus Domino Backup, Lotus Notes Backup, Microsoft SQL Server Backup, MySQL Backup, Oracle Database Backup.) You shall be solely responsible for installing any third party software on your computers and obtaining a suitable licence.

1.2. If you want to restore either file or application data from our backup servers to your computer or server you can do this using the Software from the "Restore" section or over the internet using the web interface at <https://backup.backedup247.com> under the "OBS User Configuration Console" section. We will use our reasonable endeavours (subject to the terms of this Contract) to make the Service available via the Software or web interface.

1.3. You will only be able to recover data from those backups carried out using the Software that are successfully completed and in accordance with your custom configuration settings and retention policy settings within the Software. We will have no responsibility for the custom configuration of the backup settings in the Software except where we have provided Installation Assistance in accordance with the terms of this Contract.

1.4. You are expected to monitor your backups and backup logs on a daily basis and attempt to resolve any issues arising from the configuration of the Software. If you are aware of a fault with the Software and/or the Service you must report the fault to us in writing or by email to support@supported247.com no later than 12 hours from the discovery of the fault and before the next scheduled backup. We shall have no liability for any loss of data arising from any fault which you did not notify to us in accordance with this Clause.

1.5. If you are unable to restore the data solely because a failure of our systems or network, we will use our reasonable endeavours to make the data available from within the Software or web interface within a reasonable period of time.

Additional Services

The services listed below are available for an additional fee and are not part of the standard service. Please contact us for pricing and additional information.

2.1. We can also provide a recovery service for data from our servers onto a CD/DVD disc. This is not part of the Service and is available at an additional charge.

2.2. On-site Software Installation Assistance (if applicable, additional fees apply, and please see Clause 1.9 for more information).

2.3. Data Seed Loading. This consists of transferring files over an external hard drive directly onto the server on the first backup in order to save time and bandwidth. All subsequent backups are carried out over the standard method by using the Software. This is not included in the Service but is available at an additional charge.

2.4. Disaster Recovery & Data Security Consultation. This is not included in the Service but is available at an additional charge.