ONLINE DATA BACKUP

SERVICES

AGREEMENT



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CONTENTS

1. Definitions and Interpretation 3

2. Services 5

3. Licence 5

4. Supplier’s Obligations and Responsibilities 5

5. Customer’s Obligations and Responsibilities 6

6. Charges and Payment 8

7. Indemnity 8

8. Liability 8

9. Period And Termination Of Agreement 9

# DEFINITIONS AND INTERPRETATION

* 1. The following definitions apply in this Agreement.

**Additional Services:** any services (other than the Backup Service) that the Supplier makes available from time to time including, for example, data recovery, disaster recovery, support, hosting, network monitoring, or remote access testing.

**Agreed Amount:** online backup space up to an agreed amount specified by the Supplier.

**Backup:** the process of transferring the Data from a Customer Computer to the Backup Server for storage using the Backup Software.

**Backup Server:** the computer hardware and software system/s and network/s owned by a third party and used by it to provide the Backup Service.

**Backup Service:** the online data backup and retrieval services to be provided for the Customer’s business continuity purposes by the Supplier (referred to in clause 2 and described in Schedule 1) during the Term using the Backup Software.

**Backup Software:** the personal computer desktop software, media, associated documentation, manuals and other information, and any updates and supplements to them, supplied by the Supplier 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.

**Charges:** the charges payable to the Supplier.

**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 Backup Software, for transmitting Data to the Supplier, and for recovering and saving Data upon its Retrieval.

**Data:** any data (including any personal data, as defined by the Data Protection Laws), programs, or other information of the Customer copied, or to be copied, from the Customer Computer during a Backup.

**Encryption Key:** a unique code, which shall be known only to the Customer, to access and retrieve its Data stored on the Backup 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) a Force Majeure Event; (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.

**Licence:** the licence (referred to in clause 3) granted by the Supplier (on behalf of a third party) to the Customer of the Backup Software the terms of which comprise those set out in Schedule 2.

**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 2 hours of such Outage in aggregate in any calendar week (Mon-Sun) shall count; (b) only the first 6 hours of such Outage in aggregate in any calendar month shall count; and (c) the Supplier has given notice to the Customer of any such Outage period at least 72 hours prior to its commencement. The following will not be a Maintenance Period: (a) any Outage caused by work or actions by the Supplier or any third party which is not planned maintenance, configuration changes or upgrade of the Backup Service; or (b) 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 the 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.

**Term:** an initial period of 12 months and thereafter, unless and until terminated by either party in accordance with the provisions of the Agreement.

**Website:** The Supplier’s website, access to which is made available to organisations and the general public via the internet from which the Customer may download the Backup Software.

* 1. The following rules of interpretation shall apply:
     1. terms defined in the General Terms and Conditions shall have the same meaning when used in this Agreement;
     2. the rules of interpretation in the General Terms and Conditions shall apply to this Agreement;
     3. the schedules shall be incorporated into this Agreement; and
     4. if there is any conflict between the provisions of the General Terms and Conditions and the terms of this Agreement, the latter shall take priority.

# SERVICES

* 1. The Supplier shall provide the Backup Service from the Commencement Date for the duration of the Term subject to the terms of this Agreement.
  2. The use by the Customer of the Backup Service shall be as specified in this Agreement.
  3. This Agreement does not include the supply of any Additional Services.

# LICENCE

* 1. The Backup Software may only be used by the Customer as part of the Backup Service and under a licence of the Backup Software (“**Licence**”).
  2. Accordingly, the Supplier (on behalf of a third party) hereby grants the Licence to the Customer on and subject to the terms set out in Schedule 2 and all other applicable terms of this Agreement.

# SUPPLIER’S OBLIGATIONS AND RESPONSIBILITIES

* 1. The Supplier shall use reasonable endeavours to maintain and make available the Backup Service.
  2. Without prejudice to clause 4.1 the Supplier does not undertake or warrant that:
     1. the 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 inaccessible by third parties;
     2. the Backup Software will meet the Customer’s requirements;
     3. the operation of the Backup Software will be uninterrupted or error-free; or
     4. the Backup Service, and in particular the Backup Server, will operate entirely error-free or be available during any Excused Outage time.

# CUSTOMER’S OBLIGATIONS AND RESPONSIBILITIES

* 1. The Customer undertakes to the Supplier that it shall:
     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, libelous, or breaches another's confidentiality or privacy rights, or is abusive, indecent, defamatory, criminally obscene or threatening, or is otherwise unlawful;
     2. not transmit to the Supplier for storage by the Supplier any personal or other data of another party without first obtaining any consent of that party required to be obtained for that purpose by the Data Protection Laws;
     3. comply with the Data Protection Laws and any other laws or regulations as are applicable to the Customer’s transmission, storage, and retrieval of Data using the Backup Service;
     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. 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;
     6. comply with the Supplier's guidelines, policies, procedures, arrangements and any instructions issued from time to time by the Supplier notified by it to the Customer or placed on the Website;
     7. not interfere with, disrupt, or attempt to gain unauthorised access to, computer systems, servers or networks connected to the Backup Service;
     8. not attempt to gain unauthorised access to the Backup Service or the accounts of other Customers of the Supplier who use similar services provided by the Supplier; and
     9. fulfil all other Customer obligations and responsibilities set out in this Agreement in a timely and efficient manner.
  2. The Customer assumes the sole responsibility for:
     1. selecting the Backup Service and deciding whether it meets its business needs;
     2. using a Customer Computer suitable for the purpose of using the Backup Service;
     3. 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;
     4. implementing the 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. the consequences to the Customer and to Backup Server storage devices and media of the Customer transmitting Data containing any virus or malicious code;
     6. loss or corruption of or damage to Data unless due to any breach of any of the Supplier’s obligations under this Agreement;
     7. the supply, operation, control and support of all necessary resources not included within the Backup Service;
     8. the Encryption Key received or obtained by the Customer;
     9. all security arrangements necessary and appropriate to the Customer’s use of the Backup Service including, without limitation, passwords, pass codes, audit controls, operating methods and procedures;
     10. all results it obtains from the Backup Service;
     11. 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 Supplier’s obligations under this Agreement; and
     12. its use of the Backup Software unless any failure of the Backup Software or adverse consequence of such use is due to any breach of any of the Supplier’s obligations under this Agreement.
  3. The Customer undertakes to comply in full at all times with the terms of the Licence.

# CHARGES AND PAYMENT

* 1. The Customer shall pay the Charges in consideration for the provision and use of Backup, Retrieval and the Licence.
  2. All Charges and other amounts stated or referred to in this Agreement are exclusive of Value Added Tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
  3. The Supplier will issue invoices monthly in advance for the Charges.
  4. The Customer’s attention is drawn to clause 9 of the General Terms and Conditions.

# INDEMNITY

The Customer undertakes to defend and indemnify the Supplier 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 Supplier 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 Supplier’s obligations under this Agreement.

# LIABILITY

* 1. The Supplier 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 Supplier 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 Supplier 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.

* 1. Occurrence of any Excused Outage is not within the scope of the Backup Service and accordingly the Supplier will not have any financial or other liability for any Excused Outage.
  2. Except as expressly set out in this Agreement the Supplier 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.
  3. The Customer’s attention is specifically drawn to clause 13 of the General Terms and Conditions.

# PERIOD AND TERMINATION OF AGREEMENT

* 1. On expiry of the Term the Agreement shall continue and automatically renew for a further period of 12 months (**Additional Term**) and thereafter for further periods of 12 months unless terminated by either party giving not less than three months’ prior written notice to terminate the Agreement at the end of the Term and not before or, as the case may be, the relevant Additional Term.
  2. The Customer’s attention is specifically drawn to clauses 14 and 15 of the General Terms and Conditions.
  3. On the termination of this Agreement (for any reason) the Supplier may after 30 days, 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.

**SCHEDULE 1 | BACKUP SERVICE**

The Backup Service comprises the following offsite backup, storage, restoration and retrieval of data services and facilities as detailed in, and within the scope of, the Specification attached as Annex 1, subject both to the terms of the Licence of the Backup Software set out in Schedule 2 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 Backup Server and Retrieval of that Data from the Backup Server. The Backup Server stores a single copy of Data. For additional data security, a secondary copy is stored on a separate server at a different physical location from the server storing the primary copy.
2. The Backup Service operates via the internet using an internet control product comprising the Backup Software installed on one or more Customer Computers which interact with the Backup Server. The Backup Software on Customer Computers connect to a server network infrastructure that is deployed on the internet and managed by Supplier. 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 Customer may purchase additional online space in addition to the Agreed Amount subject to availability.
4. The Customer’s Backup of Data will be effected by the Backup Server which will make and store a copy of that Data when the Backup Server is accessed by the Customer by means of the Backup 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 in Annex 1 (Specification).
5. The Backup Service will be operational and available to the Customer 99% of the time in each calendar month less any Excused Outage in that month. (The first calendar month begins on the Commencement Date.) The Supplier 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, the Supplier will allow or pay to the 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:
   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 £50 and;
   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 £500
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 1.5 times the portion of the Fee payable by the 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. The Supplier is not responsible for:
   1. either loss of data or absence of backup of it occurring between each Backup; or
   2. the Customer’s deletion or failure to store data; or
   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 Supplier 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.
9. Loss of data due to the client getting a computer virus or having their files encrypted by a ransomware attack.

**ANNEX 1 TO SCHEDULE 1 – SPECIFICATION**

1. An initial full Backup is undertaken that copies all selected files. Subsequent Backups are incremental and copy all Data that has been modified since the last Backup. Files will not be marked as archived or otherwise flagged as having been Backed up.
2. The Supplier will undertake tests at four intervals to:
   1. confirm the integrity of the Backups;
   2. note the Recovery Time Objective (length of time taken to undertake the recovery); and
   3. note the Recovery Point Objective (date and, if possible, time from which Data may be recoverable).

**Retrieval**

1. The Supplier shall be responsible for testing the integrity and the suitability of the Data that is to be retrieved by Customer.
2. No warranty is given that Retrieval will be available at any given time.
3. The speed of transmission from Backup Server to Customer Computer during any Retrieval will be dependent on both the technical limitations of the Backup Server and the demand of other Customers backing up or retrieving data at the time.

**SCHEDULE 2 – LICENCE**

The Customer undertakes to comply with the terms of the current versions of:

1. the End User Licence Agreement; and
2. the Terms of use on Acronis’s website.

both of which are available at https://www.acronis.com/en-gb/legal