

User Agreement

DATAFORT Managed Backup Service

Please note fax or post both sides of this document to the DataFort office.

Fax: 0870 831 4580

**End User License Agreement and Limited Warranty
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**PLEASE READ THIS LICENSE CAREFULLY BEFORE YOU START
TO USE THE SOFTWARE YOUR RIGHT TO USE THIS SOFTWARE
PRODUCT IS SUBJECT TO THE TERMS SET OUT IN THIS
LICENSE AGREEMENT. CONTINUING TO USE THE SOFTWARE
INDICATES YOUR ACCEPTANCE OF THESE TERMS. IF YOU DO
NOT ACCEPT OR UNDERSTAND THEM, YOU SHOULD DELETE
THE SOFTWARE FROM YOUR COMPUTER.**

1. Definitions 1.1 In this License unless the context otherwise requires:

"Agreement" means these terms and conditions.

"Backup" means the process of transferring Data from your COMPUTER to DataFort's Server for storage.

"The Services" means the services offered by DataFort for Data storage.

"DataFort's Server" means the computer system, owned by DataFort, supplied by an Internet Service Provider or supplied by another third party and used to provide DataFort's Services, its Web Site and other ancillary functions.

"The computer" means the server, laptop or desktop computer that you use.

"Data" means any programs, data or other information copied, or to be copied from your computer for storage during a Backup.

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

"Photograph" means a photograph as defined in s84(3) of the Criminal Justice and Public Order Act 1994 and includes the negative as well as the positive and data stored on a computer disc or by other electronic means capable of conversion into a photograph.

"The Proprietary Software" means the computer programs used by DataFort or an Internet Service Provider.

"Pseudo-photograph" means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph, as defined in s84 (7) of the Criminal Justice and Public Order Act 1994.

"The Service" means the On-Line Backup service as defined in the service level statement.

"The Service Level Statement"

means the then current description and level of service statement as maybe amended and posted on the DataFort web site from time to time.

"The Software" means the computer program supplied to enable your Data to be stored on DataFort's Servers.

"The Subscription Fee" means the monthly amount payable (if any) for The Services.

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

2 Grant of License You are not permitted to install or run the Software or use the Documentation that will be supplied to you without the permission of DataFort. DataFort will grant you a License in consideration of your:

2.1 agreement to the following terms and conditions;

2.2 subscription to The Services (your "Subscription"); and

2.3 continuing payment of the Subscription Fee, where appropriate.

3. Permitted Acts by You You are permitted to do the following:

3.1 load the Software on computers which are under your control at all times and use it to store Data;

3.2 use the Software to Backup your computer;

3.3 use the Documentation in connection with the permitted use of the Software;

3.4 transfer the Software from one computer to another provided that the Software is used on only one computer at a time;

3.5 make a backup copy of the Software in support of your permitted use of the Software provided you label the backup copy with DataFort's copyright notice - any other copies of the whole or any part of the Software are prohibited;

3.6 use the Software for your personal use or in your business or profession - permitting unauthorised access to, copying or use of the Software and Documentation is a breach of this Agreement.

4. Prohibited Acts by You

You are prohibited from doing, or allowing others to do, the following:

4.1 using or copying the Software except to the extent permitted by this Agreement or by statute;

4.2 transferring the Software, the Documentation and/or the License to any other individual or entity whether on a permanent or temporary basis. If you transfer possession of any copy of the Software to another person, your License is automatically terminated;

4.3 distributing, renting, loaning, sub-licensing or otherwise dealing in the Software and Documentation;

4.4 altering, adapting, merging, modifying or translating the Software or the Documentation in any way for any purpose, including, without limitation, for error correction except to the extent permitted by statute;

4.5 reverse-engineering, disassembling or de-compiling the Software except that the User may de-compile the Software only to the extent permissible by law where this is indispensable to obtain the information necessary to achieve the inter-operability of an independently created program with the Software or with another program and such information is not readily available from DataFort or elsewhere;

4.6 removing, changing or obscuring any product identification or notices of proprietary rights and restrictions on or in the Software and Documentation;

4.7 using the Services to store Photographs, Pseudo-photographs, films, articles, sound records, messages, or any other material that may be stored in a computer that may be described as indecent or obscene or is otherwise illegal; or

4.8 exporting, sending, transmitting or otherwise removing the Software from the country in which you purchased The Service other than on the computer in the normal course of your business.

5. Term and Termination

5.1 The License will continue until terminated. You consent to the commencement of the service immediately. This removes your right to cancel under the Distance Selling Regulations

5.2 Your License to use the Software and Documentation will terminate immediately and automatically if your Subscription is terminated, your payments cease or we do not receive full, cleared payment for any reason (or if payment is returned or removed from us) and in any of these events the cost (including the administrative costs) to us of dealing with that issue will be added to the money due to us from you.

5.3 Your License will also terminate immediately and automatically if you fail to comply with any of the terms of this agreement.

5.4 Your License will also terminate without further action or notice by DataFort if you become bankrupt, go into liquidation, suffer or make any winding up petition, make an arrangement with your creditors, have an administrator, administrative receiver or receiver appointed or suffer or file any similar action in consequence of debt.

5.5 DataFort may terminate your License at any time upon giving you at least one month's notice, such notice to end on the last day of a calendar month.

5.6 Following termination of your License, for whatever reason:

5.6.1 you will destroy the Software and Documentation together with all copies in any form, including copies on your hard and backup disks;

5.6.2 any use of any copies of the Software or Documentation will be unlawful; and

5.6.3 you authorise and consent to DataFort, after 30 days, being able to delete your stored Data without liability for loss or damage.

5.7 Termination by you will only be accepted via email from the customer's own email domain or through fax or through the post. Absolutely no termination instructions will ever be taken from a customer over the telephone.

6. Limited Warranty by DataFort

6.1 DataFort warrants to you, as the Licensee, that the Software when used properly, in the correct environment, will provide the functions

and facilities and will perform substantially as described in the Documentation.

6.2 DataFort's entire liability and your exclusive remedy under the warranty, given in 6.1 above, will be, at DataFort's option, to either:

6.2.1 repair or replace the Software which does not conform with the warranty; or

6.2.2 terminate the License and refund to you a percentage of the Subscription Fee paid representing unused time.

7. Exclusion of Other Warranties by DataFort

7.1 Except for the express warranty in Clause 6 DataFort and its suppliers make and you receive no other warranties, conditions or representations, express or implied, statutory or otherwise, and without limitation the implied terms of merchantability and fitness for purpose are excluded. DataFort does not warrant that the operation of the Software or access to DataFort's Server or web site will be error free or uninterrupted. It is your responsibility to ensure that the Software is suitable for your needs and the entire risk as to the performance and results of the Software and Documentation is assumed by you.

7.2 In particular DataFort does not warrant that you will be able to restore data after using the Software. The warranties with regard to this Software are confined to section 6.1 above and do not extend to your being able to restore from the backed up data. You agree this is a reasonable limitation of warranty given that you have the daily control of activity using the Software and you have the ability to make daily checks that it is functioning to your individual (over which we have no control) requirements.

8. Warranties and indemnities by the Licensee

8.1 You acknowledge that software in general is not error-free and agree that the existence of such errors shall not constitute a breach of this License.

8.2 You acknowledge that the Software was not designed and produced to your requirements and that you were responsible for their selection.

8.3 You warrant to DataFort that you will follow instructions and guidance in any software manual or accompanying papers and especially the same produced by the Software itself.

8.4 You warrant to DataFort that at all appropriate or material times, you will maintain and have maintained a registration under the Data Protection Act 1984.

8.5 You warrant to DataFort that at no time will you intentionally use the Software on a computer on which there is a computer worm or virus of any type, regardless of whether the worm or virus is capable of causing any damage.

8.6 You hereby undertake to DataFort that you will, without prejudice to any other right of action which DataFort may have, at all time keep DataFort fully and effectively indemnified against all and any liability (which liability shall include, without limitation, all losses, costs, claims, expenses, demands, actions, damages, legal and other professional fees and expenses on a full indemnity basis) which DataFort may suffer or incur as a result of, or by reason of, any breach or non-fulfilment of any of your obligations including your warranties in respect of this License or in respect of any Court action which may be brought in any way connected to this Agreement whether by you, DataFort or another.

9. Disclaimer

9.1 In no event will either DataFort or its suppliers be liable for any direct, indirect, consequential, incidental, or special damage or loss of any kind (including without limitation loss of profits, loss of contracts, business interruptions, inability to restore data, loss of or corruption to data) however caused and whether arising under contract, tort, including negligence, or otherwise except that required by (or not allowed to be excluded by) law.

9.2 If any exclusion, disclaimer or other provision contained in this Agreement is held invalid for any reason and DataFort becomes liable for loss or damage that could not otherwise be limited, such liability, whether in contract, negligence or otherwise, will not exceed the amount actually paid by you for the Service.

9.3 DataFort does not exclude or limit liability for:

9.3.1 death or personal injury resulting from an act or negligence of DataFort; or

9.3.2 damage caused by a defect in the Software within the meaning of the Consumer Protection Act 1987 Part I.

9.4 You acknowledge that the allocation of risk in this Agreement reflects the price paid for the Software and also that it is not within DataFort's control how and for what purposes the Software and the

Service are used by you and that DataFort has no knowledge of the data you intend to use the Software for, its value or use.

10. Entire Agreement

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

10.2 Nothing in this Agreement shall create or be deemed to create a partnership or the relationship of employer and employee or principal and agent between the parties.

11. Severability If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

12. Waiver The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have here under operate as a waiver of any breach or default by the other party.

13. Notices Any notice, request, instruction or other document to be given under the Terms and Conditions shall be delivered or sent by first class post, email or by facsimile transmission (such facsimile transmission notice to be confirmed by letter posted within 12 hours) to the postal address, email address or to the facsimile number of the other party set out in this agreement (or such other addresses or numbers as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered or sent by email) at the time of delivery, (if sent by post) upon the expiration of 48 hours after posting and (if sent by facsimile transmission) upon the expiration of 12 hours after dispatch.

14. Headings Headings to clauses in this agreement are for the purpose of information and identification only and shall not be construed as forming part of this agreement.

15. Law This agreement shall be governed by and construed in accordance with English law and the parties hereto agree to submit to the non-exclusive jurisdiction of the English courts.

16. Payment All invoices must be paid in full within 30 days of issue. There is a minimum charge of £14.95 per month charged on all accounts regardless of whether the service is used or not, or whether there is any data stored in the account.

Subject to our right to strictly enforce our rights in Section 5.2 above, accounts that fall into arrears will be suspended, which will disable the automatic backup process . A suspended account will continue to accrue storage charges. A £25.00 reconnection fee may be charged per account to reactivate after suspension. Suspended accounts that are not settled within 120 days will be cancelled, with the deletion of stored data, and sent to a collection agency. Any fees associated with recovering the owed balance will be added to the sum owed during the license period.

ACCOUNT USERNAME

SIGNATURE

PRINT NAME

POSITION IN COMPANY

COMPANY

DATE