

RECITALS:

(A) The Company is the proprietor of certain computer Services known as "DataFort Bytebaq Services" and others, which provides Bytebaq Services for businesses

(B) The Company has the exclusive right to grant licenses for the production, marketing, advertising and distribution of the Services and for the use of it for promotional purposes

NOW IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

- 'Bytebaq Service' any service as described in Schedule 1 and all modifications, enhancements, versions and replacements thereof and additions thereto provided by the Company and made available to the Dealer from time to time pursuant to this Agreement.
- 'Backup Server' a computer maintained in a secure environment for the purpose of holding a secondary copy of the Licensee's data.
- 'Confidential Information' means this Agreement and all information obtained by one party from the other pursuant to this Agreement which is expressly marked as confidential or which is manifestly of a confidential nature or which is confirmed in writing to be confidential within 7 days of its disclosure.
- 'Informational Data' means any data stored on the Licensee's computer servers that is created or used by that Licensee in the performance of their business. It excludes computer operating systems, software, libraries or applications that may be needed to operate the computer servers.
- 'Intellectual Property' means patents, trademarks, internet domain names, service marks, registered designs, applications for any of the foregoing, copyright, design rights, trade and business names, website content and any other similar protected rights in any country.
- 'Licensee' means the entity who orders the Bytebaq Service and that entity shall be taken to include bodies Incorporate or unincorporated.
- 'USB Disc Recovery' means the service provided for an additional fee by the Company to assist a Licensee to recover data when a complete recovery is needed.
- 'Service Materials' means the Service manuals, help menus and web pages, and service information to be provided to the Licensees by the Dealer and directed by the Company.
- 'Subscription Fee' means the cost of providing the Bytebaq Service to a Licensee payable to the Company.
- 'Support Services' means the help or assistance to be provided to Licensee's of the Bytebaq Service as described in Schedule 1 of this agreement and may be changed in writing by the Company from time to time.
- 'the Territory' means the United Kingdom of Great Britain and Northern Ireland.
- 'Transaction' means each agreement entered into between the Company and a Licensee pertaining to the Bytebaq Service provided by the Company and introduced to the Licensee by the Dealer.
- 'User Agreement' means a service agreement between the Company and a Licensee which is an entity, either incorporated or not within the Territory during the continuance of this agreement to use the Bytebaq Services provided by the Company. It will be described in Schedule 1 of this agreement or amended in a Change Order from the Licensee or by the Company in writing from time to time.
- 'Year' means any period of 12 months commencing on the date hereof or any anniversary of the date hereof.

2. APPOINTMENT

- 2.1 The Company hereby appoints the Dealer and the Dealer hereby agrees to act as the nonexclusive Dealer of the Company to promote and resell the Bytebaq Services in the Territory.
- 2.2 The Dealer represents and warrants to the Company that it has the ability and experience to carry out the obligations assumed by it under this Agreement and that by virtue of entering into this Agreement it is not and will not be in breach of any express or implied obligation to any third party binding upon it.
- 2.3 Without prejudice to the remaining provisions of this Agreement the Company reserves the right:
- 2.3.1 to decline to accept any transaction received from or through the Dealer from a Licensee;
 - 2.3.2 to continue to sell direct to customers and to appoint other Dealers in the Territory;
 - 2.3.3 to vary the specification and/or the price of the Bytebaq Services;
 - 2.3.4 to vary the Bytebaq Services either by the withdrawal of those Services from its service range or by the addition to those Services.

3. DURATION

This Agreement shall commence on the date hereof for an initial period of [1] Year and shall continue thereafter unless or until terminated in accordance with clause 6.

4. THE COMPANY'S OBLIGATIONS

The Company agrees:

4.1 Sales Support and Information

- 4.1.1 to provide information in electronic format to the Dealer for the promotion of the Bytebaq Services to attract new Licensees;
- 4.1.2 in his relations with the Dealer to act dutifully and in good faith and without limitation to the specific obligations on the part of the Company to inform the Dealer within a reasonable time of their acceptance or refusal of and any execution by them of a Transaction;
- 4.1.3 endeavour to answer as soon as reasonably possible via email all technical queries raised by the Dealer concerning the use or application of the Services;
- 4.1.4 give the Dealer reasonable advance written notice of any material changes in or modifications of the Bytebaq Services or of the Company's intention to discontinue licensing or sublicensing the Bytebaq Services in the Territory.

4.2 Advertising and Promotion

To advertise and promote the Bytebaq Services in the Territory in such manner as it considers appropriate.

4.3 Licensee and Fee Information

To supply the Dealer with a periodic statement detailing the number of Licensees using the Bytebaq Service and the type of Service Accounts currently under License.

4.4 Maintenance of Intellectual Property

Subject to clause 5.6 of this Agreement to maintain the Intellectual Property and throughout the duration of this Agreement not to cause or permit anything which may damage or endanger it or the Company's title to it or assist or suffer others to do so.

4.5 Changes in Fees

DataFort may from time to time and with 30 days notice as per the terms of Clause 8.7 of this agreement change the fees as detailed in Schedule 1. This can be done only once in any twelve month period.

- 4.5.1 From time to time DataFort may choose to offer promotional pricing for a limited period. These promotional prices will always be a decrease in the Subscription Fee and are excluded from counting as the once a year fee change option.

4.6 Cancellation of Service

The Company reserves the right to immediately cancel any Licensee account if the Company does not receive prompt payment for any Subscription Fee, Upgrade Fee or Recovery Fee in a timely fashion.

5. THE DEALER'S OBLIGATIONS

The Dealer agrees to:

5.1 Scope and activity and authority

5.1.1 No description as agent: Not to describe itself as agent or representative of the Company except as expressly authorised by this Agreement.

5.1.2 No pledge of credit: Not to pledge the credit of the Company in any way.

5.1.3 No warranties: Not to make any representations to customers or to give any warranties other than those contained in any standard terms and conditions laid down by the Company from time to time.

5.2 Technical Support for Licensees:

At all times to diligently inform the Licensee of any issues they know may be impacting the Services ability to backup the Licensee's data. To answer the Licensee's questions pertaining to the delivery of the Bytebaq Service in a timely fashion. And to trouble-shoot any issues that may impact the delivery of the Bytebaq service to the customer.

5.3 Good faith: In all matters to act in good faith toward the Company.

5.4 Compliance

5.4.1 To obey the Company's instructions in relation to the conduct of the sales and promotion of the Bytebaq Service;

5.4.2 To comply in the conduct of the distribution and promotion of the Bytebaq Service with all applicable laws, byelaws and requirements of any governmental or regulatory authorities.

5.5 Protection of Intellectual Property

5.5.1 Not to attempt to reverse engineer or carry out any work to determine the methodology the Company uses to perform any of the Services provided to the Dealer or its Licensees.

5.5.2 Not to cause or permit anything which may damage or endanger the Intellectual Property or other property of the Company or the Company's title to it or assist or allow others to do so.

5.5.3 To notify the Company of any suspected infringement of the Intellectual Property or other intellectual property of the Company.

5.5.4 To take such reasonable action as the Company shall direct at the expense of the Company in relation to such infringement.

5.5.5 To compensate the Company for any use by the Dealer of the Intellectual Property otherwise than in accordance with this Agreement.

5.5.6 To indemnify the Company for any liability incurred to third parties for any of the Intellectual Property the Dealer uses with prospects other than in accordance with this Agreement.

5.5.7 On the expiry or termination of this Agreement the Dealer shall forthwith to cease to use the Intellectual Property as provided by the Company.

5.5.8 Not to tamper with any packages, markings or name plates or other indication of the source of origin of the Bytebaq Service or Service Materials.

5.5.9 Not to use the Intellectual Property than is otherwise permitted by this Agreement.

5.5.10 Not to use any name or mark similar to or capable of being confused with any trade name of the Company.

5.5.11 Not to use the Intellectual Property except directly in the promotion of the Services.

5.5.12 To hold any additional goodwill generated by the Dealer for the Intellectual Property or the Services as bare trustee for the Company.

- 5.6 The Service Materials and the Intellectual Property rights therein or relating thereto are and shall remain the property of the Company and all copies thereof in the Dealer's possession, custody or control shall (to the extent that they are not exhausted by proper use) be returned to the Company or otherwise disposed of by the Dealer as the Company may from time to time direct.
- 5.7 The Dealer shall notify the Company immediately if the Dealer becomes aware of any unauthorised use of any of the Service Materials or any of the Intellectual Property rights therein or relating thereto and will assist the Company (at the Company's expense) in taking all reasonable steps to defend the Company's rights therein.
- 5.8 The Dealer shall not use, reproduce or deal in the Service Materials or any copies thereof except as expressly permitted by this Agreement.

5.9 Confidentiality

The provision of this clause shall survive the termination of this agreement.

5.9.1 The Dealer shall not use, divulge or communicate to any person (other than as permitted by this Agreement or with the written authority of the Company):

5.9.1.1 Any of the Company's Confidential Information which may come to the Dealer's knowledge during the continuance of this Agreement;

5.9.1.2 the Service Materials or any information concerning the same;

5.9.1.3 any of the terms of this Agreement and the Dealer shall use all reasonable endeavours to prevent the unauthorised publication or disclosure of any such information, materials or documents.

5.9.2 The Dealer shall ensure that its employees are aware of and comply with the confidentiality and nondisclosure provisions contained within this Clause and the Dealer shall indemnify the Company against any loss or damage which the Company may sustain or incur as a result of any breach of confidence by any of the Dealer's employees.

5.9.3 If the Dealer becomes aware of any breach of confidence by any of its employees it shall promptly notify the Company and give the Company all reasonable assistance in connection with any proceedings which the Company may institute against any such employees.

5.9.4 The provisions of this Clause shall survive the termination of this Agreement but the restrictions contained in Clause 5.9.1 shall cease to apply to any information which may come into the public domain otherwise than through unauthorised disclosure by the Dealer or its employees, or which is received by the Dealer from a third party who does not breach a duty of confidence in disclosing it, or which is required to be disclosed by law, or by any court of competent jurisdiction or any administrative or regulatory authority.

5.10 Assignment

5.10.1 Not to assign or change this Agreement in any way without the consent of the Company.

5.11 Delegation

Not to delegate any duties or obligations arising under this Agreement otherwise than may be expressly permitted under its terms.

5.12 Not to tamper with the Service Materials

The Dealer will distribute the Service Materials in the same condition as that in which it receives them.

5.13 Indemnity

To indemnify and keep indemnified the Company from and against any and all loss, damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by the Company resulting from a breach of this Agreement by the Dealer including any act neglect or default of the Dealer's agents, subagents, employees, Licensees or other customers.

5.14 At all times display, demonstrate and otherwise represent the Services fairly in comparison with competitive products.

5.15 Not make any promises or representations or give any warranties, guarantees or indemnities in respect of the Bytebaq Service except such as expressly authorised by the

Company in writing and shall not supply the Bytebaq Service to any company or person knowing that it does not meet their requirements.

5.16 Not supply or recommend any computer equipment to a Licensee for use in conjunction with Bytebaq that is not appropriate for use with Bytebaq.

5.17 Payment for Licensees, Upgrade Fees or Recovery Fees

The Dealer is required to immediately pay all Subscription Fees, Recovery Fees and other charges made of Licensees as stated in Schedule 1 of this agreement or as changed from time to time by DataFort.

5.17.1 Such payment will be due within 10 days of DataFort invoice.

5.17.2 If the Dealer receives payment from Licensees and does not pay the portion to DataFort as detailed in Schedule 1, the Dealer will be responsible for all charges DataFort must pay for the recovery of any Subscription Fees, Recovery or other fees that are charged to the Licensee. This will include court costs (if any) and the cost of time spent in recovering fees owed to the Company.

6. TERMINATION

This Agreement shall terminate (in the case of clauses 6.1 and 6.4 inclusive) forthwith upon service of written notice to that effect. This notice shall be given by registered post:

6.1 Breach

If either party fails to comply with any terms and conditions of this Agreement and such failure, if capable of remedy, is not remedied within 28 days of receipt of a written notice of such failure from the other party.

6.2 Insolvency

If the Dealer goes into liquidation either compulsory or voluntary (save for the purpose of reconstruction or amalgamation) or if a receiver, administrative receiver or manager is appointed in respect of the whole or any part of its assets or if the Dealer makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things or any judgement is made against the Dealer or any similar occurrence in any jurisdiction affects the Dealer.

6.3 Conduct prejudicial

If the Dealer engages in any conduct prejudicial to the distribution and promotion of Bytebaq or the marketing of the Services generally.

6.4 Change of management or control

If any material change occurs in the management or control of the Dealer.

6.5 Notice

6.5.1 Where following the expiry of the initial period of 1 Year this Agreement has become one for an indefinite period by virtue of the Commercial Agents (Council Directive) Regulations 1993 (or any provisions replacing the same) either party may terminate it by giving the other notice.

6.5.2 The period of such notice shall be:

6.5.2.1 one month for the first Year following Commencement Date;

6.5.2.2 two months for the second Year following Commencement Date;

6.5.2.3 three months for the third Year following Commencement Date.

6.5.3 The period of such notice shall coincide with the end of the calendar month.

7. TERMINATION CONSEQUENCES

7.1 Procedure

On the expiry or other termination of this Agreement the Dealer undertakes:

7.1.1 to return all Service Materials in its possession to the Company or dispose of it in accordance with the Company's directions;

7.1.2 to return to the Company all samples and publicity, promotional and advertising material used for the distribution and promotion of the Services;

7.1.3 to sign such notification of cessation of use of the Intellectual Property as is required by the Company;

7.1.4 to return to the Company all originals and copies of all documents and information in any form containing or covering in any way any part of the Intellectual Property;

7.1.5 forthwith to cease carrying on the distribution and promotion of the Bytebaq Services;

7.1.6 to complete any sales for which the Dealer has received a purchase order or signed User Agreement.

7.2 No solicitation

For a period of 1 Year after expiry or termination the Dealer undertakes not to damage the goodwill of the Company and in particular:

7.2.1 to immediately turn over to the company all information pertaining to the Licensees of the Bytebaq Service and make Licensees aware of the change of account management;

7.2.2 not to solicit Licensees or former Licensees of the Company with the intent of taking their custom;

7.2.3 not to employ any employees or former employees who were employed by the Company or any other representative of the Company and to procure that all directors and shareholders of the Dealer enter into direct covenants of a similar nature with the Company.

8. MISCELLANEOUS

8.1 Warranty: Each of the parties warrants that it has power to enter into this Agreement.

8.2 Reservation of rights: All rights not specifically and expressly granted to the Dealer by this Agreement are reserved to the Company.

8.3 Force majeure: Both parties will be released from their respective obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the reasonable control of the parties or either of them renders the performance of the Agreement impossible whereupon:

8.3.1 all money due under this Agreement shall be paid immediately, and;

8.3.2 the Dealer shall forthwith cease carrying on the distribution and promotion of the Bytebaq Services provided that this clause shall only have effect at the discretion of the Company except when such event renders performance impossible for a continuous period of not less than 12 calendar months.

8.4 Severance: If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of the Company it may be severed from this Agreement.

8.5 Whole agreement: The Dealer acknowledges that this Agreement contains the whole agreement between the parties and it has not relied upon any oral or written representation made to it by the Company or its employees or agents and has made its own independent investigations into all matters relevant to the Bytebaq Service.

8.6 Change of address: Each of the parties shall give notice to the other of the change or acquisition of any address, electronic mail address, telephone, facsimile or similar number at the earliest possible opportunity but in any event within 48 hours of such change of acquisition.

8.7 Notices:

8.7.1 Any notice to be served on either of the parties by the other may be served:

8.9.1.1 by delivering it to the Dealer or to the Company;

8.9.1.2 by leaving it at the address specified in clause 1 addressed to the Dealer or Company by name;

8.7.1.3 by sending it by post addressed to the Dealer's or the Company's registered address or to the address of the relevant party's registered or principal office;

8.7.1.4 by prepaid recorded delivery or registered post.

8.8 Headings: Headings contained in this Agreement are for reference purposes only and should be not incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the clauses and subclauses to which they relate.

8.9 Joint and several: All agreements on the part of either of the parties which comprises more than one person or entity shall be joint and several and the neuter singular gender throughout this Agreement shall include all genders and the plural and the successors in title to the parties.

8.10 No partnership: The parties are not partners or joint venturers nor is the Dealer able to act as (AN) agent of the Company save as authorised by this Agreement.

8.11 The Principal's right to assign: This Agreement and all rights under it may be assigned or transferred by the Company.

8.12 Proper law and jurisdiction: This Agreement shall be governed by the law of England and Wales in every particular including formation and interpretation and shall be deemed to have been finally made in England.

8.13 Rights cumulative: All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under this Agreement shall restrict or prejudice the exercise of any other right granted by this Agreement or otherwise available to it.

8.14 Survival of terms: No term shall survive expiry or termination of this Agreement unless expressly provided.

8.15 Waiver: The failure by the Company to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

8.16 Costs: Each of the parties shall pay the costs and expenses incurred by it in connection with this Agreement.

8.17 VAT: All sums payable under this Agreement are exclusive of VAT or any tax replacing it.

8.18 Data Protection Act:

8.18.1 The parties to this Agreement mutually undertake and agree not to disclose to any unauthorised person any data which is subject to the Data Protection Act 1998;

8.18.2 The parties to this Agreement mutually undertake and agree to apply for registration under the Data Protection Act 1998 and to maintain such registration throughout the continuance of this Agreement.

8.19 Links to Third Parties' Websites: The Company's websites may contain links and pointers to Internet sites maintained by third parties. The Company does not operate or control any information, products or services on such third party sites. Third party links and pointers are included solely for the Dealer's information and convenience and do not constitute any endorsement by the Company or its suppliers. Any questions the Dealer may have with respect to information, products or services on such third party sites, should be addressed to the third party maintaining that site.

SCHEDULE 1

Bytebaq Offsite Backup Services

This service is a service that runs from an application installed on the Licensee's computer. It will compress, encrypt and transmit the Licensee's file data to a backup server. Each Licensee accepts the Terms of a User Agreement at the inception of service and the account is subject to those terms. They can be reviewed on the Bytebaq website www.bytebaq.com/legal.htm. The service will not backup network drives or external drives. The Bytebaq Service will maintain files removed from the Licensee's computer disks for a period of 45 days. There is an optional extension of this retention period to 365 days for a supplementary fee.

Bytebaq PRO PC Edition – Monitored from Dealer's control panel. Will backup all the informational data on a Windows PC running non-server software.

Bytebaq Server Edition software will examine the disks and determine the appropriate account size. The Dealer will be charged accordingly for the appropriate service level.

If during the service term the Server is upgraded to disks of a larger size, the Bytebaq service will detect that increase and not allow recovery of data until the service level has been upgraded.

Bytebaq Server Upgrades – If the disk sizes on a server protected by the Bytebaq Service increases, the Service agreement will be cancelled and the remaining portion of the Subscription Fee will be applied towards a new 12 month agreement at the higher service level.

Bytebaq Server downgrades – It is not possible downgrade an account if a server’s disks are decreased within the term of the agreement. Upon renewal the size of the disks will be assessed and the new Subscription Fee will reflect the decrease in disk size.

Optional USB Recovery Service

The Licensee can recover data at any time via their Internet connection. If this is not sufficient for the recovery requirement, they can order the delivery of all data on a USB encrypted disk. Once the service is ordered it is not possible to cancel the order and the Recovery Fee must be paid. DataFort will deliver an estimate of how many USB disks will be required to recover the Licensee’s data. It is not possible to select a portion of data for USB Disk Recovery and the entire data set will be returned to the Licensee at their expense.

There may be a delay of up to 5 business days for the delivery of the Licensee’s complete data set. DataFort bears no responsibility in recovering the data from the disk to the Licensee’s computers. DataFort gives no assurance that the data recovered from the USB disk will include all the data from the protected machine and the offering of this service is subject to the terms of the User Agreement entered into with the Licensee at the inception of the Bytebaq Service.

Bytebaq Dealer Commissions for 12 months service (Ex VAT)			
Bytebaq PROFESSIONAL			
Service Description	Trade Price	Retail Price	RRP – 12 month data retention extensions (optional)
Bytebaq PRO PC Edition	£40.00	£45.00	£75.00
Bytebaq PRO 500	£325.00	£349.95	£75.00
Bytebaq PRO 1000	£450.00	£499.95	£125.00
Bytebaq PRO 2000	£800.00	£899.95	£150.00
USB Disk Recovery			
Each disk will hold up to 500Gb of compressed data			£300.00 / per disk

EXECUTED under hand in two originals the day and year first before written

Dealer:

Signature			
Print name:			
Company:			
Position:		Date:	

Company:

Signature			
Print name:			
Company:			
Position:		Date:	