



DATAFORT DELUXE Terms & Conditions

Prepared for

Company Name: _____

Company Registration Number: _____

Agreement Date: _____ 200__

TERMS AND CONDITIONS**1. Definitions and interpretation**

1.1 in this Agreement, unless the context otherwise requires:

"Customer" means the person who orders the Service and that person shall be taken to include bodies Incorporate or unincorporated.

"Agreement" means the contract between DataFort and the Customer incorporating these terms and conditions; the Conduct Rules; any special terms agreed between DataFort and the Customer set out in the order forms, as amended from time to time pursuant to clause 2. If there is any inconsistency between any special terms and any other terms of this Agreement, the special terms shall prevail;

"Backup" means the process of transferring Data from your Computer to DataFort's Appliance(s) and Servers for storage.

"Backup Appliance(s)" means the equipment provided by DataFort to the Customer for the provision of the Service and will include but not be limited to servers, external disks and any other equipment that DataFort feels necessary to provide the Service.

"Change Order" means any changes to the Statement of Work as agreed by the Customer and the Company at any time during the Term.

"Conduct Rules" – The details of the Customer's responsibilities.

"Customer" means the company or individual signing this Agreement to initiate the provision of the Service.

"Data" means any Data or other information to be copied.

"DataFort" is a private limited company registered in England No. 04022026 and whose registered office is at TV House, 45a Whitmore Road, Guildford, Surrey GU11QU.

"Law" means any law, statute or regulation, guideline or code of conduct, (whether or not having the force of Law in any jurisdiction to which DataFort or the Customer is from time to time subject;

"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.

"Price List" is the official list of charges for the Service that is included with the Statement of Work at the onset or on the anniversary of the Agreement Term.

"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.

"Service" means the Backup Service as defined in the Statement of Work.

"Service Software" means any proprietary software supplied to the Customer by DATAFORT in relation to the Service;

"Secure Environment" means within such structures that are deemed permissible by DataFort's insurance provider. (Further details are obtainable from the DataFort office.)

"Service Level Statement" means the then current description and level of Service statement as noted in Schedule I of this document. This Agreement may be amended at the time of Agreement renewal.

"Statement of Work" means the forms which include details of the Customer's Backup requirement and information needed to provide the Service including prices;

"Subscription Fee" means the charge based on the amount of Data that is or has been selected for backup and charged as stated in the Statement of Work or subsequent Change Order(s) issued at any time during the Term.

"Security Deposit" means the refundable money required to secure the Backup Appliance(s) required to run the Service.

"Term" means the period specified in clause 8 of this Agreement.

1.1 The Customer's undertaking not to do any act or thing shall be deemed to include an undertaking that the Customer shall not permit or suffer the doing of that act or thing,

1.2 The expressions "Customer" and "DataFort" shall include their respective successors and permitted Assignees and their respective employees and agents.

2. PROVISION OF SERVICE

2.1 DataFort will lay out the Service provision in the Statement of Work for the initial Term as described in clause 8. A new Statement of Work will be issued at the onset of a new Term subsequent to any Change Orders DataFort agrees to provide the Customer, on the terms and conditions of this Agreement.

2.2 DataFort reserves the right to amend this Agreement (including but not limited to the terms and conditions), DataFort price schedule and the Conduct Rules once a year on the anniversary of the Agreement date. DataFort will notify the Customer in writing of changes to the Price or to this Agreement. The Customer may terminate this Agreement as provided in clause 13. if it does not wish to be bound by such new terms and conditions. Continued use of the Service or failure to terminate this Agreement will be deemed to constitute acceptance of the new terms and conditions.

3. SUBSCRIPTION FEES AND OTHER CHARGES

The Customer will pay the Subscription Fee for the Service based on the details provided in the Statement of Work and any Change Order(s) as set out in Price List accompanying the Statement of Work. Any work not covered in the Statement of Work as may be required from time to time will be charged as listed in the Price List.

3.1 There is a minimum Subscription Fee of **£75.00/100.00** per month.

3.2 In addition DataFort shall be entitled to charge:

3.2.1 an Abortive Visit Charge of £125 if the information that the Customer has supplied is incorrect or insufficient and it is not technically possible to install the Service or to provide other work as agreed;

3.2.2. an Abortive Visit Charge of £125 where it is necessary to provide other requested services to the Customer where an engineer visits the Customer's site and the Customer cancels the visit without giving at least 48 hours notice;

3.2.3 an Abortive Visit Charge of £200 where the Customer requests immediate assistance and then cancels that request.

3.3 Subject to any provision of this Agreement, liability for charges shall commence, unless DataFort notifies the Customer to the contrary, with effect from the day on which DataFort first makes the Service available to the Customer, whether or not the Service is actually used, the first charge being calculated based on the minimum detailed in clause 3.1 of this Agreement, and thereafter for each billing period in arrears.

3.4 The Security Deposit is payable on signing this Agreement. An installation date will not be scheduled until the Security Deposit has cleared.

3.5 Payment of the Subscription Fee or any other charge will be made within 14 days of the date of Invoice.

3.6 Unless stated to the contrary, all fees, rates or charges quoted by DataFort are subject to VAT and listed exclusive of VAT.

3.7 Without prejudice to any other rights of DataFort, DataFort reserves the right to charge interest on overdue amounts (under this clause) or any other clause from the date on which payment thereof was due, to the date on which it is made (whether before or after judgment) on a daily basis at a rate of 4% per annum over the base rate from time to time of LIBOR. The Customer shall reimburse to DataFort costs and expenses (including legal costs incurred) in the collection of any overdue amounts. Interest shall continue to accrue and costs and expenses shall continue to be reimbursed after the termination of this Agreement for any reason.

3.8 If at any time before or during the Term of this Agreement the Customer fails to meet the standard of credit worthiness deemed acceptable by DataFort from time to time, DataFort shall be entitled:

3.8.1 to require the Customer to make such regular installment payments in advance on account of any future charges as DataFort shall deem necessary;

3.8.2 to impose credit limits on the Customer in respect of charges and to suspend the Service at any time when such limits are reached until payments in full of such outstanding charges has been reached.

4. ACCESSES TO SERVICE

4.1 DataFort may temporarily suspend or restrict the Service for purpose of repair, maintenance or improvement of any of the facilities of DataFort which are necessary to provide the Service; or vary the technical specification of the Service for operational reasons subject to DataFort giving the Customer as much on-line, written or oral advice as is reasonably practicable in the circumstances, and restoring the Services, as soon as reasonably practicable after such temporary suspension.

4.2 DataFort shall not be held responsible for the Customer's inability to use the Service due to any incompatibility between the Customer's equipment and DataFort Backup Appliance(s) or the Service, or for any breakdown or failure in the Backup Appliance(s) used by the Customer, or for any incapability of the Backup Appliance(s) used by the Customer to use the Service.

4.3 The Customer shall remain liable for any charges for the Service, notwithstanding that the Customer is unable to use the Service for any period of time, unless the reason that the Customer is unable to use the Service is wholly attributable to the negligence of DataFort or willful default or omission.

5. CONDUCT RULES

5.1 The Client hereby irrevocably gives permission to DataFort and its employees, agents or contractors to:

5.1.1 execute any works on the Premises for, or in connection with, the installation, maintenance, adjustment, repair, alteration, moving, replacement, renewal or removal of the Backup Appliance(s);

5.1.2 keep and operate the Backup Appliance(s) installed on, under or over the Premises;

5.1.3 enter the Premises to inspect the Backup Appliance(s) kept on, under or over the Premises or elsewhere for the purposes of the DataFort Systems.

5.1.4 The permission set out above shall continue in force notwithstanding cancellation or termination of this

Agreement until such time as DataFort has recovered all Backup Appliance(s) from the Client.

5.2 The Customer agrees not to do or allow anything to be done to the Premises that may cause damage to, or interfere with, the Backup Appliance(s) or prevent easy access to it.

5.3 DataFort shall supply the Customer with the relevant information to enable the Customer suitably to prepare the Premises for delivery and installation of the Backup Appliance(s). The Customer shall at its expense provide suitable accommodation, assistance, facilities and environmental conditions for the Backup Appliance(s).

5.4 DataFort shall use its reasonable endeavors to comply with the Customer's reasonable requests in respect of installation but DataFort or its contractor or agents' decision on the routing of cables and wires and the positioning of outlets and other apparatus constituting the Backup Appliance(s) or part thereof shall be final and binding. DataFort shall use all reasonable endeavors to provide and install or procure the provision and installation of the Backup Appliance(s) at the Premises so that the Service can be provided on / or before any installation date specified or agreed to by DataFort. Any installation date is an estimate only and DataFort shall not be liable for any failure to meet such installation date.

5.5 Following the installation of the Backup Appliance(s), the Standard Tests shall be carried out by DataFort or any other third party to ensure that the Service is ready for use. If the Service is not ready for use, DataFort shall either repair or replace, at its sole option, the Backup Appliance(s) or any part thereof.

5.6 The Backup Appliance(s) shall remain the property of DataFort or the supplier of such Backup Appliance(s). DataFort may modify, substitute, renew or add to the Backup Appliance(s) from time to time at its absolute discretion.

5.7 The Customer shall be responsible for ensuring at all times the safekeeping and proper use of the Backup Appliance(s) after delivery and or installation at the Premises. The Customer shall be liable to DataFort for any loss or damage to the Backup Appliance(s) if it can be shown that the loss or damage is due to misuse or malicious intent:

5.7.1 to keep the Backup Appliance(s) at the Premises and not to move it;

5.7.2 to permit DataFort and its employees, agents or contractors to test the Backup Appliance(s) at all reasonable times;

5.7.3 not to cause the Backup Appliance(s) to be repaired or otherwise maintained except by an authorized representative of DataFort.

5.7.4 not to cause any attachments to be fitted to the Backup Appliance(s) except in accordance with such written authorization as may be notified by DataFort to the Customer from time to time;

5.7.5 not to do anything nor to allow any circumstances likely to damage the Backup Appliance(s) or detract from or impair its performance or operation and not to add modify or in any way interfere with or impair the performance of the Backup Appliance(s);

5.7.6 not to attempt to sell, transfer, dispose of, let, mortgage, charge, modify, extend, repair, service, tamper with, remove or interfere with the Backup Appliance(s) or suffer any distress, seizure or execution of the Backup Appliance(s) or otherwise do anything prejudicial to DataFort or the owner of the Backup Appliance(s); and

5.7.7 not to remove, tamper with or obliterate any identification mark(s) affixed to the Backup Appliance(s) or to any part thereof showing that it is the property of

DataFort or other third party supplier of the Backup Appliance(s).

5.8 Any instance of fire, flood or theft must be duly reported by the Customer to the appropriate authorities within 5 business days of the occurrence. The Customer then must provide DataFort with details of any report immediately.

5.9 The Customer is responsible for any damage to the Appliance(s) outside of normal wear and tear.

5.10 The Customer will cooperate with DataFort's reasonable requests for information regarding the Customer's use of the Service and supply such information without delay.

5.11 The Customer is not permitted to use the Service 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.

5.12 DataFort reserves the right to impose such other measures on the Customers rights to use the Service as DataFort shall reasonably deem necessary. In the event that the Customer does not act in accordance with DataFort's instructions as provided above, DataFort shall be entitled to terminate this Agreement forthwith.

6. LIMITED WARRANTY BY DATAFORT

6.1 DataFort warrants to you, the Customer, that we will provide the Services with all reasonable skill and care.

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

6.2.1 repair or replace the Service Software and Backup Appliance(s) which does not conform with the warranty; or

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

7. LIMITATION OF LIABILITY

7.1 Except as referred to in clause 7.3 and subject to clause 7.2, the aggregate liability of DataFort in respect of all claims arising under or in connection with this Agreement (whether in contract, tort or otherwise) in any calendar year shall be limited so that it shall in no circumstance exceed a sum equal to the total fees payable to DataFort under this Agreement in the calendar year in which the claim(s) arose.

7.2 DataFort shall not in any circumstance (other than those referred to in clause 7.3) be liable for any loss of profits (actual or anticipated), loss of revenue, loss of anticipated savings, loss of goodwill, loss or corruption of or damage to Data or for any indirect, incidental, consequential or special loss or damage.

7.3 Nothing in this Agreement shall exclude or limit DataFort's liability for death or personal injury resulting from negligence or in relation to any claim based on fraud or a breach of the obligations imposed by s12 Sale of Goods Act 1979 or s2 Supply of Goods and Services Act 1982.

8. TERM AND TERMINATION

The Term of this Agreement shall commence, unless DataFort notifies the Customer to the contrary, with effect from the day on which DataFort first makes the Service available to the Customer, whether or not the Service is actually used and will continue for a minimum Term of twelve months. The Term will then automatically renew for consecutive periods of twelve months. You may terminate this Agreement after the Term by giving DataFort not less than sixty (60 days' written notice before the start of a new term.)

8.1 DataFort shall be entitled to terminate forthwith if:

8.1.1 DataFort is precluded from providing the Service by Law or by the decision of any competent judicial or regulatory authority;

8.1.2 The Customer becomes insolvent or bankrupt,

8.1.3 The Customer commits a breach of clause 5 of this Agreement which in DataFort's reasonable opinion is serious enough to merit immediate termination;

8.1.4 The Customer commits a breach of any of the provisions in this Agreement (including without limitation, non payment of any charges hereunder and in the case of a breach of any provision which is capable of remedy, fails to remedy the same within 7 days after receipt of a notice giving particulars of the breach and requiring it to be remedied;

8.2 The right to terminate this Agreement shall not prejudice any other right or remedy of DataFort in respect of any breach or any rights, obligations or liabilities accrued prior to termination.

8.3 If notice is given to terminate this Agreement, the Customer shall pay Subscription Fees up to the expiry of the Term. They will also be liable for any other pending fees and charges. The Customer's notice does not void any liability for the Service already provided or to be provided under this Agreement. On termination of this Agreement the Customer shall immediately cease using the Service. The Customer shall have no further rights to use the Service or to access information stored as part of the Service.

8.4 On termination the Customer will, within fourteen days of said termination, in addition to any other liabilities under this Agreement, deliver to DataFort the Backup Appliance(s) supplied to the Customer under this Agreement. If the Customer fails to deliver the Backup Appliance(s) within fourteen days, or if the Backup Appliance(s) has been willfully or negligently damaged and is delivered in an unusable state, the Customer will forfeit to DataFort the sum equal to the refundable Security Deposit as stated in the most recent Statement of Work and/or Change Order.

9. INDEMNITY

9.1 The Customer shall indemnify DataFort against each loss, liability or cost incurred by DataFort arising out of:

9.1.1 any claims or legal proceedings arising from the Customers use of the Service; or

9.1.2 Any breach of this Agreement by the Customer.

10. ASSIGNMENTS

The Customer shall not assign or delegate or otherwise deal with all or any of its rights or obligations under this Agreement. DataFort shall have the right to assign or otherwise delegate any of its rights or obligations under the terms of this Agreement to any person or entity.

11. FORCE MAJEURE

DataFort shall not be liable for any breach of its obligations under this Agreement where it is hindered or prevented from carrying out its obligations by any cause outside its reasonable control, including without limitation by lightning, fire, flood, extremely severe weather, strike, lock-out, labour dispute, act of god, war, riot, civil commotion, malicious damage, failure of any telecommunications or computer system, compliance with any law, accident (or by any damage caused by any of such events).

12. ENTIRE AGREEMENT AND NO WAIVER

12.1 This Agreement represents the entire understanding between the parties in relation to the subject matter herein and supersedes any other Agreement or

representations made by either party, whether oral or written.

12.2 No waiver by DataFort of any default of the Customer under this Agreement shall operate or be construed as a waiver by DataFort of any future defaults, whether of a like of different character. No granting of time or other forbearance or indulgence by DataFort to the Customer shall in any way release, discharge or otherwise affect the liability of the Customer under this Agreement.

13. NOTICES

Unless otherwise stated within this Agreement, notices to be given to either party shall be in writing and shall be delivered by hand, electronic mail (other than for the purpose of legal process), sent by fax or pre-paid post to the Customer at the Customer address or to DataFort at its address as specified in the Statement of Work.

14. DATA PROTECTION

14.1 DataFort may use any information supplied by the Customer for its own administrative and Customer Service purposes or for any purpose required by Law.

14.2 Unless the Customer notifies DataFort in writing DataFort may:

14.2.1 use information supplied by the Customer for market research purposes or to supply the Customer with information about other products or services available from DataFort or its associated companies.

14.2.2 use information supplied by the Customer for purposes of the development of marketing literature, brochures or press statements.

15. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with English Law and DataFort and The Customer agree to submit to the non-exclusive jurisdiction of the English courts.

16. SERVICE LEVEL STATEMENT

Measurement Conditions for determining Service Level Statement

The Core Network Element of The DataFort Service will have a Regional Point of Presence (POP) to Network Access Point (NAP) availability of better than 99.95%. The NAP will have direct Internet connectivity to one or more Tier 1 carriers. The Server Element of The DataFort Service will have a Service availability of better than 99.95%.

Notes:

16.1 99.95% availability is considered "expected availability".

16.2 These calculations are made on a "sliding" 30 day period. Therefore, 99.95% means less than a total of 21 minutes downtime over the preceding 30 day period. The calculation is performed at 23:59 local everyday.

The calculation is:- 0.05% x 24 HOURS x 30 DAYS.

The granularity of the calculation is 5 minutes i.e. the availability tests are made every 5 minutes.

16.3 Planned Outages (i.e. where disrupted work has been notified more than 24 hours in advance) will be excluded from the calculation except when these planned outages overrun their allocated time.

16.4 This statement is valid for all Customers of the DataFort Service, unless otherwise stated.

16.5 The Core Network Element in the context of this statement is all The DataFort utilised equipment, Wide Area Transport and the DataFort Gateway routers. It does not cover Customer Access Routers nor the line connecting the Customer location to DataFort's core network.

16.6 The Service Element in the context of this statement is defined as the availability of the DataFort backup servers. Details of any security firewalls between the servers supplying the Services and the Core Network are also included.

16.7 This statement does not cover end-to-end reachability between the DataFort Core Network and the Customer's Internet connection.

16.8 This availability is subject to change.

COPY OF TERMS AND CONDITIONS RECEIVED BY:

Signature

Print Name

Title

Date