



# Tier II Dealer Agreement

Dated: \_\_\_\_\_ 200\_\_

1) DATAFORT LTD.

Registered in England: 04022026

VAT No. 793 7738 66

2)

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Company Registration Number

\_\_\_\_\_  
VAT No.

MANAGED  
BACKUP  
SERVICES  
**DATAFORT**  
WWW.DATAFORT.COM

TV House  
45a Whitmore Road  
Guildford  
Surrey  
GU1 1QU  
T: +44 [0]1483 872 052  
F: +44 [0]870 831 4580  
Email: [channel@datafort.co.uk](mailto:channel@datafort.co.uk)

**THIS AGREEMENT** is made

The \_\_\_\_\_ of \_\_\_\_\_, 200\_\_\_\_

**PARTIES:**

(1) **DATAFORT LIMITED** a company registered in England whose principal place of business is TV House, 45a Whitmore Road, Guildford, Surrey GU1 1QU (‘the Company’)

[2]

whose registered office is located at:

\_\_\_\_\_  
(the Dealer)

**RECITALS:**

(A) The Company is the proprietor of certain computer Services known as “DataFort Managed Backup Services” and others, which provides backup 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

(C) The Company has agreed to appoint the Dealer as its nonexclusive dealer to negotiate the grant of such licences of such Software on the terms and conditions hereinafter contained to any interested persons and the Dealer wishes to accept such appointment.

**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:

**‘Business Day’**

means a day other than a Saturday, Sunday or a public holiday.

**‘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

**‘EndUser Agreement’**

means a software licence and support agreement granted by the Dealer to the end user procured or introduced by the Dealer by using the Dealer’s Unlock Code within the Territory during the continuance of this Agreement to use the Services in such form as the Company may from time to time direct or approve in writing and as the same may be amended by agreement with the Company in writing from time to time.

**‘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 a person situated in the Territory who is a party to an EndUser Agreement.

**‘Space used on the Servers’**

means the amount of disk space used, in gigabytes, by Licensees introduced by the Dealer for the storage of data as part of the DataFort Managed Backup Services on the Servers.

**‘the Servers’**

means the servers provided by DataFort to be used by Licensees as part of the Managed Backup Services.

**‘the Services’**

means the Company’s DataFort Managed Backup Services, the Select Plus, Deluxe Service and any other Services detailed 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.

**‘the Software Documentation’**

means the operating manuals and other literature provided by

the Company to the Dealer from time to time for use by end users in conjunction with the Software.

**‘the Service Materials’**

means the Service, hardware and the Service Documentation.

**‘the Support Services’**

means the software support services provided or to be provided by the Dealer pursuant to each EndUser Agreement.

**‘the Territory’**

means the United Kingdom of Great Britain and Northern Ireland.

**‘Transaction’**

means each successful registration by a Licensee with the Company to use the Software

**‘Unlock Code’**

means a unique code given by the Company to the Dealer and Licensees used for the registration of end users with the Company during the initial installation of the Software

**‘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 agent of the Company to promote the 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 order received from or through the Dealer from a customer using the Dealer’s Unlock Code;

2.3.2 to continue to sell direct to customers and to appoint other agents in the Territory;

2.3.3 to vary the specification and/or the price of the Services;

2.3.4 to vary the Services either by the withdrawal of those Services which the Company proposes to withdraw from its software range or by the addition to those Software Materials of further software and/or documentation.

**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 with the Dealer throughout the duration of this Agreement:

**4.1 Support and Information**

To support the Dealer in its efforts to promote the Services and in particular its own expense:

4.1.1 to supply the Dealer with an Internet address where they can download the Software;

4.1.2 to assign and supply to the Dealer an Unlock Code;

4.1.3 to provide promotional information in electronic format for potential Licensees to the Dealer for distribution with the Software;

4.1.4 removed intentionally.

4.1.5 to provide the Dealer with a password to enable access to the Company’s website information service;

4.1.6 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 his acceptance or refusal of and any execution by him of a Transaction;

4.1.7 endeavour to answer as soon as reasonably possible all technical queries raised by the Dealer or Licensees concerning the use or application of the Services;

4.1.8 give the Dealer reasonable advance written notice of any material changes in or modifications of the Services or of the Company’s intention to discontinue licensing or sublicensing the Services in the Territory;

**4.2 Advertising and Promotion**

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

4.2.2 removed intentionally.

4.2.3 To make available to the Dealer free of charge a version of the software re-branded to represent the Dealer's company image as detailed in Schedule 2.

#### 4.3 *Space Used*

4.3.1 To supply the Dealer with a statement of the server space used by each Licensee introduced by the Dealer at the end of each billing period or data selected at source for those services sold with that payment profile.

4.3.2 To make available to the Dealer, through the Company web-site, a statement of the server space used by each Licensee introduced by the Dealer available at any time.

#### 4.4 *Maintenance of Intellectual Property*

Subject to clause 5.8 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.

### 5. THE DEALER'S OBLIGATIONS

The Dealer agrees with the Company throughout the duration of this Agreement:

#### 5.1 *Diligence*

At all times to work diligently to protect and promote the interests of the Company.

#### 5.2 *Scope and Activity and Authority*

##### 5.2.1 *Exclusive agency*

Not without the previous consent in writing of the Company to be concerned or interested either directly or indirectly in the supply of any goods in the Territory which are similar to or competitive with the Service and Services Materials.

##### 5.2.2 *No description as agent*

Not to describe itself as agent or representative of the Company except as expressly authorised by this Agreement.

##### 5.2.3 *No pledge of credit*

Not to pledge the credit of the Company in any way.

##### 5.2.4 *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.

5.2.5 Pay for all subscription fees and charges that customers associated with the Dealer's unlock code contract for, whether or not those services are used or paid for by the customer for as long as those services are provided to the customer(s).

#### 5.3 *Diligently to promote*

At all times diligently promote and procure sales of the Services throughout the Territory by appropriate means including:

5.3.1 personal visits to and correspondence with potential purchasers and licensees;

5.3.2 advertising and distribution of publicity matter subject however to the specific prior approval in writing in all cases by the Company of the form and extent of such advertising and publicity matter (without recourse to the Company for any expense incurred unless such expense is specifically authorised by the Company in writing prior to expenditure);

5.3.3 to supply the Service Materials to potential Licensees and subscribers such supply or installation of the Service to be free of charge;

#### 5.4 *Good faith*

In all matters to act loyally and faithfully toward the Company.

#### 5.5 *Compliance*

5.5.1 To obey the Company's orders and instructions in relation to the conduct of the sales and promotion of the Service.

5.5.2 To conduct the distribution and promotion of the Service and software in an orderly and businesslike manner.

5.5.3 To comply in the conduct of the distribution and promotion of the Services with all applicable laws, byelaws and requirements of any governmental or regulatory authority.

5.5.4 To supply the Company with a business profile including a current electronic mail address.

5.5.5 To maintain browser access to the Internet.

#### 5.6 *Disclosure*

On entering into this or any other agreement or Transaction with the Company throughout the duration of this Agreement to make full disclosure of all material circumstances and of everything known to it respecting the subject matter of the relevant contract or Transaction which would be likely to influence the conduct of the Company including in particular the

disclosure of other agencies in which the Dealer is interested directly or indirectly.

#### 5.7 *Pass on information*

5.7.1 To refer to the Company any enquiries from prospective customers or other leads outside the Territory.

5.7.2 To supply to the Company information which may come into its possession which may assist the Company to effect sales or other dealings in the Services.

5.7.3 To pass on any information which may prejudice sales of the Services.

#### 5.8 *Protection of Intellectual Property*

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

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

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

5.8.4 To affix such notices to the software and the Services or their packaging or advertising associated with the Services as the Company shall direct.

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

5.8.6 To indemnify the Company for any liability incurred to third parties for any of the Intellectual Property otherwise than in accordance with this Agreement.

5.8.7 On the expiry or termination of this Agreement forthwith to cease to use the Intellectual Property.

5.8.8 Not to tamper with any packages markings or name plates or other indication of the source of origin of the Service Materials which may be placed by the Company on the Service Materials.

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

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

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

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

5.9 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.

5.10 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.

5.11 The Dealer shall not use, reproduce or deal in the Service Materials or any copies thereof except as expressly permitted by this Agreement.

#### 5.12 *Support*

5.12.1 Qualified Engineers. The Dealer will have at least one member of staff that has used and understands the installation, setup and management of the service. The Dealer will provide support to Licensees as detailed in Schedule 3.

5.13 *Confidentiality*. The provision of this clause shall survive the termination of this agreement.

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

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

5.13.1.2 the Services Materials or any information concerning the same;

5.13.1.3 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.

5.13.2 The Dealer shall ensure that its employees are aware of and comply with the confidentiality and nondisclosure provisions contained in 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 its employees.

5.13.3 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.

5.13.4 The provisions of this Clause shall survive the termination of this Agreement but the restrictions contained in Clause 5.13.1 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, 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, by any court of competent jurisdiction or any administrative or regulatory authority.

*5.14 Sale reports*  
To supply to the Company from time to time upon request sales reports, returns and other information relating to the sales and promotion of the Software in such detail as the Company may reasonably request

*5.15 Inspection of books and premises*  
To permit the Company or its representatives at all reasonable times to inspect all things material to the distribution and promotion of the Software including computer hardware and to take copies of any relevant documents and for this purpose to enter any premises used in connection with the distribution and promotion of the Software.

*5.16 Subagents*

5.16.1 Not to employ subagents without the consent of the Company.

5.16.2 To be responsible for the activities of any properly appointed subagents.

*5.17 Assignment*

5.17.1 Not to assign, charge or otherwise deal with this Agreement in any way without the consent of the Company.

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

*5.19 Pay expenses*  
To pay all expenses of and incidental to the carrying on of the distribution and promotion of the Services.

*5.20 Not to tamper with the Service Materials*  
To distribute the Service Materials in the same condition as that in which it receives them.

*5.21 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:

5.21.1 Any act neglect or default of the Dealer's agents, employees, Licensees or customers;

5.21.2 Breaches resulting in any successful claim by any third party alleging libel or slander in respect of any matter arising from the supply of the Service Materials.

5.22 Use all reasonable endeavours to promote and extend the licensing of the Services throughout the Territory.

5.23 Perform its obligations hereunder in accordance with all reasonable instructions which the Company may give the Dealer from time to time.

5.24 Promptly inform the Company of any opportunities of which the Dealer becomes aware and which are likely to be relevant in relation to the commercial exploitation of the Services and which are advantageous or disadvantageous to the interests of the Company.

5.25 At all times conduct its business in a manner that will reflect favourably on the Services and on the good name and reputation of the Company.

5.26 Not by itself or with others participate in any illegal, deceptive, misleading or unethical practices including, but not limited to, disparagement of the Service or the Company or other practices which may be detrimental to the Service, the Company or the public interest.

5.27 At all times display, demonstrate and otherwise represent the Services fairly in comparison with competitive products from other suppliers.

5.28 At all times employ a sufficient number of fulltime staff who are capable of competently demonstrating the Services to prospective licensees.

5.29 Removed Intentionally.

5.30 Not make any promises or representations or give any warranties, guarantees or indemnities in respect of the Services Materials except such as are contained in an EndUser Agreement or as expressly authorised by the Company in writing and shall not supply the Service to any person knowing that it does not meet that person's specified requirements.

5.31 Not supply or recommend any computer equipment to a Licensee for use in conjunction with the Services save for that equipment which is supplied by the Dealer and approved from time to time by the Company.

5.32 Permit the Company and its authorised agents at all reasonable times to enter any of the Dealer's premises for the purpose of ascertaining that the Dealer is complying with its obligations under this Agreement (and so that the Dealer hereby irrevocably licenses the Company, its employees and agents to enter any such premises for such purpose).

5.33 Comply with the provisions of each EndUser Agreement entered into by the Dealer.

*5.34 Use of Communication Forums/Monitoring*  
To the extent that the Company's channel program websites contain chat rooms, usernets, bulletin boards, or other message or communication facilities ("forums"), to use such forums only to send and receive messages and material that are proper and related to a particular forum. The Dealer agrees to read and comply with usage guidelines provided by the Company to be followed by users of these forums.

5.35 To pay for all services used by the Dealer and all Licensees introduced by the Dealer as detailed in Schedule 1, subsection a, b, c and d. Additional services and associated charges will be brought to the attention of the Dealer as they become available.

**6. TERMINATION**

This Agreement shall terminate (in the case of clauses 6.1 and 6.5 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 the Services 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 Services 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 Services.

### *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 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 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 contain 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 Services.

### *8.6 Supersedes prior agreements*

This Agreement supersedes any prior agreement between the parties whether written or oral and any such prior agreements

are cancelled as at the date hereof but without prejudice to any rights which have already accrued to either of the parties.

### *8.7 Discretion*

Any decision, exercise of discretion, judgement or opinion or approval of any matter mentioned in this Agreement or arising from it shall only be binding upon the Company if in writing and shall only be binding upon the Company if in writing and shall be at its sole discretion unless otherwise expressly provided in this Agreement.

### *8.8 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.

### *8.9 Notices*

8.9.1 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;  
8.9.1.3 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;  
8.9.1.4 by prepaid recorded delivery or registered post.

### *8.10 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.

### *8.11 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.

### *8.12 No partnership*

The parties are not partners or joint venturers nor is the Dealer able to act as agent of the Company save as authorised by this Agreement.

### *8.13 The Principal's right to assign*

This Agreement and all rights under it may be assigned or transferred by the Company.

### *8.14 Proper law and jurisdiction*

8.14.1 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.

### *8.15 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.

### *8.16 Survival of terms*

No term shall survive expiry or termination of this Agreement unless expressly provided.

### *8.17 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.

### *8.18 Costs*

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

### *8.19 VAT*

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

### *8.20 Data Protection Act*

8.20.1 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.

8.20.2 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.

### *8.21 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.

*8.22 Press Release and Promotion*

Unless otherwise required by law, no party will issue any press release or any other announcement with respect to this Agreement or the terms and conditions thereof, including, without limitation, the services or otherwise disclose any of the services set forth herein without the other party's prior written consent, which approval shall not be unreasonably withheld or delayed. This paragraph shall survive the expiration or earlier termination of this Agreement.

**SCHEDULE 1  
Charges**

A Dealer Spreadsheet will accompany this agreement and become part of the agreement listing the current price list for all available DataFort services. This price list can be amended giving the dealer 90 days notice.

At the end of each month the dealer will be invoiced for the services used by his customers following these price schedules. Prices may change with 90 days notice. Each customer account is invoiced separately, but the monthly statement will cover all money due for that month's service.

**SECTION A – DATAFORT SELECT SERVICE PRICING (OFFSITE BACKUP)**

**SECTION B – DATAFORT SELECT PLUS AND DELUXE SERVICE PRICING^ (ONSITE/OFFSITE BACKUP)**

Prices are based on the current retail price list. Tier II Dealers are invoiced at 30% below retail prices. Each customer account is invoiced separately, but the monthly statement will cover all money due for that month's service.

**SECTION C - ADDITIONAL SERVICES** such as system imaging, DataFort onsite engineering services, bandwidth sales and other services that may be added to the product line are available at a 30% discount to DataFort's published retail price list.

A direct debit mandate must be supplied before customers can be added to this unlock code. In the event that the dealer cancels the direct debate mandate he will be in breach of this agreement and DataFort may choose to terminate the agreement.

No equipment will be allocated for the use of the dealer, nor will work commence on the rebranded agent until the direct debit mandate has been received.

**SCHEDULE 2**

Upon request we will provide a version of the DataFort service branded with the Dealer's logo. There will be a "Powered by DataFort" logo included in the software branding.

To provide this facility the Dealer must provide each of the items detailed in Appendix 1.

**SCHEDULE 3**

The Dealer will be expected to provide first line support to Licensees. The Dealer will escalate support issues that they are unable to resolve to the Company support line. The Company will interact with the Dealer to resolve these escalated support issues.

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

Signature:

Signature:

(PRINT) \_\_\_\_\_  
Name:

(PRINT) \_\_\_\_\_  
Name:

Company: \_\_\_\_\_

Company: DATAFORT LTD.

Position: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX 1

	Description	How used	DataFort Example
<input type="checkbox"/>	Website Address	This will refer the client to your internet site for marketing and contact purposes	<a href="http://www.datafort.co.uk">www.datafort.co.uk</a>
<input type="checkbox"/>	Phone Number	This will provide your clients with a contact number	01483 872052
<input type="checkbox"/>	Email Address	Will provide clients with an email link to contact your support desk	<a href="mailto:support@datafort.co.uk">support@datafort.co.uk</a>
<input type="checkbox"/>	Software Update Site	This will point the software clients to a location where updates are stored. This can either be at your site or a default location within backupcentral e.g. <a href="http://yourcompany.backupcentral.co.uk/updates">http://yourcompany.backupcentral.co.uk/updates</a>	<a href="http://www.datafort.co.uk/agentupdates">http://www.datafort.co.uk/agentupdates</a>
<input type="checkbox"/>	Name	This will refer to your company name	DataFort
<input type="checkbox"/>	Brand	This will refer to the product branding	Managed Backup Service
	Dealer Password	To access information about your customer accounts	Pass62word

**Software images** – Note images will look better with a small white border –5 pixels in width. These images are for reference only. They are not to size.

	IMAGE SIZE	WHERE USED
<input type="checkbox"/>	Image 163 x 250 pixels Example:	Help screens and installation wizards 


	IMAGE SIZE	WHERE USED
<input type="checkbox"/>	Image 591 x 92 pixels Example:	Title bar within setup wizards 

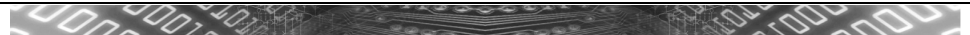
	IMAGE SIZE	WHERE USED
<input type="checkbox"/>	Image 1800 x 50 pixels Example:	Run time screen top border 

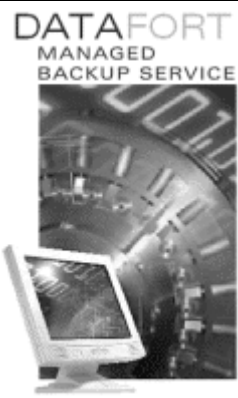



	IMAGE SIZE	WHERE USED
<input type="checkbox"/>	Image 224 x 360 pixels Example:	Registration Screens
		

	IMAGE SIZE	WHERE USED
<input type="checkbox"/>	Image 189 x 34 pixels Example:	Registration Screens
		

	IMAGE SIZE	WHERE USED
<input type="checkbox"/>	Image 119 x 242 pixels Example:	Software About Screen
		

User agreement:

Below is the minimum acceptable user agreement which will be inserted into the registration process for the Select service. If no additions are provided, this will be used as the template which will become part of the rebranded service software provided to The Dealer.

 Items highlighted in Yellow are mandatory.  Items highlighted in blue are optional.

**End User License Agreement and Limited Warranty**

**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 the Backup Server for storage.

"**The Services**"

means the services offered by  for Data storage.

"**Backup Server**"

means the computer system, supplied to provide  Services, its Web Site and other ancillary functions.

"**The computer**"

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

**"Data"**

means any 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 [Insert company name] or a third party company to provide the service.

**"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 [Insert company name] web site from time to time.

**"The Software"**

means the computer program supplied to enable your Data to be stored on the Backup 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 [Insert company name]. [Insert company name] 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 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;
- 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 [Insert company name] 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 [Insert company name] 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 [Insert company name], 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 [Insert company name]**

- 6.1 [Insert company name] 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 [Insert company name] entire liability and your exclusive remedy under the warranty, given in 6.1 above, will be, at [Insert company name] 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 [Insert company name]

7.1 Except for the express warranty in Clause 6 [Insert company name] 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. [Insert company name] does not warrant that the operation of the Software or access to the Backup 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 [Insert company name] 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 [Insert company name] 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 [Insert company name] 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 [Insert company name] 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 [Insert company name] that you will, without prejudice to any other right of action which [Insert company name] may have, at all time keep [Insert company name] 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 [Insert company name] 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, [Insert company name] or another.

## 9. Disclaimer

9.1 In no event will either [Insert company name] 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 [Insert company name] 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 [Insert company name] does not exclude or limit liability for:

9.3.1 death or personal injury resulting from an act or negligence of [Insert company name] 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 [Insert company name] control how and for what purposes the Software and the Service are used by you and that [Insert company name] 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 £00.00 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.