



## License Agreement

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SOFTWARE LICENSE AND SUBSCRIPTION SERVICE AGREEMENT

VITAL DATA STORAGE AS PROVIDED BY:

**VITAL INTERNATIONAL LIMITED (“Vital”)**

900 Coronation Road

London

NW10 7PH

UK Company Registered No. 04502260

UK VAT No. GB 809 9178 87

CAREFULLY READ THE FOLLOWING LEGAL AGREEMENT BEFORE DOWNLOADING THIS SOFTWARE. BY DOWNLOADING THIS SOFTWARE YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS SOFTWARE LICENSE AND SUBSCRIPTION SERVICE AGREEMENT (THE “AGREEMENT”).

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT DOWNLOAD THIS SOFTWARE FROM VITAL INTERNATIONAL LIMITED

IT IS RECOMMENDED THAT YOU PERFORM OCCASIONAL TEST RESTORES AND FAMILIARISE YOURSELF WITH THE OPERATION OF THE SOFTWARE BEFORE AN EMERGENCY SITUATION ARISES.

**1. LICENSE:**

The software covered by this Agreement is the software program and documentation accompanying this License, whether on disk, in read only memory, on any other media or in any other form, and if you have downloaded the software, the licensed software includes all files, images contained in or generated by the software and accompanying data (collectively, the “Software”). Vital grants to you a non-exclusive limited license to install and use the Software as necessary, for the sole purpose of connectivity to the Vital Data Storage backup and restore Service (the “Service”).

**2. RESTRICTIONS.**

You shall not transfer, distribute, rent, lease, sublicense, assign, copy, modify, reverse compile, disassemble, or otherwise reverse engineer or attempt to reconstruct the Software, in whole or in part. You may only use the Software in connection with Vital’s Service, and not with any other backup or related service.

**3. OWNERSHIP.**

This Agreement gives you limited rights to use the Software. You do not own the Software.

**4. TERM AND TERMINATION.**

This Agreement is effective until terminated. This Agreement will automatically terminate, without notice to you, if you fail to comply with any term of this Agreement, including the non-

payment of Service Fees. You may terminate this Agreement at any time by discontinuing service with Vital. To discontinue service, you must give Vital 30 days written notice to expire at the end of any minimum term contract periods as specified on the relevant Sales Order Form

YOU AGREE THAT UPON ACCOUNT TERMINATION, YOU ARE AUTHORISING VITAL TO DELETE ALL ASSOCIATED BACKUP FILES AND DATA FROM OUR SERVERS.

**5. USE OF SERVICE.**

Use of this Service consists of the right of a Customer of the Service ("Customer") to electronically transmit and store computer data using either a private data communications network, or the Internet into a location maintained by Vital and to retrieve said data as required. The Service is made available by Vital to Customer during the period the Customer maintains a paid subscription to the Service. The Customer must maintain a current license of Vital's Software for Services where software is required to provision access.

The Customer should maintain a primary electronic file of all materials stored in the Service. The Customer should not utilise the service as a substitute for primary electronic file maintenance.

Vital may make copies of all files stored as part of the backup and recovery of servers utilised in connection with some of the Services. Vital is not obligated to archive such copies and will utilise them only for backup purposes. They will not be accessible to the Customer.

**6. SERVICE FEES.**

Customer shall pay in advance any registration or service fees and other charges incurred by Customer or Customer's designated users at the rates in effect for the billing period in which those charges are incurred. For situations where credit card payment is utilised, Customer shall maintain a current authorisation for Vital to debit Customer's credit card account for such amounts. In addition, Customer shall provide Vital a current street address and Internet e-mail address for all communications and shall notify Vital of any change of address. Customer shall pay all applicable taxes related to use of the Service by Customer or Customer's designated users. For situations where the Customer's credit card issuing financial institution has been notified of a payment dispute, said Customer agrees that proof of Service usage by Customer constitutes Customer's authorisation to submit payment request to Credit Card issuing financial institution. Vital may, in addition, at its sole discretion and without notice to the Customer, (a) suspend its performance under this Agreement and deny Customer and Customer's designated users' access to and use of the Service until Customer is back in good standing, or (b) terminate this Agreement and Customer's and Customer's designated users' access to and the use of the Service. Further, Vital may cancel the Service to Customer without cause upon thirty (30) days prior written notice. Customer must provide Vital with

written notice of Customer's intent to terminate use of the Service. At the time of cancellation, the Customer's access to any of Customer's data stored by the Service may be permanently terminated. Vital will not provide a refund for any unused portion of the Services paid in advance by Customer.

While Vital reserves the right to modify and change Service fees at any time, current Service fees, and any changes to the fees will be posted on Vital's website at:

<http://www.vital-storage.com/pricing.asp>.

CUSTOMER AGREES THAT VITAL WILL INVOICE CUSTOMER FOR THE FEE APPLICABLE TO THE AMOUNT OF STORAGE SPACE USED ON VITAL'S SERVERS FOR CUSTOMER'S DATA BACKUP. SHOULD CUSTOMER'S DATA BACKUP REQUIREMENTS INCREASE SUCH THAT THE RESULTING SIZE REQUIREMENT MOVES THE CUSTOMER INTO A DIFFERENT PRICE LEVEL AS PER VITAL'S PRICING MODEL, CUSTOMER AGREES TO BE INVOICED AT THE NEW, APPLICABLE RATE, PRORATED FOR EACH MONTH CUSTOMER'S STORAGE REQUIREMENTS EXCEED CUSTOMER'S PRE-AUTHORISED STORAGE LIMIT.

**7. PASSWORDS.**

No bailment or similar obligation is created between Customer (and/or Customer's designated users) and Vital with respect to Customer's stored data. Customer is solely responsible for maintaining the confidentiality of Passwords, including restricting the use of the Passwords by Customer's designated users. Customer shall be responsible for all use of the Service accessed through Customer's Password.

VITAL SHALL NOT HAVE ANY RESPONSIBILITY OR OBLIGATION TO CUSTOMER, CUSTOMER'S DESIGNATED USERS OR OTHER USERS OF THE SERVICE TO MONITOR, SUPERVISE OR OVERSEE THE CONTENTS OF FILES STORED ON THE SERVICE. VITAL IS NOT RESPONSIBLE FOR PROVIDING CUSTOMER WITH PASSWORDS IN THE EVENT OF A FORGOTTEN PASSWORD. WITHOUT THE CORRECT PASSWORD, CUSTOMER'S DATA WILL REMAIN ENCRYPTED AND INACCESSIBLE.

**8. COMMUNICATIONS CIRCUITS.**

Customer is responsible for and must provide all telephone or other communication equipment and services necessary to access the Service. All data files are transmitted over communication company circuits, which are wholly beyond the control and jurisdiction of Vital and are maintained by the communications company. If these communication circuits are not functional for any reason, the data files may not accurately or completely reach Vital's facility or equipment. Vital cannot be responsible for the continued operation or functioning of these communication circuits nor the reliability of the data files being received over them.

**9. UNLAWFUL MATERIALS.**

Customer shall not use the Service for storage, possession or transmission of any information, the possession, creation or transmission of which violates any of the Customer's local or national laws, or UK and EU laws including without limitation, stolen materials, obscene materials or child pornography.

CUSTOMER'S BACKUP FILES MAINTAINED BY VITAL ARE SUBJECT TO EXAMINATION BY LAW ENFORCEMENT OFFICIALS OR OTHERS WITHOUT CUSTOMER'S CONSENT UPON PRESENTATION TO CUSTOMER OR VITAL OF A SEARCH WARRANT OR SUBPOENA.

**10. EXPORT CONTROLS.**

Customer acknowledges that the Software contains encryption algorithms and may be subject to restrictions and controls imposed under the export control laws and regulations of the jurisdiction in which the Customer is using the Software and may not be exported, acquired, shipped, transferred or re-exported, directly or indirectly, to (i) any country or region prohibited under such laws and regulations or (ii) any end user who has been prohibited from participating in the export transaction under such laws or regulations. In particular, the Software is subject to regulations respecting export permits and prohibitions on export under the laws of the United States and Canada.

**11. INDEMNIFICATION.**

Customer agrees to indemnify Vital against liability for use of Customer's account which liability is a direct result of Customer's misuse or neglect use of its account(s).

**12. NO OTHER WARRANTIES.**

CUSTOMER EXPRESSLY AGREES THAT USE OF THE SOFTWARE AND SERVICE IS AT CUSTOMER'S SOLE RISK. NEITHER VITAL NOR ANY OF ITS LICENSORS, EMPLOYEES, OR AGENTS WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE; NOR VITAL OR ANY OF ITS LICENSORS, EMPLOYEES OR AGENTS MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICE. EXCEPT AS EXPRESSLY PROVIDED IN THIS LICENSE, THE SOFTWARE AND SERVICE IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION, OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT.

**13. LIMITATION OF LIABILITY.**

In no event will vital or its resellers, distributors, agents or licensors be liable for any claim, whether in contract, tort or any other theory of liability, exceed the amounts paid by customer,

if any, for the service for the twelve month period (if paying annually) or the three month period (if paying quarterly) or the one month period (if paying monthly) preceding the event forming the basis of the claim. In no event will vital nor anyone else involved in creating, delivering or maintaining the service be liable for any damages including, without limitation, any direct, indirect, incidental, special, exemplary or consequential damages, losses related to business interruption, loss of business information or loss of profits arising out of customer's use of or inability to use the software or service, or out of any breach of warranty, even if vital has been advised of the possibility of such damages, or for any claim by any third party.

**14. INSURANCE.**

Customer does not desire this Agreement to provide liability for loss or damage due directly or indirectly to occurrences, or consequences there from, which the service is designed to deter or avert. If Customer desires additional liability coverage, it shall be the Customer sole responsibility to secure it from an insurance carrier or other agency of Customer choice, at Customer's own expense. Customer shall bring no suit against Vital as a result of any loss arising from this Agreement.

**15. ASSIGNMENT.**

Vital shall have the right to assign this Agreement to any person, firm or corporation, without prior consent.

**16. EXCLUSIVE REMEDY.**

In the event a court of competent jurisdiction determines that the "Insurance," "Limitation of Liability," and/or "No Other Warranties" section(s) of this Agreement are invalid and Vital should be found liable for loss or damage due to failure of the services provided under this Agreement, Vital's liability shall be limited to the Subscriber's fees paid, if any, for the Service for the 12 month period (if paying annually) or the 3 month period (if paying quarterly) or the 1 month period (if paying monthly) preceding the event forming the basis of the claim, as agreed upon liquidated damages and not as a penalty. Because of the nature of the services rendered and the system as a whole, it is impractical and extremely difficult to determine the actual damages, if any, which may result from failure on the part of Vital to perform its responsibilities under this Agreement. Such liquidated damage is the exclusive remedy for any failure of the services, and the provisions of this paragraph shall apply if loss or damage, irrespective of cause or origin, results directly or indirectly to a person or property from the performance or non-performance of any obligation of Vital from negligence, active or otherwise, of Vital, its agents or employees. It is intended and expressly agreed that the purpose of the preceding provisions are to set an upper limit to the amount recoverable by subscriber and to fix liability of Vital at a specific sum not to exceed the fees paid to Vital for the prior twelve, three or one month(s) of service, whichever is applicable.

**17. ENTIRE AGREEMENT.**

This Agreement and any additional Operating Rules published by Vital from time to time

constitute the entire and only agreement between Vital and Customer (including Customer's designated users) with respect to the Software and Service. This Agreement supersedes all other communications and agreements with regard to the subject matter hereof. Upon notice published over the Service, Vital may modify this Agreement, the Operating Rules or prices, and may discontinue or revise any or all other aspects of the Service at its sole discretion and without advance notice. Unless otherwise agreed, Customer's right to use the Service or to designate users is not transferable and is subject to any limits established by Vital.

**18. CONTROLLING LAW AND SEVERABILITY.**

This Agreement is, and shall be governed by and construed in accordance with the law of the United Kingdom and the European Union applicable to agreements made and performed in the United Kingdom. The parties hereto agree that any dispute in any manner arising out of this Agreement shall be submitted for resolution by mandatory arbitration. In the event the parties cannot agree upon a mutually-acceptable arbitrator, the arbitrator shall be the UK Small Claims Court. The parties further agree that the laws of the United Kingdom shall apply to all disputes arising hereunder and that the exclusive and proper forum for the arbitration of disputes arising hereunder shall be in Brentwood, Essex, England. The parties further agree that the successful party in any such arbitration shall be entitled to the recovery of its reasonable attorney's fees and costs, to be awarded by the arbitrator. Notwithstanding any acknowledgement of a Customer purchase order by Vital, any provision or condition in any purchase order, voucher, letter or other memorandum of the Customer which is in any way inconsistent with, or adds to the provisions of this agreement is null and void. Neither the course of conduct between parties nor trade practice shall act to modify the provisions of this Agreement. If any provision of this Agreement is determined to be invalid, all other provisions shall remain in full force and effect. The provisions of paragraph 12 and 18 and all obligations of and restrictions on Subscriber and its designated users shall survive any termination of this Agreement.