



# Select Internet

Standard Terms and Conditions relating to the supply of online backup services by Select Internet

Select Internet, PO Box 317 Kidlington, Oxford. OX5 3WZ

[www.SelectInternet.co.uk](http://www.SelectInternet.co.uk)



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## Agreement for the provision of Online Backup Services

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## 1. This agreement

This agreement, covering the provision of online backup services is between:

<b>The Vendor</b>	Jonathan Galloway PO Box 317 Kidlington OX5 3WZ e-mail – customer.service@selectinternet.co.uk  Trading as Select Internet  Referred to in this agreement as - We, Us, Our, Vendor, Select Internet
<b>The Customer</b>	The person or company benefiting from The Service  Referred to in this agreement as – You, Your, Customer

## 2. Communications and notices

Any communications sent by You to Us relating to this agreement must be sent to the postal or e-mail addresses given above.

Any communications sent by Us to You will be sent to the postal or e-mail addresses provided by You. It is Your responsibility to ensure that if these addresses change We are notified of that change.

## 3. The Service

The Service is the provision of software and on-line storage facilities by Us to You, to allow the Off-Site backup and restore of computer data.

Off-Site is any location other than that where your computer equipment is normally located.

You are granted a non-exclusive, non-transferable, royalty-free, limited license to use the binary form of the software provided as part of The Service for Your use only. Redistribution of programs, unless explicitly granted by Us, is strictly prohibited.

The Service uses the Internet to move the data to the Off-Site storage facility. It is understood that the provision of such Internet services are not part of The Service and We are not responsible for any failings, shortcomings or limitations in any such Internet service.

We will use reasonable commercial efforts to ensure that The Service is available at all times (24 hours a day, 7 days a week). However, We will not be liable for any loss, direct or consequential, as a result of service interruptions, however caused.

This will be Our total obligation under this agreement.

#### **4. Your obligations**

You agree to the conditions laid out in this agreement. This agreement can not be amended or altered in any way except with Our written consent.

You will pay the applicable fees due under this agreement.

It is solely Your responsibility to ensure that the data you require to be secured is backed up. Backup reports detailing each backup and the data copied as part of that backup will be sent via e-mail to the e-mail address You supply. You are advised to check and retain those reports.

You have sole knowledge of the encrypting keys used to protect your data and have responsibility to ensure these encrypting keys are kept in a safe and secure place.

**YOU UNDERSTAND THAT WITHOUT THESE KEYS DATA CAN NOT BE ACCESSED OR RESTORED.**

#### **5. Suitability of The Service and Trial Period**

A Trial Period of up to 28 days is available at no charge and with no obligation on You or Us to convert this to a paid service during or at the end of that 28 days.

It is solely Your responsibility to satisfy yourself that The Service is suitable for the purpose for which you wish to use it.

All software provided as part of The Service is on an "as is" basis with no warranties of any kind and We will not be liable for any damages of any kind arising from the use. We further disclaims all warranties, express and implied, including without limitation, any implied warranties of merchantability or fitness for a particular purpose.

#### **6. Agreement terms and cancellation**

##### **6.1. Minimum Term (the Initial Term)**

The Minimum Term of the agreement (the Initial Term) is 3 months starting from the day on which service commences, excluding the Trial Period (the Commencement Of Service).

Fees for the Initial Term are payable in advance for the full period.

##### **6.2. Renewal Term**

At the end of the Initial Term and at the end of each Renewal Term, the agreement will automatically renew (The Renewal Term) until cancelled by either You or Us.

You can choose a Renewal Term of 1 or 3 calendar months.

### **6.3. Cancellation by You**

You can cancel this agreement at any time with 1 calendar months notice.

If you notify Us that The Service is no longer required this will constitute cancellation at the end of the then current Term or, if the end of the then current Term is within less than 1 month, at the end of one calendar month following the then current Term. Any fees already paid by You to Us will not be refunded.

The Service will be considered to be cancelled by You without further action or notice by Select Internet 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.

You understand and accept that We cannot infer cancellation of your account simply as a result of backups not occurring

### **6.4. Price**

The Price you pay for The Service will be the price shown within the relevant banding rate applicable from time to time and stipulated on the Select Internet website <http://www.selectinternet.co.uk>.

You acknowledge that the prices are subject to change and is dependent upon the service package selected and the amount of data that is being stored.

Any changes in fees will be communicated by Us to You at least 60 days prior to the change taking effect.

### **6.5. Payment of fees**

Renewal fees become due on the last day of each Term and are payable within 7 calendar days for the whole Renewal Term.

Failure to pay fees on time will not in itself constitute cancellation, but We may Discontinue The Service pending payment.

### **6.6. Cancellation by Us**

We can cancel the agreement at any time.

We are under no obligation to offer to renew the agreement at the end of any Term.

We will give a minimum of 90 days notice of cancellation, or of Our intention not to offer renewal of the agreement.

### **6.7. Discontinuation of services**

If The Service is cancelled by You or by Us, immediately following the cancellation notice period all obligations under the agreement will cease and The Service will be Discontinued.

If fees due under this agreement, as set out in section 6.5 above, are not paid, The Service will be Discontinued pending payment of fees due.

When The Service is Discontinued You will no longer be able to use The Service for any purpose, including to back up or restore (recover) previously backed up data.

#### **6.8. Conditions of renewal**

The conditions set out in this agreement will remain in force for the duration of the provision of The Service by Us to You including any Renewal Terms unless any changes are agreed by Us and You.

#### **7. Limit of liability**

We warrant that the products and services supplied as part of The Service will perform substantially in accordance with the help file supplied for the duration of your use of the The Service.

If The Service fails to perform as promised , Your sole and exclusive remedy shall be the return of fees paid for The Service during the period for which the Product or Service failed to perform as promised. You must notify Us immediately of any failure or suspected failure. Under no circumstances will any liability exceed the total fees paid by You to Us in the 12 months immediately preceding Your becoming aware of any failure.

Notwithstanding the foregoing, if any failure of The Service has resulted from abuse, misapplication, or unauthorized use, the limited warranty provided by this Agreement is and shall be void.

To the maximum extent permitted by applicable law you acknowledge that Our obligations and liabilities in respect of The Service are exhaustively defined in this Agreement. You agree that the express obligations and warranties made by Us in this Agreement are in lieu of and to the exclusion of any warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise relating to anything supplied or services provided under or in connection with this Agreement including (without limitation) as to the condition, quality, performance, or fitness for the purpose of The Service or any part of it.

You are responsible for the consequences of any use of the Product. We will not be liable for any indirect or consequential loss, damage, cost or expense of any kind whatsoever and however caused, whether arising under contract, tort (including negligence) or otherwise, including (without limitation) loss of production, loss of or corruption to data, loss of profits or of contracts, loss of operation time and loss of goodwill or anticipated savings, even if We has been advised of their possibility.

You acknowledge and agree that the allocation of risk contained in this clause 7 is reflected in the Price paid for The Service and is also recognition of the fact that inter alia it is not within Our control how and for what purpose The Service is used by You.

## **8. Use of The Service**

You agree not to use The Service in any application that may involve risks of death, personal injury, severe property damage or environmental damage, or life support applications, devices or systems.

You will not use The Service for information, data or material that ;

(i) infringes on the intellectual property rights of any third party or any rights of publicity or privacy;

(ii) violates any law, statute, ordinance or regulation (including but not limited to the laws and regulations governing, unfair competition, anti-discrimination or false advertising);

(iii) is defamatory, trade libellous, unlawfully threatening, or unlawfully harassing;

(iv) is obscene, pornographic or indecent in violation of applicable law;

(v) contains any virus or other programming routine intended to damage any system or data; or

(vi) is provided in breach of any prior contractual commitment to any third party.

## **9. Privacy**

Information relating to You and, where relevant, Your business will be held in paper and / or electronic form for the purposes of administering the service to You.

We will not divulge this information to any third party for any purpose except where We need to do so to provide services to You.

We may send notices to you via either email or regular mail. We may also provide notices of changes to the terms or other matters by displaying notices or links to notices to you generally on the services provided by Us.

## **10. Contradictory information**

In the event of contradictory information or conditions existing between this agreement and any other document or source of information, this agreement will always take precedence, except where another document specifically reflects alternative terms and conditions agreed by Us and You and that this other document is annotated "Agreed modification to standard conditions".

## **11. Assignment**

We may assign or otherwise transfer the rights and obligations of this agreement at any time by giving You a minimum of 90 days notice.

You may not assign the obligations of the agreement to any other party without Our written agreement.

Where services are provided for a business and that business changes ownership the services can continue to be used by the new owners under the same terms and conditions set out in this agreement.

## **12. Indemnification**

The Customer agrees to indemnify and hold the Vendor and the Vendor's employees and agents harmless from and against all liabilities, legal fees, damages, losses, costs and other expenses in relation to any claims or actions brought against the Vendor arising out of any breach by the Customer of the terms of this agreement or other liabilities arising out of or relating to the website or services supplied.

## **13. Disputes**

In the event of a dispute We and You agree to take all reasonable steps to resolve the dispute before resorting to legal remedies.

Any provision of this Agreement which is held invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Agreement, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction

This agreement will be governed by English law.