



Terms and Conditions of Service (January 2007)

Terms & Conditions

ACCEPTANCE OF THESE TERMS AND CONDITIONS, THE SLA (IF APPLICABLE) AND THE EULA WHEN YOU PLACE AN ORDER FORMS A CONTRACT (THE "CONTRACT") BETWEEN YOU (REFERRED TO IN THESE TERMS AND CONDITIONS EITHER AS "YOU" OR THE "USER") AND Start Backup Service ("Start Backup Service", "us"). BY ORDERING, DOWNLOADING OR USING THE PRODUCT OR SERVICE, AS DEFINED BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ THESE TERMS AND CONDITIONS, THE SLA (IF APPLICABLE) AND THE EULA AND YOU AGREE TO BE BOUND BY THEM.

These Terms and Conditions exist along side the Service Level Agreement ("SLA") which may provide additional guarantees and remedies for you in the event of non-performance of the Service. The SLA applies strictly to Users who are using the Products and Services in the course of their business ("Business Users"), and only where such Users meet the additional conditions set out below. In addition, the terms of the End User Licence Agreement ("EULA") set out further restrictions on the use of the Product. If you have ordered the 30 day free trial or any other free evaluation period, you will be treated as an "Evaluation User" of the Product and Service, and these Terms and Conditions do not apply to you in full. You should read Clause 6 which sets out the terms of your use of the Product and Service. The other provisions will only apply to the extent that Clause 6 says they do.

Start IT Services is a trading name of Acorn Ltd Ltd. All references to Start Backup or Start IT Services are references to Acorn Ltd. (company registration number 04996179).

1. Provision of Product and Services

1.1 In consideration of the payment by you of fees in accordance with Clause 5 below, Start Backup Service agrees to make the Start Backup Service Online Backup Manager software (the "Product") (or alternative software having similar functionality) available for you to download, and to provide a data backup service ("Service") provided by Start Backup Service.

1.2 The use of the Product will be governed by the provisions of the EULA, which you will be deemed to accept on installation of the Product. If you do not accept the terms of the EULA you will not be able to use the software and any associated services of Start Backup Service, and you should refer to the provisions of Clause 4.4 which set out your rights to cancel the Contract within the first thirty (30) days after placing your order.

1.3 The Product will be made available to you on the basis of the licence set out in the EULA for the duration of the Contract and you acknowledge that you do not own it, and will not be granted any ownership right in it. You may use the Product only in conjunction with the Service and in accordance with the Contract and the EULA. You will have no right to use the Product or Service after termination of the Contract.

1.4 You may copy and use the Product solely for the purpose of evaluating (if you are an Evaluation User) or utilising the Service. Any other use is strictly prohibited. You specifically agree not to make any attempt to modify decompile or reverse engineer the Product or otherwise discover the source code or underlying processes or algorithms of the Product, other than as permitted by applicable law.

1.5 The Services to be provided in accordance with the Contract, and the exclusions from them are as follows:

1.5.1. Off-site Backup Services using the Product or any alternative equivalent provided by Start Backup Service. The Product has the ability to backup data from third party software (including: File & Application Data Backup, System State Backup, Microsoft Exchange Server Backup, Lotus Domino Backup, Lotus Notes Backup, Microsoft SQL Server Backup, MySQL Backup, Oracle Database Backup.) The User shall be responsible for installing any such third party software on its computers, and for obtaining a suitable licence from the licensor of such software.

1.5.2. If a User wishes to restore file or application data from Start Backup Service's backup servers to their computer or server, the User can do this from within the Product under the Restore section or over the internet using the web interface at <https://backup.start-backup.com> under the "OBS User Configuration Console" section. Start Backup Service will use its reasonable endeavours (subject to Clause 9) to make the Service available for Users to recover data via the software or web interface.

1.5.3. The User will only be able to recover data from the User's **successful** backups carried out using the Product, and in accordance with the User's custom configuration settings and retention policy settings within the Product. Unless Start Backup Service has provided Installation Assistance in accordance with clause 1.9, Start Backup Service shall have no responsibility for the custom configuration of the backup settings in the Product selected by the User.

1.5.4. Users are expected to monitor their backups and backup logs on a daily basis and attempt to resolve any issues arising from the configuration of the Product. If the User is aware of a fault with the Product or the Service or a failure in its backups, the User must report the fault to Start Backup Service in writing or by email to support@startitervices.com no later than 12 hours from the discovery of the fault and before the next scheduled backup. Start Backup Service shall have no liability for any loss of data arising from a fault of which the User was aware, but which was not notified to Start Backup Service in accordance with this Clause 1.5.4.

1.5.5. If the User is unable to restore the data in accordance with Clause 1.5.2 because a failure of Start Backup Service's systems or network, Start Backup Service will use its reasonable endeavours to make the data available for access from within the software or web interface within a reasonable period of time.

1.5.6. Start Backup Service can also provide a recovery service for data from its servers onto a CD/DVD disc. This is not included within the Service and is available at an additional charge to the User.

1.5.7. On-site Software Installation Assistance (if applicable, additional fees apply, and please see Clause 1.9 for more information).

1.5.8. Data Seed Loading. This consists of transferring files over an external hard drive directly onto the server on the first backup in order to save time and bandwidth for the User. All following backups are carried out over the standard method by using the Product. This is not included within the Service but is available at an additional charge to the User.

1.5.9. Disaster Recovery & Data Security Consultation. This is not included within the Service but is available at an additional charge to the User.

1.5.10. Leased Line Connectivity, Fibre Optic Connections or equivalent data connectivity lines to connect the clients network to the Start Backup Service network, provided by a nominated third party carrier. This is not included within the Service but is available at an additional charge to the User. The third party will provide their own SLA to the client, but the service may be invoiced by Start Backup Service. The terms on which such services will be provided will be agreed prior to the provision of such service by Start Backup Service or a third party carrier. Failures on any of these connections are the responsibility of the third party data carrier.

1.5.11 The use of the Product and Service is dependent on the User obtaining and maintaining a suitable internet connection over HTTP & HTTPS ports and/or a direct connection from the User's computer to the Start Backup Service servers over a leased line or equivalent connection. The User is responsible for all costs in respect of such connections. Start Backup Service cannot be responsible for failures relating to leased lines, fibre optic connections, SDSL connections, ADSL connections, direct private connections, local or external ethernet connections, public internet connections or any other connections linking you to the Start Backup Service network and this will be treated as an event outside Start Backup Service's control in accordance with Clause 9.

Where additional services are available at an additional charge, the details of such services including performance dates and any applicable charges must be agreed between Start Backup Service and the User prior to such services being provided.

1.6 Your use of the Services will be limited in accordance with the options you selected when setting up the Contract, in particular the limit on storage. If you reach your storage limit you will not be able to back up additional data by using the Services, will receive an error report stating that you have reached your storage limit and are advised to upgrade. You should contact Start Backup Service on +44 (0) 845 0562969 or email support@startitsservices.com in order to upgrade your account. Alternatively, you can upgrade your account directly from our website, under the Support menu option, and your request will be actioned accordingly. The fees applicable to any upgrade carried out under this Clause 1.6 will be the difference between the monthly fees already paid and the monthly fees applicable to the upgraded service for the remainder of the then current 12 month term. One-off upgrade charges will also be applicable.

1.7 Start Backup Service acknowledges that the data stored by means of the Services may include Personal Data and that it may act as a Data Processor on your behalf (both terms as defined in the Data Protection Act 1998). To the extent applicable, Start Backup Service shall comply with the obligations set out in the seventh data protection principle. It is your responsibility to ensure that you have adequate consents from data subjects in respect of the processing to be carried out by Start Backup Service and, without limitation, to the storage of personal data outside the European Economic Area by Start Backup Service. By accepting these Terms and Conditions as part of the Contract, you warrant and undertake that you have obtained and will obtain such consent and, where you are a Business User, you shall indemnify and keep indemnified Start Backup Service against any liability, costs or damages arising due to your breach of this clause 1.7.

1.8 The Product and Services are provided for the purposes of data backup only. You are granted no right to use them for the following purposes:

1.8.1 in order to use or back up any application that may involve risks of death, personal injury, severe property damage or environmental damage;

1.8.2 in order to use or back up life support applications, devices or systems;

1.8.3 in order to back up information, data or material that (a) infringes on the intellectual property rights of any third party or any rights of publicity or privacy; (b) violates any law, statute, ordinance or regulation (including but not limited to the laws and regulations governing, unfair competition, antidiscrimination or false advertising); (c) is defamatory, trade libellous, unlawfully threatening, or unlawfully harassing; (d) is obscene, pornographic or indecent in violation of applicable law; (e) contains any virus or other programming routine intended to damage any system or data; or (f) is provided in breach of any prior contractual commitment to any third party.

If Start Backup Service becomes aware of any use of the Services in breach of this clause it may, at its option, delete any information, data or material which in its reasonable opinion is in breach of clause 1.8.3 and/or terminate the Contract. In addition, where you are a Business User you shall indemnify and keep indemnified Start Backup Service against any liability, costs or damages arising due to your use of the Product and Services in breach of this clause 1.8.

1.9 If you have requested that Start Backup Service install and configure the Product in order for you to access and use the Services ("Installation Assistance"), you shall provide Start Backup Service with the details reasonably required by Start Backup Service in relation to the request, including details of the Installation Assistance requested and the location at which the Installation Assistance will be provided. Start Backup Service shall have no obligation to provide the Installation Assistance until the scope, timescale and costs of such Installation Assistance have been agreed by Start Backup Service and you in writing. You shall pay the fees for any Installation Assistance prior to Start Backup Service providing such Installation Assistance unless you hold an authorised credit account with Start Backup Service, whereby you will be billed for the service in due course. Start Backup Service shall use reasonable endeavours to meet the performance dates agreed. Upon completion of the Installation Assistance, if the Installation Assistance has been performed in accordance with the agreed scope, you shall accept the services by signing off the job card provided by Start Backup Service. The job card will provide detail of what information and data is set to be backed up, and on what schedule the backup will take place as agreed with you in advance. Installation Assistance is provided on a one-off basis and it is the User's responsibility to carry out any changes in its technical configuration or data management after the completion of the Installation Assistance. If the data locations or specifications change from that which is set by Start Backup Service it is the Users responsibility to notify Start Backup Service of these changes if the User wishes to engage Start Backup Service to reconfigure the Product to reflect these new changes. Any such additional assistance shall be charged to the User. Start Backup Service shall have no obligation to monitor the User's backups in order to determine whether changes to the configuration of the Product are required.

2. SLA and Warranty

2.1 The SLA will apply to your use of the Product and Services if:

2.1.1 you are a Business User;

2.1.2 you agree to a minimum of one year service contract;

2.1.3 you are not in breach of your Contract; and

2.1.4 all fees relating to your use of the Product and Service are paid up to date. If the SLA applies to you, you should see the SLA for information about minimum service levels and your remedies if the Service does not meet them. The rights set out in the SLA are in addition to your rights set out in this clause, however, where you are entitled to recover under both the SLA and these Terms and Conditions, you shall not be entitled to recover more than once in respect of the same loss, and your total recovery shall be limited in accordance with clause 3.3 of these Terms and Conditions.

2.2 Start Backup Service warrants that the Product and Service will perform in all material respects in accordance with the help file that accompanies the Product for the duration of the Contract.

2.3 If the Product or Service fails to perform in accordance with clause 2.2, your remedy shall be (where applicable) the provision of a replacement Product or Service meeting the standards set out in clause 2.2 and/or the return of fees paid for use of the Product or Service during the period for which the Product or Service failed to perform as set out in that clause.

2.4 The warranty set out in clause 2.2 shall not apply in the event that you are in breach of any other provision of the Contract or have not paid any fees which are due under the Contract.

2.5 To the maximum extent permitted by applicable law you acknowledge that Start Backup Service's obligations and liabilities in respect of the Product are as set out in the Contract. You agree that the express obligations and warranties made by Start Backup Service in this Agreement are in place 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 Contract including (without limitation) as to the condition, quality, performance, or fitness for the purpose of the Product or any part of it. Nothing in this contract shall exclude any warranty as to title implied by the Sale of Goods Act 1979 or Supply of Goods and Services Act 1982.

2.6 You acknowledge that the Product and Service are standard offerings and have not been tailored or customised to your requirements. Start Backup Service makes no representation or warranty that they are suitable for your purposes or meet your requirements. You should make sure that you are happy with the level of service offered by Start Backup Service prior to concluding the Contract.

3. Liability

3.1 Start Backup Service will not be responsible for any losses suffered by you which were:

3.2.1 not foreseeable to Start Backup Service and you when you concluded the Contract; or

3.2.2 not caused by any breach of contract, negligence or breach of statutory duty on the part of Start Backup Service;

3.2.3 caused by your failure to use the Product or Service in accordance with the terms of the Contract;

3.2.4 caused by your failure to configure the Product to meet your needs unless the failure results from the provision of Installation Assistance to you by Start Backup Service (for example, and without limitation, you may set your own retention periods within the Product, and Start Backup Service has no liability to you where data is deleted following the expiry of these retention periods);

3.2.5 caused by the loss of data which was not backed up using the Product or Service, and you are advised to check the backup log to ensure that the desired file has been transmitted;

3.2.6 caused wholly by your failure to comply with the Contract;

3.2.7 caused by the failure of the User's hardware equipment or software, or any other hardware or software installed on or connected to the Users computer or server which is outside the control of Start Backup Service; or

3.2.8 caused by failures relating to leased lines, fibre optic connections, SDSL connections, ADSL connections, direct private connections, local or external ethernet connections, public internet connections or any other connections linking you to the Start Backup Service network and this will be treated as an event outside Start Backup Service's control in accordance with Clause 9.

3.2 Nothing in these Terms and Conditions excludes or limits the liability of Start Backup Service for fraudulent misrepresentation or death or personal injury caused by the negligence of Start Backup Service or its employees.

3.3 In circumstances where you are a Business User and you are not acting as a consumer, the following limitations of liability shall apply:-

3.3.1 Start Backup Service will not be responsible for any indirect, special or consequential loss or damage including (without limitation) loss of profit, loss of business, loss of contracts, loss of opportunity, loss or depletion of goodwill, loss of production, loss of operation time and loss of anticipated savings, or other costs or expenses (whether arising in contract, tort, negligence, breach of statutory duty or otherwise) that might arise; and

3.3.2 Subject to clauses 3.3.1, 3.1 and 3.2, Start Backup Service's maximum total liability to you in respect of all losses (whether arising in contract, tort, negligence, breach of statutory duty or otherwise) arising in one month shall not exceed the total fees paid by you to Start Backup Service under the Contract in respect of the Services (excluding any setup or installation charges) in the relevant month. Where you pay annually in advance, the relevant limit shall be 1/12 of the annual charge.

3.4 You acknowledge that the fees payable by you are calculated on the basis of the amount of storage space required by you, and that the fees for the Services are based on, amongst other things, the limitations and exclusions of liability set out in the Contract. Other backup services are available which may offer higher levels of liability at an additional price. Start Backup Service has no control over the nature of data backed up by you using the Service, and where the value of your data or other material backed up exceeds the limits set out in these Terms and Conditions, you should consider whether the Start Backup Service Service is appropriate for your requirements.

4. Term and Termination

4.1 When you agree to the terms of this Contract you will be asked to agree to a 12 month contract in accordance with clause 4.6. You will also be required to pay for the fees for a full year of use of the Product and Services in accordance with clause 5.2 or 5.3, unless Start Backup Service has agreed to alternative payment terms prior to the commencement of the Contract. At the end of each year, unless you give notice of termination to Start Backup Service at least 30 days in advance of the end of such year, a further year's fees will automatically be debited from your original method of payment or, if you pay on account, by cheque or bank transfer, an invoice will be issued in respect of a further years fees. If you pay such further fees, the term of the Contract will be extended for a further year. If you do not pay such further fees within 30 days of the date of any invoice or request for payment, the Contract shall expire at the end of the then current 12 month term and Start Backup Service shall be entitled to delete any of your data backed up using the Service without further notice to you upon expiry. If you do not renew the Contract, you will not be entitled to a refund in respect of any payments made for the current 12 month term.

4.2 This Contract will terminate upon the earliest to occur of the following:

4.2.1 the Contract is terminated under Clause 1.8, 4.1, 4.3 or 4.4; or

4.2.2 Start Backup Serviv receives written notice from you that you wish to terminate the Contract; or

4.2.3 you have failed to pay fees due under Clause 5 of this Contract within 30 days of their due date or otherwise breach the Contract; or

4.2.4 you give written notice to Start Backup Service that it is in breach of the Contract and Start Backup Service does not remedy such breach within 30 days of receipt of the notice. You will not be entitled to any refund of fees already paid in the event of termination, unless you terminate in accordance with Clause 4.2.4 or Clause 4.4.

4.3 The Contract will terminate without further action or notice by Start Backup Service 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 (or any other similar action in any jurisdiction).

4.4 You have the right to terminate the Contract and receive a full refund of fees paid if you give notice of cancellation to Start Backup Service within the first thirty (30) days after placing your order. Any notice given under this clause 4.4 should be sent to Start Backup Service, Multimedia House, 46 Sinclair Grove, London NW11 9JG or cancellation requests can be faxed to +44 (0) 8704 322 633. Requests must include full details of your account number and account username for us to clearly identify your account with us.

4.5 Following termination of the Contract for whatever reason:

4.5.1 You will have no further right to use the Product and must delete it from your computer equipment and destroy any other copies of it in any form, including copies on your hard and backup disks.

4.5.2 You will have no right to access the Service and Start Backup Service shall have the right to delete your stored data without liability for loss or damage.

4.5.3 Start Backup Service will remove and destroy all of your data backed up during the use of the service 30 days after the termination date of the Contract or in accordance with clause 4.1.

4.6 You agree to contract for the provision of the Service (after any initial Evaluation Period in accordance with Clause 6) for a minimum period of twelve months unless otherwise a longer period is determined as part of a specific service agreement entered into between the User and Start Backup Service. Any such agreement must be in writing and signed by an authorised representative of Start Backup Service, and shall be deemed to form part of the Contract. If you terminate the Contract prior to the expiry of the minimum period other than under clause 4.2.4 and have not paid the fees in advance in accordance with clause 4.1, you will be liable to make a one-off payment for the length of time remaining under the contract calculated on the banding rate applicable to your highest rate of usage of the Service prior to the date of termination.

4.7 You understand and accept that Start Backup Service cannot infer cancellation of your account simply as a result of backups not occurring.

4.8 You understand that until notification of your wish to cancel your account is received by Start Backup Service your account remains active and billable.

5. Pricing and Payment

5.1 The fees you pay for the Product and Service will be the fees shown within the relevant banding rate applicable to your use of the Service. Start Backup Service may amend its standard fees from time to time and amendments will be set out on the Start Backup Service website. Where you have paid fees in advance you will be unaffected by any change in fees until your Contract is due for renewal in accordance with Clause 4.1 unless you opt to amend the level of storage available to you under the Contract in accordance with Clause 1.6.

5.2 **Consumers:** Unless otherwise agreed in writing, or if you have an approved consumer credit account, payment of the fees in respect of setting up the Service and the first 12 month term is due on the date of order by either cash or credit card in accordance with Clause 4.1. You may choose to pay by cheque or bank transfer, however, all orders and online accounts will only be activated when payment has been cleared, at the discretion of Start Backup Service.

5.3 **Business Users:** Unless otherwise agreed in writing, or if you have an approved UK business credit account, payment of the fees in respect of setting up the Service and the first 12 month term is due on the date of order by either cash or credit card in accordance with Clause 4.1. You may choose to pay by cheque or bank transfer, however, all orders and online accounts will only be activated when payment has been cleared, at the discretion of Start Backup Service.

5.4 Unless otherwise agreed in writing by an authorised representative of Start Backup Service, all renewal fees applicable to your use of the Product and Service after the initial 12 month term shall be paid annually in advance in accordance with Clause 4.1.

5.5 All fees are quoted exclusive of VAT unless otherwise stated and any applicable VAT shall be paid in addition to the fees.

5.6 If you fail to pay in full on the due date:

5.6.1 Start Backup Service may suspend or cancel your account order or, in respect of the non-payment of renewal fees, the Contract shall expire in accordance with Clause 4.1;

5.6.2 Start Backup Service may terminate the Contract in accordance with Clause 4.2;

5.6.3 Start Backup Service may cancel any discount offered to you; or

5.6.4 where you are a Business User, you must pay Start Backup Service interest as set out in the Late Payment of Commercial Debts (Interest) Act 1998 calculated (on a daily basis) from the date of our invoice until payment, compounded on the first day of each calendar month and in respect of the period before and after any judgment (unless the court orders otherwise).

5.7 If you have an approved business credit account Start Backup Service may withdraw it or reduce your credit limit or bring forward your due date for payment at any time without notice.

5.8 You do not have the right to set off any money you may claim from Start Backup Service against anything you may owe Start Backup Service from any contract or invoice.

5.9 Business Users shall indemnify and keep indemnified Start Backup Service against all expenses and liabilities Start Backup Service may incur (directly or indirectly and including legal and debt-recovery costs on a full indemnity basis) following any breach by the User of any of its obligations under these terms.

6. Evaluation Use

6.1 Where you have asked for a free trial, the following provisions shall apply. Your use of the Product and Services as an evaluation user shall be solely for the purpose of evaluating the Product and Services to determine whether it meets your requirements.

You must not use the Product and Services during an Evaluation Period as a sole back up of valuable or business critical data or applications, as Start Backup Service can accept no liability for live use of the Product and Services during the Evaluation Period.

6.2 Your use of the Product and Services shall be limited to 30 days from the date of your order (the "Evaluation Period"). At the end of the Evaluation Period your right to use the Product and Services shall terminate and, unless you enter into a Contract with Start Backup Service in respect of the Product and Services, you shall have no further right to use the Product and Services. Clause 4.5 shall apply.

6.3 Use of the Product and Services during the Evaluation Period shall be subject to the terms of the EULA and the following provisions of these Terms and Conditions: Clauses 1.2, 1.3, 1.4, 1.6, 1.7, 1.8, 2.6, 3.1, 3.2, 4.2, 4.3, 4.5, 8, 9, 10, 11, 12.

6.4 The SLA does not apply to any use of the Product and Services during an Evaluation Period, and Start Backup Service gives no warranties, representations or undertakings in respect of the Product and Services during this period, save as required by law.

6.5 You acknowledge that no fees are payable for the use of the Product and Services during the Evaluation Period and that you are not permitted to use the Product and Services for any purpose other than for evaluation. Subject to Clause 3.2, to the extent permitted by applicable law, Start Backup Service therefore excludes all liability any direct, indirect, special or consequential loss or damage including (without limitation) loss of profit, loss of business, loss of data, loss of contracts, loss of

opportunity, loss or depletion of goodwill, loss of production, loss of operation time and loss of anticipated savings, or other costs or expenses (whether arising in contract, tort, negligence, breach of statutory duty or otherwise) that might arise. Use of the Product and Services during the Evaluation Period is at the User's risk.

7. Upgrades and support

Start Backup Service may make upgrades to the Product available for free download from its website from time to time, under the "Support" section. Upgrades are not essential, however it is recommended that the User upgrade to the latest version. We will not provide support for any older versions of the Product once a new version has been made available for download from the website. Start Backup Service shall have no liability to the User for any fault contained in a version of the Product which has been replaced by a new version in accordance with this clause 7.

Users will be informed via email when a new version of the Product is available.

Start Backup Service's standard office hours, for sales, accounts and support helpdesk, are from 9:00am to 5:30pm Mon-Fri (UK time) on +44 (0) 8704 322 633. Out of office hours support in emergencies is available on +44 (0) 7050 55 92 55 which will connect the user directly to an Start Backup Service engineer.

You may contact Start Backup Service to report faults in the Product or Service or with queries in relation to their use. We will use our reasonable endeavours to respond to such queries or fault reports within a reasonable period of time.

Installation and configuration of the Product is the responsibility of the User, as are any problems which may arise from incorrect configuration. Start Backup Service does not provide ongoing support and maintenance for the configuration of the Product by the User. This is the sole responsibility of the User. If, however, the User wishes for Start Backup Service to monitor its backup on a regular basis then Start Backup Service will charge an additional fee for this service, such fee to be agreed and paid by the User in advance of the support being provided.

8. Entire Agreement

8.1 With the exception of the SLA for Business Users and the EULA, these Terms and Conditions shall constitute the entire agreement and understanding between the parties with respect to all matters which are referred to and shall supersede any previous agreement(s) between the parties in relation to the matters referred to in the Contract.

8.2 Where conflict exists between these Terms and Conditions and the SLA, these Terms and Conditions shall be deemed to override the SLA. Where conflict exists between these Terms and Conditions and the EULA, the EULA shall be deemed to override these Terms and Conditions.

9. Force Majeure

9.1 Neither party shall be liable for any failure or delay in performance of the Contract (other than an obligation to make payment), which is caused by circumstances beyond the reasonable control of that party including but not limited to fires, explosions, severe weather, industrial disputes, insurrection, riots, requirements or regulations or any civil or military authority, acts of war (whether declared or not), civil unrest, acts of God, earthquake, flood, riot, embargo, government act, terrorist action, DNS caching, propagation or other DNS issues outside Start Backup Service's reasonable control or failure or outage of any telecommunications links or other connections forming part of the internet which are not under the control of Start Backup Service.

10. Governing Law

10.1 The Contract will be construed in accordance with and governed by the law of England and Wales and subject to clause 12, each party agrees to submit to the exclusive jurisdiction of the Courts of England and Wales, unless you are a consumer in which case you may bring any action against Start Backup Service in your local courts.

11. Severance

11.1 Each provision of the Contract shall be construed separately. If the whole or any part of any such provision may prove to be illegal or unenforceable, this shall not affect the legality or enforceability of any other provision of the Contract and the parties shall try to agree substitute provision for that which is invalid or unenforceable.

12. Disputes

12.1 Start Backup Service and the User will negotiate in good faith and use their reasonable efforts to settle any dispute that may arise out of or relate to the Contract or any breach of it. If any such dispute cannot be settled amicably through ordinary negotiations, the dispute shall be referred to the representatives nominated by each party who will meet in good faith in order to try and resolve the dispute

12.8 Nothing contained in this clause 12 shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect any proprietary or trade secret right.