

TekMedic[®] Offsite Data Backup (*YouBackup*[™])

Software and Service License Agreement

THIS DOCUMENT FORMS A CONTRACT (THE "CONTRACT") BETWEEN YOU (HEREINAFTER REFERRED TO EITHER AS "YOU" OR THE "USER" OR THE "CUSTOMER") AND TEKMEDIC LIMITED ("TEKMEDIC"). BY USING THE PRODUCT OR SERVICE, AS DEFINED BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS CONTRACT AND YOU AGREE TO BE BOUND BY IT.

This document exists along side the Service Level Agreement ("SLA") which provides additional guarantees and remedies for you in the event of non-performance of the service. The SLA applies strictly to clients using the *YouBackup* offsite data backup service, with a minimum of one year service contract period and whose accounts are in good standing.

1. General

1.1 TEKMEDIC agrees to provide you with software (the "Product") to be used in conjunction with the *YouBackup* data backup service ("Service") provided by TEKMEDIC in consideration of the payment of an ongoing monthly fee (the "Price"). You may copy the Product solely for the purpose of evaluating or utilising the Service. Any other use is strictly prohibited.

1.2 By accepting or using the Product, you acknowledge that you do not own it. Under the terms of this Contract, in consideration of the fees you pay to TEKMEDIC in accordance with section 4 below, you may use the Product only in conjunction with the Service.

1.3 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.

1.4 As required by the Data Protection Act 1998 TEKMEDIC shall comply with the obligations set out in the seventh principle of Schedule 1 in respect of all processing carried out on your behalf.

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

1.6 You will not use the Services for 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, anti-discrimination 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.

2. Warranty

2.1 TEKMEDIC warrants that the Product and Service will perform substantially in accordance with the help file that accompanies the Product for the duration of your use of the Service.

2.2 If the Product or Service fails to perform as promised in this Contract, your sole and exclusive remedy shall be 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 promised.

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

2.4 Under no circumstances will TEKMEDIC be liable for data that was never sent by you, using the Product, to the backup data centre. You are therefore advised to check the log file to ensure that the desired files have been transmitted.

2.5 To the maximum extent permitted by applicable law you acknowledge that TEKMEDIC obligations and liabilities in respect of the Product are exhaustively defined in this Contract. You agree that the express obligations and warranties made by TEKMEDIC 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 Contract including (without limitation) as to the condition, quality, performance, or fitness for the purpose of the Product or any part of it.

2.6 You are responsible for the consequences of any use of the Product. TEKMEDIC 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 TEKMEDIC has been advised of their possibility.

2.7 TEKMEDIC accepts liability to the extent it results from the negligence of TEKMEDIC and its employees for:

2.7.1 Death or injury without limit; and

2.7.2 Physical damage to or loss of the Customer's tangible property up to the amount of the Price in respect of each incident or series of connected incidents.

2.8 In all other cases not falling within clause 2.6 TEKMEDIC total liability (whether in contract, tort, including negligence, or otherwise) under or in connection with this Contract or based on any claim for indemnity or contribution will not exceed the Price.

2.9 You agree that, except as expressly provided in this clause 2 TEKMEDIC will not be under any liability of any kind whatsoever and however caused arising directly or indirectly in connection with this Contract. You will indemnify TEKMEDIC in respect of any third party claim for any injury, loss, damage or expenses occasioned by or arising directly or indirectly from your possession, operation, use or modification of the Product except and in so far as TEKMEDIC is liable as expressly provided in this Agreement.

2.10 You acknowledge and agree that the allocation of risk contained in this clause 2 is reflected in the Price paid for the Product and Service and is also recognition of the fact that inter alia it is not within TEKMEDIC control how and for what purpose the results of the Service are used by the Customer.

3. Term

3.1 When you agree to the terms of this Contract, you acquire a license to use the Product. The User's license to use the product is valid only for so long as you actually use and pay for the Service provided by TEKMEDIC. At no time and under no circumstances do you acquire an ownership interest in the Product.

3.2 The license provided by this Contract expires upon the earlier to occur of the following: (i) TEKMEDIC receives actual notice from you that you wish to cancel the Service, or (ii) you

have failed to pay service charges due under section 4 of this Contract within 15 days of their due date.

3.3 Your license will also terminate without further action or notice by TEKMEDIC 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.

3.4 Following termination of your license for whatever reason:

3.4.1 You will destroy the software together with all copies in any form, including copies on your hard and backup disks.

3.4.2 Any use of any copies of the software will be unlawful; and TEKMEDIC shall have the right to delete your stored Data without liability for loss or damage.

3.4.3 TEKMEDIC will remove and destroy all of your data backed up during the use of the service 30 days after the termination date of this agreement.

3.5 You agree to contract for the provision of the Service, after any initial evaluation period, for an Initial Term, not less than three months, as agreed between Customer and TEKMEDIC.

3.6 In order to ensure the continued protection of your data, your subscription will automatically renew for Additional Terms equal in length to the Initial Term unless cancelled by you giving not less than one month's notice prior to the end of the then current Term.

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

3.8 You understand that until notification of your wish to cancel your account is received by TEKMEDIC and such notification is confirmed back to you in writing, your account remains active and billable.

4. Pricing

4.1 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 TEKMEDIC website www.tekmedic.co.uk.

4.2 You acknowledge that the price shown within the relevant banding rate is subject to change and is dependent upon the service package selected and the amount of data that is being stored.

5. Entire and Final Agreement

5.1 With the exception of the "SLA" for Business clients, this agreement 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 this agreement. Where conflict exists between this Agreement and the aforementioned SLA, the terms of this Agreement shall be deemed to override those of the SLA.

6. Force Majeure

6.1 Neither party shall be liable for any failure or delay in performance of this agreement, which is caused by circumstances beyond the reasonable control of that party including but

not limited to acts of war, acts of God, earthquake, flood, riot, embargo, government act or failure of the Internet.

7. Governing Law

7.1 This Agreement will be construed in accordance with and governed by the law of England and Wales and each party agrees to submit to the non-exclusive jurisdiction of the Courts of England and Wales.

8. Supervening illegality and severance

8.1 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.

9. Disputes

9.1 TEKMEDIC and the User will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to this agreement 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. If the dispute or difference is not resolved as a result of such meeting either party may (at such meeting or within 14 days of its conclusion) propose to the other in writing that structured negotiations be entered into with the assistance of a neutral adviser or mediator ('Neutral Adviser') before resorting to litigation.

9.2 If the parties are unable to agree on a Neutral Adviser or if the Neutral Adviser agreed upon is unable or unwilling to act, any party may, within 14 days from the date of the proposal to appoint a Neutral Adviser or within 14 days of notice to any party that he is unable or unwilling to act, apply to the Centre for Dispute Resolution ('CEDR') in London to appoint a Neutral Adviser.

9.3 The parties will within 14 days of the appointment of the Neutral Adviser meet with him in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiation to be held in London. If considered appropriate the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

9.4 All negotiations connected with the dispute will be conducted in complete confidence, and the parties undertake not to divulge details of such negotiations except to their professional advisers who will also be subject to such confidentiality, and will be without prejudice to the rights of the parties in any future proceedings.

9.5 If the parties accept the Neutral Adviser's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be reduced to writing and once, it is signed by their duly authorised representatives, shall be final and binding on the parties.

9.6 Failing agreement, any of the parties may invite the Neutral Adviser to provide a non-binding but informative opinion in writing as to the merits of the dispute and the rights and obligations of the parties. Such opinion will be provided on a without prejudice basis and will be private and confidential to the parties and may not be used in evidence in any proceedings commenced pursuant to the terms of this Agreement without the prior written consent of all the parties.

9.7 If the parties fail to reach agreement in the structured negotiations within 15 days of the Neutral Adviser being appointed, such a failure shall be without prejudice to the right of any party subsequently to refer any dispute or difference to litigation but the parties agree that before resorting to litigation structured negotiations in accordance with this clause (no) shall have taken place.

9.8 Nothing contained in this clause 9 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.

I, THE CUSTOMER OR USER, ACKNOWLEDGE THAT I HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.