

Terms and Conditions of Sale for EJT Studios Ltd, trading as FortisBackup.

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 FortisBackup ("FortisBackup", "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 alongside 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.

FortisBackup is a trading name of EJT Studios Ltd. All references to FortisBackup are references to EJT Studios Ltd. (company registration number 4308367).

1. Provision of Product and Services

- 1.1. In consideration of the payment by you of fees in accordance with Clause 5 below, FortisBackup agrees to make the FortisBackup client software (the "Product") (or alternative software having similar functionality) available for you to download, and to provide a data backup service ("Service") provided by FortisBackup.
 - 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 FortisBackup.
 - 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 FortisBackup. 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 FortisBackup's backup servers to their computer or server, the User can do this from within the Product under the Restore section. FortisBackup will use its reasonable endeavours (subject to Clause 9) to make the Service available for Users to recover data via the software.
 - 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. FortisBackup 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 FortisBackup in writing or by email to support@fortisbackup.co.uk no later than 12 hours from the discovery of the fault and before the next scheduled backup. FortisBackup 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 FortisBackup 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 FortisBackup's systems or network, FortisBackup will use its reasonable endeavours to make the data available for access from within the software within a reasonable period of time.
 - 1.5.6. FortisBackup can also provide a recovery service for data from its servers onto a CD/DVD disc or an external USB hard drive. This is not included within the Service and is available at an additional charge to the User.
 - 1.5.7. 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.
 - 1.5.8. The use of the Product and Service is dependent on the User obtaining and maintaining a suitable internet connection over HTTP & HTTPS ports from the User's computer to the FortisBackup servers over a leased line or equivalent connection. The User is responsible for all costs in respect of such connections. FortisBackup 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 FortisBackup network and this will be treated as an event outside FortisBackup's control in accordance with Clause 9.
- 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, you will receive an error report stating that you have reached your storage limit and are advised to upgrade. You should contact FortisBackup on 0845 058 9428 or email support@fortisbackup.co.uk in order to upgrade your account. The fees applicable to any upgrade carried out under this Clause 1.6 will be the difference between the fees already paid and the fees applicable to the upgraded service for the remainder of the then current quarterly billing cycle in accordance with Clause 5.4.
 - 1.7. FortisBackup 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, FortisBackup 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 FortisBackup and, without limitation, to the storage of personal data outside the European Economic Area by FortisBackup. 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 FortisBackup 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 FortisBackup becomes aware of any use of the Services in breach of this clause it may, at its option, terminate the Contract. In addition, where you are a Business User you shall indemnify and keep

indemnified FortisBackup against any liability, costs or damages arising due to your use of the Product and Services in breach of this clause 1.8.

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 are not in breach of your Contract; and
 - 2.1.3. 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. To the maximum extent permitted by applicable law you acknowledge that FortisBackup'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 FortisBackup 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.
- 2.3. You acknowledge that the Product and Service are standard offerings and have not been tailored or customised to your requirements. FortisBackup 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 FortisBackup prior to concluding the Contract.

3. Liability

- 3.1. FortisBackup will not be responsible for any losses suffered by you which were:
- 3.1.1. not foreseeable to FortisBackup and you when you concluded the Contract; or
 - 3.1.2. not caused by any breach of contract, negligence or breach of statutory duty on the part of FortisBackup;
 - 3.1.3. caused by your failure to use the Product or Service in accordance with the terms of the Contract;
 - 3.1.4. caused by your failure to configure the Product to meet your needs (for example, and without limitation, you may set your own retention periods within the Product, and FortisBackup has no liability to you where data is deleted following the expiry of these retention periods);
 - 3.1.5. 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;
 - 3.1.6. caused wholly by your failure to comply with the Contract;
 - 3.1.7. 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 FortisBackup; or
 - 3.1.8. 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 FortisBackup network and this will be treated as an event outside FortisBackup's control in accordance with Clause 9.
- 3.2. Nothing in these Terms and Conditions excludes or limits the liability of FortisBackup for fraudulent misrepresentation or death or personal injury caused by the negligence of FortisBackup 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. FortisBackup 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, FortisBackup'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 FortisBackup under the Contract in respect of the Services in the relevant month. Where you pay quarterly in advance, the relevant limit shall be 1/3 of the quarterly 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. FortisBackup 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 FortisBackup Service is appropriate for your requirements.

4. Term and Termination

- 4.1. When you agree to the terms of this Contract you will be required to pay for the fees for the first 3 months use of the Product and Services in accordance with clause 5.2, prior to the commencement of the Contract. At the end of each quarterly billing cycle, unless you give notice of termination to FortisBackup an invoice will be issued in respect of a further 3 month's fees. If you do not pay such further fees within 14 days of the date of any invoice or request for payment, the Contract shall expire at the end of the then current paid quarterly billing cycle and FortisBackup shall be entitled to delete any of your data backed up using the Service without further notice to you upon expiry.
- 4.2. The Contract will terminate upon the earliest to occur of the following:
- 4.2.1. the Contract is terminated under Clause 1.8, 4.1 or 4.4; or
 - 4.2.2. FortisBackup 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 14 days of their due date or otherwise breach the Contract; or
 - 4.2.4. you give written notice to FortisBackup that it is in breach of the Contract and FortisBackup does not remedy such breach within 30 days of receipt of the notice.
- 4.3. You may be entitled to a refund of fees already paid in the event of termination. The refund amount will be calculated based on your most recent monthly banding rate for the number of whole months remaining until the end of the then current billing cycle.
- 4.4. The Contract will terminate without further action or notice by FortisBackup 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).
- 4.5. 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 FortisBackup shall have the right to remove and destroy any stored data without liability for loss or damage.
 - 4.5.3. FortisBackup will remove and destroy any 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 understand and accept that FortisBackup cannot infer cancellation of your account simply as a result of backups not occurring.
- 4.7. You understand and accept your account will remain active and billable until such time as FortisBackup receives notification in writing at our offices of your wish to cancel or terminate your account.

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. FortisBackup may amend its standard fees from time to time and amendments will be set out on the FortisBackup website. Where you have paid fees in advance you will be unaffected by any change in fees until your next quarterly payment unless you opt to amend the level of storage available to you under the Contract in accordance with Clause 1.6.
- 5.2. Unless otherwise agreed in writing, all payment of fees will be in advance paid quarterly. You may choose to pay by cheque or bank transfer, however, ongoing quarterly payments will need to be by an automated method such as by standing

order. All orders and online accounts will only be activated when payment has been cleared, at the discretion of FortisBackup.

- 5.3. Payment terms are strictly 14 days from date of invoice on all new Contracts (this also includes all capacity upgrades after the initial contract has commenced), after which, quarterly payments will be made by an automated method such as by standing order.
- 5.4. Capacity upgrades will be charged on a daily basis up to the next quarterly payment.
- 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. FortisBackup 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. FortisBackup may terminate the Contract in accordance with Clause 4.2;
 - 5.6.3. you must pay FortisBackup interest of 2% per month on any outstanding balance, plus all expenses of collection.
- 5.7. You do not have the right to set off any money you may claim from FortisBackup against anything you may owe FortisBackup from any contract or invoice.
- 5.8. Business Users shall indemnify and keep indemnified FortisBackup against all expenses and liabilities FortisBackup 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 FortisBackup 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 FortisBackup 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, 2.3, 3.1, 3.2, 4.2, 4.4, 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 FortisBackup 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, FortisBackup 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. Support

FortisBackup's standard office hours, for sales, accounts and support helpdesk, are from 8:00am to 6:00pm Mon-Fri (UK time) on 0845 058 9428. Out of office hours support in emergencies is available on 0845 058 9428.

You may contact FortisBackup 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. FortisBackup 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 FortisBackup to monitor its backup on a regular basis then FortisBackup 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

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 FortisBackup'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 FortisBackup.

10. Governing Law

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 FortisBackup in your local courts.

11. Severance

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. FortisBackup 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.
- 12.2. 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.

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