GIGASOFT DATA PROTECTION LTD SERVICES AGREEMENT FOR THE SUPPLY OF DATA BACKUP

 0. DEFINITIONS

0.1 Gigasoft Data Protection Ltd (Gigasoft) a company registered in England and Wales under Reg # 05603283 whose registered office is at 2nd Floor, Cambridge House, Cambridge Road, Harlow, Essex, CM22 6HL.

0.2 The Services; Data backup and storage services and business continuity.

0.3 The Fee; The fees determined in accordance with this agreement derived from those published at www.gigasoftdatabackup.com/ from time to time.

0.4 You; The person obtaining the Services from Gigasoft under this Agreement.

0.5 Storage Package (The Package selected by you when you signed up)

1. ADDITIONAL DEFINITIONS

1.1 The Data; The digital information provided by you to Gigasoft through the use of the Software to be stored on Gigasoft servers.

1.2 Data Controller; As defined in the Data Protection Act 1998

1.3 Data Processor; As defined in the Data Protection Act 1998

1.4 Public Key; The published part of an asymmetric encryption key pair which a person intends third parties to use to encrypt data for the benefit of the person generating the key and which can only be decrypted by the use of the corresponding private key which is kept secure by the key generator.

1.5 The Software; The Gigasoft client software as updated by Gigasoft from time to time.

1.6 Usage Fee is defined in clause 4.

2. PROVISION OF SERVICES

2.1 In consideration of your payment of the Fee Gigasoft agrees to supply you with the Services on the terms and subject to the conditions set out in this Agreement.

2.2 You acknowledge that you are responsible for providing (and paying for) your own internet access facilities through your ISP or telecommunications provider.

2.3 Gigasoft agrees to provide technical support from time to time.

3. PAYMENT OF FEES

3.1 You agree to pay the Usage Fees (as set out in clause 4) as (they) become(s) due.

3.2 All fees are payable in advance and you hereby authorise us to use the credit card/debit card details issued to us or any direct debit set up with us to pay the Fees and other charges under this agreement as they become due. Where any of your credit/debit card or direct debit payments is refused or reverse charged (other than through the default of Gigasoft) Gigasoft reserves the right to charge an administration fee of £20 on each and every occasion where this occurs to cover Gigasoft's time and expense. You undertake to inform Gigasoft each time your credit/debit card or bank details change.

3.3 Gigasoft reserves the right to charge interest on all late payments at the rate prescribed by Late Payment of Commercial Debts (Interest) Act 1998, whether or not such act applies to the debt in question.

3.4 Gigasoft reserves the right to pass on all Debt Collection fees to the debtor upon instruction of our approved Debt Collection Agency. Further charges will be added as the case escalates due to non-payment for such things as obtaining CCJ's and escalating the case to the high court (this is not an exhaustive list of additional charges and further actions will incur the appropriate fees). A separate invoice will be created and added to the debt specifically for these charges as soon as the escalation is agreed between Gigasoft and the Debt Collection agency.

4. USAGE FEES

4.1 Usage Fees are calculated on the basis of the average amount of data held on the Gigasoft servers after compression rounded up to the nearest storage package category. Unless otherwise stated, Gigasoft Data Protection Ltd reserves the right to adjust its prices in accordance with market trends and as necessary to maintain its services and products. Written notice will be sent by email to all parties involved. Receipt of said email is assumed unless a failed email receipt is received.

4.2 By default Auto-Increase is turned on, if you exceed your storage category we will automatically upgrade you to the next storage category and charge you for such storage band for the remainder of the term. Gigasoft cannot be held responsible for failed backups due to an account hitting its limit where Auto-Increase has been deactivated.

5. AVAILABILITY and SERVICE LEVELS

5.1 Gigasoft undertakes to make reasonable commercial endeavors to maintain and to provide services 24/7/365.

6. ACCEPTABLE USE POLICY

You undertake not to use the Services to store or transmit any data which are obscene, illegal, defamatory or which breach the rights of any third party and to fully and effectively indemnify Gigasoft against any cost, claim or expense arising from any breach or suspected breach of such undertaking.

7. OWNERSHIP OF DATA

7.1 You acknowledge and confirm that you own or are licensed and are permitted to transmit to Gigasoft all Data without breach of any law, agreement, arrangement or duty or the rights of any third party.

7.2 You acknowledge that Gigasoft has no effective access to the content of Data transmitted to Gigasoft using the Services as all Data is encrypted prior to transmission to Gigasoft using an algorithm which Gigasoft has no practical means of reversing in the absence of a password.

7.3 You undertake never to transfer to Gigasoft in whatever form (including but not limited to written or spoken) and for whatever reason any encryption key (except a Public Key), decryption key, password or other access token except only where such encryption key, decryption key or password is itself encrypted as part of the Data in a way which prevents Gigasoft from accessing it.

7.4 In no circumstances will Gigasoft attempt any processing of any Data supplied to Gigasoft under this Agreement other than storage and retrieval of encrypted data blocks.

7.5 So far as Gigasoft is aware of the current state of the art, loss of your password or encryption key will result in irretrievable loss of Data and no practical means exists of recovering such Data. 7.6 Gigasoft will never attempt to assist the recovery of any Data where loss is caused by the loss of or corruption to any encryption key.

7.7 All Backup Clients encrypted data that resides on Gigasoft's SAN's is solely and only the property of the Backup Client. In the event that, Gigasoft enters into liquidation or ceases to continue to trade, the Client's data will be available for a minimum of one month for restoration in the normal manner.

8. DATA PROTECTION

8.1 Gigasoft stores the Data within the United Kingdom, but is not a Data Controller in relation to such Data as it has no access to nor ability to process such Data (whether pursuant to your instructions or otherwise) other to obtain or release such Data pursuant to instructions directed directly at the Gigasoft servers by you.

8.2 Gigasoft refuses to process or attempt to process any Data other than in accordance with clause 8.1 above.

8.3 You acknowledge that as holder of the decryption keys associated with the Data the security of the Data is entirely within your control. Gigasoft will use all reasonable endeavours not to permit anyone who does not have the appropriate access keys to have access to the Data (and then only in encrypted form) and you acknowledge and confirm that this satisfies the requirements of the seventh Data Protection Principle (security).

9. USE OF SERVICE

You undertake to use the Services and to access the Gigasoft equipment solely through use of the Software as supplied to you and unmodified and you acknowledge and confirm that any other use of Gigasoft equipment is UNAUTHORISED AND MAY THEREFORE AMOUNT TO AN OFFENCE UNDER THE PROVISIONS OF THE COMPUTER MISUSE ACT, and you will not assist or any permit any other person so to access the Gigasoft equipment.

10. USE and UPDATING SOFTWARE

10.1 You will be responsible for downloading the Software from the Gigasoft servers and installing it on your equipment.

10.2 You undertake to update the Software promptly on notification by us as subsequent versions are released.

10.3 You acknowledge that the Software's feature set may vary from release to release.

10.4 Gigasoft accepts no liability for any failure in the Services where:

10.4.1 You attempt to access them with a version of the Software which is not current;

10.4.2 The Software fails owing to:

10.4.2.1 Your failure to follow instructions correctly;

10.4.2.2 Failure of the Software to interoperate with other software (including firmware);

10.4.2.3 Hardware malfunctions;

10.4.3 There is any corruption or failure of encryption or decryption key;

10.4.4 The loss or corruption of any password or other identification token;

10.4.5 Loss of or corruption of data caused while the data is in transit to or from the Gigasoft storage facility;

10.5 Unless the Gigasoft Total DR service has been purchased it is the responsibility of the customer/reseller to monitor the backup reports on a daily basis and report failures or errors to Gigasoft support.

11. LICENCE TO SOFTWARE

11.1 For such period as Gigasoft is contracted to provide the Services, the Software is licensed to you pursuant to the End User Licence Agreement as amended from time to time.

11.2 The End User Licence Agreement is incorporated into this Agreement.

11.3 The licence referred to in Clause 11.1 above extends to any amendments, modifications bug fixes or version releases that may be issued from time to time.

12. SUSPENSION OF SERVICES

12.1 Without prejudice to any other remedy Gigasoft is permitted to suspend the services

12.1.1 If you are in breach of any term of this Agreement (including the End User Licence Agreement)

12.1.2 If you owe any money to Gigasoft (whether under this Agreement or otherwise) and such sums are due and payable;

12.1.3 Where Gigasoft reasonably suspects that you are in breach of any term of this Agreement or reasonably anticipates that you will be;

12.1.4 Where Gigasoft reasonably suspects that the security of its systems is or is about to be compromised

12.2 Should Gigasoft revoke such suspension, it does not guarantee the retention or integrity of any data stored pursuant to the

Services while such suspension is in place.

12.3 Your licence to use the Software is suspended for such time as the Services are suspended pursuant to clause 12.1 above.

12.4 Fees continue to accrue and be payable at any time while the Services are suspended pursuant to clause 12.1 above.

13. TERMINATION

13.1 Either party shall be permitted to terminate this Agreement on notice to the other if the other is in material breach of this Agreement and (where the breach is capable of remedy) has failed to remedy the breach within 30 days of receiving notice of the breach.

13.2 Gigasoft shall be entitled forthwith to terminate this Agreement by written notice to you if you become bankrupt.

13.3 Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.

13.4 The rights to terminate this Agreement given by this clause shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

13.5 With reference to Co-Location and Hosting services - Gigasoft reserves the right to cancel service contracts with a minimum 1 month (31 days) notice by email or letter sent to the account designated/ authorised person.

13a. CANCELLATION

The client may cancel their backup service with 90 days notice from confirmed receipt of written/ email cancellation.

The reseller may cancel their backup service with 180 days notice from confirmed receipt of written/ email cancellation.

13b. EFFECT OF CANCELLATION

The client or resellers allocated storage limit that is set on the Gigasoft servers at the time of cancellation will be held for the notice period. On completion of the notice period the account and all of its data will be deleted.

14. EFFECT OF TERMINATION

On termination of this Agreement however caused, Gigasoft' obligation to retain any Data ceases, and Gigasoft shall be permitted to delete any Data held on its servers.

15. REFERENCES TO LEGISLATION

Any reference to a statutory provision shall include that provision as from time to time modified or re-enacted provided that in the case of modifications or re-enactments made after the date of this Agreement the same shall not have effected a substantive change to that provision.

16. SINGULAR AND PLURAL AND GENDER

The singular includes the plural and vice versa and any gender includes any other gender.

17. HEADINGS

The headings of this Agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.

18. FORCE MAJEURE

18.1 Gigasoft shall not be liable for delay in performing or failure to perform obligations under this Agreement if the delay or failure results from force majeure.

18.2 For the purposes of this Agreement "force majeure" shall mean any Act of God war riot act of terrorism outbreak of hostilities strike or other industrial action of any kind malicious damage default of suppliers or sub-contractors accident failure or breakdown of plant or machinery fire flood explosion any act of local or national government or authority and any cause or circumstance whatsoever outside the reasonable control of the Parties.

18.3 In the event of any delay or failure under this Agreement resulting from force majeure a Party may rely on the provisions of this clause for exemption from liability for non-performance part performance defective performance or delay and in the event that any such delay or failure continues for a period in excess of 30 consecutive days a Party shall have the right to terminate this Agreement with immediate effect.

18.4 In the event of any force majeure (including a sequence of events of force majeure) which has lasted or is likely to last for longer than 14 days the Parties agree to discuss in good faith whether the respective rights and obligations of each Party under this Agreement can be amended in order to alleviate the effects of the force majeure and best bring into effect the original intentions of the Parties.

19. VARIATION

This Agreement may be modified or amended from time to time by the mutual agreement of the Parties provided however that no such modification or amendment shall be effective until reduced to writing signed by the Parties

20. SUCCESSORS AND ASSIGNS

References in this Agreement to the Parties shall include their respective heirs successors in title permitted assigns and personal representatives.

21. WAIVER AND FORBEARANCE

If any Party fails to rely on its rights under this agreement or otherwise, that shall not prevent it from relying on those (or similar) rights in the future.

22. CUMULATIVE REMEDIES

22.1 The provisions of this Agreement, and the rights and remedies of the Parties under it are cumulative and are without prejudice and in addition to any rights or remedies a Party may have at law or in equity.

22.2 No exercise by a Party of any one right or remedy under this Agreement, or at law or in equity, shall (save to the extent, if any, provided expressly in this Agreement, or at law or in equity) operate so as to hinder or prevent the exercise by it of any other such right or remedy.

23. WARRANTY

Subject to Clause 24 below, Gigasoft expressly warrants that it will carry out the Services with reasonable skill and care.

24. LIABILITY

24.1 Except as expressly stated in this Agreement, Gigasoft shall have no liability to you for any loss or damage whatsoever arising out of or in connection with this Agreement or the supply of Services hereunder whether arising in contract, tort (including negligence and breach of statutory duty) or otherwise. Subject to Clause 24.3 below Gigasoft's total aggregate liability to you in connection with this Agreement other than its liability under Clause 0.1 in any one calendar year shall not exceed 125% of the amount received by Gigasoft (excluding VAT) from you under this Agreement in such calendar year.

24.2 Neither Party shall, in any event, be liable or responsible to the other for any indirect, incidental, special or consequential loss, damage, cost or expense of any kind whatsoever and howsoever caused whether arising under contract, tort (including negligence and breach of statutory duty) or otherwise, including without limitation, loss of documentation, loss or corruption of data, loss of profits or of

contracts, remedial costs, loss of operation or staff time, costs of obtaining substitute goods or services and loss of goodwill or anticipated savings, even if it has been advised of the possibility. Gigasoft cannot and does not know the value of the data you have stored and accordingly you are in a better position to assess the risk of loss of data and take out appropriate insurance than Gigasoft.

24.3 The express warranties given in this Agreement are in lieu of all warranties, conditions, terms, representations, undertakings and obligations (express or implied) imposed by statute, common law or otherwise all of which are hereby excluded to the maximum extent permitted by law.

24.4 The above exclusions and limitations shall apply to the fullest extent permissible at law but neither Party excludes or limits liability for death or personal injury caused by its negligence or that of its employees or agents and for which it is responsible, or for fraud or wilful deceit and nothing in this clause shall have the effect of derogating from the statutory rights of a consumer as defined in the Consumer Transactions (Restrictions on Statements) Order 1976 (as amended).

24.5 The Parties hereto acknowledge that the exclusions set out above are fair and reasonable in all the circumstances and that the exclusions and limitations of liability set out above are reasonable notwithstanding that they may have the effect of protecting Gigasoft from losses.

24.6 No indemnity in this Agreement shall be effective to the extent that it has the effect of excluding or restricting liability as set out in Clause 24.4 above.

24.7 You agree fully and effectively to indemnify Gigasoft against any claim, cost or expense arising in any way from any breach by you of this Agreement.

25. SEVERABILITY

If any provision of this Agreement is found by a court or other competent authority to be void or unenforceable that provision shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect; and the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for that provision.

26. WHOLE AGREEMENT

26.1 Subject to clause 26.3 below this Agreement (including the documents and instruments referred to in it) supersedes all prior representations, arrangements, understandings and agreements between the Parties relating to its subject matter and is the entire complete and exclusive agreement and understanding between the Parties relating to its subject matter.

26.2 Each Party acknowledges that it has not relied on any representation, arrangement, understanding or agreement (whether written or oral) not expressly set out or referred to in this Agreement

26.3 Clauses 26.1 and 26.2 above shall not apply to the extent that they relate to any warranty, representation or undertaking made fraudulently in which case the other Party shall be entitled to all the remedies available under English law.

27. ASSIGNMENT

You may not assign transfer sub-contract or otherwise dispose of any rights or obligations under this Agreement without the prior written consent of Gigasoft.

28. NOTICES

Any notice given under this Agreement shall be in writing and shall be delivered or sent by pre-paid registered post, email or by fax to the address of the relevant party as set out at the head of this Agreement, or to such address as subsequently notified to the other party pursuant to this clause. In the case of post, the notice shall be deemed to have been received 72 hours after it was posted, and in the case of fax or email, as soon as it has finished being sent, provided (in the case of fax) that the sending machine confirms that the receiving machine has received the notice error-free and in the case of email that no non-delivery receipt was received by the sender within 72 hours after sending.

29. RIGHTS OF THIRD PARTIES

This Agreement is not intended to convey a benefit on any person not a party to it and accordingly the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded.

30. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by the laws of England and Wales and the Parties agree to submit to the non-exclusive jurisdiction of the English Courts.

31. GIGACLOUD

31.1 Existing Customers and Resellers wishing to swap their service to GigaCloud will be charged an administration fee per backup account.

31.2 Initial seeding of new accounts there will be no charge, for further re-seeding there will be a charge of £150.00 per seed plus courier fees.

31.3 For bulk data restoration there will be a charge of £500.00 per 1 Terabyte drive plus courier fees.

31.4 Unless otherwise stated GigaCloud comes with a minimum 1 year rolling contract.