

Net24 Limited – Service Agreement

Online Backup Service ("OBS") Terms & Conditions of Service

Updated: 20th February 2007

ACCEPTANCE OF THESE TERMS AND CONDITIONS, THE SLA (IF APPLICABLE) AND THE EULA WHEN YOU USE THE "OBS" SERVICE FORMS AN AGREEMENT ("SERVICE AGREEMENT") BETWEEN YOU (REFERRED TO IN THESE TERMS AND CONDITIONS EITHER AS "YOU" OR THE "USER") AND NET24 LIMITED ("NET24 LIMITED", "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.

We may update this Service Agreement from time to time. Your use of our Product and Service after the date on which updates are stated shows your unconditional agreement to them as set out below.

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 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 a "Trial User" of the Product and Service, and these Terms and Conditions do not apply to you in full. You should read Clause 16.0 that sets out the terms of your use of the Product and Service. The other provisions will only apply to the extent that Clause 16.0 says they do.

1.0 – Definitions and References

All references to OBS are references to Net24 Limited.

2.0 - Provision of Product and Services

In consideration of the payment by you of fees in accordance with Clause 9 below, Net24 Limited agrees to make the OBS, 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 Net24 Limited. 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 OBS, and you should refer to the provisions of Clause 4.0 and 7.0 that set out your rights to cancel the Service.

The Product will be made available to you on the basis of the licence set out in the EULA. Until the Service is cancelled 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 EULA. You will have no right to use the Product or Service after cancellation of the Service.

You may use the Product solely for the purpose of evaluating (if you are a Trial 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.

The use of the Product and Service is dependent on the User obtaining and maintaining a suitable Internet connection over HTTP & HTTPS ports to OBS servers over a suitable connection. The User is responsible for all costs in respect of such connections. Net24 Limited cannot be responsible for failures relating to leased lines, fibre optic connections, ADSL connections, direct private connections, local or external ethernet connections, public internet connections or any other connections linking you to Net24 Limited's network and this will be treated as an event outside Net24 Limited's control.

Where additional services are available at an additional charge, the details of such services and any applicable charges must be agreed between Net24 Limited and the User prior to such services being provided.

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

2.1 - Off-site Backup Services using the Product or any alternative equivalent provided by Net24 Limited

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. If a User wishes to restore file or application data from Net24 Limited'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://obs.net24.net.nz> under the "OBS User Configuration Console" section. Net24 Limited will use its reasonable endeavors (subject to Clause 3) to make the

Service available for Users to recover data via the software or web interface. 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. Net24 Limited shall have no responsibility for the custom configuration of the backup settings in the Product selected by the User. 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 Net24 Limited in writing or by email to service@net24.co.nz no later than 12 hours from the discovery of the fault and before the next scheduled backup. If the User is unable to restore the data because a failure of Net24 Limited's systems or network, Net24 Limited will use its reasonable endeavors to make the data available for access from within the software or web interface within a reasonable period of time.

Net24 Limited can also provide a recovery service for data from its servers onto removable media. This is not included within the Service and is available at an additional charge to the User.

2.2 - Data Seed Loading

This consists of transferring files over an external hard Drive, CD or portable media 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.

2.3 – Restoring Data

Restoring data from the OBS server, or any data encrypted using any Net24 Limited's Backup tools requires the corresponding encryption key used during the backup. It is the Users responsibility to store the encryption key in a secure location; NET24 DOES NOT STORE THE CUSTOMERS ENCRYPTION KEYS. ALL DATA IS UNRECOVERABLE WITHOUT THE CORRESPONDING ENCRYPTION KEY.

2.4 – Use of Services

Your use of the Services will be limited in accordance with the options you selected when setting up the Service Agreement, 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 Net24 Limited on +64 (03) 962 9510 or email service@net24.co.nz in order to upgrade your account. The fees applicable to any upgrade carried out under this Clause 9.0 will be the difference between the monthly fees already invoiced and the monthly fees applicable to the upgraded service for the remainder of the month. It is your responsibility to ensure that you have adequate consents from data subjects in respect of the processing to be carried out by Net24 Limited and, without limitation, to the storage of personal data within New Zealand by Net24 Limited. By accepting these Terms and Conditions as part of the Service Agreement, you warrant and undertake that you have obtained and will obtain such consent and, where you are a OBS user, you shall indemnify and keep indemnified Net24 Limited against any liability, costs or damages. 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:

- i.in order to use or backup any application that may involve risks of death, personal injury, severe property damage or environmental damage;
- ii.in order to use or back up life support applications, devices or systems;
- iii.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, anti-discrimination or false advertising);
 - c)is defamatory, trade libelous, 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 Net24 Limited becomes aware of any use of the Services in breach of this clause, it may, at its own discretion, terminate the Service Agreement. In addition, you shall indemnify and keep indemnified Net24 Limited against any liability, costs or damages arising due to your use of the Product and Services in breach of clause 2.3

2.5 - Technical Assistance

Assistance by telephone and email is available but it is the User's responsibility to carry out any changes in its technical configuration or data management after the completion of the assistance given. If the data locations or specifications change, it is the Users responsibility to notify Net24 Limited of these changes if the User wishes to engage Net24 Limited to reconfigure the Product to reflect these new changes. Any such additional assistance maybe charged to the User. Net24 Limited has no obligation to monitor the User's backups in order to determine whether changes to the configuration of the Product are required.

3.0 - Service Level Agreement (SLA)

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

- i.you are not in breach of your Terms & Conditions, and
- ii.all fees relating to your use of the Product and Service are paid up to date.

Due to 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. Net24 Limited'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 Net24 Limited under the Service Agreement in respect of the Services (excluding any setup or installation charges) in the relevant month.

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 Service Agreement. Net24 Limited 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 Net24 Limited Service is appropriate for your requirements.

Net24 Limited's Service Level Agreement (SLA) can be viewed at the following URL: <http://www.net24.co.nz/sla.php>

4.0 - Terms of Service

When you agree to the terms of this Service Agreement you will be asked to agree to a one month Service Agreement. You will also be required to pay one month's use of the Product and Services in accordance with clause 9.0, unless Net24 Limited has agreed to alternative payment terms prior to the commencement of the Service Agreement. At the end of month, unless you give notice of termination to Net24 Limited at least 14 days in advance of the end of month, a further month's fee will automatically be invoiced in respect to a further month's service. If you do not pay such further fees within 14 days of the date of any invoice or request for payment, the Service Agreement shall expire at the end of the then current month and Net24 Limited shall be entitled to delete any of your data backed up using the Service without further notice to you upon expiry.

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

- i. The Service Agreement is terminated when Net24 Limited receives notification via the web site service cancellation form from you that you wish to terminate the Service Agreement; or you have failed to pay fees due under Clause 9.0 of this Service Agreement within 14 days of the due date or otherwise breach the Terms & Conditions; or
- ii. you give written notice to Net24 Limited that it is in breach of the Service Agreement and Net24 Limited does not remedy such breach within 14 days of receipt of the notice.

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 3.0 of these Terms and Conditions.

5.0 - Warranty

Net24 Limited 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 Service period. If the Product or Service fails to perform in accordance with clause 5.0, your remedy shall be (where applicable) the provision of a replacement Product or Service meeting the standards set out in clause 5.0 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.

The warranty set out in clause 5.0 shall not apply in the event that you are in breach of any other provision of the Terms & Conditions or have not paid any fees which are due under the Service Agreement.

To the maximum extent permitted by applicable law you acknowledge that Net24 Limited's obligations and liabilities in respect of the Product are as set out in the Service Agreement.

You agree that the express obligations and warranties made by Net24 Limited 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 Service Agreement 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 Consumer Guarantees Act 1993.

You acknowledge that the Product and Service are standard offerings and have not been tailored or customised to your requirements. Net24 Limited 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 Net24 Limited prior to concluding the Service Agreement.

6.0 - Refunds

You will not be entitled to any refund of fees already paid in the event of termination, unless you terminate in accordance with Clause 4.0 ii.

7.0 - Termination

The Service Agreement will terminate without further action or notice by Net24 Limited 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).

Any cancellation notice given under this Clause 7.00 should be requested at the following web site address: www.net24.co.nz/cancelaccount. No other of cancellation will be accepted.

Following termination of the Service Agreement for whatever reason:

- i. 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.
- ii. You will have no right to access the Service and Net24 Limited shall have the right to delete your stored data without liability for loss or damage. Net24 Limited will remove and destroy all of your data backed up during the use of the service 14 days after the termination date of the Service Agreement or in accordance with Clause 4.0.
- iii. You understand and accept that Net24 Limited cannot infer cancellation of your account simply as a result of backups not occurring.
- iv. You understand that until notification of your wish to cancel your account is received by Net24 Limited, your account remains active and billable.

8.0 – Limitation of Liability

Net24 Limited will not be responsible for any losses suffered by you, which were:

- i. not foreseeable to Net24 Limited and you when you concluded the Service Agreement; or
- ii. not caused by any breach of the Service Agreement, negligence or breach of statutory duty on the part of Net24 Limited;
- iii. caused by your failure to use the Product or Service in accordance with the terms of the Service Agreement;
- iv. 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 Net24 Limited (for example, and without limitation, you may set your own retention periods within the Product, and Net24 Limited has no liability to you where data is deleted following the expiry of these retention periods);
- v. 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;
- vi. caused wholly by your failure to comply with the Service Agreement;
- vii. 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 Net24 Limited; or
- viii. caused by failures relating to leased lines, fibre optic connections, ADSL connections, local or external ethernet connections, public internet connections or any other connections linking you to Net24 Limited's network and this will be treated as an event outside Net24 Limited's control in accordance with Clause 12.0.

Nothing in these Terms and Conditions excludes or limits the liability of Net24 Limited for fraudulent misrepresentation or death or personal injury caused by the negligence of Net24 Limited or its employees. Net24 Limited 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.

9.0 - Pricing and Payment

The fees you pay for the Product and Service will be the fees shown within the relevant Backup Service Plan applicable to your use of the Service. Net24 Limited may amend its standard fees from time to time and amendments will be set out on the Net24 Limited web site. Where you have paid fees in advance you will be unaffected by any change in fees until your next billing period in accordance with Clause 4.0 unless you opt to amend the level of storage available to you under the Service Contract in accordance with Clause 2.2. In consideration of Net24 Limited providing you with the OBS service, you agree to the payment as follows:

All fees are due in full within 14 days of invoice dates. If payment is not received within this period, you will have 7 days from notification by us of the unsuccessful collection of fees, after which your account will be placed on hold and a reconnection fee of \$ 25.00 excluding GST will apply. Overdue accounts referred to our debt collection agency will incur all costs of collection pursuant to the Fair Trading Act, 1986. Payment of fees can be made by cheque, credit card or direct credit.

Fees are quoted exclusive of New Zealand Goods and Services Tax, unless otherwise stated and any applicable GST shall be paid in addition to the fees.

9.1 - Failure of Payment

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

- i. Net24 Limited may suspend or cancel your account order or, in respect of the non-payment of renewal fees, the Service Agreement shall expire in accordance with Clause 4.0;
- ii. Net24 Limited may terminate the Service Agreement in accordance with Clause 7.0;
- iii. Net24 Limited may cancel any discount offered to you

10.0 - Upgrades and Support

Net24 Limited may make upgrades to the Product available for free download from its website from time to time, under the "Downloads" 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. Net24 Limited shall have no liability to the User for any fault contained in a version of the Product that has been replaced by a new version in accordance with this Clause 10.0. Users will be informed via email when a new version of the Product is available.

Net24 Limited's standard office hours, for sales, accounts and support helpdesk are from 8:30am to 5:00pm Mon-Fri on +64 3 962 9510 or via email at: service@net24.co.nz

You may contact Net24 Limited 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 that may arise from incorrect configuration. Net24 Limited does not provide ongoing support and maintenance for the configuration of the Product by the User. This is the sole responsibility of the User.

11.0 - Entire Agreement

With the exception of the SLA and the EULA, these Terms and Conditions shall constitute the entire agreement and understanding between the parties with respect to all matters that are referred to and shall supersede any previous agreement(s) between the parties in relation to the matters referred to in the Service Agreement.

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.

12.0 - Force Majeure

Neither party shall be liable for any failure or delay in performance of the Product or Service (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 Net24 Limited'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 Net24 Limited.

13.0 - Governing Law

The Service Agreement will be construed in accordance with and governed by the law of New Zealand and subject to Clause 12. Each party agrees to submit to the exclusive jurisdiction of the New Zealand courts.

14.0 - Severance

Each provision of the Service Agreement 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 Service Agreement and the parties shall try to agree substitute provision for that which is invalid or unenforceable.

15.0 – Disputes

Net24 Limited 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 Service 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. 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.

You do not have the right to set off any money you may claim from Net24 Limited against anything you may owe Net24 Limited from any invoice.

Users shall indemnify and keep indemnified Net24 Limited against all expenses and liabilities Net24 Limited 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.

16.0 – Trial Period Evaluation

Where you have requested a free Trial, the following provisions shall apply. Your use of the Product and Services as a Trial 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 Trial Period as a sole back up of valuable or business critical data or applications, as Net24 Limited can accept no liability for live use of the Product and Services during the Trial Period. Your use of the Product and Services shall be limited to 30 days from the date of your order (the "Trial Period"). At the end of the Trial Period your right to use the Product and Services shall terminate and, unless you enter into a Service Agreement with Net24 Limited in respect of the Product and Services, you shall have no further right to use the Product and Services. Clause

7.0 shall apply.

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 1.0, 2.0, 2.1, 2.3, 2.4, 4.0, 5.0, 6.0, 8.0, 11.0, 12.0, 13.0, 14.0, 15.0

The SLA does not apply to any use of the Product and Services during a Trial Period, and Net24 Limited gives no warranties, representations or undertakings in respect of the Product and Services during this period, save as required by law.

You acknowledge that no fees are payable for the use of the Product and Services during the Trial Period and that you are not permitted to use the Product and Services for any purpose other than for evaluation. Subject to Clause 5.0, to the extent permitted by applicable law, Net24 Limited 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,

17.0 - Acknowledgement

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

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