

ROSH-TECH IT PTY LTD SERVICES AGREEMENT FOR THE SUPPLY OF DATA BACKUP

0. DEFINITIONS

- 0.1. Rosh-Tech IT Pty Ltd (RTIT) a company registered in Australia ABN: 93117626374 whose head office is at 4 Cartwright Street, Qld 4030.
- 0.2. The Services; Data backup and storage services.
- 0.3. The Fee; The fees determined in accordance with this agreement derived from those published at www.roshtech.com.au from time to time.
- 0.4. You; The person obtaining the Services from RTIT 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 RTIT through the use of the Software to be stored on RTIT servers.
- 1.2. 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.
- 1.3. The Software; The RTIT client software as updated by RTIT from time to time.
- 1.4. Usage Fee is defined in clause 4.

2. PROVISION OF SERVICES

- 2.1. In consideration of your payment of the Fee RTIT 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. RTIT 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 RTIT)
- 3.3. RTIT reserves the right to charge an administration fee of \$20 on each and every occasion where this occurs to cover RTIT's time and expense. You undertake to inform RTIT each time your credit/debit card or bank details change.

4. USAGE FEES

- 4.1. Usage Fees are calculated on the basis of the average amount of data held on the RTIT servers rounded up to the nearest storage package category.
- 4.2. 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.

5. AVAILABILITY and SERVICE LEVELS

- 5.1. RTIT undertakes to make reasonable commercial endeavours to maintain and to provide services 24/7/365.
- 5.2. RTIT's helpdesk is manned Monday to Friday 8:30am to 5pm excluding public holidays
- 5.3. Outages occurring outside of RTIT's standard working hours will be addressed during standard working hours

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 RTIT 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 RTIT all Data without breach of any law, agreement, arrangement or duty or the rights of any third party.
- 7.2. You acknowledge that RTIT has no effective access to the content of Data transmitted to RTIT using the Services as all Data is encrypted prior to transmission to RTIT using an algorithm which RTIT has no practical means of reversing in the absence of a password.

- 7.3. You undertake never to transfer to RTIT 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 RTIT from accessing it.
- 7.4. In no circumstances will RTIT attempt any processing of any Data supplied to RTIT under this Agreement other than storage and retrieval of encrypted data blocks.
- 7.5. So far as RTIT 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. RTIT 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 RTIT's Servers' is solely and only the property of the Backup Client. In the event that, RTIT 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. RTIT stores the Data within Australia, 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 than to obtain or release such Data pursuant to instructions directed directly at the RTIT servers by you.
- 8.2. RTIT 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. RTIT 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 RTIT equipment solely through use of the Software as supplied to you and unmodified and you acknowledge and confirm that any other use of RTIT equipment is UNAUTHORISED AND MAY THEREFORE AMOUNT TO AN OFFENCE, and you will not assist or permit any other person to access the RTIT equipment.

10. USE and UPDATING SOFTWARE

- 10.1. You will be responsible for downloading the Software from the RTIT 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. RTIT 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 RTIT storage facility;

11. LICENSE TO SOFTWARE

- 11.1. For such period as RTIT is contracted to provide the Services, the Software is licensed to you pursuant to the End User License Agreement as amended from time to time.
- 11.2. The End User License Agreement is incorporated into this Agreement.
- 11.3. The license 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. TECHNICAL SERVICES

- 12.1. RTIT's Backup Services are designed so that an end user with some IT knowledge can operate the system
- 12.2. From time to time you may require RTIT's technical services to perform tasks such as
 - 12.2.1. Initial loading of The Data
 - 12.2.2. Recovery of some or all of The Data
 - 12.2.3. Testing of The Data recovery procedure
 - 12.2.4. Upgrading of Backup client software
 - 12.2.5. Any other IT technical service
- 12.3. The above services and any other IT services will be supplied by RTIT as and when required and will be billed to You at the rate derived from those published at www.roshtech.com.au from time to time.

13. SUSPENSION OF SERVICES

- 13.1. Without prejudice to any other remedy RTIT is permitted to suspend the services

- 13.1.1. If you are in breach of any term of this Agreement (including the End User License Agreement)
- 13.1.2. If you owe any money to RTIT (whether under this Agreement or otherwise) and such sums are due and payable;
- 13.1.3. Where RTIT reasonably suspects that you are in breach of any term of this Agreement or reasonably anticipates that you will be;
- 13.1.4. Where RTIT reasonably suspects that the security of its systems is or is about to be compromised
- 13.2. Should RTIT 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.
- 13.3. Your license to use the Software is suspended for such time as the Services are suspended pursuant to clause 13.1 above.
- 13.4. Fees continue to accrue and be payable at any time while the Services are suspended pursuant to clause 13.1 above.

14. TERMINATION

- 14.1. 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.
- 14.2. RTIT shall be entitled forthwith to terminate this Agreement by written notice to you if you become bankrupt.
- 14.3. 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.
- 14.4. 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.

15. EFFECT OF TERMINATION

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

16. 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.

17. SINGULAR AND PLURAL AND GENDER

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

18. 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.

19. FORCE MAJEURE

- 19.1. RTIT 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.
- 19.2. 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.
- 19.3. 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.
- 19.4. 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.

20. 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

21. SUCCESSORS AND ASSIGNS

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

22. 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.

23. CUMULATIVE REMEDIES

- 23.1. 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.
- 23.2. 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.

24. WARRANTY

Subject to Clause 25 below, RTIT expressly warrants that it will carry out the Services with reasonable skill and care.

25. LIABILITY

- 25.1. Except as expressly stated in this Agreement, RTIT 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 25.3 below RTIT'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 RTIT (excluding GST) from you under this Agreement in such calendar year.
- 25.2. 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. RTIT 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 RTIT.
- 25.3. 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.
- 25.4. 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
- 25.5. 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 RTIT from losses.
- 25.6. 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 25.4 above.
- 25.7. You agree fully and effectively to indemnify RTIT against any claim, cost or expense arising in any way from any breach by you of this Agreement.

26. 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.

27. WHOLE AGREEMENT

- 27.1. Subject to clause 27.3 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.
- 27.2. 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
- 27.3. Clauses 27.1 and 27.2 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 Australian law .

28. 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 RTIT.



29. 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.

30. RIGHTS OF THIRD PARTIES

This Agreement is not intended to convey a benefit on any person not a party to it.

31. GOVERNING LAW AND JURISDICTION

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

NAME:

SIGNATURE:

FOR AND ON BEHALF OF: Rosh-Tech IT Pty Ltd

DATE:

NAME:

SIGNATURE:

FOR AND ON BEHALF OF:

DATE:

PACKAGE: