

# PC Cloud Backup

## Service Description

### Introduction

By registering to use the Cloud Services you acknowledge and agree that you have read and understood the Standard Terms (as amended below) and the terms set out in this Service Description for Cloud Services (together, the "Terms") and any use of the Cloud Services will be subject to the Terms. You warrant that the Administrator, and any other person using the applicable user name and password, has your authority to purchase the Cloud Services for your use and to manage the use of the Cloud Services on your behalf.

### General

#### 1. Definitions

**"Acceptable Use Policy"** means our acceptable use policy, as set out in Appendix 1 to this Service Description.

**"Administrator"** means your nominated administrator who has your authority to purchase Cloud Services and manage those services on your behalf.

**"Cloud Services"** means Vodafone's cloud services as set out on and provided through the Cloud Services Portal, and as further defined in this Service Description.

**"Cloud Services (PC Cloud Backup)"** means the provision of online backup and online storage services, as further defined in the Cloud Services (PC Cloud Backup) section of this Service Description.

**"Cloud Services Portal"** means the Vodafone Internet site for discovery, browsing, subscribing, consumption, reporting and customer administration of the Cloud Services.

**"Standard Terms"** means Vodafone's Business Terms.

**"Storgate Licence Agreement"** means the licence terms set out in Appendix 2 to this Service Description, as may be amended by Storgate from time to time.

**"Vodafone", "we" and "our"** means Vodafone New Zealand Limited and **"you"** means you, our customer.

#### 2. Standard Terms

The Cloud Services will be supplied to you on the basis of:

- The Standard Terms, subject to the amendments referred to below; and
- The terms set out in this Service Description.

The Standard Terms are amended as follows:

- Ordering of the Cloud Services will be completed on-line via the Cloud Services Portal;
- Clause 2.1: your agreement with us for Cloud Services will commence on the date that we advise you via your nominated email address that the Cloud Services are available for your use;
- "Initial Term" means one month from the date we advise you, via your nominated email address that the Cloud Services are available for your use";

- Clause 26.10: your notice details will be the details supplied by your Administrator when setting up the Cloud Services.
- Clause 1.3: the following Specific Terms are incorporated into the Agreement:

”Specific Terms” means the Service Description: Cloud Services (PC Cloud Backup) and the particular Cloud Services that will be provided to you and the associated Charges payable by you, the details of which are set out in the “My Services” section under the “My Subscriptions” tab on the Cloud Services Portal.”

### **3. Your Services**

#### **Minimum Term**

The Cloud Services are provided to you on a month-to-month basis, commencing on the date we advise you, via your nominated email address, that the Cloud Services are available for your use. Charging for the Cloud Services will also start from this date. Charging will continue until you fully decommission the services thereby terminating them.

#### **Suspension or Termination**

Any rights for us to suspend or terminate the Cloud Services are in addition to our rights to suspend or terminate your service under the Standard Terms.

We may suspend or cancel your receipt of the Cloud Services and you must continue to pay all charges relating to the relevant suspended services during the period of suspension if we reasonably believe that you are in breach of:

- (i) the Acceptable Use Policy;
- (ii) the Storgate Licence Agreement;
- (iii) the Standard Terms;
- (iv) the terms and conditions set out in this Service Description; or
- (v) any user guides provided by us.

In addition to our other rights to cancel or suspend your receipt of the Cloud Services, we may also suspend or cancel your receipt of the Cloud Services (but without you incurring any charges relating to such services during the period of suspension) due to a reasonable suspicion on our behalf that the continued provision of a product, service or feature may compromise the security of our service platform, for example due to hacking attempts or denial of service attacks or a vulnerability discovered in relation to a particular item of technology which we use to deliver the Cloud Services.

Where we suspend or cancel your receipt of the Cloud Services, we will provide you with as much notice as is reasonably possible in the circumstances prior to suspending or cancelling the services.

#### **Acceptable Use Policy**

You must use the Cloud Services in accordance with the Acceptable Use Policy.

#### **User and Responsibility Guides**

You must follow our reasonable directions in relation to:

- (a) your use of the Cloud Services; and
- (b) the data that is stored or hosted as part of the services you are receiving under the Cloud Services.

We may provide you with user guides relating to the Cloud Services which will set out relevant technical information related to your services as well as instructions for use.

### **Third Party Claims**

You indemnify us against all loss, liability, cost or expense, suits or proceedings arising as a result of or in connection with any third party claim that relates to your data (including hosted content, any data stored on our storage platform and any software or configuration data you install on our service platform) or arising as a result of or in connection with your use of the Cloud Services.

## **4. Ancillary Services**

### **Help Desk**

If you experience a fault with your service, you may contact our help desk. Our help desk staff will attempt to rectify the fault, but may require certain information from your authorised representative before the fault can be rectified. The help desk may not be able to assist if your authorised representative is unavailable.

### **Cloud Services Portal**

As part of your service, we will provide your Administrator with a user account and password enabling you to access our online Cloud Services Portal so that you can order Cloud Services, review information about your products, services and features and administer them.

You acknowledge that the accessibility and functionality of the online Cloud Services Portal may be affected by your internet connection, browser and/or the computer system you are using.

### **Security**

We aim to protect our equipment and service platform against intrusions, viruses, trojan horses, worms, time bombs and other similar harmful software which may affect your service, as well as vulnerabilities which may expose our equipment and service platform to the risk of intrusion or attack. We do not, however, guarantee such protection.

You must take steps to prevent unauthorised access to your service and our service platform, for example, by not disclosing security credentials (such as user names and passwords) related to the services purchased as part of the Cloud Services.

You are responsible for the use of the Cloud Services by your users. You are also responsible for maintaining the confidentiality of your passwords and you are solely responsible for all activities that occur under your password. You agree to notify us immediately of any unauthorised use of your password/s or any other breach of security related to the Cloud Services Portal or the Cloud Services.

The Cloud Services do not include the following security features:

- For the server: intrusion detection, intrusion prevention and host intrusion protection; and
- For the network: network intrusion detection and network intrusion prevention.

You will not access or attempt to access the Vodafone internal network or perform penetration testing in relation to the Cloud Services.

### **Service Software**

We use software to provide the Cloud Services. We do not guarantee that such software is error-free.

As part of your service, we may provide you with a non-exclusive, non-transferable licence to use certain software ("Service Software") for the sole purpose of you accessing and using your service.

You must comply (and ensure that your users comply) with all licence terms applicable to the Service Software, this Service Description, the Standard Terms and the Storgate Licence Agreement set out in Appendix 2.

Because of the nature of the Cloud Services, which are made up of technology and services provided by our third party suppliers, we may not have control over certain terms and conditions which the third party supplier requires you to click to accept or otherwise enter into when you first use your service.

We will endeavour to provide you with a copy of these third party terms and conditions.

If you do not agree to the third party terms which we provide, we may not be able to provide you with certain products, services or features. If you accept the third party terms and conditions, you must comply with those terms and conditions. If you fail to do so, we may be required by the relevant third party to cancel your service.

Except as permitted by law, you must not (and you must ensure that your users do not):

- (a) remove any copyright, trade mark or similar notices on the Service Software;
- (b) attempt to reverse engineer, decompile, disassemble, or derive any part of the source code of the Service Software; or
- (c) modify, translate, or create derivative works based on the Service Software.

You must install Service Software, other software, upgrades and patches as directed by us. If you fail to do so, we may suspend or refuse to support your service.

### **Your Software**

You must not use third party applications in connection with the Cloud Services which have licence terms and conditions which conflict with or could cause you to breach the Standard Terms or this Service Description.

## **5. Your Information**

### **Your Data**

If we host or store your data as part of your service, you grant us a licence to host or store your data for all purposes required for or related to our provision of the Cloud Services.

If we do not think that your data meets certain required standards, we may suspend or cancel your Cloud Services or we may direct you to remove your data or request your authorisation for us to do so on your behalf. Some examples of data that do not meet our standards includes pornographic, offensive or defamatory content.

Notwithstanding any other clause in this Service Description or any other terms between us, we are not liable for any loss or corruption of data irrespective of how such loss arose.

We may delete your data immediately on termination of your Cloud Services. You are responsible for transferring your data elsewhere.

### **Privacy**

In order to deliver the Cloud Services, you allow us to disclose personal information we collect from you and your users to third parties such as our suppliers, contractors and third party service providers (or their suppliers).

We rely on you to ensure that you have taken all legally necessary steps to allow us and our third party suppliers to collect personal information from your users and to use, disclose, store and transfer such personal information in accordance with the Vodafone Privacy Statement (at <https://www.vodafone.co.nz/legal/policy/privacy/>) and these additional privacy terms. You indemnify us against any claim, cost, loss or liability which may arise in connection with your failure to do so.

### **Take Down Notices and Directions**

You must promptly notify us if you receive any mandatory take-down, service cessation or link deletion notices from any regulatory authority, that relates to your hosted content or data stored on our services platform. You must promptly comply with any such notices and directions.

We may immediately disable or suspend access by you or your customers to your hosted content by written notice to you if:

- (a) you fail to comply with, or we receive, any mandatory take-down, service cessation or deletion notices from a regulatory authority that relates to your hosted content or data or any part of it; or
- (b) we reasonably suspect that your hosted content or any part of it breaches any laws, regulations, determinations or industry codes applicable to your service or your hosted content, or infringes the rights (including intellectual property rights) of any person.

### **Intellectual Property**

If we provide you with any documents, processes, service configurations or software as part of your service, we (or our licensors) will:

- (a) continue to own the intellectual property rights in those materials; and
- (b) grant you a non-exclusive, non-transferable licence to use that material solely for purposes required to use the Cloud Services.

You must immediately inform us if you become aware of any infringement or suspected infringement of our intellectual property rights.

### **Your Records**

You are responsible for ensuring that you comply with all laws or regulations which require you to retain certain records, data and information.

### **Virtualisation**

Many of the products, services and features provided under the Cloud Services are provided through the use of virtualisation technology and you acknowledge and agree that the hardware and software that we use to provide you with your products may be shared with other customers.

## **6. Pricing**

### **Pricing**

Pricing for the Cloud Services is specified in the Cloud Services Portal. We will commence billing for your Cloud Services from the date we advise you, via your nominated email address that the Cloud Services are available to you.

## **Cloud Services (PC Cloud Backup) Detailed Service Description**

In addition to the General terms above, the following terms apply if you are purchasing Cloud Services (PC Cloud Backup) from us.

To be eligible for Cloud Services (PC Cloud Backup) you need an account with Vodafone and a fixed broadband or mobile broadband plan with Vodafone.

Cloud Services (PC Cloud Backup) is an online computer backup and storage service provided by our third party supplier Storegate. Cloud Services (PC Cloud Backup) require internet access to be able to use them. To backup a computer you must download the backup client software onto the computer. All data that is backed up or uploaded is stored in Storegate's secure datacentres located in Sweden. Vodafone has no responsibility or liability for your transmissions of data.

Vodafone reserves the right to suspend the Cloud Services (PC Cloud Backup) (whether partially or otherwise) if and to the extent that your use of the Cloud Services (PC Cloud Backup) materially and adversely affects Vodafone or its suppliers' operations or delivery of similar services to other customers.

### **Scope of Services**

#### **1. Cloud Services (PC Cloud Backup) - Product Options**

Cloud Services (PC Cloud Backup) consist of 2 product variants:

##### **(a) Storegate Business**

Storegate Business provides shared online storage that can be used to backup and store files from an unlimited number of computers. Storegate Business includes the following:

- Single user account;
- Subscription based on storage options – 10, 50, 100, 250, 500 and 1,000 GB; and
- License to install the backup client on an unlimited number of devices.

##### **(b) Storegate Team**

Storegate Team provides personal user accounts for storing private data in addition to an option for shared online storage. Storegate Team includes the following:

- 5 to 50 users;
- entry level is 5 users with an initial 50GB storage in total;
- Additional storage available by subscription – 50, 100, 250, 500 and 1,000 GB;
- Additional users available by subscription – 10, 25, 50 users;
- Administrator administrates users, sets roles per user, and allocates storage by user; and
- License to install the backup client on an unlimited number of devices.

#### **2. Cloud Services (PC Cloud Backup) Features**

##### **(a) Web Interface**

Cloud Services (PC Cloud Backup) are fully web based and are optimised for the latest versions of the following supported Web browsers - Internet Explorer, Firefox, Chrome and Safari.

**(b) Web Based Storage**

Cloud Services (PC Cloud Backup) provide drag-and-drop functionality directly in the web browser. Your users can continue to work with their files during large uploads.

**(c) Sharing**

Your users can share files with and give access to specific folders to, third parties.

To avoid misuse of Cloud Services (PC Cloud Backup) – for example, sharing illegal material – our third party supplier Storegate supports a “shared page” functionality which displays the full name of the person who shares a file or item, and Storegate may report this information where Storegate is obliged to do so in order to (a) comply with a legal obligation; (b) uphold the Storegate License Agreement; (c) respond to statements that contents and/or registration data constitute an infringement of a third party right; or (d) where reasonably necessary to protect Storegate’s, its users or the public’s interests, rights, property or personal safety.

**(d) Streaming**

Cloud Services (PC Cloud Backup) have support for streaming through http-streaming, i.e. the web browser will start the local application for streaming (normally Windows Media Player for PC). Cloud Services (PC Cloud Backup) support standard streaming file types such as - .wav, .mp3, .wma, .wmv, .mpeg. Your users can decide if a file should be downloaded or streamed. Shared files can be streamed in the same way.

**(e) Gallery View and Web Album**

The gallery view application provides your users the option to edit and view stored pictures. The included Web Album feature provides the option to organize and publish pictures invite third parties to view them (with or without password protection), and photo printing (optional feature with an additional cost for any printing).

**(f) Recycle Bin**

The recycle bin helps to protect your users from losing files or folders deleted by mistake. The recycle bin function can be enabled or disabled by your users.

**(g) Your Users’ Account Administration**

The Web Interface provides a tool for your users to administer the Cloud Services (PC Cloud Backup). Based on the particular implementation, settings for storage, backup licenses, sync licenses, time zone, and language can all be managed by your users.

**(h) WebDAV Access**

Your users can work in their storage area directly in the operating system (Windows and Mac) using the standard protocol WebDAV (Web-based Distributed Authoring and Versioning). This makes it possible for your users to work directly in the cloud and obtain information relating to their storage area by dragging-and dropping whole folders onto their local computer.

### **3. Cloud Services (PC Cloud Backup) - Software Applications**

To operate the Cloud Services (PC Cloud Backup) your users will need to download and install on their computers the Online Backup Client and Sync Client software applications.

#### **(a) Online Backup Client**

The online backup client offers your users improved tools for secure and efficient cloud backup. The features included are:

- Real-time backup;
- Scheduled backup;
- Intuitive and easy-to-use installation process; and
- A GUI to match the web interface.

The online backup client includes custom policy features that enable auto-selection of certain folders, blacklisting on both folder and file level, and bandwidth throttling and file size limitations.

The Online Backup client supports Windows Vista, Windows 7, Windows 8 and Mac OSX.

#### **(b) Sync Client**

Once installed, the sync client will add a folder which will be synchronised with the server and other computers under the same account. The sync client supports the following features:

- Real-time sync;
- Installation with tutorial;
- Settings with possibility to link/unlink computers;
- Status information about quota;
- Notifications when quota limit is being reached; and
- Quick launch of online account.

The sync client supports Windows Vista, Windows 7, Window 8 and Mac OSX.

#### **(c) Mobile App 2.0 for iPad**

Mobile App 2.0 for iPad complements the Cloud Services (PC Cloud Backup) by providing your users the following functionality:

- Slide view
- Store
- Share to Facebook
- View pdf, Office files, jpg.

#### **(d) Mobile App 3.0 for Smartphones**

Mobile App 3.0 for smartphones enables your users to download the app and start file backups from a smartphone without accessing a web page or connecting with cables. Mobile App 3.0 for smartphones provides support for:

- Installation with tutorial
- Settings enabling the possibility to auto upload files
- Support for multi upload
- Slide view

- View Office documents
- Start page with:
- Auto upload progress bar
- Show recent media
- Show recent documents
- Access to online hard drive, backup or common
- Functionalities to manage files and folders, e.g.:
  - Create folder
  - Delete
  - Share
  - View.

Mobile App 3.0 for smartphone supports iPhone, Android and Windows phone.

#### 4. **Storegate Feature Summary**

The table below summarises the feature set for the Cloud Services (PC Cloud Backup):

Feature	Storegate Business	Storegate Team
	Automatic backup. Synchronise and access files from anywhere.	Backup the business environment. Collaborate in common files.
Number of end users	1	5 to 50
Storage space	from 10GB	from 50GB
Storegate online backup	√	√
Storegate file synchronisation	√	√
Automatic backup	√	√
Scheduled backup	√	√
Selective reset	√	√
Recycle bin	√	√
Web interface	√	√
Mobile applications	√	√
Archive files	√	√
Cloud guarantee	√	√
Secure transfer (SSL)	√	√
Direct access (WebDAV)	√	√
Optimized search	√	√

Feature	Storegate Business	Storegate Team
Password protected shares	√	√
Share links	√	√
Encryption	√	√
Versioning	√	√
Support	√	√
Online fileserver		√
Work in groups		√
Administer sub User		√
Role based User		√

**5. Service Levels**

Key Performance Indicators	Value
Agreed Cloud Services (PC Cloud Backup) time	24 hours x 7 days
Availability of Cloud Services (PC Cloud Backup)	99.8%
Support Hours	24 hours x 7 days

## **Appendix 1: Cloud Services Acceptable Use Policy**

Vodafone expects that You (the customer) will use the Cloud Services (“Services”) in accordance with this Acceptable Use Policy (“AUP” or “Policy”). Any illegal, unauthorised, or improper use of the Services could be harmful to Vodafone, its suppliers, its licensors, other customers, the technological integrity of Vodafone infrastructure, or Services, or may otherwise damage Vodafone’s reputation.

Consequently, this Policy describes prohibited uses of the Services, including (but not limited to) the Cloud Services Portal. Vodafone may modify this Policy at any time on 14 days’ notice by emailing You.

By using the Services (including accessing the Cloud Services Portal), You agree to comply with this Policy. If You breach a material term of this Policy or authorise or help others to do so, and such breach remains un-remedied after reasonable written notice from Vodafone (no less than 14 days), Vodafone may suspend some or all affected Services or terminate Your use of the Services in accordance with the Standard Terms and/or the Service Description.

If a breach of a material term of this Policy involves any illegal activity conducted by You, then Vodafone reserves the right to suspend the Services without providing notice.

This Policy forms part of the terms of the agreement for providing and use of the Services. You are solely responsible for violations of this Policy by You, including your employees or contractors.

### **Obligation to Report**

In delivering the Services, Vodafone provides the physical or virtual servers, related storage and other resources, and support services according to the terms of the Service Description.

In the course of delivering the Services, Vodafone does not monitor, and may not be aware of, Your use of the Services, including Your loading and managing of Your application software, data or content. Except as needed to deliver the Services, as authorised by You, or as required by law, Vodafone will not have access to Your application software, data or content.

Therefore, if You become aware of any violation of this Policy, You agree to notify Vodafone as soon as reasonably practicable and cooperate in any efforts to stop or remedy the violation. To report any such violation or suspicion of such violation, You should contact the Vodafone Select Help Desk on 0508 400 300.

Vodafone may investigate any violation of this Policy or misuse of the Services or the Cloud Services Portal, although Vodafone is not obligated to do so. Vodafone may deem it necessary to report any activity that it suspects violates any law or regulation to appropriate law enforcement officials or regulators, without necessarily advising You.

Subject to Vodafone’s obligations of confidentiality (a) such reporting in the preceding paragraph may include disclosing appropriate information, and network and systems information related to alleged violations of this AUP, the Standard Terms or the Service Description, and (b) Vodafone may cooperate with appropriate public agencies or other appropriate third parties to assist with the investigation and prosecution of illegal conduct related to alleged violations of this Policy.

### **Accurate Information Required**

You agree to use reasonable endeavours to provide accurate and complete information when You purchase or use the Services, and You agree to use reasonable endeavours to keep such information accurate and complete during the entire time that You use the Services.

### **No Illegal, Harmful, or Offensive Usage or Content**

By using the Services, You represent that You will use the Services only in accordance with the Standard Terms, the Service Description, this Policy and with all applicable laws in all relevant jurisdictions.

You may not use, or encourage, promote, facilitate, or instruct others to use the Services for any use that is reasonably considered to be illegal, harmful, or offensive, or to knowingly transmit, store, or otherwise make available any content that is reasonably considered to be illegal, harmful, or offensive and in breach of this Agreement. These prohibited activities and content involve:

- Illegal activities, including disseminating, promoting, or facilitating pornography or any activity that is likely to be in breach of, or does breach, any applicable laws, codes, or regulations including data protection.
- Any offensive content that is defamatory, obscene, deceptive, abusive, an invasion of privacy, objectionable, or otherwise inappropriate.
- Any content that infringes or misappropriates the intellectual property or proprietary rights of others or assists others in infringing such rights.
- Any activity that is reasonably likely to be harmful to the Services or to Vodafone's or its suppliers' reputation, including engaging in any fraudulent or deceptive practices.

### **No Security Violations**

You may not use the Services to violate, or attempt to violate, the security or integrity of any network, computer, or communications system, software application, or network or computing device ("**System**"). These prohibited activities include You taking, or attempting to take, any of the following actions:

- Accessing or using any such System without permission.
- Probing, scanning, or testing the vulnerability of such System, or breaching any security measures without express authorisation of the owner of the System.
- Monitoring data or traffic on any System without such permission.
- Falsifying the origin of any TCP-IP packet headers, email headers, or any part of a message.
- Gaining unauthorised access to the Services or any other accounts, computer systems, or networks, whether through hacking, password mining, reverse engineering, or any other means.

### **No Interference or Disruption of Services or Others' Networks, Systems, or Internet Connections**

You may not make network connections to any users, hosts, or networks unless You have permission to communicate with them. You may not take any action, or attempt any action, that interferes with or disrupts the proper functioning of a network or system. These prohibited activities involve You taking, or attempting to take, any of the following actions (unless obligated by law or permitted otherwise under the Agreement):

- Engaging in any activity that interferes with or adversely affects other Vodafone customers' use of the Services.
- Collecting information by deceit, under false pretences, or by impersonating any person or entity or otherwise misrepresenting Your affiliation with a person or entity.
- Using any content or technology that may damage, interfere with, intercept, or take unauthorised control of any system, program, or data, including, but not limited to, viruses, worms, or time bombs.
- Using the Services in any manner that appears to Vodafone to threaten the Service Infrastructure. This includes You providing inadequate security, allowing unauthorised third party access, or attempting to circumvent Vodafone's measures for controlling, monitoring, or billing usage.
- Using viruses, worms, corrupt files, Trojan horses, or other forms of corruptive code, or any other content which may compromise the Services, Network or Computing Infrastructure operations, or its performance for other Vodafone customers.
- Interfering with the proper functioning of any System, including any deliberate attempt to overload a System by any means.
- Monitoring or crawling a System so that such System is impaired or disrupted.
- Conducting or condoning denial of service attacks.
- Avoiding any use limitations placed on a System, such as access and storage limitations.

## Appendix 2: Storegate License Agreement

### END USER LICENSE TERMS

#### **SOFTWARE LICENSE AGREEMENT**

IMPORTANT - READ CAREFULLY: This Software License Agreement (the "Agreement") is a legal agreement between, ON THE ONE HAND, you (either an individual or an entity) ("Licensee") and, ON THE OTHER HAND, STOREGATE AB AND, WHERE APPLICABLE, ITS DISTRIBUTORS

(COLLECTIVELY, "Storegate") for the Storegate software, which includes computer software, Associated media and printed materials, whether provided in physical form or received on-line in electronic form (collectively, "Software"). You may install only ONE copy of the Software.

By clicking on the "I Accept" button, installing, copying or otherwise using the Software, Licensee agrees to be bound by the terms of this Agreement. If Licensee does not agree to the terms of this

Agreement, return the unused Software to Storegate, or click on the "Cancel" button and Licensee will not be able to download the Software.

#### **1. DEFINITIONS**

The following terms have the meanings set forth below whenever they are used in this Agreement:

- 1.1 "Software" means the software referred to in the Order.
- 1.2 "Documentation" means the documentation provided by Storegate together with the Software, containing i.a. specifications and operating instructions for the Software.

#### **2. TERM OF AGREEMENT**

- 2.1 This Agreement shall become effective on Licensee's receipt or download of the Software, as set out in the Preamble above, and shall- subject to Licensee's payment of applicable license fees for the Software remain in effect indefinitely, subject to the terms and conditions set out below- in particular the right of Storegate to terminate the Agreement upon Licensee's breach.

#### **3. OWNERSHIP AND LICENSE GRANT**

- 3.1 Licensee acknowledges that Storegate is the owner of any and all intellectual property rights in respect of the Software and the Documentation, and that Storegate has the right to distribute and license the Software and the Documentation to Licensee. Title to the Software shall remain vested in Storegate.
- 3.2 Subject to the terms and conditions of this Agreement, Storegate hereby grants to Licensee a personal, limited, non-transferable and non-exclusive license to use the Software. The Software may be used by Licensee solely as set out in this Agreement and the Documentation.

#### **4. LICENSE RESTRICTIONS**

- 4.1 Licensee may not reverse engineer, decompile, or disassemble the Software. Licensee covenants that it will not sell, license, lease, lend or in any other way dispossess itself of Software delivered to Licensee. Licensee is prohibited from adapting, modifying, revising, improving, upgrading, enhancing and creating derivative works of the Software for any purpose including error correction or any other type of maintenance.

4.2 Licensee undertakes not to permit any Software to be examined by any third party, without Storegate's prior written consent

4.3 Storegate reserves all rights not expressly granted to Licensee by this License Agreement. The license granted herein is limited solely to the uses specified herein and, without limiting the generality of the foregoing, Licensee is NOT licensed to copy or otherwise reproduce the Software or the Documentation.

4.4 Licensee is aware that the use of the Software may entail processing of personal data. In several countries such data processing is regulated by law and may, under certain circumstances, be prohibited unless consented to by the individual(s) concerned. Storegate expressly disclaims any liability for Licensee's breach of any such data processing laws and regulations.

## **5. CONFIDENTIALITY**

5.1 Licensee acknowledges that the Software and the Documentation contains confidential information that is proprietary to Storegate. Licensee agrees that the Software, together with the Documentation and any other information provided in respect of the Software, is made available for the use solely under and in accordance with this Agreement. Licensee has no right at any time during or after expiry or termination of this Agreement to disclose any information obtained under the Agreement, whether directly or indirectly, to any third party without Storegate's prior written consent. Licensee shall hold harmless, defend and indemnify Storegate from and against any and all losses, costs, damages and expenses arising out of or in connection with Licensee's failure to comply with the requirements of this Section 5. Licensee's confidentiality obligations hereunder shall survive cancellation or termination, for any reason, of this Agreement.

## **6. BLANK**

## **7. LIMITED WARRANTY**

7.1 Storegate warrants that medium on which the Software is recorded, upon receipt by Licensee will be free from defects in materials and faulty workmanship under normal use for a period of ninety (90) days from the date of receipt. During this warranty period Storegate will, at its option, repair or replace, free of charge, the defective medium upon which the Software was supplied and record a copy of the Software on the repaired or replacement medium. Said repair or replacement shall be Licensee's exclusive remedy under this warranty. Notwithstanding the foregoing, Storegate shall have no responsibility to repair or replace media which, in Storegate's opinion, have been damaged by Licensee by accident, abuse, or as a result of attempted self-maintenance, including service or modifications not performed by Storegate or Storegate's appointed contractor.

7.2 Storegate does not warrant that the Software will meet Licensee's requirements or that the operation of the Software will be uninterrupted and error free.

7.3 The above stated is Storegate's or any third party's only warranties with regard to the Software and this Agreement, and no other warranty or condition, express or implied, will apply. Storegate specifically, but without limitation, excludes all other warranties, representations or undertakings relating to performance, including any warranties that might otherwise be implied, such as those of satisfactory quality, merchantable quality, merchantability, fitness for a particular or any purpose, or ability to achieve any particular result.

## **8. NOT USED**

## **9. LIMITATION OF LIABILITY**

9.1 The use of the Software and all consequences arising therefrom is the sole responsibility of Licensee. Storegate shall not be liable to Licensee for any loss or damage caused arising directly or indirectly in connection with the Software, the use of the Software or otherwise.

9.2 Storegate's liability vis-a-vis Licensee under this Agreement shall under all circumstances be limited to THE PRICE PAID BY LICENSEE FOR THE SOFTWARE.

9.3 Storegate shall in no event be liable to Licensee under this Agreement for any special, indirect, incidental or consequential damages, such as loss of data, use and/or profits, downtime costs and capital costs or claim from third party, whether on account of defects, performances, non-performances, delays, personal injuries, property damages or otherwise.

## **10. TERMINATION OF THE AGREEMENT**

10.1 Storegate shall have the right to terminate this Agreement with immediate effect if Licensee is in default of any of its obligations under this Agreement, and Licensee has failed to make good such default within thirty calendar days after having received written notice from Storegate requiring it to do so. Storegate shall furthermore have the right to terminate this Agreement with immediate effect if Licensee suspends its payments, becomes bankrupt or insolvent or enters into liquidation or otherwise may be regarded as insolvent.

10.2 In the event of termination of this Agreement, Licensee shall, where applicable, immediately return the Software and the medium on which it was made available. Licensee shall also immediately certify in writing that Licensee, either directly or indirectly and either wholly or in part, is not in possession of the Software or a copy thereof, regardless of what form the copy takes.

## **11. EXPORT CONTROL REGULATIONS**

11.1 Licensee acknowledges that the Software and the Documentation may be subject to export control rules such as the Export Administration Act of the United States of America and/or other similar rules, and that it is the sole responsibility of Licensee to make sure that export or re-export of the Software will be in accordance with said rules.

## **12. MISCELLANEOUS**

12.1 This Agreement shall not be assignable in whole or in part by Licensee, without the prior written consent of Storegate.

12.2 No alteration or amendment to this Agreement shall be valid unless such alteration or amendment is made out in writing and signed by the parties hereto. If any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall in no way be effected or impaired thereby.

12.3 This Agreement contains the entire understanding between the parties on its subject matter, and annuls and replaces any other agreements or understandings, whether written or oral, which may exist or have existed between the parties on the subject matter hereof.

12.4 This Agreement shall be governed by and construed in accordance with the laws of Sweden, excluding its conflict of law provisions.