



Terms and Conditions of Use

1. INTRODUCTION

These terms and conditions of use shall constitute the entire agreement between Handisoft Software Pty Ltd ABN 91 089 780 218 "Handisoft" and the Customer relating to the subject matter hereof.

2. THE SERVICE

- Handisoft will provide the Customer with an online data backup service known as Sage DataSecure comprising of a client program (Attix5 Backup Professional) installed on the Customer's computer / server and an online storage platform where the Customer's data is backed up to on a scheduled basis.
- Handisoft reserves the right, at any time, to modify or discontinue, temporarily or permanently, the Service or parts thereof with or without notice.
- The ownership and all rights to the software remain vested in Handisoft and Attix5 and the customer has the right to use the software provided the customer has paid the required fees.

3. FEES AND CHARGES

- The fees and charges payable by the Customer to Handisoft for the Service will be determined in accordance with the schedule of fees and charges/Customer proposal as published from time to time by Handisoft.
- Handisoft shall be entitled to vary the fees and charges from time to time.

4. PAYMENT PROVISIONS

- The Customer undertakes to effect payment of all amounts due to Handisoft arising out of this agreement monthly in advance and without deduction or set-off for whatsoever reason.
- The monthly amount payable by the Customer to Handisoft will be paid by means of a direct debit authority or direct transfer.

5. TERM

- This agreement shall commence on the effective date as defined in point 6 below.
- Customers wishing to terminate use of the service are required to give Handisoft 30 days prior written notice. Customers remain liable for the monthly fee during the notice period, as well as any applicable usage charges.

6. EFFECTIVE DATE

- The effective date shall be the date on which this agreement is signed or the date as stated in the Schedule of Services.
- The Service will commence with free usage for the first 14 days after confirmation of registration. Thereafter the service will continue after receipt by facsimile transmission of a signed Direct Debit Request and Authority form allowing the withdrawal of funds from the Customer's bank account in accordance with these terms and conditions of use.



7. OBLIGATIONS OF THE CUSTOMER

- The Customer agrees to abide by all applicable local, state, national and international laws and regulations and is solely responsible for all acts or omissions that may occur.
- The Customer agrees not to interfere with or attempt to disrupt the Service or otherwise disrupt or tamper or attempt to de-compile the binary code of the Service;
- The Customer must not use the Service in a way which is illegal or which interferes with or disrupts other internet users or service providers including any service providers, their computers, software or hardware, including without limitations:
 - propagating computer worms, Trojans or viruses;
 - using the Service to gain unauthorised access to another computer or network;
 - sending harassing, obscene, indecent, offensive or threatening electronic mail;
 - forgery (or attempted forgery) of electronic mail messages;
 - placing, transmitting or storing any defamatory materials;
 - using the Service in a bureau or outsourcing capacity to generate revenue; or
 - storing, backing-up or accessing any data which does not belong to the Customer and/or the consent of the owner of such data has not been obtained.
- The Customer warrants that the contact information in the Schedule of Services/Customer Proposal is true and accurate and undertakes to inform Handisoft of any changes thereto as and when they occur.

8. WARRANTIES

- The Customer hereby warrants to and in favour of Handisoft that it –
 - Will, at all times whilst using the Service, act in the utmost good faith and to comply with all reasonable directions of Handisoft with regards to its use, security protocols and any other matters Handisoft, in its sole discretion, considers relevant;
 - Has the necessary legal title, legal capacity and right to utilise the Service; and
 - Will have no action against Handisoft or its shareholders, directors or employees arising either directly or indirectly out of the use of the Service and, to the extent necessary, the Customer hereby waives and abandons such claims.
- Handisoft hereby warrants that it will at all times endeavour to act in accordance with best practice and in good faith in terms of the storage and management of their customer's data on their remote backup servers and networks.

9. DISCLAIMERS / LIMITATION OF LIABILITY

- Handisoft does not represent or warrant that the Service or the Customer's use thereof will be uninterrupted or error-free, that defects will be corrected, or that the Service or the server that makes it available are free of viruses or other harmful components.
- Handisoft accepts NO responsibility for data loss of any kind where the Customer or a Handisoft Representative assisting the Customer does NOT select the correct data to back up. The Customer is solely and exclusively responsible for the selection of data to backup and for verifying that the correct data is being backed up on an ongoing basis. Any actions of our Representatives in selecting data will be deemed to have been on instruction from the Customer and in providing assistance to the Customer in setting up a valid back up selection.
- Handisoft does not warrant or represent that the use or the results of the use of the Service or the materials made available, as part of the Service will be correct, accurate, timely, or otherwise reliable.
- Handisoft shall not be responsible for unauthorised access to or alteration of transmissions or data stored, any material or data sent or received or not sent or received, or any transactions or agreements entered into through the use of the Service.
- The Customer specifically agrees that Handisoft is not responsible for any content or data sent using and/or included in the Service.



- Handisoft and/or its suppliers, shareholders, directors and employees make no representations about the suitability, reliability, availability, timeliness, security and accuracy of the Service for any purpose. The Service is provided "as is" and without warranty of any kind. Handisoft hereby disclaims all warranties and conditions with regard to the Service, including all implied warranties, fitness for a particular purpose, title and non-infringement.
- In no event shall Handisoft and/or its suppliers, shareholders, directors and employees be liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the use or performance of the Service, with the delay or inability to use the Service, the provision of or failure to provide the Service, whether based on contract, tort, negligence, strict liability or otherwise, even if Handisoft has been advised of the possibility of such damages. The Customer's sole and exclusive remedy is to discontinue using the Service as provided for in clause 5 above.

10. INDEMNIFICATION

The Customer agrees to indemnify and hold Handisoft and its shareholders, directors and employees harmless from any claim, demand or damage, including reasonable legal fees (on a full indemnity basis), asserted by any third party due to or arising out of the Customer's use of the Service.

11. PROPRIETARY RIGHTS TO CONTENT

The Customer acknowledges that the content, including but not limited to text, software, photographs, graphics, manuals or other material contained or made available to the Customer via the Service is protected by copyrights, trademarks, patents or other proprietary rights and laws and the Customer undertakes not to infringe such rights.

12. TERMINATION OF SERVICE

Handisoft may, at its sole discretion, terminate the Service provided to the Customer, for any reason, including, without limitation, if the Customer has acted inconsistently with the letter or spirit of this agreement.

13. FORCE MAJEURE

- To the extent that Handisoft's delay or inability to perform the Service is due to the existence of a Force Majeure Event (which shall mean an event beyond the reasonable control of Handisoft or any other third party who is contracted to assist Handisoft in the provision of the Service, including but not limited to, an act of war, terrorism, mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, action or inaction by a government agency, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a virus or other malicious code introduced other than through the acts of omissions of Handisoft), Handisoft's obligation under this Agreement will be suspended until the passing of that Force Majeure Event PROVIDED THAT notice is given to the Customer and all reasonable steps to minimise any disruption to and resume the performance of its affected obligations are taken.
- If substantially all of Handisoft's obligations under this Agreement are suspended by a Force Majeure Event under the preceding clause by more than twenty one (21) days, either Handisoft or the Customer may elect to immediately terminate this Agreement without penalty, or enter into a separate discussions to modify the affected obligations by variation of this Agreement.



14. GENERAL

- This agreement shall be governed by and interpreted in accordance with the laws of Australia and subject to the non-exclusive jurisdiction of the courts of Western Australia.
- The Customer agrees that no joint venture, partnership, employment, or agency relationship exists between the Customer and Handisoft as a result of this agreement or use of the Service.
- Handisoft's performance of this agreement is subject to existing laws and legal process and nothing contained in this agreement is in derogation of Handisoft's right to comply with governmental, court and law enforcement requests.
- If any part of this agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the agreement shall continue in effect.
- Unless otherwise specified herein, this agreement constitutes the entire agreement between the parties with respect to the Service and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between the parties with respect to the Service.
- Any notice required to be given, by either party, must be served in writing at the address as set out in this license agreement, or alternatively, sent to the facsimile number or email address located at www.sagedatasecure.com.au/contactus in the case of Handisoft and the address used by the Customer at the time of registering, located at www.sagedatasecure.com.au/openregister in the case of the Customer.
- This agreement may not be transferred or assigned by the Customer to any other party.
- The clause headings in this agreement are solely used for the convenience of the parties and have no legal or contractual significance.