



<b>Software:</b>	ProBak & ProBak Lite
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The "Services" means the service whereby the Customer will be offered the use of the Software to securely backup and retrieve their data on-line via any tcp/ip connection to the Vortex Online Backup storage platform, where such backed up data will be stored. The Vortex Online Backup storage platform is hosted in a secure environment.

The Customer can then select and schedule their backup set. The Customer can restore their data whilst online. After the initial backup, incremental backups are done for a period defined by the customer in the ProBak client interface, the default is 30 days.

The volume of data held on the Storage Platform, including all the daily changes and the month end consolidation is, on average, equivalent to the Allocated Limit of Data Storage (as shown within the Limit Column of the Monitor Console). Should the volume of data, for any one account, stored on the Storage Platform exceed the Allocated Limit of Data Storage set for that account by more than 20%, then Vortex reserves the right to suspend that account or to charge for the quantity of data that exceeds the Allocated Limit of Data Storage set for that account.

**IMPORTANT: The Customer will be provided with the client application. The Customer will then be required to provide name, password and encryption key. This encryption key will not be stored by the system. Accordingly, if the Customer loses this information, the data cannot be recovered.**

TERMS AND CONDITIONS

1. PRIVATE DEFINITIONS

"Vortex" "we" "us" means Vortex Backup Ltd. "you" means the Customer. "The Software" means all or any computer programs sold or leased by Vortex to you, whether such programs are produced by Vortex, or are sold or leased as distributor or agent of a third party whether by licence or through the public domain. "The Internet" means the worldwide collection of equipment and systems that include but is not restricted to access to items of service ("the Internet Service"). "The Services" means the Vortex Online Backup Managed Solution as outlined in the Description of Services above.

2. VORTEX OBLIGATIONS

When the Services are operational, and connected to the Internet Service, we shall make all reasonable efforts to ensure that the Services are maintained and are fully available to you 24 hours x 365 days per year. Notwithstanding the foregoing, in the event that in any calendar month following commencement of the Services, we are unable to provide 99.5% connectivity to the Internet (calculated on a 24 hour basis) (hereinafter "the Failure") you shall be entitled to Service Credits as per the Vortex Online Backup Service Level Agreement.

3. PAYMENT

The charges detailed on the Vortex website during the upgrade process are non-refundable and for a minimum period of twelve (12) months from the date you accept these terms and conditions by selecting the tick box during the sign up process. Thereafter the charges may be reviewed on an annual basis. You must pay monthly in arrears unless otherwise stated. All charges are exclusive of VAT. Where any payment from you remains due and unpaid we will be entitled to charge interest at 10% above Barclays Bank plc base rate for the time being accrued daily. You may not withhold payment for the Services by reason of any outstanding claim under this or any other agreement with us.

All payments are non-refundable and non-returnable. You agree to pay us on presentation of our invoice. Any delay in payment will entitle us at our sole election to suspend the service and/or to apply liquidated damages. Save as allowed by law, payment due for services provided shall not be withheld on grounds that any claim is outstanding.

4. RESTRICTION OF LIABILITY

You hereby confirm that you have not relied upon any representation made by us or on our behalf which has induced you to enter into this agreement except as is provided herein. If we delay or fail to perform our obligations under this agreement our maximum liability is limited to the amount already paid by you under this agreement for the Services (excluding VAT or other tax and the cost of any equipment provided under this agreement and which shall be owned or controlled by you). Subject to this we shall not be liable to you for any claims loss damage (including consequential loss or damage) of whatsoever nature and howsoever caused except as is provided by statute. Except for the terms of this agreement (or required by law) no other conditions warranties terms representations and undertakings apply. If we are prevented from providing the Services for any reason beyond our reasonable control, we may suspend or delay delivery of the Services and shall not be held responsible or liable to you for our inability to deliver them. We cannot guarantee the proper delivery of any email message or other data item once it has left the confines of our network, and similarly we cannot guarantee that data traffic will be delivered or that its contents will be held secure once it passes from our control.

5. UNLAWFUL USE OF THE SERVICE

You warrant and undertake that neither you nor any person authorised by you will knowingly publish or transmit over the Internet nor store on the Vortex Online Backup Storage Platform any material that is obscene, threatening, defamatory or likely to cause offence or which in any way infringes the intellectual property rights of another party. You hereby agree to indemnify and hold us harmless from any and all demands losses claims proceedings damages costs and expenses including legal fees arising out of any claim against us in relation to such materials.

6. DURATION

This Agreement shall commence on the Services Commencement Date and shall, subject to the other provisions hereof, continue for a minimum period of twelve (12) months ("initial period"), whereafter it shall be automatically renewed for a further twelve (12) months unless notice of termination in writing is given by either you or us not less than

ninety (90) days prior to the end of the twelve (12) month period.

7. TERMINATION

We reserve the right to terminate this Agreement at any time if you become the subject of a receivership winding up administration or bankruptcy order (or a petition is presented in respect of any of these) or if it otherwise appears to us that you are insolvent and unable to pay your debts as they fall due. We shall also be entitled to terminate this Agreement in the event that you commit a material breach of this Agreement and fail to remedy the same within 30 days of receipt of written notice from us. Any termination shall be without prejudice to our other rights or to your liability for amounts payable under this agreement.

8. GENERAL

This agreement contains all the terms agreed between us and supersedes any previous communications representations or agreement by either of us including any terms and conditions on your order. No modification of this agreement will be accepted unless made in writing and signed by one of Vortex's Directors. Our acceptance will form a contract subject only to these Terms and Conditions.

We may assign our rights and obligations under this agreement. You may only assign your rights without further payment only with our written consent (not to be unreasonably withheld) where the assignment is to a parent affiliate or subsidiary corporation purchasing all or substantially all your assets or where you merge with another corporate entity or partnership providing in each case the proposed assignee is not in our reasonable opinion a competitor.

The waiver by either party of any breach of these Terms and Conditions will not prevent the subsequent enforcement thereof and shall not be deemed a waiver of any subsequent breach. If any part of this agreement is adjudged by a court of competent jurisdiction to be invalid such judgment shall not affect the remainder of this agreement which shall remain in full force and effect. Notices may be given by facsimile, first class mail or by delivery to the address shown on our website. English Law shall govern this Agreement and the forum for settling any dispute shall be the English Court.

**1. INTRODUCTION**

This Service Level Agreement (SLA) forms part of the Vortex Services Agreement (TSA) between **VORTEX BACKUP LTD** and **THE CUSTOMER** and is subject to all terms of that agreement. The scope of this SLA is the delivery of Vortex Online Backup only when the server platform and hosting thereof is managed by Vortex. In addition, unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

“Vortex”	Vortex Backup Ltd.
“Queries”	All reports of software or service faults, queries, requests for service or any other enquiries from Customer and Customer Customers in relation to the software and its operation.
“Business Day”	Any day within the year, excluding weekends (Saturday, Sunday) and public holidays.
“ProBak”	The backup service for Servers
“ProBak Lite”	The backup service for Desktops and Laptops
“Software”	ProBak & ProBak Lite

**2. SERVICE LEVEL PROVISIONS**

**2.1 Service Level Targets**

Vortex will use all reasonable efforts to ensure that the ProBak is available as detailed in the table below:

Minimum ProBak availability per month	99.5%*
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The ProBak service will be deemed unavailable if it cannot be reached from the Hosting Centre Infrastructure (\*excludes down time for operating systems patches and updates).

The Vortex Online Backup service shall not be deemed unavailable (without limitation) in the event of any of the following:

1. Failure of the Customer connection to the Vortex Hosting Centre Infrastructure (e.g. via the public internet or Customer’s own network);
2. Malfunction of Customer’s or customer’s own computing systems upon which ProBak is installed (including hardware, operating system or local software), including non availability due to configuration issues;
3. Malfunction of ProBak (Vortex would commit to resolve issues as outlined in section 4);
4. Malfunction of service due either to incorrect installation or configuration of the ProBak or use of the software on platforms not qualified by Vortex.

Vortex will use all reasonable efforts to ensure that a failure of either the main, or mirror site, is recovered as detailed in the table below:

Recovery time to re-establish full functionality and capacity at either the main or mirror site in the event of failure	3 Business Days
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**2.2 Service Level Credits**

If Vortex fails to achieve the Service Level Targets specified for the ProBak Service above, and if Customer requests Vortex to do so within five (5) Business Days after the target is not met, Vortex will issue to the Customer credit rebate detailed in the table below:

Performance against target service levels will be reviewed and agreed on a quarterly basis by Vortex and Customer account management.

ProBak -Service availability in a given Month	Rebate (% of monthly recurring charge)
Less than 99.5% and greater than or equal to 98.0%	25
Less than 98.0% and greater than or equal to 95.0%	50
Less than 95.0%	75

The monthly recurring charges used to calculate the ProBak Service credits will be the total monthly recurring charges (MRCs) relating to for the affected ProBak Service.

The credits will be paid as discounts to the MRCs for the month following Vortex’s approval of the Customer’s credit request.

**3. SUPPORT**

3.1. All service requests are to be sent via email to Vortex at [support@vortexbackup.net](mailto:support@vortexbackup.net) or by telephone 0845 680 0463.

**4. PROBAK SOFTWARE BUG FIXES AND PATCH UPGRADES**

**4.1 ProBak Software Bugs Fixes**

In the event that a customer identifies, or suspects, a bug or non conformance in the ProBak Software, this is to be reported to Vortex via email.

Vortex will work with the Customer to confirm that non availability of the service is due to a bug or non conformance. Vortex will use all best endeavours to rectify any bug or non conformance of the software and provide an upgrade/patched version of the software within a reasonable time period.

In the event that the existence of a bug within the ProBak is confirmed then Vortex will notify the Customer’s technical contacts by e-mail within 48 hours stating the nature of the bug, or non conformance, platforms affected, any actions which should be taken by the Customer, and estimated time to rectify the bug or non conformance.

**5. PROVISION OF SERVICES**

Vortex’s obligations, in terms of the agreement and the Service Level Agreement, to resolve queries, shall be performed remotely via the Internet.

**6. FORCE MAJEURE**

If Vortex is prevented from carrying out any of its service level undertakings as a result of an act of God, strikes, fire, riot, war (whether declared or not), embargoes, export control, international restrictions, shortage of transport facilities, any order of any international authority, any court order, any requirements of any authority or other competent local authority, or any other circumstances whatsoever which are not within the reasonable control of Vortex, then Vortex will be deemed to have been relieved of the performance of these service level undertakings to the extent that and for so long as it is so prevented from performing, this agreement will be deemed to have been suspended to such extent and for the period concerned. Vortex shall in addition, not be liable for any loss, liability, damages (whether direct, indirect or consequential) or expense of whatsoever nature that howsoever arising where Vortex’s failure to meet the service level or otherwise perform any of the services.