

Data-Lifeline Service Agreement - Terms and Conditions

Measurement Conditions for determining Service Levels

The Core Network Element of The Data-Lifeline Service will have a Regional Point of Presence (POP) to Network Access Point (NAP) availability of better than 99.95%. The NAP will have direct Internet connectivity to one or more Tier 1 carriers.

The Server Element of The Data-Lifeline Service will have a service availability of better than 99.95%.

Notes:

- 99.95% availability is considered "expected availability".
- These calculations are made on a "sliding" 30 day period. Therefore, 99.95% means less than a total of 21 minutes downtime over the preceding 30 day period. The calculation is performed at 23:59 local everyday.
The calculation is:- 0.05% x 24 HOURS x 30 DAYS.
The granularity of the calculation is 5 minutes i.e. the availability tests are made every 5 minutes.
- Planned Outages (i.e. where disrupted work has been notified more than 24 hours in advance) will be excluded from the calculation except when these planned outages over-run their allocated time.
This statement is valid for all Customers of the Data-Lifeline service, unless otherwise stated.
- The Core Network Element in the context of this statement is all The Data-Lifeline utilised equipment, Wide Area Transport and The Data-Lifeline Gateway routers. It does not cover Customer Access Routers nor the line connecting the Customer location to Data-Lifeline's core network.
- The Service Element in the context of this statement is defined as the availability of the Data-Lifeline backup servers. Details of any security firewalls between the servers supplying the Services and the Core Network are also included.
- This statement does not cover end-to-end reachability between the Data-Lifeline Core Network and the Customer's Internet connection.
- This availability is subject to change.

Terms and Conditions

Definitions and interpretation

- In this agreement, unless the context otherwise requires:

"Agreement" means the contract between Data-Lifeline and the Customer incorporating these terms and conditions; the Conduct Rules; any special terms agreed between Data-Lifeline and the Customer set out in Data-Lifeline's order forms for the Service, all as amended from time to time pursuant to clause 2.2. If there is any inconsistency between any special terms and any other terms of this Agreement, the special terms shall prevail;

"Conduct Rules" means the instructions given by Data-Lifeline pursuant to Clause 6.1 relating to acceptable use;

"Customer" means the customer whose details appear in the schedule or who uses the service;

"Equipment" means the switches, routers, servers, computers and other items, of hardware necessary to form a connection and interface to the service;

"Internet" means the global data network comprising interconnected networks using the TCP/IP ("Transmission Control Protocol/Internet Protocol");

"Internet Address" means an Internet Protocol address (IP Address);

"Law" means any law, statute or regulation, guideline or code of conduct, (whether or not having the force of law) in any jurisdiction to which Data-Lifeline or the Customer is from time to time subject;

"Name" means any name specifically requested by or allocated to the Customer for provision of the Service and shall include, without limitation, any domain name or mailbox name;

"Data-Lifeline" is a trading name of and means The Web Works New Media Ltd, a private limited company registered in England No. 2715102 and whose registered office is Newcastle Technopole, Kings Manor, Newcastle, Tyne & Wear, NE1 6PA

"Service" means the services provided by Data-Lifeline whether by the Customer may store its data on Data-Lifeline's storage system(s) and, where applicable, any means and facilities provided by Data-Lifeline for the Customer in connection with the Service;

"Software" means any proprietary software supplied to the Customer by Data-Lifeline in relation to the Service;

"User Documentation" means any documentation relating to the Services and/or any Software, supplied by Data-Lifeline, either on paper or on-line.
- The Customer's undertaking not to do any act or thing shall be deemed to include an undertaking that the customer shall not permit or suffer the doing of that act or thing,
- The expressions "Customer" and "Data-Lifeline" shall include their respective successors and permitted assignees and their respective employees and agents.
- ### Provision of Service

 - The Data-Lifeline agrees to provide the Customer with the Services, on the terms and conditions of this Agreement.
 - Data-Lifeline reserves the right to amend this Agreement (including but not limited to these terms and conditions, Data-Lifeline price schedule and the Conduct Rules) at any time upon not less than 30 days notice to the Customer. Amendments to the Conduct Rules will be posted on-line. Data-Lifeline will notify the customer in writing of changes to the Price or to this Agreement. The Customer may terminate this Agreement as provided in clause 9.3 if it does not wish to be bound by such new terms and conditions. Continued use of the service or failure to terminate this Agreement will be deemed to constitute acceptance of the new terms and conditions.
 - It is technically impracticable to provide the Service free of faults and Data-Lifeline does not undertake to do so. In the event of a fault in the Service the Customer should report it by telephone on the customer support number set out in the User Documentation or such other number as Data-Lifeline may from time to time provide to the Customer, or by notice. Upon receipt of a fault report, Data-Lifeline will endeavour to advise the Customer how to correct the fault as soon as reasonably practicable.
 - Data-Lifeline does not warrant that the Customers use of the Service will be uninterrupted and given the nature of the Internet does not warrant that any information transmitted via the Service will be transmitted accurately, reliably in a timely manner or at all. The Customers sole remedy for dissatisfaction with the service is to terminate this Agreement under clause 9.1.
 - Use of the Service enables the Customer to Backup and Restore its Data Files across the Internet in an encrypted and compressed form to and from one of Data-Lifeline's storage systems. Data-Lifeline does not control and is not responsible for the content of material stored using the Service. The Customer is responsible in all circumstances for determining the suitability, legality or lawfulness of storing, uploading or downloading any material from Data-Lifeline.
 - The Customer is responsible for obtaining all computers and other equipment or services necessary to properly use the Service, except for that specified on the order form. In particular, connection to the Service is via a fixed telecommunications link or dial up connection.
- ### Charges

 - The Customer will pay all charges for the Service. Charges will be made according to the Service level chosen by the Customer using the web site using the . Usage above this level ('Overage') will be charged at the rate of £30 per GB (or part thereof) per month.
 - Subject to any provision of this Agreement, liability for charges shall commence, unless Data-Lifeline notifies the Customer to the contrary, with effect from the day on which the Customer either presses the "Place Order" button on the Web site or Data-Lifeline first makes the Service available to the Customer. Whether or not the Service is actually used, the first charge will be calculated on a pro-rata daily basis to the end of the first billing period, and thereafter for each billing period in advance. Payment of all charges is due within 14 days of date of invoice and will be made by Direct Debit. Unless stated to the contrary, all rates or charges quoted by Data-Lifeline are exclusive of VAT.
 - If at any time before or during the term of this Agreement the Customer fails to meet the standard of credit worthiness deemed acceptable by Data-Lifeline from time to time, Data-Lifeline shall be entitled: to require the Customer to make such regular instalment payments in advance on account of any future charges as Data-Lifeline shall deem necessary;
 - to impose such other measures on the Customers rights to use the Service as Data-Lifeline shall reasonably deem necessary

In the event that the Customer does not act in accordance with Data-Lifeline's instructions as provided above, Data-Lifeline shall be entitled to terminate this agreement forthwith.

- Data-Lifeline reserves the right to charge a deposit to secure amounts payable by the Customer here under. Such deposit maybe applied by Data-Lifeline against any outstanding charges by the Customer here under from time to time.
- If in any period of thirty days during the term of this agreement the Service is not available at the rate referred to, Data-Lifeline shall allocate a credit of the service charge to the account of the customer in the next invoicing period following such a thirty day period, on the following basis:

Network Availability as a percentage of the service level in the 30 day period	Amount of credit
99.95% or more	nil
96.67% - 99.94%	1 day service charge
93.34% - 96.66%	7 days service charge
less than 93.33%	14 days service charge

Data-Lifeline shall apply the credit to the Customers invoice in the period following the period when the interruption occurred, or if not possible, as soon as practical thereafter. Data-Lifeline shall have no liability if the Customer terminates the Service prior to such credit being applied.

Name and Customer's Details

- The Customer shall provide Data-Lifeline with all personal details reasonably required by Data-Lifeline, including but not limited to the Customer's full name, address, telephone number, age and payment details (such as credit card numbers and expiry date). The Customer will notify Data-Lifeline within 30 days of any change to any of the personal details provided to Data-Lifeline.

Access to Service

- The Customer shall select a Username(s) and Password(s) to enable it to use the service and the Customer shall be responsible and liable for all use of the service through the Customer's username(s) and password(s) (including without limitation all charges incurred and any breaches of the terms of this agreement), even where the service is not actually used by the Customer but by some other person or organisation using the Customer's password(s).
- The Customer's access to the Service may occasionally be restricted to allow implementation of new facilities and to allow data archival.
- Data-Lifeline may temporarily suspend the Service for purpose of repair, maintenance or improvement of any of the facilities of Data-Lifeline which are necessary to provide the Service; or vary the technical specification of the Service for operational reasons subject to Data-Lifeline giving the Customer as much on-line, written or oral advice as is reasonably practicable in the circumstances, and restoring the Services, as soon as reasonably practicable after such temporary suspension.
- Data-Lifeline shall not be held responsible for the Customer's inability to use the Service due to any incompatibility between the Customer's equipment and Data-Lifeline equipment or the Service, or for any breakdown or failure in the equipment used by the Customer, or for any incapability of the equipment used by the Customer to use the Service.
- The Customer shall remain liable for any charges for the Service, notwithstanding that the Customer is unable to use the Service for any period of time, unless the reason that the Customer is unable to use the Service is wholly attributable to the negligence of Data-Lifeline or wilful default or omission.

Use of the Service

- Data-Lifeline may, on reasonable notice, give instructions about the use of the Service Data-Lifeline thinks to reasonably necessary in the interest of the quality of service to other customers of Data-Lifeline and any such instructions shall whilst they are in force, be deemed to form part of this agreement;
- Without limitation the Customer undertakes not to use or permit anyone else to use the Service: to store any material which is grossly offensive, of an indecent, obscene or menacing character, blasphemous or defamatory of any person, in contempt of court or in breach of confidence, copyright, rights of personality, publicity, privacy or any other third party rights;
- in breach of the Conduct Rules;
- to intercept or attempt to intercept any communications transmitted by way of a telecommunications system;
- other than in conformance with accepted Internet practices and practices of any connected networks;
- in any illegal or unlawful manner or for any illegal or unlawful purpose, or in any way which is contrary to the Law.
- If the Customer (or anyone other than the Customer, using the Customer's password, with or without the Customer's knowledge or approval) uses the Service in contravention of this agreement Data-Lifeline may suspend the Customer's use of the Service.
- If Data-Lifeline suspends the Service, it may refuse to restore the Service until it receives an assurance from the customer, in a form deemed acceptable by Data-Lifeline, that there will be no further breach of the provisions of this agreement.
- Whilst Data-Lifeline does not have the capability and does not purport to monitor the information stored using the Service, it reserves the right to block access to and/or to edit or remove any material which in its reasonable opinion it determines make give rise to a breach of clause 6.2.
- Except with the prior written consent of Data-Lifeline:
- the service shall not be used by or on behalf of any person other than the customer or any employee, agent or sub contractor of the customers organisation authorised to use the service by the customer; the customer shall not receive or permit any person to receive any consideration (whether in money or moneys worth, the given or withholding of any business or benefit of any kind or description), either directly or indirectly in return for or on account of use of the service by or on behalf of any person other than the customer.
- Title, ownership rights and intellectual property rights in and to the Data stored using the service is the property of the applicable content owner and maybe protected by applicable copyright or other law.

Limitation of Liability

- Except as otherwise provided herein, Data-Lifeline shall not have any liability under this agreement other than in respect of:
 - death or personal injury arising from its own negligence or that of its employees, agents or contractors while acting in the course of their employment by Data-Lifeline; or
 - direct physical damage to the customers property or the premises to an amount not exceeding £10,000.00 in respect of any one event or series of connected events where such damage arises from the negligence of Data-Lifeline, its employees, agents or contractors while acting in the course of their employment by Data-Lifeline; or
 - any liability of Data-Lifeline which cannot by Law be excluded or restricted.
 - In performing any obligation under this agreement, Data-Lifeline's duty is only to exercise the reasonable care and skill of a competent storage facilities supplier.
 - Data-Lifeline is not liable in contract, tort (including liability for negligence), or otherwise for loss, whether direct or indirect of business, revenue or profits, anticipated savings or wasted expenditure, corruption or destruction of data or any indirect or consequential loss whatsoever.
- ### Software
- Intellectual property rights in software remain the property of Data-Lifeline or its licensors. The customer agrees to comply with the terms of this agreement and the licenses of software reasonably required by the owner of any intellectual property rights in any of the software for the protection of that software notified by Data-Lifeline to the customer or appearing on screen as part of the service. If the customer does not consent to any such licenses of software, the customer may terminate this agreement pursuant to clause 9.3. Continued use of the service or failure to terminate this agreement will be deemed to constitute acceptance of such licenses of software.
 - Data-Lifeline hereby grants to the customer a non-exclusive license to use the software in executable form only.
 - The license granted to the customer under this agreement is personal to the customer and may not be sub-licensed, transferred, assigned, or otherwise disposed of.
 - If the customer uses the software in anyway which will result in the customer being in breach of this agreement or attempts to transfer, assign or otherwise dispose of the customers license to use the software that license is terminated immediately.

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- 8.5 The software is protected by copyright law. The customer may copy and distribute the software for the purpose of enabling potential uses to evaluate Data-Lifeline. Any such copies shall be subject to this agreement and shall contain all of the notices regarding proprietary rights as contained in the software originally provided to the customer. This license does not grant the customer any right to any enhancement or update to the software. Enhancements and updates, if available, may be obtained on the Data-Lifeline web site along with the current standard pricing, terms and conditions.
- 8.6 The customer agrees not to attempt to reverse engineer, decipher, decompile or disassemble the software or otherwise reduce it to human readable form or knowingly allow others to do so, except to the extent that applicable laws specifically prohibits such restriction. The customer may not modify the software or create derivative works of the software.
- 8.7 Data-Lifeline warrants that whilst the service is being provided, the software, if unmodified and operated as directed, will substantially achieve the functionality described in any User Documentation. Whilst Data-Lifeline or its suppliers have used reasonable efforts to minimise defects or errors in the software and to check the software for viruses, Data-Lifeline does not warrant, however, that the customers use of the software will be uninterrupted or that the operation of the software will be error free, virus free or secure or that the functions of the software will meet the customers requirements. In addition, the security mechanism implemented by the software has inherent limitations and the customer must determine that the software sufficiently meets the customers needs.
- 8.8 Data-Lifeline also warrants that any media containing the software, if provided Data-Lifeline, is free from defects in material and workmanship and will so remain for 90 days from the date the customer Aquarius the software.
- 8.9 Data-Lifeline's sole liability for any breach of the warranties in Clauses 8.7 and 8.8 shall be, at Data-Lifeline's sole discretion:
- 8.9.1 to replace the customers defective media or copy of the software;
- 8.9.2 to advise the customer how to achieve substantially the same functionality as described in any user documentation with the software through a procedure different from that set forth in the user documentation; or
- 8.9.3 if the above remedies are impracticable, to refund that part of the fee a customer paid for the provision of the software.
- 8.10 Repaired, corrected or replaced software shall be covered by this limited warranty for the period remaining under the warranty that covered the original software, or if longer, for 30 days after the date of shipment to the customer of the replacement media or copy of the software, or the Data-Lifeline advised the customer how to operate the software so as to achieve the functionality described in any user documentation.
- 8.11 Only if the customer informs Data-Lifeline of the customers problem with the software during the applicable warranty period, returns the software to Data-Lifeline and provides evidence of the dates the customer acquired the software, will Data-Lifeline be obligated to honour the warranties contained in this clause 8.
- 8.12 The warranties contained in this clause 8 are the only warranties made by Data-Lifeline. Data-Lifeline makes no other express or implied warranty relating to the performance, quality or fitness for a particular purpose of the software. No Data-Lifeline agent or employee is authorised to make any modifications, extensions or additions to this warranty. If any modifications are made to the software by the customer during the warranty period; if the media is subjected to accident, abuse, or improper use; or if the customer violates the terms of this agreement, then these warranties shall immediately be terminated.
- 8.13 Nothing in this agreement effects the customers statutory rights as a consumer, that is to say someone acquiring the software other than in the course of a business are not holding themselves out as acquiring the software in the course of a business.
- 8.14 The service may comprise software, services, technical information, training materials, or other technical data which are subject to the United States of America Export Control Regulations or the laws or regulations of another country. The customer may not download or otherwise export or re-export the software or any underlying information or technology except in full compliance with all United States and other applicable laws and regulations.
- 8.15 Use, duplication or disclosure by the U.S. Government is subject to restrictions set forth in the Federal Acquisition Regulations.
- 9 Term and Termination**
- 9.1 Save as otherwise agreed, this agreement will commence on the earlier of the date of signature hereof by both parties, the date on which the customer clicks Data-Lifeline "Register" button on the Data-Lifeline web site or after having loaded the software (if supplied) or the date on which the customer starts using the service, and continue for a minimum term of one year and then in yearly terms until terminated by either Data-Lifeline or the customer given not less than thirty days notice to the other before the start of a new term.
- 9.2 Data-Lifeline shall be entitled to terminate forthwith if:
- 9.2.1 Data-Lifeline is precluded from providing the service by Law or by the decision of any competent judicial or regulatory authority;
- 9.2.2 the customer becomes insolvent or bankrupt;
- 9.2.3 the customer commits a breach of clause 6 of this agreement which in Data-Lifeline reasonable opinion is serious enough to merit immediate termination;
- 9.2.4 the customer commits a breach of any of the provisions in this agreement (including without limitation, non payment of any charges hereunder) and in the case of a breach of any provision which is capable of remedy, fails to remedy the same within 7 days after receipt of a notice given particulars of the breach requiring it to be remedied;
- 9.2.5 Data-Lifeline suspects on reasonable grounds that the customer may have committed or be committing any fraud against Data-Lifeline; or
- 9.2.6 the customer provides Data-Lifeline with any false, inaccurate or misleading information for the purpose of obtaining a service.
- 9.3 The customer shall be entitled to terminate this agreement by notice, effective on receipt by Data-Lifeline of the notice, if the customer does not consent to any change of this agreement, to the terms of any licenses of software or to any Conduct Rules notified to the customer, in writing, or, in the case of Conduct Rules, by posting on Web pages.
- 9.4 The right to terminate this agreement shall not prejudice any other right or remedy Data-Lifeline in respect of any breach or any rights, obligations, or liabilities accrued prior to termination.
- 9.5 If notice is given to terminate this agreement, the customer shall pay all subscription charges up to the expiry of the Term. The customers notice does not avoid any liability for the service already provided or to be provided under this agreement.
- 9.6 On termination of this agreement the customer shall immediately cease using the service and the software and shall destroy all copies of the software in its possession. The customer shall have no further rights to use the service or the software, or to access the information stored as part of the service.
- 9.7 On termination of this agreement Data-Lifeline may immediately delete all of the clients information stored on Data-Lifeline's equipment.
- 10 Indemnity**
- 10.1 The customer shall indemnify Data-Lifeline against each loss, liability or cost incurred by Data-Lifeline arising out of:
- 10.1.1 any claims or legal proceedings arising from the customers use of the service or use of the service through the customers computer servers or passwords which are brought or threatened against Data-Lifeline by any other person; or
- 10.1.2 any breach of this agreement by the customer.
- 11 Insurance**
- The customer does not require Data-Lifeline to provide liability for loss, damage or otherwise due directly or indirectly to the customers use of the service or consequences therefrom which the service or system is designed to deter or avert. If the Customer requires liability coverage, it shall be the Customer's responsibility to secure it from an insurance provider or other agency of his choice, at his own expense. The Customer shall bring no suit against Data-Lifeline for any loss arising from this agreement.
- 12 Force Majeure**
- Data-Lifeline shall not be liable for any breach of its obligations under this agreement where it is hindered or prevented from carrying out its obligations by any cause outside its reasonable control, including
- without limitation by lightning, fire, flood, extremely severe weather, strike, lock-out, labour dispute, act of god, war, riot, civil commotion, malicious damage, failure of any telecommunications or computer system, compliance with any law, accident (or by any damage caused by any of such events).
- 13 Entire Agreement and No Waiver**
- 13.1 This agreement represents the entire understanding between the parties in relation to the subject matter herein and supersedes all other agreements or representations made by either party, whether oral or written.
- 13.2 No waiver by Data-Lifeline of any default of the customer under this agreement shall operate or be construed as a waiver by Data-Lifeline of any future defaults, whether of a like of different character. No granting of time or other forbearance or indulgence by Data-Lifeline to the customer shall in any way release, discharge or otherwise affect the liability of the customer under this agreement.
- 14 Notices**
- 14.1 Unless otherwise stated within this agreement, notices to be given to either party shall be in writing and shall be delivered by hand, electronic mail (other than for the purpose of legal process), sent by fax or pre- paid post to the customer at the customer address or to Data-Lifeline at its address as specified in the User Documentation.
- 14.2 any such notice shall be deemed to be duly served as follows:
- 14.2.1 if by facsimile transmission or electronic mail - six hours after transmission on a working day if transmitted before 4pm or otherwise at 10am on the following working day.
- 14.2.2 if by post - seventy two working hours after posting.
- 14.3 in proving service by post it shall be sufficient to show that the envelope containing the notice was duly addressed and stamped and posted.
- 14.4 a request for termination shall not be considered served until the Company acknowledges its receipt in writing.
- 14.5 A working day shall mean any day excluding any Saturday, Sunday, or a Bank or other public holiday.
- 15 Data Protection**
- 15.1 Data-Lifeline may use any information supplied by the customer for its own administrative and customer service purposes or for any purpose required by Law.
- 15.2 Unless the customer notifies Data-Lifeline in writing Data-Lifeline may use information supplied by the customer for market research purposes or to supply the customer with information about other products or services available from Data-Lifeline or its associated companies;
- 16 Governing Law**
- This agreement shall be governed by and construed in accordance with English Law Data-Lifeline and the Customer agree to submit to the non-exclusive