

Client-Software License Agreement

PLEASE READ THIS CLIENT-SOFTWARE LICENSE AGREEMENT (HEREINAFTER REFERRED TO AS THE "AGREEMENT") CAREFULLY. TO COMPLETE YOUR ORDER FOR THE CLIENT SOFTWARE, YOU (HEREAFTER REFERRED TO AS "YOU" &/OR "YOUR") MUST ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT BY ELECTRONICALLY CHECKING THE BOX MARKED "I ACCEPT". THIS AGREEMENT GOVERNS YOUR USE OF THE CONNECTED CORPORATION'S CLIENT-SOFTWARE AND ALL RELATED COMPONENTS AND/OR MODULES. IT IS STRONGLY RECOMMENDED THAT YOU PRINT AND RETAIN A COPY OF THIS AGREEMENT FOR YOUR RECORD, YOU MAY FIND A VERSION OF THIS AGREEMENT POSTED AT THE FOLLOWING URL www.back2go.com/docs/back2go_tac.pdf

IF YOU DO NOT AGREE AND/OR REJECT THIS LICENSE AGREEMENT YOU SHALL NOT BE CHARGED A FEE OR YOU ARE ENTITLED TO A FULL REFUND OF ANY PREPAID LICENSE FEES.

1. Definitions

1.1 "Licensed Product(s)" means the Connected Backup/PC, DataProtector 7.x.x client-software and/or Email Optimizer 7.x.x as developed by Connected Corporation, a USA corporation (hereinafter referred to as "Connected"), in machine-readable form of the object code, associated modules, user documentation, user manuals, installation guides, training materials, Updates, Upgrades, New Releases, products and maintenance, ordered by You and provided by Back2Go Limited (hereinafter referred to as "Back2Go") while this Agreement is in effect.

1.2 "Update(s)" and/or "Upgrade(s)" means a subsequent release of a particular Licensed Product, which provides patches, fixes, modifications, error corrections or enhanced functionality and for which Back2Go does not charge a license or other additional fee to You for that Licensed Product.

1.3 "New Release(s)" means a Licensed Product with greater or different capability than the Licensed Products and for which Back2Go charges a separate and/or additional license fee.

1.4 "Back2Go", "we", "us" means Back2Go Limited, Registered Office: SUITE B, 29 HARLEY STREET LONDON W1G 9QR UNITED KINGDOM. Address for communications is Back2Go Limited, PO Box 378, Farnham SURREY GU10 2BH UNITED KINGDOM.

2. License Grant & Restrictions

2.1 License Grant.

The Licensed Product(s) are licensed only and are not sold to You. Back2Go hereby grants, and You accept, a non-exclusive, non-assignable, non-transferable, non-sublicensable, limited license to use the Licensed Products in machine readable form only, and to utilize the Licensed Product(s), for Your individual use only in the manner in which such Licensed Products were intended for the term indicated when You downloaded the Licensed Products from Back2Go's web pages and/or purchased the Licensed Products from Back2Go (hereinafter referred to as the "Term"). You may make one (1) copy of the Licensed Product(s) solely for backup purposes. You may use the Licensed Product(s) within or in conjunction with any other software, subject to the terms and conditions contained herein, and any use shall always remain subject to this Agreement.

2.2 License Restriction.

You shall display and retain Back2Go's and/or its suppliers' copyright, trademark, proprietary, or confidentiality statement and other notices on any portion of the Licensed Products however such Licensed Products are used. You shall not attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code of the Licensed Product or any portion thereof, or otherwise derive its source code;

- (i) not modify, port, translate, localize or create derivative works of the Licensed Product;
- (ii) not disclose the results of any performance tests or qualitative analysis on the Licensed Product(s) to any third party without the prior written consent of Back2Go's and/or its suppliers;
- (iii) not use the Licensed Product(s) on a server, ("server" shall mean a system that is used to access or is accessed by and/or store data for multiple personal computers);
- (iv) not use the Licensed Product(s) on personal computer systems used for extensive multimedia processing including but not limited to storing, processing or playing very large quantities of picture, video, and/or sound files;
- (v) not use the Licensed Product(s) in a way
 - a. that infringes on the intellectual property rights of any third party or any rights of publicity or privacy;
 - b. that violates any law, statute, ordinance or regulation (including but not limited to the laws and regulations governing export/import control, unfair competition, anti-discrimination and/or false advertising);
 - c. that is defamatory, trade libellous, unlawfully threatening, or unlawfully harassing;
 - d. that is obscene, pornographic or indecent in violation of applicable law; or
 - e. to propagate any virus, worms, Trojan horses or other programming routine intended to damage any system or data;
- (vi) not use the Licensed Product(s) in any application that may involve risks of death, personal injury, severe property damage or environmental damage, or in any life support applications, devices or systems and
- (vii) not use a total number of licenses in excess of the total amount allocated to You.

The license granted hereunder is specific to You only, and is not transferable to any other person or business entity, including subsidiaries and successors-in-interest to You, without the prior written consent of Back2Go.

3. Pricing & Privacy

3.1 Pricing.

Commencing upon Your completion of the installation of the Licensed Products You shall be allowed to use the Licensed Products free of charge for the number of days indicated when you downloaded the Licensed Products from Back2Go's web pages and/or purchased the Licensed Products from Back2Go (hereinafter referred to as the "Evaluation Period"). After the Evaluation Period, You shall automatically be charged all applicable fees for the Licensed Products based on the offering You selected.

You accept that pricing is subject to change and the fee applied will be determined by the offering you select. Back2Go reserves the right to change the products offered and/or the prices of its offerings and undertakes to notify you of such change 30 days before any such change takes effect.

3.2 Upgrades and Downgrades

You may modify the offering select by You at any time. Modifications which increase the amount of data able to be backed up (hereinafter referred to as "Upgrades") can be selected at anytime and Your fees payable will be modified accordingly. Modifications which decrease the amount of data able to be backed up (hereinafter referred to as "Downgrades") will be applied at Your next billing point and Your fees payable will be modified accordingly. Where Downgrades are selected no refund of fees previously paid will be offered.

3.3 Privacy Policy

All use by Back2Go of personal information collected from You through, or arising from, Your registration of the Licensed Products, shall be done in accordance with applicable privacy legislation and Back2Go's privacy policy, which is currently located at http://www.backupmystuff.co.uk/hiw/faq/faq_general_4.htm. Upon Your completion of the installation of the Licensed Products, You grant permission to Back2Go to verify Your personal information, including all information pertaining to Your credit card with the appropriate credit agency and/or other applicable administrative organization.

4. Account Suspension & Termination

4.1 Suspension

Back2Go may, by written notice to You, which may include electronic mail (email), suspend your access to our services, including all licenses granted hereunder, if you fail to pay Back2Go in full for any fee(s) and/or charges(s) due within 7 days after payment was due.

4.2 Termination.

This Agreement shall remain in effect unless terminated by either party. Notice to terminate the Agreement shall be by written notice to the other Party, which may include electronic mail (email).

Not less than 21 days notice before your next payment due date shall be given by You of the intention to terminate this agreement.

Termination notices served by You under the terms above shall take effect at Your next billing date and as such no refunds are offered.

You accept that ceasing to backup; uninstalling the software or otherwise rendering the software inoperable is insufficient notification of your intention to terminate and as such, until Back2Go receives a termination notice from You any licenses you operate remain billable.

4.3 Termination for Breach.

Back2Go may, by written notice to You, which may include electronic mail (email), terminate this Agreement, including all licenses granted hereunder, if any of the following event(s) occurs:

- (a) the failure of You to pay Back2Go in full for any fee(s) and/or charge(s) due to Back2Go if payment is not rendered within twenty (20) days after the payment was due;
- (b) any breach of any material term or obligation of this Agreement if not remedied within thirty (30) days after written receipt of notice;
- (c) any material breach of license grants, license restrictions, intellectual property rights, or confidentiality provisions provided herein effective immediately upon receipt of notice from Back2Go; or
- (d) the insolvency of You.

4.4 In the event of termination for whatever reason You shall

- (a) Uninstall and cease use of all licenses and services
- (b) Make immediate payment of outstanding sums due

4.5 In the event of termination for whatever reason Back2Go shall

- (a) Suspend access to our services from the date that termination takes effect
- (b) Delete and destroy from our systems and/or suppliers systems any data backed up by You.

4.6 Charges

Suspended or Terminated accounts may incur an administration charge of £15.00 for each late payment which has to be processed and Back2Go is entitled to charge interest at a rate 5% above the Barclays Bank Plc base rate which will accrue daily.

Any termination shall be without prejudice to our rights or to your liability for amounts payable under this agreement. Back2Go does not refund unused portions of payments made.

5. Export Controls;

5.1 Export Controls.

You understand that the Licensed Products are subject to regulation by agencies of the United States Government as well as the laws and regulations of other applicable countries which prohibit export, importation or diversion of certain technological products or services to certain countries and individuals. You hereby specifically agree to comply in all respects with such export, re-export, and/or import restrictions. You further agree not to export/import or attempt to export/import the Licensed Products without the prior written consent of Back2Go. You may not export/import or re-export/import the Licensed Software (or provide to a national of) countries in the US Government Country Group E:1 or E:2 without a license or license exception from the U.S. Department of Commerce nor otherwise violate any provisions of U.S. export laws.

6. Intellectual Property Rights

6.1 Intellectual Property Rights.

All intellectual property rights in and to the Licensed Products shall remain the property of Back2Go (and/or its suppliers if applicable), exclusively. You shall have no right in or to the Licensed Products except as expressly set forth in this Agreement. Intellectual property includes, but is not limited to, patents, inventions, invention disclosures, Marks (as defined below), trade secrets, know-how, formulae and processes, software programs, proprietary data and databases, copyrights and all other similar items of intellectual property, whether registered or unregistered, including any rights created thereof, all proceeds thereto, and the right to sue for past, present and future infringements. All rights not expressly granted hereunder by Back2Go are reserved for Back2Go (and/or its suppliers if applicable). Back2Go (and/or its suppliers if applicable) retains the rights in and title to its respective trade names, trademarks, service marks, logos, domain names and other branding elements and identifiers (the "Marks"), and any other intellectual property previously or generally developed by Back2Go or its affiliates. You shall not copy, use, display, distribute or transfer the Marks or other Intellectual Property of Back2Go, except as expressly provided by this Agreement.

7. Limited Warranty & Disclaimer

7.1 Licensed Product(s) Limited Warranty.

Back2Go warrants that the Licensed Product(s) will conform substantially in accordance with its documentation for ninety (90) days from delivery. If Back2Go confirms a defect reported by You in the unaltered Licensed Product(s), Back2Go will use commercially reasonable efforts to remedy the nonconformance. Back2Go does not warrant that the operation or utilization of any Licensed Product(s) will be uninterrupted or error free, nor does it guarantee that its remedial efforts will correct any nonconformance. Corrections will be warranted for the remainder of the original warranty period. If any Licensed Products fails to comply with any warranty set forth in this Section and Back2Go does not remedy such failure as required by this Section, Back2Go's obligation and liability, and Your exclusive remedy, for such failure shall be limited to the refund of the license and maintenance fees paid within the last twelve 12 month period prior to such failure or ten (£10.00) Pounds Sterling whichever is less, excluding reasonable amounts for past use, for such Licensed Products, upon the return of such Licensed Products to Back2Go, in which event this Agreement shall terminate with respect to such Licensed Products. You expressly recognize and acknowledge that such limitation of liability is an essential part of this agreement and is an essential factor in establishing the price of the Licensed Products. THIS SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY.

7.2 DATA CONTENT DISCLAIMER

YOU EXPRESSLY RECOGNIZE THAT BACK2GO DOES NOT CREATE, OPERATE, CONTROL OR ENDORSE ANY DATA, INFORMATION, THIRD-PARTY PRODUCTS, PROCESSED BY THE LICENSED PRODUCTS OR SERVICES PROVIDED VIA ANY LICENSED PRODUCTS HEREUNDER, INCLUDING BUT NOT LIMITED TO INFORMATION OBTAINED. BACK2GO DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION OR ENDORSEMENT TO YOU OR ANY THIRD PARTY WHATSOEVER WITH REGARD TO ANY DATA, INFORMATION, PRODUCTS OR SERVICES PROVIDED IN CONJUNCTION WITH THE LICENSED PRODUCTS, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF: 1) MERCHANTABILITY; 2) FITNESS FOR A PARTICULAR PURPOSE; AND 3) NON-INFRINGEMENT. BACK2GO SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY COST OR DAMAGE ARISING EITHER DIRECTLY OR INDIRECTLY FROM ANY LOSS OF DATA.

7.3 GENERAL DISCLAIMER.

BACK2GO MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, WRITTEN OR ORAL, EXCEPT AS EXPRESSLY STATED HEREIN. ADDITIONALLY, BACK2GO DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED AND IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND FREEDOM FROM INFRINGEMENT WITH RESPECT TO ALL LICENSED PRODUCTS, UPDATES, UPGRADES, NEW RELEASES AND ALL OTHER PRODUCTS, SERVICES, MATERIALS AND OTHER ITEMS FURNISHED UNDER, OR IN CONNECTION WITH, THIS AGREEMENT.

8. General Limitation of Liability

8.1 Limitation of Liability.

Back2Go's (and its suppliers') entire liability, and Your exclusive remedy, for any and all claims arising under or in connection with this Agreement or related to any item or service provided under or in connection with this Agreement, regardless of the form of the action (including negligence), whether in breach of warranty, contract, tort, strict liability or otherwise, shall be limited to ten (£10.00) Pounds Sterling. You expressly recognize and acknowledge that such limitation of liability is an essential part of this agreement and is an essential factor in establishing the price of the Licensed Products.

8.2 EXCLUSION OF DAMAGES.

IN NO EVENT SHALL BACK2GO (NOR ANY OF ITS SUPPLIERS) BE LIABLE FOR DAMAGES RESULTING FROM LOSS OF DATA, LOST PROFITS, BUSINESS INTERRUPTION, LOST REVENUE, OR LOST BUSINESS, IN CONNECTION WITH THE USE OF ANY LICENSED PRODUCT OR ANY OTHER ITEM OR SERVICE PROVIDED UNDER THIS AGREEMENT, NOR FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, NOR FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY PRODUCT, SERVICE OR OTHER ITEM PROVIDED UNDER THIS AGREEMENT, WHETHER IN BREACH OF WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE (INCLUDING NEGLIGENCE), EVEN IF BACK2GO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Under no circumstances will Back2Go be liable for data that was never sent by you, using the Product, to the Online Backup Storage Platform. You are therefore advised to check the log file to ensure that the desired files have been transmitted.

9. General

9.1 Assignment.

Neither this Agreement nor any of Your rights or obligations under this Agreement shall be assigned or transferred by You without the prior written consent of Back2Go and any attempted assignment or transfer without such consent shall be voidable by Back2Go upon notification. You agree that this Agreement binds You and each of Your employees, agents and persons associated with You, including Your affiliated and subsidiary firms, corporations and other organizations.

9.2 Force Majeure.

Back2Go shall not be liable for any failure or delay in performing services or any other obligation under this Agreement, nor for any damages suffered by You by reason of such failure or delay, which is, indirectly or directly, caused by strike, riot, natural catastrophe or other act of God, or any other cause beyond Back2Go's reasonable control.

9.3 Limitations Period.

Neither party may bring any action under this Agreement for any cause whatsoever more than two (2) years after the occurrence giving rise to such cause of action; provided however, that this Section shall not apply to any action brought by Back2Go to protect its intellectual property rights or confidential information.

9.4 No Waiver.

If either party fails to perform any of its obligations hereunder and the other party fails to enforce the provisions relating thereto, such party's failure to enforce this Agreement shall not prevent its later enforcement.

9.5 Severability.

If any provision of this Agreement is determined by a court to be, or becomes, invalid, unenforceable or illegal, such provision shall be

- (a) modified to be made valid, enforceable and legal in such a manner as to best effectuate the intent of the parties on the date hereof or
- (b) deemed eliminated where such modification is not practicable; the remainder of this Agreement shall remain in effect in accordance with its terms as modified by such modification or deletion.

9.6 Notices.

All notices and correspondence under this Agreement shall be in writing and shall be delivered by personal service, confirmed facsimile, express courier, electronic mail (email), or certified mail, return receipt requested, to the addresses first set forth herein, or at such different address as may be designated by such party by written notice to the other party from time to time. All notices shall be deemed received and effective upon receipt if delivered personally or sent by express courier or confirmed facsimile, electronic mail (email), and seven (7) days after mailing if sent by certified mail.

9.7 Governing Law

This Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English courts.

9.8 Irreparable Harm

You acknowledge that Your breach of this Agreement may cause irreparable harm to Back2Go and You agree that Back2Go shall be entitled to injunctive relief in the event of such a breach.

9.9 Modifications & Enforceability.

No modification of this Agreement shall be binding upon either party unless made in writing and signed by an authorized representative of Back2Go and You. If any provision of this Agreement is held unenforceable for any reason whatsoever, the unenforceable provision will be construed in accordance with applicable law as nearly as possible to reflect the original intent, and all other provisions will remain in full force and effect.

9.10 Limited Use.

The Software is a "Commercial Item," as that term is defined at 48 C.F.R 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. 12.212 and 48 C.F.R. 227.7202, as applicable. Consistent with 48 C.F.R. 12.212, 227.7202-1 through 227.7202-4, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end-users (a) only as Commercial Items and (b) with only those rights as are granted to all other end-users pursuant to the terms and conditions herein. The Licensed Products and the Documentation have been developed at private expense and are sold commercially to the general public. They are provided under any U.S.

government contracts or subcontracts with the most restricted and the most limited rights permitted by law and regulation. Whenever so permitted, the government and any intermediate buyers will obtain only those rights specified in our standard commercial license. Thus, the Licensed Products referenced herein, and the Documentation provided by Back2Go hereunder to any agency of the U.S. Government or U.S. Government contractor or subcontractor at any tier shall be subject to the maximum restrictions on use as permitted by FAR 52.227-19 (June 1987) or DFARS 227.7202-3(a) (Jan. 1, 2000) or successor regulations. Manufacturer is Connected Corporation located at 100 Pennsylvania Avenue, Framingham, Massachusetts United States, 01701.