

These terms and conditions cover the delivery of Microminder's Quark Online Back-Up service. They form a legally binding agreement made between Micro Minder Ltd ("Microminder") and you the Client ("Client").

The current Terms & Conditions for the Quark Online Back-Up (ie the latest revision of this document) will be located on Microminder's website at: <http://www.microminder.com/quark/terms>. It is the Client's responsibility to check this periodically, for amendments.

These Terms and Conditions may be subject to further conditions or qualifications set forth in additional related agreements between Microminder and the Client.

Microminder offers their Quark online back-up service and will make all reasonable efforts to ensure success. However, complete success depends upon the client:

- Your Internet Service Provider providing fault-free connection to the Microminder servers.
- The correct data being selected for upload as advised by you.
- Frequent validation of downloaded data to verify the continued success of the back-up process – Microminder shall include one such download every six months. It is your responsibility to contact the Microminder support desk who will then organise the download of data that is one day old, onto your server. Once this data is downloaded, the support desk will configure your EXACT to read that data so that you can ensure your records have been completely restored. If you have a Microminder IT Support contract this will not be chargeable, if you do not, this will be chargeable at our normal rates.

Microminder will remotely access and configure the Quark software on your server. However, it is your responsibility to ensure that it is not tampered with either intentionally or accidentally such as a result of interaction with other software, by a user in your practice or by any other 3rd party hardware support provider.

In the event you believe the configured software has been tampered with, you must notify Microminder immediately in writing.

Microminder reserve the right to offer revisions of the software at any time.

Deployment

Microminder engineers will install the Quark Online Backup Software remotely. A recording of the deployment process shall be retained on the clients file. The recording shall show the settings of the Quark Online Backup and those folders and file locations selected by the Client for backing up.

If these folder and file locations change thereafter, Microminder cannot be held responsible for data not being backed-up if no longer part of the back-up policy.

System Availability

We offer a 99.9% service guarantee. This means that for any given month, while highly unlikely, it is possible that we may experience an average downtime of the Quark service up to 44 minutes per month excluding Scheduled Maintenance. Scheduled Maintenance means: any maintenance at the Microminder Data Centre's, where the Client is notified 48 hours in advance by telephone, email or fax and that is performed during a standard maintenance window Mondays through to Thursdays from 22:00 hours to 08:00 hours GMT. We will always minimize this by running maintenance outside of backup schedules, where possible.

Data Quality

A successful back-up is NOT determined by the quality of the data. Quark online back-up will successfully back-up all data, whether that data is corrupt or otherwise. A back-up failure is defined as an instance where the Quark back-up software has failed to run either completely or partially and data in part or in total has not been backed-up as a result.

Where data, applications and/or programmes are corrupt this data will still be backed-up in this corrupt form. It is not the function of the Quark Back-up software to repair corrupt files or programmes.

File Restore

All files backed up on the Microminder Servers will be available for a period of 30 days from the date of back-up on a whole or individual basis.

Upon a request, by the Client to recover a file or group of files, Microminder will be able to recover files within 24 hours from the initial request. In this instance the files of group of files will be downloaded to Microminder Head Office, Unit 1, 8A Wadsworth Road, Greenford, Middlesex, UB6 7JD. A download of data, direct to site, will be dependent on many factors including but not limited to Internet Service Provider, Internet Service Package, internet download speeds, time of day, as such, Microminder will not provide such a timed SLA (Service Level Agreement) in this instance.

Disaster Recovery

In the event of a major data loss by the Client involving the loss of entire servers and their contents or the data stored on a server, Microminder will make all reasonable efforts to provide expert guidance to the client in order to restore the data to its original state.

We will provide such support as is necessary, working with the Client or its authorised representative(s) in order to ensure that system files and data files are restored to any replacement hardware. Microminder will, at its sole discretion assist in returning all data and applications to their previous state. Microminder WILL NOT restore hardware and network infrastructures, including third party programmes under the terms and conditions of this Quark agreement. Microminder reserves the right to make reasonable charges in accordance with their current fees to reinstate hardware, programmes and network infrastructures UNLESS the Client is also a Microminder Support & Maintenance contract Client, in which case Microminder shall complete a full restore under the terms of the Support & Maintenance Contract.

Maintenance/Troubleshooting

Where a Client has a Microminder IT Support Contract in existence, all trouble-shooting shall be undertaken in accordance with the Terms and Conditions of the IT Support Contract.

Where a Quark Online Back-up client does not have a Microminder IT Support contract in place, Microminder shall ONLY remotely access the site's infrastructure with the site's own IT support provider present. If there is not one, then the practice principal or manager or other authorised representative MUST be present. Microminder's involvement shall be limited to the Quark Online Back-Up product ONLY. A full recording of the remote access shall be retained. Microminder shall not take responsibility or accept any liability for any direct or indirect affect or impact onto the site IT infrastructure that changes to the Quark Online Back-up my precipitate, or for any charges resulting from third parties. It is for the Clients' IT support contractor to resolve such conflicts or issues in accordance with their Terms and Conditions.

Password Protection

Microminder WILL NOT be privy to your password. As such, it is important that you keep a note of it as without this password, Microminder shall not be able to retrieve your data.

Non-Payment by Client

If you default in payment of your subscription to Quark, Microminder reserves the right, without further notification, to:

- Stop running daily back-ups with immediate effect.
- Stop storing (i.e. delete) any data using space on the Microminder servers with immediate effect. **THIS MEANS THERE WILL BE NO HISTORICAL DATA BACK-UP.**
- Refuse to download any stored data or complete any disaster recovery process until the account is settled in full.

Compensation Payments

To be eligible for any claim of compensation whatsoever under these Terms and Conditions, the Client must notify Microminder of a possible failed back-up incident as soon as is reasonably possible. The time of this notification will only be recognised by the creation of a Support Case within Microminder's Case Management System.

It shall be for Microminder to ascertain whether the problem exists within our realm of reasonable control. Microminder's assessment shall be final.

Microminder does not accept liability for any consequential loss, consequential damage, loss of earnings, loss of profits, loss of goodwill, loss of savings, or damage as a result of business interruptions through use of this service.

Microminder's total liability for non-performance shall be limited to compensating direct damages, up to a maximum of the lesser of 12 months' payment to Microminder for the Quark Service ONLY or £240.

Clients must notify Microminder in writing to Head of Operations, Micro Minder Ltd, Unit 1, 8A Wadsworth Road, Greenford, Middlesex, UB6 7JD; indicating the wish to pursue rights in accordance with these Terms and Conditions, within 7 days of the incident. This should be sent by recorded delivery and the recorded date of receipt shall be the date taken into consideration in this matter.

Force Majeure

Except in respect of payment liabilities, neither party to this agreement will be liable for failure or delay in performance of its obligations under these Terms and Conditions due to reasons beyond its reasonable control including: acts of war, acts of God, earthquake, flood, riot, embargo, government act or failure of the Internet, provided that the delayed party gives the other party prompt notice for such cause. Where Microminder have not provided the Internet connection Microminder will not be liable, under any circumstances for the connection, the security of the connection, the availability of the connection, the reliability of the connection, the impact of the internet connection on the successful completion of any back-ups.