



## Subscription Services Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THESE SERVICES.

- **By using the Services, clicking Agree, or electronically or manually signing a Services Order Form, you (Customer) agree to be bound by this agreement.**
- **If you are agreeing to this agreement on behalf of or for the benefit a company, organization, or other entity, or another individual, then you represent and warrant that you have the necessary authority to agree to this agreement on behalf of that company, organization, other entity or individual, and the term “Customer” refers to that company, organization, other entity or individual. If you are agreeing to this agreement on your own behalf, then the term “Customer” refers to you.**
- **If you do not have that authority, or if you do not agree to the terms of this agreement, you must not accept this agreement and may not use OwnBackup products or services.**
- **If Customer has a written agreement with OwnBackup covering this subject matter, then that agreement applies instead of this agreement.**
- You may not access OwnBackup products or services if you are OwnBackup’s direct competitor, or to monitor their availability, performance or functionality, or for any benchmarking or competitive purpose, except with OwnBackup’s prior written consent. These restrictions apply to everyone in your company or organization.

This agreement (**Agreement**) was last updated on May 28, 2020. It is effective between OwnBackup and Customer as of the date Customer first accepts it.

### 1. SOFTWARE SERVICE

This Agreement governs Customer’s access to and usage of Internet based software services specified in order forms (**Orders**), including, without limitation, their user interfaces, features and functions (**Services**).

### 2. USE OF SERVICE

- Customer Owned Data.** All electronic data and information authorized by Customer to be uploaded by the Services (**Customer Data**) remains the property of Customer, as between OwnBackup and Customer. Customer grants OwnBackup the right to use the Customer Data solely for purposes of performing under this Agreement. Customer may export its Customer Data as allowed by functionality within the Services.
- Affiliates and Contractors.** Customer, including its Affiliates, may enter into Orders with OwnBackup and its Affiliates. An Affiliate entering into an Order agrees to be bound by this Agreement as if it were an original party hereto. Customer may allow its Affiliates and contractors to use the Services, provided Customer is responsible for their compliance with the terms of this Agreement, and use by such contractors is solely for Customer’s benefit. **Affiliate** means any company controlled by or under common control with the subject entity, directly or indirectly, with an ownership interest of at least 50%.
- Customer Responsibilities.** Customer (i) will keep its passwords secure and confidential and use industry-standard password management practices; (ii) is primarily responsible for Customer Data and all activity in its Services accounts; (iii) will use commercially reasonable efforts to prevent unauthorized access to its account and notify OwnBackup promptly of any such unauthorized access; and (iv) may use the Services only in accordance with the Services’ technical documentation and applicable law.

- d. **OwnBackup Support.** OwnBackup will provide customer support for the Services under the terms of OwnBackup's Customer Support Policy (**Support**), located at <http://www.ownbackup.com/support>.
- e. **Trials.** If Customer has registered for a trial or proof of concept use of a Service, Customer may access the Service for the trial period. The Service is provided AS IS, with no warranty during this time period. All Customer Data will be deleted after the trial period unless Customer purchases a paid Service subscription under an Order.

### 3. SERVICE LEVEL AGREEMENT AND WARRANTY

- a. **Warranty.** OwnBackup warrants to Customer that: (i) OwnBackup will use commercially reasonable efforts to maintain the availability of the Services as provided at <http://www.ownbackup.com/SLA.htm> (which terms are incorporated into this Agreement); and (ii) the Services, Support and Security Measures (as defined below) may change but will not materially decrease during any paid term. **Customer's exclusive remedy and OwnBackup's sole obligation for OwnBackup's failure to meet these warranties shall be, for (i), a credit to customer as provided in the link above (or if this Agreement is not renewed, then a refund), for the applicable month, and for (ii), as described in the "Termination for Material Breach" and "Effect of Termination" sections below.**
- b. **Disclaimer.** OwnBackup disclaims all implied warranties, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose, satisfactory quality and noninfringement. OwnBackup does not guarantee that Services will be error-free or uninterrupted or invulnerable.

### 4. PAYMENT

- a. **Fees and Payment.** Unless otherwise stated in an Order, fees are due and payable net 30 days from the invoice date. Quantities cannot be decreased during a paid term except as provided in the applicable Order. Customer is responsible for payment of all sales, use, VAT, withholding (without reducing the amount payable to OwnBackup under any invoice) and similar taxes.
- b. **Nonpayment.** Any invoiced amount not received by OwnBackup by the due date may accrue interest at the lower rate of 1.5% per month or the maximum rate permitted by law. In addition, if an invoiced amount is 30 days or more past due, OwnBackup may suspend Services and Support until the amount is paid in full, provided OwnBackup has given Customer at least 30 days' prior written notice that its account is past due. OwnBackup will not exercise its rights under this paragraph if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

### 5. CONFIDENTIALITY AND DATA PROTECTION

- a. **Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). Customer's Confidential Information includes, without limitation, the Customer Data. OwnBackup's Confidential Information includes, without limitation, the Services and their pricing.
- b. **Protection of Confidential Information.** Recipient will use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of Discloser for any purpose not contemplated by this Agreement. Recipient will use the same degree of care that it uses to protect its own confidential information of a like nature, but not less than a reasonable degree of care, to limit access to Confidential Information of Discloser to those of its and its Affiliates' employees and contractors who need such access for purposes contemplated under this Agreement and who are legally or contractually bound to protect the Confidential Information as provided in this Section.

Confidential Information excludes information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to Recipient before its disclosure by Discloser without breach of any obligation owed to Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) is independently developed by Recipient without use of the Confidential Information. Recipient may disclose Confidential Information to the extent required by law or court order. Recipient will, if legally permitted, notify Discloser in advance of any such disclosure and cooperate reasonably with Discloser in seeking available protection for the Confidential Information.

- c. **Data Security.** OwnBackup will (i) implement and maintain appropriate security measures, including, without limitation, technical, physical, administrative and organizational controls, designed to maintain the confidentiality, security and integrity of Customer's Confidential Information, including Customer Data; (ii) implement and maintain systems and procedures for detecting, preventing and responding to attacks, intrusions, and system failures, and regularly test and monitor the effectiveness of such systems and procedures (including through vulnerability scans and penetration testing); (iii) designate employees to coordinate implementation and maintenance of its security; and (iv) identify internal and external risks to the security, confidentiality and integrity of Customer Data that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of Customer's Confidential Information, including Customer Data, and assess the sufficiency of systems and procedures in place to control these risks (collectively, **Security Measures**). More information on OwnBackup's security practices and policies is located at <https://www.ownbackup.com/company/security> Upon request, OwnBackup will provide Customer with a copy of its latest third-party SOC 2 audit report.
- d. **Data Breach.** If OwnBackup becomes aware that Customer Data was accessed or disclosed in breach of this Agreement, OwnBackup will so notify Customer without undue delay, immediately act to mitigate the breach and preserve forensic evidence, and provide information to Customer regarding the nature and scope of the breach.

## 6. OWNBACKUP PROPERTY

- a. **Reservation of Rights.** OwnBackup and its licensors are and remain the sole owners of the Services and their underlying software, including all intellectual property rights therein. Customer may not remove or modify any proprietary marking or restrictive legend in the Services. OwnBackup reserves all rights not expressly granted in this Agreement.
- b. **Restrictions.** Customer may not (i) sell, resell, rent or lease the Services or use them in a service provider capacity, (ii) use the Services to store or transmit infringing, unsolicited marketing emails, libelous, unlawful or tortious material, or to store or transmit material in violation of third-party rights, (iii) interfere with or disrupt the integrity or performance of the Services, (iv) attempt to gain unauthorized access to the Services or their related systems or networks, (v) reverse engineer or decompile the Services except as otherwise required by law, or (vi) access the Services to build a competitive service or product, or copy any feature, function or graphic for competitive purposes. OwnBackup may suspend Services to Customer if OwnBackup believes in good faith that Customer's use of the Services poses an imminent threat to the security, availability or legality of the Services; in such event, OwnBackup will work with Customer to address the issue and restore Services as quickly as possible.
- c. **Statistical Information.** OwnBackup may compile statistical information related to the performance of the Services, and may make such information publicly available so long as such information does not identify Customer, any individual or any Customer Confidential Information, including any Customer Data, and there are no means to re-identify the information or data. OwnBackup retains all intellectual property rights in such information.
- d. **Third-Party Services.** OwnBackup's Services interoperate with third-party services (e.g. Salesforce) (**Third-Party Services**) and depend on continuing availability of and access to the Third-Party Services, including application programming interfaces. If for any reason a Third-Party Service

ceases to be available for OwnBackup's Services on reasonable terms, OwnBackup may be unable to continue to provide all of the functions of its Services. If a Third-Party Service for which Customer has purchased OwnBackup's Services becomes permanently unavailable for interoperation with OwnBackup's Services (other than as a result of an act or omission of Customer), then Customer may terminate the affected Orders and OwnBackup will refund to Customer any prepaid and unused fees for such Orders. Customer must purchase Third-Party Services separately. Customer acknowledges that Customer Data will be copied from the Third-Party Services to OwnBackup's Services, that Third-Party Service providers are not responsible for the privacy, security or integrity of such copies of Customer Data in OwnBackup's Services, and that those copies of Customer Data are instead covered by the protections in this Agreement. OwnBackup's Services may automatically query Customer's Third-Party Service accounts for the sole purpose of validating the purchased quantity of OwnBackup's Services.

## **7. TERM AND TERMINATION**

- a. Term of this Agreement.** This Agreement continues until the 30<sup>th</sup> day after all Orders have expired, unless earlier terminated as provided below.
- b. Term of Orders.** The term of each Order shall be specified in the Order. Unless otherwise stated in an Order, (i) Orders and all subscriptions under them will automatically renew for additional one-year periods unless a party notifies the other of non-renewal 30 or more days before the renewal date, (ii) an automatically renewing Order will remain unchanged from the prior term except for any pricing increase of which OwnBackup has notified Customer 60 or more days before the renewal date, and (iii) upon automatic renewal, the per-unit pricing for any Service will not increase by more than 7% over that in the prior term unless the prior pricing was clearly designated in the Order as promotional or one-time.
- c. Termination for Material Breach.** If either party is in material breach of this Agreement, the other party may terminate this Agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
- d. Return of Customer Data.** Within 15 days after termination, upon written request OwnBackup will make the Services available for Customer to export Customer Data. After such 15-day period, OwnBackup has no obligation to maintain the Customer Data and will destroy the Customer Data after termination unless otherwise required by law.
- e. Effect of Termination.** If this Agreement is terminated for OwnBackup's breach, OwnBackup will refund Customer fees prepaid for the remainder of the term of all Orders after the termination effective date. If this Agreement is terminated for Customer's breach, Customer will pay any unpaid fees for the term of all Orders. Upon request following any termination of this Agreement, each party will destroy or return all of the other party's property that it holds, subject to the "Return of Customer Data" section above.

## **8. LIABILITY LIMIT**

- a. EXCLUSION OF INDIRECT DAMAGES.** To the maximum extent allowed by law, neither party is liable for any indirect, special, incidental or consequential damages arising out of or related to this Agreement (including, without limitation, costs of delay, and lost profits, revenue or anticipated cost savings), even if it knows of the possibility of such damage or loss.
- b. TOTAL LIMIT ON LIABILITY.** To the maximum extent allowed by law, each party's total liability arising out of or related to this Agreement (whether in contract, tort or otherwise) does not exceed the amount paid by Customer within the 12-month period before the event that gave rise to the liability. The foregoing does not limit Customer's payment obligations under Orders.

## **9. INDEMNIFICATION FOR THIRD-PARTY CLAIMS.**

OwnBackup will defend or settle any third-party claim against Customer to the extent that such claim alleges that OwnBackup technology used to provide the Services infringes a copyright, patent, trademark or other intellectual property right, if Customer promptly notifies OwnBackup of the claim in writing, cooperates with OwnBackup in the defense, and allows OwnBackup to solely control the defense or settlement of the claim. **Costs.** OwnBackup will indemnify and hold harmless Customer from any infringement claim defense costs incurred by OwnBackup in defending Customer, OwnBackup negotiated settlement amounts, and court awarded damages. **Process.** If such a claim appears likely, then OwnBackup may modify the Services, procure the necessary rights, or replace it with the functional equivalent. If OwnBackup determines that none of these are reasonably available, then OwnBackup may terminate the Services and refund any prepaid and unused fees. **Exclusions.** OwnBackup has no obligation for any claim arising from: OwnBackup's compliance with Customer's specifications; a combination of the Services with other technology or aspects where the infringement would not occur but for the combination; Customer Data; or technology or aspects not provided by OwnBackup. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND OWNBACKUP'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT.

## 10. WHO CUSTOMER IS CONTRACTING WITH, GOVERNING LAW AND JURISDICTION

- a. **General.** Who Customer is contracting with under this Agreement, what law will apply in disputes arising in connection with this Agreement, and where such disputes will be resolved, depend on where Customer is domiciled.

| If Customer is domiciled in:  | Customer is contracting with: | The governing law is:                              | The exclusive venue for resolving disputes is: |
|-------------------------------|-------------------------------|--|--|
| Any country other than Israel | OwnBackup Inc.                | Delaware and controlling United States federal law | State and Federal courts in Delaware, USA      |
| Israel                        | OwnBackup Ltd.                | Israel   | Courts in Israel                               |

- b. **Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

## 11. OTHER TERMS

- a. **Entire Agreement and Changes.** This Agreement and the Order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this Agreement. No representation, promise or inducement not included in this Agreement is binding. No modification of this Agreement is effective unless both parties sign it, and no waiver is effective unless the party waiving the right signs a waiver in writing.
- b. **No Assignment.** Neither party may assign or transfer this Agreement or an Order to a third party, except that this Agreement with all Orders may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all a party's assets, business, or stock not involving a competitor of the other party, or at any time to an Affiliate.
- c. **Export Compliance.** The Services and Confidential Information may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Neither party will permit its personnel or representatives to access any Service in a U.S.-embargoed country or in violation of any applicable export law or regulation.

- d. **Anti-Corruption.** The parties shall comply with all applicable laws relating to anti-bribery and anti-corruption. Each party represents that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate this restriction.
- e. **Notices.** Notices under this Agreement will be written and be effective on (i) personal delivery, (ii) the second business day after mailing, (iii) confirmed delivery by courier service, or (iv), except for notices of breach or an indemnifiable claim (**Legal Notices**), the day sent by email. Notices to OwnBackup will be addressed to its VP Customer Success, with a copy to its General Counsel, at the address first listed above, and to [success@ownbackup.com](mailto:success@ownbackup.com) (or [legal@ownbackup.com](mailto:legal@ownbackup.com) for notices of indemnifiable claims). Billing notices to Customer will be addressed to the relevant billing contact designated by Customer, and Legal Notices to Customer will be addressed to Customer and be clearly marked as Legal Notices. Other notices to Customer will be addressed to the account contact designated by Customer.
- f. **Independent Contractors.** The parties are independent contractors with respect to each other.
- g. **Enforceability and Force Majeure.** If any term of this Agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation, force majeure events.
- h. **Money Damages Insufficient.** Any breach by a party of this Agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- i. **No Additional Terms.** OwnBackup rejects additional or conflicting terms of any Customer form-purchasing document.
- j. **Order of Precedence.** An Order prevails in any inconsistency between it and this Agreement.
- k. **Survival of Terms.** Any terms that by their nature survive termination of this Agreement for a party to assert its rights and receive the protections of this Agreement, will survive (including, without limitation, the confidentiality and ownership terms within this Agreement). The UN Convention on Contracts for the International Sale of Goods does not apply.
- l. **Feedback.** If Customer provides feedback or suggestions about the Services, then OwnBackup (and those it allows to use its technology) may use such information without obligation to Customer.
- m. **Reference.** OwnBackup may use Customer's name and logo in its marketing communications and materials, in accordance with Customer's trademark guidelines and policies.
- n. **No Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.