



## Subscription Services Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE.

BY USING THE SERVICE OR CLICKING AGREE YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF OR FOR THE BENEFIT OF YOUR EMPLOYER OR AN ENTITY FOR WHOSE BENEFIT THIS SERVICE IS BEING USED, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE NECESSARY AUTHORITY TO AGREE TO THIS AGREEMENT ON THEIR BEHALF.

This agreement is between OwnBackup Inc., a Delaware corporation (**OwnBackup**), and the customer agreeing to these terms (**Customer**).

### 1. SOFTWARE SERVICE.

This agreement provides Customer access to and usage of an Internet based software service, which includes without limitation its user interface and features and functions, as specified on an order (**Service**).

### 2. USE OF SERVICE.

- a. **Customer Owned Data.** All electronic data and information authorized by Customer to be uploaded by the Service remains the property of Customer, as between OwnBackup and Customer (**Customer Data**). 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 Service.
- b. **Contractor Access and Usage.** Customer may allow its contractors and Affiliates to access the Services in compliance with the terms of this agreement, which access must be for the sole benefit of Customer. Customer is responsible for the compliance with this agreement by its contractors and Affiliates. **Affiliate** means any company controlled by or under common control with Customer, directly or indirectly, with an ownership interest of at least 50%.
- c. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is primarily responsible for Customer Data and all activity in its account in the Service; (iii) must 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 Service only in accordance with the Service's technical documentation and applicable law.
- d. **OwnBackup Support.** OwnBackup must provide customer support for the Service under the terms of OwnBackup's Customer Support Policy (**Support**), which is located at <http://www.ownbackup.com/support>
- e. **Trial Version.** If Customer has registered for a trial or proof of concept use of the 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 the Service for a fee under an order.

### 3. SERVICE LEVEL AGREEMENT & WARRANTY.

- a. **Warranty.** OwnBackup warrants to Customer: (i) that commercially reasonable efforts will be made to maintain the online availability of the Service for a minimum of availability in any given month as provided at this site <http://www.ownbackup.com/SLA.htm> (which terms are incorporated into this agreement for all purposes); and (ii) the Service, 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 ITS FAILURE TO MEET THE WARRANTY IN A(I) ABOVE WILL BE FOR OWNBACKUP TO PROVIDE A CREDIT FOR THE APPLICABLE MONTH AS PROVIDED IN THE LINK ABOVE (IF THIS AGREEMENT IS NOT RENEWED, THEN A REFUND), FOR THE MONTH.**
- b. **DISCLAIMER.** OWNBACKUP DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WHILE OWNBACKUP TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, OWNBACKUP DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.

#### 4. PAYMENT.

Customer must pay all fees as specified on the order, but if not specified then within 30 days of receipt of an invoice. Customer is responsible for the payment of all sales, use, withholding, VAT and other similar taxes. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement.

#### 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 Service (including without limitation the Service user interface design and layout, and pricing information).
- b. **Protection of Confidential Information.** The Recipient must 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 the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement. 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 the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order but will provide Discloser with advance notice to seek a protective order to the extent permitted by law.
- c. **Data Security.** In order to protect Customer's Confidential Information and Customer Data, OwnBackup will (i) implement and maintain all appropriate security measures, including without limitation, technical, physical, administrative and organizational controls, and will maintain the confidentiality, security and integrity of such Confidential Information; (ii) implement and maintain industry standard systems and procedures for detecting, preventing and responding to attacks, intrusions, or other systems failures and regularly test or otherwise monitor the effectiveness of such systems, and procedures (i.e., 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 such information, and assess the sufficiency of any 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 II audit report.
- d. **Data Breach.** If OwnBackup knows or has reason to know that Customer Data was accessed or disclosed without proper authorization and contrary to the terms of this agreement, OwnBackup will alert Customer of any data breach in accordance with OwnBackup's Incident Response Plan, and immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of the data breach. OwnBackup will provide Customer with all information reasonably necessary to enable Customer to fully understand the nature and scope of the data breach.

#### 6. OWNBACKUP PROPERTY.

- a. **Reservation of Rights.** The software provided by OwnBackup as part of the Service are the proprietary property of OwnBackup and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with OwnBackup. Customer may not remove or modify any proprietary marking or restrictive legends in the Service. OwnBackup reserves all rights unless expressly granted in this agreement.
- b. **Restrictions.** Customer *may not* (i) sell, resell, rent or lease the Service or use it in a service provider capacity; (ii) use the Service 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 Service; (iv) attempt to gain unauthorized access to the Service or its related systems or networks; (v) reverse engineer or decompile the Service; or (vi) access the Service if Customer is a direct competitor to OwnBackup or access the Service to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.

- c. **Statistical Information.** OwnBackup may compile statistical information related to the performance of the Service, and may make such information publicly available, provided that such information does not identify Customer's Confidential Information or any 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 Integrated Services.** The Service integrates with third-party services (e.g. Salesforce.com, ServiceNow, Microsoft Dynamics 365, etc.) with which Customer has a contract (**Third Party Services**) and depends on the continuing availability and access to such third-party service and any data or information interfaces. If for any reason OwnBackup cannot access or use the applicable Third-Party Service (including without limitation, change in terms or increase in fees charged by a third-party service provider), OwnBackup may not be able to provide all of the functions of its Service. No refund or credit will be provided for temporary unavailability of any Third Party Services (for example, third party maintenance windows), however if access to a Third Party Service is permanently not available (other than as a result of the act or omission of Customer) then Customer may terminate the affected order and OwnBackup will provide a refund to Customer of any prepaid and unused fees for that order. With respect to all Third-Party Services, Customer understands that the Customer Data will be transmitted outside of the Third-Party Service and into the Service, and OwnBackup and not such third-party service provider is responsible for the privacy, security or integrity of such data once it has left the Third-Party Service.

## **7. TERM AND TERMINATION.**

- a. **Term.** This agreement continues until all orders have expired or are terminated as specified in **Section 7(b)**.
- b. **Mutual 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.
- c. **Return of Customer Data.**
  - *Within 15-days after termination*, upon written request OwnBackup will make the Service available for Customer to export Customer Data as provided in **Section 2(a)**.
  - *After such 15-day period*, OwnBackup has no obligation to maintain the Customer Data and will destroy the Customer Data after termination.
- d. **Return OwnBackup Property Upon Termination.** Upon termination of this agreement for any reason, Customer must pay OwnBackup for any unpaid amounts, and destroy or return all property of OwnBackup. Upon OwnBackup's request, Customer will confirm in writing its compliance with this destruction or return requirement.

## **8. LIABILITY LIMIT.**

- a. **EXCLUSION OF INDIRECT DAMAGES.** To the maximum extent allowed by law, OwnBackup is not 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 and except for OwnBackup's indemnity obligations, OwnBackup'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 prior to the event that gave rise to the liability.

## **9. DEFENSE OF 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 Service violates 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 pay infringement claim defense costs incurred as part of its obligations

above, and OwnBackup negotiated settlement amounts, and court awarded damages. **Process.** If such a claim appears likely, then OwnBackup may modify the Service, 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 Service 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 Service with other technology or aspects where the infringement would not occur but for the combination; Use of 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 CLAIMS.

## 10. OTHER TERMS.

- a. **Customers located in the US - Governing Law and Forum.** This agreement is governed by the laws of the State of Delaware (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for New Castle County, Delaware, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.
- b. **Customer located outside the US - Governing Law and Arbitration.** This agreement is governed by the laws of the State of Delaware, without regard to conflict of laws principles. Any dispute between Customer and OwnBackup arising out of or related to this agreement must be exclusively determined by binding arbitration in the State of Delaware, US in English, under the then current international rules of The International Centre For Dispute Resolution. The decisions of the arbitrators may be entered in any court of competent jurisdiction. Nothing in this agreement prevents either party from seeking injunctive relief in any court of competent jurisdiction. The prevailing party in any arbitration or litigation is entitled to recover its attorneys' fees and costs from the other party.
- c. **License Validation.** The Service, as part of its standard functionality, automatically remotely queries Customer's account with the applicable Third-Party Service only to validate the purchased capacity of the Service.
- d. **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 or it is modified through an online process provided by OwnBackup, and no waiver is effective unless the party waiving the right signs a waiver in writing.
- e. **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 the assets, business, or stock of a party, or at any time to an Affiliate.
- 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.** If there is an inconsistency between this agreement and an order, the order prevails.
- 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 Service, 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.

Ver. 3/26/19