



## DOCTOR COMPUTER BACKUP –TERMS OF SERVICE

Thank you for using Doctor Computer Backup Services. These terms of service, which are incorporated herein by this reference and which Customer can access at [www.drcomputer.com](http://www.drcomputer.com) (collectively, the "Terms"), are a binding legal contract between Doctor Computer, and its affiliates (collectively, "Doctor Computer"), and the individual or legal entity (the "Customer" or "Customer's") who subscribes to, purchases, or uses the Doctor Computer Backup Services (the "Services"). By accessing or using the Services, Customer represents that they have the authority to enter into these Terms. If Customer do so on behalf of a legal entity, the Customer represents and warrants that they have the authority to accept these Terms on behalf of that legal entity.

These Terms govern Customer's use of the Services and any downloadable client software which is provided solely for the purpose of accessing the Services (a "Client"), and any updates and written documentation (together with the Client, the "Services"). Customer's continued use of the Services following modification to the Services or these Terms, constitutes the Customer's agreement to be bound by the application of the Terms to the modified Services or the modified Terms. To stay informed of any changes, please review the most current version of these Terms at [www.drcomputer.com/terms](http://www.drcomputer.com/terms). If the customer does not agree to be bound by these Terms, Customer may not use the Services.

### **OFFSITE BACKUP SERVICES**

**Doctor Computer will provide backup services to the Customer for the backup of the Customer's data. If required by the Customer, Doctor Computer will assist the Customer in setting up the data to be backed up by the Services. Even in the event that the backup is initially set up by Doctor Computer it remains the Customer's responsibility to determine what data and files they need to back up with the Services and to confirm that the Data/Files required to be backed up are backed up on an on-going basis. It is Doctor Computer's recommendation that the Services be used as a secondary backup in conjunction with a primary on-site internal backup device to ensure that their data is not lost due to system outage or other intervening circumstances.**

**MANAGED SERVICES CUSTOMERS -As part of providing the Managed Backup Services, Doctor Computer will monitor whether the Services are successfully completing backups. If the Services are not completing successful backups of the Customer's data then Doctor Computer will work to restart the backups by remotely accessing their computer or server. This support will be provided as part of the Managed Services contract. If the issue requires Doctor Computer to dispatch a technician on-site to resolve the issue than the service call will be billable at Doctor Computer's prevailing on-site service rates or under the terms of the Managed Services contract.**

**UNMANAGED BACKUP SERVICES CUSTOMERS - For Customers using only Doctor Computer's Unmanaged Backup Services Doctor Computer will not monitor the backup Services and it is the Customer's responsibility to work with the Client software to complete backups in situations where the automatic backups are not completing successfully. If the Customer requires Doctor Computer to assist them to determine why the Services are not completing successful backups of the Customer's data then the support service will be provided by Doctor Computer by remotely accessing their computer or server. This support will be provided as part of the Service. If the issue requires Doctor Computer to dispatch a technician on-site to resolve the issue than the service call will be billable at Doctor Computer's prevailing on-site service rates.**

### **CUSTOMER'S ACCOUNT**

**Compliance with Law.** Customer is solely responsible for ensuring that Customer's use of the Services is in compliance with all applicable federal, state and local laws, foreign laws, rules and regulations. The Services provide for the uploading and downloading of Customer Data, and the accessing, hosting, storing, sharing and/or publishing of such Customer Data. Customer

shall be solely responsible for Customer's Data. Doctor Computer does not endorse and has no control over the content of Customer Data submitted by other Customers. Doctor Computer assumes no responsibility whatsoever in connection with or arising from Customer Data or for actively monitoring Customer Data for inappropriate or illegal content.

**Customer's Account.** Customer agrees to provide Doctor Computer with accurate and complete information when Customer register for an Account. If Customer's contact information or other Account information changes, Customer must update Customer's Account details promptly. After Customer create an Account, Customer may upload, download and access content and materials (Customer's "Customer Data") for which Customer have a legal right to copy, publish, share, store, or otherwise use. Customer, not Doctor Computer, is solely responsible for Customer's Account and Customer Data. Doctor Computer is not liable for any loss or damage arising from any access to, sharing or use of, Customer's Account and Customer Data. If Customer believes that there has been unauthorized access to Customer's Account or Customer's Customer Data, Customer must notify Doctor Computer immediately. Charges for the Services will be based on the amount of data that is stored with Doctor Computer. The Service is designed so that if the Customer has additional data to back up that data will be added to the backup even if the amount of data exceeds the data limit in the plan agreed to. If data that is being backed up increases beyond the storage limits included in the agreed upon data plan then Doctor Computer can move the Customer to the next higher plan and increase the monthly charge to the cost of the plan with the next higher data limit.

**Customer's Subscription.** Customer's subscription to the Services will begin on the earliest of the day and time that (1) the Customer has Doctor Computer initiate the Service or (2) when Customer first use the Services. Initial subscriptions will last for a 1 year period (the "Subscription Period"). To ensure there is no disruption in the Customer's Service, Customer's subscription may automatically renew at the end of the Subscription Period on a monthly basis and Doctor Computer will charge the then-current renewal fees to the credit card associated with Customer's Account, unless the Customer cancels Customer's subscription. If Customer cancels their subscription, Doctor Computer is not obligated to refund subscription charges already paid and cancellation will take effect at the end of the current subscription period unless a sooner date is requested. After cancellation, Customer will no longer be able to use any Services or access Customer's Account or Customer backup data. Customer's subscription will automatically terminate or expire upon the earliest of (1) non-renewal, cancellation or expiration of a subscription or failure to pay subscription fees when due, if applicable, (2) Doctor Computer's discontinuation of the Services, or (3) failure to comply with these Terms. Customer acknowledge and agree that after non-renewal, cancellation or expiration of Customer's Subscription Period, Doctor Computer's policy is to automatically delete all Customer Data protected by Customer's Account that is stored on Doctor Computer servers or on Doctor Computer's third-party cloud storage providers.

**Backup Service Client.** Customer may be required to download a Client. The Client is licensed to Customer for the sole purpose of accessing the Services. The Services may automatically update the Client installed on Customer's computer, tablet, smartphone or any other electronic device (each, a "Device") when a new version is available. Customer may use the Services only in accordance with the then-current documentation and customer support available at [www.drcomputer.com](http://www.drcomputer.com). Doctor Computer may discontinue, suspend or modify the Services, any feature included in the Services, or the availability of the Services on any particular Device at any time and without notice to Customer. While not obligated to do so, Doctor Computer will endeavor to communicate any such actions to Customer by providing electronic notice to Customer or by posting relevant information to the Doctor Computer website.

### **DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY**

CUSTOMER'S INSTALLATION, USE AND ACCESS OF THE SERVICES IS AT CUSTOMER'S SOLE DISCRETION AND RISK AND CUSTOMER ARE SOLELY RESPONSIBLE FOR ANY DAMAGES TO CUSTOMER'S DEVICE, SOFTWARE AND THE LOSS OF CUSTOMER'S CUSTOMER DATA THAT RESULTS FROM THE USE THEREOF. DEPENDING ON THE SERVICES CUSTOMER CHOOSE TO UTILIZE, CUSTOMER'S CUSTOMER DATA MAY NOT BE AVAILABLE OR RESTORABLE IF (1) DOCTOR COMPUTER HAS NOT COMPLETED COPYING OR SYNCING CUSTOMER'S CUSTOMER

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DATA, (2) FOR FILES, FOLDERS OR DISK DRIVES THAT THE SERVICES DO NOT AUTOMATICALLY BACKUP OR SYNC PURSUANT TO DOCTOR COMPUTER DOCUMENTATION, CUSTOMER DO NOT MANUALLY SELECT THEM FOR BACKUP OR SYNCING OR CUSTOMER UNSELECT CERTAIN CUSTOMER DATA FOR BACKUP OR SYNCING, (3) CUSTOMER DELETES CERTAIN CUSTOMER DATA FROM CUSTOMER'S DEVICE AND DOES NOT RESTORE IT WITHIN 30 CALENDAR DAYS AFTER DELETION, OR CUSTOMER DELETE A DEVICE FROM CUSTOMER'S DOCTOR COMPUTER ACCOUNT, (4) CUSTOMER MOVE CUSTOMER DATA TO A LOCATION ON CUSTOMER'S DEVICE THAT IS NOT AUTOMATICALLY SCANNED TO SELECT FILES FOR BACKUP OR SYNCING, OR CUSTOMER UPGRADE CUSTOMER'S OPERATING SYSTEM RESULTING IN CHANGES TO CUSTOMER'S FILE MAPPING, (5) CUSTOMER'S DEVICE IS UNABLE TO ACCESS THE INTERNET OR NETWORK SERVICE, (6) THE SERVERS PROVIDING THE BACKUP SERVICE ARE UNABLE TO MAKE A CONNECTION WITH CUSTOMER'S DEVICE, (7) CUSTOMER FAILS TO FOLLOW THE TECHNICAL REQUIREMENTS FOR UTILIZING THE BACKUP SERVICES, INCLUDING UPGRADING THE VERSION OF THE SERVICES AS REQUIRED AND PERIODICALLY TESTING CUSTOMER'S BACKUPS AND RESTORES, OR (8) CUSTOMER TERMINATE CUSTOMER'S LICENSE OR FAIL TO RENEW CUSTOMER'S SUBSCRIPTION TO THE SERVICES.

THE SERVICES MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. CUSTOMER ACKNOWLEDGE AND AGREE THAT DOCTOR COMPUTER DOES NOT OPERATE OR CONTROL THE INTERNET AND THAT (1) VIRUSES, WORMS, TROJAN HORSES AND OTHER UNDESIRABLE DATA OR SOFTWARE, OR (2) UNAUTHORIZED CUSTOMERS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE CUSTOMER'S CUSTOMER DATA, WEBSITES, DEVICES AND NETWORKS. DOCTOR COMPUTER IS NOT RESPONSIBLE FOR SUCH ACTIVITIES. CUSTOMER IS SOLELY RESPONSIBLE FOR THE SECURITY AND INTEGRITY OF CUSTOMER'S ACCOUNT, CUSTOMER'S CUSTOMER DATA AND CUSTOMER'S DEVICES. CUSTOMER ACKNOWLEDGES AND AGREES THAT DOCTOR COMPUTER SHALL HAVE NO LIABILITY ASSOCIATED WITH OR ARISING FROM CUSTOMER'S FAILURE TO MAINTAIN ACCURATE CONTACT OR OTHER INFORMATION, INCLUDING, BUT NOT LIMITED TO, CUSTOMER'S FAILURE TO RECEIVE CRITICAL INFORMATION ABOUT THE SERVICES. THE SERVICES AND THIRD-PARTY COMPONENTS ARE PROVIDED "AS IS," "WHERE IS," "AS AVAILABLE," "WITH ALL FAULTS" AND, TO THE FULLEST EXTENT PERMITTED BY LAW, WITHOUT WARRANTY OF ANY KIND. DOCTOR COMPUTER DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SERVICES AND THIRD-PARTY COMPONENTS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES REGARDING RELIABILITY, TIMELINESS AND PERFORMANCE OF THE SERVICES. DOCTOR COMPUTER DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SERVICES WILL BE CORRECTED, OR THAT ENCRYPTION ALGORITHMS, ASSOCIATED KEYS AND OTHER SECURITY MEASURES WILL BE SECURE OR EFFECTIVE. CUSTOMER UNDERSTAND AND AGREE THAT NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY DOCTOR COMPUTER SHALL CREATE ANY ADDITIONAL DOCTOR COMPUTER WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF DOCTOR COMPUTER'S OBLIGATIONS HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL DOCTOR COMPUTER BE LIABLE TO CUSTOMER OR ANY THIRD-PARTY FOR ANY COST TO PROCURE SUBSTITUTE SERVICES OR CUSTOMER DATA, OR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR ANY OTHER DAMAGES, INCLUDING DAMAGES FOR PERSONAL INJURY, LOST REVENUES OR PROFITS, LOSS OF DATA, LOSS OF CUSTOMER DATA OR BUSINESS INTERRUPTION, ARISING OUT OF CUSTOMER'S USE OR INABILITY TO USE THE SERVICES, EVEN IF DOCTOR COMPUTER HAS BEEN ADVISED ABOUT THE POSSIBILITY OF SUCH DAMAGES (WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE). IN ANY CASE AND WITHOUT LIMITING THE FOREGOING, THE ENTIRE LIABILITY OF DOCTOR COMPUTER FOR ALL DAMAGES OF EVERY KIND AND TYPE (WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) SHALL BE LIMITED TO THE SUBSCRIPTION FEES PAID BY CUSTOMER TO DOCTOR COMPUTER IN THE 6 CALENDAR MONTHS IMMEDIATELY PRIOR TO THE DAMAGES ARISING.

THE FOREGOING TERMS SET A LIMIT ON THE AMOUNT OF DAMAGES PAYABLE AND ARE NOT INTENDED TO ESTABLISH LIQUIDATED DAMAGES. CUSTOMER EXPRESSLY RECOGNIZES AND ACKNOWLEDGES THAT SUCH LIMITATION OF LIABILITY IS AN ESSENTIAL PART OF THESE TERMS AND DOCTOR COMPUTER'S AGREEMENT TO PROVIDE CUSTOMER THE SERVICES, AND IS AN ESSENTIAL FACTOR IN ESTABLISHING THE PRICE OF THE SERVICES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR THE LIMITATION ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE FOREGOING TERMS MAY NOT APPLY TO CUSTOMER.

#### INDemnIFICATION

Customer will, at Customer's own expense, defend, indemnify and hold harmless the Company, affiliates and agents, and their respective officers, shareholders, agents, and employees (each, an "Indemnitee"; and collectively, "Indemnitees") from and against any and all loss, cost, expense, damage, claim, demand, or liability, including (without limitation) reasonable attorney and professional fees and costs, and the cost of settlement, compromise, judgment, or verdict incurred by, or demanded of, an Indemnitee, that, directly or indirectly, arises out of, results from or occurs in connection with: (a) Customer's negligence, bad faith or willful misconduct; (b) Customer's breach of any of the provisions of this Agreement; (d) Customer's use of the Services or any Doctor Computer service, in any manner whatsoever. We reserve the right, at our own cost and in our sole and absolute discretion, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Customer, in which event Customer will fully cooperate with us in asserting any available defenses, and reimburse our reasonable costs and expenses (including, without limitation, reasonable attorney and professional fees) in connection with, relating to or arising from our defense in such matter.

#### GENERAL LEGAL TERMS

**Governing Law and Arbitration.** These Terms shall be governed, construed and enforced in accordance with the laws of the State of Pennsylvania without reference to conflicts of law principles. The parties agree that the exclusive jurisdiction of any actions arising out of, relating to or in any way connected with these Terms, shall be in the state or federal courts, as applicable, located in Chester or Philadelphia County, PA. Any dispute, controversy or claim arising out of or relating to this Agreement, including the arbitrability of the matter or the formation, interpretation, scope, applicability, termination or breach thereof, shall be referred to and finally determined by arbitration in accordance with the JAMS Streamlined Arbitration Rules and Procedures. The arbitration shall be administered by JAMS, shall take place before a sole arbitrator and shall be conducted in Boston, Massachusetts. Judgment upon the arbitral award may be entered by any court having jurisdiction. This section shall apply to and require arbitration of all disputes, controversies and claims, regardless of whether such disputes, controversies or claims concern a single individual, entity or other person, multiple individuals, entities or other persons, or classes of individuals, entities or other persons.

**Changes or Modifications.** The Company may, in its sole and absolute discretion, modify or change any or every aspect of the Agreement at any time (for any reason or no reason), effective immediately upon posting such modifications or changes (or a revised version of this Agreement incorporating such modifications or changes therein) on or through the Services. Please periodically consult the end of this Agreement to determine when the Agreement was last revised. Customer agree to periodically review this Agreement to ensure that Customer is in compliance with any ongoing changes or modifications that are made to the Agreement. Customer's continued use of the Services after any such modifications or changes are posted will constitute Customer's complete and unequivocal acceptance of such any modifications or changes to the Agreement. The Company reserves the right, but has no obligation whatsoever, to modify or change the Agreement as it applies to any specific Customer, provided that any and all such special modifications must be in writing and signed by and between the Company and the applicable Customer. Any specialized modifications so made shall apply exclusively and only to the Customer that is a party to such written agreement.

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**Termination.** Doctor Computer may, immediately and without notice to Customer, terminate Customer's access to and use of the Services, including if Customer (1) misrepresent Customer's identity, impersonate any person or attempt to gain access to or illegally track any Account, computers or networks related to the Services, without authorization, (2) use or manipulate a Service in any manner not specified by Doctor Computer, (3) use the Services for any illegal purpose, or to store, backup or distribute any illegal or unauthorized files or data, (9) alter or modify any disabling mechanism which may be included in the Services.

**General.** These Terms constitute the entire understanding of the parties and supersede all prior and contemporaneous written and oral agreements with respect to the subject matter hereof. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of these Terms. If one or more of the provisions herein shall be held invalid, illegal or unenforceable in any respect, the validity, legality and enforcement of the remaining provisions shall not be affected or impaired. Any inconsistency between these Terms in English and these Terms in any other language shall, to the fullest extent permitted by applicable law, be resolved by reference to the English version. The failure to enforce or the waiver by either party of a default or breach of the other party shall not be considered to be a waiver of any subsequent default or breach. Customer may not assign or delegate any rights or obligations under the Terms. Any purported assignment and delegation shall be ineffective. Doctor Computer may freely assign or

delegate all rights and obligations under the Terms, fully or partially, with or without notice to Customer. Doctor Computer may also substitute, by way of novation, any third-party that assumes our rights and obligations under these Terms. If Customer or Doctor Computer cannot perform its obligations under these Terms because of any act of God, accident, strike, court order, fire, riot, war, failure of third-party equipment or any other cause not within the affected party's reasonable control and that could not be avoided through the exercise of reasonable care and diligence, then the non-performing party will, if possible and reasonable, (1) promptly notify the other party, (2) take reasonable steps to resume performance as soon as possible, and (3) not be considered in breach during the duration of the Force Majeure Event. If a Force Majeure Event continues for five (5) days, Doctor Computer may terminate Customer's subscription to the Services and these Terms by providing electronic notice to Customer. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT. The following provisions shall survive termination or expiration of this Agreement: Customer's Account, Customer's Subscription, Customer's Conduct, Doctor Computer Property, Disclaimer of Warranties; Limitation of Liability; and General Legal Terms.

#### **DOCTOR COMPUTER**

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