



The Mobile PC Guys

Computer Repair - Websites - IT Equipment Sales

731-588-4200 1-877-433-9795

www.themobilepcguys.com

215 Hawks Rd Suite 10B
P.O. Box 127
Martin, Tennessee 38237

Effective Date: 8/8/2015

Offsite Managed Backup Service Terms and Conditions

READ THE TERMS AND CONDITIONS OF THIS TERMS OF SERVICE AGREEMENT ("AGREEMENT") CAREFULLY BEFORE USING THIS ONLINE BACKUP SOFTWARE ("PRODUCT(S)"). BY CHECKING THE "I accept the agreement" SELECTION AND CLICKING THE "Agree" BUTTON OR ACCESSING, USING OR INSTALLING ANY PART OF THE PRODUCT, YOU: (1) EXPRESSLY AGREE TO AND CONSENT TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT; (2) ACKNOWLEDGE THAT YOU HAVE CAREFULLY READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT; AND (3) ACKNOWLEDGE THAT YOU ARE AN AUTHORIZED REPRESENTATIVE OF YOUR ORGANIZATION AND/OR HOUSEHOLD WITH THE AUTHORITY TO EXECUTE THIS AGREEMENT ON ITS BEHALF. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, YOU MUST IMMEDIATELY EXIT THE SETUP PROCESS AND YOU MAY NOT ACCESS, USE, OR INSTALL ANY PART OF THE PRODUCT. THIS LICENSE AGREEMENT IS SUBJECT TO CHANGE WITHOUT NOTICE.

This Agreement is made by and between Mobile PC Guys, Inc. ("The Mobile PC Guys Managed Backup") and the end user, either an individual or an entity ("Customer"). This Agreement sets forth the terms and conditions pursuant to which The Mobile PC Guys Managed Backup shall provide the Product to Customer.

Product License Grant. The Mobile PC Guys Managed Backup hereby grants to Customer a limited, nonexclusive, royalty-free license to use the executable code version of the Product as authorized in this Agreement. This Agreement does not sell, transfer, or convey rights of ownership in the Product.

Scope of Use.

The term "Product(s)" as used herein is meant to include this Online Backup software, website and all other documentation, features, tools, and any other Online Backup service provided by The Mobile PC Guys Managed Backup or its authorized resellers, distributors, and licensees.

Customer may distribute the Product to third-parties only where such third-parties are aware of, and agree to be bound by, the terms and conditions contained in this Agreement. Such distribution shall include all files associated with the Product. All trademarks, service marks, patents, copyright and other proprietary notices must be reproduced when making copies in whole or in part.

Customer may only use the Product in accordance with its intended use as documented by The Mobile PC Guys Managed Backup and delivered as part of the Product. You may not use the Product for any unlawful purpose. The Product may not be used to store, backup, or distribute child pornography or other illegal content. Customer agrees to comply strictly with all such laws and regulations.

Customer may not modify the Product, any accompanying documentation, or any file utilized in the delivery or distribution of the Product or any accompanying documentation, without the express written consent of an authorized representative of The Mobile PC Guys Managed Backup.

Customer may not reverse engineer, decompile, or take any other steps consistent with an attempt to reveal any confidential, trade secret, or other non-public information associated with the Product. Further, Customer may not assist any other party attempting to reverse engineer, decompile, or take any other steps consistent with an attempt to reveal any confidential, trade secret, or other non-public information associated with the Product. Should Customer become aware of any activity in violation of this term, whether or not under Customer's control or authorization, Customer shall inform The Mobile PC Guys Managed Backup of such activity and assist The Mobile PC Guys Managed Backup in terminating such activity and protecting The Mobile PC Guys Managed Backup's rights.

Customer may not sell, rent, lease, or otherwise charge for the distribution, installation, use, copying, or storage of the Product, without the express written consent of an authorized representative of The Mobile PC Guys Managed Backup. Such consent may require license costs and other associated fees.

Customer may not sell, rent, lease, distribute, or use the Product, nor cause the Product to be sold, rented, leased, distributed, or used, where such sale, rental, lease, distribution, or use is prohibited by any statute or governmental agency of the United States or other international, national, or local entity having jurisdiction at the point of sale, rental, lease, distribution, or use, nor may Customer sell, rent, lease, distribute, or use the Product where Customer is aware that such sale, rental, lease, distribution, or use is likely to result directly or indirectly in a sale, rental, lease, distribution, or use prohibited by any statute or governmental agency of the United States or other international, national, or local entity having jurisdiction at the point of initial or subsequent sale, rental, lease, distribution, or use.

Term and Termination.

The term of this Agreement shall be for the period of twelve (12) months, unless another term is specified in an applicable Service Order ("Term").

Absent issuance of written notice otherwise, this Agreement shall automatically renew for the entire term as listed in Section 3.a, or The Mobile PC Guys Managed Backup may elect a shorter renewal term length of The Mobile PC Guys Managed Backup's choosing, by notifying You in writing. The Mobile PC Guys Managed Backup may increase fees and charges associated with any applicable Service unless a Service Order(s) has been executed with a Commitment Discount line item.

Termination by Default. If Customer materially defaults in the performance of any of Customer's duties or obligations under this Agreement or applicable Service Order(s), and Customer does not cure the default within thirty (30) days after written notice is given to Customer specifying the default, The Mobile PC Guys Managed Backup may without further notice terminate this Agreement and/or any applicable Service Order(s). Customer will remain liable for all unpaid charges through the end of the term, or any termination charges outlined in the Service Order(s).

Termination by The Mobile PC Guys Managed Backup. The Mobile PC Guys Managed Backup may terminate this Agreement at any time and for any reason without notice to Customer. Customer will remain liable for all unpaid amounts for Services through the termination date.

Termination by Customer. Customer may terminate this agreement at any time by serving written notice to The Mobile PC Guys Managed Backup seven (7) days before billing date. Customer will remain liable for all unpaid amounts for Services through the end of the Term.

Obligations Upon Termination. Customer will, at its own expense, uninstall, return, delete, or destroy all copies of the Product, or any portion of the Product, remaining in Customer's possession or under Customer's control, including all distribution media containing distributable copies of all or any portion of the Product.

The Mobile PC Guys Managed Backup shall cease all performance of the terminated service. The Mobile PC Guys Managed Backup shall be entitled to retain a copy of any information from Customer for archival purposes only.

Ownership and Confidential Information. The Mobile PC Guys Managed Backup owns the Product under copyright laws, trade secret laws, and all other laws that may apply. All product names, designs, and logos associated with the Product are considered valuable intellectual property of their respective owners and should be treated as such. No right, license, or interest to such intellectual property is granted hereunder, and Customer agrees that no such right, license, or interest shall be asserted by Customer with respect to such intellectual property. The source code of the Product and all information regarding the design, structure and internal operation of the Product are valuable trade secrets of The Mobile PC Guys Managed Backup or third parties with which The Mobile PC Guys Managed Backup has licensing arrangements ("Confidential Information"). Confidential Information shall not include information which: (1) was publicly known or otherwise known to Customer prior to the time of disclosure by The Mobile PC Guys Managed Backup; (2) subsequently became known to Customer through no act or omission by Customer; or (3) otherwise became known to Customer other than through disclosure by The Mobile PC Guys Managed Backup without violation of any party's obligations to The Mobile PC Guys Managed Backup. Customer shall not sell, transfer, publish, disclose, display or otherwise permit access to any Confidential Information by any third party, nor use any of the Confidential Information, except strictly as part of the Product in the form originally distributed by The Mobile PC Guys Managed Backup.

Disclaimer of Warranty. THE PRODUCT AND RELATED DOCUMENTATION ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND. The Mobile PC Guys Managed Backup DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. The Mobile PC Guys Managed Backup, DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE PRODUCT OR DOCUMENTATION WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE OPERATION OF THE PRODUCT WILL BE ERROR-FREE, COMPLETE, OR THAT DEFECTS IN THE PRODUCT OR DOCUMENTATION WILL BE CORRECTED.

Limitation of Liability. UNDER NO CIRCUMSTANCES SHALL The Mobile PC Guys Managed Backup, OR ANY OTHER PERSON OR ENTITY INVOLVED IN THE CREATION, PRODUCTION, OR DELIVERY OF THE PRODUCT BE LIABLE FOR ANY LOST REVENUE OR PROFITS OR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OR INABILITY TO USE THE PRODUCT OR RELATED PRODUCTS OR DOCUMENTATION, EVEN IF SAFEBAKUP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL

DAMAGES SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY. IN NO EVENT SHALL The Mobile PC Guys Managed Backup's TOTAL LIABILITY TO CUSTOMER FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE AMOUNT PAID OVER ONE YEAR FOR THE PRODUCT, INCLUDING MEDIA FEES.

Customer will indemnify, defend and hold harmless The Mobile PC Guys Managed Backup, its directors, officers, employees, affiliates and customers (collectively, the "The Mobile PC Guys Managed Backup Covered Entities") from and against any losses caused by Customer or Customer's personnel, and any and all claims and liabilities, actions or demands brought against any of the The Mobile PC Guys Managed Backup Covered Entities alleging: (a) with respect to the Customer's business: (i) infringement or misappropriation of any intellectual property rights; (ii) defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity; or (iii) spamming or any other offensive, harassing or illegal conduct or violation of the Acceptable Use Guidelines; (b) any loss suffered by customer, customer's equipment or any other customer's representatives, employees or agents, which loss, damage or injury is caused by or otherwise results from acts or omissions by Customer, Customer representative(s) or Customer's designees; (c) any personal injury suffered by any Customer personnel arising out of such individual's activities related to the Services, unless such injury is caused by The Mobile PC Guys Managed Backup' negligence or willful misconduct; or (d) any other damage arising from the Customer Equipment or Customer's business, (collectively, the "Customer Covered Claims"). Customer agrees to reimburse The Mobile PC Guys Managed Backup for the expense and cost of handling such claims including, reasonable legal fees.

Specific Disclaimer of Warranty for High Risk Activities. The Product is not fault-tolerant and is not designed, manufactured or intended for use on equipment or devices running in hazardous or financial environments requiring fail-safe performance, including but not limited to the operation of banks, financial institutions, insurance regulated businesses, nuclear facilities, aircraft navigation or communication systems, air traffic control systems, direct life support machines, or weapons systems, in which the failure of the Product could contribute to death, personal injury, severe financial loss, or severe physical or environmental damage ("High Risk Activities"). The Mobile PC Guys Managed Backup AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF DESIGN, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE OF THE PRODUCT FOR HIGH RISK ACTIVITIES. The Mobile PC Guys Managed Backup DOES NOT AUTHORIZE USE OF THE PRODUCT FOR ANY HIGH RISK ACTIVITY. CUSTOMER AGREES TO DEFEND AND INDEMNIFY The Mobile PC Guys Managed Backup, AND HOLD The Mobile PC Guys Managed Backup HARMLESS, FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, LOSSES, COSTS JUDGMENTS AND DAMAGES OF ANY KIND IN CONNECTION WITH USE IN RELATION TO ANY HIGH RISK ACTIVITY OF ANY COPY OF THE PRODUCT RELATING TO THIS AGREEMENT.

Export Controls. You shall comply with all export laws and restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control ("OFAC"), or other United States or foreign agency or authority, and not to export, or allow the export or re-export of the Product in violation of any such restrictions, laws or regulations.

Surviving Terms. The provisions set forth in the following sections and any other right or obligation of the parties in this agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 2, Section 3, Section 4, Section 5, Section 6, Section 7, Section 8, Section 9, and Section 11.

Miscellaneous.

Law and Jurisdiction. This Agreement and any dispute relating to the Product or to this Agreement shall be governed by the laws of the United States and the laws of the State of Texas, without regard to choice of law rules. Customer agrees and consents that jurisdiction and proper venue for all claims, actions and proceedings of any kind relating to The Mobile PC Guys Managed Backup or the matters in this Agreement shall be exclusively in courts located in Fort Worth, Texas. If a court with the necessary subject matter jurisdiction over a given matter cannot be found in Jackson, then jurisdiction for that matter shall be exclusively in a court with the proper jurisdiction as close to Fort Worth as possible, and within Texas, if possible.

If any part or provision of this Agreement is held to be unenforceable for any purpose, including but not limited to public policy grounds, then both parties agree that the remainder of the Agreement shall be fully enforceable as if the unenforceable part or provision never existed.

This Agreement shall be binding on the parties and their respective successors and assigns. The Mobile PC Guys Managed Backup may assign this Agreement, without the prior written consent of the Customer.

Force Majeure. Neither party shall be liable to the other party for any delay, failure in performance, loss, or damage to the extent caused by force majeure conditions such as acts of God, fire, explosion, power blackout, cable cut, acts of regulatory or governmental agencies, unavailability of right-of-way, unavailability of services or materials upon which the Services rely, or other causes beyond the party's reasonable control, except that Your obligations to pay for Services provided shall not be excused. Changes in economic, business or competitive condition shall not be considered force majeure events.

Limitation Period. Neither party may institute any action in any form arising out of this Agreement more than one (1) year after the cause of action has arisen, or in the case of nonpayment, more than one (1) year from the date of last payment.

Conflicting Terms. In the event of a conflict between this Agreement, Service Order(s), and/or any Policy, the conflict shall be resolved by the following order of precedence:

Service Order(s), then this Agreement, then any Policy.

Entire Agreement. This Agreement, together with any Service Order(s), SLA(s), and Policies, and all applicable tariffs incorporated herein by this reference, sets forth the entire agreement of the parties with respect to the subject matter hereof, and supersedes any prior agreements, promises, representations, understandings and negotiations between the parties. Nothing herein is intended to confer upon any person other than the Parties any rights or remedies hereunder.

Accounts, Passwords and Security. You must be a registered user to access the Service. You are responsible for keeping all password(s) secure. You will be solely responsible and liable for any activity that occurs under your user name. If you lose your password(s) or the encryption key for your account, you may not be able to access your data or restore your data. The Mobile PC Guys Managed Backup shall not be liable for any damages (including damages for not being able to restore backup data or the disclosure of confidential information) resulting from loss/corruption/compromise of any password or encryption key.

The Mobile PC Guys Managed Backup reserves the right at any time to modify this Agreement in its sole discretion, without liability to you. This Agreement, as amended, will be effective upon acceptance of registration for new users and effective for all existing users 7 days after the posting of any amended terms on the The Mobile PC Guys Managed Backup.com website. You agree to be bound by this Agreement, as modified. If you do not agree to any changes to this Agreement, you must terminate your account immediately.

No Third Party Beneficiaries. There are no third party beneficiaries of any promises, obligations or representations made by The Mobile PC Guys Managed Backup herein.

Heirs and Assigns. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this paragraph shall be construed as a consent by The Mobile PC Guys Managed Backup to any assignment of this agreement except as provided hereinabove.