



P.O. Box 1695
Wapakoneta, OH 45895

REMOTE DATA PROTECTION SERVICE AGREEMENT

NOTICE TO SUBSCRIBER: CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS GOVERNING THE USE OF E-STORAGE ONLINE SERVICE. UTILIZATION OF THE SERVICE CONSTITUTES ACCEPTANCE OF THESE TERMS AND CONDITIONS.

1. **Service Provided.** Use of this Remote Data Protection Service (the "Service") consists of the right of a Subscriber of the Service ("Subscriber") and its designated users to electronically transmit and store computer data for archival and backup purposes, using either a private data communications network or the Internet, into one or more server computers maintained by E-Storage Backup, and to retrieve said data subject to applicable fees. Subscriber is responsible for and must provide all telephone, Internet, and other equipment and services necessary to access the Service, at Subscriber's expense. Subscriber shall have access to data stored on E-Storage Backup's servers for restoration purposes via the Internet at no charge. Any data restoration involving creation of physical media will incur a service fee.

2. **Limited License.** Subscriber agrees to install and use the software only on devices licensed under this Agreement. E-Storage Backup may provide certain software to Subscriber to facilitate use of the Service (the "Software"). E-Storage Backup hereby grants Subscriber a limited license to use the Software solely in connection with utilization of the Service during the term of this Agreement, and for no other purpose. Upon termination of this Agreement for any reason, Subscriber shall immediately cease all use of the Software, and shall promptly uninstall and delete all copies thereof in Subscriber's possession or under its control to avoid possible interaction with other components of the Subscriber's computer system. E-Storage Backup shall not be responsible for any damage to Subscriber's computer system or loss of Subscriber's data due to Subscriber's use of the Services including, but not limited to, any interactions between the Software and Subscriber's computer system.

3. **Terms of Agreement.** This Agreement shall have an initial term of one (1) year from the date hereof. The term shall be automatically renewed on a yearly basis thereafter, unless Subscriber notifies E-Storage Backup, in writing at least thirty (30) days prior to the end of the current term of its intention to terminate this Agreement. Prices in a renewal year shall be at the then most current price schedule. E-Storage Backup reserves the right to terminate this Agreement for any reason with a written notice to Subscriber at least thirty (30) days prior to such termination. If this Agreement is terminated for any reason, at the time of such termination the Subscriber shall have no access to data stored on E-Storage Backup servers and the data will be erased.

4. **Pricing and Payment.** Subscriber shall pay all registration, setup, subscription, usage and other fees and charges incurred by Subscriber or Subscriber's designated users.

5. **Dishonor and Non-Payment.** In the event that the financial institution issuing Subscriber's credit card, electronic payment account or check declines to honor any check or charge by E-Storage Backup (including the reversal of payment of a prior charge based upon a dispute of such charge by the Subscriber), E-Storage Backup may, at its sole discretion and without prior notice to the Subscriber: (a) suspend its performance under this Agreement and deny Subscriber's and Subscriber's designated users' access to and use of the Service until all payment issues have been resolved, or (b) terminate this Agreement including all further right of Subscriber and Subscriber's designated users' to access and the use of the Service. For situations where the Subscriber's credit card or check issuing financial institution has been notified of a payment dispute, said Subscriber agrees that proof of Service usage by Subscriber constitutes proof of Subscriber's authorization for E-Storage Backup to submit payment requests to Subscriber's credit card or check issuing financial institution with respect to such usage.

6. **Pricing Changes.** From time-to-time and at the sole discretion of E-Storage Backup, E-Storage Backup may change its pricing with respect to the Service or any component thereof.



7. **No Refunds for Service Interruptions.** Due to the nature of the Internet and the technology utilized in connection with the Service, or to other matters beyond E-Storage Backup's control, service interruptions may occur. No full, partial, or prorated refunds will be made as adjustment for any such Service interruption. Subscriber hereby acknowledges that where changes in the nature of the Service occur due to matters which are beyond the control of E-Storage Backup, such changes do not constitute grounds for any full or partial refund of any fees previously paid.

8. **Responsibility for Confidentiality of Subscriber's Data.** E-Storage Backup shall take reasonable steps to protect the confidentiality of Subscriber's data, including archive or backup copies of such data. Notwithstanding the foregoing, however, Subscriber shall be solely responsible for maintaining the confidentiality of Passwords utilized by Subscriber with respect to the Service, including restricting knowledge of Passwords to Subscriber's designated users. Subscriber shall be solely responsible for all use of the Service accessed through Subscriber's Password. **E-STORAGE BACKUP NEITHER ASSUMES NOR ACCEPTS ANY RESPONSIBILITY OR OBLIGATION TO SUBSCRIBER, SUBSCRIBER'S DESIGNATED USERS, OR OTHER USERS OF THE SERVICE TO MONITOR, SUPERVISE OR OVERSEE THE USAGE OF THE SERVICE OR THE CONTENTS OF FILES STORED ON THE SERVICE. E-STORAGE BACKUP'S STAFF HAVE NO ABILITY TO OBTAIN OR RECOVER/RETRIEVE PASSWORDS AND WITHOUT THE CORRECT PASSWORD, SUBSCRIBER'S DATA WILL REMAIN ENCRYPTED AND INACCESSIBLE.**

9. **Restrictions Upon Use of Service, Indemnification.** Subscriber shall not use the Service for storage, possession or transmission of any information, the possession, creation or transmission of which violates any state, local or federal law, including without limitation, stolen materials, obscene materials or child pornography. **SUBSCRIBER'S BACKUP FILES MAINTAINED BY E-STORAGE BACKUP ARE SUBJECT TO EXAMINATION BY LAW ENFORCEMENT OFFICIALS OR OTHERS WITHOUT SUBSCRIBER'S CONSENT, UPON PRESENTATION TO SUBSCRIBER OR E-STORAGE BACKUP OF A SEARCH WARRANT OR SUBPOENA.** Subscriber agrees to indemnify and hold E-Storage Backup harmless against any cost or liability (including attorney's fees) arising out of use of the Service by Subscriber, it's employees or agents for any unauthorized or illegal purpose, or arising out of the need to respond to a search warrant or subpoena with respect to data stored by Subscriber or any user having access to Subscriber's account.

10. **Loss of Subscriber's Data.** No bailment or similar obligation is created between Subscriber (and/or Subscriber's designated users) and E-Storage Backup with respect to Subscriber's stored data. E-Storage Backup strongly recommends that Subscriber maintain an alternative electronic file backup of all data stored using the Service as well as data not stored using this service. **Subscriber should not utilize the Service as a substitute for primary electronic file BACKUP.** The Subscriber agrees to report any errors arising in course of use of the software promptly by phone, fax or e-mail to E-Storage Backup. The Subscriber will ensure the communication services used to connect to E-Storage Backup site are error free and reliable. **E-STORAGE BACKUP SHALL NOT BE RESPONSIBLE FOR THE LOSS OF SUBSCRIBER'S DATA STORED USING THE SERVICE, DUE TO ANY CAUSE BEYOND E-STORAGE BACKUP REASONABLE CONTROL.** E-Storage Backup shall not be responsible for loss of data not properly backed up due to Subscriber's failure to maintain the data size below the allocated storage quota. E-Storage Backup shall not be responsible for maintaining the NTFS file security information of Subscriber's data. E-Storage Backup may, but shall not be obligated to make copies of all data files stored as part of the backup and recovery of servers utilized in connection with some of the Services. Subscriber shall have no right to access such backup files. **AFTER THE TERMINATION OF THIS AGREEMENT THE SUBSCRIBER SHALL HAVE NO ACCESS TO DATA STORED BY E-STORAGE BACKUP AND SUCH DATA WILL BE DESTROYED WITHIN THIRTY (30) DAYS AFTER SUCH TERMINATION. THEREFORE, THE SUBSCRIBER SHALL DOWNLOAD ALL NECESSARY DATA PRIOR TO THE AGREEMENT'S TERMINATION DATE.**

11. **Disclaimer of Warranties.** **SUBSCRIBER EXPRESSLY AGREES THAT USE OF THE SERVICE IS AT SUBSCRIBER'S SOLE RISK. NEITHER E-STORAGE BACKUP NOR ANY OF ITS LICENSORS, EMPLOYEES, OR AGENTS WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. NOR DO E-STORAGE BACKUP OR ANY OF ITS LICENSORS, EMPLOYEES OR AGENTS MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICE. THE SERVICE IS MADE AVAILABLE ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS**



OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

12. Limitation of Remedies. NEITHER E-STORAGE BACKUP, ITS EMPLOYEES, AGENTS, NOR ANYONE ELSE INVOLVED IN CREATING, DELIVERING OR MAINTAINING THE SERVICE SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF USE OF THE SERVICE, INABILITY TO USE THE SERVICE, OR LOSS OF SUBSCRIBER'S DATA. IN NO EVENT WILL E-STORAGE BACKUP LIABILITY FOR ANY CLAIM BY SUBSCRIBER, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID BY SUBSCRIBER, IF ANY, FOR THE SERVICE IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT FORMING THE BASIS OF THE CLAIM.

14. Termination. The Subscriber may terminate this agreement at any time during the first year of the term by providing 60 days advance notice to E-Storage Backup, in writing, of Subscriber's intention to terminate this agreement, and by paying for all services covered under this agreement, for the remainder of the term.

16. Events E-Storage Backup Control. E-Storage Backup shall not be deemed to be in breach of this Agreement, and its obligations hereunder shall be deemed suspended, if its performance is delayed or prevented, in whole or part, by any act of God, war, terrorism, fire, natural disaster, accident, riot, strike, governmental action, shortage of materials or supplies, failure of any transportation or communication system, non-performance of vendor, or any other cause beyond its reasonable control.

17. Choice of Law. This agreement is, and shall be governed by and construed in accordance with the laws of the State of Ohio applicable to agreements made and performed in Ohio, excluding conflicts of law provisions.

18. Notice of Claim, Filing of Suit. Any claim arising under this Agreement shall be presented to the other party within a reasonable period of time, and in no event shall suit on such claim be commenced more than six (6) months after the event, act or omission giving rise to the claim. The venue of any action arising under this Agreement shall be the state or federal courts located in Auglaize County, Ohio. In any legal action arising under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs. Subscriber agrees to submit itself to the personal jurisdiction of the Ohio court and hereby irrevocably waives its right to challenge such personal jurisdiction.

19. Invalidity. If any provision of this Agreement is determined to be invalid, all other provisions shall remain in full force and effect.

20. Entire Agreement, Modification regard to the subject matter hereof. Upon notice published on www.estoragebackup.com or sent in writing to Subscribers designated mailing address, E-Storage Backup may prospectively modify its Operating Rules and/or Prices, and may discontinue or revise any or all other aspects of the Service, at its sole discretion and without advance notice.

By using E-Storage Backup you agree to use the Products and Services provided by E-Storage Backup on an "As-Is" basis. E-Storage Backup is not responsible for data stored on their servers, nor are they responsible for any problems that may arise from using their Products or Services.