



# MOZY TERMS OF SERVICE

These terms of service ("Terms") are a legal agreement between you, either an individual or a single legal entity ("You" or "you"), and the entity identified in Section 1 that operates that Mozy online services for your country of residence ("Mozy"). These Terms govern your use of any Mozy online services ("Services"), the Mozy website ("Site"), the client software distributed with this Agreement and any other software provided by Mozy, including any updates and any accompanying documentation ("Software"). Collectively, the Software, the Site and the Services may be referred to as the "Products." By clicking the "I AGREE" or similar button, or using any Products, you agree to these Terms and the Mozy Privacy Policy mentioned in Section 4 below. If you do not agree to these Terms or the Privacy Policy, then do not click the button indicating your acceptance and do not use the Products. If you agree to these Terms on behalf of a legal entity, you represent that you have the authority to bind that legal entity to these Terms.

## 1. CONTRACTING ENTITY

If you are a resident of the United States of America, you are contracting with Mozy, Inc., 505 1st Ave S, Suite 600, Seattle, WA 98104, USA. For residents of all other countries, you are contracting with Mozy International Limited, IDA Industrial Estate, Ovens, Co. Cork, Ireland.

## 2. ACCOUNTS AND FEES

You must register with Mozy to use the Services, and you agree to keep your registration information accurate, complete and up-to-date as long as you continue to use the Services. Mozy currently offers a free personal account with limited storage capacity ("Free Account") and various fee-bearing accounts offering larger storage capacities and other feature enhancements ("Paid Accounts"). If you sign-up for a Paid Account, you agree to pay the fixed subscription and variable usage-based fees, if any, for the account type you have selected and agree to any applicable restrictions, including quotas on the amount of storage you are allowed to use. If you exceed any quota allocated to your account, you agree that Mozy may restrict your ability to backup further data until you reduce your storage usage or sign-up to another type of account with a higher quota or no quota at all. If you use a credit card for payment, you authorise Mozy to automatically renew your subscription and charge the then-current renewal fees to the credit card associated with your account unless you notify Mozy before expiration of your current subscription that you do not want to renew.

## 3. PASSWORDS AND SECURITY

You are responsible for keeping your passwords secure, and you agree not to disclose your passwords to any third party. You are solely responsible for any activity that occurs under your user names and accounts, including any sub-accounts. If you lose your passwords or the encryption keys for your accounts, you may not be able to access your backup data. You must notify Mozy immediately of any unauthorised use of your accounts or any other security breach related to the Service. If Mozy determines that a security breach has occurred or is likely to occur, Mozy may suspend your accounts and require you to change your user names and passwords.

## 4. PRIVACY

You agree that Mozy's collection, use and disclosure of your personal information, backup data or any other data will be governed by Mozy's [Privacy Policy](#) and the laws generally applicable to Mozy as a provider of the Services, including breach notification laws. Unless specifically agreed otherwise in writing by Mozy, you agree to be solely responsible for compliance with laws applicable to any such information or data and your use of the Services, including any laws that apply to your business or industry.

## **5. USE OF SERVICES AND SOFTWARE**

Subject to these Terms, Mozy grants you a limited, non-exclusive, non-transferable and revocable licence to access the Site and use the Services and Software. You may install and use the Software in executable form only on the number and type of devices that are specified in the then-current documentation for your account type as described on the Site or as specified in other transaction documentation provided by Mozy or an authorised reseller. You acknowledge that certain third party code may be provided with the Software and that the licence terms accompanying that code will govern its use.

You acknowledge that Mozy or third parties own all right, title and interest in and to the Products, including all intellectual property rights. Except for the licence granted in these Terms, Mozy and its licensors retain all rights in the Products, and no implied licences are granted to you.

You specifically agree that you will not, nor will you permit another person to:

- sub-licence, lease, rent, loan, transfer, or distribute any portion of the Products;
- modify, adapt, translate, or create derivative works from the Products;
- decompile, reverse engineer, disassemble, or otherwise attempt to derive source code from the Products; or
- remove, obscure or alter any trademark, copyright or other proprietary rights notices displayed in the Software or on the Site.

Any Software you have installed may periodically check with Mozy for updates, and you agree that Mozy may automatically download and install such updates on your devices.

## **6. SHARED CONTENT AND DATA SHUTTLE SERVICES**

The Products may enable you to share or synchronise your files between your own devices or with devices owned or controlled by third parties. If you choose to use any such features, you agree that your use of these features, including any content submitted by you, shall be at your sole risk and responsibility. You also agree that you have obtained all necessary rights and licenses to any such content. You hereby grant Mozy a worldwide, royalty-free, nonexclusive licence to use any such content as part of the Services, and in relation to the Products, without any compensation to you or others. Mozy reserves the right to refuse to post or remove any such content at any time at its sole discretion without notice or liability.

If you have a large amount of data to backup when you first sign-up for the Services, you may choose to seed your initial backup using the Mozy Data Shuttle service. If you use this service, you agree that you bear all risk of loss and damage to your backup data while it is in transit, and you may not be able to access and retrieve your backup data until you have performed a successful online backup after completion of the Data Shuttle transfer.

## **7. COMPLIANCE WITH LAWS AND ACCEPTABLE USE**

You are solely responsible for your conduct related to the Service and any data you store or share on the Service. You specifically agree that you will not use the Products to:

- violate any laws or regulations;
- infringe the intellectual property or other rights of third parties;
- transmit any material that is obscene or objectionable or that contains viruses or other harmful computer code or files such as Trojan horses, worms, or time bombs.

## **8. INTELLECTUAL PROPERTY PROTECTION**

Mozy respects the intellectual property of others and requires that users of the Service do the same. When you use the Products, you may not upload, store, share, display, post, email, transmit or otherwise make available any material that infringes any copyright, patent, trademark, trade secret or other proprietary rights of any person or

entity. If you commit repeated violations, Mozy may terminate your accounts.

## **9. USER INDEMNITY**

You agree to defend, indemnify and hold Mozy, its suppliers, resellers, partners, and their respective affiliates harmless from and against any claims, liabilities, damages, losses and expenses, including reasonable legal fees and costs, in connection with:

- your use of the Products;
- your breach of these Terms;
- your infringement of any third-party right, including any intellectual property right;
- or any claim that use of your data caused damage to a third party.

This indemnity obligation will survive the termination or expiration of your account and these Terms.

## **10. CHANGES TO THE SERVICE AND TERMS**

Mozy reserves the right at any time to modify, suspend, or discontinue providing the Service, in whole or in part. In the event Mozy anticipates that any such action will significantly affect your use of the Service in a negative way, Mozy will endeavour to provide you with advance notice by e-mail, an in-client message or by posting relevant information on the Site.

Mozy reserves the right to modify these Terms at any time, and each such modification will be effective upon posting on the Site. All material modifications will apply prospectively only. Your continued use of any Products following any such modification constitutes your agreement to be bound by the modified Terms. To stay informed of any changes, please review the most current version of these Terms posted on the Site. If you do not agree to be bound by these Terms, you must stop using the Products immediately.

## **11. TERM AND TERMINATION**

These Terms, and any posted revisions, remain in effect as long as you continue to maintain an account or use the Services. You may terminate your account at any time, for any reason, by following the instructions on the Site and discontinuing use of the Products.

If you have a Free Account, Mozy may terminate your account and these Terms immediately and without notice if your computer fails to access the Services to perform a backup for more than thirty (30) days or you fail to comply with these Terms. If you have a Paid Account, Mozy may terminate your account and these Terms immediately and without notice if you fail to renew your subscription, fail to pay any fees or invoices when due or otherwise fail to comply with these Terms.

On termination or expiration of your account or these Terms, you will no longer have the right to continue to use the Software and the Services, and you will no longer be able to access and restore your backup data. Also, you specifically agree that Mozy has no obligation to provide you or anyone else with a copy of your backup data and may automatically purge your backup data from Mozy systems.

## **12. EXPORT**

You acknowledge that use of the Products may be subject to the export and import laws of the United States and other countries. You agree to comply with all export and import laws and regulations. In particular, you acknowledge that the Products may not be exported or re-exported to any U.S. embargoed countries or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Persons List or Entity List. By using the Products, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the Products for any

purposes prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons.

### **13. ENTIRE AGREEMENT**

These Terms constitute the entire agreement between you and Mozy and completely replace any prior agreements between you and Mozy in relation to the Products. If any part of these Terms is held invalid or unenforceable, that portion will be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions will remain in full force and effect. The failure of Mozy to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision. You agree that, except as otherwise expressly provided in these Terms, there will be no third- party beneficiaries to this agreement. You agree that any claim or cause of action related to these Terms or the use of the Products must be filed within one (1) year after the cause of action arose or be forever barred.

### **14. COUNTRY TERMS**

In addition to the foregoing, your relationship with Mozy will be governed by the following country-specific terms, which will vary depending on your location or country of residence.

#### **MOZY COUNTRY TERMS FOR:**

**THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND; AND THE REPUBLIC OF IRELAND (referred to in the Terms as "Country Terms")**

### **15. WARRANTIES, INDEMNITY AND DISCLAIMERS:**

15.1 Nothing in these terms and conditions excludes, restricts or affects your statutory rights.

15.2 The Service will be provided to you with reasonable skill and care. In this context, you specifically acknowledge and accept that the Service, as with other internet applications, is not capable of being 100% secure and Mozy does not guarantee the prevention or detection of any unauthorised attempts to access your data through the Service, the Site and/or our other systems and services.

15.3 Mozy also cannot be held responsible for any loss or corruption of data or any unauthorised access of such data that takes place over third party systems and services used by you to transmit the data to or retrieve the data from Mozy. It is also entirely your responsibility to protect your computer from computer viruses by installing and updating adequate anti-virus software.

15.4 Without prejudice to any other provision of this agreement, if a failure with the Site, the Software, the Service, and other content, information, material, software or other items or services made available or provided by Mozy through the Site or the service ("Other Materials") materially or permanently prevents you from accessing or retrieving any data that you have stored through the Service, then Mozy shall, at our option either

(a) resolve the issue or (b) refund to you that proportion of the price you paid for the Service which is reasonably attributable to the data in question, taking into account its size relative to the total volume of data stored by you during the term of this agreement. To the maximum extent permitted under applicable law, such resolution or refund is Mozy's entire liability and your exclusive remedy relating to any such failure.

15.5 TO THE FULLEST EXTENT PERMITTED BY LAW, MOZY AND ANY THIRD PARTY SOFTWARE

AND SERVICE SUPPLIERS, EXCLUDE ALL OTHER EXPRESS OR IMPLIED TERMS AND CONDITIONS, CONDITIONS, WARRANTIES, REPRESENTATIONS OR ENDORSEMENTS WHATSOEVER WITH REGARD TO THE SITE, THE SOFTWARE, THE SERVICE AND/OR OTHER MATERIALS INCLUDING WITHOUT LIMITATION THOSE AS TO SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS AND ANY WARRANTIES OR OTHER TERMS REGARDING THE AVAILABILITY, SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SOFTWARE OR SERVICE AND SUCH THIRD PARTY SOFTWARE OR SERVICES.

15.6 MOZY SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE RESULTING FROM THE ILLEGAL, INCORRECT OR INAPPROPRIATE USE OF THE SITE, THE SOFTWARE, THE SERVICE AND/OR OTHER MATERIALS BY YOU OR ANYONE ELSE USING YOUR ACCOUNT. MOZY MAY REQUIRE YOU TO REIMBURSE US FOR ANY REASONABLE AND FORESEEABLE LOSSES, COSTS, EXPENSES, DAMAGES OR OTHER LIABILITY THAT MOZY INCURS AS A DIRECT RESULT OF THE MISUSE OF THE SITE, THE SOFTWARE, THE SERVICE AND/OR ANY OTHER MATERIALS EITHER BY YOU OR BY SOMEONE USING YOUR ACCOUNT. FOR THE PURPOSE OF THIS PARAGRAPH, "MISUSE" SHALL BE CONSTRUED AS INCLUDING (I) ANY USE OF THE SITE, THE SOFTWARE, THE SERVICE AND/OR OTHER MATERIALS THAT IS IN BREACH OF THIS AGREEMENT (INCLUDING THE PRIVACY POLICY); AND/OR (II) ANY USE OF THE SITE, THE SOFTWARE, THE SERVICE AND/OR OTHER MATERIALS IN CONNECTION WITH WHICH MOZY IS REQUIRED TO DEFEND ITS OWN INTERESTS BEFORE A COURT, GOVERNMENT AGENCY, INDUSTRY REGULATOR, SELF-REGULATORY BODY OR SIMILAR MEMBERSHIP ORGANISATION, OR DISPUTE RESOLUTION BODY AND/OR INCURS ANY LOSSES, COSTS, EXPENSES, DAMAGES OR OTHER LIABILITY IN CONNECTION WITH ANY THREATENED OR ACTUAL CIVIL, CRIMINAL OR ADMINISTRATIVE PROCEEDINGS.

## **16. LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES SHALL MOZY, OR ITS SUPPLIERS, RESELLERS, PARTNERS OR THEIR RESPECTIVE AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING FROM OR RELATED TO THE SOFTWARE OR SERVICE, WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, (EVEN IF MOZY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES).

WITHOUT LIMITING THE FOREGOING, SAVE IN THE CASE OF DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE OR THE NEGLIGENCE OF OUR EMPLOYEES, OR WHERE WE HAVE ACTED FRAUDULENTLY, THE TOTAL AGGREGATE LIABILITY OF MOZY, AND ITS SUPPLIERS, RESELLERS, PARTNERS AND THEIR RESPECTIVE AFFILIATES ARISING FROM OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT, IF ANY, PAID BY YOU TO MOZY FOR THE SOFTWARE OR SERVICES. IF THE SOFTWARE AND SERVICES ARE PROVIDED WITHOUT CHARGE, THEN MOZY AND ITS SUPPLIERS SHALL HAVE NO LIABILITY TO YOU WHATSOEVER.

THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON THE SOFTWARE OR SERVICE, FROM INABILITY TO USE THE SOFTWARE OR SERVICE, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF THE SOFTWARE OR SERVICE (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES). SUCH LIMITATION SHALL APPLY NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE FULLEST EXTENT PERMITTED BY LAW.

THE SOFTWARE AND SERVICE ARE NOT INTENDED FOR USE IN CONNECTION WITH ANY NUCLEAR, AVIATION, MASS TRANSIT, OR MEDICAL APPLICATION OR ANY OTHER INHERENTLY DANGEROUS APPLICATION THAT COULD RESULT IN DEATH, PERSONAL INJURY, CATASTROPHIC DAMAGE, OR MASS DESTRUCTION, AND YOU AGREE THAT MOZY WILL HAVE NO LIABILITY OF ANY NATURE AS A RESULT OF ANY SUCH USE OF THE SOFTWARE.

## **17. MISCELLANEOUS PROVISIONS**

17.1 The following shall be added to bullet point three of clause 5 of the terms:

"Notwithstanding the foregoing you may decompile the Software only to the extent permitted by law where this is indispensable to obtain information necessary to achieve the interoperability of an independently created program with the Software or another program and such information is not readily available from Mozy or elsewhere;"

17.2 You acknowledge that use of the Products may be subject to the export and import laws of the United States and other countries. You agree to comply with all export and import laws and regulations. In particular, you acknowledge that the Products may not be exported or re-exported to any U.S. embargoed countries or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Persons List or Entity List. By using the Products, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the Products for any purposes prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons.

17.3 This agreement will be governed by and construed in accordance with the laws of England, without giving effect to any conflict of laws and provisions that would require the application of the laws of any other jurisdiction.

17.4 The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

17.5 The failure of Mozy to exercise or enforce any right or provision of this Agreement does not constitute a waiver of such right or provision. If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, the remainder of this Agreement will continue in full force and effect.

17.6 This Agreement constitute the entire agreement between you and Mozy and supersedes and replaces any prior agreements between you and Mozy in relation to the Products and the subject matter hereof and replaces any and all prior or contemporaneous understandings or agreements whether written or oral regarding the Products or such subject matter. You agree that the Contracts (Rights of Third Parties) Act 1999 does not apply to this Agreement.

17.7 All disputes arising out of this Agreement will be subject to English law and the parties agree and submit to the personal and exclusive jurisdiction and venue of the English courts, except that nothing will prohibit Mozy from instituting an action in any court of competent jurisdiction to obtain injunctive relief or protect or enforce its intellectual property rights.

17.8 You may not assign or transfer any of your rights or obligations under this Agreement to a third party without the prior written consent of Mozy. Mozy may freely assign this Agreement. Any attempted assignment or transfer in violation of the foregoing will be void from the beginning.

17.9 You acknowledge that you have, prior to entering into this Agreement, had your right to terminate this Agreement without penalty within fourteen (14) days of your entry into this Agreement ("Rescission Notice Period") drawn to your notice. Within the Rescission Notice Period you may at any time provide Mozy with written notice to terminate this Agreement by sending Mozy an e-mail to the following email address [Emea.support@mozy.com](mailto:Emea.support@mozy.com). If you exercise your right to terminate as prescribed any payments already made by you shall be refunded to you within thirty (30) days of Mozy's receipt of your e-mail and your account shall be closed. In addition Mozy shall send you notice that all data backed up by you with Mozy shall be deleted by the expiry of the thirty (30) day period.

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