

# Terms of Service

Updated on April 14<sup>th</sup>, 2022

## **Terms and conditions of service agreement- online services**

The terms and conditions of sale, set forth herein (“Terms and Conditions”), shall apply to all products sold (the “Products”) by SysCloud, Inc., a Delaware corporation (“SysCloud” or the “Company”) to you (the “Purchaser”) and shall constitute an agreement between SysCloud and you (the “Agreement”). These Terms and Conditions are a binding agreement between SysCloud and you. SysCloud and you are sometimes hereinafter referred to collectively as the “Parties” and individually as a “Party.”

## **Definition of terms**

Please read these terms and conditions of the service agreement carefully. It contains the terms and conditions under which SysCloud, Inc. will sell its products to you, the purchaser. It also contains terms and conditions that bind you, the purchaser, in connection with the sale.

## **Overview of SysCloud**

SysCloud delivers backup, disaster recovery and migration solutions for home, business, and managed service providers. Our portfolio of products includes complete protection solutions for Microsoft Windows and Google Apps for business in both virtual and physical environments.

## **Services overview**

The backup service enables the user to retrieve data from their Google Apps domain user accounts and store it (“data”) during the service period on Amazon Cloud infrastructure. The amount of storage space used depends entirely on the plan purchased. The migration service enables the user to migrate from one Google Apps domain to another including data and settings (“migration data”) wherever applicable.

## **Description of service provided**

Online domain level backup (software as a service) provides for automated backup and restore for unlimited domains and users for Google Apps data with encryption (the “Backup Service”).

Fully automated online domain level migration (software as a service) service allows you to migrate your Google Apps data and settings from one domain to another domain (the “Migration Service”).

SysCloud Backup and Security application helps understand how data is being shared both within your organization and outside. We scan your documents to generate detailed security reports. This scan can be turned off in settings page during onboarding or later.

## **Data collection and privacy policy**

If we require information from you, you agree to provide completely accurate information. The SysCloud Privacy Policy describes how we use this information. See “Privacy Policy” on our site. You agree that, by purchasing applications online from us, you have accepted these Terms and Conditions and our Privacy Policy.

## **Confidentiality policy**

The Confidentiality Policy applies to all the documents that are classified as confidential under our Data Classification Policy, SysCloud. (Please Note that Personal Identifiable Information (“PII”) is covered under our Privacy Policy). The Confidentiality Policy may undergo modifications reflecting the changes that are made to SysCloud applications and services. All the modifications made in this policy will be updated on our website. Please kindly visit our site regularly to be aware of the changes in the Confidentiality Policy. For queries related to Confidentiality Policy modifications write to [support@syscloud.com](mailto:support@syscloud.com).

## **Service period**

The “service period” will commence on the date you activate the service. It will continue for the period agreed upon.

## **Your conduct**

You are solely responsible for ensuring that your use of the online service is in compliance with all applicable laws. You agree not to remove or alter company's labeling of its applications. You agree neither to undertake any effort nor allow any third party to reverse engineer the products or any component of the products.

SysCloud may terminate your use if you: backup illegal files, files with viruses, worms, corrupted files, files protected by intellectual property rights of a third party (unless you own or have rights), tamper with our service, misrepresent your identity, interfere with another person's use, access another user's data. SysCloud shall not be liable for any damages, liabilities, losses, fines, costs resulting from your violation of these terms.

### **User accounts and passwords**

You will be solely responsible for keeping your username and/or password secure. If you lose your username and/or password, you will not be able to access your data. We do not guarantee that you can retrieve lost username and/or passwords. We do not store your login password but instead use encrypted one-way security token based partly on your username/password. We are not liable if your password is lost or forgotten by you and you are unable to login. We don't guarantee that you can retrieve lost or forgotten passwords via forgot password feature.

### **Service availability**

SysCloud will not be liable for any downtime due to maintenance, or forces beyond our reasonable control. To know more about the services related to SysCloud, please visit <https://www.syscloud.com/service-level-agreement/> .

The company agrees to use commercially reasonable efforts to provide and maintain the services/applications in accordance with the specifications specified herein.

### **Payment**

You will be charged in advance using the payment method you agree upon and authorize SysCloud to automatically charge your credit card for all payments owed by you. You agree that the information you supply is correct and will notify SysCloud when billing or payment information changes.

### **Non payment**

You agree that we may terminate/suspend your access to our online service if, at any time, you have not paid all fees that you owe to us.

## **Refunds**

You agree that all our service plans are either a one-time service (migration) or based on monthly service (backup) periods and we do not give refunds.

## **Security**

You acknowledge that SysCloud's online service is not invulnerable to security breaches or other threats and agree that if we believe that an account is being used for any illegal purpose, we have the right to inspect and/or deny access to any backup and/or migration data. If you have any concerns related to security, availability, confidentiality, and integrity, please contact us via email to [incident@syscloud.com](mailto:incident@syscloud.com).

## **Access of backup data**

You agree that SysCloud may terminate your access at any time, for any reason, in our sole discretion.

SysCloud will not be liable to anyone for any termination or deletion of backed up data. Access to data is not guaranteed and SysCloud is not liable: If Amazon cloud infrastructure where our servers and storage is present has an outage or there is a cloud outage. Our site/services are down due to maintenance or any other reason beyond our control:

- if any software/hardware/operator failure results in deletion of your backup data or accounts at our site or services
- if we have not completed backup and/or migration of your data whether it is the first time or incrementally
- if you change your domain security key (OAuth) or we have been restricted/denied access to your data
- if Google restricts or denies access to your data for us to backup
- if your subscription terminates or is suspended

## **Proprietary rights**

You acknowledge and agree that SysCloud owns all legal right, title, and interest in and to the online service. You acknowledge that the online service provided may contain information designated confidential by SysCloud and you shall not disclose such information without SysCloud's prior written consent. Unless agreed to in writing by SysCloud, nothing in this agreement gives you the right to use any of SysCloud's trademarks, logos etc. Use, reproduction or representation (in whole or in part) of these logotypes, trademarks, product names or the applications themselves regardless of in what form it occurs, is prohibited unless such use is approved in writing in advance by company.

You acknowledge that the company disclaims any and all written or verbal, explicit or implied warranties on intellectual property infringements with respect to the use of the applications.

Any feedback that you provide to us shall be considered confidential information. You agree that you irrevocably transfer all intellectual property rights arising out of such feedback.

At all times during the service, the data received from customer domains remains the property of customer.

## **Exclusion of warranties**

Nothing in these Terms and Conditions shall exclude or limit SysCloud's warranty or liability for losses which may not be lawfully excluded or limited by applicable law.

## **Disclaimer of warranties**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN AS-IS-AND-AS-AVAILABLE BASIS. WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE, THAT THE CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED, OR ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT,

OPERABILITY AND ANY WARRANTY ARISING OUT OF ANY COURSE OF PERFORMANCE. USE OF ANY MATERIAL DOWNLOADED OR OBTAINED THROUGH THE USE OF THE SERVICES SHALL BE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR DATA THAT RESULTS FROM THE USE OF THE SERVICES OR THE DOWNLOAD OF ANY SUCH MATERIAL. NO PERSON IS AUTHORIZED TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING THE PERFORMANCE OF THE SERVICE OTHER THAN AS PROVIDED IN THIS AGREEMENT.

### **Limitation of liability**

YOU AGREE THAT WE WILL, IN NO EVENT, BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER LOSS OR DAMAGE WHATSOEVER OR FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, COMPUTER FAILURE, LOSS OF BUSINESS INFORMATION, OR OTHER LOSS ARISING OUT OF OR CAUSED BY YOUR USE OF OR INABILITY TO USE THE SERVICE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. YOU AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH US RELATED TO ANY OF THE SERVICES WILL BE TERMINATION OF SUCH SERVICE. IN NO EVENT WILL OUR LIABILITY TO YOU WITH RESPECT TO ANY SERVICE, WHETHER DIRECT OR INDIRECT, EXCEED THE FEES PAID BY YOU FOR SUCH SERVICE.

### **Intellectual property**

You may not sell, assign, or transfer any right in SysCloud's online service.

### **Copyright and trademark policies**

You agree that SysCloud trademarks, service marks, trade names, or logos are copyrighted and may not be modified, copied, reproduced, without prior written permission.

### **Exclusion and limitations**

Nothing in the terms of service is intended to exclude or limit any condition, warranty, or liability which may not be lawfully excluded or limited.

## **Termination**

Upon expiration of the service period, your right to use our online service will terminate and we will delete your account data and backup data. SysCloud may suspend/terminate use if we believe that you have failed to comply with these terms and conditions. On service period expiration/ termination SysCloud will not maintain/store/forward your data to another account or alternate provider. SysCloud is not responsible for any deleted data. To learn more about our data retention policy, please visit <https://www.syscloud.com/SysCloud-DataRetentionPolicy.pdf> .

## **Indemnification**

You agree to indemnify SysCloud, our parents, subsidiaries, affiliates, officers, directors, co-branders, partners, employees, consultants and agents from all third-party claims, liabilities, losses, costs, resulting from: Your backup data or migration data/settings, use of the site or services, and violation of these terms of use.

## **Changes to the service**

SysCloud may, at its discretion, change the features of its online service. You agree that SysCloud shall not be liable for any loss arising from such changes.

## **Changes to the terms and conditions of service**

SysCloud may, at its discretion, change the terms of service by publishing at the site. You acknowledge and agree that you will review and if you disagree with the changes, you will terminate your subscription immediately. If you continue your service, you agree to the changes to the Terms and Conditions.

## **Electronic communications**

By purchasing an application from us, you agree to receive communications from us in an electronic form and that all communication provided to you electronically will satisfy all legal requirements as such as if it were in writing. If you want to discontinue communications from us, you must contact us at [incident@syscloud.com](mailto:incident@syscloud.com).

## **Miscellaneous**

- You and SysCloud agree to execute any and all necessary documents and to take such further action as may reasonably be necessary to carry out the terms and intent of this agreement.
- This agreement shall be binding upon, and inure to the benefit of SysCloud and you, their legal representatives, successors and assigns. However, no assignment shall be made of the rights here under without the prior written consent of the other Party.
- This agreement embodies and constitutes the entire understanding between the Parties with respect to the transactions contemplated herein. All prior or contemporaneous agreements, understandings, representations, oral or written, are superseded by this agreement unless explicitly included as an attachment.
- Neither this agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated.
- All notices that are required to be given here under will be deemed to have been properly given and will be effective when and if sent by U.S. regular mail, postage prepaid, U.S. certified mail, electronic mail, and/or by personal delivery or by courier, to the address of the other Party.
- Except as otherwise provided for in this section, we and you agree that any and all controversies or claims arising out of or relating to this agreement, or any alleged breach hereof, shall be resolved by binding arbitration as prescribed herein. A single arbitrator engaged in the practice of law, who is knowledgeable about crypto currencies and financial markets, and shall conduct the arbitration under the current rules of the American Arbitration Association (“AAA”), unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the city of San Jose, California, and all expedited procedures prescribed under the AAA rules shall apply. There shall be no discovery other than the exchange of information, which is provided to the arbitrators by the Parties. The arbitrator shall only have authority to award compensatory damages and shall not have authority to award punitive damages,



other non-compensatory damages or any other form of relief. Each Party shall bear its own costs and attorneys' fees and disbursements. The arbitrator's decision and award shall be final and binding, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

- The provisions of this agreement are for the benefit only of the Parties, and no third party may seek to enforce or benefit from these provisions.
- If one or more provisions of this agreement are held to be unenforceable under applicable law, such provision shall be excluded from this agreement and the balance of the agreement shall be interpreted as if such provision was so excluded and shall be enforceable in accordance with its terms.

### **Beta participation**

A separate Beta Participation Agreement shall apply if you choose to sign up for the beta version of the products made available by SysCloud. To read the terms of the Beta Participation Agreement, please visit <https://www.syscloud.com/beta-terms/> .

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