



Last Updated: December 16, 2024

## **Druva App for Microsoft<sup>1</sup> 365 Backup Storage: Terms and Conditions**

THESE TERMS AND CONDITIONS (“**TERMS**”) FOR THE APP FOR MICROSOFT 365 BACKUP STORAGE FROM DRUVA (“**MBS OFFERING**”) FORM A LEGALLY BINDING AGREEMENT BETWEEN “**DRUVA**” (AS DEFINED IN THE [MASTER CUSTOMER AGREEMENT](#) OR SUCH OTHER SIMILARLY TITLED WRITTEN OR ELECTRONIC AGREEMENT GOVERNING THE ACCESS AND USE OF THE DATA MANAGEMENT CLOUD PRODUCTS AND SERVICES FROM DRUVA (“**AGREEMENT**”)) AND THE COMPANY, ORGANIZATION, OR OTHER LEGAL ENTITY THAT YOU REPRESENT (“**YOU**”, “**YOUR**” or “**CUSTOMER**”). THESE TERMS ARE EFFECTIVE AS OF THE DATE YOU CLICK “I AGREE” OR OTHERWISE ACCESS OR USE THE MBS OFFERING AND SUPPLEMENTS THE AGREEMENT.

BY ACCESSING OR USING THE MBS OFFERING, YOU: (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THESE TERMS; (B) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ACCEPT THESE TERMS (AND, THAT IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF A LEGAL ENTITY, THAT YOU HAVE THE RIGHT, POWER AND AUTHORITY TO BIND SUCH ENTITY); AND (C) ACCEPT THESE TERMS AND AGREE THAT YOU (AND THE LEGAL ENTITY ON WHOSE BEHALF YOU ARE ACCEPTING) ARE LEGALLY BOUND BY THESE TERMS.

YOUR ACCESS AND USE OF THE MBS OFFERING IS ALSO SUBJECT TO THE APPLICABLE TERMS, CONDITIONS, POLICIES, RULES AND/OR DOCUMENTATION OF MICROSOFT (“MICROSOFT TERMS”), WHICH ARE INCORPORATED HEREIN BY REFERENCE. YOU UNDERSTAND AND AGREE THAT BY ACCESSING OR USING THE MBS OFFERING, YOU AGREE TO ALSO COMPLY WITH THESE MICROSOFT TERMS.

IF YOU DO NOT ACCEPT THESE TERMS, YOU MAY NOT ACCESS OR USE THE MBS OFFERING IN ANY MANNER.

### **Recitals**

The MBS Offering integrates with the Microsoft 365 Backup product from Microsoft. These Terms supplement those in the Agreement. The Terms describe the product-specific terms and conditions that apply to the access or use of MBS Offering.

“**Microsoft 365 Backup**” is the product designed by Microsoft to enable Microsoft customers to backup and restore the data Microsoft customers create in common Microsoft 365 applications such as Microsoft Exchange (“**Exchange**”), Microsoft OneDrive (“**OneDruva**”) and Microsoft Sharepoint (“**Sharepoint**”). More information regarding Microsoft 365 Backup can be found at the

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<sup>1</sup> Microsoft, Microsoft 365 Backup, Microsoft 365 Backup Storage, Microsoft Exchange, Microsoft OneDrive and Microsoft Sharepoint are trademarks of the Microsoft group of companies.

following link (or such other link Microsoft may provide): <https://learn.microsoft.com/en-us/microsoft-365/backup/backup-overview?view=o365-worldwide..>

The MBS Offering, which is powered by Microsoft APIs, is designed to deliver the capabilities of Microsoft 365 Backup to joint customers of Druva and Microsoft like You. Using the MBS Offering, joint customers can view and manage their Customer Backup Data (as defined below) in their Druva console; however, unlike other Druva offerings, Customer Backup Data is stored in the Microsoft cloud in a Microsoft tenant licensed by You from Microsoft, and as a result, Customer Backup Data never leaves Microsoft's trust boundaries. Features may differ between the MBS Offering and native Druva workloads as the MBS Offering is dependent on the features Microsoft makes available. More information regarding the MBS Offering can be found in the Documentation.

## Terms

1. **Definitions.** Any capitalized terms used but not defined in these Terms have the meanings set out in the Agreement.
  - (a) **“Customer Backup Data”** means the data and information Customer and its Users create in Microsoft 365 applications, the backup of which is managed by Customer and/or Customer's Authorized Users using the MBS Offering.
  - (b) **“Customer Microsoft 365 Tenant”** means the Microsoft tenant in the Microsoft cloud to which You, as a customer of Microsoft, subscribe for the purpose of storing Customer Backup Data.
  - (c) **“Free Trial”** means any Druva service, product, offering, functionality or feature that Druva makes available to Customer on a trial basis, at no additional charge, and which is designated as “early availability,” “early access,” “beta,” “pilot,” “trial,” “free trial,” “evaluation,” “proof of concept (POC),” “promotion,” or by a similar designation.
  - (d) **“MBS Subscription Term”** means the period of time set forth in the Reseller Order Form or Druva Order Form, as applicable, during which Customer licenses the MBS Offering.
  - (e) **“Microsoft 365”** means the Microsoft product that includes productivity and collaboration applications such as Exchange, OneDrive and Sharepoint.
  - (f) **“User”** means the individual(s) authorized by Customer to use Customer's Microsoft 365 applications.
2. **License.** Customer's access and use of the MBS Offering is subject to these Terms, the Agreement and any applicable Microsoft Terms.
  - (a) **Druva License.** Subject to 2(b), Customer may access and use the Druva portal in accordance with the license in the Agreement (including all applicable restrictions, obligations, requirements and prohibitions) for the purpose of managing backup and restores of Customer Backup Data for Customer's own internal business purposes during the MBS Subscription Term.
  - (b) **Microsoft Licenses.** Customer acknowledges that it must have subscriptions for Microsoft 365 and Microsoft cloud storage to access and use the MBS Offering. Customer represents,

warrants and covenants that Customer (i) has and will maintain such subscriptions, and (ii) shall comply with all applicable Microsoft Terms (including applicable [Microsoft Product Terms](#)) when accessing and using the MBS Offering. For the avoidance of doubt, as applicable to Customer, Microsoft Terms include the [Microsoft APIs Terms of Use](#) (or such other documentation as Microsoft may provide), which are incorporated herein.

- 3. Changes, Discontinuation or Termination of MBS Offering.** Customer acknowledges that Microsoft may modify, discontinue or terminate the provision of Microsoft Backup, Microsoft Backup Storage, Microsoft APIs (which power the MBS Offering), or any feature or functionality Microsoft controls at any time without notice. Accordingly, Druva shall not be liable to Customer or any third party for any such modification, discontinuation or termination by Microsoft.
- 4. Ownership of Customer Backup Data.** As between Customer and Druva, Customer owns all right, title and interest in and to the Customer Backup Data.
- 5. Data Storage and Microsoft Environment.** Customer Backup Data is stored in the Customer Microsoft 365 Tenant in the Microsoft cloud (i.e., in Microsoft's environment). The data storage location is based on what You selected when You set up Your Customer Microsoft 365 Tenant.
- 6. Data Privacy and Data Security.**
  - (a) Personal Data Collected by Druva.** In connection with Druva's performance under these Terms, Druva and its Affiliates may collect usage and configuration metrics as set forth in the Agreement. Any information collected pursuant to this Section shall not include any Customer Backup Data. Customer can review Druva's privacy practices by visiting Druva's [Privacy Policy](#).
  - (b) Personal Data in Customer Backup Data.** The MBS Offering is integrated with Microsoft 365 Backup. Customer Backup Data is stored in the Microsoft environment and never leaves Microsoft's trust boundaries (or enters Druva's environment). Customer therefore acknowledges and agrees that the processing of Customer Backup Data (and any personal data therein) is subject to the [Microsoft Products and Services Data Protection Addendum \(DPA\)](#). Customer is advised to review Microsoft's online documentation [here](#) regarding applicable Microsoft's privacy, security and compliance policies, practices and technologies.
- 7. Billing/Payment.** In addition to the terms relating to payment, taxes and billing set forth in the Agreement, Customer acknowledges that storage limits apply and that Customer may be charged for overages periodically during the MBS Subscription Term. As with any other Druva order, orders for the MBS Offering are non-cancellable and non-refundable except as expressly provided herein.
- 8. Customer Responsibilities.** During any MBS Subscription Term, Customer shall:
  - (a)** be solely responsible for maintaining the confidentiality of any keys, credentials, passwords, and account information provided to Customer or Customer's Authorized Users;

- (b) only use the MBS Offering duly licensed herein to configure and manage Customer Backup Data; and
- (c) be solely responsible for: (i) properly configuring the MBS Offering for the backup of Customer Backup Data, (ii) all activities that occur with respect to Customer's and Customer's Authorized User's accounts, (iii) Customer's and Customer's Authorized Users' access and use of the MBS Offering and compliance with these Terms, the Agreement, the Documentation and the applicable Microsoft Terms, (iv) all content of Customer Backup Data, and (v) all product settings, which may override individual end point settings of Authorized Users (if applicable).

For the avoidance of doubt, Druva is not responsible for any alteration, compromise, corruption, or loss of Customer Backup Data.

**9. Support and Service Levels.** Customer acknowledges that Customer Backup Data may become inaccessible due to issues on Microsoft's part, including service disruptions or data unavailability that are beyond Druva's control; therefore, Druva's support and availability commitments have limited applicability as further provided below.

(a) **Support.** Druva's support service offerings (including response times) will have limited applicability. While Druva will make reasonable efforts to respond within the initial response times in the Documentation, follow up times may be beyond Druva's control where the response involves collaboration with Microsoft. Similarly, Druva may not provide support for problems related to the MBS Offering where the problem is due, in part or in whole, to Microsoft. Before contacting Druva customer support, the Customer should make all reasonable efforts to rule out the possibility that the problem is due to Microsoft.

(b) **Service Levels.** Druva's Service Level Agreement does not extend to the MBS Offering because Customer Backup Data is stored in the Customer Microsoft 365 Tenant, which is beyond Druva's control.

**10. Data Resiliency Guarantee.** Druva's Data Resiliency Guarantee (including the remedies therein) is not available for or applicable to Customer's purchase of the MBS Offering.

**11. Data Retrieval and Destruction.** Retrieval and destruction of Customer Backup Data at termination or expiration of these Terms are dependent on features and functions made available by Microsoft. Customer is advised to review the applicable Microsoft Terms along with Microsoft's online product documentation [here](#). For the avoidance of doubt, the data retrieval provisions in the Agreement do not apply.

**12. No warranties.** Druva's warranties do not extend to the MBS Offering. Available remedies, if any, depend solely on Microsoft.

**13. Disclaimer.** THE MBS OFFERING IS PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS. DRUVA MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE AND ASSUMES NO INDEMNITY OBLIGATION OF ANY KIND WITH REGARD TO THE MBS OFFERING.

- 14. Limitation of Liability.** DRUVA'S AND DRUVA AFFILIATES' TOTAL AGGREGATE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATING TO THE MBS OFFERING IS LIMITED TO THE FEES PAID AND PAYABLE BY CUSTOMER FOR THE MBS OFFERING FOR THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. DRUVA AND DRUVA'S AFFILIATES WILL HAVE NO LIABILITY WHATSOEVER FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF BUSINESS, GOODWILL, REVENUE, USE OR OTHER ECONOMIC ADVANTAGE, BUSINESS INTERRUPTION, OR ANY ALTERATION, COMPROMISE, CORRUPTION OR LOSS OF CUSTOMER BACKUP DATA) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE MBS OFFERING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE ABOVE LIMITATIONS SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THESE TERMS.
- 15. Indemnification.** Customer, if notified promptly in writing and given authority, control, information and assistance at Customer's expense for defense and settlement of same, shall defend and indemnify Druva, Druva's Affiliates, and its/their employees, officers, directors, agents, successors, and assigns against any Indemnified Liabilities, in any Third-Party Legal Proceeding so far as it relates to the content of Customer Backup Data or Customer's failure to ensure that it has the necessary software licenses for its use of Microsoft 365. If Druva has given authority, control, information and assistance of a matter in accordance with this Section 16 (Indemnification) to Customer, Customer shall not settle such matter without the prior written approval of Druva which approval shall not be unreasonably withheld.
- 16. Feedback.** (i) Druva may use data and information Customer provides (collectively "Feedback") to provide, maintain, develop, and improve our products, services or features; comply with applicable law; enforce our terms and policies and keep our products, services and features safe. (ii) Customer agrees that Druva may use Feedback without restriction or compensation to Customer.
- 17. Modifications of Terms.** Druva reserves the right to modify, amend, or update these Terms at any time. Any changes to these Terms will be effective immediately upon posting on Druva's website or other designated platform. Customer's continued use of any MBS Offering after such modifications constitutes acceptance of the revised Terms. It is Customer's responsibility to regularly review these Terms to stay informed of any updates or changes.
- 18. Free Trials.** If Customer uses a Free Trial, then the applicable provisions of these Terms will govern that Free Trial, and Druva will make such Free Trial available to Customer on a trial basis, free of charge, until the earlier of (a) the end of the free trial period for which Customer agreed to use such Free Trial, (b) the start date of any subscription purchased by Customer for such product, service or offering, or (c) termination of the Free Trial by Druva in its sole discretion. A Free Trial period may be extended upon mutual agreement by Druva and Customer. Notwithstanding anything to the contrary in these Terms, a Free Trial is provided "AS IS." DRUVA MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND AND SHALL HAVE NO INDEMNIFICATION OBLIGATIONS WITH RESPECT TO A FREE TRIAL. DRUVA SHALL HAVE NO LIABILITY OF ANY TYPE WITH RESPECT TO A FREE TRIAL, UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE DRUVA'S TOTAL

AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO A FREE TRIAL IS \$1,000 USD. CUSTOMER SHALL NOT USE THE FREE TRIAL IN A MANNER THAT VIOLATES APPLICABLE LAWS OR ANY USE RESTRICTIONS OR REQUIREMENTS IN THESE TERMS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 9 (“LIMITATION OF LIABILITY”), CUSTOMER WILL BE FULLY LIABLE FOR ANY DAMAGES CAUSED BY ITS USE OF A FREE TRIAL. ANY DATA AND CONFIGURATIONS ENTERED INTO CUSTOMER’S FREE TRIAL ACCOUNT MAY BE PERMANENTLY LOST UPON TERMINATION OF THE FREE TRIAL.

## 19. General Terms.

- (a) **Termination.** These Terms (and any orders hereunder) shall automatically terminate on the expiration or termination of the Agreement unless a party terminates these Terms earlier for a material breach in accordance with the notice and cure period in the Agreement..
- (b) **Additional Terms.** The terms in the Agreement regarding the following subjects shall apply to these Terms: export compliance, assignment, choice of law, jurisdiction and dispute resolution.
- (c) **Order of Precedence.** Notwithstanding Section 21(a), in the event of any conflict between the Agreement and these Terms, these Terms shall prevail with respect to Customer’s access and use of the MBS Offering.
- (d) **Survival.** All terms and conditions in these Terms that are necessary to enforce the surviving confidentiality obligations will survive the termination of this Terms.
- (e) **Entire Agreement.** These Terms are the entire agreement between the parties regarding the MBS Offering, and these Terms supersede any prior communications, discussions, understandings, or agreements. These Terms may be amended or waived only with the written consent of duly authorized representatives of the parties.