

Reckon Tools Backup licence agreement

RECKON LIMITED ("RECKON") AGREES TO PROVIDE AND YOU AGREE TO RECEIVE THE SERVICES SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. Your subscription to the back-up, storage and retrieval services ("the Services") will create a legal agreement ("the Agreement") between you and Reckon. By subscribing to the Services you represent that you are at least 18 years of age and have the capacity to be legally bound by the terms of the Agreement. Your use of the Services is conditional upon:
 - 1.1 your acceptance of the terms of the Agreement which will be confirmed by clicking on the "I Agree" icon at the bottom of the "Terms and Conditions" displayed by the "New Account" process.
 - 1.2 the payment by you of the appropriate Service Fee ("the Fee") for each option subscribed to by you when such Fee becomes applicable.
2. Subject to the acceptance of the Terms and Conditions and the payment of the fee, Reckon Limited will deliver an online storage facility with monthly hard disk storage and an upload limit to reflect the plan you have chosen upon signup. A free desktop application will also be available to users to download once they have signed up for the service. In your use of the service, you are responsible for providing the following:
 - 2.1 all equipment necessary to access the World Wide Web, for example such as Computer, Modem, etc;
 - 2.2 your own access to the World Wide Web and payment of all fees (phone lines, ISP fees) associated with such access.
3. The benefits of, or rights conferred by this Agreement are non-transferable and the use of the Services is limited to the individual or company whose name was provided when you subscribed to the services.
4. As part of the Services, Reckon will, subject at all times to your compliance with the terms of the Agreement:
 - 4.1 establish in your name a Reckon Backup FACILITY ("the Facility") which will enable you at any time during the currency of the Agreement to store data files ("Data") in the Facility on servers provided by Reckon for that purpose;
 - 4.2 grant to you the Licence ("the Licence") at any time during the currency of the Agreement to access the Facility through the use of Reckon's software for the purpose of either:
 - 4.2.1 backing up Data to the Facility;
 - 4.2.2 storing such Data; and
 - 4.2.3 retrieving such Data from the Facility.
5. The Fee payable by you shall be in consideration of the Licence granted to you in terms of this Agreement to use the software ("the Software") and to access the Facility. You agree that:
 - 5.1 all fees must be paid in full upfront before your access to Reckon Tools Backup will be permitted;
 - 5.2 the Fee shall be calculated according to the tariff of options available to you set out on the pricing page of this web site, subject to variation by Reckon from time to time on 30 days notice to you. Monthly data upload limits apply and are also subject to change on 30 days notice to you;
 - 5.3 you will be liable to Reckon for any penalty charges incurred by Reckon by reason of the dishonour or reversal of any payment made by you;
 - 5.4 all Fees becoming due or payable by you shall be subject to the Goods and Services Tax ("GST") at the applicable rate;

- 5.5 customers have the ability to trial both the Reckon Tools Backup Basic and Reckon Tools Professional offering for 30 days. As such, all fees payable for Reckon Tools Backup are non-refundable, even in the event of cancellation, suspension or termination.
- 5.6 All fees remain payable whether or not you use the Service.
- 6 The Software made available to you as part of the Services is protected intellectual property and may be downloaded and used only by you and only in connection with the Services provided pursuant to this Agreement. Any other use of the Software is strictly forbidden. In particular, you may not in any way reverse engineer, modify, decompile or otherwise tamper with the Software.
- 7 You shall not use the Facility for any unlawful purpose and you undertake to use the Services in a manner consistent with all applicable laws. In particular, without limitation you undertake not to store or share access to any Data that:
- 7.1 contains illegal pictures, material or information;
- 7.2 infringes upon the intellectual property rights of others;
- 7.3 contains any viruses, worms or similar contaminating or destructive features.
8. Quicken reserves the right to modify the Facility upon 30 days written notice to you and shall not be liable to you or any third party in respect of such modification.
9. This Agreement is for an initial period of 12 months, and may be terminated by you upon giving Reckon 30 days written notice before the end of the initial period of such termination. In that event:

You must inform us in writing, addressed to Reckon Limited, Locked Bag 15, PO Broadway NSW 2007 (or by email to reckonbackup@quicken.com.au), if you wish to terminate this agreement.

IN ALL CASES YOUR DATA WILL BE DELETED FROM OUR SERVERS 30 DAYS AFTER WE RECEIVE YOUR TERMINATION REQUEST.

As soon as you have sent notice of your intention to terminate this agreement, it is your sole responsibility to ensure that you have removed all data from our servers.

No data will be recoverable after the termination is effective.

By using the Software you agree to release Reckon from all claims, demands and proceedings for deleted, lost or stolen data and you indemnify Reckon against all liability for all loss or damage arising out of or connected with your use of the Facility and the Software. This release continues forever and binds your heirs, successors, executors and personal representatives.

10. You agree that the requirement of written notice shall be complied with by Reckon upon such notice being communicated by email correspondence to the email address provided when you subscribed to the Services.
11. Should you fail to pay the Fee (when applicable), or in any other way breach any of the terms of this Agreement (all of which shall be regarded as material for this purpose) Reckon will give you 14 days written notice to pay the Fee failing which Reckon shall have the right, at its discretion, to terminate this Agreement and the Services.
12. In the event of Reckon electing to terminate the Agreement and the Services by reason of your failure to pay the Fee, Reckon will give you 14 days written notice to remove any Data backed up by you to the Facility during which time you will be unable to back up any additional Data to the Facility. If at the end of the 14 day notice period the Data has not been removed, Reckon will have the right (in addition to any other remedies it may have and without further notice to you) to remove and/or destroy the Data.
13. In the event that you have at various times subscribed to two or more options for the storage of Data, should you fail to pay the Fee in respect of the earliest option subscribed to

by you when it becomes due for renewal, then Reckon shall give you 14 days written notice to pay the Fee failing which the Facility provided by the option will be terminated. If at the end of the 14 day notice period the Fee has not been paid, Reckon shall have the right (in addition to any other remedies it may have and without further notice to you) to remove and/or destroy any Data which exceeds the storage space of the remaining option/s to which you have subscribed. In that event the earliest Data backed up by you to the Facility will be removed and/or destroyed so that you will be left with no less than the storage space you will be entitled to in respect of the remaining option/s.

14. You shall assume responsibility for your use of the Facility which is provided to you on an "as is" and "as available" basis. Under no circumstances will Reckon on behalf of itself and/or any of its distributors and associates assume any liability with regard to your use of the Facility, including but not limited to loss of Data. In particular, it is your responsibility to protect the security of your password and to ensure that your password is not used to access the Facility in an unauthorised manner. This is especially important in relation to you providing access to third parties for shared access to Data and it is your sole responsibility to manage and administer third party access. Your password will be kept by Reckon in a file in encrypted form and will be accessed only in the event of your password being lost or forgotten. In that event we will make your password available to you provided other suitable safeguards deemed necessary by us are complied with at the time.

Any sharing of Data that is provided through the Facility is subject to the requirements of paragraph 6 of this Agreement.

In addition, if you wish to make use of the file share functionality your e-mail address will be visible to other customers for verification of sharing rights. The service is not available if you do not consent to visibility of your e-mail address.

15. Reckon will use reasonable precautions to prevent the unauthorised disclosure of your Data and will not decrypt your Data. We will not, however, be responsible or incur any liability for any matters, without limitation, any unauthorised access to your Data, including by third parties to whom you have intentionally or inadvertently given shared access. In the event that Reckon is served with a subpoena or is otherwise lawfully compelled to provide access to your Data, we will, subject to it being lawful, notify you of that fact.
16. To the extent permitted by law, without limiting paragraph 14 or any other disclaimer from responsibility in this Agreement, while Reckon undertakes to ensure that:
- 17.1 the Facility shall perform substantially in accordance with what is specified on any web site for Reckon Online Backup; and
- 17.2 shall make every effort to ensure that security and technical back-up shall be maintained;

in no event, including negligence, shall Reckon be liable for the cost of the procurement of substitute goods, services or technology or for any general, special, punitive or consequential damages. In addition, Reckon shall not be liable for any damages or losses arising out of the use of or inability to use the Service or Software or for loss of Data (however that might happen).

Insofar as all or part of this disclaimer may be void for any reason, you agree and understand that in no event shall Reckon's liability for loss or damage exceed the total Fee paid by you for the services for the previous six months.

18. No assignment of the rights acquired by you under this Agreement shall be recognised by unless previously agreed to in writing by Reckon.
19. The failure or delay by Reckon to insist upon or enforce strict performance of any of its rights under this agreement shall not be construed as a waiver of any of those rights or a release of any obligation which you may have towards Quicken.
20. This agreement shall be governed by and in accordance with the laws of the State of New South Wales, Australia as they apply from time to time. You consent to the jurisdiction of the State and Federal Courts located in New South Wales in respect of any claim that may arise by reason of this Agreement.

21. Should any term of this Agreement be declared void or unenforceable by any Court of competent jurisdiction, such declaration shall have no effect upon the remaining terms hereof.
22. Any claim arising out of this agreement shall be commenced by you within 6 months from the date that the cause of action in respect of such claim arose, failing which you shall be barred from any further prosecution of that claim.
23. This Agreement constitutes the entire agreement of the parties and supersedes all other agreements which the parties may have in respect of the subject matter of this Agreement.

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