

# Professional Services Agreement

This Professional Services Agreement (this “Agreement”) is executed and delivered effective as of the date of full execution by the duly authorized representatives of Druva, and the undersigned customer (“Customer”).

WHEREAS, Druva and Customer have entered into Customer Agreement(s) for the license of certain Druva inSync and/or Phoenix products and services (the “Customer Agreement”), and Customer now desires to obtain professional services as identified in the Order Form(s) (the “Professional Services”) from Druva in connection with the products and services that Customer is licensing under the Customer Agreement.

Now therefore, the parties agree as follows:

## 1. Definitions

- a. **“Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. **“Control”** for purposes of this definition means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- b. **“Cloud Services”** shall mean the unified data protection and governance software-as-a-service solution of Druva and its Affiliates for enterprise endpoints (inSync) and/or servers (Phoenix), and any feature or functionality add-ons, and any modified versions of, and upgrades, updates and additions to such solution, that Customer licenses from Druva pursuant to the Customer Agreement.
- c. **“Documentation”** shall mean the published guides, manuals, instructions and/or other documentation provided or made available to Customer with respect to the Software, the Cloud Services and/or the Professional Services.
- d. **“Druva”** shall mean: (i) Druva Technologies Pte. Ltd., a Republic of Singapore company, if this Agreement is entered into when Customer is headquartered in the Asia-Pacific region (other than the India subcontinent), (ii) Druva Data Solutions Private Limited, a Republic of India company, if this Agreement is entered into when Customer is headquartered in the India subcontinent (which includes India, Pakistan, Sri Lanka, Bangladesh, Nepal and Bhutan), (iii) Druva Europe Limited, an England and Wales, United Kingdom company, if this Agreement is entered into when Customer is headquartered in Europe, the Middle East or Africa, (iv) Druva Inc., a Delaware, United States company, if this Agreement is entered into when Customer is headquartered in North America, South America or any other geography not described above, or (v) the Druva company designated in a written document signed by such Druva company and Customer; which in each case will include the applicable Druva company’s designated assigns, successors and transferees.
- e. **“Order Form”** shall mean an order confirmation of Druva (or an Affiliate of Druva) or other written document (e.g., purchase order) that identifies the Professional Services ordered by Customer, directly or through the reseller with which Customer contracted, which is accepted by Druva (or an Affiliate of Druva) in writing, but shall exclude any pre-printed or linked terms and conditions set forth in such written document that are in addition to, inconsistent or in conflict with, or different than, this Agreement. The term “reseller” in this Agreement shall refer to a reseller or a distributor of Druva’s products and services, as applicable.
- f. **“Software”** shall mean the Druva software installed on the endpoint devices of Customer’s Authorized Users (as defined in the Customer Agreement) and/or Customer’s enterprise servers pursuant to the Customer Agreement, and any feature or functionality add-ons, and any modified versions and copies of, and upgrades, updates and additions to such software, licensed to Customer pursuant to the Customer Agreement.
- g. **“Term”** shall mean the period of time during which Druva’s Professional Services are initially contracted to be available to Customer pursuant to this Agreement as set forth in the Order Form(s), unless earlier terminated pursuant to this Agreement. After the initial term and unless earlier terminated pursuant to this Agreement, this Agreement and the corresponding Order Form(s) shall automatically renew for one additional renewal term of 12 months at the established pricing contained in such Order Form(s) as of the end of the initial term, unless either party provides the other party with written notice of termination at least 60 days prior to or 30 days after the end of this Agreement’s then-current term.

## 2. Professional Services

- a. **Services.** Druva agrees to provide the Professional Services for the services plan identified in the Order Form to Customer, subject to Customer's payment of all applicable Fees and related expenses for the Professional Services. Druva or its Affiliates will perform the Professional Services. The Professional Services do not include any intellectual property development activities.
- b. **Documentation.** Customer may use and make copies of the Documentation for its own internal use in connection with its license of the Software and the Cloud Services in accordance with the Customer Agreement, and its obtainment of the Professional Services in accordance with this Agreement, but may make copies no more than the amount reasonably necessary. Customer will not remove or modify any trademarks, trade names, service marks, service names, logos or brands, or copyright or other proprietary notices on the Documentation, or add any other markings or notices to the Documentation. Customer will not modify or create any derivative work based upon the Documentation, or copy, distribute, sell, license or otherwise transfer the Documentation to a third party.
- c. **Customer Role.** Customer acknowledges that the successful completion of the Professional Services depends on Customer reasonably and in good faith cooperating with Druva by (i) providing personnel, equipment, facilities and other resources required for installing, deploying and using the Software and/or the Cloud Services, (ii) allocating sufficient resources, timely responding to inquiries and timely performing any tasks reasonably necessary to enable the performance of the Professional Services and (iii) providing complete, accurate and timely information, data and feedback regarding the Professional Services. Any delays in the performance of the Professional Services caused by Customer may result in additional applicable Fees.
- d. **Customer Policies.** When Druva performs any Professional Services at a Customer facility, Druva personnel will at all times comply with Customer's health, safety and security policies and procedures provided in writing to Druva.
- e. **Insurance.** Druva agrees to maintain at its expense during the Term workers' compensation insurance as required by applicable law, and commercial general liability insurance, automobile insurance, errors and omissions liability insurance and umbrella liability insurance from financially sound insurance companies having coverages and limits of liability that are commercially reasonable. Upon request, Druva will provide Customer with proof of such insurance.

## 3. Proprietary rights

- a. **Intellectual Property.** Customer does not grant to Druva any rights in or to its intellectual property. The Documentation and any authorized copies that Customer makes are the intellectual property of and are owned by Druva and its Affiliates and their licensors. As between Druva and Customer, Druva and its Affiliates retain title to and ownership of all right, title and interest in the Documentation, including all intellectual property and other proprietary rights therein, and subject to the applicable limited license expressly granted by Druva to Customer in Section 2(b), Customer does not have any right, title or interest in the Documentation. All rights not expressly granted in this Agreement are reserved by Druva and its Affiliates and their licensors.
- b. **Confidential Information.** The disclosure and use of Confidential Information and any other rights and obligations vis-à-vis such information in connection with the performance of the Professional Services shall be solely and exclusively governed by this Section 3. Each party or its Affiliate (the "Disclosing Party") may from time to time during the Term disclose to the other party or its Affiliates (the "Receiving Party") the Disclosing Party's confidential, proprietary and/or non-public information, materials or knowledge that is marked or identified as confidential or that reasonably should be understood to be confidential given the nature of the information, materials or knowledge and/or the circumstances of disclosure (the "Confidential Information"). While the Customer Data may contain confidential, proprietary and/or non-public information, materials or knowledge of Customer, for the purposes of this Agreement, the Customer Data shall not constitute Customer's Confidential Information for this Section 3, which Customer Data is protected from unauthorized access, disclosure or use pursuant to the Customer Agreement.
- c. **Protection of Confidential Information.** The Receiving Party will only use the Confidential Information of the Disclosing Party in connection with the performance of the Professional Services (or as expressly authorized by the Disclosing Party in writing), and will disclose the Confidential Information of the Disclosing Party only to the employees and contractors of the Receiving Party and its Affiliates who have a need to know the Confidential Information in connection with the performance of the Professional Services (or for other purposes as expressly authorized by the Disclosing Party in writing) and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder.

The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature but with no less than reasonable care.

- d. Exceptions.** The Receiving Party's obligations under this Section 3 with respect to any Confidential Information of the Disclosing Party will terminate if the Receiving Party can document that such information (i) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party free from any obligation of confidence, (ii) was disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions, (iii) is, or through no fault of the Receiving Party has become, generally available to the public or (iv) was independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law or a court or other judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such compelled disclosure promptly and in writing (to the extent legally permitted) and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.
- e. Return of Confidential Information.** The Receiving Party will return to the Disclosing Party all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party. At the Disclosing Party's request, the Receiving Party will certify in writing signed by an officer of the Receiving Party that it has fully complied with its obligations under this Section 3(e).
- f. Confidentiality Term.** All confidentiality obligations created by this Section 3 shall remain in force and effect for the Term plus two years.

#### 4. Payment terms

- a. Fees and Expenses.** Customer agrees to pay Druva, directly or through the reseller with which Customer contracted, the fees and other amounts for the Professional Services ordered by Customer in United States currency (unless otherwise specified in the Order Form) (collectively, the "Fees"). All Fees payment obligations are non-cancellable, and all Fees paid to Druva are non-refundable except as expressly set forth in this Agreement. Customer will reimburse Druva for reasonable travel and out-of-pocket expenses incurred in connection with the Professional Services.
- b. Terms of Payment.** All Fees will be invoiced in advance in accordance with the Order Form. Unless otherwise set forth in the Order Form, all Fees and expenses are due and payable Net 30 days after the date of the applicable invoice. All invoices that are not paid within 30 days, and all credit accounts that are delinquent, shall be assessed a 1.5% late payment charge (or, if less, the highest legal rate under applicable law) for each month the invoice is not paid or the account is delinquent. Customer will reimburse Druva for all reasonable costs (including reasonable attorneys' fees) incurred by Druva in connection with collecting any overdue amounts.
- c. Taxes.** The Fees do not include any taxes, duties, fees or other amounts assessed or imposed by any government authority. Customer is responsible for paying all such taxes, duties, fees and other amounts, other than taxes imposed on Druva's income.

#### 5. Limited warranty

- a. Authority.** Each of Druva and Customer represents and warrants that (i) this Agreement has been duly entered into and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (ii) no authorization or approval from any third party is required in connection with such party's entering into or performance of this Agreement; and (iii) the entering into and performance of this Agreement does not violate the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.
- b. Limited Warranty.** Druva warrants that the Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. For any breach of this limited warranty, Customer's sole and exclusive remedy and Druva's entire obligation and liability will be the re-performance of the applicable Professional Services. If Druva is unable to re-perform the Professional Services as warranted, Druva will refund Customer, directly or through the reseller with which Customer contracted, the Fees for such portion of the deficient Professional Services pre-paid by Customer. Customer agrees to make any claim under this limited warranty to Druva in

writing within 90 days of performance of such deficient Professional Services to receive the warranty remedy. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 5(b), THE PROFESSIONAL SERVICES ARE PROVIDED “AS IS” AND DRUVA SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 6. Limitation of liability

IN NO EVENT SHALL EITHER PARTY BE LIABLE 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 DATA) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE PROFESSIONAL SERVICES, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY’S AGGREGATE LIABILITY FOR THE PROFESSIONAL SERVICES SHALL BE LIMITED TO THE FEES PAID AND PAYABLE BY CUSTOMER FOR THE PROFESSIONAL SERVICES FOR THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. FOR CLARITY, THE ABOVE LIMITATIONS SHALL NOT LIMIT CUSTOMER’S PAYMENT OBLIGATIONS UNDER SECTION 4 OF THIS AGREEMENT. Except for Professional Services warranty claims pursuant to Section 5(b), no claim against Druva may be brought more than one year after the facts giving rise to such claim has arisen. The limitations of liability and exclusions of damages in this Section 6 form an essential basis of the bargain between the parties and shall survive and apply even if any remedy specified in this Agreement is found to have failed its essential purpose.

## 7. Termination

- a. **Termination.** This Agreement may only be terminated by a party upon written notice to the other party (i) if the other party breaches a material term of this Agreement that is uncured within 30 days (or, in the case of non-payment, 15 days) after delivery of notice of such breach, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors not dismissed within 30 days.
- b. **Fees.** Upon expiration of this Agreement, Customer will pay Druva, directly or through the reseller with which Customer contracted, any unpaid amounts that are owed to Druva for the Term. Upon termination of this Agreement based on Customer’s breach (following any applicable cure period), Customer will pay Druva any unpaid amounts that would have been owed to Druva for the remainder of the then-current Term if such early termination had not occurred as well as any other amounts owed to Druva under this Agreement, without limiting Druva’s other rights and remedies. Upon termination of this Agreement based on Druva’s breach (following any applicable cure period), Druva will refund Customer, directly or through the reseller with which Customer contracted, any amounts pre-paid pursuant to this Agreement for the remaining full calendar months in the then-current Term.
- c. **Effect.** Upon expiration or termination of this Agreement, Customer will immediately cease all use of the Documentation and delete (or, at Druva’s request, return) all Documentation and any Druva confidential information in its possession or control, and Druva’s obligation to provide the Professional Services will immediately cease.
- d. Sections 3, 4, 5, 6, 7 and 8 will survive any expiration or termination of this Agreement.

## 8. General

- a. **Parties.** Druva and Customer are independent contractors. Nothing in this Agreement shall be deemed to constitute a joint venture or partnership between the parties, nor constitute any party as the agent of the other party for any purpose, or entitle any party to commit or bind the other party in any manner. Nothing in this Agreement, express or implied, (nor if this Agreement is governed by Singapore law, under the Contracts (Rights of Third Parties) Act, Chapter 53B of Singapore) is intended to confer upon any party other than the parties hereto, Druva’s Affiliates and their licensors and their respective successors and permitted assigns any rights or obligations.
- b. **Governing Law, Jurisdiction and Attorneys’ Fees.** This Agreement shall be governed by the laws of: (i) Singapore, if pursuant to Section 1(d), Druva means Druva Technologies Pte. Ltd., (ii) India, if pursuant to Section 1(d), Druva means Druva Data Solutions Private Limited, (iii) England, if pursuant to Section 1(d), Druva means Druva Europe Limited, or

(iv) California, United States, if pursuant to Section 1(d), Druva means Druva Inc. The respective courts of Singapore when Singapore law applies, Mumbai, India when India law applies, London, England when England law applies, or Santa Clara County, California, United States when California law applies shall have exclusive jurisdiction for any dispute between the parties, and the parties consent to venue and personal jurisdiction there. Unless California law applies, THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY. This Agreement shall not be governed by the conflict of law rules of any jurisdiction, the application of which is expressly excluded. If any action is pursued to enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs, in addition to any other relief to which such party may be entitled.

- c. **Entire Agreement; Amendment; Waiver.** This Agreement, together with the Order Form(s), is the parties' entire agreement with respect to its subject matter, and supersedes any prior communications, discussions, understandings or agreements. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived with the written consent of duly authorized representatives of the parties.
- d. **Severability.** If any provision of this Agreement is held to be unenforceable, the unenforceable provision shall be replaced by an enforceable provision that comes closest to the parties' intentions underlying the unenforceable provision, and the remaining provisions of this Agreement shall remain in full force and effect. The unenforceability of any provision in any jurisdiction shall not affect the enforceability of such provision in any other jurisdiction.
- e. **Subcontracts; Assignment.** Druva may subcontract any services to be performed pursuant to this Agreement without Customer's consent and without providing notice. Druva may assign or transfer this Agreement, in whole or in part, to any Affiliate or in connection with any acquisition, consolidation, merger, reorganization, transfer of all or substantially all of its assets or other business combination, or by operation of law without Customer's consent and without providing notice. Customer may not assign or transfer any part of this Agreement by business combination, operation of law or otherwise without Druva's prior written consent. Subject to the foregoing, this Agreement will bind and benefit the parties and their respective successors and permitted assigns.
- f. **Force Majeure.** Druva shall not be liable for its inadequate performance caused by any condition beyond the reasonable control of Druva or its suppliers, including accidents, acts of God or nature, government acts, civil unrest, acts of war or terrorism, third party criminal acts, strikes or other labor problems, failures in computer, hardware, telecommunications, internet service provider or hosting facilities, power shortages and denial of service attacks.
- g. **Notices.** All notices given pursuant to this Agreement shall be in writing and shall be deemed given upon the earlier of actual receipt or: (i) when sent, if sent by email during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (ii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iii) one business day after the business day of deposit with an internationally recognized overnight courier, freight prepaid, specifying priority delivery, with written verification of receipt. All notices shall be sent to the parties at their respective address on the Order Form, or to such email address, facsimile number or address as subsequently modified by written notice given in accordance with this Section.
- h. **Counterparts.** This Agreement may be signed in counterparts, including via facsimile, pdf or other electronic reproduction, and any such counterpart will be valid and effective for all purposes.

The signatures of authorized individuals of the parties below confirm that this is a valid and binding Customer Agreement effective as of the date of full execution by the parties.

**Druva**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Customer**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_