



MASTER CUSTOMER AGREEMENT

THIS MASTER CUSTOMER AGREEMENT ("Agreement") is executed and delivered effective as of the date of full execution ("Effective Date") by the duly authorized representatives of the relevant Druva entity specified in Section 14(b) ("Druva") and the undersigned customer ("Customer").

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) **"Authorized Users"** means a natural person or entity who is authorized by Customer to use the Cloud Services and who accesses the Cloud Services.
- (c) **"Cloud Services"** means Druva's software-as-a-service solution for managing data availability and information governance, any feature or functionality add-ons, and any modified versions of, and upgrades, updates and additions to such solution, ordered by Customer under a Reseller Order Form or Druva Order Form, as applicable.
- (d) **"Cloud Storage Area"** means the geographic storage area provided by Druva where Customer Data may be stored per Customer's instructions.
- (e) **"Confidential Information"** means all confidential or proprietary information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information excludes Customer Data. Confidential Information will not include information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.
- (f) **"Customer Data"** means data, information, and materials of Customer or its Authorized Users that Customer or its Authorized Users uploads to, stores on, or accesses with Druva's Cloud Services.
- (g) **"Customer Site"** means the geographic location at which Customer Data may be collected.
- (h) **"Documentation"** means the published user guides, manuals, instructions and/or specifications provided or made available to Customer with respect to the Cloud Services on <https://docs.druva.com/>, as amended from time to time. Customer may subscribe to alerts to receive changes to the Documentation in the customer documentation portal.
- (i) **"Druva Order Form"** means a Druva order form signed by Customer reflecting Customer's purchase of the Cloud Services.
- (j) **"Indemnified Liabilities"** means any (i) settlement amounts approved by the indemnifying party; (ii) damages and costs in a final judgment awarded against the indemnified part(ies) by a competent court; and (iii) all attorneys' fees, and court or tribunal costs incurred by either party with respect to defense and settlement of such third-party claim.
- (k) **"Reseller"** means a reseller of Druva's Cloud Services.
- (l) **"Reseller Order Form"** means a (i) Druva order form signed by Reseller or (ii) purchase order of Reseller (provided that the Reseller has a signed reseller agreement in place with Druva) that references the corresponding order form number (and which purchase order 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), reflecting Customer's purchase of the Cloud Services.
- (m) **"Term"** means the term of this Agreement as set forth in Section 12(a).
- (n) **"Third-Party Legal Proceeding"** means any formal legal proceeding filed by an unaffiliated third party before a court.

2. Cloud Services License; Affiliates.

- (a) **License.** Subject to Customer's compliance with this Agreement, Druva hereby grants Customer a non-transferable, non-exclusive, revocable, limited, and restricted license to access and use the Cloud Services for Customer's own internal business purposes only in a manner pursuant to this Agreement and the applicable Documentation for the Term unless earlier terminated. Druva shall use commercially reasonable efforts to make the Cloud Services available to Customer in accordance with the service levels attached hereto as Exhibit A during the Term unless earlier terminated. Customer may install and use the Cloud Services on any of Customer's compatible endpoint devices up to the maximum number of permitted Authorized Users and storage limit per Authorized User set forth in the Reseller Order Form or Druva Order Form, as applicable. Customer may make copies of the Documentation for its own internal use in connection with its use of the Cloud Services in accordance with this Agreement, but no more than the amount reasonably necessary.
- (b) **Customer Affiliates.** Customer may extend its rights, benefits and protections to its Affiliates and to contractors acting on its or its Affiliates' behalf, so long as Customer remains responsible for their compliance hereunder, in which case all references to Customer in this Agreement shall include Customer's Affiliates.

3. Privacy and Confidentiality.

- (a) **Privacy.** Druva agrees to comply with its data processor obligations under privacy laws applicable to the provision of the Cloud Services and this Agreement. Customer authorizes Druva to process Customer Data to provide the Cloud Services to Customer and Customer's Affiliates. For additional information on Druva's privacy practices and the personal information Druva may collect in its role as the data controller, please visit our [Privacy Policy](#). Customer is responsible for maintaining its own compliance with applicable privacy laws.
- (b) **Confidentiality.** The Receiving Party agrees to use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind, but not less than reasonable care. Each party shall not (i) disclose the other party's Confidential Information to any third parties other than as expressly provided in this Agreement, (ii) use the other party's Confidential Information for purposes outside the scope of this Agreement, or (iii) disclose the other party's Confidential Information, unless to directors, employees, or consultants who have a need to know such information and are subject to confidentiality obligations that are at least as restrictive as those contained in this Agreement.
- (c) **Data Storage.** The Cloud Services will process and store Customer Data in the Cloud Storage Area selected by Customer, except as necessary to comply with law or a valid binding order of a law enforcement agency. In the event that Druva has the capability and desires to change the location of the Cloud Storage Area for a Customer Site, Druva agrees to promptly notify Customer in writing and provide all relevant details of the desired change to the location of the Cloud Storage Area, and not change the location of the Cloud Storage Area without Customer's prior written approval, which Customer may withhold in its sole discretion.
- (d) **Usage and Configuration Metrics.** In connection with Druva's performance of this Agreement, Druva and its Affiliates may collect information regarding number of users, number of devices, number of servers, per user storage capacity, aggregate storage usage and storage locations of the Customer and may use such information only for internal business purposes, including to perform their obligations under this Agreement and to ensure compliance with this Agreement. Any information collected pursuant to this Section shall not include any Customer Data, or any "personally identifiable information" or "protected health information" therein, as such terms are defined in applicable privacy laws. Druva and its Affiliates agree to keep all collected information confidential.
- (e) **Data Security.** During the Term, Druva will maintain commercially reasonable technical and organizational measures, including disaster recovery and business continuity procedures, to protect the security and integrity of Customer Data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer Data.

4. Customer Ownership, Responsibility.

- (a) **Ownership.** Customer retains title to and ownership of all right, title, and interest in the Customer Data.
- (b) **Customer Responsibility.** Customer is solely responsible for (i) maintaining the confidentiality of its Authorized Users' credentials, passwords, and encryption keys associated with its accounts, (ii) properly configuring the settings of the Cloud Services and taking its own steps to maintain appropriate security and protection of passwords and encryption keys and settings for any backup of Customer Data, (iii) all activities that occur with respect to Customer's accounts, other than activities of an unauthorized third party, (iv) its and its Authorized Users' access and use of the Cloud Services and compliance with this Agreement and the applicable Documentation, (v) all content of Customer Data, and (vi) all product settings, which may override individual end point settings of Authorized Users, if applicable. Druva is not responsible for any alteration, compromise, corruption, or loss of Customer Data that arises from any access to, sharing, or use of Customer's accounts, credentials, passwords, or encryption keys by Customer.

5. Druva Ownership.

The Cloud Services, the Documentation, and any authorized copies thereof made by Customer are the intellectual property of and are owned by Druva, its Affiliates and their licensors, and constitute the Confidential Information of Druva. Druva and its Affiliates retain title to and ownership of all right, title and interest in the Cloud Services and the Documentation, including all intellectual property and other proprietary rights therein, subject to the applicable limited licenses expressly granted by Druva to Customer in Section 2 (Cloud Services License). Customer does not have any right, title, or interest in the Cloud Services or the Documentation. All rights not expressly granted in this Agreement are reserved by Druva and its Affiliates and their licensors.

6. Restrictions and Requirements.

- (a) **Proprietary Notices.** Customer and its Authorized Users will not remove or modify any trademarks, trade names, service marks, service names, logos or brands, or copyright or other proprietary notices on the Cloud Services or the Documentation, or add any other markings or notices to the Cloud Services or the Documentation.
- (b) **Use Obligations.** Customer and its Authorized Users (i) will access and use the Cloud Services in accordance with this Agreement and the applicable Documentation, (ii) will not use or permit the Cloud Services to perform any file storage or other services for any third party, (iii) will not knowingly use or permit the Cloud Services to upload or backup any Customer Data (A) that infringes the intellectual property rights or other proprietary rights of any third party, (B) that is unlawful material, or (C) that contains any known software viruses or other harmful or deleterious computer code, files, or programs, such as trojan horses, worms, time bombs, or cancelbots, (iv) will not knowingly use or permit the use of any software, hardware, application, or process that (A) interferes with the Cloud Services, (B) interferes with or disrupts servers, systems, or networks connected to the Cloud Services, (C) accesses or attempts to access another customer's accounts, servers, systems, or networks without authorization, or (D) harasses or interferes with another customer's use and enjoyment of the Cloud Services, and (v) will not tamper with or breach the security of the Cloud Services.

- (c) **Prohibited Activities.** Customer and its Authorized Users will not (i) modify, port, adapt, translate or create any derivative work based upon the Cloud Services or the Documentation, (ii) reverse engineer, decompile, disassemble, or otherwise derive or attempt to derive the source code of the Cloud Services, except for any non-waivable right to decompile the Cloud Services expressly permitted by applicable mandatory law, (iii) copy, distribute, sell, assign, pledge, sublicense, lease, loan, rent, timeshare, use or offer the Cloud Services on a service bureau basis, deliver or otherwise transfer the Cloud Services, in whole or in part, or (iv) access Cloud Services to create competitive products to Druva or engage in the competitive analysis of the Cloud Services.

7. Limited Warranty.

- (a) **Authority.** Each party 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.** During an applicable subscription term, Druva warrants that the Cloud Services will perform substantially in accordance with the applicable published specifications when used in accordance with this Agreement and the Documentation. Non-substantial variations of performance from the published specifications or other Documentation do not establish a warranty right. This limited warranty is void if failure of the Cloud Services has resulted from (i) installation, deployment, use, maintenance or support not in accordance with this Agreement or the Documentation, (ii) modification by Customer, an Authorized User, or a third party not authorized by Druva, (iii) force majeure, or (iv) any material breach of this Agreement by Customer or an Authorized User (other than non-payment). In the event of a Cloud Services warranty claim under this Section 7(b), Customer's sole and exclusive remedy and Druva's entire obligation and liability shall be, at Druva's sole option, to either (x) provide a correction, update or upgrade of the Cloud Services, (y) correct or replace the Cloud Services, or (z) terminate Customer's subscription for the impacted Cloud Services (by written notice) and refund Customer, directly or through the Reseller with which Customer contracted, the unused fees pre-paid by Customer for the impacted Cloud Services covering the whole months remaining after the effective date of termination. Any corrected, upgraded or updated version of the Cloud Services will be warranted for the remainder of the applicable subscription term. All warranty claims must be made to Druva in writing within such subscription term.
- (c) **General Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 7(a) (AUTHORITY) AND 7(b) (LIMITED WARRANTY), THE CLOUD SERVICES ARE PROVIDED "AS IS" AND (i) DRUVA SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; AND (ii) DRUVA DOES NOT WARRANT THAT THE CLOUD SERVICES OR ANY PART THEREOF, OR USE THEREOF WILL BE UNINTERRUPTED, ERROR-FREE, UNBREACHABLE OR VIRUS FREE, OR WILL MEET CUSTOMER'S QUALITY AND PERFORMANCE REQUIREMENTS. CUSTOMER ASSUMES THE ENTIRE RISK OF AND SHALL NOT HOLD DRUVA RESPONSIBLE FOR ANY ALTERATION, COMPROMISE, CORRUPTION OR LOSS OF CUSTOMER DATA ATTRIBUTABLE TO CUSTOMER.

8. Indemnification.

- (a) **Customer's Indemnification Obligations.** 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 Data, including intellectual property infringement right claims. If Druva has given authority, control, information and assistance of a matter in accordance with this Section 8(a) to Customer, Customer shall not settle such matter without the prior written approval of Druva which approval shall not be unreasonably withheld.
- (b) **Druva's Indemnification Obligations.** Subject to Section 8(c) (Indemnification Exceptions), Druva, if notified promptly in writing and given authority, control, information and assistance at Druva's expense for defense and settlement of same, shall defend and indemnify Customer against Indemnified Liabilities, in any Third Party Legal Proceeding so far as it is based on a claim that the use of the Cloud Services furnished under this Agreement infringes third-party intellectual property rights. If Druva reasonably believes that Customer's use of the Cloud Services is likely to be enjoined, or if the Cloud Services are held to infringe such intellectual property rights and all use of such Cloud Services by Customer is thereby enjoined, Druva shall, at its expense and at its sole option: (i) procure for Customer the right to continue using the Cloud Services, (ii) replace the Cloud Services with other non-infringing software or services of substantially equivalent functionality, or (iii) modify the Cloud Services so that there is no infringement, provided that such modified software or services provide substantially equivalent functionality. If, in Druva's opinion, the remedies in clauses (i), (ii) and (iii) above are infeasible or commercially impracticable, Druva may, in its sole discretion, terminate Customer's subscription for the impacted Cloud Services (by written notice) and refund Customer, directly or through the Reseller with which Customer contracted, the unused fees pre-paid by Customer for the impacted Cloud Services covering the whole months remaining after the effective date of termination. If Customer has given authority, control, information and assistance of a matter in accordance with this Section 8(b) to Druva, Druva shall not settle such matter without the prior written approval of Customer which approval shall not be unreasonably withheld.
- (c) **Indemnification Exceptions.** The indemnification obligation in Section 8(b) (Druva's Indemnification Obligations) will not apply to the extent the infringement is caused by any of the following: (i) the modification of the Cloud Services in an unauthorized manner by Customer, (ii) the combination of the Cloud Services with other unauthorized software, hardware, application or process by

Customer, (iii) use of the Cloud Services in violation of this Agreement or the Documentation by Customer, (iv) any third party deliverables or components contained within the Cloud Services that are not provided by Druva, or (v) any materials, data or information provided by Customer, including Customer Data.

- (d) **Sole Remedy.** THIS SECTION 8 SETS FORTH CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND DRUVA'S ENTIRE OBLIGATION AND LIABILITY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

9. Limitation of Liability.

EXCEPT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 (INDEMNIFICATION), OBLIGATIONS RELATING TO CONFIDENTIAL INFORMATION UNDER SECTION 3(B), GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND CUSTOMER'S MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES 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 CLOUD SERVICES, THE DOCUMENTATION, OR THE USE THEREOF, OR THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THE EXCLUSIONS SET FORTH IN THE PRECEDING SENTENCE, EACH PARTY'S AND ALL OF ITS AFFILIATES AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID AND PAYABLE BY CUSTOMER FOR THE CLOUD SERVICES FOR THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. THE ABOVE LIMITATIONS SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT. The limitations of liability and exclusions of damages in this Section 9 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.

10. Insurance.

During the Term, Druva shall maintain, at its expense, workers' compensation insurance as required by applicable law, and commercial general liability insurance, errors and omissions liability insurance, cyber security insurance, and umbrella liability insurance from financially sound insurance companies having coverages and limits of liability that are commercially reasonable and consistent with industry standards.

11. Suspension

- (a) **For Breach.** In the event of any breach of this Agreement by Customer (including non-payment), without limiting Druva's other rights and remedies and notwithstanding anything in this Agreement to the contrary, Druva may temporarily suspend Customer's use of the Cloud Services. Druva will use commercially reasonable efforts to provide at least ten (10) days' notice prior to any suspension under this Section, except where Druva reasonably believes immediate suspension is necessary. Druva shall use commercially reasonable efforts to resume providing access to the Cloud Services as soon as reasonably possible after the event giving rise to the suspension is cured. If Customer does not fully address the reasons for the suspension within sixty (60) days after suspension, Druva may terminate Customer's access to the Cloud Services.
- (b) **For Credit Depletion (if applicable).** For consumption-based Cloud Services, Druva may suspend Customer's use of the applicable Cloud Services within fifteen (15) days from Customer's depletion of the pre-purchased credits. Druva shall make reasonable efforts to provide a courtesy notice to Customer upon depletion of such credits. Notwithstanding the foregoing, it is Customer's sole responsibility to ensure timely purchase of credits for uninterrupted service.

12. Term and Termination.

- (a) **Term of Agreement.** This Agreement commences on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated.
- (b) **Term of Subscriptions.** The term of each subscription is set forth in the Reseller Order Form or Druva Order Form, as applicable. Except as otherwise specified in the Reseller Order Form or the Druva Order Form, any subscription will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter, but in no event less than one (1) year), unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant subscription term. Notwithstanding the foregoing, any promotional or one-time priced subscription will not be subject to auto-renewal. The per-unit pricing during any automatic renewal term shall not increase more than 3% from the prior subscription term.
- (c) **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 thirty (30) 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 thirty (30) days. For license-based Cloud Services in the event the cost of providing Cloud Services exceeds the fees paid and payable by Customer, Druva will notify Customer and Customer shall work with Druva in good faith to remediate the issue. If no resolution is found within 60 days from the date of the notice to Customer, then Druva may terminate the Agreement. For consumption-based Cloud Services, Druva may terminate the Agreement within thirty (30)

days from the end of the suspension period for Cloud Services pursuant to Section 11(b) (Suspension for Credit Depletion). Notwithstanding the above, Druva may immediately terminate this Agreement without prior written notice or an opportunity to cure in the event of an actual or threatened breach of Sections 2 (Cloud Services License), 5 (Druva Ownership) or 6 (Restrictions and Requirements).

- (d) **Refund or Payment on Expiration or Termination.** Upon expiration of this Agreement, Customer will pay Druva, directly or through the Reseller with which Customer contracted, any unpaid and undisputed amounts that are owed to Druva for the Term. Upon early termination of this Agreement based on Customer's breach (following any applicable cure period), Customer will pay Druva, directly or through the Reseller with which Customer contracted, any unpaid and undisputed amounts that would have been owed to Druva for the remainder of Customer's subscriptions 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 early 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 unused amounts pre-paid under this Agreement for the Cloud Services covering the whole months remaining after the effective date of termination. In the event of an invoice dispute, Customer shall notify Druva in writing no later than ten (10) days after the date of the disputed invoice, and any invoices not so disputed shall be deemed accepted. For clarity, an invoice dispute does not authorize Customer to withhold any amounts not in dispute.
- (e) **Data Retrieval.** Upon expiration or termination of this Agreement, the rights granted by Druva to Customer under this Agreement will lapse and Customer will immediately cease all use of the Cloud Services and delete (or, at Druva's request, return) related Documentation, passwords, and any Druva Confidential Information in its possession or control. Upon expiration or termination of this Agreement (other than termination by Druva for Customer's breach), Customer may (i) access the Cloud Services for thirty (30) days solely to retrieve a back-up of the Customer Data at no cost, and (ii) access the Cloud Services for an additional thirty (30) day period to retrieve a back-up of the Customer Data at a cost equal to the current annual list price, pro-rated to a monthly rate. If the Agreement is terminated by Druva for Customer's breach, on or prior to the 30th day after the expiration or termination of this Agreement, Customer may request that Druva provide a copy of the Customer Data to Customer at Druva's standard export fee. Druva will have no obligation to maintain or provide access to the Customer Data after the above periods have expired and will delete such data unless legally prohibited.
- (f) **Survival.** Sections 1 (Definitions), 2(b) (Affiliates), 3(b) (Confidentiality), 4 (Customer Information), 5 (Ownership), 6 (Restrictions and Requirements), 7 (Limited Warranty), 8 (Indemnification), 9 (Limitation of Liability), 11 (Suspension), 12 (Term and Termination except 12(c)), 13 (Provisions Applicable to Direct Customers) and 14 (General) will survive the expiration or termination of this Agreement.

13. Payment Terms.

- (a) **Indirect Purchases.** Where Customer purchases the Cloud Services through a Reseller, Customer's payment terms are with the Reseller and not with Druva; however, a breach of Customer's payment obligations to a Reseller will be deemed to be a breach of this Section 13(a).
- (b) **Direct Purchases.** Where Customer purchases the Cloud Services directly from Druva, payment terms are set forth in Exhibit B, which are hereby incorporated into this Agreement by reference.

14. 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 2001, Chapter 53B of Singapore; nor if this Agreement is governed by the law of England and Wales, under the Contracts (Rights of Third Parties) Act 1999) 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.** The Druva contracting and invoicing entity and the applicable law will depend on where Customer is domiciled as set forth in the table below.

If Customer is domiciled in:	Customer is contracting with:	The governing law is:	The courts having exclusive jurisdiction are:
A country in North America or South America	Druva Inc.	California and controlling United States federal law	Santa Clara, California, U.S.A.
A country in Asia Pacific (except Japan)	Druva Singapore Pte. Ltd.	Singapore law	Singapore
Japan		Japan law	Tokyo, Japan
A country in India subcontinent (which includes India, Pakistan, Sri Lanka, Bangladesh, Nepal and Bhutan)	Druva Data Solutions Private Limited	India law	Mumbai, India
A country in Europe, Middle East, or Africa (except Germany)	Druva Europe Limited	England and Wales law	London, England
Germany	Druva GmbH	German law	Frankfurt, Germany

- (c) **Dispute Resolution.** TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, 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 United Nations Convention on Contracts for the International Sale of Goods, or the Uniform Computer Information Transactions Act, 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 and any other relief to which such party may be entitled.
- (d) **Export Laws.** Customer understands that the Cloud Services and the export and re-export of data via the Cloud Services may be controlled by the laws, regulations and rules of one or more countries governing technology use and transfer, including U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. Customer and its Authorized Users will not use the Cloud Services or transfer any technology or data via the Cloud Services in violation of such laws, regulations or rules. Customer represents that neither it nor its Authorized Users are on any denied or restricted party list.
- (e) **Publicity.** Customer authorizes Druva to use Customer's name, logo, and/or trademark in connection with promotional, marketing, sales and public relations activities only. If requested by Druva, Customer shall cooperate with Druva in marketing-related activities, which may include a press release, case study, testimonial or customer reference (collectively, the "Testimonials"). If Customer provides any written or recorded Testimonials to Druva, Customer hereby authorizes Druva to reproduce, publish, distribute and/or translate such Testimonials for marketing purposes (i) on websites or social media channels operated by Druva, (ii) on the Druva video repository on www.YouTube.com, and/or (iii) in commercial presentations or events.
- (f) **Entire Agreement; Amendment; Waiver.** This Agreement, together with the Exhibit(s), Reseller Order Form and Druva Order Form, as applicable, 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 or waived only with the written consent of duly authorized representatives of the parties. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.
- (g) **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.
- (h) **Data Processors and Service Providers.** Druva may use, and Customer consents to Druva's use of, its Affiliates and third parties to provide certain parts of the Cloud Services under this Agreement. By way of example only, Druva uses Amazon Web Services (AWS) to provide Cloud hosting services. Druva shall be liable for its Affiliates and its third-party service providers who perform parts of the Cloud Services to the same extent as if such services were performed by Druva. Upon request, Druva will provide Customer with a list of its current sub-processors.
- (i) **Assignment.** 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 upon written notice. Druva shall notify Customer of any such assignment or transfer as soon as practicable, but such notice shall not be a condition to such assignment or transfer. Customer may terminate this Agreement by providing written notice of termination to Druva no later than thirty (30) days after receiving notice of such assignment or transfer, if

(i) Druva or this Agreement is acquired by Customer's direct competitor, (ii) Druva is acquired by a vendor with whom Customer has an active dispute and/or litigation, or (iii) Druva is acquired by a vendor that is subject to a pending state or federal regulatory investigation. 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, which consent shall not be unreasonably withheld. Subject to the foregoing, this Agreement will bind and benefit the parties and their respective successors and permitted assigns.

- (j) **Force Majeure.** Except for Customer's payment obligations, neither party shall be liable for its failure to perform caused by any condition beyond its reasonable control, including acts of God or nature, government acts, civil unrest, or acts of war or terrorism.
- (k) **Notices.** All notices given under this Agreement shall be in writing and shall be deemed given upon receipt. All notices shall be sent to the parties at their respective address on the Reseller Order Form or Druva Order Form, as applicable, or to such email address or address as subsequently modified by written notice given in accordance with this section.
- (l) **Counterparts.** This Agreement may be signed in counterparts, including via PDF, DocuSign 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 Agreement on the Effective Date by the parties.

Druva

[Insert Customer's Full Legal Name]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A
Service Level Agreement (SLA) for InSync and Phoenix

Cloud Services Availability

The Cloud Services will be available 24 hours per day, 7 days per week, excluding any scheduled maintenance as described below.

Category 1 – Scheduled Maintenance.

- **InSync:** A weekly scheduled maintenance period may be scheduled (i) in the case of InSync, every Saturday between **9:00AM UTC to 3:00PM UTC**, and (ii) in the case of InSync GovCloud, every Friday between **5:00PM PT to 11:30PM PT**, in each case, to perform system maintenance, backup, and upgrade functions for the Cloud Services. If scheduled maintenance is required outside of the scheduled maintenance period described above, Druva will notify Customer at least three (3) business days in advance.
- **Phoenix:** A weekly scheduled maintenance period may be scheduled on the first and third Monday of each month at **5:00AM UTC** (Phoenix Cloud) and at **8:00AM UTC** (Phoenix GovCloud) for a maximum duration of 90 minutes to perform system maintenance, backup, and upgrade functions for the Cloud Services. If scheduled maintenance is required outside of the scheduled maintenance period described above, Druva will notify Customer at least three (3) business days in advance.

Category 2 – Unscheduled Maintenance. Unscheduled maintenance may be required to resolve issues that are critical for Customer and/or performance of the Cloud Services. Druva will use its commercially reasonable efforts to notify Customer at least six (6) hours prior to the unscheduled maintenance.

Uptime and Service Credits

The following details the credits available to Customer in the event Cloud Services Availability falls below the indicated thresholds. A “Reporting Period” shall mean a calendar month.

InSync

Cloud Services Availability	Credits
< 99.5% in one Reporting Period	5% of one (1) month of subscription fees
< 99% in one Reporting Period	10% of one (1) month of subscription fees

Phoenix

Cloud Services Availability	Credits
< 99.5% in one Reporting Period	5% of one (1) Phoenix Month*
< 99% in one Reporting Period	10% of one (1) Phoenix Month*

* Phoenix Month is equivalent to the value of the Phoenix credits consumed by Customer for the affected month.

Additionally, if the Cloud Services Availability falls below 95% for three (3) consecutive Reporting Periods, Customer shall have the right to terminate this Agreement, and such right must be exercised within ten (10) days of the end of such three (3) month period or Customer shall be deemed to have waived its termination right with respect to that particular three (3) month period.

Calculation of Cloud Services Availability

Cloud Services Availability = (Total Hours in Reporting Period – Unscheduled Maintenance which causes unavailability – Scheduled Maintenance) / (Total Hours in Reporting Period – Scheduled Maintenance) X 100%.

The following shall be excluded when calculating Cloud Services Availability: (i) unavailability caused by force majeure; (ii) any problems resulting from Customer combining or merging the Cloud Services with any hardware or software not supplied by Druva or not identified by Druva in writing as compatible with the Cloud Services; (iii) interruptions or delays in providing the Cloud Services resulting from telecommunications or Internet service provider failures; or (iv) any interruption or unavailability resulting from Customer's use of the Cloud Services in an unauthorized or unlawful manner or any interruption resulting from the misuse, improper use, alteration or damage of the Cloud Services.

Request for Credit for Cloud Services Availability

Any Customer request for a credit under this SLA may only be made on a calendar month basis and must be submitted within ten (10) days after the end of the relevant calendar month or shall be deemed to have been waived by Customer. For those periods at the end of a subscription term that do not coincide with the end of a calendar month, Customer must make a claim for a credit within ten (10) days after the expiration of the subscription term or the claim for credit shall be deemed to have been waived by Customer.

The right to a credit and/or the right to terminate this Agreement under this SLA and this Agreement shall be the sole and exclusive remedy available to Customer in the event of unavailability of the Cloud Services and, under no circumstance, shall the unavailability of the Cloud Services be deemed a breach by Druva of its obligations under this Agreement.

Exhibit B
Payment Terms Applicable to Direct Customers Only

1. **Definitions.**

- a. **"Indirect Tax"** means without limitation, value-added tax, goods and services tax, sales and use and similar transaction taxes, and gross receipts tax, as the case may be.
- b. **"Taxes"** means taxes, levies, duties or similar national, federal, state, provincial, or local governmental assessments of any nature, including Indirect Tax, that are assessable by any jurisdiction under applicable law.

2. **Payment Terms.**

- a. **Fees.** Customer shall pay Druva the subscription fees and other amounts for Druva's products and services ordered by Customer, in the currency specified in the Druva Order Form) (collectively, the "**Fees**"). All payment obligations are non-cancellable, and all Fees paid to Druva are non-refundable except as expressly set forth in this Agreement.
- b. **Payment Terms.** All Fees will be invoiced in advance in accordance with the Druva Order Form. Unless otherwise set forth in the Druva Order Form, all Fees are due and payable Net 30 days after the date of the applicable invoice. All invoices that are not paid within Net 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.
- c. **Taxes.** With respect to the transactions and payments contemplated in this Agreement, each party shall be solely responsible to pay all Taxes and governmental fees and charges (and any penalties, interest, and other additions thereto) that each party is liable to pay under applicable law or otherwise under this Agreement. All Fees payable under this Agreement are exclusive of applicable Taxes. If either party has an obligation under applicable law or this Agreement to pay or collect Indirect Tax for which the other party is legally liable or responsible under this section, then the paying or collecting party will invoice the other party for such Indirect Tax, which the invoiced party will pay. The invoice will satisfy requirements under applicable law for a valid tax invoice. Each party will provide the other party with such information as is reasonably required to determine whether there is an obligation to pay or collect Indirect Tax. Neither party shall pay or collect any Indirect Tax from or on behalf of the other party for which, under applicable law, (i) the other party has previously provided to the paying or collecting party a properly completed and valid exemption certificate, or (ii) the parties may otherwise claim an available, valid exemption from such Indirect Tax.

3. **Conflict.** In the event of any conflict or inconsistency between the following documents, the order of precedence shall be: (1) the Druva Order Form, and (2) this Agreement. The parties agree that any term or condition in Customer's purchase order is void and of no effect.