



## INDIRECT RESELLER AGREEMENT

THIS INDIRECT RESELLER AGREEMENT is effective as of the date of full execution ("**Effective Date**") by and between Druva ("**Druva**") and the undersigned company ("**Partner**").

WHEREAS, Partner wishes to become an indirect reseller for Authorized Products, and will purchase Druva Products (as defined below) through Authorized Distributor (as defined below) for resale under the terms and conditions of this Agreement.

### 1. DEFINITIONS

- (a) "**Authorized Distributor**" means any person or entity currently authorized in writing by Druva or its affiliates to distribute Authorized Products to third parties, other than Customers and Authorized Users.
- (b) "**Authorized Products**" means the products that Partner has procured directly from an Authorized Distributor and that Partner is authorized to resell under this Agreement. "Authorized Products" may include support, maintenance, and professional services for the Cloud Services.
- (c) "**Authorized Users**" means natural persons who are authorized by the Customer to use the Cloud Services, as applicable, and who actively use the Cloud Services.
- (d) "**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 an order form.
- (e) "**Customer**" means a customer (including its affiliates) of Druva and its affiliates sourced by Partner that is licensed to access and use the Authorized Products in compliance with this Agreement and the Customer Agreement.
- (f) "**Customer Agreement**" means (i) the then-current customer agreement of Druva and its affiliates that governs the Cloud Services, which is available at: <https://www.druva.com/documents/DRUVA-mca-cloud-services.pdf>, and may be amended from time to time, or (ii) the mutually executed agreement between Druva and Customer (if applicable). The Customer Agreement is included with each Authorized Product in electronic form as part of a product installer.
- (g) "**Customer Data**" means data, information, and materials of the Customer or its Authorized Users that the Customer or its Authorized Users uploads to, stores on, or accesses with the Authorized Products.
- (h) "**Documentation**" means the published user guides, manuals, instructions, and/or specifications provided or made available by Druva and/or its affiliates to Customers with respect to the Authorized Products.
- (i) "**Druva Marks**" means the names, trademarks, trade names, service marks, service names, logos and brands, or copyright or other proprietary notices, as amended from time to time, of Druva and its affiliates.
- (j) "**Druva Partner Price List**" means the then-current list of prices and discount schedules for the Authorized Products as published by Druva and its affiliates, which may be amended from time to time without prior notice.
- (k) "**Druva Partner Program**" means the then-current reseller qualification criteria, pricing, discount schedules, Minimum Order Requirements, and the deal registration requirements, for the Authorized Products to resellers based upon their partnership level, or any successor program. For certain tiers in the program, such resellers shall be subject to additional terms and conditions, if applicable. The current Druva Partner Program documentation, which includes the Druva Partner Price List and the Druva Partner Deal Registration Program, is available on the Druva Partner Resource Center. Druva may modify the Druva Partner Program in its sole discretion at any time without prior notice. Druva, in its sole discretion, determines the application of any program criteria.
- (l) "**Druva Partner Resource Center**" means <https://partnerportal.druva.com/English/> or any other successor website. Druva may initially provide the then-current Druva Partner Program documentation, which includes the Druva Partner Price List, to Partner in writing, but from and after the establishment of <https://partnerportal.druva.com/English/>, the information on such website shall supersede any such written documentation regarding the Druva Partner Program. Partner is required to review the Druva Partner Resource Center regularly and in no event less than monthly.
- (m) "**Minimum Order Requirements**" means a minimum of 25 licenses for the inSync product family, 12 credits for the Phoenix product family, and 50 servers for CloudRanger.

### 2. APPOINTMENT

- (a) **Appointment.** Subject to Partner's compliance with this Agreement, Druva hereby appoints Partner, during the Term, as a non-exclusive reseller to market, promote, resell, and distribute the Authorized Products to any Customer located worldwide, unless otherwise specified

in Exhibit A attached hereto (“Territory”). Partner’s subsidiary or affiliate may not act as a reseller for the Authorized Products without Druva’s prior written approval. For clarity, as used in this Agreement, the terms “purchase”, “sell”, “resell,” and like terms refer to purchase or sale of a license to use the Authorized Products and not to a purchase or sale of title to or ownership of any rights or other interests in the Authorized Products.

- (b) **Term.** Unless terminated earlier in accordance with this Agreement, the term of this Agreement (“Term”) will commence on the Effective Date and will continue for an initial period of 12 months from the Effective Date. Thereafter, this Agreement will automatically renew for successive 12-months terms on each anniversary of the Effective Date, provided that Partner meets the criteria set forth in the Druva Partner Program prior to each renewal.
- (c) **License – Authorized Products.** Subject to Partner’s compliance with this Agreement, Druva hereby grants to Partner a non-transferable, non-exclusive, limited, and restricted license, during the Term, to (i) access and use the Authorized Products solely to demonstrate, market, and promote the Authorized Products solely to potential Customers in the Territory, which are not competitors of Druva and its affiliates, and (ii) resell and distribute the Authorized Products solely to Customers in the Territory through Druva under this Agreement. Partner may make copies of the Documentation for its own internal use in connection with its performance of this Agreement, but no more than the amount reasonably necessary.
- (d) **License – Trademarks.** Subject to Partner’s compliance with this Agreement, Druva hereby grants to Partner a non-transferable, non-exclusive, limited, and restricted license, during the Term, to use the Druva Marks solely in connection with Partner’s marketing, promotion, resale, and distribution of the Authorized Products under this Agreement. Partner shall correctly attribute ownership of the Druva Mark to Druva in accordance with applicable law, Druva’s then-current trademark usage guidelines, which may be amended from time to time and without notice, and any trademark license agreement as mutually agreed between both parties, if applicable. Partner shall not and shall not permit a third party to:
  - i. Use any or part of the Druva Mark as its trade name or in any way that would imply or suggest that Druva and Partner are affiliates or are otherwise related entities;
  - ii. Remove or obscure any Druva Mark on or in the Authorized Products; or
  - iii. Attach any additional names, trademarks, trade names, service marks, service names, logos, or brands on or in the Authorized Products.

If any Druva Mark is used with another trademark on or in relation to the Authorized Products, then the Druva Mark will be presented at least equally legibly and equally prominently. Any goodwill derived from Partner’s use of the Druva Marks under this Agreement shall inure solely to the benefit of Druva. Partner shall at no time contest, oppose, or challenge the validity or ownership of any Druva Mark, including, without limitation, applying to register any name, trademark, trade name, service mark, service name, logo, or brand that is similar to any Druva Mark. Druva, in its sole discretion, may withdraw its approval of Partner’s use of Druva Mark at any time upon written notice to Partner.

- (e) **Customer Agreement.** Partner agrees that the Authorized Products will be licensed directly by Druva or its affiliates to each Customer pursuant to the Customer Agreement. Prior to any sale of the Authorized Products, Partner shall notify Customer in writing that the Customer’s rights with respect to the Authorized Products are solely set forth in the Customer Agreement, which the Customer is required to accept before using the Authorized Products. Partner shall promptly (i) notify Druva in writing of any suspected or actual breach of the Customer Agreement, (ii) cooperate with Druva in any related investigation of such breach, and (iii) comply with any action determined by Druva to enforce the Customer Agreement. Druva may suspend or terminate any Customer’s access to the Authorized Products in the event that Druva reasonably determines that such Customer or its Authorized Users have violated the Customer Agreement.

### **3. RESTRICTIONS AND REQUIREMENTS.**

- (a) **Proprietary Notices.** Partner shall not, and shall not permit any third party, to remove or modify any trademarks, trade names, service marks, service names, logos or brands, or copyright or other proprietary notices on or in the Authorized Products or the Documentation or add any other markings or notices to the Authorized Products or the Documentation.
- (b) **Use Obligations.** Partner shall (i) access and use the Authorized Products in accordance with this Agreement and the applicable Documentation, (ii) not use or permit the Authorized Products to be used to perform any file storage or other services for any third party, except by a Customer for its own internal business use, (iii) not upload or permit the Authorized Products to be used to upload any data that (A) infringes the intellectual property rights or other proprietary rights of any third party, (B) is unlawful or objectionable material, or (C) contains software viruses or other harmful or deleterious computer code, files or programs such as trojan horses, worms, time bombs or cancelbots, (iv) not use or permit the use of any software, hardware, application or process that (A) interferes with the Authorized Products, (B) interferes with or disrupts servers, systems or networks connected to the Authorized Products, or violates the regulations, policies or procedures of such servers, systems or networks, (C) accesses or attempts to access another customer’s accounts, servers, systems or networks without authorization, (D) harasses or interferes with another customer’s use and enjoyment of the Authorized Products, or (E) in Druva’s sole discretion, inordinately burdens the resources of Druva and/or its affiliates that are providing the Authorized Products, and (v) will not tamper with or breach the security of the Authorized Products.
- (c) **Prohibited Activities.** Partner shall not, and shall not permit any third party to, (i) modify, port, adapt, translate or create any derivative work based upon, the Authorized Products or the Documentation, (ii) reverse engineer, decompile, disassemble or otherwise derive or attempt to derive the source code of the Authorized Products, except as otherwise expressly permitted by applicable law, (iii) copy, distribute, sell,

assign, pledge, sublicense, lease, loan, rent, timeshare, use or offer the Authorized Products on a service bureau basis, deliver or otherwise transfer the Authorized Products, in whole or in part, or (iv) access the Authorized Products to create competitive products to Druva or engage in the competitive analysis of the Authorized Products.

- (d) **Regulatory Compliance.** Partner shall not enter into any agreements or make any commitments regarding compliance with data protection laws, Health Insurance Portability and Accountability Act of 1996, Health Information Technology for Economic and Clinical Health Act of 2009, or other regulations with respect to the Authorized Products or otherwise bind Druva or its affiliates to such regulations, without Druva's prior written approval.
- (e) **Monitoring; Usage Data Collection.** Druva, its affiliates, and its third-party service providers that perform services in connection with Druva's performance of the Customer Agreement may monitor the number of users, devices, and storage capacity of each Customer remotely, through functionality integrated with the Authorized Products or otherwise. Druva and its affiliates may collect and use such data only for their internal business purposes, including to perform and to ensure compliance with this Agreement and/or the Customer Agreement. Druva, its affiliates, and its third-party service providers agree to keep such information confidential.

#### **4. PARTNER OBLIGATIONS**

- (a) **Business Practices.** Partner shall (i) conduct business in a manner that reflects favorably at all times on Druva or Druva's affiliates, the Authorized Products, and/or the good name, goodwill and reputation of Druva and Druva's affiliates, (ii) avoid any deceptive, misleading, or unethical practices that are or might be detrimental to Druva or Druva's affiliates and/or the Authorized Products, (iii) not make any false or misleading representations about Druva or Druva's affiliates and/or the Authorized Products, (iv) not make representations, warranties, or guarantees of any kind, either express, implied, or statutory, to potential or actual Customers on the specifications, functionality, features, or capabilities of the Authorized Products that are inconsistent with the Documentation, and (v) not, and shall not permit any third party, to market, promote, resell, or distribute the Authorized Products to (A) persons or entities outside of the Territory, or (B) persons or entities that Partner knows or reasonably should know will resell or transfer the Authorized Products outside of the Territory.
- (b) **Druva Partner Program.** Partner agrees to comply with the Druva Partner Program, including the Druva Partner Deal Registration Program requirements set forth in the Druva Partner Program.
- (c) **No Conflict.** In the event that Druva (or its affiliates, and/or an Authorized Distributor or another reseller) and Partner engage the same potential Customer in a sales effort unbeknownst to the other party, Druva may control such sales opportunity and determine a reasonable level of compensation for Partner's cooperation and efforts.
- (d) **Governments Customers.** Partner, in consultation with Druva and with Druva's agreement, shall take all reasonable steps in making proposals and agreements with governments that involve the Authorized Products to ensure that the proprietary rights of Druva and its affiliates in such Authorized Products and related Documentation receive the maximum protection available from such governments for commercial computer software and related documentation developed at private expense. The provisions of this section shall not be construed to expand the scope of Partner's rights set forth in this Agreement.
- (e) **Costs and Expenses.** Except as expressly provided in this Agreement or agreed in writing by the parties, Partner shall pay all costs and expenses incurred in the performance of Partner's obligations under this Agreement.

#### **5. PURCHASES**

- (a) **Purchases.** Unless otherwise agreed in writing by Druva, Partner may only procure Authorized Products from an Authorized Distributor located in the Territory in accordance with this Agreement.
- (b) **Prices.** The Druva Partner Price List, which is part of the Druva Partner Program, sets forth the then-current pricing and discounts for the Authorized Products to resellers based upon their partnership level. Partner agrees that for individual purchases from any Authorized Distributor, these discounts are recommended and Partner and such Authorized Distributor are free to negotiate pricing. In the event of additional discounts for deal registration or other programs, Druva will make additional discounts available to such Authorized Distributor to allow such Authorized Distributor to pass through such discounts to Partner in accordance with the program, but final pricing will be negotiated between Partner and such Authorized Distributor. Partner shall be free to establish the prices it charges its Customers for the Authorized Products.
- (c) **Ordering and Payment.** Unless otherwise agreed in writing with Druva, Partner shall submit purchase orders to an Authorized Distributor that is authorized to sell the Authorized Products in the Territory (a list of which is available from Druva upon request) and all terms relating to the Authorized Product ordering, payment, taxes, and fees shall be as set forth in Partner's agreement with such Authorized Distributor. Partner represents and warrants that it shall flow down any special terms and conditions provided by Druva to Authorized Distributor in the applicable order form to the applicable Customer. In no event will Druva be liable for any additional terms and conditions agreed between Authorized Distributor and Partner or between Partner and Customer that were not approved by Druva in writing.
- (d) **Minimum Order Requirements.** Both parties agree that Druva will not accept orders with quantities that do not meet the Minimum Order Requirements as defined above.

#### **6. 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.** Druva warrants to each Customer that the Cloud Services will perform substantially in accordance with the applicable published specifications when used in accordance with the Customer Agreement and the Documentation for the period during which Customer has paid Druva for Cloud Services. Non-substantial variations of performance from the published specifications or Documentation do not establish a warranty right. THIS LIMITED WARRANTY DOES NOT APPLY TO BETA, PRE-RELEASE, EVALUATION, STARTER, TRIAL AND PRODUCT SAMPLER, WHICH ARE MADE AVAILABLE "AS IS" AND WITHOUT WARRANTY, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, FROM DRUVA, AND ANY USE OF SUCH CLOUD SERVICES IS ENTIRELY AT PARTNER'S AND CUSTOMER'S OWN RISK. This limited warranty is void if failure of the Cloud Services has resulted from installation, deployment, use, maintenance, or support not in accordance with the Customer Agreement or the Documentation, modification by Customer or a third party not authorized by Druva, force majeure, or any breach of this Agreement by Partner. In the event of a warranty claim, the sole and exclusive remedy of Partner and Customer, and Druva's entire obligation and liability shall be, at Druva's sole option, to either (i) provide a correction, update or upgrade of the Cloud Services, (ii) correct or replace the Cloud Services or (iii) refund to the applicable Customers a pro-rated amount of the applicable Fees pre-paid by such Customers to Druva, through Partner or an Authorized Distributor, covering the whole months that would have remained, absent such early termination, in the term of the applicable Customer Agreements following the effective date of such early termination and terminate such Customer Agreements. Any upgraded or updated version of the Cloud Services will be warranted for the remainder of the original warranty period. All warranty claims must be made to Druva in writing within such warranty period.
- (c) **Partner Warranty.** Partner represents and warrants that it shall comply with all applicable laws, rules, and regulations, including any applicable anti-corruption, data protection, and privacy laws, in performing this Agreement and in its dealings with respect to the Authorized Products, Authorized Distributors, and Customers. Partner shall make no warranty, guarantee, or representation of any kind, whether written or oral, with respect to the Authorized Products or on behalf of Druva or Druva's affiliates.
- (d) **General Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6(b), THE CLOUD SERVICES ARE PROVIDED "AS IS" AND TO THE EXTENT PERMITTED BY APPLICABLE LAWS (i) DRUVA SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE; 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 PARTNER'S OR CUSTOMER'S QUALITY AND PERFORMANCE REQUIREMENTS. PARTNER AND CUSTOMER ASSUME THE ENTIRE RISK OF AND SHALL NOT HOLD DRUVA RESPONSIBLE FOR ANY ALTERATION, COMPROMISE, CORRUPTION OR LOSS OF CUSTOMER DATA, NOTWITHSTANDING ANY SECURITY OR OTHER MEASURE THAT MAY BE PROVIDED BY DRUVA.

## 7. CONFIDENTIALITY

- (a) **Definition.** "Confidential Information" means any confidential, proprietary, and/or non-public information, materials or knowledge of the disclosing party disclosed to the receiving party, provided that when in tangible form, Confidential Information shall be marked "confidential" or with a similar legend at the time of disclosure. All other Confidential Information, whether oral or visual, must be stated as confidential at the time of disclosure and summarized in writing by the disclosing party for the receiving party no later than 30 days after its initial disclosure. Notwithstanding the above, the receiving party must treat as confidential any information that the receiving party, given the nature of the information or the circumstances of the disclosure, would reasonably understand to be confidential. Druva's Confidential Information shall include, without limitation, the Authorized Products, any software whether in source or executable code, the products and services development plans of Druva and its affiliates, the evaluation and testing data of the Authorized Products, the Authorized Products' pricing and discounts, the business plans of Druva and its affiliates, the performance of Druva and its affiliates against service levels, the specific terms and pricing set forth in this Agreement, and this Agreement. The Customer Data is exclusively the confidential information of the Customer and not the confidential information of Partner or Druva.
- (b) **Exclusions.** Confidential Information shall not include information that: (i) is now or hereafter becomes part of the public domain through no act or failure to act of the receiving party, (ii) is information that the receiving party had rightfully in its possession without restriction as to use or disclosure before receiving such information from the disclosing party, (iii) is hereafter rightfully obtained by the receiving party from a third party without restriction as to use or disclosure, provided that such third party is not known by the receiving party to be bound by a confidentiality agreement with respect to such information or (iv) is information that the receiving party independently developed without access to or use of any Confidential Information of the disclosing party.
- (c) **Confidentiality Obligations.** Neither party has an obligation to disclose any Confidential Information to the other party. Each party agrees (i) to use its reasonable efforts to protect Confidential Information of the disclosing party, and in no event, will either party use a standard of care that is lower than it uses for the protection of its own Confidential Information but in any event, not less than reasonable care, (ii) not to disclose Confidential Information to any third parties other than as expressly provided in this Agreement and (iii) not to use any Confidential Information for any purpose except to perform this Agreement. The receiving party may disclose Confidential Information of the disclosing party to its directors, employees, and consultants who are subject to obligations to maintain the confidentiality of the Confidential Information at least as restrictive as those contained in this Agreement and who have a bona fide need to know the Confidential Information to perform this Agreement. Druva may disclose Partner's Confidential Information to the directors, employees, consultants, advisors, accountants, and

attorneys of Druva and Druva's affiliates, who are subject to obligations to maintain the confidentiality of the Confidential Information at least as restrictive as those contained in this Agreement and who have a bona fide need to know the Confidential Information. The receiving party agrees to notify the disclosing party in writing of any misuse or misappropriation of Confidential Information of the disclosing party that may come to its attention.

- (d) **Compelled Disclosure.** If the receiving party receives notice of a request by any court or governmental authority for production of Confidential Information of the disclosing party, the receiving party shall promptly notify the disclosing party, use reasonable efforts to limit disclosure, and obtain a protective order at the disclosing party's expense. If permitted by applicable law, the receiving party shall enable the disclosing party to participate in limiting the disclosure and seeking a protective order. If the receiving party is legally compelled to disclose Confidential Information, the receiving party shall furnish only that portion of Confidential Information that the receiving party is advised by legal counsel is legally required and shall exercise its reasonable efforts to obtain confidential treatment for such Confidential Information.

## **8. INTELLECTUAL PROPERTY RIGHTS**

All Confidential Information remains the sole and exclusive property of the disclosing party. The Authorized Products, the Documentation, and any corrections, derivatives, enhancements, modifications, updates, and upgrades to the Authorized Products and the Documentation, including all intellectual property and other proprietary rights therein ("**Druva IP**") are the intellectual property of and are owned by Druva, including its affiliates and its suppliers. As between Druva and Partner, Druva retains title to and ownership of all right, title, and interest in the Druva IP. Subject to the applicable limited licenses expressly granted by Druva to Partner in Section 2, Partner does not have any right, title, or interest in the Druva IP. All rights not expressly granted in this Agreement are reserved by Druva and its suppliers.

## **9. INTELLECTUAL PROPERTY INDEMNIFICATION**

- (a) **IP Infringement.** 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 Partner against any action, suit, or proceeding brought against Partner so far as it is based on a third-party claim that the use of the Cloud Services furnished under this Agreement infringes a United States patent that has been issued as of the installation or deployment date, as the case may be. If Druva reasonably believes that Partner's use of the Cloud Services is likely to be enjoined, or if the Cloud Services are held to infringe such patent and all use of such Cloud Services by Partner is thereby enjoined, Druva shall, at its sole option and expense, (i) procure for Partner the right to continue using the Cloud Services pursuant to the applicable limited licenses expressly granted by Druva to Partner in Section 2, (ii) replace 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 provides 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, refund to the applicable Customers a pro-rated amount of the applicable Fees pre-paid by such Customers to Druva, through Partner or an Authorized Distributor, covering the whole months that would have remained, absent such early termination, in the term of the applicable Customer Agreements following the effective date of such early termination and terminate such Customer Agreements. Partner shall not settle any matter without the prior written approval of Druva.
- (b) **Exceptions.** The indemnification obligation in this Section 9 will not apply to the extent the infringement is caused by any of the following: (i) the Product is modified in an unauthorized manner, (ii) the Product is combined with other software, hardware, application, or process not authorized by Druva, (iii) the Product is used in violation of this Agreement, the Customer Agreement, or the Documentation, (iv) any third party deliverables or components contained within the Product that are not provided by Druva, (v) any materials, data, or information provided by Partner or the Customer, including Customer Data, or (vi) any failure by Partner or the Customer to use the corrected, updated, or modified version of the Product as provided by Druva. **THE INDEMNIFICATION OBLIGATION IN THIS SECTION 9 DOES NOT APPLY TO BETA, PRE-RELEASE, EVALUATION, STARTER, TRIAL AND PRODUCT SAMPLER, AND ANY USE OF SUCH CLOUD SERVICES IS ENTIRELY AT PARTNER'S AND CUSTOMER'S OWN RISK.**
- (c) **Sole Remedy.** **THIS SECTION 9 SETS FORTH PARTNER'S SOLE AND EXCLUSIVE REMEDY AND DRUVA'S ENTIRE OBLIGATION AND LIABILITY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.**

## **10. PARTNER INDEMNITY**

Partner agrees to defend, indemnify, and hold Druva and Druva's affiliates harmless from and against all claims, damages, liabilities, losses, and expenses, including reasonable attorneys' and experts' fees, as a result of (i) any breach of this Agreement by Partner, (ii) any death or bodily injury to any person, destruction, or damage to any property or any loss of use resulting therefrom, (iii) any misrepresentation of Druva and Druva's affiliates and/or its Authorized Products, or (iv) any violation of any law, rule or regulation, caused, in whole or in part, by any negligent or willful act or omission of Partner.

## **11. RELATIONSHIP**

Partner's relationship with Druva during the Term is that of an independent contractor. Partner will not have, and will not represent that it has, any power, right, or authority to bind Druva, or to assume or create any obligation or responsibility, express, or implied, on behalf of Druva or in Druva's name, except as expressly provided in this Agreement.

**12. TERMINATION**

- (a) **For Convenience.** Each party may terminate this Agreement for convenience upon 60 days advance written notice.
- (b) **For Cause.** Either party may terminate this Agreement 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, five 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. 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(c), 2(d), 3(a-d), 7, or 8, or a change in control of Partner through merger, consolidation, sale, license, or other transfer of Partner's equity securities or assets, or other business combination.
- (c) **Fees and Other Remedies.** Immediately upon expiration or termination of this Agreement, Partner shall pay all fees owed to Druva under this Agreement. The payment dates of all amounts due to Druva will automatically be accelerated so that they will become due and payable on the effective date of such expiration or termination, even if longer terms had been provided previously. Druva reserves all other rights and remedies available at law or in equity, including the right to seek damages and injunctive relief for breach of this Agreement.
- (d) **Effect.** Immediately upon expiration or termination of this Agreement, (i) the license rights granted by Druva to Partner under this Agreement will cease, (ii) Partner's right to access and use the Authorized Products and the Documentation will terminate, and (iii) Partner will cease marketing, promoting, reselling, and distributing the Authorized Products, cease using the Druva Marks, and discontinue all representations that it is a reseller of the Authorized Products. Each party will promptly return to the other party all of the other party's Confidential Information within its possession or control. Partner will return to Druva all marketing and promotional materials for the Authorized Products in its possession within 30 days of the expiration or termination of this Agreement and certify in writing that it has complied with such obligation.
- (e) **Post-Termination Customer Support.** Upon the expiration or termination of this Agreement, Customer's rights to use the Authorized Products will not be affected and Partner, in good faith, shall immediately cooperate with Druva to transition ongoing support of Customers directly to Druva or other Druva resellers and provide necessary information as required by Druva (or other Druva resellers). If Customer, at any time, elects to purchase Cloud Services directly from Druva or other Druva resellers, Druva shall give Partner reasonable notice in writing. In such an event, Partner, in good faith, shall immediately cooperate with Druva (or other Druva resellers) to transition ongoing support of Customers and provide necessary information as required by Druva (or other Druva resellers).
- (f) **Survival.** Sections 2(b), 2(e), 3(a-d), 4(e), and 6-14 will survive any termination or expiration of this Agreement.

**13. Limitations of Liability**

EXCEPT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS IN SECTION 9 and 10, EITHER PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS, AND PARTNER'S MISAPPROPRIATION OF DRUVA'S INTELLECTUAL PROPERTY RIGHTS, 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, OR ANY ALTERATION, COMPROMISE, CORRUPTION OR LOSS OF DATA) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE CLOUD SERVICES, THE DOCUMENTATION OR 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 AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID OR PAYABLE BY PARTNER TO DRUVA UNDER THIS AGREEMENT FOR THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. FOR CLARITY, THE ABOVE LIMITATIONS SHALL NOT LIMIT PARTNER'S PAYMENT OBLIGATIONS FOR PURCHASES UNDER SECTIONS 5 OF THIS AGREEMENT. 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 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.

**14. GENERAL**

- (a) **Entire Agreement; Amendment; Waiver.** This Agreement, together with the Exhibit(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.
- (b) **Severability.** If any provision of this Agreement is held to be unenforceable, the unenforceable provision will be replaced by an enforceable provision that comes closest to the parties' intentions underlying the unenforceable provision, and the remaining provisions of this Agreement will remain in full force and effect. The unenforceability of any provision in any jurisdiction will not affect the enforceability of such provision in any other jurisdiction.
- (c) **Subcontracts; Assignment.** Druva may subcontract any services to be performed pursuant to this Agreement without Partner'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, demerger, merger, reorganization, transfer of all or substantially all of its assets or other business combination, or by operation of law without Partner's consent and without providing notice. Partner may not assign or transfer any part of this Agreement, or delegate its duties or responsibilities under this Agreement, by business combination, operation of law or otherwise without

Druva’s prior written consent, and any attempt to make such assignment without consent will be rendered null and void. Subject to the foregoing, this Agreement will bind and benefit the parties and their respective successors and permitted assigns.

- (d) **Third Party Beneficiaries.** Except as expressly provided in this Agreement, nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto (and with respect to Druva, Druva’s affiliates) or their respective successors and permitted assigns any rights or obligations, and if this Agreement is governed by Singapore law, a person who is not a party to this Agreement (other than Druva’s affiliates) has no right under the Contracts (Rights of Third Parties) Act, Chapter 53B of Singapore, to enforce any term or condition of this Agreement.
- (e) **Governing Law.** Pursuant to the table below, the Druva contracting entity and the applicable law will depend on where Partner is domiciled.

<b>If Partner is domiciled in:</b>	<b>Partner is contracting with:</b>	<b>The governing law is:</b>	<b>The courts having exclusive jurisdiction are:</b>
A country in North America or South America	Druva Inc. a Delaware corporation	California and controlling United States federal law	Santa Clara, California, U.S.A.
A country in Asia Pacific	Druva Singapore Pte. Ltd., a Republic of Singapore company	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	Druva Europe Limited, an England and Wales, United Kingdom company	Wales and England law	London, England
Germany		Druva GmbH	German law

This Agreement will 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.

- (f) **Equitable Relief; Attorney’s Fees.** Notwithstanding anything in this Agreement to the contrary, Druva shall have the right, at its election, to seek injunctive or other equitable relief in any court of competent jurisdiction to protect its proprietary or Confidential Information. If any action is pursued to enforce or obtain compliance with this Agreement, the prevailing party will be entitled to reasonable attorneys’ fees and costs and any other relief to which such party may be entitled.
- (g) **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.
- (h) **Compliance with Laws.** Partner understands that the Authorized Products and the export and re-export of data via the Authorized Products may be controlled by the laws of one or more countries governing technology use and transfer, including U.S. Export Administration Regulations. Partner shall not engage in any activities in violation of such laws.
- (i) **Notices.** All notices given pursuant to this Agreement will be in writing and deemed given upon receipt. All notices will be sent to the respective parties at their address as set forth on the signature page hereto, or to such other address as subsequently modified by written notice given in accordance with this section.
- (j) **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.

IN WITNESS WHEREOF, the parties’ authorized representatives have executed this Agreement as of the Effective Date.

**Druva**

**Partner:** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT A**

**TERRITORY**

(If this exhibit is left blank, Druva and Partner will presume that "Territory" means any customer located worldwide for the purposes of this Agreement.)

Partner shall limit its activities under this Agreement to the following markets and/or territories: