

Terms of Use

In consideration of the use of the Services, Customer agrees to the following Terms of Use.

The terms and conditions set forth in this Terms of Use (the "Terms of Use") are expressly and fully incorporated by reference into the order, estimate, quote or online purchase to which they relate (in each case, the "Services Agreement"). Such Services Agreement, including the Terms of Use, is referred to as this "Agreement." In this Agreement, KeepItSafe, Inc. DBA OffsiteDataSync (the "Company") and the customer named in the Services Agreement ("Customer") are sometimes individually called a "party" and collectively called the "parties."

1. Services. Company will provide Customer with the Services as described in Customer's online purchase or in the Services Agreement and as set forth in any written amendments or change orders entered into by and between the Company and Customer during the Term of this Agreement (collectively, the "Services"). The Services are subject to Company's Terms of Use as published from time to time. Notwithstanding the foregoing, storage increases may be initiated unilaterally by Customer. Storage increases will increase the minimum monthly charges for the remainder of the Agreement. For purpose of this Agreement, acceptance of a Service Agreement, an online purchase, or any other agreement with Company may be made via 'click wrap' acceptance, email with acceptance language, original or pdf signatures or other commercially acceptable forms of electronic signature. Company will have the right to determine the method and means of performing the Services. In addition, Company may vary the technical specifications of the Services, and any equipment and software which are necessary for the Services (hereinafter "Equipment and/or Software"), provided that it does not materially impair the Services.

2. Fees and Payment Terms.

2.1 Fees. As consideration for the Services, Customer will pay the Company the fees on the terms set forth in the Services Agreement with respect to the Services described in the Services Agreement (as well as the fees on the terms set forth in any amendments or change orders with respect to the Services set forth in such additional amendments or change orders) (collectively, the "Fees"). In the event of any Disaster Declaration by Customer the Company will only support Failover for VMware vSphere and Microsoft Hyper-V operating systems and the following additional Fees will be charged: (1) Disaster Declaration call out fee of \$1,500 and (2) Failover Usage Charges – CPU Consumption @\$0.02 per GHz per hour and RAM Consumption at \$.05 per GB RAM per hour (unless such Failover Usage Charges occur in any 'no charge' time period set forth in the Estimate). If Customer requires any additional services other than those set forth in the Services Agreement, those services shall be charged at Company's regular rates. Any such additional Disaster Declaration and additional services Fees are subject to change at the Company's published rates from time to time. A "Disaster Declaration" is any event where Customer requests and utilizes Company's resources (other than those described in the Estimate and Service Level Agreement) during a business continuity disruption. The following conditions are non-exclusive, traditional examples of events that trigger a Disaster Declaration: One or more mission-critical systems will be unavailable for more than 8 hours; Customer office building or facility where the business is located will be unavailable for more than 8 hours; The network infrastructure that supports business systems and voice communications will be unavailable for more than 8 hours; Access into the area where the business resides has been cordoned off and will not be available for at least 8 hours. Unless otherwise agreed to in writing by the Company and Customer, the Services will be ready to 'go

live' within 30 days of purchase unless a delay is caused, wholly or in part, by Partner or Partner's customer. Billing for any purchase shall commence at the time of purchase.

2.2 Taxes. All Fees and other amounts payable by the Customer to Company pursuant to this Agreement are exclusive of all applicable sales taxes, use taxes, value added taxes, duties, assessments, or other similar taxes levied on the Services, equipment, or software (collectively, the "Taxes"). All Taxes will be the sole responsibility of the Customer. The Customer will promptly pay Company any Taxes owed upon request by Company.

2.3 Payment Terms. Payment of the Fees, any Taxes owed, and any other amounts due Company from the Customer pursuant to this Agreement will be made net 15 days in U.S. Dollars and paid by regular, certified, or bank check, credit card, letter of credit, wire transfer in accordance with the wire transfer instructions provided by Company, or any other means of payment agreed to by Company in writing. No set-offs by the Customer will be permitted against any amounts due Company from the Customer pursuant to this Agreement. Customer authorizes Company to charge Customer recurring monthly fees to Customer's designated Payment Method, including but not limited to a credit card. Customer acknowledges that the amount billed each month may be increased and may vary from month to month for reasons that may include Customer initiated storage increases, or terminating a subscription early, and Customer authorizes Company to charge Customer's Payment Method for such varying amounts, which may be billed monthly in one or more charges or in the case where a subscription is terminated early, in one lump sum.

2.4 Late Payment. If the Customer fails to pay the Fees, any Taxes owed, or any other amount due Company pursuant to this Agreement when such amount comes due, then Company, at its sole discretion, may, without prejudice to any other rights it has: (a) suspend the Services until the past due amount and any damages caused thereby (including, without limitation, attorneys' fees and disbursements) are paid in full; provided, however, that no suspension of Services shall be implemented prior to Company providing the Customer with at least ten (10) days prior written notice of non-payment and intention to suspend services, and the Customer fails to make the payment or make other arrangements as agreed to by Company in writing prior to the expiration of such notice period; and/or (b) charge the Customer a late fee equal to the greater of \$35.00 or of 1.5% of the past due amount and any damages caused thereby (including, without limitation, attorneys' fees and disbursements) per month or fraction thereof until such past due amount and damages by are paid in full.

3. Maintenance, Repairs, and Improvements. Company, in its sole discretion, reserves the right to suspend the Services, or any part thereof, at any time for the purpose of carrying out or implementing maintenance, repairs, or improvements, provided that Company gives at least 24 hours prior written notice to the Customer and Company uses reasonable efforts to minimize the disruption to the Services.

4. Customer Restrictions. The Customer will not use the Services, Equipment, or Software: (a) for any unlawful purpose or in a manner that is unlawful or constitutes a violation or infringement of the rights of any individual or entity; or (b) other than in conformance with any

acceptable usage policies that Company has agreed to with connected network providers.

5. Customer's Representations and Warranties. The Customer represents and warrants to Company that: (a) the Customer is duly organized, validly existing, and in good standing in the Customer's state and/or country of organization; (b) the Agreement is valid and binding with respect to the Customer and enforceable against the Customer in accordance with the terms and conditions set forth hereunder; (c) the Customer is not a party to any agreement, judgment, decree, or order that would directly or indirectly affect its ability to perform its obligations under these agreements; (d) if Customer is agreeing to the Agreement on behalf of a third party ("Third Party User"), Customer has the authority to act as the Third Party User's agent and bind it to these Terms of Use; and (e) Customer will not use the Services to transmit or store (1) any "protected health information" (as such term is used in the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191) unless and until Customer has executed a Business Associate Agreement with Company in connection with this Agreement; (2) any cardholder data unless such transmission or storage is encrypted as part of the Services; or (3) any other type of regulated information that imposes independent obligations upon Company.

6. Confidentiality.

6.1 Definition of Confidential Information. For purposes of this Agreement, the term "Confidential Information" means any and all information in any form or of any type, whether tangible or intangible, and whether stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing (including, without limitation, all oral and visual information), of, about, or relating to the Disclosing Party (as defined below) existing as of the date of this Agreement or thereafter created, including, without limitation: (a) trade secrets, know-how, data, personnel information, research and development, products and services, prototypes, devices, work in process, apparatuses, ideas, concepts, plans, patterns, designs, drawings, engineering, configurations, compilations, processes, techniques, improvements, procedures, systems, methodologies, formulas, technology, hardware, firmware (integrated circuits and microprocessors), algorithms, codes, source code, object code, computer software, computer programs, materials, inventions, discoveries, patent applications, and copyrightable materials; (b) any information that the Disclosing Party expressly designates, in writing, as confidential from time to time; and (c) this Agreement.

6.2 Information Not Considered Confidential Information. During the Term of this Agreement and thereafter, each party to this Agreement (a "Receiving Party") agrees to hold in confidence and not disclose to any third party (other than its Representatives (as defined below)), nor to use for its own benefit, any Confidential Information of the other party (a "Disclosing Party"), except in furtherance of the Receiving Party's obligations or rights under this Agreement or upon the prior written consent of the Disclosing Party. Notwithstanding anything in Section

6.1 of these Terms of Use to the contrary, information will not be considered Confidential Information to the extent that it (a) is or becomes part of the public domain without breach of this Agreement; (b) is rightfully received by the Receiving Party (as defined below) without requirements of confidential treatment from a third party who did not acquire or disclose such information by a wrongful or tortious act or in violation of any agreement or other requirements of confidential treatment; (c) was lawfully in the Receiving Party's possession without

requirements of confidential treatment, as demonstrated by written records, prior to the Receiving Party's receipt of such information of, about, or relating to the Disclosing Party; or (d) can be shown by documentation to have been independently developed by the Receiving Party without reference to any Confidential Information of the Disclosing Party.

6.3 Disclosure and Use of Confidential Information. During the Term of this Agreement and thereafter, each party to this Agreement (a "Receiving Party") agrees to hold in confidence and not disclose to any third party (other than its Representatives (as defined below)), or use for its own benefit, any Confidential Information of the other party (a "Disclosing Party"), except in furtherance of the Receiving Party's obligations or rights under this Agreement or upon the prior written consent of the Disclosing Party.

6.4 Representatives. The term "Representatives" as used in this Agreement means the entities that the Receiving Party controls, the entities that control the Receiving Party, or the Receiving Party's employees, independent contractors, attorneys, accountants, and other advisors that (a) have a need to know the Confidential Information of the Disclosing Party in connection with furthering the Receiving Party's obligations or rights under this Agreement and (b) accept disclosure of the Confidential Information of the Disclosing Party under a written agreement incorporating the restrictions on use and disclosure contained in this Agreement with respect to the Confidential Information of the Disclosing Party. And even then, such Representatives will have access only to the Confidential Information they actually need in connection with furthering the Receiving Party's obligations or rights under this Agreement.

6.5 Disclosure Required by Law, Court Order, or Subpoena. If the Receiving Party becomes legally obligated to disclose any Confidential Information of the Disclosing Party under law, court order, or subpoena, the Receiving Party may disclose such Confidential Information of the Disclosing Party as so required; provided, however, that before such disclosure the Receiving Party will give the Disclosing Party prompt written notice of such obligation (which will include, without limitation, identification of the Confidential Information of the Disclosing Party to be so disclosed and a copy of the law, court order, or subpoena) to allow the Disclosing Party to seek a protective order or other appropriate remedy to prevent or limit any such disclosure and, in the event that the Disclosing Party cannot prevent the disclosure, the Receiving Party will disclose only such Confidential Information of the Disclosing Party as the Receiving Party is legally required to disclose.

6.6 Duty to Protect Confidential Information. The Receiving Party acknowledges and understands that the Confidential Information of the Disclosing Party is confidential and proprietary to the Disclosing Party, that it constitutes trade secrets of the Disclosing Party, and that it is of great value and importance to the success of the Disclosing Party. The Receiving Party will take all reasonable measures (including, without limitation, those measures that the Receiving Party uses to protect its own Confidential Information, which will be no less than reasonable care) to protect the secrecy of the Confidential Information of the Disclosing Party and to prevent the unauthorized, negligent, or inadvertent disclosure or use thereof. The Receiving Party will not in any manner copy or reproduce any portion of the Confidential Information of the Disclosing Party without the prior written consent of the Disclosing Party, except for copies distributed to the Receiving Party's Representatives on a need-to-know basis in connection with

furthering the Receiving Party's obligations or rights under this Agreement. The Receiving Party will promptly notify the Disclosing Party in writing of any unauthorized, negligent, or inadvertent use or disclosure of the Confidential Information of the Disclosing Party. The Receiving Party will be liable under this Agreement for any use or disclosure of the Confidential Information of the Disclosing Party in violation of this Agreement by the Receiving Party or any of the Receiving Party's Representatives.

6.7 Duty to Cease Use and Disclosure of Confidential Information.

The Receiving Party will, upon termination of this Agreement or upon demand by the Disclosing Party, whichever is earlier, immediately: (a) cease all use and disclosure of the Confidential Information of the Disclosing Party otherwise permitted under this Agreement; (b) return to the Disclosing Party any and all Confidential Information of the Disclosing Party (together with any copies, reproductions, summaries, compilations, and excerpts thereof), whether in tangible, electronic, or any other form whatsoever, in the Receiving Party's possession or within the Receiving Party's control, or in the possession of or within the control of the Receiving Party's Representatives; (c) destroy (or, in the case of electronic embodiments, permanently erase) all notes, memoranda, analyses, and other documents and materials concerning, or which incorporate or refer to, the Confidential Information of the Disclosing Party, whether in tangible, electronic, or any other form whatsoever, in the Receiving Party's possession or within the Receiving Party's control, or in the possession of or within the control of the Receiving Party's Representatives; and (d) confirm to the Disclosing Party in writing that the Receiving Party has complied with (a), (b), and (c) of this sentence.

6.8 No Rights Granted in Confidential Information. Nothing in this Agreement will, nor is intended to, grant to the Receiving Party any right, title, or interest in or to: (a) any Confidential Information of the Disclosing Party other than the limited right to use and disclose the Confidential Information of the Disclosing Party pursuant to the terms of this Agreement solely in furtherance of the Receiving Party's obligations or rights under this Agreement; or (b) any patent, trademark, copyright, trade secret, or other intellectual property right of the Disclosing Party. Except, each party to this Agreement grants express rights of name or logo use in marketing materials to solely identify each party as an end-user or provider of services.

6.9 Injunction. The Receiving Party acknowledges and agrees that its obligations provided in Section 6 of these Terms of Use are necessary and reasonable to protect the Disclosing Party, and the Receiving Party expressly agrees that any breach or threatened breach of this Agreement by the Receiving Party or its Representatives may cause the Disclosing Party irreparable harm for which there is no adequate remedy at law, and as a result of which, the Disclosing Party will be entitled to the issuance by a court of competent jurisdiction of an injunction, restraining order or other equitable relief in favor of the Disclosing Party, without the necessity of posting bond, restraining the Receiving Party or its Representatives from committing or continuing to commit any such violation. Any right of the Disclosing Party to obtain an injunction, restraining order, or other equitable relief will not be deemed a waiver of any right to assert any other remedy that may be available to the Disclosing Party in law or in equity.

6.10 Survival. Section 6 of these Terms of Use will survive the termination of this Agreement indefinitely.

6.11 Customer Confidential Data. Notwithstanding anything in Section 6 of these Terms of Use or elsewhere in this Agreement to the contrary, (a) all Customer information and data backed up to, stored on, or otherwise resident on servers or storage devices of Company, wherever located (the "Customer Stored Data"), will be deemed Confidential Information belonging to the Customer; and the Customer Stored Data may not be disclosed, accessed, or used by Company for any purpose other than by lawful order or to furnish and/or restore such Customer Stored Data to and for the Customer, as part of the Services. Upon termination of the Agreement, Company will delete all Customer Stored Data and Customer software stored in any Services resources within a commercially reasonable time period which shall be no less than 5 business days and no more than 15 business days after termination of the Agreement. Customer is responsible for migrating any of Customer Stored Data and Customer software from Company Services resources prior to deletion at Customer's sole expense.

7. Privacy Policy. Company is dedicated to establishing trusting relationships with its customers, based on respect for personal identity and information. A current copy of Company's Privacy Policy ("Privacy Policy") is available at Company's website and is incorporated into this Agreement by reference. If Company updates its Privacy Policy, Company will notify Customer via email and post a revised Privacy Policy at Company's website. If any Privacy Policy update materially and adversely impacts Customer, Customer may, within 14 days of the effective date of such update, provide Company with a written notice of objection to the change, identifying the specific language to which Customer objects and setting forth in reasonable detail the basis for Customer's objection. Failure to deliver notice within such 14-day period will be deemed acceptance of the Privacy Policy as modified. If mutual resolution is not achieved within 30 days from the date Company receives Customer's notice of objection, then the previous version of the Privacy Policy will remain in effect as to the specific language to which Customer objected.

7.1 Data Protection. For the purposes of the General Data Protection Regulation (EU) 2016/679, or any applicable national implementing laws, regulations and secondary legislation implementing the requirements of such regulation (the "GDPR"), Company is a processor and Customer is the controller in relation to personal data contained in Customer's files it processes in the provision of the Services. Customer retains control over the content of Customer's files that are the subject of the Services, and as such the types of personal data that are subject to processing cannot be categorised by Company in this Terms of Use. It is assumed such personal data may include all categories of personal data relating to Customer, or Customer's own clients, customers, suppliers, employees, other personnel and/or other data subjects.

8. Third Party Agreements for Equipment and Software. Notwithstanding anything in this Agreement to the contrary, the Customer's use of any Equipment and Software is subject to the terms and conditions of any purchase agreement, lease, license, or other agreement entered into by and between the Customer and the manufacturer, developer, or vendor of such Equipment or Software.

9. Third Party Warranties for Equipment and Software. Company does not adopt or affirm any warranties, either express or implied by statute, usage, custom of trade, or otherwise (including, without limitation, the implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement), made by any manufacturer, developer, or vendor of the Equipment, Software, or any

other products or services purchased, leased, licensed, or otherwise obtained by the Customer from any third party in connection with the Services or otherwise. Furthermore, Company does not make any independent representations or warranties with respect to the Equipment, Software, or any other products or services purchased, leased, licensed, or otherwise obtained by the Customer from any third party in connection with the Services or otherwise. The third party warranties, if any, for the Equipment, Software, and any other products or services purchased, leased, licensed, or otherwise obtained by the Customer from any third party in connection with the Services or otherwise are the Customer's exclusive remedies with respect to such Equipment, Software, products, and services.

10. Limited Warranty. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THESE TERMS OF USES, THE SERVICES AND ANY OTHER PRODUCTS OR SERVICES PROVIDED BY COMPANY PURSUANT TO OR IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED ON AN "AS IS", "WITH ALL FAULTS", AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED BY STATUTE, USAGE, CUSTOM OF TRADE, OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT).

11. Limitation of Liability and Damages. IN NO EVENT WILL COMPANY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF USE, DATA, REVENUE, PROFITS, OR GOODWILL, LOSS OF OR DAMAGE TO BUSINESS, BUSINESS VALUE, OR BUSINESS RELATIONS, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, OR FACILITIES, ECONOMIC LOSSES OR PROPERTY DAMAGE, CLAIMS OF AGREEING PARTIES OR VENDORS, OR ATTORNEYS' FEES AND DISBURSEMENTS) ARISING FROM, CONNECTED WITH, OR RELATED TO THIS AGREEMENT, THE SERVICES, OR ANY OTHER PRODUCTS OR SERVICES PROVIDED BY COMPANY PURSUANT TO OR IN CONNECTION WITH THIS AGREEMENT IN ANY MANNER WHATSOEVER (INCLUDING, WITHOUT LIMITATION, THE USE OF THE SERVICES AND SUCH OTHER PRODUCTS OR SERVICES BY THE CUSTOMER OR ANY OTHER PERSON OR ENTITY), WHETHER ARISING UNDER CONTRACT, BREACH OF WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, ENTERPRISE LIABILITY, PRODUCT LIABILITY, ANY OTHER THEORY OF LIABILITY, OR OTHERWISE, AND WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE OTHERWISE FORESEEABLE. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR OTHERWISE TO THE CONTRARY, COMPANY'S TOTAL LIABILITY TO THE CUSTOMER, IF ANY, ARISING FROM, CONNECTED WITH, OR RELATED TO THIS AGREEMENT, THE SERVICES, OR ANY OTHER PRODUCTS OR SERVICES PROVIDED BY COMPANY PURSUANT TO OR IN CONNECTION WITH THIS AGREEMENT IN ANY MANNER WHATSOEVER (INCLUDING, WITHOUT LIMITATION, THE USE OF THE SERVICES AND SUCH OTHER PRODUCTS OR SERVICES BY THE CUSTOMER OR ANY OTHER PERSON OR ENTITY) WILL NOT EXCEED THE TOTAL AMOUNT OF MONTHLY SERVICES CHARGES PAID BY THE CUSTOMER TO (AND ACTUALLY RECEIVED BY) COMPANY PURSUANT TO THIS AGREEMENT IN THE 6 MONTH PERIOD IMMEDIATELY

PRECEDING THE EVENT GIVING RISE TO THE CUSTOMER'S CLAIM OF LIABILITY; PROVIDED, HOWEVER, THAT COMPANY WILL HAVE NO LIABILITY TO THE CUSTOMER WHATSOEVER UNDER THIS AGREEMENT OR OTHERWISE FOR ANY LOSS OR CORRUPTION OF THE CUSTOMER'S DATA OR THE INABILITY TO RESTORE THE CUSTOMER'S DATA DUE TO THE LOSS OF THE CUSTOMER'S ENCRYPTION KEYS. THIS SECTION WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

12. Time Limit to Bring Claim. THE CUSTOMER HEREBY AGREES THAT REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION THAT THE CUSTOMER MIGHT HAVE ARISING FROM, CONNECTED WITH, OR RELATED TO THIS AGREEMENT, THE SERVICES, OR ANY OTHER PRODUCTS OR SERVICES PROVIDED BY COMPANY PURSUANT TO OR IN CONNECTION WITH THIS AGREEMENT IN ANY MANNER WHATSOEVER (INCLUDING, WITHOUT LIMITATION, THE USE OF THE SERVICES AND SUCH OTHER PRODUCTS OR SERVICES BY THE CUSTOMER OR ANY OTHER PERSON OR ENTITY) MUST BE FILED AGAINST COMPANY IN A COURT OF LAW WITHIN 1 YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR SUCH CLAIM OR CAUSE OF ACTION WILL BE FOREVER BARRED. This Section will survive the termination of this Agreement.

13. Notice Regarding Limitations, Disclaimers, and Exclusions. Please note that some jurisdictions may not allow the limitations, disclaimers, and exclusions set forth in Sections 10, 11, and 12 of these Terms of Use, so some of those limitations, disclaimers, and exclusions may not apply to the Customer. As such, notwithstanding anything in this Agreement to the contrary, the limitations, disclaimers, and exclusions set forth in Sections 10, 11, and 12 of these Terms of Use apply to the maximum extent permitted by applicable law, and are not intended to deprive the Customer of any mandatory protections provided to the Customer under applicable law. The Customer should check its local laws for any restrictions or limitations regarding the limitations, disclaimers, and exclusions set forth in Sections 10, 11, and 12 of these Terms of Use.

14. Indemnification. To the fullest extent permitted by law, except to the extent attributable to the willful misconduct or unlawful or negligent acts or omissions of Company, the Customer will, at the Customer's sole expense, indemnify, defend, and hold harmless Company and Company's officers, directors, managers, members, shareholders, agents, representatives, successors, and assigns (the "Company Indemnifiable Parties") from and against any and all Losses (as defined below) resulting from, arising out of, or related to: (a) any breach of or any inaccurate, false, or fraudulent representation or warranty made by the Customer in this Agreement; (b) any breach or default in the performance of any covenant or agreement made by the Customer in this Agreement; (c) any willful misconduct or unlawful or negligent acts or omissions of the Customer, and (d) if Customer is purchasing Services for a Third Party User, any claims by the Third Party User against Company, Customer or both. Company Indemnifiable Parties will provide reasonable notice to the Customer of any claim asserted by a third party against Company Indemnifiable Parties that may give rise to a claim for indemnification pursuant to this Section and the Customer will take up the defense of such claim. Company Indemnifiable Parties will provide reasonable assistance to the Customer as reasonably necessary for the Customer to defend any such third party claim, provided that Company Indemnifiable Parties will have the right to fully

participate in such defense at their own expense. The Customer will have the right to settle the matter upon written consent of Company Indemnifiable Parties, which consent will not be unreasonably withheld. For purposes of this Section, “Losses” means any and all losses, damages, penalties, expenses, costs, court costs, professional fees (including, without limitation, attorneys’ fees and disbursements), interest, disbursements, judgments, liens, and liabilities of any kind or nature whatsoever (including, without limitation, claims for the injury to or the death of any person or the damage to any property (including, without limitation, loss of use thereof)). This Section will survive the termination of this Agreement.

15. **Term and Termination.**

15.1 **Term.** The term of this Agreement will begin on the effective date set forth in the Services Agreement and will continue until the end of the term set forth in the Services Agreement (the “Term” of this Agreement); provided, however, that this Agreement shall automatically renew after the initial Term and at the end of each successive renewal Term for the renewal period set forth in the Services Agreement or for successive twelve month periods if not otherwise set forth in the Services Agreement unless it is cancelled in writing via email to operations@offsitedatasync.com 30 days prior to the end of the initial Term (or 30 days prior to the end of any successive renewal Term).

15.2 **Termination.** This Agreement may be terminated as follows:

(a) If Company fails to perform a material obligation or otherwise violates the terms or conditions of this Agreement and such default continues for a period of thirty (30) days after receipt of a written notice describing the default, then the Customer may terminate this Agreement upon written notice to Company.

(b) If the Customer fails to perform its obligations or otherwise violates the terms or conditions of this Agreement (other than a non-payment default which is subject to Sections 2.4 and 15.2.e) and such default continues for a period of twenty (20) days after receipt of a written notice describing the default, then Company may terminate this Agreement.

(c) If Customer is in breach of any of its representations, warranties, covenants, or obligations under this Agreement and fails to remedy that breach within 20 days after receipt of written notice of such breach from Company, or as to such breaches that by their nature cannot reasonably be cured within that time, the Customer fails to commence diligent efforts to cure such breach within that time and prosecute such efforts diligently to completion, the Company may thereafter terminate this Agreement by written notice to the breaching party.

(d) If Customer files a petition as to its bankruptcy, is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or is dissolved, the Company may terminate this Agreement upon written notice to the Customer.

(e) If Customer is in violation of the restrictions set forth in Section 4 or 5 of these Terms of Use or has failed to make any payment due and owing to Company, Company may, in addition to Section 2.4, terminate this Agreement upon written notice to Customer.

(f) If the provision of the Services, or a part thereof, is prohibited by law, statute, legislation, order, regulation or guidance issued by a court of law, governmental body, or regulatory body, Company, at its sole discretion, may terminate this Agreement or suspend the Services, or any part thereof, upon ten (10) days prior written notice to the Customer.

15.3 Upon termination of the Agreement, Company will delete all Customer stored data and Customer software stored in any Services resources within a commercially reasonable time period which shall be no less than 5 business days and no more than 15 business days after termination of the Agreement. Customer is responsible for migrating any of Customer stored data and Customer software from Company Services resources prior to deletion at Customer’s sole expense. The termination of this Agreement for any reason will not affect: (a) the right of either party to this Agreement to receive or recover: (i) damages sustained by reason of the breach of this Agreement by the other party, or (ii) any payments which may then be owing under the terms of this Agreement; or (b) the right of Company to receive or recover the Fees pursuant to Section 15.4 below. The termination of this Agreement for any reason will not affect the obligations which have accrued as of the date of termination and those obligations which, from the context thereof, are intended to survive the termination of this Agreement. If either party for any reason terminates this Agreement, the Customer will not be entitled to a refund of any Fees paid prior to the termination of this Agreement.

15.4 If this Agreement is terminated for any reason, other than due to a material breach by Company, the Customer must pay to Company within ten (10) days of the effective date of termination a termination charge (which Customer acknowledges is a reasonable measure of actual damages and not a penalty) equal to 100% of the monthly service charges portion of the Fees (and Taxes, if any) for the number of months agreed to in the Services agreement minus the number of months already paid (“the remaining months”). For Customer, who are authorized by Company to reseller to Third Parties, this includes the remaining months for each and every active subaccount at the time of termination. Company may, at its sole discretion, charge such amount to Customer’s credit card or other payment method that the Customer has previously given to Company at any time for the purpose of paying the Fees or any portion thereof.

16. **Third Party User; Third Party Consent.** If these Terms of Use are accepted by Customer on behalf of a Third Party User then Third Party User’s consent to the these Terms of Use confirms the following terms with respect to Third Party User:

16.1 Third Party User agrees to and accepts Customer’s acceptance of the Terms of Use on behalf of Third Party User. Third Party User is bound by the same Terms of Use as if the Third Party User is the Customer. Notwithstanding the foregoing or anything else in this agreement to the contrary, Third Party User’s sole recourse with respect to any claims, losses and damages, which are associated with the Services or otherwise alleged against Company, shall be against Customer, and Third Party User agrees it shall not have any or make any claim against Company in contract or otherwise.

16.2 Third Party User understands that the Services may be terminated by Company without notice to Third Party User due to termination of the Agreement between Company and Customer.

16.3 Customer agrees that it shall defend, indemnify and hold harmless Company from any and all Losses (as defined in Section 14) asserted by an Third Party User.

17. Miscellaneous.

17.1 Enforcement of the Agreement. If Company hires an attorney and/or commences legal proceedings to enforce the provisions of this Agreement, then Company will be entitled to recover attorneys' fees and disbursements, court costs, expenses of investigation, expert fees, and all other costs and expenses incurred by Company in connection with such enforcement, provided that Company is the prevailing party in any such action or proceeding. This Section will survive the termination of this Agreement.

17.2 Survival. The provisions of this Agreement that by their terms or by their nature and content survive or are intended to survive the termination of this Agreement will so survive the termination of this Agreement.

17.3 Assignment. The Customer may not assign this Agreement or any rights or obligations under this Agreement without the prior written consent of Company. Notwithstanding the foregoing, the Customer Customer may assign this Agreement without the prior written consent of Company to (a) any entity controlling, controlled by, or under common control with the Customer, (b) any entity that acquires substantially all of the Customer's assets or the assets of the business unit of the Customer to which this Agreement pertains, or (c) the successor in a merger or consolidation involving the Customer, provided that (i) the assignee assumes the Customer's obligations under this Agreement in writing for the benefit of Company effective as of the time of the assignment and (ii) the Customer notifies Company of the assignment in writing no less than 10 days before the effectiveness of the assignment, and provided further that the Customer will nonetheless remain fully bound by the terms of this Agreement and responsible for the performance of its assignee, whether or not this Agreement is thereafter amended or changed. Any proposed assignment in contravention of this Section will be null and void.

17.4 Force Majeure. No party to this Agreement will be in default under this Agreement by reason of any delay or failure in its performance under this Agreement (other than the payment of any amount due another party to this Agreement pursuant to this Agreement) resulting, directly or indirectly, from acts beyond the reasonable control of such party, including, without limitation, acts of God, strikes, walkouts, lockouts, freight embargo, riots, civil disturbance, acts of war, acts of terrorism, acts of a public enemy, laws, regulations, or other government proclamations, ordinances, or acts, quarantine, epidemics, unusually severe weather, power failures, earthquakes, floods, fires, explosions, or other catastrophes. The party to this Agreement claiming force majeure will be excused for non-performance for as long as its performance is so prevented, delayed, or hindered due to force majeure. The party claiming excuse from performance by reason of such event shall use its best efforts to restore any interrupted services through any reasonably available alternate means and to restore full performance immediately upon the termination of the event giving rise to such interruption.

17.5 Specific Performance. The parties to this Agreement agree that any breach of this Agreement, other than a default in the payment of money, cannot be compensated for by damages, and the aggrieved party will have the right, and is hereby granted the privilege, to obtain specific

performance of this Agreement, in any court of competent jurisdiction, in the event of any breach under this Agreement. Such remedy will be in addition to any and all other remedies, including, without limitation, damages, available to a party for such breach or threatened or attempted breach. This Section will survive the termination of this Agreement.

17.6 Cumulative Remedies. Except as expressly set forth in this Agreement, the rights and remedies set forth in this Agreement or otherwise conferred upon or reserved to any party to this Agreement are cumulative and not exclusive of any other rights or remedies which the party otherwise has or would have under this Agreement or otherwise, and may be exercised singularly, successively, or together at the sole discretion of the party as often as occasion may arise or as may be deemed expedient.

17.7 Governing Law; Jurisdiction. This Agreement will be governed by, and interpreted and construed in accordance with, the laws of the State of New York, without regard to the principles of conflict of laws, and will be binding on the parties to this Agreement in the United States and worldwide. Any suit or proceeding relating to this Agreement will be commenced exclusively in the state or federal courts located in New York, New York, and each party to this Agreement irrevocably consents to the exclusive jurisdiction and venue of such courts.

17.8 Notices. Any notice, consent, demand, or other communication required or permitted under this Agreement will be in writing, addressed to the party that the same is directed using the address set forth in this Agreement (or such other address as the party may designate by like notice from time to time), and deemed delivered to and received by the party that the same is directed for all purposes as of the date that such notice is: (a) actually delivered by the party that the same is directed, if sent by electronic mail; (b) actually received by the party that the same is directed, if delivered personally; (c) 1 business day after it was sent, if sent by reputable overnight courier service; (d) 3 business days after it is deposited in a regularly maintained receptacle for the deposit of U.S. mail, if sent by registered or certified U.S. mail, postage and charges prepaid; or (e) 7 business days after it is deposited in a regularly maintained receptacle for the deposit of U.S. mail, if sent by regular U.S. mail, postage and charges prepaid.

17.9 Amendment. Notwithstanding anything to the contrary, this Agreement may be amended, changed, or modified, from time to time by Company. Company may amend the Terms of Use at any time upon notice by (i) posting a revised version of the Terms of Use on the Company website, and/or (ii) sending information regarding the amendments to the email address in the Customer's designated account. Customer is responsible for regularly reviewing the Company website to obtain timely notice of such amendments. Customer's continued use of the Services shall be deemed acceptance by Customer of the amended Terms of Use. Except as set forth above in this Section 17(9), this Agreement may not be amended except in writing signed by both parties.

17.10 Severability. If any provision of this Agreement is finally determined to be unenforceable, invalid, or ineffective in any action, suit, or proceeding, such provision will be automatically reformed and construed so as to be valid, operative, and enforceable to the maximum extent permitted by law or equity while preserving its original intent. The determination that any provision of this Agreement is unenforceable, invalid, or ineffective in any action, suit, or proceeding will not affect the enforceability of the remainder of this Agreement.

17.11 No Waiver. Failure on the part of any party to this Agreement to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement will not be deemed a waiver of such term, covenant, or condition, nor will any waiver or relinquishment of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of such right or power at any other time or times.

17.12 Binding Effect. This Agreement is binding upon and will inure to the benefit of the parties to this Agreement and their respective legal representatives, heirs, executors, successors, and permitted assigns.

17.13 No Third Party Beneficiary. This Agreement is intended solely for the benefit of the parties to this Agreement (and a Third Party User if applicable) and does not create or grant any right in a person or entity who is not party to this Agreement.

17.14 Headings. The headings in this Agreement are inserted as a matter of convenience only and will not be used to interpret or construe any provision of this Agreement.

17.15 Construction. Whenever the context may require, any pronoun used in this Agreement will include the corresponding masculine,

feminine, or neuter forms and the singular of nouns, pronouns, and verbs will include the plural and vice versa.

17.16 General Interpretive Principles. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, (a) references in this Agreement to “Sections”, “paragraphs”, and other subdivisions without reference to a document are to designate Sections, paragraphs, and other subdivisions of this Agreement; (b) the word “herein”, “hereof”, “hereunder”, and other words of similar import refer to this Agreement as a whole and not to any particular provision; and (c) the terms “include” or “including” will mean without limitation by reason of enumeration.

17.17 Incorporation by Reference. Every schedule, exhibit, appendix, and other attachment attached to this Agreement and referred to herein is hereby incorporated into this Agreement by reference.

17.18 Acceptance. This Agreement is accepted by Customer (and Third Party User) when a purchase is made with Company.

17.19 Entire Agreement. This Agreement contains the entire agreement of the parties to this Agreement with respect to the subject matter hereof and supersedes all prior agreements relating thereto.

To the extent that Customer acquires the Services online, by clicking on the box and clicking accept, Customer is indicating that Customer has read and agrees to the Terms of Use.

[Remainder of page intentionally left blank]