

Terms of Service

DRFORTRESS TERMS OF SERVICE AGREEMENT

Revision Date: July 16, 2014

PLEASE READ CAREFULLY – THIS IS A BINDING CONTRACT UPON CLICKING THE ACCEPT BUTTON.

THIS DRFORTRESS TERMS OF SERVICE AGREEMENT ("AGREEMENT") IS A BINDING AGREEMENT BETWEEN DR FORTRESS, LLC ("DRFortress") AND YOU AND/OR, IF APPLICABLE, THE COMPANY OR OTHER LEGAL ENTITY YOU REPRESENT (COLLECTIVELY "CUSTOMER"). THIS AGREEMENT INCORPORATES BY REFERENCE (1) THE PRIVACY NOTICE POSTED ON WWW.DRFORTRESS.COM ("PRIVACY NOTICE"), (2) THE ACCEPTABLE USE POLICY POSTED ON WWW.DRFORTRESS.COM ("AUP"), AS THESE POLICIES AND TERMS MAY BE MODIFIED BY DRFORTRESS OR ITS AFFILIATES FROM TIME TO TIME.

BY CLICKING THE "ACCEPT" BUTTON OR SIGNING A DRFORTRESS ORDER FORM REFERENCING THIS AGREEMENT OR ACCEPTING ANY MODIFICATION TO THIS AGREEMENT, YOU AGREE TO BE BOUND BY, AND BIND ANY RELEVANT LEGAL ENTITY YOU REPRESENT TO-IF APPLICABLE, THE TERMS AND CONDITIONS OF THIS AGREEMENT AND WARRANT THAT YOU ARE LEGALLY ABLE TO ENTER INTO A BINDING CONTRACT (I.E., YOU ARE NOT A MINOR OR OTHERWISE CONTRACTUALLY INCAPACITATED). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT CUSTOMER HAS THE LEGAL AUTHORITY TO BIND THE LEGAL ENTITY TO THIS AGREEMENT, IN WHICH CASE "CUSTOMER" SHALL MEAN SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU OR SUCH ENTITY DO(ES) NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MUST SELECT THE "DECLINE" BUTTON AND CUSTOMER IS NOT AUTHORIZED TO UTILIZE THE SERVICES.

Cloud Computing Services

Subject to the terms of this Agreement, and contingent on Customer's satisfaction of DRFortress' credit approval requirements, DRFortress agrees to provide the cloud computing services described in the Order for the fees stated in the Order and as further described at www.drfortress.com, www.drcloud.com and www.drstorage.com. An Order is defined as any request for services whether placed online, orally via telephone, through written sales order, or through the utilization of the Cloud Computing Services themselves. "Cloud Computing Services", "Cloud Services" or "Services" include, but are not limited to, that set of services and applications as set forth and/or provisioned through the www.drfortress.com, www.drcloud.com and www.drstorage.com sites. The term "DRFortress Properties" includes any data, images, text, and content, APIs, tools or other information or materials provided by DRFortress through or in the Cloud Services including any beta or test applications, services, and features. This Agreement applies to all DRFortress Properties or customer support packages that Customer sign up for (each a "Service"). DRFortress Cloud Services can be accessed through multiple protocols and all information Customer receive from DRFortress, and Customers' use of the same, is subject to the terms and conditions of this Agreement.

Term

Where the parties agree to term-based Cloud Services, the initial service term of this agreement shall begin on the date that DRFortress generates an e-mail message to Customer announcing the activation of the Customer's account (the 'Service Commencement Date') and shall continue until termination of all Cloud Services associated with this Agreement. The 'Initial Term' shall be defined as the first partial month of service plus the full calendar terms stated in the initial Order. Upon expiration of the Initial Term, this Agreement shall automatically renew for a period equal to the original 'Initial Term,' unless a non-renewal notification is provided in writing at least 30 days prior to the expiration date. The Initial Term and any Renewal Term may be referred to collectively in this Agreement as the 'Term.'

Where the parties agree to usage-based Cloud Services or where Cloud Services are provisioned directly online, such Services may be cancelled or paused as allowed by DRFortress' System.

Fees. Fees and charges are calculated and billed monthly. Customer shall pay DRFortress the applicable fees and charges for use of the Cloud Service as described on the DRFortress Cloud Services Site using a supported payment method. Any and all fees set forth on the DRFortress Cloud Services Site are expressed exclusive of sales, use, value-added ("VAT") or import taxes, customs duties or similar taxes that may be assessed by any state and/or jurisdiction (collectively, "Taxes"). All amounts payable under this Agreement shall be made without setoff or counterclaim, and without any deduction or withholding. Fees and charges for any new Cloud Services shall be effective upon DRFortress' posting updated fee and charge schedules on the DRFortress Cloud Services Site unless expressly stated otherwise. DRFortress may increase or add new fees and charges for any existing Services by posting notice of such increase at least 30 days prior to such new rates taking effect. DRFortress shall also provide at least 30 days notice of such fee and charge changes/additions by emailing the primary contact set by Customer in the Cloud Services system. Customer's failure to update such contact information or email address, spam filtering, or any other circumstance preventing Customer's receipt of such email shall not obviate Customer's duty to comply with such changes. Following such posting, should Customer continue using the Cloud Services past the effective date of such increases, the Customer shall be conclusively deemed to have

accepted the new fees and charges. Fees are payable on the first day of each calendar month. DRFortress may require a deposit of an approximate amount for the first billing cycle before beginning service or anytime thereafter following a late payment or other cured breach of this Agreement, the Acceptable Use Policies, and the like. If the Order provides for credit/debit card billing, Customer authorizes DRFortress to bill subsequent fees to the credit/debit card on or after the first day of each successive billing cycle during the Term of this Agreement; otherwise DRFortress shall invoice Customer via electronic mail to the Primary Customer Contact listed on the Order. Invoiced fees may be issued on or before the 1st day of each billing cycle, and the fees shall be due on the 14th day following invoice date, but in no event earlier than the first day of each billing cycle.

Customer is responsible for providing DRFortress with changes to billing information (such as credit card expiration, change in billing address). At its option, DRFortress may accrue charges to be made to a credit/debit card until such charges exceed \$10.00. DRFortress may charge interest on overdue amounts at the lesser of 1% per month or the maximum non-usurious rate under applicable law. DRFortress may suspend the service without notice if payment for the service is overdue. Fees not disputed within 30 days of due date are conclusively deemed accurate. Customer agrees to pay DRFortress' reinstatement fee following a suspension of service for non-payment, and to pay DRFortress' reasonable costs of collection of overdue amounts, including collection agency fees, attorney fees and court costs. All credit card and billing information is transmitted using SSL encryption to secure backend servers.

Taxes. At DRFortress' request Customer shall remit to DRFortress all sales, VAT or similar tax imposed on the provision of the services (but not in the nature of an income tax on DRFortress); regardless of whether DRFortress fails to collect the tax at the time the related services are provided. In addition to such fees payable, you will pay any Taxes that DRFortress is legally required to charge on the applicable fees under this Agreement. If requested to do so by DRFortress, or as otherwise required by applicable law, you will supply Customer's VAT, or other applicable tax identification number to DRFortress. We may change the fees or fee structure for any Service, as reflected in the applicable Service Detail Page, and you will not have any obligation to continue such Service.

Refunds. All charges are non-refundable unless expressly stated otherwise, or otherwise provided by applicable law. DRFortress reserves the right to cancel or remove any programs or services at any time in its unlimited discretion. DRFortress does not assume responsibility for any other costs or damages (including special, consequential, exemplary, incidental, tort, or other damages) or for any lost profits resulting from DRFortress removing or canceling a program or service and shall not provide any refunds for services not provided.

Law and Acceptable Use Policy

Customer agrees to use the service in compliance with applicable law and DRFortress' Acceptable Use Policy posted on the DRFortress Cloud Services Site at <http://www.drfortress/aup> (the 'AUP'), which is hereby incorporated by reference in this Agreement. Customer agrees that DRFortress may amend the AUP from time to time to detail, describe, add, or modify restrictions and conditions on Customer's use of the Services. Amendments to the AUP are effective on the earlier of DRFortress' notice to Customer that an amendment has been made (effective notice being defined as the posting of the new AUP on the site set forth above), or the first day of any Renewal Term that begins subsequent to the amendment. Customer agrees to cooperate with DRFortress' reasonable investigation of any suspected violation of the AUP. In the event of a dispute between DRFortress and Customer regarding the interpretation of the AUP, DRFortress' commercially reasonable interpretation of the AUP shall govern.

Intellectual Property

The DRFortress Properties are protected by copyright, trademark, patent, trade secret, and other laws. In no event may Customer reverse engineer or copy DRFortress Properties unless DRFortress provides express permission to do so. In the case of breach of stated reverse engineering or copying protection, DRFortress retains the right to pursue all claims and damages resulting from such an act. Customer retain all intellectual property rights Customer may have in the applications Customer create which are based on or utilize DRFortress Properties (subject to DRFortress' underlying ownership rights in DRFortress Properties). Customer hereby release and covenant not to sue DRFortress or its affiliates, or any of their licensees, assigns or successors, for any and all damages, liabilities, causes of action, judgments, and claims: (i) pertaining to Customer's applications, or any intellectual property Customer develop that is based on, uses, or relates to DRFortress Properties; and/or (ii) which otherwise may arise in connection with Customer's use of, reliance on, or reference to DRFortress Properties. DRFortress, our affiliates and our applicable licensors retain all intellectual property rights (including all worldwide patent, trademark, copyright, and other proprietary rights) in and to DRFortress Properties, and any derivative works of the DRFortress Properties. ALL RIGHTS NOT EXPRESSLY GRANTED IN THIS AGREEMENT ARE HEREBY RESERVED BY DRFORTRESS, ITS AFFILIATES AND THEIR RESPECTIVE LICENSORS.

We disclaim all liability, and Customer will be solely responsible for, the development, operation, and maintenance of Customer's application and for all materials that appear on or within Customer's application. We further disclaim all liability for any failure of Customer's application to interface with the DRFortress Properties for any reason.

Customer may generally publicize Customer's use of DRFortress Properties, however Customer may not issue any press release with respect to DRFortress Properties or this Agreement without our prior written consent. We may make available to Customer certain small graphic images, trademarks, trade names, service marks or logos owned or licensed by DRFortress or its affiliates ("Marks") that Customer may use for the purpose of indicating that Customer's Application was created using DRFortress Properties. Customer may not use the Marks in any manner that disparages DRFortress, its affiliates or its licensors, or that otherwise dilutes the Mark. Other than Customer's limited right to use the Marks as provided in this Agreement, DRFortress retains all right, title and interest in and to the Marks. Customer will not at any time now or in the future challenge or assist others to challenge the validity of the Marks, or attempt to register confusingly similar trademarks, trade names, service marks or logos. Customer must immediately discontinue use of any Mark as specified by us at any time in writing. We may modify any Marks provided to Customer at any time, and upon notice, Customer will use only the modified Marks and not the old Marks. Other than as specified in this Agreement, Customer may not use any trademark, service mark, trade name or other business identifier of DRFortress or its affiliates or third parties that sell products on the DRFortress Website unless Customer obtain DRFortress' and any applicable third party's prior written consent. The foregoing prohibition includes the use of "DRFortress," any other trademark of DRFortress or its affiliates, or variations or misspellings of any of them, in the name of an Application or in a URL to the left of the top-level domain name (e.g., ".com", ".net", ".uk", etc.) — for example, a URL such as "DRFortress.mydomain.com" or "Nirvanix.com" are expressly prohibited. In addition, Customer may not in any manner misrepresent or embellish the relationship between us and you, or state or imply any relationship or affiliation between us and Customer or any other person or entity except as expressly permitted by this Agreement (including by statement or implying that DRFortress, its affiliates or any third party that sells any products or services on the DRFortress Website supports, sponsors, endorses, or contributes money to Customer or Customer's business endeavors).

Monitoring and Disclosure

DRFortress may track information regarding Customer's usage of DRFortress Properties and Cloud services including, without limitation, email volume. DRFortress shall not disclose, sell, or license Content, except as may be necessary to comply with subpoenas, court orders, or other legal requirements.

Customer Information

Customer represents and warrants to DRFortress that the information he, she or it has provided and shall provide to DRFortress for purposes of establishing and maintaining the service is accurate. Customer further warrants and understands that and that such information must be updated immediately upon change of such information and that such updates shall be the sole responsibility of Customer such that any issues arising from Customer's failure to update shall be Customer's sole responsibility. DRFortress may therefore rely on the instructions of the person listed as the Primary Customer Contact on the Order in all regards to Customer's account until Customer has provided a written notice changing the Primary Customer Contact and any relevant information. If Customer is an individual, Customer represents and warrants to DRFortress that he or she is at least 18 years of age and contractually capable of entering into a binding agreement.

Content

"Content" means any content, data, software, applications, materials, technology or other information that Customer or Customer's clients' store (whether owned or provided by Customer, its clients or any third party) using the DRFortress Properties or otherwise make available to DRFortress or to third parties in connection with Customer's use of such Service and Applications.

Modifications to this Agreement

Customer agrees that DRFortress may modify this Agreement or any policy or other terms referenced in this Agreement (collectively the "Additional Policies") at any time by posting a revised version of this agreement or such Additional Policy on the DRFortress.com site. The revised terms shall be effective as follows: if the revised terms are for: (a) Any Paid Services which DRFortress adds at the time of the revision, then the revised terms shall be effective upon posting (unless otherwise expressly stated at the time of posting);(b) If the revised terms are for any then-existing Paid Services, then the revised terms shall be effective upon the earlier of (i) 30 days following such posting or (ii) upon Customer's acceptance of a DRFortress provided mechanism for Customer's immediate acceptance of the revised terms, such as a click-through confirmation or acceptance button; (c) If under a specific term, then 30 days following the expiration of such term; (d) If the revised term relates to the AUP, then as set forward in the applicable section above.

IF ANY MODIFICATION IS UNACCEPTABLE TO CUSTOMER, IT'S ONLY RECOURSE IS TO STOP USING DRFORTRESS PROPERTIES OR THE APPLICABLE SERVICE(S). CUSTOMER'S CONTINUED USE OF DRFORTRESS PROPERTIES OR THE APPLICABLE SERVICE(S) FOLLOWING OUR POSTING OF A CHANGE NOTICE OR NEW AGREEMENT ON OUR SITE WILL CONSTITUTE CUSTOMER'S BINDING ACCEPTANCE OF THE CHANGE. Customer's agrees to his/her/its affirmation duty to check the DRFortress Cloud Services Site regularly for changes to this Agreement or the Additional Policies, as applicable and by continuing to use or receive the Services after the effective date of any revisions to this Agreement or any Additional Policies, Customer agrees to be bound by the revised Agreement or any revised Additional Policies. No modification of this

Agreement other than as provided above will be binding on DRFortress unless set forth in a writing signed by both parties which specifically references this section by quoting its contents.

Indemnification

Customer agrees to indemnify and hold harmless DRFortress, DRFortress' affiliates, and each of their respective officers, directors, agents, and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable attorneys fees) brought by a third party under any theory of legal liability arising out of or related to the actual or alleged use of Customer's services, including those in violation of applicable law or the AUP by Customer or any person using Customer's log on information, regardless of whether such person has been authorized to use the services by Customer.

Director, Officer and Employee Liability

Unless otherwise provided in writing, no Party's directors, officers or employees shall have any personal liability to any other Party with respect to this Agreement. Except as may be specifically otherwise consented to in writing by an Affiliate of a Party (and none of the other terms of this Agreement shall be deemed to constitute such consent), no Party's Affiliates shall have any liability to any other Party with respect to this Agreement, including with respect to any Orders.

Disclaimer of Warranties

DRFORTRESS DOES NOT WARRANT OR REPRESENT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. TO THE EXTENT PERMITTED BY APPLICABLE LAW DRFortress DISCLAIMS ANY AND ALL WARRANTIES INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL SERVICES ARE PROVIDED ON AN 'AS IS' BASIS.

Limitation of Damages

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGE OF ANY KIND, OR FOR DAMAGES THAT COULD HAVE BEEN AVOIDED BY THE USE OF REASONABLE DILIGENCE, ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER MAY USE DRFORTRESS PROPERTIES AND SERVICES TO STORE, PROCESS, AND RETRIEVE CONTENT. CUSTOMER ACKNOWLEDGES THAT NEITHER DRFORTRESS NOR ITS AFFILIATES ARE RESPONSIBLE IN ANY MANNER, AND CUSTOMER IS SOLELY RESPONSIBLE, FOR CONTENT.

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, THE MAXIMUM AGGREGATE LIABILITY OF DRFORTRESS AND ANY OF ITS EMPLOYEES, AGENTS OR AFFILIATES, UNDER ANY THEORY OF LAW (INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY, AND INFRINGEMENT) SHALL BE A PAYMENT OF MONEY NOT TO EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE PRIOR THREE MONTHS OF SERVICE.

Suspension/Termination

Suspension of Service. DRFortress may suspend any or all of the Services without notice and without liability if (a) Customer fails to pay fees by their due date; (b) Customer interferes with DRFortress' operation or maintenance of its systems or network or with one or more of its other customers' use thereof, and Customer fails to cure such breach immediately of being informed of the same; (c) In DRFortress' reasonable judgment Customer's use has the potential to interfere with DRFortress' operation or maintenance of its systems or network or with one or more of its other Customers' use thereof, and Customer fails to cure such breach within 48 hours of being informed of the same; (d) DRFortress reasonably believes that the services are being used in violation of the AUP and Customer does not remedy the situation immediately upon notice of such violation; (e) Customer otherwise breaches this agreement and does not cure such breach within 5 business days following DRFortress' notice of such breach. If DRFortress suspends a Service pursuant to this Section, unless DRFortress has subsequently terminated this Agreement as permitted under this Agreement, DRFortress shall resume the discontinued Service within 24 hours after it is reasonably satisfied Customer has cured the breach(es) which gave rise to such suspension. DRFortress may charge a reinstatement fee equal to the direct out-of-pocket expenses, if any, incurred by DRFortress to discontinue and resume the Service.

DRFortress may terminate this Agreement upon written notice of termination to Customer, if (a) Customer interferes with DRFortress' operation or maintenance of its systems or network or with one or more of its other customers' use thereof on more than 3 occasions during a 12 month period; (b) Customer fails to pay Service Fees when due and such failure continues for 10 business days after such Fees are past due unless Customer has already been past due during the prior 12 month period in which case failure must be cured within 1 business day; (c) Upon 24 hour notice if Customer's Service is used in violation of a material term of the AUP more than once; (d) Customer breaches any

material term or condition of this Agreement and such breach is not cured within 30 calendar days following notice of breach ; (e) Customer files a voluntary petition in bankruptcy or commences any voluntary proceeding relating to insolvency, receivership, liquidation, or composition or assignment for the benefit of its creditors; or (f) Customer becomes the subject of an involuntary petition, in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation or composition or assignment for the benefit of creditors if such petition or proceeding is not dismissed within 30 days of filing. The foregoing notwithstanding, Cloud Services provisioned directly online may be cancelled or paused as allowed by DRFortress' System.

Requests for Customer Information

Customer agrees that DRFortress may, but is not obligated to, and without notice to Customer (i) report to the appropriate authorities any conduct by Customer or any of Customer's customers or end users that, in its sole and unlimited discretion, DRFortress believes violates applicable law and/or (ii) provide any information that it has about Customer or any of its customers or end users in response to a formal or informal request from a law enforcement or regulatory agency or in response to a formal request in a civil action that on its face meets the requirements for such a request.

Back-up Copy

Customer understands that it is responsible for maintaining a current copy of all content hosted by DRFortress notwithstanding any agreement by DRFortress to provide backup services.

Force Majeure

DRFortress shall not be in default of any obligation under this agreement if the failure to perform the obligation is due to any event beyond DRFortress' control, including, without limitation, failure of the Internet (not caused by DRFortress or its own systems and equipment), natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorist activity, or other events of a magnitude or type for which precautions are not generally taken in the industry.

Assignment

The rights accorded Customer under this Agreement, or under any Orders, are personal to Customer and except as expressly set forth herein may not be assigned, sublicensed, or otherwise transferred (each a "Transfer") in any fashion, without the prior written consent of DRFortress, which consent may be withheld in DRFortress' sole discretion. In any event, no assignment shall relieve Customer of its obligations hereunder, under any Order, or under any Additional Policy. Moreover, this Agreement shall bind and inure to the benefit of each Party and each Party's successors and permitted assigns.

Governing Law and Choice of Forum

THIS AGREEMENT AND/OR THE ADDITIONAL POLICIES SHALL BE GOVERNED BY THE LAWS OF THE STATE OF HAWAII, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS. IN ANY ACTION OR PROCEEDING ARISING IN CONNECTION WITH THIS AGREEMENT AND/OR THE ADDITIONAL POLICIES, ANY ORDER AND/OR ANY SERVICES PROVIDED HEREUNDER, DRFORTRESS AND CUSTOMER HEREBY CONSENT TO (A) THE JURISDICTION OF ANY COMPETENT COURT WITHIN THE STATE OF HAWAII, (B) SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY HAWAII LAW, AND (C) IN THE INTEREST OF SAVING TIME AND EXPENSE, TRIAL WITHOUT A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR SUCCESSORS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE ADDITIONAL POLICIES , THE RELATIONSHIP OF DRFORTRESS AND CUSTOMER, CUSTOMER'S USE OF THE CLOUD SERVICES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. IN THE EVENT DRFORTRESS COMMENCES ANY SUMMARY PROCEEDINGS OR ACTION FOR NONPAYMENT OF SERVICE FEES, CUSTOMER SHALL NOT INTERPOSE ANY COUNTERCLAIM OF ANY NATURE OR DESCRIPTION (UNLESS SUCH COUNTERCLAIM SHALL BE MANDATORY) IN ANY SUCH PROCEEDING OR ACTION, BUT SHALL BE RELEGATED TO AN INDEPENDENT ACTION AT LAW. IN ANY ACTION OR PROCEEDING ARISING IN CONNECTION WITH THIS AGREEMENT AND THE ADDITIONAL POLICIES , ANY ORDER AND/OR ANY SERVICES PROVIDED HEREUNDER, ALL COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED BY THE PREVAILING PARTY THEREIN SHALL BE PAID BY THE NON-PREVAILING PARTY, IN THE APPLICABLE PROCEEDING, WHICH OBLIGATION ON THE PART OF THE NON-PREVAILING PARTY SHALL BE DEEMED TO HAVE ACCRUED ON THE DATE OF THE COMMENCEMENT OF SUCH ACTION AND SHALL BE ENFORCEABLE WHETHER OR NOT THE ACTION IS PROSECUTED TO JUDGMENT.

Export Controls

Customer agree to comply with all applicable export and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control in connection with Customer's use of any Service. Specifically, Customer acknowledge and understand that Content that

Customer upload, store, manage, or transfer using DRFortress Properties may be subject to U.S. export control laws and regulations. Customer hereby certifies that Customer will not — directly or indirectly — sell, export, re-export, transfer, divert, or otherwise dispose of any Content to any country (or national thereof) without obtaining any required prior authorizations from the appropriate government authorities.

Customer may not use any Service to transfer any item to parties who are in U.S. sanctioned countries or identified on restricted government lists, including the Denied Persons List, the List of Specially Designated Nationals, or the Entity List.

Miscellaneous

Each party acknowledges and agrees that the other party retains exclusive ownership and rights in its trademarks, service marks, trade secrets, inventions, copyrights, and other intellectual property. Neither party may use the other party's name or trade mark without the other party's prior written consent. The parties intend for their relationship to be that of independent contractors and not a partnership, joint venture, or employer/employee. Neither party shall represent itself to be agent of the other. Each party acknowledges that it has no power or authority to bind the other on any agreement and that it shall not represent to any person that it has such power or authority. This Agreement may be amended only by a formal written agreement signed by both parties. The terms on Customer's purchase order or other business forms are not binding on DRFortress unless they are expressly incorporated into a formal and negotiated written agreement signed by both parties irrespective of whether such a document is created subsequent to the acceptance of this Agreement. A party's failure or delay in enforcing any provision of this agreement shall not be deemed a waiver of that party's rights with respect to that provision or any other provision of this agreement. A party's waiver of any of its right under this agreement is not a waiver of any of its other rights with respect to a prior, contemporaneous or future occurrence, whether similar in nature or not. The captions in this agreement are not part of this agreement, but are for the convenience of the parties. The following provisions shall survive expiration or termination of this agreement: Fees, indemnity obligations, provisions limiting liability and disclaiming warranties, provisions regarding ownership of intellectual property, these miscellaneous provisions, and other provisions that by their nature are intended to survive termination of this agreement. There are no third party beneficiaries to this agreement. Neither insurers nor the customers of resellers are third party beneficiaries to this agreement. Customer may not transfer this agreement without DRFortress' prior written consent. DRFortress' approval for assignment is contingent on the assignee meeting DRFortress' credit approval criteria. DRFortress may assign this agreement in whole or in part. In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to any law or regulation, the remaining provisions of this Agreement shall remain in full force and effect. The Parties shall not be deemed to waive any of their rights or remedies under this Agreement unless such waiver is in writing and signed by the Party to be bound. The waiver of any breach or default of this Agreement shall not constitute a waiver of any subsequent breach or default. This Agreement (including all Orders) constitutes the complete and exclusive agreement between the Parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. If this Agreement is translated into another language, the translation is for the convenience of the Customer and the provisions of the version of this Agreement (including all Orders) set forth in English shall prevail for all purposes.

Service Level Agreement (SLA)

CONTINUITY OF SERVICES

DRFortress shall provide Datacenter Network and Cloud Server Hosts (i.e., compute, storage, and hypervisor) available at least 99.99% of the time in any given annual period for unplanned outages (e.g., excluding Scheduled Maintenance and Listed Exceptions).

EXCEPTIONS AND REMEDIES

Exclusions include but are not limited to the following: Planned service outage and maintenance windows, any availability or outage impact related to client-side security breaches or compromised service credential, errors associated with improper use of the system (credentials, call sequence, method formats, etc.), any external factor affecting Customer from making use of our DRFortress service, suspension or termination of services as described in the terms and conditions of the service (e.g., account suspension due to non-payment), any service outage due to factors outside DRFortress' control such as Force Majeure events, failure of DRFortress' upstream providers or Customer's ISP where applicable, software or its configuration running within Customer's DRFortress Cloud Server virtual servers, Customer's failure to update/patch code where applicable or hypervisor tools where recommended by DRFortress, actions of third parties (such as without limitation, server compromises, denial of service attacks and malicious code), and/or user activity error. ; (iii) breaches by the Customer of this Agreement or the AUP; (iv) actions taken by DRFortress in accordance with remedies to which DRFortress is entitled under this Agreement or the AUP; or (v) where approved in advance by Customer.

DRFortress agrees to provide in credits 5% of fees for the then-current month for each hour of downtime, up to 100% of the DRFortress Cloud Services Fees for the relevant month in violation of this SLA.

In order to make a claim based on a variance to a Service Level Standard, Customer must notify DRFortress in writing within 5 business days of observation of the variance and agree to cooperate with DRFortress in its investigation and remediation of the variance. Once a variance is validated, DRFortress shall use commercially reasonable efforts to compute any credit due Customer and apply that amount to the next Invoice. Except where specifically addressed by this SLA, the credits stated herein are the Customer's sole and exclusive remedies in the event of a qualifying variance to the Service Level Standard. In no event shall the total of all credits for one or more variances to the Service Level Standard in a calendar month exceed the total recurring Service Fees for all Services installed and operating in that month. Customer shall not be entitled to any credit whatsoever if there is a past due balance of any amount due DRFortress.

Definitions: For purposes of this Service Level Guaranty:

"DRFortress Cloud Server" means Customer's unique virtual machine instance;

"DRFortress Cloud Services Fees" means the fees for Customer's DRFortress Cloud Server for the monthly billing period in which the failure occurred and includes monthly virtual machine instance and bandwidth charges;

"DRFortress Cloud Server Host" means the physical server which hosts Customer's DRFortress Cloud Server;

"Datacenter Network" means the portion of DRFortress Cloud network extending from the network egress point of Customer's DRFortress Cloud Server Host to the outbound port of the datacenter border router;

"Scheduled Maintenance" means maintenance that is announced at least 24 hours in advance, and that does not exceed ninety minutes in any calendar month.

Customer is not entitled to a credit if Customer is in breach of Customer's services agreement with any DRFortress service (including Customer's payment obligations to us) until Customer has cured the breach. Customer is not entitled to a credit if downtime would not have occurred but for Customer's breach of Customer's agreement with DRFortress or Customer's misuse of DRFortress Cloud Server system.

To receive a credit, Customer must contact DRFortress Cloud account team within thirty (30) days following the end of the downtime. Customer must show that Customer's use of the DRFortress Cloud Server was adversely affected in some way as a result of the downtime to be eligible for the credit.

This Service Level Guaranty is Customer's sole and exclusive remedy for DRFortress Cloud Server Host and Datacenter Network unavailability.

Notwithstanding anything in this Service Level Guaranty to the contrary, the maximum total credit for the monthly billing period, including all guaranties, shall not exceed 100% of Customer's fee for that billing period. Credits that would be available but for this limitation shall not be carried forward to future billing periods.

This Service Level Guaranty is part of Customer's Agreement with DRFortress along with the Terms of Service, the Acceptable Use Policy, and other relevant terms between the parties and is subject to the terms and conditions stated in those documents. In cases where Customer report service unavailability but they are not entitled to a service credit, DRFortress may issue service credits in its sole discretion.

Requesting DRFortress Service Credits

To be eligible for service credits, affected Customer must submit a request for service credits through the customer support page or by contacting support@drfortress.com within five (5) days of the Failure. This request must include the dates, times, and duration of the Failure. In the event that a DRFortress representative requests the server logs that support the Failure, these must be provided in order for the customer to be eligible for credits. Once DRFortress confirms the Failure and approves the claim, the corresponding service credits will be applied automatically to the customer's next billing cycle. Failure to request service credits or provide the required documentation supporting the requests will make customer ineligible for service credits for that billing cycle.

In cases where Customer report service unavailability but they are not entitled to a service credit, DRFortress may issue service credits in its sole discretion without waiving its right to reject such requests.

ADDITIONAL SERVICE TERMS

The following Additional Service Terms (“AST”) apply only to the specific Services to which the Terms relate. In the event of a conflict between the terms of these Service Terms and the terms of the Terms of Service Agreement or other agreement with DRFortress governing Customer’s use of DRFortress’ Services (the “Agreement”), the terms and conditions of these ASTs shall prevail to the extent of such conflict.

Capitalized terms used herein but not defined herein shall have the meanings set forth in this Agreement.

Service Terms Applicable to All Services

Customer may only use the Additional Services to store, retrieve, query, serve, execute and otherwise manipulate Customer’s Content that is owned, licensed or lawfully obtained by Customer. As used in these Service Terms, “Customer’s Content” includes any “Company Content”. As part of the Services, Customer may be allowed to use certain software (including related documentation) provided by DRFortress or third party licensors. This software is neither sold nor distributed to Customer and Customer may use it solely as part of the Services. Customer may not transfer it outside the Services without specific authorization to do so.

Customer shall comply with the current technical documentation applicable to the Services (including the applicable developer guides) as posted by DRFortress and updated by DRFortress from time to time on the DRFortress Cloud Services Site.

Customer shall provide information or other materials related to Customer’s Content (including copies of any customer-side applications) as reasonably requested by DRFortress to verify Customer’s compliance with this agreement. DRFortress may monitor the external interfaces (e.g., ports) of Customer’s Content to verify Customer’s compliance with this agreement. Customer shall not block or interfere with DRFortress’ monitoring, but Customer may use encryption technology or firewalls to help keep Customer’s Content confidential. Customer shall reasonably cooperate with DRFortress to identify the source of any problem with the Services that DRFortress reasonably believes may be attributable to Customer’s Content or any end user materials that Customer control.

If DRFortress reasonably believes any of Customer’s Content violates the law, infringes or misappropriates the rights of any third party or otherwise violates a material term of this agreement (including the documentation, this Agreement, or the Acceptable Use Policy) (“Prohibited Content”), DRFortress may, but is not obligated to, initiate a disablement process by notifying Customer of the Prohibited Content and request that such content be removed from the Services or access to it be disabled. If DRFortress has suspended services and Customer does not request access to, and does not actually remove, the Prohibited Content within 1 business day of DRFortress’ notice, DRFortress may remove or disable access to the Prohibited Content or terminate the Services to the extent DRFortress is not able to remove the Prohibited Content. If DRFortress has not suspended services, Customer shall have 1 business day following DRFortress’ notice of the Prohibited Content, to remove the same or DRFortress may remove or disable access to the Prohibited Content or terminate the Services to the extent DRFortress is not able to remove the Prohibited Content.

Notwithstanding the foregoing, DRFortress may remove or disable access to any Prohibited Content without prior notice in connection with illegal content, where the content may disrupt or threaten the Services, pursuant to the Digital Millennium Copyright Act or as required to comply with law or any judicial, regulatory or other governmental order or request. In the event that DRFortress remove content without prior notice, DRFortress shall provide prompt notice to Customer unless prohibited by law.

From time to time, DRFortress may offer free or discounted pricing programs covering certain usage of the Services (each, a “Special Pricing Program”). DRFortress may stop accepting new sign-ups or discontinue a Special Pricing Program at any time. Standard charges shall apply after a Special Pricing Program ends or if Customer exceed the limitations by the Special Pricing Program. Customer must comply with any additional terms, restrictions, or limitations (e.g., limitations on the total amount of usage) for the Special Pricing Program as described in the offer terms for the Special Pricing Program or on the pricing page for the eligible Service(s). Customer may not access or use the Services in a way intended to avoid any additional terms, restrictions, or limitations (e.g., establishing multiple accounts in order to receive additional benefits under a Special Pricing Program), and DRFortress may immediately terminate Customer’s account upon Customer’s attempt to do so. Any data stored or instances provided as part of a Special Pricing Program must be actively used.

Customer shall ensure that all information Customer provides to DRFortress via the DRFortress Cloud Services Site (for instance, information provided in connection with Customer’s registration for the Cloud Services, requests for increased usage limits, etc.) is accurate, complete and not misleading.

Licenses

Customer is responsible for maintaining licenses and adhering to the license terms of any software utilized by Customer.

Microsoft Software

As part of the Services, Customer may be allowed to use certain software (including related documentation) developed and owned by Microsoft Corporation or its licensors (collectively, the "Microsoft Software"). If Customer chooses to use the Microsoft Software, Microsoft and its licensors require that Customer agree to these additional terms and conditions:

Customer may not transfer or use the Microsoft Software outside the Services; Customer may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Microsoft Software; Customer may not reverse engineer, decompile or disassemble the Microsoft Software, except to the extent expressly permitted by applicable law; Microsoft disclaims, to the extent permitted by applicable law, all warranties by Microsoft and any liability by Microsoft or its suppliers for any damages, whether direct, indirect, or consequential, arising from the Services; Microsoft is not responsible for providing any support in connection with the Services and should not be contacted for support unless support is provided through a separate agreement entered into between Microsoft and Customer.

Customer is not granted any right to use the Microsoft Software in any application controlling aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, weaponry systems, or any similar scenario (collectively, "High Risk Use"). Microsoft and its suppliers disclaim any express or implied warranty of fitness for High Risk Use. High Risk Use does not include utilization of the Microsoft Software for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function.

Data Seeding. Customer may provide physical storage media (the "Media") to DRFortress that DRFortress shall use to transfer data (such data contained on Media hereinafter referred to as "Data") contained on the Media into snapshots as Customer's Content or into DRFortress' Compute or Storage Services as Customer's Content.

Customer shall comply with all specifications and documentation for Data Seeding as provided by DRFortress, including Media requirements and shipping requirements. Customer shall be solely responsible for all shipping and handling costs (including costs of freight and transit insurance) relating to shipping Media to or back from DRFortress. Customer is responsible for payment of all customs, duties, taxes and other charges in connection with Media being shipped to or from us.

Customer shall bear the sole and entire risk of loss of, or damage to, any Media (including Data) while in transit and Customer is solely responsible for obtaining insurance at Customer's expense. DRFortress shall have no liability or responsibility with respect to any delay, damage or loss incurred during shipment, including loss of Data.

Customer shall not deliver, and DRFortress may refuse to accept any, damaged or defective Media or any Media not shipped in accordance with the shipping requirements (collectively, "Damaged Media"). DRFortress may return or dispose of any Damaged Media in accordance with this Data Seeding provisions (and Customer shall be deemed to have consented to such action) if Customer fail to direct DRFortress to return or dispose of any Unsuitable Media within thirty (30) days after DRFortress notification to Customer of DRFortress' possession of the Damaged Media. Customer shall reimburse DRFortress for any expenses incurred in connection with any Unsuitable Media.

Customer shall retain title to any Media DRFortress receives from Customer during the process of Data Seeding. Customer supplies DRFortress with Media and Data entirely at Customer's own risk. DRFortress is not responsible for and shall not be held liable for any damage to Media or any loss of Data. DRFortress' confirmed receipt of delivery does not: (a) indicate or imply that any Media or Data has been delivered free of loss or damage, or that any loss or damage to any Media or Data later discovered occurred after confirmed receipt of delivery; (b) indicate or imply that DRFortress actually received the number of units of Media specified by Customer for such shipment; or (c) waive, limit or reduce any of DRFortress' rights under this agreement. DRFortress reserve the right to impose, and change, from time to time, volume limitations on the delivery of Customer's Media, and Customer shall comply with any such restrictions or limitations.

Customer must back-up Data prior to delivery to DRFortress. Customer's Data (and Content) should not include live or production data or any other data that cannot be lost.

Customer represents that Customer has all necessary rights to (a) provide the Media and Data to DRFortress for upload into DRFortress' systems. Customer represents that import of the Media or Data to DRFortress does not require a license under the laws or regulations of any country.

Use of Data Seeding requires use of DRFortress' Cloud Services. Customer is responsible for the separate fees Customer accrues for such Cloud Services.

IN ADDITION TO THE DISCLAIMERS IN THIS AGREEMENT, DRFORTRESS HEREBY DISCLAIMS ANY DUTIES OF A BAILEE OR WAREHOUSEMAN, AND CUSTOMER HEREBY WAIVES ALL RIGHTS AND REMEDIES OF A BAILOR (WHETHER ARISING UNDER COMMON LAW OR STATUTE), RELATED TO OR ARISING OUT OF ANY POSSESSION, STORAGE OR SHIPMENT OF MEDIA OR DATA BY US OR OUR AFFILIATES OR ANY OF OUR OR THEIR

CONTRACTORS OR AGENTS. CUSTOMERS ARE SOLELY RESPONSIBLE FOR APPLYING APPROPRIATE SECURITY MEASURES TO CUSTOMER'S DATA, INCLUDING ENCRYPTING SENSITIVE DATA.

In addition to Customer's indemnification obligations under this Agreement, Customer agrees to indemnify, defend and hold DRFortress, its affiliates and licensors, and each of DRFortress' respective employees, officers, directors and representatives, harmless from and against any and all claims, losses, damages, liabilities, judgments, penalties, fines, costs and expenses (including reasonable attorneys' fees), arising out of or in connection with any claim relating to (a) the Media (whether or not title has transferred to us) and Data, including any personal injury, death or property damage (including any damage caused by malicious or harmful code included in Data); (b) any sales, goods and services, use, excise, import, export, property, value added or other taxes or duties assessed or imposed on DRFortress or its affiliates in connection with or as a result of the storage, shipping or other actions by DRFortress taken with respect to the Media or Data; (c) any legal or regulatory violation, arising under the laws or regulations of any country, related to import or export of the Media or the Data.

Once Data Seeding services are complete, DRFortress shall return the Media to Customer. DRFortress may return Media to Customer for any reason, including upon termination of this agreement or the Data Seeding service. Returned Media shall be sent to Customer's designated shipping address unless otherwise authorized for will call or the like. If DRFortress has an outdated, incorrect or prohibited address for Customer, DRFortress shall notify Customer and Customer shall have thirty (30) calendar days from the date DRFortress notify Customer to supply a substitute address. If Customer do not supply a substitute address within thirty (30) calendar days of notification, the Media shall be deemed Unsuitable Media subject to disposal. DRFortress may dispose of Media in any manner and no duty of care of any sort shall apply and DRFortress have no obligation to reimburse or compensate Customer's for any loss of Media or Data due to DRFortress' disposal.

Notwithstanding anything to the contrary in this agreement, Customer may give agents and subcontractors of Customer's choosing access to the private key associated with Customer's account solely for the purpose of (a) preparing Data for import using Data Seeding or (b) confirming the integrity of Data imported using Data Seeding. Customer remains fully responsible for and indemnifies DRFortress for all activities undertaken by such third parties under Customer's account. Except as specifically set forth in this section, all terms and conditions of this agreement continues to apply to Customer's use of the Services.

DRFortress will not act as the importer of record for Customer's shipments of Media or Data and Customer shall take all steps and responsibilities relating to the lawful and proper shipment of such Media and Data.

Cloud Connect

Customer may only use DRFortress' Cloud Connect to connect Customer's computing resources to DRFortress' Cloud Services systems via a Virtual Private Network (VPN) connection. As use of DRFortress' Cloud Connect may require the use of other Services, Customer shall be responsible for all applicable fees associated with Customer's use of other Services in connection DRFortress' Cloud Connect. Following initial implementation, Customer is solely responsible for the configuration, operation, performance and security of all equipment and computing resources Customer uses with DRFortress' Cloud Connect, including any gateways, customer-side hardware VPN appliances, or other devices Customer uses to connect to DRFortress' Cloud Connect. DRFortress recommends that customers consult with capable security and networking experts to ensure their connections are properly hardened against compromise.

Launch to Cloud

Customer may use DRFortress' Launch to Cloud service to provision a collection of resources and provision them. DRFortress may make sample templates available for Customer to use in connection with DRFortress' Launch to Cloud service. All sample templates are offered "as is" and Customer is solely responsible for Customer's use of the sample templates. Any templates use in connection with DRFortress' Launch to Cloud service shall comply with this Agreement and Acceptable Use Policy and Customer are solely responsible for Customer's use of any templates.

DRFortress' Launch to Cloud service requires the use of other DRFortress Cloud Services. Customer is responsible for all fees incurred for the use of such Cloud Services used in connection with DRFortress' Launch to Cloud service.

Direct Networking

At DRFortress' sole discretion the DRFortress may allow Customer to establish a dedicated network connection between Customer's network and Customer's DRFortress Cloud resources by using connection types and locations supported by DRFortress. When Customer establishes such a connection, Customer's network traffic that would have otherwise been routed over the Internet may be routed through Customer's dedicated network connection, including Customer's network traffic sent to or from (i) services offered by other affiliates of DRFortress or (ii) the DRFortress Cloud Services resources of other DRFortress Cloud customers.

The hardware and equipment Customer uses with Direct Networking must comply with the DRFortress requirements and standards. Customer is responsible for protecting Customer's Direct Networking connections, including using physical security, firewalls, and other applicable network security tools.

Customer is responsible for Customer's separate relationship with any other service providers, including compliance with Customer's agreement with, and the policies and procedures of, the other service provider, and payment of applicable fees to the datacenter operator or other service provider.

If the connection Customer establishes as part of Direct Network is temporarily unavailable or terminated, DRFortress will route traffic bound for Customer's DRFortress' Cloud Services resources over the public Internet and DRFortress' standard data transfer charges will apply. If Customer is using DRFortress' Cloud Connect, traffic bound for Customer's DRFortress' Cloud Services resources will be routed through an IPsec VPN connection. If an IPsec VPN connection is unavailable, traffic bound for Customer's DRFortress' Cloud Services may not be delivered.