CLOUD BACKUP SOFTWARE AS A SERVICE

TERMS OF SERVICE

BY ACCEPTING THIS AGREEMENT OR ACCESSING OR USING ANY CLUMIO SERVICE, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, UNLESS A SEPARATE WRITTEN AGREEMENT IS IN EFFECT THAT SPECIFICALLY GOVERNS THE SUBJECT MATTER HEREOF. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT USE ANY CLUMIO SERVICE. IF YOU ARE USING ANY CLUMIO SERVICE AS AN EMPLOYEE OR AGENT OF A CORPORATION OR ENTITY, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO SIGN FOR AND BIND SUCH ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT. THE RIGHTS GRANTED UNDER THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON ACCEPTANCE BY AUTHORIZED PERSONNEL.

This Clumio Terms of Service ("**Agreement**") is entered into by and between Clumio, Inc., a Delaware corporation, headquartered at 4555 Great America Parkway, Suite 101, Santa Clara, CA 95054 USA ("**Clumio**"), and you or the entity you represent placing an order for or accessing any Service ("**Customer**"). This Agreement includes any addenda or exhibits referenced in this Agreement, any Orders, and any BAA or DPA (each, as applicable), along with the Clumio Privacy Policy. The "**Effective Date**" of this Agreement is the earlier of (i) Customer's initial access to any Service or (ii) the date of Customer's first Order. Clumio and Customer may be referred to in this Agreement individually as a "party" and collectively as the "parties."

1. Service Access and Use. Subject to the terms of this Agreement, Clumio grants Customer and its Users a non-exclusive, non-transferable, and non-sublicensable right and license to access and use the Service, solely during the Subscription Term, and solely in accordance with the Documentation and the applicable Order. Customer may permit its Affiliates (and its and its Affiliates' independent contractors and consultants) to act as Users provided that any such use is solely for the benefit of Customer. Customer shall be responsible for each User's compliance with this Agreement and for each User's actions while using the Service. To the extent use of the Service requires Customer to install any downloadable software on Customer's local hardware, Clumio grants Customer and its Users a non-exclusive, non-transferable, and non-sublicensable right and license to use the object code form of such software, solely during the Subscription Term, and solely in accordance with the Documentation and the applicable Order.

2. Restrictions. Customer will not (and will not permit any third party to): (i) sell, rent, assign, sublicense, or distribute the Service, or provide the Service as a commercial hosted service, to any third party; (b) provide access to, or otherwise make available, the Service to any third party (except as expressly set forth in Section 1); (c) modify, copy, translate, or create derivative works of, the Service, (d) reverse engineer, decompile, disassemble, or otherwise seek to obtain or derive the source code or non-public APIs or algorithms of the Service, except to the extent expressly permitted by applicable law (and then only upon advance written notice to Clumio); (e) remove or obscure any copyright labels or proprietary or other notices contained in the Service; (f) use the Service in violation of applicable law or third party intellectual property rights; or (g) use the Service to benchmark the Service or to build similar or competitive products or services.

3. Title. Clumio and its licensors retain all right, title, and interest in all intellectual property rights, including patent, trademark, trade name and copyright, whether registered or not registered, in and to the Service and underlying technology thereof, the Documentation, and any derivative works, modifications, or improvements of any of the foregoing. Clumio reserves all rights in the Service not expressly granted herein, and no other license or implied rights of any kind are granted or conveyed. In the event that certain software provided with the Service is subject to open source licenses, nothing herein limits Customer's rights under, or grants rights that supersede, the licenses applicable to such software. "Clumio" and associated logos are the registered trademarks or trademarks of Clumio and its Affiliates. This Agreement does not permit Customer to use any Clumio trademarks.

4. Support; Customer's Account. During the Subscription Term, Clumio will provide Customer the support and service levels for the Service as specified in the Order, in accordance with Clumio's Customer Support Service Level Agreement available at https://clumio.com/customer-sla/ and incorporated herein by reference ("**Support**"). Customer is responsible for establishing a username and password (or any other means required by Clumio) for verifying that only designated Users have access to the Service and Support therefor. Customer is responsible for maintaining the security of Customer's account and any administrative or User passwords. Customer acknowledges and agrees that Clumio may rely on the actions and instructions of any User in the provision of Support to Customer. Further, if Customer procured the Service through a Clumio authorized reseller, then Customer agrees that Clumio may provide such reseller with information related to Customer's consumption of the Service.

5. Trials and Feedback.

5.1 Trials. Clumio may make available to Customer a trial use of the Service and/or other services, software, or features that may not yet be generally available, including pre-release or beta versions of the foregoing (collectively, "**Trials**").

Customer may access and use Trials solely for the purpose of evaluating the Service and related features, and not for production use. Clumio may terminate Customer's access to and use of any Trial at any time, without notice to Customer. For pre-release or beta Trials, Customer acknowledges that such Trials (i) may not perform at the level of generally available offerings, (ii) may not operate correctly, (iii) may be modified prior to being made generally available, and (iv) may not be made generally available. Trials are provided "as is" without indemnification or warranty of any kind, whether express, implied, statutory, or otherwise.

5.2 Feedback. Clumio may freely use and incorporate into Clumio's products and services any suggestions, corrections, enhancement requests, or other feedback provided to Clumio by Customer or Users of the Service ("**Feedback**"). Clumio shall ensure all Feedback is anonymized and does not identify Customer or any User.

6. Warranty and Disclaimers.

6.1 Warranty. Clumio warrants that the Service will operate in substantial accordance with the applicable Documentation. In the event of a breach of this warranty, Clumio will use commercially reasonable efforts to correct the reported non-conformity, at no additional charge to Customer, or if Clumio determines such remedy to be impracticable, either party may terminate the applicable Order and Customer will receive a prorated refund of amounts pre-paid to Clumio for Customer's use of the Service for the remainder of the Subscription Term. The foregoing remedy shall be Customer's sole and exclusive remedy for any breach of warranty hereunder.

6.2 Exclusions. The warranty in Section 6.1 shall not apply unless Customer makes a claim within thirty (30) days of the date on which Customer first noticed the alleged non-conformity. The warranty also does not apply to any unavailability or suspension of the Service: (i) caused by factors outside of Clumio's reasonable control, including any force majeure event, Customer's Internet access, or other problems beyond the demarcation point of the Service; (ii) that result from any actions or inactions of Customer or any third party not under Clumio's direct control; (iii) that result from misuse, unauthorized modification, or Customer or third party equipment, software, services, or technology not within Clumio's direct control; (iv) any unavailability, suspension or termination of any cloud service provider, or any other cloud service provider performance issues; or (v) arising from Clumio's suspension or termination of Customer's right to use the Service in accordance with this Agreement.

6.3 Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICE IS PROVIDED "AS IS," AND CLUMIO DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. CLUMIO DOES NOT WARRANT AGAINST LOSS OR INACCURACY OF DATA OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. CLUMIO SHALL NOT BE LIABLE FOR PROBLEMS INHERENT IN USE OF THE INTERNET OR FOR ISSUES RELATED TO THIRD PARTY HOSTING PROVIDERS WITH WHOM CUSTOMER SEPARATELY CONTRACTS. THE SERVICE IS ONE TOOL IN CUSTOMER'S DATA PROTECTION STRATEGY AND DOES NOT REPRESENT A SHIFT IN RESPONSIBILITY FOR CUSTOMER'S BUSINESS. CUSTOMER REMAINS RESPONSIBLE FOR ENSURING THAT IT HAS APPROPRIATE DATA BACK-UP, DATA RECOVERY, AND DISASTER RECOVERY MEASURES IN PLACE.

7. Indemnification. Clumio will defend Customer from and against any claim by a third party alleging that the Service infringes a copyright or U.S. patent or trademark, or misappropriates a trade secret, and will indemnify and hold harmless Customer from and against any damages and costs awarded against Customer or agreed in settlement by Clumio resulting from such claim. If Customer's use of the Service is, or in Clumio's opinion is likely to become, enjoined as a result of an infringement claim, or if Clumio determines such actions are reasonably necessary to avoid liability, Clumio may, at its option and expense, either (i) procure for Customer the right to continue using the Service; (ii) replace or modify the Service so that it becomes non-infringing and remains functionally equivalent; or (iii) if, despite its commercially reasonable efforts, Clumio is unable to do either (i) or (ii), Clumio will terminate the rights herein and pay to Customer a prorated refund of amounts pre-paid to Clumio for the Service for the remainder of the Subscription Term. The obligations in this Section 7 are subject to Customer notifying Clumio promptly in writing of such claim, giving Clumio sole control of the defense thereof and any related settlement negotiations, and cooperating and assisting in such defense at Clumio's reasonable request and expense (including reasonable attorneys' fees). Nothing in this Section 7 prohibits Customer from participating in such defense at its own expense. Notwithstanding the foregoing, Clumio will have no obligation with respect to any infringement claim based upon (a) any use of the Service that is not in accordance with this Agreement or the corresponding Documentation; (b) any use of the Service in combination with other products or services not provided by Clumio if such infringement would not have arisen but for such combination; or (c) any unauthorized use or modification of the Service. This Section 7 states Clumio's entire liability, and Customer's sole and exclusive remedy, for infringement claims and actions.

8. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CLUMIO WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS, LOST OPPORTUNITIES, LOST DATA, OR INTERRUPTION OF BUSINESS, OR THE COST TO PROCURE SUBSTITUTE GOODS OR SERVICES, EVEN IF CLUMIO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL CLUMIO'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE SERVICE IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

9. Confidentiality. Each party (the "**Receiving Party**") shall protect the Confidential Information of the other party (the "**Disclosing Party**") using the same degree of care that it uses to protect the confidentiality of its own confidential information (but not less than reasonable care). The Receiving Party shall (i) not use or disclose any Confidential Information of the Disclosing Party for any purpose except as necessary in performance of its obligations under this Agreement or as otherwise authorized by the Disclosing Party in writing, and (ii) limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who have a need to know such Confidential Information for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. The Receiving Party's obligations under this Section 9 shall survive termination and continue for five (5) years from the date of termination of this Agreement. All Confidential Information shall remain the property of the Disclosing Party. Upon termination, the Receiving Party shall cease any use of the Disclosing Party's Confidential Information. Upon the Disclosing Party's written request, the Receiving Party shall promptly return or destroy all documents and tangible materials containing Disclosing Party's Confidential Information and provide a signed document attesting to such return or destruction. If Receiving Party is required by law or court order to disclose Confidential Information, then Receiving Party shall, to the extent legally permitted, provide Disclosing Party with advance written notice and cooperate in any effort to obtain confidential treatment of the Confidential Information. The Receiving Party acknowledges that disclosure of Confidential Information may cause substantial harm for which damages alone may not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

10. Subscription Term; Termination.

10.1 Subscription Term. The start date of any Subscription Term shall be the date that Clumio makes the Service available to Customer for any net new Service, or for any renewal, the date immediately following the end date of the previous Subscription Term. Except as otherwise specified in the applicable Order, upon expiration of the initial Subscription Term, the Service will automatically renew for subsequent 12-month terms, unless Customer provides Clumio written notice of its intent not to renew at least ten (10) days prior to the expiration of the then-current Subscription Term.

10.2 Retrieval of Customer Data. At least ten (10) days prior to the expiration of the then-current Subscription Term, and at its sole option and expense, Customer may elect to extend access to the Service for up to sixty (60) days for the sole purpose of retrieving any Customer data remaining on the Service beyond the Subscription Term end date ("**Retrieval Period**"). Customer acknowledges and agrees that Clumio

offers the Retrieval Period: (i) up to 60 days to give Customer a flexible time period to migrate its data, and (ii) at Customer's expense to cover Clumio's cost of maintaining Customer's data after expiration of the Subscription Term. During the Retrieval Period, Customer is prohibited from writing any new data to the Service. Customer shall be charged for any new data written to the Service during the Retrieval Period. Upon expiration or termination of any Subscription Term (or upon expiration of any Retrieval Period elected by Customer), Customer acknowledges and agrees that (i) any Customer data stored in the Service will no longer be retrievable by Customer, and (ii) Customer hereby authorizes Clumio to delete all remaining Customer data stored in the Service. If Customer requires assistance in connection with migrating Customer data from the Service, then depending on the nature of the request, Clumio may require a mutually agreed upon fee for assistance.

10.3 Termination. This Agreement, and Customer's rights to use the Service, shall terminate immediately if: (i) any applicable Subscription Term expires; (ii) Customer fails to make timely payments for the Service to Clumio or its authorized reseller; (iii) a party materially breaches any provision of this Agreement and fails to cure such breach within 30 days from the date of such party's written notice to the other party, or (iv) a party seeks protection under any bankruptcy or similar proceeding and such proceeding is not dismissed within sixty (60) days. Additionally, Clumio may suspend Customer's access to the Service for failure to make timely payments for the Service to Clumio or its authorized reseller, or for usage of the Service by Customer in excess of the licenses granted in the applicable Order, provided, however, that Clumio shall notify Customer prior to any such suspension. Upon any termination, Customer shall promptly: (a) discontinue all use of the Service, and (b) pay all amounts due for the Service for the duration of the Subscription Term, provided, however, that if Customer terminates the Service for Clumio's uncured breach, then (1) Customer shall pay all amounts due for the Service up to the effective date of termination, and/or (2) Customer will receive a prorated refund of amounts pre-paid to Clumio for Customer's use of the Service for the remainder of the Subscription Term. Notwithstanding the foregoing, any amounts pre-paid through the effective date of termination are final and non-refundable. Except as otherwise set forth herein, the Service may not be cancelled or terminated by Customer during the Subscription Term. Sections 2, 3, 5.2, 6.3, and 8 through 13 will survive any termination of this Agreement.

11. Audit. Any usage of the Service by Customer in excess of the licenses granted in the applicable Order are subject to billing in arrears by Clumio or a Clumio authorized reseller. Clumio and its independent accountants shall have the right, upon reasonable notice to Customer, to examine Customer's use of the Service to verify compliance with the licenses granted in this Agreement and the applicable Order. If the audit identifies usage in excess of the applicable Order, then Customer will promptly pay to Clumio or a Clumio authorized reseller (as determined by Clumio), any additional fees that Clumio or such

reseller is owed hereunder, and the reasonable costs of conducting the audit.

12. General Provisions.

12.1 Governing Law and Venue. This Agreement will be governed by the laws of the State of California and the United States without regard to any conflicts of laws principles. The parties expressly consent to the personal jurisdiction and venue in the state and federal courts in Santa Clara County, California for any lawsuit filed relating to this Agreement. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

12.2 Compliance with Laws. The parties agree to comply with all laws applicable to the use of the Service and performance of its obligations under this Agreement.

12.3 Notices. All notices required or permitted under this Agreement shall be in writing and shall be delivered by personal delivery, certified overnight delivery, registered mail (return receipt requested), or email and shall be deemed given upon receipt. Notwithstanding the foregoing, except for notices related to non-payment, notices related to termination of this Agreement or any claims related thereto may not be given via email. Email notices to Clumio shall be sent to legal@clumio.com and to Customer at the email address(es) Customer uses to login to the Service.

12.4 Export. The Service and related technology are subject to U.S. export laws and may be subject to export regulations in other countries. Customer agrees not to use or export (directly or indirectly) the Service or related technology in violation of applicable export laws or regulations. Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that has been designated by the U.S. government as a "terrorist supporting" country.

12.5 US Government End Users. The Service and related Documentation is provided in accordance with, and use of the Service is subject to, FAR 12.212 (Software) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation), as applicable.

12.6 No Assignment. This Agreement will inure to the benefit of each party's permitted successors and assigns. Except in connection with a merger, acquisition, or sale of all or substantially all of a party's assets or voting securities, neither party may assign this Agreement without the advance written consent of the other party. Any other transfer or assignment of this Agreement except as expressly authorized under this Section will be null and void.

12.7 Force Majeure. Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement if the delay or failure is due to any cause beyond such party's reasonable control, including acts of God, labor conditions, systemic electrical, telecommunications, or other utility failures, earthquakes, floods, fires, storms, acts of terrorism, war, or acts or orders of government.

12.8 Miscellaneous. This Agreement is the entire agreement between Clumio and Customer and supersedes all previous written and oral communications between the parties with respect to the subject matter hereof. No varying terms or conditions stated in a purchase order or other ordering document or process (other than Orders) shall form any part of this Agreement, and all such terms and conditions shall be null and void. From time to time, Clumio may modify this Agreement, and any changes become effective for Customer upon renewal of the then-current Subscription Term or entry into a new Order after the updated version of this Agreement goes into effect. Customer's continued use of the Service after the updated version of this Agreement goes into effect will constitute Customer's acceptance of such updated version. If any provision of this Agreement is held to be invalid or unenforceable, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

13. Definitions.

"**Affiliate**" means an entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, a party. As used herein, "control" means the power to direct the management or affairs of an entity and "ownership" means the beneficial ownership of more than fifty percent (50%) of the voting securities or interests of an entity.

"**BAA**" means a business associate agreement executed by the parties, if applicable.

"**Confidential Information**" means non-public information that is identified as confidential at the time of disclosure by the Disclosing Party or that should reasonably be understood by the Receiving Party to be confidential due to the nature of the information or the circumstances surrounding its disclosure. Clumio's Confidential Information includes all non-public information relating to the Service, including performance or benchmark results and any usage statistics. Confidential Information shall not include information that the Receiving Party can demonstrate: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information.

"**Documentation**" means Clumio's technical documentation and usage guides for the applicable Service as made available at https://support.clumio.com or through the Service.

"**DPA**" means a data processing addendum executed by the parties, if applicable.

"**Order**" means a quote, or other written or online ordering document, issued by Clumio or a Clumio authorized reseller, which has been accepted by Customer by means of signature, issuance of a purchase order, or online acceptance. Customer's use of any Service procured through a Clumio authorized reseller will be subject to the terms of this Agreement.

"**Privacy Policy**" means Clumio's Privacy Policy made available at https://clumio.com/privacy-policy-2/, which constitutes an integral part of this Agreement.

"**Service**" means Clumio's software as a service offerings and associated software and Documentation, as more fully described in each Order. The Service is provided and licensed based on limitations identified in the Order, which may include, but are not limited to: (i) the Subscription Term, (ii) identified applications or file types, (iii) identified capacity limits, and (iv) identified number of users, all as applicable to the specific Service licensed by Customer. Any identified data retention periods are subject to Customer having an active Subscription Term for the duration of such data retention periods.

"**Subscription Term**" means the specified period of time during which Customer is entitled to access and use the Service.

"**Users**" means the persons designated and granted access to the Service by or on behalf of Customer, including its and its Affiliates' independent contractors and consultants.