



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 acceptance or execution of this Agreement by Clumio. 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 and conditions of this Agreement, Clumio grants Customer and its Users a non-exclusive, non-transferable, and non-sublicensable right 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.

4.1 Service Levels. During the Subscription Term, and upon payment of any applicable Fees, Clumio will provide Customer support for the Service in accordance with Clumio’s Customer Support Service Level Agreement available at <https://clumio.com/customer-sla/> and incorporated herein by reference (“**Support**”). Unless otherwise specified in an Order Customer shall be entitled to the “Standard Plus” support level.

4.2 Customer’s Account. 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 representative, then Customer agrees that Clumio may provide such representative with information related to Customer’s consumption of the Service for billing and support purposes.

5. Security Policy. Clumio will implement technical and organizational measures designed to prevent unauthorized



access, use, alteration, or disclosure of Customer Data in accordance with the Clumio Security Policy, which is incorporated herein by reference.

6. Trials and Fees.

6.1 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**”). Trials will be limited to; (i) a specific storage usage amount of the Service as specified in the Order (“**Credits**”) as defined in Section 6.2, and (ii) a maximum time period during which Credits may be redeemed. Customer may access and use Trials solely for the purpose of evaluating the Service and related features. Trials may be restricted to partial functionality of the Service and may be restricted to certain countries or geographies, as determined by Clumio in its sole discretion. 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. If Support is provided for such Trial such support shall be Standard Plus Support.

6.2 Trial Credits. At Clumio’s sole discretion, Clumio may offer Customer promotional Credits as part of a Trial. Any such Credits will be credited against Customer’s On-Demand Subscription or Commitment Subscription, as applicable. Promotional Credits for use of the Service have no cash value, are non-transferrable and non-refundable, and unless otherwise specified in the Order expire thirty (30) days after they are issued. If Customer signed up for the Service under a free Trial, the free Trial expires upon the earlier of: (i) thirty (30) days (or such other time period specified in the Order) from the Subscription Term start date, or (ii) once Customer’s Credits are exhausted. Upon expiration of the Trial, Customer may convert to a On-demand Subscription, Time-based Subscription or Commitment Subscription.

6.3 Fees. Customer will pay all fees (“**Fees**”) specified in the Order. Except as otherwise specified herein or in an Order Form, (i) payment obligations are non-cancelable and Fees paid are non-refundable, and (ii) Credits purchased cannot be decreased during the relevant Subscription Term. Clumio will invoice Customer in accordance with the relevant Order. Unless otherwise stated in the Order, invoiced charges are due net thirty (30) days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information and notifying Clumio of any changes to such information. If any invoiced amount is not received by the due date, then without limiting Clumio’s rights or remedies, (a) those charges may accrue late interest at the rate of 1% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) Clumio may condition future subscription

renewals and Orders on alternative payment terms, and (c) Clumio shall be entitled to recover collection costs, including reasonable attorneys fees, in connection with collection of overdue Fees. Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “**Taxes**”). Customer is responsible for paying all Taxes associated with the Services. If Clumio has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section 6.3, Clumio will invoice Customer and Customer will pay that amount unless Customer provides a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Clumio is solely responsible for taxes assessable based on Clumio’s income, property and employees.

6.4 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.

7. Warranty and Disclaimers.

7.1 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 a Clumio executive officer determines such remedy to be impracticable, either party may terminate the applicable Order and Customer will receive a prorated refund of amounts prepaid 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.

7.2 Exclusions. The warranty in Section 7.1 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.

7.3 Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7.1, 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.

8. Indemnification.

8.1 Clumio Indemnification. Clumio will defend Customer from and against any claim by a third party alleging that; (i) the Service infringes a copyright or U.S. patent or trademark, or misappropriates a trade secret, or (ii) Clumio has violated the DPA, 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.

8.2 Customer Indemnification. Customer will defend Clumio from and against any claim by a third party alleging that Customer has violated such party's data privacy rights, and will indemnify and hold harmless Clumio from and against any damages and costs awarded against Clumio or agreed in settlement by Customer resulting from such claim.

8.3 Indemnification Obligations. The obligations in this Section 7 are subject to; (i) the indemnified party notifying the indemnifying party promptly in writing of such claim, (ii) giving the indemnifying party sole control of the defense thereof and any related settlement negotiations, and (iii) cooperating and assisting in such defense at the indemnified party's reasonable request and expense (including reasonable attorneys' fees). Nothing in this Section 8 prohibits the indemnified party 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 8 states each indemnifying party's entire liability, and each indemnified party's sole and exclusive remedy, for infringement and data privacy claims and actions.

9. 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.

10. 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 10 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.



11. Term, Subscription Term; Termination.

11.1 Start Date. This Agreement shall commence on the Effective Date and continue unless otherwise terminated as provided herein (“Term”). For any net new Service, the start date of any Subscription Term is the later of: (i) the date that Clumio makes the Service available to Customer, or (ii) the start date specified in the applicable Order. For any renewal, the start date of any Subscription Term is the date immediately following the end date of the previous Subscription Term. Either party shall have the right to terminate this Agreement upon expiration or termination of a Subscription Term upon written notice to the other party.

11.2 Renewal. Except as otherwise specified in the applicable Order, (i) for either a On-Demand Subscription or a Time-based Subscription upon expiration of the Subscription Term, the Service will automatically renew for a subsequent term (equal to the duration of the preceding Subscription Term), 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. For any Time-based Subscription, Services rates for the renewal Term shall be the same as the prior Subscription Term unless increased by Clumio. For Commitment Subscription Customers, upon expiration of the then current Subscription Term, the Service will convert to a On-Demand Subscription and any remain Credits shall immediately expire unless Customer makes alternative arrangements with Clumio in a new Order prior to expiration of the then current Subscription Term. In connection with such new Order the remaining Credits purchased for a previous Subscription Term (for a Commitment Subscription) expire 6 months following expiration of the previous Subscription Term.

11.3 Retrieval of Customer Data. If this Agreement is not terminated by Clumio for Customer’s breach, then at least ten (10) days prior to the expiration of the then-current Subscription Term, Customer may elect (at its cost) 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**”). During the Retrieval Period, Customer is prohibited from writing any new data to the Service. If Customer requires assistance 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. Except as expressly set forth in this Section 11.3, Clumio has no obligation to archive or make available Customer Data after expiration or termination of this Agreement. This Agreement shall remain in full force and effect during any Retrieval Period.

11.4 Deletion of Customer Data. 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. Clumio will provide a written confirmation of deletion upon Customer’s written request.

11.5 Termination. This Agreement, and Customer’s rights to use the Service, shall terminate immediately if: (i) the applicable Subscription Term expires without renewal; (ii) Customer fails to make timely payments of Fees 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 usage rights granted in the applicable Order, provided, however, that Clumio shall notify Customer prior to any such suspension.

11.6 Effect of Termination. 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 unused 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. Credits not used during the Subscription Term will expire at the end of the Subscription Term. Sections 2, 3, 6.2, 7.3, and 9 through 14 will survive any termination of this Agreement.

12. Usage Statistics. Clumio monitors Customer’s use of the Service for billing and Support purposes, as well as to improve Clumio’s offerings. 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 representative. 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.

13. General Provisions.

13.1 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.

13.2 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.

13.3 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.

13.4 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.

13.5 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.

13.6 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.

13.7 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.

13.8 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.

14. 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 as made available by Clumio at <https://clumio.com/legal/baa/> and executed by the parties, if applicable.

“**Commitment Subscription**” means a subscription to the Service, as identified in an Order, with an advanced commitment to purchase a specific quantity of Credits for use during the Subscription Term. Unless otherwise renewed the Subscription Term shall expire upon the earlier of; (i) use of the Credits, or (ii) one year from the commencement of the Subscription Term.

“**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.

“**Credits**” means an allowance to use the Service for identified applications or file types, identified capacity limits, and/or an identified number of users, as issued by Clumio to Customer, either under a prepaid Commitment Subscription or a Trial. Unless otherwise specified in the Order, and except as provided in Section 11.2 Credits expire one (1) year after issuance.



“**Customer Data**” means data of any type that is uploaded by or on behalf of Customer to the Service for the purpose of storage and retrieval. As between Clumio and Customer, Customer retains all right, title, and interest in and to the Customer Data.

“**Documentation**” means Clumio’s technical documentation and usage guides for the applicable Service as made available electronically through the Service.

“**DPA**” means a data processing addendum as made available by Clumio at <https://clumio.com/legal/dpa/> and executed by the parties, if applicable.

“**On-Demand Subscription**” means a subscription to the Service, as identified in an Order, with no upfront commitment, paid monthly in arrears based on actual usage in the preceding month.

“**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 as made available at <https://clumio.com/privacy-policy/>, which constitutes an integral part of this Agreement.

“**Security Policy**” means Clumio’s Security Policy as made available by Clumio at <https://clumio.com/legal/security-policy/>.

“**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, (iv) identified Credits, (v) identified hosting regions, (vi) identified feature sets, including replication or access costs, and/or (vii) an 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. The Service includes both On-Demand Subscriptions and Commitment Subscriptions.

“**Subscription Term**” means the specified period of time during which Customer is entitled to access and use the Service. The Subscription Term for any On-Demand Subscription is one month, and the Subscription Term for any Commitment Subscription is the period of time identified in the Order.

“**Time-based Subscription**” means a subscription to the Services, as identified in an Order, for a specific period of time.

“**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.