



MAIN SERVICE AGREEMENT

This MAIN SERVICE AGREEMENT (the “**Agreement**”) is entered into by and between Clumio, Inc., a Delaware corporation, headquartered at 4555 Great America Parkway, Suite 240, Santa Clara, CA 95054 USA (“**Clumio**”), and the customer listed on the applicable Order Form (as defined in Section 1.1 below) (“**Customer**”). This Agreement governs all use of Clumio’s Service (as defined below) and includes any addenda or exhibits referenced in this Agreement, including any Order Forms. 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 the first Order Form executed by the parties. In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Customer’s Subscription.**

1.1. Description of the Service and Ordering. Clumio is the owner and provider of data backup and related solutions (collectively, the “**Service**”). Customer may purchase access to the Service by entering into one or more ordering documents that describe the Service to be provided and that reference this Agreement (“**Order Form**”). The period that Customer may access and use the Service (“**Subscription Period**”) will be stated on the applicable Order Form. Customer’s subscription may include the purchase of “**Credits**,” which are a specific quantity of allowances to use the Service for a certain period of time. Such allowances may be certain applications or file types, capacity limits, and/or a quantity or type of user seats that Customer may deploy during the Subscription Period. If applicable, Credits will be stated and may be further described on the Order Form. Order Forms may be entered into by each party executing such document or mutual execution by Customer and Clumio’s authorized resale partner (“**Reseller**”). Customer’s use of the Service procured through an Order Form with a Reseller will also be subject to the terms of this Agreement. Customer’s subscription may be provided directly by Clumio or through an online marketplace owned and operated by a third-party (“**Marketplace**”), as will be stated on the applicable Order Form.

1.2. Users and Access Rights. Subject to the terms and conditions of this Agreement, Clumio grants Customer, including its designated employees (“**Users**”), the right to access and use the Service during the Subscription Period for Customer’s internal use only. Customer may also 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 and that Customer remains responsible for compliance by such individuals with all the terms and conditions of this Agreement. To the extent use of the Service requires Customer to install and run 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 provided such software is used only in conjunction with the Service, solely during the Subscription Period, and solely in accordance with the Documentation and the applicable Order Form; such software will be considered part of the Service. Customer may also use, access, and, if applicable, download Clumio’s technical documentation and usage guides for the Service (“**Documentation**”), solely for the purpose of Customer using the Service in accordance with this Agreement. Customer will, and will ensure that its Users will, use the Service in accordance with the Documentation. For the purposes of this Agreement “**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.

2. **Use Restrictions and Ownership.**

2.1. Use Restrictions and Responsibilities. Customer will be responsible for each User’s compliance with this Agreement and for each User’s actions while using the Service. The Service is provided and licensed based on limitations identified in the Order Form, which may include, but are not limited to: (a) the Subscription Period, (b) identified applications or file types, (c) identified capacity limits, (d) identified Credits, (e) identified hosting regions, (f) identified feature sets, including replication or access costs, (g) identified data retention periods (subject to Customer having an active Subscription Period for the duration of such data retention periods) and/or (h) an identified number of user seats; Customer is responsible for complying with such limitations. Any identified data retention periods are subject to Customer having an active Subscription Period for the duration of such data retention periods. Customer will not, directly or indirectly, and will not permit any User or third party to: (u) sell, rent, assign, sublicense, or distribute the Service, or provide the Service to any third party, (v) modify, copy, translate, or create derivative works of, the Service, (w) 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), (x) remove or obscure any copyright labels or proprietary or other notices contained in the Service, (y) use the Service in violation of applicable law or third-party intellectual property rights or (z) use the Service to benchmark the Service or to build similar or competitive products or



services. If Customer (including Users) is using the Service in a manner that, in Clumio's reasonable judgment, causes or is likely to cause significant harm to Clumio or the Service or otherwise threatens the security, integrity or availability of the Service, then Clumio may suspend Customer's access to the Service. Clumio will use commercially reasonable efforts under the circumstances of such suspension to, (1) provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension, (2) limit the suspension to only accounts involved in the activities in question and (3) remove the suspension as quickly as practicable after the circumstances leading to the suspension have been resolved.

2.2. Clumio's Ownership. 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. Customer's rights in and ownership of its Customer Data (as defined below) are stated below in Section 4.1. Use of and access to the Service are licensed, not sold, and no rights are granted to Customer hereunder other than as expressly set forth herein. The Service is offered as an online, hosted solution, and Customer has no right to obtain a copy of the Service itself or any software or code that underlies the Service.

3. **Support.**

3.1. Service Levels. During the Subscription Period, Clumio will provide Customer with technical support for the Service in accordance with Clumio's Customer Support Service Level Agreement available at <https://clumio.com/customer-sla/> ("SLA") and incorporated herein by reference ("**Support**"). If Customer pays for a support package that includes additional support services, such support package and its cost will be stated on the Order Form.

3.2. Customer's Account. Customer is responsible for establishing a username and password (or any other means required by Clumio) for the purpose of verifying that only authorized Users have access to the Service and Support. Customer is responsible for maintaining the security of Customer's account and any administrative or User passwords on Customer's own systems. Customer acknowledges and agrees that Clumio may rely on the actions and instructions of any User in the provision of Support to Customer. If Customer procures access to the Service through a Reseller or the Marketplace, then Customer agrees that Clumio may provide such Reseller or the provider of the Marketplace (as applicable) with information related to Customer's use of the Service for billing and support purposes.

4. **Data.**

4.1. Customer Data. As part of its use of the Service, Customer may provide data, information, or materials that are uploaded by or on behalf of Customer to the Service for the purpose of storage and retrieval ("**Customer Data**"). Customer Data also includes all information provided by Users for the purpose of logging into the Service. Customer grants Clumio a non-exclusive, worldwide, royalty-free, paid-up, transferable right and license to store, process, transmit, display (to Users), and otherwise use the Customer Data for the sole purpose of providing the Service to Customer. Except for the limited rights granted in the foregoing sentence, as between Clumio and Customer, Customer retains all right, title, and interest in and to the Customer Data. Customer represents and warrants that Customer has all necessary rights in Customer Data to grant the rights and licenses stated above.

4.2. Data Processing Addendum. 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, as made available by Clumio at <https://clumio.com/legal/security-policy/>, which is incorporated herein by reference ("**Security Policy**"). The parties will also comply with the data processing addendum with respect to all processing and handling of Customer Data, the current version of which is available at <https://clumio.com/legal/dpa/> ("**DPA**"). Clumio will process all Customer Data in accordance with Customer's instructions; it is solely Customer's responsibility to ensure that its instructions comply with applicable law, including those instructions to destroy any Customer Data or backups of Customer Data. Customer agrees to be liable if its instructions regarding Customer Data violate applicable law.

4.3. BAA. If applicable, the parties will enter into and agree to comply with the business associate agreement, the current version of which is available at <https://clumio.com/legal/baa/> ("**BAA**").

4.4. Usage Statistics. Clumio monitors Customer's use of the Service for billing and Support purposes, as well as to improve Clumio's offerings. As Customer (including its Users) interacts with the Service, it collects data pertaining to the performance of the



Service and measures of the operation of the Service (“**Usage Statistics**”). Notwithstanding anything else to the contrary herein, provided that no Customer Data, or any other personal identifying information of Customer, is revealed to any third party, the parties agree that Clumio is free to use the Usage Statistics in any manner. Clumio owns all right, title, and interest in and to Usage Statistics provided that they do not include Customer Data or any other personally identifying information of Customer. For clarity, this Section 4 does not give Clumio the right to identify Customer (including its Users) as the source of any Usage Statistics.

5. **Payment.**

5.1. **Fees.** Customer will pay all fees specified in the Order Form (“**Fees**”). Except as otherwise specified herein or in an Order Form, (a) payment obligations are non-cancelable and Fees paid are non-refundable and (b) Credits purchased cannot be decreased during the relevant Subscription Period.

5.2. **Invoicing.** Customer will be invoiced in accordance with this Agreement and the relevant Order Form. Unless otherwise stated in the applicable Order Form, undisputed invoices are due net thirty (30) days from the date customer receives the invoice. Customer is responsible for providing complete and accurate billing and contact information and notifying Clumio of any changes to such information. If Customer has executed an Order Form with a Reseller, Customer will pay such Reseller (and not Clumio) in accordance with the terms of such Order Form. If Customer has purchased its subscription to the Service through a Marketplace, Customer will pay such Marketplace (and not Clumio) in accordance with Customer’s terms with such Marketplace and the terms of the applicable Order Form.

5.3. **Taxes.** 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 Service. If Customer is legally obligated to deduct or withhold any Taxes from any Fees payable to Clumio, then the amount payable to Clumio shall be increased as necessary so that after making all required deductions and withholding, Clumio receives an amount equal to the amount it would have received had no such deductions or withholdings been made. If Clumio has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section 5.3, 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.

5.4. **Failure to Pay and Disputing Invoices.** If Customer fails to pay any undisputed invoices from Clumio in accordance with this Section 5 then Clumio may, provided that it gives Customer written notice of such non-payment and ten (10) days from the date of such notice to remit the overdue amounts in full: (a) suspend Customer’s access to the Service pending payment of such overdue invoices or (b) charge a finance charge of 1% per month on any outstanding balance, or the maximum permitted by law, whichever is lower. If Customer believes that Clumio has billed Customer incorrectly, Customer must contact Clumio no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared to receive an adjustment or credit. Once Clumio receives notice of a disputed invoice, Clumio will review such notice and provide Customer with a written decision regarding the dispute, including documentary support for such decision. If Clumio reasonably determines that the amounts charged on a disputed invoice are, in fact, due, Customer will pay such amounts within ten (10) days of Clumio notifying Customer in writing of such decision. Customer understands and agrees that if Customer does not pay a Reseller or the Marketplace in accordance with the applicable Order Form, Clumio will have the right to suspend Customer’s right to use and access the Service and to terminate this Agreement upon notice to Customer.

5.5. **Overages.** If Customer uses all Credits purchased under an Order Form prior to the expiration of the applicable Subscription Period, Customer may continue using the Service if Customer pays for such use. If Customer has not entered into a new Order Form to purchase additional Credits upon Customer’s use of its last Credit, Customer’s subscription will automatically become an “on demand” subscription at Clumio’s then-current list rate and Customer will be responsible for paying for any Credits used each calendar month, which will be invoiced monthly in arrears. Clumio will have the right to examine Customer’s use of the Service to verify compliance with the Credit limitations stated in the applicable Order Form. If such examination identifies usage more than the applicable Order Form, then Customer will promptly pay to Clumio (directly or through the Marketplace, as determined by Clumio), any additional fees that Clumio is owed hereunder.

6. **Term and Termination.**

6.1. **Agreement Term.** This Agreement will commence on the Effective Date and continue until all Order Forms have expired or been terminated, unless otherwise terminated as provided herein (“**Agreement Term**”). If Customer is accessing and using the Service



for the first time, the start date of any Subscription Period is the later of: (a) the date that Clumio makes the Service available to Customer or (b) the start date specified in the applicable Order Form. For any renewal, the start date of any Subscription Period is the date immediately following the end date of the previous Subscription Period. Either party will have the right to terminate this Agreement upon expiration or termination of a Subscription Period upon written notice to the other party.

6.2. **Renewal.** The parties may choose to renew any Order Form on mutual, written agreement. Any additional renewal terms will be stated on the Order Form or as otherwise proscribed on the Marketplace.

6.3. **Retrieval and Deletion of Customer Data.** Upon expiration or termination of this Agreement or any Subscription Period other than termination by Clumio for Customer's material, uncured breach, Customer may, at least ten (10) days prior to the expiration of the then-current Subscription Period, 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 Period end date ("**Retrieval Period**"). Customer understands and agrees that Clumio's costs to host Customer Data are significant and as such, Clumio is unable to host or store Customer Data when Customer is not paying for its access to and use of the Service. Thus, Customer will be invoiced for its access to the Service during the Retrieval Period and will pay such invoice in accordance with this Agreement. During the Retrieval Period, Customer is prohibited from writing, uploading, or otherwise providing any new Customer 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 such assistance. Except as expressly stated in this Section 6.3, Customer understands and agrees that Clumio has the right to immediately delete all Customer Data in its possession upon termination of this Agreement or any Subscription Period and Clumio has no obligation to archive or make Customer Data available after expiration or termination of this Agreement or any Subscription Period. For the avoidance of doubt, Customer Data will be immediately deleted following any Retrieval Period. This Agreement will remain in full force and effect during any Retrieval Period. Upon expiration or termination of any Subscription Period (or upon expiration of any Retrieval Period), (a) any Customer Data stored in the Service will no longer be retrievable by Customer and (b) Customer hereby authorizes Clumio to delete all remaining Customer Data stored in the Service. Clumio will provide a written confirmation of deletion of Customer Data upon Customer's written request.

6.4. **Termination.** This Agreement, and Customer's rights to use the Service, may be terminated by Clumio immediately on notice to Customer if: (a) the applicable Subscription Period expires without renewal or (b) Customer fails to make timely payments of Fees for the Service to Clumio. Either party may terminate this Agreement upon written notice to the other party if (y) a party materially breaches any provision of this Agreement and fails to cure such breach within 30 days from the date of the non-breaching party's written notice to the other party detailing the material breach or (z) a party seeks protection under any bankruptcy or similar proceeding and such proceeding is not dismissed within one hundred twenty (120) days.

6.5. **Effect of Termination.** Upon any termination, Customer will promptly: (a) discontinue all use of the Service and (b) pay all Fees due for the Service for the duration of the Subscription Period, provided, however, that if Customer terminates the Service for Clumio's uncured breach, then (y) Customer will pay all amounts due for the Service up to the effective date of termination and/or (z) 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 Period. Unless otherwise stated on the Order Form, Credits not used during the Subscription Period will expire at the end of the Subscription Period. Sections 2.2, 4.4, 5, 6, 7.4 and 8 -12 will survive any termination or expiration of this Agreement.

7. **Warranty and Disclaimers.**

7.1. **Performance Warranty.** Clumio warrants that: (a) the Service will operate in substantial compliance with the applicable Documentation and (b) Clumio will provide the Support Services in a professional and workmanlike manner. In the event of a breach of the forgoing warranty, Clumio will use commercially reasonable efforts to correct the reported non-conformity at no additional charge to Customer. If Clumio is unable to make such corrections or if Clumio determines such remedy to be impracticable, either party may terminate the applicable Order Form 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 Period. The foregoing remedy will be Customer's sole and exclusive remedy for breach of warranty under this Section 7.1.

7.2. **Exclusions.** The warranty in Section 7.1 will 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: (a) 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, (b) that result from any actions or inactions of Customer or any third party not under Clumio's direct control, (c) that result from misuse, unauthorized modification, or Customer or third party equipment, software, services, or technology not within Clumio's direct control, (d) any unavailability, suspension or termination of any cloud



service provider, or any other cloud service provider performance issues or (e) arising from Clumio's suspension or termination of Customer's right to use the Service in accordance with this Agreement.

7.3. **Mutual Warranties.** Both parties represent and warrant that they will comply with all laws applicable to the use of the Service and performance of its obligations under this Agreement.

7.4. **Warranty Disclaimer.** EXCEPT AS EXPRESSLY STATED IN SECTION 7, 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 WILL 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 and its Affiliates, employees, directors, and officers from and against any claim, suit, or other proceeding brought by a third party arising from (a) the allegation that the Service infringes any intellectual property right of such third party or (b) Clumio's gross negligence or willful misconduct, and in each case Clumio agrees to pay any settlements with respect to the foregoing obligations that Clumio agrees to in a writing signed by Clumio's authorized officer or final judgments awarded to the third party claimant by a court of competent jurisdiction. Notwithstanding the foregoing, Clumio will have no obligation with respect to any infringement claim based upon (x) any use of the Service that is not in accordance with this Agreement or the corresponding Documentation, (y) any use of the Service in combination with other products or services not provided by Clumio or contemplated by the Documentation if such infringement would not have arisen but for such combination or (z) any modification of the Service by anyone other than Clumio.

8.2. **Customer Indemnification.** Customer will defend Clumio and its Affiliates, employees, directors, and officers from and against any claim, suit, or other proceeding brought by a third party arising from (a) the allegation that Clumio's use and processing of Customer Data in accordance with this Agreement violated the rights of such third-party and (b) Customer's gross negligence or willful misconduct, and in each case Customer will pay any settlements with respect to the foregoing obligations that Customer agrees to in a writing signed by Customer's authorized officer or final judgments awarded to the third party claimant by a court of competent jurisdiction.

8.3. **Procedures.** The obligations of each party in this Section 8 are conditioned on the indemnified party (a) notifying the indemnifying party promptly in writing of such claim (provided that the indemnified party's failure to provide reasonable written notice shall only relieve the indemnifying party of its indemnification obligations hereunder to the extent such failure materially limits or prejudices the indemnifying party's ability to defend or settle such claim), (b) granting the indemnifying party sole control of the defense of the claim (including settlement) and (c) 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. The indemnifying party may not settle any claim that requires the indemnified party to admit fault, admit liability, or pay any amounts without written consent signed by an authorized officer of the indemnified party, not to be unreasonably withheld or delayed. Notwithstanding anything else to the contrary in this Agreement, any obligation of the indemnifying party to defend, indemnify and hold the indemnified party harmless hereunder is limited to the indemnifying party's payment for the cost of defense of the third-party claim incurred by the indemnifying party and the payment of (y) any settlements agreed to by the indemnifying party in a writing signed by an officer of the indemnifying party or (z) final judgments awarded to the third-party claimant by a court of competent jurisdiction.

8.4. **Options.** 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 (a) procure for Customer the right to continue using the Service, (b) replace or modify the Service so that it becomes non-infringing and remains functionally equivalent or (c) if, despite its commercially reasonable efforts, Clumio is unable to do either (a) or (b), Clumio will terminate this Agreement and provide Customer with a prorated refund of any Fees pre-paid to Clumio for the Service for the remainder of the Subscription Period.



8.5. **Sole Remedy.** NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY IN THIS AGREEMENT, THIS SECTION 8 STATES CLUMIO'S ENTIRE RESPONSIBILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS UNDER THIS AGREEMENT.

9. **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT FOR LIABILITY ARISING FROM (A) CUSTOMER'S OBLIGATIONS UNDER OR BREACH OF SECTION 2 (Use Restrictions and Ownership), (B) A PARTY'S OBLIGATIONS UNDER SECTION 8 (Indemnification), (C) A PARTY'S VIOLATION OF THE LAWS APPLICABLE TO ITS BUSINESS OPERATIONS OR (D) EITHER PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD, NEITHER PARTY WILL BE LIABLE WITH RESPECT TO ANY CAUSE RELATED TO OR ARISING OUT OF THIS AGREEMENT, WHETHER IN AN ACTION BASED ON A CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, HOWEVER ARISING, FOR (1) INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, (2) ANY DAMAGES BASED ON USE OR ACCESS, INTERRUPTION, DELAY OR INABILITY TO USE THE SERVICE, LOST REVENUES OR PROFITS, DELAYS, INTERRUPTION OR LOSS OF SERVICES, BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION OR BREACHES IN SYSTEM SECURITY OR (3) ANY DAMAGES THAT IN THE AGGREGATE EXCEED THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER FOR THE SERVICE THAT IS THE SUBJECT OF THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT WHICH GIVES RISE TO SUCH DAMAGES. THESE LIMITATIONS WILL APPLY WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

10. **Confidentiality.** Each party (the "Receiving Party") will 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). "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 will not include information that the Receiving Party can demonstrate: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information, (b) is or has become public knowledge through no fault of the Receiving Party, (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation or (d) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information. The Receiving Party will (x) not use 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, (y) make diligent efforts not to disclose the Confidential Information of the Disclosing Party and (z) 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 provisions at least as protective of the Confidential Information as those herein. The Receiving Party's obligations under this Section 10 will survive termination and continue for five (5) years from the date of termination of this Agreement. All Confidential Information will remain the property of the Disclosing Party. No license (whether related to any intellectual property or otherwise) is either granted or implied by the conveying of Confidential Information to the Receiving Party. None of the Confidential Information which may be disclosed or exchanged by the parties shall constitute or include any representation, warranty, assurance, guarantee or inducement by either party to the other of any kind, including, without limitation, any representation or warranty with respect to the non-infringement of any intellectual property rights. CONFIDENTIAL INFORMATION IS PROVIDED SOLELY ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND WHETHER EXPRESS OR IMPLIED. Upon termination, the Receiving Party will cease any use of the Disclosing Party's Confidential Information. Upon the Disclosing Party's written request, the Receiving Party will 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. Notwithstanding the foregoing, the Receiving Party may retain Confidential Information to comply with any applicable law, rule, regulation, or its document retention policies and is not required to erase or destroy any Confidential Information contained in back up storage made in the ordinary course of business provided that all retained Confidential Information remains subject to the restrictions of this Agreement. If Receiving Party is required by law or court order to disclose Confidential Information, then Receiving Party will, 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. **Feedback.** Customer or its Users may, but are not required to, provide Clumio with suggestions, ideas, enhancement or correction requests, feedback, recommendations, or other information specifically regarding the Service ("Feedback"). Feedback will



not include Customer Data and will not constitute Confidential Information or to impose any confidentiality obligations on Clumio. Customer grants to Clumio and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, disclose, reproduce, license, or otherwise exploit any Feedback as it sees fit, without obligation or restriction of any kind on account of intellectual property rights or otherwise, except that Clumio will never identify Customer as the source of such Feedback..

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 will not apply to this Agreement.

12.2. **Changes.** Customer acknowledges that the Service is an on-line, subscription-based product, and that in order to provide improved customer experience Clumio may make changes to the Service provided, however, that Clumio will not materially decrease the core functionality of the Service. The Security Policy, SLA, BAA, and DPA may be modified by Clumio from time to time upon reasonable notice to Customer (notice through the Service will suffice) to reflect changes in law or Clumio's business or Service, process improvements, or changing practices; however, Clumio agrees that except as required by law, any such modifications will not materially decrease Clumio's obligations as compared to those reflected in such terms as of the Effective Date. For the avoidance of doubt, Clumio's right to modify the SLA, DPA, BAA and Security Policy under this clause do not give Clumio any right to or alter the material risk allocation clauses of this Agreement, i.e. the warranty, liability, and indemnity provisions.

12.3. **Notices.** All notices required or permitted under this Agreement will be in writing and will be delivered as provided for under this Agreement, by personal delivery, certified overnight delivery, registered mail (return receipt requested), or email and will be deemed given upon receipt. Notwithstanding the foregoing notices related to termination of this Agreement or any claims related thereto, except for notices related to non-payment, may not be given via email. Email notices to Clumio will 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. **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, not to be unreasonably withheld or delayed. Any other transfer or assignment of this Agreement except as expressly authorized under this Section 12.6 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. If a force majeure event causes Clumio to be unable to provide the Service for a period of fifteen (15) consecutive days or more then Customer may terminate this Agreement upon written notice to Clumio and receive a pro-rata refund of all unused Fees pre-paid by Customer for the remainder of the then-current Subscription Period.

12.8. **Entire Agreement.** 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 Customer's purchase order(s) or other ordering document, or process (other than Order Forms), will form any part of this Agreement, including, without limitation, any click-through, online, or form agreements accepted by Customer or its Users when creating an account or otherwise accessing the Service, and all such terms and conditions will be null and void. Except as otherwise expressly provided for herein, changes and modifications to this Agreement may only be made in a writing signed by both parties. 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.

12.9. **Promotions.** If any promotion was applied to Customer's subscription, as stated on an Order Form, then the Promotion Terms, the current version of which can be found at <https://clumio.com/legal/promotions/>, or a successor sight provided by Clumio to Customer.

13. Trials.

13.1. **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"). Unless otherwise agreed upon by the parties, Trials are free of charge. Trials will be limited to (a) a specific number of Credits and (b) a maximum 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 free Trial at any time, without notice to Customer. For pre-release or beta Trials, Customer acknowledges that such Trials (w) may not perform at the level of generally available offerings, (x) may not operate correctly, (y) may be modified prior to being made generally available and (z) may not be made generally available. **Trials are provided "as is" without indemnification or warranty of any kind, whether express, implied, statutory, or otherwise.**

13.2. **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 paid 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 Form expire fourteen (14) days after they are issued. If Customer signed up for the Service under a free Trial, the free Trial expires upon the earlier of: (a) fourteen (14) days (or such other period specified in the Order Form) from the Subscription Period start date or (b) once Customer's Credits are exhausted. Upon expiration of the Trial, Customer may purchase a subscription to the Service under an Order Form.