**Data Storage Agreement**

This Data Storage Agreement (this “**Agreement**”) is entered into as of the date set forth on the signature page hereto (the “**Effective Date**”) between the storage provider (“**Storage Provider**”) and the data storage client (“**Client**”), each as set forth on the signature page hereto. In consideration of the mutual promises and warranties herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Data Storage Services. Storage Provider shall store certain data (the “**Data**”) for Client by providing Client the data storage services (the “**Data Storage Services**”) in exchange for the fees (“**Fees**”), each as set forth on a separate Scope of Work that is either attached hereto or separately executed among the parties.
2. Term & Termination. The term of this Agreement shall begin on the Effective Date and shall remain in effect for so long as any Scope of Work is in effect between the parties. The duration of Data storage and termination rights are as set forth on the applicable Scope of Work.
3. Intellectual Property; Confidentiality. To the extent that Storage Provider’s intellectual property or proprietary software is used in connection with providing the Data Storage Services to Client, Storage Provider grants to Client a limited, non-transferable, non-sublicensable, and revocable license to use such intellectual property strictly for storing Data with Storage Provider during the term of this Agreement. All applicable rights to either party’s intellectual property, proprietary software, patents, copyrights, trademarks, and trade secrets are and shall remain the exclusive property of such party. Each party agrees to keep confidential and not use for any purpose (other than as needed to perform their obligations under this Agreement) all information of the other party (i) which is proprietary information concerning such other party’s business, finances, property, or technology, or (ii) is of a nature that the receiving party should reasonably understand it to be treated as confidential or proprietary by the disclosing party; provided, however, that the confidentiality and non-use restrictions as to Client’s Data shall be set forth in the applicable Scope of Work.
4. LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, OF ANY KIND WHATSOEVER, OR FOR LOSS OF PROFIT OR LOSS OF GOODWILL, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. STORAGE PROVIDER WILL USE COMMERCIALLY REASONABLE EFFORTS TO MITIGATE LOSS OR DAMAGE TO THE DATA, HOWEVER, STORAGE PROVIDER CANNOT AND DOES NOT GUARANTEE THE DATA WILL BE FREE FROM ALL DAMAGE OR LOSS (INCLUDING, WITHOUT LIMITATION, DURING STORAGE OF THE DATA, RETRIEVAL OF THE DATA, OR TRANSFER OF THE DATA TO OR FROM STORAGE PROVIDER). IN NO EVENT SHALL STORAGE PROVIDER’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY CLIENT TO STORAGE PROVIDER HEREUNDER FOR THE DATA STORAGE SERVICES IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE OF ANY CLAIM.
5. Force Majeure. Storage Provider shall not be liable to Client for any loss, injury, delay, expenses or damages arising out of any cause or event not within its reasonable control including, but not limited to: (i) riots, wars or hostilities between any nations; (ii) Acts of God, fires, storms, floods or earthquakes; (iii) strikes or labor disputes; (iv) vendor or supplier failures, including data center outages or maintenance; (v) outages of internet connection, connectivity, power, cooling or other utility services; (vi) network updates, maintenance, or outages; (vii) governmental restrictions or trade disputes; (viii) or other similar contingencies.
6. Authorization. Each of the individuals executing this Agreement on behalf of Storage Provider and Client represents that he or she has the legal right, power and authority to bind the party on whose behalf such individual is executing this Agreement to the terms and conditions hereof and thereof. This Agreement is and shall be a valid, legally binding obligation of and enforceable against Storage Provider and Client in accordance with its terms, subject only to applicable laws affecting or limiting the rights of contracting parties generally.
7. Relationship. The relationship of the parties is that of independent contractors and nothing in this Agreement is intended to create or shall be construed as creating between the parties the relationship of joint venture, partners, employer/employee or principal and agent. Neither party shall have any responsibility for the hiring, termination or compensation of the other party’s employees or contractors or for any employee benefits with respect to any such employee. Neither party shall attempt to create any obligation or make any representation on behalf of or in the name of the other party.
8. Future Performance; No Business Opportunity. Neither party represents or promises to the other party that the Data Storage Services or this Agreement guarantees any future success, profits, performance or any other result for such other party’s future business efforts (if any). Each party has made its own independent business evaluation regarding whether to enter into this Agreement. The acceptance of the Agreement does not constitute the sale of a franchise or a distributorship, there are no exclusive territories granted to anyone, no franchise fees have been paid or collected, and neither party is acquiring any security interest by way of this Agreement. Nothing in this Agreement, and no course of dealing between the parties, shall be construed to create or imply in any manner a business opportunity relationship between the parties.
9. Acceptable Use; Data Regulations; Export Laws. Client represents and warrants to Storage Provider that the Data shall not contain data, information, images, or content that is unlawful, illegal, violative of the rights of third parties (including privacy rights or intellectual property rights), or malicious code. Client shall not provide Storage Provider with Data that is unencrypted or encrypted in a manner less than industry standard containing health or medical data, individually identifiable health information, payment card data, consumer information data, personal data or similarly sensitive data that triggers specific data privacy or security obligations for the processing, transfer, or storage of such data (collectively, “**Regulated Data**”) without first notifying Storage Provider in writing and Storage Provider consenting in writing to store such Regulated Data. If Storage Provider consents in writing to store such Regulated Data, Client understands that Storage Provider may require Client to execute additional documents, such as an amendment to this Agreement, a data processing agreement, a business associate agreement, or other agreements. Client agrees in all cases to be the controller of any personal data. Client shall comply with all applicable laws with respect to the controlling, transfer, storage, controlling, and processing of Regulated Data. Client shall comply, and shall require its affiliates, agents, contractors, and customers to comply with the export control laws or regulations applicable export control laws, rules and regulations, as applicable, as they relate to the Data being transferred to Storage Provider, the Data stored by Storage Provider, and access to the Data Storage Services.
10. Indemnification. Client shall indemnify, defend, and hold harmless Storage Provider (and its members, managers, stockholders, officers, directors, agents, and affiliates) from and against any and all allegations, claims, liabilities, losses, suits, judgments, penalties, damages, expenses and costs (including, without limitation, reasonable attorney’s fees and expenses, expert witness fees and expenses, court costs and the like) of any kind or character (each a “**Claim**”) arising out of or in any way related to Client’s (i) breach of this Agreement, (ii) violation of applicable law (including, without limitation, with respect to the content of the Data, Client and Storage Provider’s right to possess the Data, and Storage Provider being able to legally store and transfer the Data to and from Client or its designees), and (iii) any dispute between Client and its own customers, affiliates, or other third parties (including disputes arising out of or in any way related to a violation of intellectual property rights of a third party). Storage Provider shall indemnify, defend, and hold harmless Client from and against any Claim arising out of or in any way related to Storage Provider’s (a) breach of this Agreement or (b) violation of the intellectual property rights of a third party in connection with the provision of data storage.
11. Miscellaneous. In addition to any separate Scope of Work and/or Quote between the parties (which are incorporated herein by reference), as well as any terms of use, terms and conditions, privacy policy, acceptable use policy, service level agreement, data processing agreement, or other similar policies that may be listed (if any) on a separate Scope of Work, this Agreement contains the entire agreement made between the parties relating to its subject matter. Headings in this Agreement are included for reference only and shall not constitute a part of this Agreement for any other purpose. If any provision of this Agreement should be determined to be invalid for any reason, such provision shall be severed and the remaining provisions shall remain in effect. This Agreement may be executed in any number of counterparts (including via facsimile signature, electronic signature, DocuSign, AdobeSign, PandaDoc, PDF or scanned signature), each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement. All provisions of this Agreement shall survive termination to the extent needed to give effect thereto. Failure by either party to insist upon strict compliance with any term of this Agreement in any one or more instances will not be deemed to be a waiver of its rights to insist upon such strict compliance with respect to any subsequent failure. All waivers, amendments or modifications with respect to this Agreement must be in a writing signed by both parties. Any notices required or permitted to be given to a party shall be given to the address underneath such party’s signature block to this Agreement. This Agreement shall be construed in accordance with and governed by the laws indicated in the “Governing Law” section of the applicable Scope of Work and the venue for any dispute, litigation, proceeding or action to interpret or enforce of terms of this Agreement shall be brought in the state or federal courts of the locality indicated in the “Venue” section of the applicable Scope of Work. Neither party may assign, delegate and/or transfer any of their rights or obligations under this Agreement without the prior written consent of the other party; provided, however, that either party may assign this Agreement to an affiliate or to a successor or acquirer. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Data Storage Agreement as of the Effective Date.

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| **STORAGE PROVIDER**:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *(insert full name of legal entity on line above)*    Sign:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Print:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address for Notices:  Effective Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **CLIENT**:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *(insert full name of legal entity on line above)*  Sign:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Print:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address for Notices and Invoices: |

**Scope of Work**

This Scope of Work is made part of the Data Storage Agreement executed between the parties with an Effective Date of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Capitalized terms used in this Scope of Work but not defined shall have the definitions set forth in such Data Storage Agreement.

1. **Data Storage Services**.

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| Amount of Data to Be Stored: | Up to \_\_\_\_\_. |
| Duration (“Storage Term”): | \_\_\_\_\_\_\_\_\_ [days] [***or***] [months] [***or***] [year(s)] from the [Effective Date] [***or***] [the date that Storage Provider has received the Data, confirmed the Data is properly formatted for storage, and notifies Client in writing that storage will begin]. |
| Transfer of Data to Storage Provider: | Client shall transfer the Data to Storage Provider via [shipping HDDs containing the Data to the following address: \_\_\_\_\_\_\_\_\_\_] [***or***] [S3 basket provided by Storage Provider] [***or***] [\_\_\_\_\_\_\_\_\_\_].  In all cases, prior to transferring the Data to Storage Provider, the format of the Data shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. |
| Retrieval of Data: | Storage Provider shall use best efforts in making data retrievable [XX]% of the Storage Term. Upon submitted request of Client through [DEFINE METHODOLOGY], no more than [DEFINE LIMITATION IN TIMES PER PERIOD], Storage Provider shall retrieve the Data and make such Data accessible to Client. Storage Provider shall have up to [DEFINE TIME PERIOD] from Client’s request submission to retrieve the Data. Storage Provider is under no obligation to retrieve the Data or transfer the Data back to Client unless Client has paid to Storage Provider all outstanding Fees and invoices due pursuant to this Scope of Work as of such time.  If Client desires to retrieve the Data following the termination of this Scope of Work or the expiration of the Storage Term, Client shall notify Storage Provider in writing within 30 days of such termination or expiration, otherwise Storage Provider may delete the Data. |
| Encryption/Key Management: | Prior to transferring the Data to Storage Provider, Client shall clearly notify Storage Provider in writing if any portion or category of the Data is to be encrypted. Otherwise, Storage Provider will not encrypt the Data.  [Encryption of the Data shall be accomplished as follows:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.]  [Client and Storage Provider shall both have access to the encryption key. Once Storage Provider is no longer storing the Data, then upon written request from Client, Storage Provider shall delete the encryption key and certify such destruction in writing (email sufficient) to Client.] |
| Confidentiality and Use of Client Data: | If the Data is to be encrypted (as set forth in the prior section above) then Storage Provider shall keep the Data confidential and not disclose such Data to any third party.  Storage Provider shall not use the Data for any purpose other than as strictly needed to provide the Data Storage Services to Client hereunder. |
| Data Durability: | To provide for the safety and security of Client’s Data, Storage Provider may create backup copies of the Data and provide such backup copies to the following number of partners (which may be unaffiliated) and/or affiliates for concurrent storage: \_\_\_\_\_\_\_\_. |
| [Geographical Location of Data:] | [At all times during the Storage Term, Storage Provider shall [not] store the Data on servers physically located in the following geographical locations: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.] |
| [SOC 2:] | [As of the date of this Scope of Work, Storage Provider has achieved SOC 2 certification or the following equivalent \_\_\_\_\_\_\_\_\_\_\_. If Storage Provider loses such certification at any time during the Storage Term, then within 30 days from such loss Storage Provider shall notify Client in writing that such loss has occurred and the steps Storage Provider is taking to regain such certification.] |
| Governing Law: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Venue (Location of Dispute): | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Additional Terms: | In addition to the other terms of this Scope of Work, the following shall apply:    [Client grants Storage Provider the right to use Client’s name and logo on its website and other marketing materials for so long as Storage Provider stores Client’s Data.]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

1. **Termination**.
   1. Termination. Either party may terminate this Scope of Work upon 30 days’ advance written notice to the other party. In the event Client terminates this Scope of Work prior to the end of Storage Term, then Client shall immediately pay to Storage Provider an amount equal to the total amount of unpaid Fees that would have accrued had this Scope of Work remained in effect for the entirety of the Storage Term (based on the average amount of Data stored prior to Client terminating this Scope of Work). Storage Provider is under no obligation to further retrieve the Data or to delete the Data unless and until Client pays all such Fees and any outstanding invoices in full to Storage Provider. Client acknowledges and agrees that the foregoing requirement to pay all such Fees and outstanding invoices in the event Client terminates this Scope of Work early is reasonable because the per TiB storage Fee set forth in this Scope of Work is based in part on Storage Provider’s reliance that Client will pay all Fees for the entirety of the Storage Term and that, if Client could terminate this Scope of Work early without paying all such Fees to Storage Provider, then Storage Provider would not agree to provide the Data Storage Services unless the per TiB storage Fee was greater.

* 1. Data Handling. If requested in writing by Client within 30 days from the termination or expiration of this Scope of Work, then Storage Provider shall delete Client’s Data within a reasonable period from such request (not to exceed 6 months).

1. **Other Storage Provider Policies and Terms**. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have duly executed this Scope of Work as of the date below.

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| **STORAGE PROVIDER**:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *(insert full name of legal entity on line above)*    Sign:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Print:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address for Notices:  Date of Scope of Work:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **CLIENT**:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *(insert full name of legal entity on line above)*  Sign:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Print:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address for Notices and Invoices: |