Data Storage Agreement

[template version April 2025: to be customized as needed]

This Data Storage Agreement (“Agreement”) is entered into as of the date set forth, between the parties and pursuant to the terms and conditions as set forth below.

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

## Parties

| **Client:** | **Storage Provider:** |
| --- | --- |
| Signed By: | Signed By: |
| Name: | Name: |
| Title: | Title: |
| Address for Notices: | Address for Notices: |
| Email: | Email: |
| Date: | Date: |

| Effective Date: |
| --- |

## Data Storage Scope of Work

| Amount of Data to Be Stored: | The amount of data to be storage shall be up to but shall not exceed  \_\_\_\_\_\_\_\_\_\_ gigabytes/terabytes/petabytes |
| --- | --- |
| Storage Start Date: | * The Date that the Storage Provider has received the Data, confirmed the Data is properly formatted for storage, and notifies Client in writing that storage will begin.   [or]   * Effective Date of this Agreement |
| Storage Term: | The Storage Term shall begin at the Storage Start Date and extend at least     * \_\_\_\_\_\_\_\_\_ days/months/years   [or]   * up to and including \_\_\_\_\_\_\_\_\_\_\_\_ |
| Initial Data Format: | The format of the Data transferred by Client to Storage Provider shall be:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Initial Data Transfer : (Client to Storage Provider) | * HDDs containing the Data shall be shipped to the following address: \_\_\_\_\_\_\_\_\_\_   [or]   * An S3 basket shall be provided by Storage Provider for transfer by Client   [or]   * [Other] |
| Geographical Location of Data Storage: | At all times during the Storage Term, Storage Provider shall store the Data on servers physically located in the following geographical locations:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Storage Provider agrees not store the Data on Servers located in the following regions:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Encryption | * Client shall encrypt the Data prior to providing transferring to Storage Provider via an encryption algorithm that it selects and chooses at its sole and absolute discretion   [or]   * Client agrees to notify Storage Provider in writing of any portions or categories of the Data that Storage Provider shall encrypt prior to sealing and storing in the Network. Absent such notification, Storage Provider will not encrypt the Data.   The encryption algorithm used by the Storage Provider shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. |
| Encryption Key Management | * Client shall use generally accepted industry standards to safeguard the encryption key and agrees not to provide such key to Storage Provider.   [or]   * Storage Provider shall provide Client with the encryption key. Both parties shall control and maintain access to the encryption key and shall use generally accepted industry standards to safeguard the encryption keys.   Upon written request from the Client, Storage Provider shall delete the encryption key and certify such destruction in writing to the Client. |
| Data Backups | Client grants Storage Provider the right to create up to \_\_\_\_ backup copies of the Data and provide such backup copies to \_\_\_\_ other storage providers (which may or may not be affiliated with Storage Provider) for concurrent storage.  Storage provider agrees to create \_\_\_\_\_ backup copies of the data and   * store them * provide them to \_\_\_\_ storage providers (which may or may not be affiliated with Storage Provider) for concurrent storage. |
| Data Deletion | If requested in writing by Client within 30 days expiration of the Storage Term or from the date of Termination of the Agreement, Storage Provider shall delete Client’s Data within a reasonable period from such request (not to exceed 6 months). |
| Compliance Standards | [optional] Storage Provider represents that it 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 and Venue of Dispute |  |
| Additional Terms | 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. |

## Service Levels

| Requirement | Agreed Level |
| --- | --- |
| Availability for retrieval | 3 9s: 99.9% |
| Durability | 8 9s: 99.999999% |
| Bandwidth into storage | 1 Gb/s shared |
| Bandwidth from storage | 10 Gb/s |
| Maximum Latency | 40ms |
| Max. Time To First Byte (sealed data) | 6 hours |
| Max. Time To First Byte (warm data) | 7 seconds |

## Fee Schedule

| Fees for Monthly Data Storage Services: | \_\_\_\_\_ per TiB of Data stored, per month (prorated for any partial TiB and for any partial month) during the Storage Term. |
| --- | --- |
| When Monthly Fees Are Due: | [Fees are due in advance on the first business day of each calendar quarter]  [*or*]  [Fees for each quarter of storage will be billed after such quarter by invoice sent to Client. Client shall pay each invoice within \_\_ days of receipt. ] |
| Costs to Transfer Data to Storage Provider: | [Client shall pay \_\_\_\_\_\_\_\_ for the initial transfer of the Data to Storage Provider.]  [*or*]  [Storage Provider shall pay for all costs of the initial transfer of the Data to Storage Provider.]    Client will be responsible for the Data while in transit and for obtaining any and all insurance that Client may deem appropriate with respect to any potential loss of Data during the initial transfer of the Data to Storage Provider. |
| Data Retrieval: | During the Storage Term, Client may retrieve the Data without any additional Fees so long as the monthly volume of Data retrievals is an amount of data lesser than the total amount of Data that Client is actively storing with Storage Provider (the “Retrieval Threshold”). Retrieval of Data in amounts greater than the Retrieval Threshold may be accommodated for additional Fees, as reasonably determined by Storage Provider. |
| Additional Fees: | * Adjustments for failure to meet Service Levels or other terms * Retrievals above threshold |

## Data Storage Terms and Conditions

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 in a Data Storage Scope of Work (“Scope of Work”) above, attached hereto, or separately executed among the parties.
2. **Term**. 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 in the applicable Scope of Work.
3. **Intellectual Property; Confidentiality**. 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, except as may be set forth below.
   1. *Client Protections*. If the Data is to be encrypted (as set forth in the prior section above) then the 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. Client understands and accepts that by storing non-encrypted data, it may be visible to others and therefore releases Storage Provider of the obligations as set forth in (ii) above.
   2. *Storage Provider Protections*. 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.
4. **Acceptable Use; Data Regulations; Export Laws**. Client represents and warrants to Storage Provider as follows:
   1. Client shall not provide Storage Provider with Data that contains 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.
   2. 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.
   3. Client shall comply with all applicable laws with respect to the controlling, transfer, storage, controlling, and processing of Regulated Data.
   4. Client agrees in all cases to be the controller of any personal data.
   5. 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.
5. **Indemnification**.
   1. 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).
   2. 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.
6. **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.

1. **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.
2. **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.
3. **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.
4. **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 a Scope of Work early is reasonable because the per TiB storage Fee set forth in the 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. **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) governmental restrictions or trade disputes, or (v) outages of internet connection, connectivity, power, cooling or other utility services.

[additional inserts]

(vi) vendor or supplier failures, including data center outages or maintenance; or (vii) network updates, maintenance, or outages; or (viii) other similar material contingencies.

1. **Miscellaneous**.
   1. This Agreement along with any Scopes of Work contain the entire agreement made between the parties relating to its subject matter.
   2. 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.
   3. All provisions of this Agreement shall survive termination to the extent needed to give effect thereto.
   4. 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.
   5. 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.
   6. 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.
   7. 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.
   8. 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.
   9. Headings in this Agreement are included for reference only and shall not constitute a part of this Agreement for any other purpose.
   10. This Agreement may be executed in any number of counterparts (including via facsimile signature, digital signature, or scanned signature), each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement.