



## MASTER CUSTOMER AGREEMENT

THIS MASTER CUSTOMER AGREEMENT ("Agreement") is executed and delivered effective as of the date of full execution ("Effective Date") by the duly authorized representatives of Druva and the undersigned customer and its Affiliates ("Customer").

### 1. Definitions.

- (a) **"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. **"Control"** for purposes of this definition means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- (b) **"Authorized Users"** means natural persons who are authorized by Customer to use the Cloud Services, as applicable, and who actively use the Cloud Services.
- (c) **"Cloud Services"** means Druva's software-as-a-service solution for managing data availability and information governance, any feature or functionality add-ons, and any modified versions of, and upgrades, updates and additions to such solution, ordered by Customer under an Order Form.
- (d) **"Cloud Storage Area"** means the geographic storage area provided by Druva where Customer Data may be stored per Customer's instructions.
- (e) **"Confidential Information"** means all confidential or proprietary information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information excludes Customer Data. Confidential Information will not include information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.
- (f) **"Customer Data"** means data, information, and materials of Customer or its Authorized Users that Customer or its Authorized Users uploads to, stores on, or accesses with Druva's Cloud Services.
- (g) **"Customer Site"** means the geographic location at which Customer Data may be collected.
- (h) **"Documentation"** means the published user guides, manuals, instructions and/or specifications provided or made available to Customer with respect to the Cloud Services on <https://docs.druva.com/>, as amended from time to time. Customer may subscribe to alerts to receive changes to the Documentation in the customer documentation portal.
- (i) **"Indemnified Liabilities"** means any (i) settlement amounts approved by the indemnifying party; (ii) damages and costs in a final judgment awarded against the indemnified part(ies) by a competent court; and (iii) all attorneys' fees, and court or tribunal costs incurred by either party with respect to defense and settlement of such third-party claim.
- (j) **"Indirect Tax"** means without limitation, value-added tax, goods and services tax, sales and use and similar transaction taxes, and gross receipts tax, as the case may be.
- (k) **"Order Form"** means an order confirmation of Druva (or an Affiliate of Druva), directly or through the Reseller with which Customer contracted, which is signed by Customer, but shall exclude any pre-printed or linked terms and conditions set forth in such written document that are in addition to, inconsistent or in conflict with, or different than, this Agreement. The term "Reseller" in this Agreement shall refer to a reseller or a distributor of Druva's Cloud Services, as applicable.
- (l) **"Taxes"** means taxes, levies, duties or similar national, federal, state, provincial, or local governmental assessments of any nature, including Indirect Tax, that are assessable by any jurisdiction under applicable law.
- (m) **"Third-Party Legal Proceeding"** means any formal legal proceeding filed by an unaffiliated third party before a court.

### 2. Cloud Services License.

Subject to Customer's compliance with this Agreement, Druva hereby grants Customer a non-transferable, non-exclusive, revocable, limited, and restricted license to access and use the Cloud Services for Customer's own internal business purposes only in a manner pursuant to this Agreement and the applicable Documentation for the Term unless earlier terminated. For Customers purchasing inSync or Phoenix or both, Druva shall use commercially reasonable efforts to make the Cloud Services available to Customer in accordance the service levels attached hereto as Exhibit A during the Term unless earlier terminated. Customer may install and use the Cloud Services on any of Customer's compatible endpoint devices up to the maximum number of permitted Authorized Users and storage limit per Authorized User set forth in the Order Form. Customer may make copies of the Documentation for its own internal use in connection with its use of the Cloud Services in accordance with this Agreement, but no more than the amount reasonably necessary.

### 3. Privacy and Confidentiality.

- (a) **Privacy.** Customer authorizes Druva to transmit, backup and use Customer Data solely to provide the Cloud Services to Customer and Customer's Affiliates, and otherwise in accordance with this Agreement and Druva's Privacy Policy at <https://www.druva.com/privacy-policy/>, and Data Processing Addendum at <https://www.druva.com/msa/>. The Druva Privacy Policy and Data Processing Addendum are incorporated by this reference into, and made a part of, this Agreement.
- (b) **Confidentiality.** The Receiving Party agrees to use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind, but not less than reasonable care. Each party shall not (i) disclose the other party's Confidential Information to any third parties other than as expressly provided in this Agreement, (ii) use the other party's Confidential Information for purposes outside the scope of this Agreement, and (iii) disclose the other party's Confidential Information, unless to directors, employees, or consultants who have a need to know such information and are subject to confidentiality obligations that are at least as restrictive as those contained in this Agreement.
- (c) **Data Storage.** The Cloud Services will process and store Customer Data in the Cloud Storage Area selected by Customer, except as necessary to comply with the law or a valid binding order of a law enforcement agency. In the event that Druva has the capability and desires to change the location of the Cloud Storage Area for a Customer Site, Druva agrees to promptly notify Customer in writing and provide all relevant details of the desired change to the location of the Cloud Storage Area, and not change the location of the Cloud Storage Area without Customer's prior written approval, which Customer may withhold in its sole discretion.
- (d) **Usage and Configuration Metrics.** Druva, its Affiliates, and its third-party service providers that perform services in connection with Druva's performance of this Agreement may collect information regarding number of users, number of devices, number of servers, per user storage capacity, aggregate storage usage and storage locations of the Customer (which information shall not include any Customer Data, or any "personal identifiable information" or "protected health information" as such terms are defined in applicable U.S. privacy laws). Druva, its Affiliates, and its third-party service providers may use such information only for their internal business purposes, including to perform and to ensure compliance with this Agreement. Druva, its Affiliates, and its third-party service providers agree to keep such information confidential.

### 4. Customer Information.

- (a) **Ownership.** As between Druva and Customer, Customer retains title to and ownership of all right, title, and interest in the Customer Data.
- (b) **Customer Responsibility.** Customer is solely responsible for (i) maintaining the confidentiality of its Authorized Users' credentials, passwords, and encryption keys associated with its accounts, (ii) properly configuring the settings of the Cloud Services and taking its own steps to maintain appropriate security and protection of passwords and encryption keys and settings for any backup of Customer Data, (iii) all activities that occur with respect to Customer's accounts regardless of whether the activities are undertaken by it, its employees, or a third party (including its contractors or agents), (iv) its and its Authorized Users' access and use of the Cloud Services and compliance with this Agreement and the applicable Documentation (v) all content of Customer Data, and (vi) all product settings, which may override individual end point settings of Authorized Users, if applicable. Druva is not responsible for any alteration, compromise, corruption, or loss of Customer Data that arises from any access to, sharing, or use of Customer's accounts, credentials, passwords, or encryption keys.

### 5. Ownership.

The Cloud Services, the Documentation, and any authorized copies thereof made by Customer are the intellectual property of and are owned by Druva and its Affiliates and their licensors, and constitute the Confidential Information of Druva. As between Druva and Customer, Druva and its Affiliates retain title to and ownership of all right, title and interest in the Cloud Services and the Documentation, including all intellectual property and other proprietary rights therein, and subject to the applicable limited licenses expressly granted by Druva to Customer in Section 2. Customer does not have any right, title, or interest in the Cloud Services or the Documentation. To the extent that the Cloud Services contain or may be provided with components that are offered under an open source license, Druva agrees to make that license available to Customer and the provisions of that license may expressly override some of the terms set forth in this Agreement for such components. All rights not expressly granted in this Agreement are reserved by Druva and its Affiliates and their licensors.

### 6. Restrictions and Requirements.

- (a) **Proprietary Notices.** Customer and its Authorized Users will not remove or modify any trademarks, trade names, service marks, service names, logos or brands, or copyright or other proprietary notices on the Cloud Services or the Documentation, or add any other markings or notices to the Cloud Services or the Documentation.
- (b) **Use Obligations.** Customer and its Authorized Users (i) will access and use the Cloud Services in accordance with this Agreement and the applicable Documentation, (ii) will not use or permit the Cloud Services to perform any file storage or other services for any third party, (iii) will not use or permit the Cloud Services to upload or backup any Customer Data (A) that infringes the intellectual property rights or other proprietary rights of any third party, (B) that is unlawful or objectionable material, (C) that contains software viruses or other harmful or deleterious computer code, files, or programs, such as trojan horses, worms, time bombs, or cancelbots,

(iv) will not use or permit the use of any software, hardware, application, or process that (A) interferes with the Cloud Services, (B) interferes with or disrupts servers, systems, or networks connected to the Cloud Services, or violates the regulations, policies, or procedures of such servers, systems, or networks, (C) accesses or attempts to access another customer's accounts, servers, systems, or networks without authorization, (D) harasses or interferes with another customer's use and enjoyment of the Cloud Services, or (E) in Druva's sole discretion, inordinately burdens the resources of Druva or its Affiliates that are providing the Cloud Services, and (v) will not tamper with or breach the security of the Cloud Services.

- (c) **Prohibited Activities.** Customer and its Authorized Users will not (i) modify, port, adapt, translate or create any derivative work based upon the Cloud Services or the Documentation, (ii) reverse engineer, decompile, disassemble, or otherwise derive or attempt to derive the source code of the Cloud Services, except for any non-waivable right to decompile the Cloud Services expressly permitted by applicable mandatory law, (iii) copy, distribute, sell, assign, pledge, sublicense, lease, loan, rent, timeshare, use or offer the Cloud Services on a service bureau basis, deliver or otherwise transfer the Cloud Services, in whole or in part, or (iv) access Cloud Services to create competitive products to Druva or engage in the competitive analysis of Cloud Services.

## 7. Payment Terms.

- (a) **Fees.** Customer shall pay Druva, directly or through the Reseller with which Customer contracted, the subscription fees and other amounts for Druva's products and services ordered by Customer, in United States currency (unless otherwise specified in the Order Form) (collectively, the "Fees"). All payment obligations are non-cancellable, and all Fees paid to Druva are non-refundable except as expressly set forth in this Agreement.
- (b) **Payment Terms.** All Fees will be invoiced in advance in accordance with the Order Form. Unless otherwise set forth in the Order Form, all Fees are due and payable Net 30 days after the date of the applicable invoice. All invoices that are not paid within Net 30 days, and all credit accounts that are delinquent, shall be assessed a 1.5% late payment charge (or, if less, the highest legal rate under applicable law) for each month the invoice is not paid or the account is delinquent. Customer will reimburse Druva for all reasonable costs (including reasonable attorneys' fees) incurred by Druva in connection with collecting any overdue amounts.
- (c) **Taxes.** With respect to the transactions and payments contemplated in this Agreement, each party shall be solely responsible to pay all Taxes and governmental fees and charges (and, any penalties, interest, and other additions thereto) that each party is liable to pay under applicable law or otherwise under this Agreement. All Fees payable under this Agreement are exclusive of applicable Taxes. If either party has an obligation under applicable law or this Agreement to pay or collect Indirect Tax for which the other party is legally liable or responsible under this section, then the paying or collecting party will invoice the other party for such Indirect Tax, which the invoiced party will pay. The invoice will satisfy requirements under applicable law for a valid tax invoice. Each party will provide the other party with such information as is reasonably required to determine whether there is an obligation to pay or collect Indirect Tax. Neither party shall pay or collect any Indirect Tax from or on behalf of the other party for which, under applicable law, (i) the other party has previously provided to the paying or collecting party a properly completed and valid exemption certificate, or (ii) the parties may otherwise claim an available, valid exemption from such Indirect Tax.

## 8. Limited Warranty.

- (a) **Authority.** Each party represents and warrants that (i) this Agreement has been duly entered into and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (ii) no authorization or approval from any third party is required in connection with such party's entering into or performance of this Agreement; and (iii) the entering into and performance of this Agreement does not violate the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.
- (b) **Limited Warranty.** Druva warrants that Cloud Services will perform substantially in accordance with the applicable published specifications when used in accordance with this Agreement and the Documentation for the Term of the Agreement. Non-substantial variations of performance from the published specifications or other Documentation do not establish a warranty right. This limited warranty is void if failure of the Cloud Services has resulted from installation, deployment, use, maintenance or support not in accordance with this Agreement or the Documentation, modification by Customer, an Authorized User, or a third party not authorized by Druva, force majeure, or any breach of this Agreement by Customer or an Authorized User. In the event of a Cloud Services warranty claim, Customer's sole and exclusive remedy and Druva's entire obligation and liability shall be, at Druva's sole option, to either (i) provide a correction, update or upgrade of the Cloud Services, (ii) correct or replace the Cloud Services, or (iii) refund Customer, directly or through the Reseller with which Customer contracted, a pro-rated amount of the applicable Fees pre-paid by Customer covering the whole months that would have remained, absent such early termination, in the Term following the effective date of such early termination and terminate this Agreement. Any corrected, upgraded or updated version of the Cloud Services will be warranted for the remainder of the warranty period. All warranty claims must be made to Druva in writing within such warranty period.
- (c) **General Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 8(a) AND 8(b), THE CLOUD SERVICES ARE PROVIDED "AS IS" AND (i) DRUVA SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; AND (ii) DRUVA DOES NOT WARRANT THAT THE CLOUD SERVICES OR ANY PART THEREOF, OR USE THEREOF WILL BE UNINTERRUPTED, ERROR-FREE, UNBREACHABLE OR VIRUS FREE, OR WILL MEET CUSTOMER'S QUALITY AND PERFORMANCE REQUIREMENTS. CUSTOMER ASSUMES THE ENTIRE RISK OF AND SHALL NOT HOLD DRUVA RESPONSIBLE FOR ANY ALTERATION, COMPROMISE, CORRUPTION OR

LOSS OF CUSTOMER DATA, NOTWITHSTANDING ANY SECURITY OR OTHER MEASURE THAT MAY BE PROVIDED BY DRUVA.

**9. Indemnification.**

- (a) **Customer.** Customer, if notified promptly in writing and given authority, control, information and assistance at Customer's expense for defense and settlement of same, shall defend and indemnify Druva and Druva's Affiliates, employees, officers, directors, agents, successors, and assigns against any Indemnified Liabilities, in any Third Party Legal Proceeding so far as it relates to the content of Customer Data, including intellectual property infringement right claims.
- (b) **Druva.** Subject to Sections 9(c) (Exceptions), Druva, if notified promptly in writing and given authority, control, information and assistance at Druva's expense for defense and settlement of same, shall defend and indemnify Customer against Indemnified Liabilities, in any Third Party Legal Proceeding so far as it is based on a claim that the use of the Cloud Services furnished under this Agreement infringes a United States patent that has been issued as of the installation or deployment date, as the case may be. If Druva reasonably believes that Customer's use of the Cloud Services is likely to be enjoined, or if the Cloud Services are held to infringe such patent and all use of such Cloud Services by Customer is thereby enjoined, Druva shall, at its expense and at its sole option, (i) procure for Customer the right to continue using the Cloud Services, (ii) replace the Cloud Services with other non-infringing software or services of substantially equivalent functionality, or (iii) modify the Cloud Services so that there is no infringement, provided that such modified software or services provide substantially equivalent functionality. If, in Druva's opinion, the remedies in clauses (i), (ii) and (iii) above are infeasible or commercially impracticable, Druva may, in its sole discretion, refund Customer, directly or through the Reseller with which Customer contracted, a pro-rated amount of the applicable Fees pre-paid by Customer covering the whole months that would have remained, absent such early termination, in the Term following the effective date of such early termination and terminate this Agreement. Customer shall not settle any matter without the prior written approval of Druva.
- (c) **Exceptions.** The indemnification obligation in this Section 9(b) will not apply to the extent the infringement is caused by any of the following: (i) the Cloud Services is modified in an unauthorized manner by Customer, (ii) the Cloud Services is combined with other unauthorized software, hardware, application or process by Customer, (iii) the Cloud Services is used in violation of this Agreement or the Documentation by Customer, (iv) any third party deliverables or components contained within the Cloud Services that are not provided by Druva, or (v) any materials, data or information provided by Customer, including Customer Data.
- (d) **Sole Remedy.** THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND DRUVA'S ENTIRE OBLIGATION AND LIABILITY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

**10. Limitation of Liability.**

EXCEPT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9 AND CUSTOMER'S MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF BUSINESS, GOODWILL, REVENUE, USE OR OTHER ECONOMIC ADVANTAGE, BUSINESS INTERRUPTION, OR ANY ALTERATION, COMPROMISE, CORRUPTION OR LOSS OF CUSTOMER DATA) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE CLOUD SERVICES, THE DOCUMENTATION, OR THE USE THEREOF, OR THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THE EXCLUSIONS SET FORTH IN THE PRECEDING SENTENCE, EACH PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID AND PAYABLE BY CUSTOMER FOR THE CLOUD SERVICES FOR THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. FOR CLARITY, THE ABOVE LIMITATIONS SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 7. No claim against Druva may be brought more than one year after the facts giving rise to such claim have arisen. The limitations of liability and exclusions of damages in this Section 10 form an essential basis of the bargain between the parties and shall survive and apply even if any remedy specified in this Agreement is found to have failed its essential purpose.

**11. Insurance.**

Druva shall maintain, at its expense, during the Term workers' compensation insurance as required by applicable law, and commercial general liability insurance, errors and omissions liability insurance, cyber security insurance, and umbrella liability insurance from financially sound insurance companies having coverages and limits of liability that are commercially reasonable. Upon request, Druva will provide Customer with proof of such insurance.

**12. Suspension**

- (a) **For Breach.** In the event of any actual or threatened breach of this Agreement by Customer (including non-payment of fees), without limiting Druva's other rights and remedies and notwithstanding anything in this Agreement to the contrary, Druva may immediately suspend Customer's use of the Cloud Services.
- (b) **For Credit Depletion.** For consumption-based Cloud Services, Druva may suspend Customer's use of the applicable Cloud Services within fifteen days from Customer's depletion of the pre-purchased credits. Druva shall make reasonable efforts to provide a courtesy

notice to Customer in an event of depletion of credits. Notwithstanding the foregoing, it is Customer's sole responsibility to ensure timely purchase of credits for uninterrupted service.

### 13. Term and Termination.

- (a) **Term of Agreement.** This Agreement commences on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated ("Term").
- (b) **Term of Subscriptions.** The term of each subscription is set forth in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to one year, unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. Notwithstanding the foregoing, any promotional or one-time priced subscription will not be subject to auto-renewal. The per-unit pricing during any automatic renewal term may be increased by up to 3% from the prior term.
- (c) **Termination.** This Agreement may only be terminated by a party upon written notice to the other party (i) if the other party breaches a material term of this Agreement that is uncured within 30 days (or, in the case of non-payment, 15 days) after delivery of notice of such breach, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors not dismissed within 30 days. For license-based Cloud Services, in the event the cost of providing Cloud Services exceeds the Fees paid and payable by Customer, Druva will notify Customer and Customer shall work with Druva in good faith to remediate the issue. If no resolution is found within 60 days from the date of the notice to Customer, then Druva may terminate the Agreement. For consumption-based Cloud Services, Druva may terminate the Agreement within thirty days from the end of the suspension period for Cloud Services pursuant to Section 12(b). Notwithstanding the above, Druva may immediately terminate this Agreement without prior written notice or an opportunity to cure in the event of an actual or threatened breach of Section 2, 5, or 6.
- (d) **Fees.** Upon expiration of this Agreement, Customer will pay Druva, directly or through the Reseller with which Customer contracted, any unpaid amounts that are owed to Druva for the Term. Upon termination of this Agreement based on Customer's breach (following any applicable cure period), Customer will pay Druva any unpaid amounts that would have been owed to Druva for the remainder of the then-current Term if such early termination had not occurred as well as any other amounts owed to Druva under this Agreement, without limiting Druva's other rights and remedies. Upon termination of this Agreement based on Druva's breach (following any applicable cure period), Druva will refund Customer, directly or through the Reseller with which Customer contracted, any amounts pre-paid under this Agreement for the remaining full calendar months in the then-current Term.
- (e) **Data Retrieval.** Upon expiration or termination of this Agreement, the rights granted by Druva to Customer under this Agreement will cease immediately and Customer will immediately cease all use of the Cloud Services and delete (or, at Druva's request, return) related Documentation, passwords, and any Druva Confidential Information in its possession or control. Upon expiration or termination of this Agreement (other than termination by Druva for Customer's breach), Customer may (i) access the Cloud Services solely to retrieve its back-up of the Customer Data for 30 days after the expiration or termination of this Agreement or (ii) on or prior to the 30th day after the expiration or termination of this Agreement, request that Druva provide a copy of the Customer Data to Customer at Druva's standard export fee. After such 30-day period, Druva will have no obligation to maintain or provide access to the Customer Data and will delete such data unless legally prohibited.
- (f) **Survival.** Sections 3(b), 4, 5, 6, 7, 8, 9, 10, 12, 13 and 14 will survive the expiration or termination of this Agreement.

### 14. General.

- (a) **Parties.** Druva and Customer are independent contractors. Nothing in this Agreement shall be deemed to constitute a joint venture or partnership between the parties, nor constitute any party as the agent of the other party for any purpose or entitle any party to commit or bind the other party in any manner. Nothing in this Agreement, express or implied, (nor if this Agreement is governed by Singapore law, under the Contracts (Rights of Third Parties) Act, Chapter 53B of Singapore) is intended to confer upon any party other than the parties hereto, Druva's Affiliates and their licensors and their respective successors and permitted assigns any rights or obligations.
- (b) **Governing Law, Jurisdiction and Attorneys' Fees.** Pursuant to the table below, the Druva contracting and invoicing entity and the applicable law will depend on where Customer is domiciled.

If Customer is domiciled in:	Customer is contracting with:	The governing law is:	The courts having exclusive jurisdiction are:
A country in North America or South America	Druva, Inc. a Delaware corporation	California and controlling United States federal law	Santa Clara, California, U.S.A.

A country in Asia Pacific (except Japan)	Druva Singapore Pte. Ltd., a Republic of Singapore company	Singapore law	Singapore
Japan		Japan law	Tokyo, Japan
A country in India subcontinent (which includes India, Pakistan, Sri Lanka, Bangladesh, Nepal and Bhutan)	Druva Data Solutions Private Limited	India law	Mumbai, India
A country in Europe, Middle East, or Africa (except Germany)	Druva Europe Limited, an England and Wales, United Kingdom company	Wales and England law	London, England
Germany	Druva GmbH	German law	Frankfurt, Germany

Unless California laws apply, THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY. This Agreement shall not be governed by the conflict of law rules of any jurisdiction, the United Nations Convention on Contracts for the International Sale of Goods, or the Uniform Computer Information Transactions Act, the application of which is expressly excluded. If any action is pursued to enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs and any other relief to which such party may be entitled.

- (c) **Export Laws.** Customer understands that the Cloud Services and the export and re-export of data via the Cloud Services may be controlled by the laws of one or more countries governing technology use and transfer, including U.S. Export Administration Regulations. Customer will not use or transfer any technology or data in violation of such laws.
- (d) **Publicity.** Customer authorizes Druva to use Customer's name, logo, and/or trademark in connection with marketing, sales, financial, public relation, and other materials used for promotional and marketing activities only.
- (e) **Entire Agreement; Amendment; Waiver.** This Agreement, together with the Exhibit and the Order Form(s), is the parties' entire agreement with respect to its subject matter, and supersedes any prior communications, discussions, understandings, or agreements. Any term of this Agreement may be amended or waived only with the written consent of duly authorized representatives of the parties.
- (f) **Severability.** If any provision of this Agreement is held to be unenforceable, the unenforceable provision shall be replaced by an enforceable provision that comes closest to the parties' intentions underlying the unenforceable provision, and the remaining provisions of this Agreement shall remain in full force and effect. The unenforceability of any provision in any jurisdiction shall not affect the enforceability of such provision in any other jurisdiction.
- (g) **Subcontracts; Assignment.** Druva may subcontract any services to be performed under this Agreement without Customer's consent and without providing notice. Druva may assign or transfer this Agreement, in whole or in part, to any Affiliate or in connection with any acquisition, consolidation, merger, reorganization, transfer of all or substantially all of its assets or other business combination, or by operation of law without Customer's consent and without providing notice. Customer may not assign or transfer any part of this Agreement by business combination, operation of law or otherwise without Druva's prior written consent. Subject to the foregoing, this Agreement will bind and benefit the parties and their respective successors and permitted assigns.
- (h) **Data Center Providers.** Customer hereby consents to data center providers supply hosting services for the Cloud Services.
- (i) **Force Majeure.** Druva shall not be liable for its inadequate performance caused by any condition beyond the reasonable control of Druva or its suppliers, including accidents, acts of God or nature, government acts, civil unrest, acts of war or terrorism, third-party criminal acts, strikes or other labor problems, failures in computer, hardware, telecommunications, internet service provider or hosting facilities, power shortages, and denial of service attacks.
- (j) **Notices.** All notices given under this Agreement shall be in writing and shall be deemed given upon receipt. All notices shall be sent to the parties at their respective address on the Order Form, or to such email address or address as subsequently modified by written notice given in accordance with this section.
- (k) **Counterparts.** This Agreement may be signed in counterparts, including via facsimile, pdf or other electronic reproduction, and any such counterpart will be valid and effective for all purposes.
- (l) **Conflict.** In the event of any conflict or inconsistency between the following documents, the order of precedence shall be: (1) the applicable Order Form and (2) this Agreement. The parties agree that any term or condition in Customer's purchase order is void and of no effect.

The signatures of authorized individuals of the parties below confirm that this is a valid and binding Agreement on the Effective Date by the parties.

**Druva**

**[Insert Customer Name]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## Exhibit A

### inSync and Phoenix: Service Level Agreement (SLA) for Cloud Services

#### Cloud Services Availability

The Cloud Services will be available 24 hours per day, 7 days per week, excluding any scheduled maintenance as described below.

#### **Category 1 – Scheduled Maintenance.**

**InSync:** A weekly scheduled maintenance period may be scheduled every Saturday between **10 AM** UTC to **1 PM** UTC to perform system maintenance, backup, and upgrade functions for the Cloud Services. If scheduled maintenance is required outside of the weekly scheduled maintenance period described above, Druva will notify Customer at least three business (3) days in advance.

**Phoenix:** A weekly scheduled maintenance period may be scheduled on the first and third Monday of each month at **5am** UTC (Phoenix Cloud) and at **8am** UTC (Phoenix GovCloud) for a maximum duration of 90 minutes to perform system maintenance, backup, and upgrade functions for the Cloud Services. If scheduled maintenance is required outside of the weekly scheduled maintenance period described above, Druva will notify Customer at least three business (3) days in advance.

**Category 2 – Unscheduled Maintenance.** Unscheduled maintenance may be required to resolve issues that are critical for Customer and/or performance of the Cloud Services. Druva will use its commercially reasonable efforts to notify Customer via email at least six (6) hours prior to the unscheduled maintenance.

#### Uptime and Service Credits

Please reference the following table (Reporting Period = Calendar Month), which details the credit available to Customer in the event Cloud Services Availability falls below the indicated thresholds:

##### **InSync**

<b>Cloud Services Availability</b>	<b>Credits</b>
< 99.5% in one Reporting Period	5% of one (1) month of Fees
< 99% in one Reporting Period	10% of one (1) month of Fees

##### **Phoenix**

<b>Cloud Services Availability</b>	<b>Credits</b>
< 99.5% in one Reporting Period	5% of one (1) Phoenix Month*
< 99% in one Reporting Period	10% of one (1) Phoenix Month

Additionally, if the Cloud Services Availability falls below 95% for three (3) consecutive Reporting Periods, Customer shall have the right to terminate this Agreement and such right must be exercised within ten (10) days of the end of such three (3) month period or Customer shall be deemed to have waived its termination right with respect to that particular three (3) month period.

\* Phoenix month is equivalent to the value of the Phoenix credits consumed by Customer for the affected month.

#### Calculation of Cloud Services Availability

Cloud Services Availability = (Total Hours in Reporting Period – Unscheduled Maintenance which causes unavailability – Scheduled Maintenance) / (Total Hours in Reporting Period – Scheduled Maintenance) X 100%.

\*Excluded means the following: (i) unavailability caused by force majeure; (ii) any problems resulting from Customer combining or merging the Cloud Services with any hardware or software not supplied by Druva or not identified by Druva in writing as compatible with the Cloud Services; (iii) interruptions or delays in providing the Cloud Services resulting from telecommunications or Internet service provider failures; or (iv) any interruption or unavailability resulting from Customer's use of the Cloud Services in an unauthorized or unlawful manner or any interruption resulting from the misuse, improper use, alteration or damage of the Cloud Services.

#### Request for Credit for Cloud Services Availability

Any Customer request for a credit that Customer is entitled to under this SLA may only be made on a calendar month basis and must be submitted within ten (10) days after the end of the relevant calendar month or shall be deemed to have been waived by Customer.



For those periods at the end of a Term that do not coincide with the end of a calendar month, Customer must make a claim for a credit within ten (10) days after the expiration of the Term or the claim for credit shall be deemed to have been waived by Customer.

The right to a credit and/or the right to terminate this Agreement under this SLA and this Agreement shall be the sole and exclusive remedy available to Customer in the event of unavailability of the Cloud Services and, under no circumstance, shall the unavailability of the Cloud Services be deemed a breach by Druva of its obligations under this Agreement.