

Service Agreement

Posted and effective 12 August 2016

This Service Agreement (the “Agreement”) is between SpiderOak, Inc. (“SpiderOak”) and the organization agreeing to these terms (“Customer”). The Agreement governs access to and use of the SpiderOak client software and services (“Services”) by Customer.

By clicking “I Accept,” you acknowledge that you have reviewed the following terms and conditions, have the authority to bind the organization, and accept the Agreement on the organization’s behalf.

1. **SpiderOak Services.**

A. **Provision of Services.** SpiderOak grants Customer a non-exclusive, non-transferable license to use the Services for Customer’s internal purposes. Customer and users of Customer’s Services account (“End Users”) may use SpiderOak Services in accordance with this Agreement.

B. **Information Security and Data Processing.** SpiderOak will use, at a minimum, industry-standard technical and administrative security measures to transfer, store, and process Customer Data. These measures are designed to protect the integrity of Customer Data and guard against the unauthorized or unlawful access to, use, and processing of Customer Data. Customer agrees that SpiderOak may transfer, store, and process Customer Data in the United States and locations other than Customer’s country. To the extent that Customer Data is subject to European Union data protection laws and is processed by SpiderOak as a data processor acting on Customer’s behalf (as a data controller), SpiderOak will use and process such Customer Data as Customer instructs in order to provide the Services and fulfill SpiderOak’s obligations under the Agreement. “Stored Data” means files and other data submitted to the Services by Customer or End Users. “Account Data” means account and contact information submitted to the Services by Customer or End Users. “Customer Data” means Stored Data and Account Data.

C. **Software.** Customer may use SpiderOak software to access the Services. If any component of the software is offered under an open source license, SpiderOak will make the license available to

Customer and the provisions of that license may expressly override some of the terms of this Agreement.

D. **Modifications to the Services.** SpiderOak reserves the right to update the Services from time to time.

2. **Customer Duties.**

A. **Compliance.** Customer is responsible for use of the Services by its End Users. Customer and its End Users must use the Services in compliance with this Agreement, all SpiderOak policies, and applicable regulations and laws.

B. **Customer Administration of the Services.** Customer may designate certain End Users as “Administrators.” Administrators may have the ability to access, disclose, restrict or remove Customer Data in or from Services accounts. Administrators may also have the ability to monitor, restrict, or terminate access to Services accounts. SpiderOak is not responsible for the internal management or administration of the Services on behalf of Customer. Customer must (i) maintain the confidentiality of passwords and Administrator accounts, (ii) manage access to Administrator accounts, and (iii) ensure that Administrators’ use of the Services complies with this Agreement. Customer will obtain from End Users any consents necessary to allow Administrators to engage in the activities described in this Agreement and to allow SpiderOak to provide the Services.

C. **Unauthorized Use and Access.** Customer will prevent unauthorized use of the Services by its End Users and terminate any unauthorized use of or access to the Services. Customer will ensure that it does not allow any person under 13 to use the Services. Customer will promptly notify SpiderOak of any unauthorized use of or access to the Services.

D. **Restrictions.** Customer will not (i) sell, resell, or lease the Services; (ii) use the Services in activities wherein use or failure of the Services could cause physical damage, death, or personal injury; or (iii) reverse engineer the Services, nor assist anyone else to do so, unless otherwise permitted by law.

E. **Third-Party Requests.**

i. Customer is responsible for responding directly to Third-Party Requests for information about its End Users’ use of the Services. “Third-Party Request” means a request from law enforcement or another third party for records relating to an End User’s use of the Services. Third-Party Requests

may include, but are not limited to, search warrants, subpoenas, court orders, emergency disclosure requests, or written consent from an End User permitting disclosure of records about the End User's use of the Services.

ii. SpiderOak will make commercially reasonable efforts, unless we are prohibited from doing so by law or court order (e.g., an order under 18 U.S.C. § 2705(b)), to (a) promptly notify Customer of SpiderOak's receipt of a Third-Party Request; (b) comply with Customer's commercially reasonable requests regarding its efforts to oppose a Third-Party Request; and (c) provide Customer with information or tools required for Customer to respond to the Third-Party Request (if Customer is otherwise unable to obtain the information). If Customer fails to promptly respond to a Third-Party Request, SpiderOak may, but will not be obligated, to do so.

3. **Third-Party Services.** If Customer uses any third-party service in conjunction with the Services, (A) SpiderOak will not be responsible for any act or omission of the third party, including the third party's access to or use of Customer Data and (B) SpiderOak does not warrant or support any service provided by the third party.

4. **Suspension**

A. **Of End User Accounts by SpiderOak.** If an End User (i) violates this Agreement or (ii) uses the Services in a manner that SpiderOak reasonably believes will cause it liability, then SpiderOak may request that Customer suspend or terminate the applicable End User account. If Customer fails to promptly suspend or terminate the End User account, SpiderOak may do so.

B. **Of Services In Emergencies.** Notwithstanding any term in this Agreement, SpiderOak may suspend the Services in an Emergency. SpiderOak will make commercially reasonable efforts to tailor the suspension as needed to prevent or stop the Emergency. "Emergency" means (i) use of the Services that do or could disrupt the Services, other customers' use of the Services, or the infrastructure used to provide the Services, and (ii) unauthorized third-party access to the Services.

5. **Intellectual Property.**

A. **Reservation of Rights.** Except as expressly provided, this Agreement does not grant (i) SpiderOak any intellectual property rights in Customer content or data, or (ii) Customer any intellectual property rights in the Services or SpiderOak trademarks and brand features.

B. **Limited Permission.** Customer grants SpiderOak only rights that are reasonably necessary for SpiderOak to offer the Services. This permission also extends to trusted third parties SpiderOak works with to offer the Services (e.g., payment providers, customer service specialists).

C. **Suggestions and Feedback.** SpiderOak may, at its discretion and for any purpose, use, modify, and incorporate into its products and services any feedback, comments, or suggestions from Customer or End Users without any obligation to Customer or End Users.

D. **Customer List.** SpiderOak may include Customer's name in a list of SpiderOak customers on the SpiderOak website or in promotional materials.

6. **Fees and Payment.**

A. **Fees.** Customer agrees to pay all applicable fees, and authorizes SpiderOak to charge those fees using Customer's selected payment method. Fees are non-refundable except as required by law. Customer is responsible for providing complete and accurate billing and contact information to SpiderOak. SpiderOak reserves the right to suspend or terminate the Services if fees are past due.

B. **Auto Renewals and Trials.** IF CUSTOMER'S ACCOUNT IS SET TO AUTO RENEW OR IS IN A TRIAL PERIOD, SPIDEROAK MAY AUTOMATICALLY CHARGE AT THE END OF THE TRIAL OR FOR THE RENEWAL, UNLESS CUSTOMER NOTIFIES SPIDEROAK THAT CUSTOMER WANTS TO CANCEL. SpiderOak reserves the right to revise Service rates, and will provide Customer at least 10 days notice prior to such a revision.

C. **Taxes.** Customer is responsible for all taxes. SpiderOak will charge tax when required to do so. If Customer is required by law to withhold any taxes, Customer must provide SpiderOak with an official tax receipt or other appropriate documentation.

D. **Purchase Orders.** If Customer requires the use of a purchase order or purchase order number, Customer (i) must provide the purchase order number at the time of purchase, and (ii) agrees that any terms and conditions on a Customer purchase order will not apply to this Agreement and are null and void. If Customer is purchasing through a reseller, any terms and conditions from Customer's reseller or in a purchase order between Customer and its reseller that conflict with the SpiderOak Service Agreement are null and void.

7. **Term & Termination of Agreement**

A. **Term.** This Agreement will remain in effect until Customer's subscription to the Services expires or terminates, or until the Agreement is terminated.

B. **Termination for Breach.** Either SpiderOak or Customer may terminate this Agreement if (i) the other party is in material breach of the Agreement and fails to cure that breach within 30 days after receipt of written notice, or (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 90 days.

C. **Effects of Termination.** If this Agreement terminates: (i) the rights granted by SpiderOak to Customer will cease immediately (except as set forth in this section), (ii) SpiderOak may provide Customer access to its account at then-current fees so that Customer may export its Stored Data, and (iii) after a commercially reasonable period of time, SpiderOak may delete any Stored Data relating to Customer's account. The following sections will survive expiration or termination of this Agreement: 2(E) (Third-Party Requests), 5 (Intellectual Property Rights), 6 (Fees & Payment), 7(C) (Effects of Termination), 8 (Indemnification), 9 (Disclaimers), 10 (Limitation of Liability), 11 (Disputes), and 12 (Miscellaneous).

8. **Indemnification.**

A. **By Customer.** Customer will indemnify, defend, and hold harmless SpiderOak from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of any claim by a third party against SpiderOak and its affiliates regarding (i) Customer Data, (ii) Customer's use of the Services in violation of this Agreement, or (iii) End Users' use of the Services in violation of this Agreement.

B. **By SpiderOak.** SpiderOak will indemnify, defend, and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of any claim by a third party against Customer to the extent based on an allegation that SpiderOak's technology used to provide the Services to the Customer infringes or misappropriates any copyright, trade secret, U.S. patent, or trademark right of the third party. In no event will SpiderOak have any obligations or liability under this section arising from (i) use of any Services in a modified form or in combination with materials not furnished by SpiderOak, and (ii) any content, information, or data provided by Customer, End Users, or other third parties.

C. Possible Infringement. If SpiderOak believes the Services infringe or may be alleged to infringe a third party's Intellectual Property Rights, then SpiderOak may (i) obtain the right for Customer to continue using the Services, (ii) provide a non-infringing functionally equivalent replacement, or (iii) modify the Services so that they no longer infringe. If SpiderOak does not believe the options described in this section are commercially reasonable, SpiderOak may suspend or terminate Customer's use of the affected Services (with a pro-rata refund of prepaid fees for the Services).

D. General. The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party will have full control and authority over the defense, except that (i) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed and (ii) the other party may join in the defense with its own counsel at its own expense.

THE INDEMNITIES ABOVE ARE SPIDEROAK AND CUSTOMER'S ONLY REMEDY FOR VIOLATION BY THE OTHER PARTY OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

9. Disclaimers.

THE SERVICES ARE PROVIDED "AS IS." TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER CUSTOMER NOR SPIDEROAK AND ITS AFFILIATES, SUPPLIERS, OR DISTRIBUTORS MAKE ANY WARRANTY, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, AND NON-INFRINGEMENT.

10. Limitation of Liability.

TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT FOR SPIDEROAK OR CUSTOMER'S INDEMNIFICATION OBLIGATIONS, NEITHER CUSTOMER NOR SPIDEROAK AND ITS AFFILIATES, SUPPLIERS, OR DISTRIBUTORS WILL BE LIABLE UNDER THIS AGREEMENT FOR (i) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR (ii) LOSS OF USE, DATA, BUSINESS, REVENUES, PROFITS, GOODWILL OR OTHER INTANGIBLE LOSSES (IN EACH CASE WHETHER DIRECT OR INDIRECT), EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE. TO THE FULLEST EXTENT PERMITTED BY LAW, SPIDEROAK'S AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE LESSER OF \$10,000 OR THE AMOUNT PAID BY CUSTOMER FOR THE SERVICES HEREUNDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

11. Disputes.

A. Informal Resolution. SpiderOak strives to address disputes without the need to resort to a formal legal proceeding. Before filing a claim, each party agrees to try to resolve the dispute by contacting the other party through the notice procedures in section 11(E).

B. Agreement to Arbitrate. If informal resolution fails, Customer and SpiderOak agree to resolve any claims relating to this Agreement or the Services through final and binding arbitration, except as set forth below. The American Arbitration Association (AAA) will administer the arbitration under its Commercial Arbitration Rules. The arbitration will be held in Kansas City, Missouri, or any other location both parties agree to in writing.

C. ARBITRATION OPT-OUT. You may opt out of the agreement to arbitrate in section 11(B) by notifying SpiderOak within 90 days of the date that you agreed to the Agreement by mailing an opt-out notice to Arbitration Opt-Out, SpiderOak, Inc., 4741 Central Street #324, Kansas City, MO 64112.

D. Exception to Agreement to Arbitrate. Notwithstanding section 11(B) & (C), Either party may bring a lawsuit in the federal or state courts of Kansas City, Missouri solely for injunctive relief to stop unauthorized use or abuse of the Services or infringement of intellectual property rights without first engaging in the informal dispute notice process described above. Both Customer and SpiderOak consent to venue and personal jurisdiction there.

E. NO CLASS ACTIONS. Customer may only resolve disputes with SpiderOak on an individual basis and will not bring a claim in a class, consolidated, or representative action.

12. Miscellaneous.

A. Agreement Modification. SpiderOak may revise this Agreement from time to time. The most current version will always be posted on the SpiderOak website. If a revision, in SpiderOak's sole discretion, is material, SpiderOak will notify Customer (by, for example, sending an email to the email address associated with the applicable account). Other revisions may be posted to SpiderOak's blog or terms page. By continuing to access or use the Services after revisions become effective, Customer agrees to be bound by the revised Agreement. If Customer does not agree to the revised Agreement terms, Customer may terminate the Services within 30 days of receiving notice of the change.

B. Entire Agreement. This Agreement constitutes the entire agreement between Customer and SpiderOak with respect to the subject matter of this Agreement and supersedes and replaces any prior or contemporaneous understandings and agreements, whether written or oral, with respect to the subject matter of this Agreement.

C. Governing Law. This Agreement is governed by Missouri law except for its conflicts of law principles.

D. Severability. Any provision of the Agreement deemed to be unenforceable will be modified to reflect the parties' intention and only to the extent necessary to make it enforceable. The remaining provisions of the Agreement will remain in full effect.

E. Notice. Notices must be sent via first class mail, airmail, or overnight courier, and are deemed given when received. Notices from SpiderOak to Customer may also be sent to the applicable account email address and are deemed given when sent. Notices to SpiderOak must be sent to SpiderOak, Inc., Attn: Legal, 4741 Central Street #324, Kansas City, MO 64112.

F. Waiver. The failure of SpiderOak to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of that right or provision.

G. Assignment. Customer may not assign or transfer this Agreement or any rights or obligations under this Agreement without SpiderOak's written consent. SpiderOak may not assign this Agreement without providing notice to Customer, except SpiderOak may assign this Agreement or any rights or obligations under this Agreement to an affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets without providing notice. Any other attempt to transfer or assign is void.

H. No Agency. SpiderOak and Customer are not legal partners or agents.

I. Force Majeure. Except for payment obligations, neither SpiderOak nor Customer will be liable for any default or delay in the performance of any obligations under this Agreement if such default or delay is caused by a condition beyond the party's reasonable control (e.g., fire, natural disaster, act of war or terrorism, riot, labor condition, governmental action, or internet disturbance).

J. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement. Without limiting this section, End Users are not third-party beneficiaries to Customer's rights under this Agreement.

K. **Export Restrictions.** The export and re-export of Customer Data via the Services may be controlled by United States export regulations or other applicable restrictions or embargo. The Services may not be used in Cuba, Iran, North Korea, Sudan, or Syria or any country that is subject to an embargo by the United States. Customer must not use the Services in violation of any export restriction or embargo by the United States or any other applicable jurisdiction. Customer must ensure that the Services are not provided to persons on the United States Table of Denial Orders, the Entity List, or the List of Specially Designated Nationals.