

# VENBU CLOUD SOFTWARE LICENSE AND SERVICE SUBSCRIPTION AGREEMENT

**CAREFULLY READ THE FOLLOWING CLOUD SOFTWARE LICENSE AND SERVICE SUBSCRIPTION AGREEMENT (“CSSA”)! IT CONTAINS VERY IMPORTANT INFORMATION ABOUT YOUR (END-USER) RIGHTS, RESTRICTIONS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS THAT MAY APPLY TO YOU REGARDING YOUR RIGHTS TO DOWNLOAD, INSTALL, USE OR COPY VENBU SOFTWARE (AS DEFINED BELOW) AND/OR USE VENBU SERVICES. BY DOWNLOADING, INSTALLING, USING, AND/OR CREATING AN ACCOUNT AT THE VENBU PORTAL (AS DEFINED BELOW), YOU AGREE TO THE TERMS OF THIS AGREEMENT (INCLUDING THE PRIVACY POLICY) THAT WILL GOVERN YOUR PURCHASE OF LICENSES FOR PURPOSES OF DOWNLOADING, INSTALLING, USING, OR COPYING VENBU SOFTWARE AND/OR USING VENBU SERVICES.**

THIS AGREEMENT ALSO INCORPORATES BY REFERENCE VENBU’S PRIVACY POLICY WHICH DETAILS THE TYPES OF PERSONALLY IDENTIFYING INFORMATION THAT VENBU COLLECTS FROM OR ABOUT YOU, THE MANNER IN WHICH VENBU COLLECTS IT AND HOW VENBU USES AND OTHERWISE PROCESSES THIS INFORMATION. THEREFORE, WHEN YOU DOWNLOAD, INSTALL AND/OR CREATE AN ACCOUNT AT THE VENBU PORTAL, YOU ARE ALSO AGREEING TO THE COLLECTION AND PROCESSING OF YOUR PERSONAL INFORMATION IN ACCORDANCE WITH THIS AGREEMENT, WHICH INCLUDES THE PRIVACY POLICY.

BY CLICKING ON THE “ACCEPT” BUTTON AT THE END OF THIS AGREEMENT, YOU ARE CONSENTING TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND ARE BECOMING A PARTY TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE “DECLINE” BUTTON AT THE END OF THIS AGREEMENT OR LEAVE THE WEBSITE. IF YOU “DECLINE”, THEN DO NOT INSTALL OR USE THE VENBU SOFTWARE and PROMPTLY RETURN THE VENBU SOFTWARE AND ALL RELATED DOCUMENTATION TO THE PLACE OF ACQUISITION OR IF YOU DOWNLOADED THE VENBU SOFTWARE, REFRAIN FROM INSTALLING THE SAME AND DELETE ALL DOWNLOADED FILES RELATED TO THE VENBU SOFTWARE FROM YOUR SYSTEM.

## 1. DEFINITIONS

1.1. “**Confidential Information**” means all information, material or data concerning the business, accounts, finance, technology, personnel, customers, suppliers, trade secrets, know-how or intellectual property rights of Vembu and all information which may reasonably be regarded as confidential information which are supplied or disclosed by Vembu to you or obtained by you in pursuance of or in connection with this Agreement or which is generated pursuant to or in connection with this Agreement. Without limiting the foregoing, Confidential Information shall include Vembu’s Software, source code, procedures, business processes, business activities and operations, related documentation, customer lists and the terms of this Agreement. The list of licensees and their contact information shall be deemed to be the Confidential Information of Vembu. Provided that Confidential Information shall not include any information, material or data that:

1.1.1 was, or becomes, generally known to the public without the End-User’s breach of any obligation owed to Vembu;

1.1.2 was, or subsequently is, independently developed by End-User without reference to Confidential Information of Vembu as can be proved by documentary evidence;

1.1.3 was, or subsequently is, received from a third party who obtained and disclosed such Confidential Information without breach of any obligation owed to Vembu; or

1.1.4 is required by law to be disclosed (in which case you shall give Vembu reasonable prior notice of such compelled disclosure and reasonable assistance, at End-User’s expense, should End-User wish to contest the disclosure or seek a protective order)

1.2 “**End-User**” means any corporation or a person that has obtained a license from the Owner of Vembu Software and has been authorized to install and/or use Vembu Software and/or use Vembu Services for its personal or internal business purposes, pursuant to this Agreement

1.3 “**Electronic Delivery**” means the delivery using the Internet using servers and public or private access networks

1.4 “**Intellectual Property Rights**” means any and all rights existing from time to time anywhere in the world under copyright law, patent law, trade secret law, trademark law, unfair competition law or other similar rights

1.5 “**Marks**” means any trademarks, service marks or trade names associated with the Vembu and/or Vembu Software including the trade marks ‘Vembu’

1.6 “**Owner of Vembu Software**” means M/s. Vembu Technologies Private Limited (“Vembu”), a company incorporated in India

1.7 “**Proprietary Rights**” mean all rights, title, interest and intellectual property rights including but not limited to copyright, patent, design rights, trademarks etc., present or future, in perpetuity through-out the world and shall include Confidential Information

1.8 “**Source Code**” means a series of human readable instructions or statements in high-level or low-level computer language and which is normally transformed by an interpreter or compiler into machine-readable executable code for actual use on a computer

1.9 “**Vembu**” means Vembu Technologies Private Limited, a company incorporated in India and having it’s registered office at 8th Floor, Chennai One SEZ, Pallavaram-Thoraipakkam 200 Ft Road, Thoraipakkam, Chennai – 600 097, India and its subsidiaries

1.10 “**Vembu Portal**” means the website [www.vembu.com](http://www.vembu.com) that offers a broad array of resources and services including, but not limited to, a web-based interface for users to create account information

1.11 “**Vembu Services**” means the right and ability to electronically transmit and store computer data on a computer location made available to the End-User by Vembu and to retrieve the computer data as required from time to time

1.12 “**Vembu Software**” means any edition of the following computer software programs which are part of the Vembu BDR Suite: (a) Vembu VM Backup(VMware Backup & Replication and Hyper-V Backup); (b) Vembu Image Backup(Windows Server & Workstation Image backup); (c) Vembu Network Backup(File & Application backup for Servers & Workstations); (d) Vembu Offsite Replication(Offsite DR & Cloud DR); (e) Vembu Universal Explorer; (f) Vembu Recovery CD; (g) Vembu AWS Backup; (h) Vembu SaaS Backup(Office 365 & G Suite Backup); and (i) Vembu BDR360 together with accompanying items including, but not limited to, the executable programs, drivers, libraries and data files associated with such programs and all related documentation, which are owned by the Owner of Vembu Software, each as upgraded, updated, modified and improved from time to time

## 2. SCOPE OF AGREEMENT

2.1 Scope. This Agreement sets forth the terms upon which End-User may (i) license the evaluation version of Vembu Software in order to evaluate it by installing and using the evaluation version; and (ii) obtain the right to download, install, use or copy Vembu Software and/or use Vembu Services

2.2 License, Not Sale. The Vembu Software is not sold to End-User, and instead is only granted a license to use Vembu Software in accordance with the terms of this Agreement. Vembu reserves all rights (including all title and intellectual property rights) not specifically granted to you by this Agreement. Vembu Software is protected by

copyright laws and international copyright treatises, as well as other intellectual property laws and treatises

### 3. GRANT OF RIGHTS AND RESTRICTIONS

3.1 Grant of License for Evaluation. Vembu grants to the End-User a non-exclusive, non-transferable and limited right to install and/or use the evaluation / trial version of the Vembu Software in binary object code form, for purposes of trial, testing, demonstration and or evaluation of the performance of the Vembu Software and to access and evaluate the Vembu Services. This license shall be valid only for a period of thirty (30) days from the installation of the evaluation version of the Vembu Software ("Evaluation Period") and no charges are payable for use of the Vembu Services during this Evaluation Period. Should the End-User decide to use the Vembu Services beyond the Evaluation / Trial Period, the End-User shall subscribe to the Vembu Services in accordance with the terms of this Agreement. Should the End-User decide not so subscribe to the Vembu Services beyond the Evaluation Period, the End-User shall immediately cease using the Vembu Services and the Vembu Software and/or its functionality on the expiry of the Evaluation Period and delete all copies of the Vembu Software in its computer/s. Subsequent downloads of the evaluation / trial version of the Vembu Software by or for the End-User does not extend, renew or otherwise restart the term of the license to use the Vembu Services beyond the Evaluation / Trial Period. Should the End-User not subscribe to the Vembu Services on expiry of the Evaluation / Trial Period, Vembu reserves the right to deny the End-User the right to use the Vembu Services

3.2 Grant of License For Services. Subject to End-User's acceptance of and compliance with this Agreement and the receipt of payment due for the Vembu Services as mentioned in this Agreement, End-User is hereby granted a limited, non-exclusive, non-transferable, non-sublicenseable right and license, in and under our intellectual property rights, to access and use the Vembu Services, solely in accordance with the terms and conditions of this Agreement. Should the End-User avail of the Vembu Services, it is hereby granted a limited, non-exclusive, non-transferable license to download, install and use the Vembu Software (in object code) on computer/s owned or controlled by the End-User for the sole purpose of availing of the Vembu Services for its internal purposes alone, subject to the terms of this Agreement

3.3 Ownership of Vembu Software. The Vembu Software is not sold to the End-User. End-User is merely granted a license to use the Vembu Software during the Term (as defined below) in accordance with the terms of this Agreement to avail of the Vembu Services. All rights (including all title and intellectual property rights) not specifically granted to the End-User by this Agreement are reserved to the owners thereof. End-User is not to remove or attempt to alter any copyright, trademark or other proprietary notices from any part of the Vembu Services including the Vembu Software or its copies

3.4 Restrictions. Following restrictions apply:

- (a) End-User shall install or use the Vembu Software only on such number of machines for which the End-User has obtained licenses
- (b) End-User shall not use the Vembu Software or avail of the Vembu Services beyond the period for which it has obtained a license
- (c) End-User shall not nor shall it permit any other to transmit all or any portion of the Vembu Software through any network or communication line
- (d) The rights under this Agreement are personal to the End-User and the Vembu Services may be used only by the End-User's employees, agents or others specifically authorized by the End-User to use the Vembu Software or avail Vembu Services and End-User shall not sub-license or transfer in any manner whatsoever any of its rights under this Agreement or allow any third party to use the Vembu Software and/or avail Vembu Services
- (e) End-User shall not modify any portion of the Vembu Software or merge or integrate any portion of the Vembu Software into/with any other program
- (f) End-User shall not translate, decompile, disassemble or reverse engineer the Vembu Software or do anything to obtain underlying information that is not visible to the user in connection with normal use of the Vembu Software
- (g) End-User shall not display the Vembu Software's object code on any computer screen or make any hardcopy memory dump of the Vembu Software's object code
- (h) End-User shall not remove, alter or conceal any copyright or other intellectual property notices from any copy of the Vembu Software or any of the written materials, if any, accompanying it
- (i) End-User is permitted to use the Vembu Services only for its personal use (if End-User is an individual) or for its internal business purpose (if End-User is a juristic person) for backing-up its files, data, images, videos or programs etc. (collectively, "your Data") and any other purposes as specifically permitted by Vembu from time to time in accordance with this Agreement
- (j) Use of the Vembu Services to backup any Data that contains any illegal or unlawful content; that is harassing, libelous, slanderous, abusive, threatening, harmful, vulgar, pornographic, obscene or otherwise objectionable; that contains any material could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation; that violates the intellectual property rights of any third party or that contains any viruses, worms, Trojans or any other malicious code, data or material with destructive/contaminating features is strictly prohibited. It is End-User's responsibility to ensure compliance with all applicable laws, rules or regulations including those of the country in which it resides and/or from which it access the Vembu Services

(k) End-User shall not use the Vembu Services to access or attempt to access any Data which it is not authorized to use or access

(l) The use of the Vembu Services for publishing, communicating to the public or disseminating your Data to any third party is prohibited and End-User shall not use the Vembu Services for any use that may disrupt or negatively affect the Vembu Services or the networks through which it accesses and uses the Vembu Services. End-User is permitted to access/use the Vembu Services only through the provided or authorized interfaces and protocols. Further, End-User shall not circumvent or attempt to circumvent any limitations or security features included in the use of the Vembu Services

(m) If it is suspected that End-User is in violation of any of the above restrictions, Vembu reserves the right to examine the content of your Data. On such examination, if any such violation (in Vembu's discretion or the discretion of the Owner of Vembu Software), Vembu reserves the right to discontinue the provision of the Vembu Services and/or refuse, remove or disable access to any of your Data stored on computers owned, leased or otherwise used by Vembu with immediate effect. Your Data maintained by Vembu may also be subject to examination by law enforcement officials or others authorized by law without End-User's consent or notice to the End-User

(n) End-User shall restrict the Data uploaded and downloaded to the following limits: (1) the amount of data uploaded in a month shall not exceed twice the amount of new data stored in that month; and (2) the amount of data downloaded in a month shall not exceed twice the amount of data stored in its account. In the event the End-User exceeds the above upload or download limits, Vembu reserves the right to charge the End-User additionally for the same and in the event of repeated violation of these limits, the right to terminate this Agreement

(o) All Vembu Software licenses are validated using a capability that will periodically connect to the internet automatically and communicate with the Vembu portal server. To the extent any personal information of yours is collected in this process, we will use such personal information only in accordance with our Privacy Policy

(p) **APPLICABLE ONLY FOR BETA EDITION** – Beta Editions of any of the Vembu Software shall be used only for testing purposes and shall not be used in a production environment or to process production data

(q) **APPLICABLE ONLY FOR Not for Resale (NFR) EDITION** – Any edition of a Vembu Software that is identified as NFR shall not be used in a production environment or to process production data

3.5 Electronic Delivery. Vembu shall make provision for the Electronic Delivery of Vembu Software to the End-User

3.6 Unauthorized Use or Reproduction. End-User shall take reasonable security precautions, protocols, and protective measures to prevent the unauthorized use, copying, distribution, transmission, or dissemination of the Vembu Software

3.7 The terms of this Agreement does not apply to any downtime, suspension, or termination of any Vembu Services: (a) caused by factors outside of Vembu's reasonable control, including any force majeure event or Internet access or related problems; (b) that result from any actions or inactions of the End-User or any third party; (c) that result from End-User's equipment, software or other technology and/or third party equipment, software or other technology; or (d) arising from Vembu's suspension and termination of End-User's right to use Vembu Services in accordance with this Agreement

## 4. PRICING

4.1 Fees. End-User hereby agrees to pay Vembu applicable license fee, data storage fee, subscription fee, and technical support and service maintenance fee, as described in Vembu's website [www.vembu.com](http://www.vembu.com), for Vembu Software and Vembu Services. Vembu reserves the right to revise such fees from time to time (including to charge for any Vembu Software that was made available for free) and such revised fees will be applicable to any new licenses applied by End-User after the date on which such revised fees are published on Vembu's website

4.2 Exclude Tax. All fees described herein are exclusive of applicable taxes and such taxes will be borne by the End-User

4.3 Payment Method. All payments made pursuant to this Agreement shall be in U.S. dollars. Payments shall be made by credit card, check or wire transfer at the time of purchase of licenses for use of Vembu Software and subscription fees for Vembu Services

4.4 End-User is not entitled to a service credit for Vembu Services if it in breach of the terms of this Agreement, including its payment obligations

## 5. INTELLECTUAL PROPERTY RIGHTS

5.1 IP Owner. End-User acknowledges and agrees that Vembu is the exclusive owner of the Vembu Software and retains and owns Intellectual Property Rights in any derivatives, suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by the End-User relating to Vembu Software. End-User acquires neither any Intellectual Property Rights nor other rights in Vembu Software and/or Vembu Services, other than the right to install and use the Vembu Software and/or use the Vembu Services as expressly set forth in this Agreement

**5.2 No End-User IP Rights.** End-User shall not obtain or attempt to obtain any right, title or interest in Vembu Software and/or Vembu Services, any versions or updates of the same, or in any value added services in combination with Vembu Software

## 6. End-User DUTIES

6.1 To use the Vembu Services, End-User shall be required to arrange for all computer and telecommunications equipment, software, services for access to the internet etc. at its own cost

6.2 The transmission, storage and/or retrieval of its Data is subject to a variety of factors beyond Vembu's reasonable control particularly given the nature of the Internet. Accordingly, End-User's use of the Vembu Services is at its own risk and Vembu will make commercially reasonable efforts to keep End-User's Data secure. Vembu, however, does not guarantee that it will be successful at doing so. Therefore, End-User shall be solely responsible for protecting the information on its computer systems, for adequate systems security, protection and back-up of its Data including, but not limited to, installing appropriate anti-virus software, updating its applications, password protecting its computer etc

6.3 For reliable backup, End-User's cooperation and vigilance is of utmost importance and the End-User is required to mark files for backup; store them in a location in its computer marked for backup; make the identified locations for backup on its computer available and allow its computer to access the Vembu Services. End-User should also verify the logs and the reports of the backup of its Data periodically to ensure that they are successful and take necessary corrective action if there are errors. If End-User backs-up its Data beyond the permitted free limit (if any), Vembu shall be entitled to charge the End-User as per then existing rates. Notwithstanding anything contained herein, neither Vembu shall be liable for End-User's failure to fulfill its duties

## 7. Amazon Services and Agreement

Vembu uses the cloud computing infrastructure and services provided by Amazon Web Services for the Vembu Services. End-User's use of the Vembu Services is therefore subject not only to the terms of this Agreement but also to the Amazon Web Services Customer Agreement available at <http://aws.amazon.com/agreement/>. Therefore, Vembu recommends that End-User read the Amazon Web Services Customer Agreement carefully. By accepting the terms of this Agreement, End-User shall be deemed to have accepted the terms of the Amazon Web Services Customer Agreement as well. Notwithstanding anything contained herein, neither Vembu nor the Owner of Vembu Software shall have any liability to the End-User or any third party for any interruption, disruption, unavailability or termination of the Vembu Services on account of any Service Suspensions (as defined in the Amazon Web Services Customer Agreement) or the termination or suspension of the services provided to Vembu by



Amazon Web Services. Amazon is not in any way endorsing the Vembu Services or the Vembu Software offered under this Agreement.

## 8. WARRANTIES AND DISCLAIMER

SEMBU WARRANTS THAT IT HOLDS ALL RIGHT, TITLE AND INTEREST IN AND TO THE SEMBU SOFTWARE AND IT IS OTHERWISE ENTITLED TO PROVIDE THE SEMBU SOFTWARE AND SEMBU SERVICES INCLUDING THE RIGHT TO LICENSE THE SEMBU SOFTWARE TO END-USER ON THE TERMS CONTAINED HEREIN.

SEMBU WARRANTS THAT THE SEMBU SOFTWARE, WHEN IT IS DELIVERED TO END-USER, IS FREE OF VIRUSES, TROJAN HORSES, WORMS AND OTHER SIMILAR DESTRUCTIVE OR DISABLING CODE.

THE ABOVE IS A LIMITED WARRANTY AND IS THE ONLY WARRANTY MADE BY SEMBU AND THE OWNER OF SEMBU SOFTWARE. THE SEMBU SOFTWARE AND/OR THE SEMBU SERVICES IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND END-USER'S USE OF THE SEMBU SOFTWARE AND/OR THE SEMBU SERVICES IS AT END-USER'S SOLE RISK.

SEMBU EXPRESSLY DISCLAIMS AND END-USER HEREBY EXPRESSLY WAIVES ALL OTHER CONDITIONS, WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT; THAT THE SEMBU SOFTWARE OR SEMBU SERVICES WILL MEET END-USER REQUIREMENTS OR THAT THE OPERATION OF THE SEMBU SOFTWARE OR THE PROVISION OF THE SEMBU SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ERRORS IN THE SEMBU SOFTWARE OR DEFICIENCIES IN THE SERVICES, IF ANY, WILL BE CORRECTED OR RECTIFIED BY SEMBU OR THE OWNER OF SEMBU SOFTWARE. ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, OR QUIET POSSESSION WITH REGARD TO SEMBU SOFTWARE OR SEMBU SERVICES.

END-USER UNDERSTANDS AND AGREES THAT ITS DATA UPLOADED, DOWNLOADED OR OTHERWISE STORED THROUGH THE USE OF THE SEMBU SERVICES IS DONE AT ITS OWN RISK AND COST AND THAT END-USER SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS COMPUTER SYSTEM, OR LOSS OF DATA OR UNAUTHORIZED DISCLOSURE OF DATA THAT RESULTS FROM THE UPLOAD, DOWNLOAD OR STORAGE OF SUCH DATA USING THE SEMBU SERVICES AND UNDER NO CIRCUMSTANCES SHALL SEMBU OR THE OWNER OF SEMBU SOFTWARE BE HELD LIABLE TO END-USER OR ANY THIRD PARTY FOR ANY LOSS, DAMAGE, DELAY, FAILURE, DISRUPTION, DISTURBANCE, INACCURACY, ERRORS, OMISSIONS, DEFECTS OR DEFICIENCIES IN THE SEMBU SERVICES OR ANY PART THEREOF.

VENBU'S ABOVE LIMITED WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF VENBU FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE INSTALLATION, USE OR PERFORMANCE OF THE VENBU SOFTWARE AND THE VENBU SERVICES. END-USER FURTHER AGREES THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THEIR ESSENTIAL PURPOSE OF THE WARRANTIES CONTAINED HEREIN.

END-USER ACKNOWLEDGES AND AGREES THAT THE ALLOCATION OF RISK CONTAINED IN THIS AGREEMENT HAS BEEN TAKEN INTO ACCOUNT AND IS REFLECTED IN THE FEES CHARGED FOR THE PROVISION OF THE VENBU SERVICES.

IN NO EVENT SHALL VENBU BE LIABLE FOR ANY LOST PROFITS, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, OR OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES EVEN IF VENBU HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH LIABILITY IS BY REASON OF BREACH OF WARRANTY OR BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

## 9. LIMITATION ON LIABILITY

NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT, UNDER NO CIRCUMSTANCES SHALL VENBU OR THE OWNER OF VENBU SOFTWARE BE LIABLE TO END-USER FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF BUSINESS PROFITS OR SAVINGS, BUSINESS INTERRUPTION, LOSS OF INFORMATION OR DATA, OR ANY OTHER PECUNIARY LOSS) WHETHER IN CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHERWISE ARISING OUT OF END-USER'S USE OR INABILITY TO USE VENBU SOFTWARE AND/OR VENBU SERVICES OR THE BREACH OF THIS AGREEMENT, EVEN IF FORESEEABLE OR IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR FOR ANY CLAIM THAT THE VENBU SOFTWARE INFRINGE UPON A COPYRIGHT OR VIOLATE THE TRADE SECRET RIGHTS OF ANY THIRD PARTY ARISING OR RESULTING FROM ANY BREACH OF THIS AGREEMENT BY THE END-USER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT, VENBU'S (INCLUDING THE OWNER OF VENBU SOFTWARE) AGGREGATE LIABILITY OR DAMAGES TO END-USER OR TO ANY OTHER PERSON SHALL NOT EXCEED THE AMOUNT PAID BY END-USER (IF ANY) TO VENBU TO USE THE VENBU SOFTWARE AND/OR THE VENBU SERVICES UNDER THIS AGREEMENT REGARDLESS OF THE FORM OF THE CLAIMS. THEREFORE, IF NO PAYMENTS WERE MADE TO USE THE SOFTWARE, VENBU SHALL HAVE NO LIABILITY, INCLUDING FOR ANY DIRECT DAMAGES.

## 10. INDEMNITY

End-User hereby agrees to indemnify, hold harmless and defend Vembu and the Owner of Vembu Software, its affiliates, licensors, business partners (including third party resellers) and each of Vembu and their respective employees, officers, directors and representatives from and against any and all claims, losses, damages, liabilities, judgments, penalties, fines, costs and expenses (including reasonable attorneys fees), arising out of or in connection with End-User's use of the Vembu Software and/or the Vembu Services in violation of this Agreement

## 11. TERM AND TERMINATION

**11.1 Term.** The term of this Agreement ("Term") shall commence when the End-User agrees to the terms and conditions of this Agreement by clicking the "ACCEPT" button below and completes the registration process for Vembu Services. End-User may start using the Vembu Services on commencement of the Term. This Agreement shall remain in effect until terminated by the End-User or Vembu in accordance with this Agreement. Either party may terminate this Agreement by providing the other prior written notice of one (1) day in the manner agreed in this Agreement. Vembu may forthwith terminate this Agreement (without notice) in the event that End-User fails to comply with or are in breach of any provision of this Agreement or if End-User is in default of its obligation to make payment for the Vembu Services. Upon termination of this Agreement, all of End-User's rights under this Agreement shall immediately terminate and the End-User shall be required to delete all copies of the Vembu Software from its computer(s). Vembu reserves the right to disable the Vembu Software installed on End-User's computer systems on termination of this Agreement. End-User shall remain liable for payments and any other obligations incurred till the date of termination. On the termination of this Agreement for breach, Vembu may, without notice, delete or deny End-User access to any of its Data that may remain in Vembu's possession or control after such expiry/termination. Without any liability for failure to do so, on termination of this Agreement or End-User's subscription to the Vembu Services other than for breach, Vembu will not take any intentional action to delete End-User Data and will use commercially reasonable efforts to make End-User Data available for retrieval for a period of seven (7) days thereafter

**11.2 Services Termination.** Termination of license to use Vembu Software shall automatically result in the termination of Vembu Services

**11.3 Right to Terminate.** End-User acknowledges and agrees that Vembu reserves the right to terminate this Agreement without notice, and thereby terminate the rights granted herein to the End-User at any time for any reason

**11.4 Termination upon Filing Lawsuit.** If End-User commences or participates in any legal proceeding against Vembu, then Vembu may, in its sole discretion, suspend or terminate all license grants and any other rights provided under this Agreement

**11.5 Multiple CSSAs.** In the event of multiple license purchases by the End-User for the Vembu Software, if there are any differences in the terms between or among the CSSAs issued in connection with the purchases, the terms in the most recent CSSA will be deemed adopted by the End-User to govern its use of all Vembu Software supplied to the End-User under all such CSSAs

## **12. Account Information**

While subscribing to Vembu Services, End-User agrees to provide accurate, current and complete information and to keep all such information current, complete and accurate at all times during the term of this Agreement. End-User shall be solely responsible for safeguarding the security and confidentiality of the user name and password for its account and will be solely responsible for all actions initiated using its user name and password. If End-User should lose its password, it will not be able to access its data. On becoming aware of any unauthorized use of its user name or password, End-User must notify Vembu of the same by e-mail with the title "Unauthorized Use of User Name / Password." Vembu shall not be responsible for any unauthorized access to, alteration of, or the deletion, destruction, damage, loss or failure to store any of End-User's Data that it submits or uses in connection with its account or Vembu Services.

## **13. Change to VEMBU Services**

Vembu reserves the right to modify, discontinue, suspend, prohibit use or terminate the Vembu Services as a whole or any part thereof, to the End-User or to all or some subscribers at large, with or without notice to the End-User. Other than a pro-rata refund for any prepaid but unused portion of the Vembu Services as determined in Vembu's sole discretion, Vembu shall not be liable to the End-User or any third party should Vembu exercise this right.

## **14. Retention/Deletion of END-USER Data**

Vembu does not maintain a secondary copy of any of End-User's Data that End-User may have backed-up using the Vembu Services. Should the End-User's Data be lost for any reason whatsoever, Vembu will undertake commercially reasonable efforts to create a replacement back-up from the files stored on End-User's computer. This shall be the sole remedy to the End-User for any loss of its Data.

## **15. Collection and processing of End-User's Information**

When the End-User accesses/ uses the Vembu Portal and/ or Vembu Software, Vembu may collect certain information that can personally identify the End-User. All such personally identifying information relating the End-User that is collected by Vembu shall be so collected, processed, stored or further disclosed by Vembu strictly in compliance

with the terms of the privacy policy. The terms of the privacy policy form part and parcel of this Agreement. Therefore, please read the privacy policy available at <https://www.vembu.com/privacy-policy/> carefully before clicking on the “Accept” button at the end of this Agreement.

Vembu Software collects information about the host server it has been installed in (eg: Host Name, OS details, IP & MAC Address, and UUID), information related to the backup job and backup reports to validate and manage the licenses. Vembu uses this data to simplify the license management, provide swift technical support and also for improving the user experience.

Information related to Vembu BDR backup server/agent: Vembu BDR ID, MAC address, OS name, Vembu BDR Suite edition, Vembu BDR version, Vembu BDR build number and Vembu BDR backup server installed time.

Information related to Backup Job: Backup job name, Backup job type, Backup job created time, Original size of the backup data, Backup data size after compression and deduplication, Incremental job count, Backup job status, Backup job remarks, Error codes, Backup job start time, Total time taken to complete the backup job.

Information related to Host and VM which have been selected for backup: Host/VM name, Host/VM IP address, Host/VM UUID, Physical CPU count of the host, Original size of the virtual machine, and Processed size of the virtual machine for backup.

Information related to the AWS infrastructures such as legal name, address, account numbers, virtual machines, data retaining and database services are collected, which are backed-up using the Vembu AWS Backup (For example, AWS account numbers, EC2 instances, EBS volumes, RDS and DynamoDB databases and Redshift clusters).

Vembu and its affiliates may use the name and logo of End-User to identify the End-User as a customer of Vembu, such as on the website of Vembu or its Affiliates.

## 16. Third Party Software

Portions of the Vembu Software include software with open source licenses from third parties that govern the use of those portions. Vembu (including the Owner of Vembu Software) is not affiliated with nor endorsed by any of the said open-source software providers and Vembu makes no claim of ownership of the said open-source software and Vembu supplies them to End-User solely in accordance with the license agreements accompanying the same. Nothing contained herein limits the rights and obligations the End-User may have under such open source licenses. However, the disclaimer of warranty and limitation of liability provisions in this Agreement will apply to the Vembu Software and the Vembu Services as a whole. For details of the open source software included in the Vembu Software and the terms of the license for the same, please refer to [www.vembu.com/license-agreements/open-source-list](http://www.vembu.com/license-agreements/open-source-list).

## 17. Support Services

Notwithstanding anything contained anywhere in this Agreement, Vembu shall not be responsible to the End-User for the maintenance or for the provision of support services for the Vembu Software or Vembu Services under this Agreement, or to provide any updates of the Vembu Software other than the support services and software updates provided to End-Users that pay for such services.

## 18. Governing Law & Jurisdiction

This Agreement shall be governed by and construed under the laws of the Republic of India, without regard to principles of conflicts of laws. End-User agrees that any dispute between the parties arising out of or in connection with this Agreement (including any question regarding its existence, validity or termination) shall be submitted exclusively to the competent courts located at Chennai, India and hereby expressly consents to the jurisdiction and venue of the courts within Chennai, India to the exclusion of any other court that may have jurisdiction in the matter.

## 19. Notices

Notices provided by Vembu to the End-User under this Agreement that affect Vembu's customers generally will be posted on Vembu Portal and shall become effective when so posted. All notices to the End-User shall be served via e-mail to the e-mail address the End-User provides at the time of registration or any updated e-mail address provided thereafter. The End-User shall have the responsibility to keep its e-mail address current and the End-User will be deemed to have received from Vembu any e-mail sent to the e-mail address provided by the End-User, upon Vembu's sending of the e-mail, whether or not the End-User actually receives such e-mail.

## 20. General

This Agreement is binding on End-User as well as its employees, contractors, agents and any person who uses the computer/device on which the Software is installed. This Agreement is also binding on End-User's successors and assignees. Vembu may freely assign or delegate its rights and obligations hereunder. If any provision of this Agreement is deemed invalid or unenforceable that particular provision will be deemed modified to the extent necessary to make the provision valid and enforceable and the remaining provisions will remain in full force and effect. Any failure or delay by Vembu to exercise any right or remedy under this Agreement shall not operate as a waiver of that right or remedy. This Agreement is the entire agreement between us and supersedes all previous agreements, arrangements, understandings or representations (including advertisement) relating to the subject matter hereof.