

## Zephyr Cloud Corporation - Terms of Service.

**TERMS OF SERVICE** between Zephyr Cloud Corp. (“we” or “Zephyr Cloud Corp.”) and the customer who orders Zephyr Cloud Corp. services (“you” or “Customer”).

**THE AGREEMENT.** Your use of Zephyr Cloud Corp. services is governed by these Terms of Service, the Acceptable Use Policy, any applicable Country Specific Terms, and the terms of your Order. Your Order may have additional terms that apply to the particular services in your Order. When we use the term “Agreement” in any of the Order, Terms of Service, or Acceptable Use Policy, we are referring collectively to all of them, including any product specific terms that apply to the Services.

Sections 1 – 31 of these Terms of Service state the general terms applicable to all Services, and Sections 32 – 44 state additional terms that will apply only if you elect to purchase the particular Services described in those sections.

Your use of the Services includes the ability to enter into agreements and make purchases electronically. You acknowledge that your electronic assent constitutes your acceptance to the Agreement for each electronic purchase or transaction you enter. If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have the legal authority to bind that entity to this Agreement.

**1. DEFINED TERMS.** Some words used in the Agreement have particular meanings:

“**Acceptable Use Policy**” or “**AUP**” means the Acceptable Use Policy posted at [www.zephyrcloud.com](http://www.zephyrcloud.com) as of the date you sign the Order, as it may be amended pursuant to Section 21 below.

“**API**” means application programming interface.

“**Affiliate**” means any and all legal entities which now or hereafter the ultimate parent of Zephyr Cloud Corp. controls. For the purpose of this definition, “control” shall mean an entity, directly or indirectly, holding more than fifty per cent (50%) of the issued share capital, or more than fifty per cent (50%) of the voting power at general meetings, or which has the power to appoint and to dismiss a majority of the directors or otherwise to direct the activities of such legal entity.

“**Business Day**” means 8:00 a.m. – 5:00 p.m. Monday through Friday, United States Eastern time, excluding federal public holidays in the United States.

“**Confidential Information**” means all information disclosed by one of us to the other, whether before or after the effective date of the Agreement, that the recipient should reasonably understand to be confidential, including: (i) unpublished prices and other terms of service, audit and security reports, product development plans, nonpublic information of the parties relating to its business activities or financial affairs, data center designs (including non-graphic information you may observe on a tour of a data center), server configuration designs, and other proprietary information or technology, and (ii)

information that is marked or otherwise conspicuously designated as confidential. Information that is developed by one of us on our own, without reference to the other's Confidential Information, or that becomes available to one of us other than through violation of the Agreement or applicable law, shall not be "Confidential Information" of the other party. Confidential Information shall not include Customer Data.

**"Country Specific Terms"** means the addendum or addenda that may be incorporated into your Agreement if a portion of your Services are to be provided from a non-United States jurisdiction for which we have special legal terms and that are outlined in Section 42 of these Terms of Service.

**"Customer Data"** means all data, records, files, input materials, reports, forms and other such items that are received, stored, or transmitted using the Services.

**"Hosted System"** means a combination of hardware, software and networking elements that comprise an information technology system.

**"Order"** means: (i) the online order that you submit or accept for the Services, (ii) any other written order (either in electronic or paper form) provided to you by Zephyr Cloud Corp. for signature that describes the type or types of services you are purchasing, and that is signed by you, either manually or electronically, and (iii) your use or provisioning of the Services through the Zephyr Cloud Corp. Cloud control panel or through an API.

**"Personally Identifiable Information" or "PII"** means: (i) a combination of any information that identifies an individual with that individual's sensitive and non-public financial, health or other data or attribute, such as a combination of the individual's name, address, or phone number with the individual's social security number or other government issued number, financial account number, date of birth, address, biometric data, mother's maiden name, or other personally identifiable information; (ii) any "non-public personal information" as that term is defined in the Gramm-Leach-Bliley Act found at 15 USC Subchapter 1, § 6809(4), and (iii) "protected health information" as defined in the Health Insurance Portability and Accountability Act found at 45 CFR §160.103.

**"Services"** means the software and services described in the Order and includes any services which you self-provision through the Zephyr Cloud Corp. Cloud control panel or which you utilize via an API.

**"Support"** means (i) Zephyr Cloud Corp. employees with training and experience relative to the Services will be available 'live' by telephone, chat or ticket twenty-four hours per day, seven days per week, year round and/or (ii) any additional level of support offered by Zephyr Cloud Corp. applicable to the specific Services ordered by you.

**2. ZEPHYR CLOUD CORP.'S OBLIGATIONS.** Contingent on Zephyr Cloud Corp.'s acceptance of your Order, and subject to these Terms of Service, Zephyr Cloud Corp. agrees to provide the Services and Support described in your Order. Zephyr Cloud Corp. agrees to follow security procedures at least as stringent, in Zephyr Cloud Corp.'s reasonable judgment.

**3. YOUR OBLIGATIONS.** You agree to do each of the following: (i) comply with applicable law and the Acceptable Use Policy (ii) use software in compliance with Section 19 (iii) pay when due the fees for the Services, (iv) use reasonable security precautions in light of your use of the Services, including encrypting any PII transmitted to and from, and while stored on, the Services (including the underlying servers and devices) (v) cooperate with Zephyr Cloud Corp.'s reasonable investigation of outages, security problems, and any suspected breach of the Agreement, (vi) keep your billing contact and other account information up to date; and (vii) immediately notify Zephyr Cloud Corp. of any unauthorized use of your account or any other breach of security. In the event of a dispute between us regarding the interpretation of applicable law or the AUP, Zephyr Cloud Corp.'s reasonable determination shall control.

**Customer Data Security:** In addition to the foregoing obligations, you acknowledge that you are solely responsible for taking steps to maintain appropriate security, protection and backup of Customer Data.

Zephyr Cloud Corp.'s security obligations with respect to Customer Data are limited to those obligations described in Section 2 above. Zephyr Cloud Corp. makes no other representation regarding the security of Customer Data. Customer is solely responsible for determining the suitability of the Services in light of the type of Customer Data used with the Services.

You must maintain the security of your login credentials and may not share login credentials except as required to establish and authorize users in your account. You are responsible for designating authorized users under your account and limiting access of login credentials associated with your account.

**4. ACCESS TO THE SERVICES.** You may access the Services via the Zephyr Cloud Corp. provided websites and login as specified to the applicable Services.

**5. SERVICE LEVEL AGREEMENTS.** All services are best-effort unless otherwise specified to the applicable Services.

**5.1 MANAGED IT SUPPORT.** If you purchased Managed IT Support, then Zephyr Cloud Corp. will extend support from the customer's sole point of contact to also include:

- (i) Direct end-user support of Zephyr Cloud Corp. products and services purchased by customer as stipulated by the level of IT support purchased.
- (ii) Directly manage add/remove/changes of end-user accounts within the Zephyr Cloud Corp. network.
- (iii) Directly field trouble tickets related to the services purchased from Zephyr Cloud Corp. Cloud opened by the customer's end-users.

Zephyr Cloud Corp. must have administrator access to your Services in order to provide Managed IT Support. If you use Managed IT Support, you are responsible for updating Zephyr Cloud Corp. about

password changes that limit Zephyr Cloud Corp.'s ability to manage or monitor the Services. No credits or refunds will be issued for failures caused by restrictions on Zephyr Cloud Corp.'s root/administrator access to your Services.

**Zephyr Cloud Managed IT Support DOES NOT extend to support end-user custom applications; or software licenses installed by the customer.**

**5.2 MANAGED INFRASTRUCTURE.** If you purchased Managed Infrastructure Support for your account, the scope of services for such support will be strictly defined under the contract for such support.

**6. TERM.** The initial term for each Order begins on the date we make the Services available for your use and continues for the period stated in the Order. If no period is stated in the Order, then the initial term shall be one month. Upon expiration of the initial term, the Order will automatically renew for successive renewal terms of one month each, unless and until one of us gives the other a written notice of non-renewal prior to the expiration of the initial term, or then-current renewal term, as applicable.

**7. FEES.** Zephyr Cloud Corp. will charge you fees in accordance with your Order. Unless you have made other arrangements, Zephyr Cloud Corp. will e-mail you an invoice, or charge your credit card or bank account directly without invoice on or around the date incurred, or on or around the first day of the billing cycle that follows the date incurred, at Zephyr Cloud Corp.'s option.

Unless otherwise agreed in the Order, your billing cycle will be monthly, beginning on the date that Zephyr Cloud Corp. first makes the Services available to you. Zephyr Cloud Corp. may suspend all Services (including Services provided pursuant to any unrelated Order or other agreement we may have with you) if our charges to your bank account or credit card are rejected for any reason.

Zephyr Cloud Corp. may charge interest on overdue amounts at 1.5% per month (or the maximum legal rate if it is less than 1.5%). If any amount is overdue by more than thirty (30) days, and Zephyr Cloud Corp. brings a legal action to collect, or engages a collection agency, you must also pay Zephyr Cloud Corp.'s reasonable costs of collection, including attorney fees and court costs. All fees are stated and will be charged in US Dollars.

Any "credit" that we may owe you, such as a credit for failure to meet a Service Level Agreement, will be applied to fees due from you for Services, and will not be paid to you as a refund. Charges that are not disputed within sixty (60) days of the date charged are conclusively deemed accurate. You must provide Zephyr Cloud Corp. with accurate factual information to help Zephyr Cloud Corp. determine if any tax is due with respect to the provision of the Services, and if Zephyr Cloud Corp. is required by law to collect taxes on the provision of the Services, you must pay Zephyr Cloud Corp. the amount of the tax that is due or provide satisfactory evidence of your exemption from the tax.

You authorize Zephyr Cloud Corp. to obtain a credit report at any time during the term of the Agreement.

**8. FEE INCREASES.** For those Services provided on a month-to-month term, we may increase fees at any time on thirty (30) days advance written notice. If your Order contains Services with a specified term longer than one month, then we may increase your fees effective as of the first day of the renewal term that first begins thirty (30) days from the day of our written notice of a fee increase.

**9. SUSPENSION.** We may suspend the Services without liability if: (i) we reasonably believe that the Services are being used (or have been or will be used) in violation of the Agreement, (ii) we discover that you are, or are affiliated in any manner with, a person who has used similar services abusively in the past; (iii) you don't cooperate with our reasonable investigation of any suspected violation of the Agreement; (iv) we reasonably believe that the Services have been accessed or manipulated by a third party without your consent, (v) we reasonably believe that suspension of the Services is necessary to protect our network or our other customers, (vi) a payment for the Services is overdue, or (vii) suspension is required by law. We will give you reasonable advance notice of a suspension under this paragraph and a chance to cure the grounds on which the suspension are based, unless we determine, in our reasonable commercial judgment, that a suspension on shorter or contemporaneous notice is necessary to protect Zephyr Cloud Corp. or our other customers from imminent and significant operational or security risk. If the suspension was based on your breach of your obligations under the Agreement, then we may continue to charge you the fees for the Services during the suspension, and may charge you a reasonable reinstatement fee upon reinstatement of the Services.

**10. TERMINATION FOR CONVENIENCE.** You may terminate the Agreement for convenience at any time; provided that any recurring or minimum fees for the month in which you terminate remain due and payable for such month.

**11. TERMINATION FOR BREACH.** We may terminate the Agreement for breach on written notice if:

(i) We discover that the information you provided to us about yourself or your proposed use of the Services was materially inaccurate or incomplete;

(ii) If you are an individual, you were not at least 18 years old or otherwise did not have the legal capacity to enter into the Agreement at the time you submitted the Order, or if you are an entity or fiduciary, the individual submitting the Order did not have the legal right or authority to enter into the Agreement on behalf of the person represented to be the customer;

(iii) Your payment of any invoiced amount is overdue, and you do not pay the overdue amount within three (3) days of our written notice;

(iv) A credit report indicates you no longer meet our reasonable credit criteria, provided that if we terminate on these grounds, we must give you a reasonable opportunity to migrate your environment out of Zephyr Cloud Corp. in an orderly fashion;

(v) You use the Services in violation of the AUP and fail to remedy the violation within ten (10) days of our written notice;

(vi) You violate the AUP more than once, even if you cure each violation, or

(vii) You fail to comply with any other provision of the Agreement and do not remedy the failure within thirty (30) days of our notice to you describing the failure.

**You may terminate the Agreement for breach on written notice if:**

(i) We materially fail to provide the Services as agreed and do not remedy that failure within five (5) days of your written notice describing the failure, or

(ii) We materially fail to meet any other obligation stated in the Agreement and do not remedy that failure within thirty (30) days of your written notice describing the failure.

**12. ACCESS TO DATA.**

**12.1** You will not have access to your data stored on the Services during a suspension or following termination.

**12.2** You have the option to create a snapshot or backup of your Cloud Servers or Databases, respectively, however, it is your responsibility to initiate the snapshot or backup and test your backup to determine the quality and success of your backups. You will be charged for your use of backup services as listed in your Order.

**12.3** Although the Zephyr Cloud Corp. Cloud services may be used as a backup service, you agree that you will maintain at least one additional current copy of your programs and data stored on the Cloud system somewhere other than on our system.

**13. ACCESS TO YOUR CUSTOMER DATA OR USE OF THE SERVICES.** Zephyr Cloud Corp. is not responsible to you for unauthorized access to your data or the unauthorized use of the Services unless the unauthorized access or use results from Zephyr Cloud Corp.'s failure to meet its security obligations stated in the Agreement. You are responsible for the use of the Services by any employee of yours, any person to whom you have given access to the Services, and any person who gains access to your data or the Services as a result of your failure to use reasonable security precautions, even if such use was not authorized by you.

**Zephyr Cloud Corp. agrees that it will not use or disclose Customer Data. Customer Data is and at all times shall remain the exclusive property of Customer and will remain in the exclusive care, custody, and control of Customer.**

**14. DISCLAIMERS.**

**14.1** We do not promise that the Services will be uninterrupted, error-free, or completely secure. You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of your privacy, Customer Data, Confidential Information, and property.

Zephyr Cloud Corp. has no obligation to provide security other than as stated in this Agreement or applicable Order. We disclaim any and all warranties not expressly stated in the Agreement, including the implied warranties of merchantability, fitness for a particular purpose, and non-infringement.

You are solely responsible for the suitability of the service chosen, including the suitability as it relates to your Customer Data and the security of your Hosted System.

**The Services are provided AS IS, subject to any applicable Service Level Agreement (as described in Section 5 above). Any voluntary services we may perform for you at your request and without any additional charge are provided AS IS, including any services that are deemed Unsupported.**

**14.2** Some of the services are designed to help you comply with various regulatory requirements that may be applicable to you. However, you are responsible for understanding the regulatory requirements applicable to your business and for selecting and using those services in a manner that complies with the applicable requirements.

**14.3** You are solely responsible for determining the suitability of the Services for your use in light of any applicable regulations such as HIPAA, GLB, and in compliance with the EU Data Privacy requirements or other applicable data privacy laws and regulations.

**15. EXPORT MATTERS.** You represent and warrant that you are not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons and are not otherwise a person to whom Zephyr Cloud Corp. is legally prohibited to provide the Services. You may not provide administrative access to the Service to any person (including any natural person or government or private entity) that is located in or is a national of any country that is embargoed or highly restricted under United States export regulations.

**16. CONFIDENTIAL INFORMATION.** Each of us agrees not to use the other's Confidential Information except in connection with the performance or use of the Services, as applicable, the exercise of our respective legal rights under the Agreement, or as may be required by law. Each of us agrees not to disclose the other's Confidential Information to any third person except as follows:

(i) To our respective service providers, agents, and representatives, provided that such service providers, agents, or representatives agree to confidentiality measures that are at least as stringent as those stated in this Agreement.

(ii) To law enforcement or government agency if required by a subpoena or other compulsory legal process, or if either of us believes, in good faith, that the other's conduct may violate applicable criminal law as required by law; or

(iii) In response to a subpoena or other compulsory legal process, provided that each of us agrees to give the other written notice of at least seven (7) days prior to disclosing Confidential Information under this subsection (or prompt notice in advance of disclosure, if seven (7) days advance notice is not reasonably feasible), unless the law forbids such notice.

**17. LIMITATION ON DAMAGES.** Our obligations to you are defined by this Agreement. We are not liable to you for failing to provide the Services unless the failure results from a breach of an applicable Service Level Agreement, or results from our gross negligence or willful misconduct. The credits stated in any applicable Service Level Agreement are your sole and exclusive remedy for our failure to meet those guarantees for which credits are provided unless such failure is due to Zephyr Cloud Corp.'s willful misconduct.

Neither of us (nor any of our employees, agents, affiliates or suppliers) is liable to the other for any lost profits or any other indirect, special, incidental or consequential loss or damages of any kind, or for any loss that could have been avoided by the damaged party's use of reasonable diligence, even if the party responsible for the damages has been advised or should be aware of the possibility of such damages. In no event shall either of us be liable to the other for any punitive damages.

Notwithstanding anything in the Agreement to the contrary, except for liability based on willful misconduct or fraudulent misrepresentation, and liability for death or personal injury resulting from Zephyr Cloud Corp.'s negligence, the maximum aggregate monetary liability of Zephyr Cloud Corp. and any of its employees, agents, suppliers, or affiliates in connection with the Services, the Agreement, and any act or omission related to the Services or Agreement, under any theory of law (including breach of contract, tort, strict liability, violation of law, and infringement) shall not exceed the greater of (i) the amount of fees you paid for the Services for the six months prior to the occurrence of the event giving rise to the claim, or (ii) Five Hundred Dollars (\$500.00).

**18. INDEMNIFICATION.** If we, our affiliates, or any of our or their respective employees, agents, or suppliers (the "Zephyr Cloud Corp. Indemnitees") are faced with a legal claim by a third party arising out of your actual or alleged gross negligence, willful misconduct, violation of law, failure to meet the security obligations required by the Agreement, violation of the AUP, or violation of Section 15 (Export Matters) of these Terms of Service, then you will pay the cost of defending the claim (including reasonable attorney fees) and any damages award, fine, or other amount that is imposed on the Zephyr Cloud Corp.

Indemnitees as a result of the claim. Your obligations under this Section include claims arising out of the acts or omissions of your employees, any other person to whom you have given access to the Services, and any person who gains access to the Services as a result of your failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorized by you. If you resell the Services, the grounds for indemnification stated above also include any claim brought by your customers



or end users arising out of your resale of the Services. We will choose legal counsel to defend the claim, provided that these decisions must be reasonable and must be promptly communicated to you. You must comply with our reasonable requests for assistance and cooperation in the defense of the claim. We may not settle the claim without your consent, although such consent may not be unreasonably withheld. You must pay expenses due under this Section as we incur them. You must also pay reasonable attorney fees and other expenses we incur in connection with any dispute between persons having a conflicting claim to control your account with us.

## **19. SOFTWARE**

**19.1** All software that we provide for your use is subject to the terms of this Agreement, including software that we may authorize you to install on devices located outside of our datacenter. You may not use any software we provide after the expiration or termination of this Agreement, or the particular service for which it was provided, and you may not copy the software unless expressly permitted by the Agreement.

You may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any software we provide. Unless permitted by the terms of an open source software license, you may not reverse engineer, decompile or disassemble any software we provide except and to the extent that you are expressly permitted by applicable law to do this, and then following at least ten (10) days advance written notice to us.

Any additional restrictions which may apply to software we utilize in the performance of the Services will be specified in the applicable Order.

**19.2** In the event we distribute any open source software to you as part of the Services (including for example Linux based software, OpenStack software, and software licensed under the Apache, GPL, MIT or other open source licenses) then such Open Source Software is subject to the terms of the applicable open source license. There are no warranties provided with respect to any Open Source Software and all implied warranties are disclaimed. In the event of any conflict between the terms herein and the applicable open source license with respect to any Open Source Software, the terms of the applicable open source license shall control.

**19.3** In addition to the terms of our Agreement, your use of any Microsoft®, Citrix, VMWare, or similar OEM software that is provided under licensed agreement by Zephyr Cloud Corp. is governed by their respective terms and agreements.

**20. WHO MAY USE THE SERVICES.** You may resell the Services, except as provided below or otherwise restricted by Zephyr Cloud Corp. If you resell Services, you are responsible for use of the Services by any third party to the same extent as if you were using the Services yourself. If you resell any part of the Services that includes Microsoft software, then you must include these Microsoft terms described in

Section 19 (Microsoft Software & License Mobility) above in a written agreement with your customers as well as the “No High Risk Use” section of the AUP. You may not resell the use of Role Base Access Controls. Unless otherwise agreed, Zephyr Cloud Corp. will provide support only to you, not to any other person you authorize to use the Services. There are no third party beneficiaries to the Agreement, meaning that third parties do not have any rights against either of us under the Agreement.

## **21. INTENTIONALLY OMITTED**

**22. NOTICES.** Your routine communications regarding the Services should be sent to your Zephyr Cloud Corp. account team or at [support@zephyrcloud.com](mailto:support@zephyrcloud.com). If you want to give us a notice regarding termination of the Agreement for breach, indemnification, or other non-routine legal matter, you should send it by electronic mail, and first-class United States mail to:

### **LEGAL NOTICE**

Zephyr Cloud Corporation  
1430 Carrington Ridge Lane  
Vienna Virginia 22182

Zephyr Cloud Corp.’s routine communications regarding the Services and legal notices will be sent to the individual(s) you designate as your contact(s) on your account either by electronic mail, United States mail, or overnight courier, except that Zephyr Cloud Corp. may give notice of an amendment to the AUP by posting the notice on the Zephyr Cloud Corp. Cloud website. Notices are deemed received as of the time delivered, or if that time does not fall within a Business Day, as defined below, as of the beginning of the first Business Day following the time delivered, except that notices of AUP amendments are deemed delivered as of the first time that you log on to the Zephyr Cloud Corp. Cloud website after the time that the notice is posted. For purposes of counting days for notice periods, the Business Day on which the notice is deemed received counts as the first day. Notices must be given in the English language.

## **23. INTENTIONALLY OMITTED**

**24. OWNERSHIP OF INTELLECTUAL PROPERTY.** Each of us retains all right, title and interest in and to our respective trade secrets, inventions, copyrights, and other intellectual property. Any intellectual property developed by Zephyr Cloud Corp. during the performance of the Services shall belong to Zephyr Cloud Corp. unless we have agreed with you in advance in writing that you shall have an interest in the intellectual property.

**25. IP ADDRESSES.** Upon expiration or termination of the Agreement, you must discontinue use of the Services and relinquish use of the IP addresses and server names assigned to you by Zephyr Cloud Corp. in connection with Services, including pointing the DNS for your domain name(s) away from Zephyr Cloud Corp. Services. You agree that Zephyr Cloud Corp. may, as it determines necessary, make modifications to DNS records and zones on Zephyr Cloud Corp. managed or operated DNS servers and services.

**26. SERVICES MANAGEMENT AGENT.** You agree that you will not interfere with any services management software agent(s) that Zephyr Cloud Corp. installs on your Services. Zephyr Cloud Corp. agrees that its agents will use only a minimal amount of computing resources, and will not interfere with your use of your Services. Zephyr Cloud Corp. will use the agents to track system information so that it can more efficiently manage various service issues. Your Services will become “Unsupported” as described in Section 34 below if you disable or interfere with our services management software agent(s). You agree that Zephyr Cloud Corp. may access your Services to reinstall services management software agents if you disable them or interfere with their performance.

**27. ASSIGNMENT/SUBCONTRACTORS.** You may not assign the Agreement without Zephyr Cloud Corp.’s prior written consent. We may assign the Agreement in whole or in part to an Affiliate with sufficient financial standing in order to meet its obligations under this Agreement or as part of a corporate reorganization or a sale of our business, and we may transfer your Confidential Information as part of any such transaction. Zephyr Cloud Corp. may use third party service providers to perform all or any part of the Services, but Zephyr Cloud Corp. remains responsible to you under this Agreement for work performed by its third party service providers to the same extent as if Zephyr Cloud Corp. performed the Services itself.

**28. SERVICES PROVIDED BY THIRD PARTIES.** Zephyr Cloud Corp. personnel may from time to time recommend third party software or other products and services for your consideration and may also make available to you third party products or services, including availability of third party applications through deployment or implementation tools. ZEPHYR CLOUD CORP. MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING PRODUCTS AND SERVICES THAT ARE NOT PURCHASED FROM ZEPHYR CLOUD CORP. Your use of any such third-party products and services is governed by the terms of your agreement with the provider of those products and services.

**29. FORCE MAJEURE.** Neither of us will be in violation of the Agreement if the failure to perform the obligation is due to an event beyond our control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry.

**30. GOVERNING LAW, LAWSUITS.** The Agreement is governed by the laws of the State of Virginia, exclusive of any Virginia choice of law principle that would require the application of the law of a different jurisdiction, and the laws of the United States of America, as applicable.

The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods. Each of us agrees that any dispute or claim, including without limitation, statutory, contract or tort claims, relating to or arising out of this Agreement or the alleged breach of this Agreement, shall, upon timely written request of either of us, be submitted to binding arbitration.

The party asserting the claim may elect to have the arbitration be in-person, telephonic or decided based on written submissions. The arbitration shall be conducted in the city in which you reside. The arbitration shall proceed in accordance with the commercial arbitration rules of the American Arbitration Association (“AAA”) in effect at the time the claim or dispute arose.

The arbitration shall be conducted by one arbitrator from AAA or a comparable arbitration service who is selected pursuant to the applicable rules of the AAA. The arbitrator shall issue a reasoned award with findings of fact and conclusions of law and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Either you or we may bring an action in any court of competent jurisdiction to compel arbitration under this Agreement, or to enforce or vacate an arbitration award.

We will pay the fee for the arbitrator and your filing fee, to the extent that it is more than a court filing fee. We agree that we will not seek reimbursement of our fees and expenses if the arbitrator rules in our favor. You and we waive any right to a trial by jury, so that disputes will be resolved through arbitration.

No claim subject to this provision may be brought as a class or collective action, nor may you assert such a claim as a member of a class or collective action that is brought by another claimant. Each of us agrees that we will not bring a claim under the Agreement more than two years after the time that the claim accrued. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

**31. SOME AGREEMENT MECHANICS.** These Terms of Service may have been incorporated in your Order by reference to a page on the Zephyr Cloud Corp. website. Although we may from time to time revise the Terms of Service posted on that page, those revisions will not be effective as to an Order that we accepted prior to the date we posted the revision, and your Order will continue to be governed by the Terms of Service posted on the effective date of the Order until the earlier of:

- (i) Your acceptance of any amended Terms of Service;
- (ii) Your continued use of the Services after notice of any amended Terms of Service, or
- (iii) Thirty days after the date Zephyr Cloud Corp. posts amended Terms of Service on the Zephyr Cloud Corp. website.

In addition, if over time you sign multiple Orders for a single account, then the Terms of Service incorporated in the latest Order posted on the effective date of the latest Order will govern the entire account.

Zephyr Cloud Corp. may accept or reject any Order you submit in its sole discretion. Zephyr Cloud Corp.'s provisioning of the Services described in an Order shall be Zephyr Cloud Corp.'s acceptance of the Order.

An Order may be amended by a formal written agreement signed by both parties, or by an exchange of correspondence, including electronic mail that includes the express consent of an authorized individual for each of us. Any such correspondence that adds or modifies Services in connection with an account established by an Order shall be deemed to be an amendment to that Order, notwithstanding the fact that the correspondence does not expressly refer to the Order.

Other than as stated herein, the Agreement may be modified only by a formal document signed by both parties.

If there is a conflict between the terms of any of the documents that comprise the Agreement, the documents will govern in the following order: Order, Terms of Service, and the Acceptable Use Policy. If any part of the Agreement is found unenforceable by a court or other tribunal, the rest of the Agreement will nonetheless continue in effect, and we agree that the tribunal may reform the unenforceable part if it is possible to do so consistent with the material economic incentives of the parties resulting in this Agreement.

Each of us may enforce each of our respective rights under the Agreement even if we have waived the right or failed to enforce the same or other rights in the past. Our relationship is that of independent contractors and not business partners. Neither of us is the agent for the other, and neither of us has the right to bind the other on any agreement with a third party. The captions in the Agreement are for convenience only and are not part of the Agreement.

The use of the word "including" in the Agreement shall be read to mean "including without limitation." Sections 1, 7, 16, 17, 18, 22, 24, 30, 31, and all other provisions that by their nature are intended to survive expiration or termination of the Agreement shall survive expiration or termination of the Agreement.

If you have made any change to the Agreement documents that you did not bring to our attention in a way that is reasonably calculated to put us on notice of the change, the change shall not become part of the Agreement.

The Agreement may be signed in multiple counterparts, which, taken together, will be considered one original. Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be original signatures.

This Agreement is the complete and exclusive agreement between you and Zephyr Cloud Corp. regarding its subject matter and supersedes and replaces any prior agreement, understanding, or communication, written or oral.

## ADDITIONAL TERMS FOR CERTAIN SERVICES

### 32. INTENTIONALLY OMITTED.

**33. DOMAIN NAME REGISTRATION SERVICES.** If you register, renew, or transfer a domain name through Zephyr Cloud Corp., Zephyr Cloud Corp. will submit the request to its domain name services provider (the “Registrar”) on your behalf. Zephyr Cloud Corp.’s sole responsibility is to submit the request to the Registrar. Zephyr Cloud Corp. is not responsible for any errors, omissions, or failures of the Registrar. Your use of domain name services is subject to the Registrar’s applicable legal terms and conditions. You are responsible for closing any account with any prior reseller of or registrar for the requested domain name, and you are responsible for responding to any inquiries sent to you by the Registrar.

**34. UNSUPPORTED CONFIGURATION ELEMENTS OR SERVICES.** If you ask us to implement a configuration element (hardware or software) or other service in a manner that is not customary at Zephyr Cloud Corp., or that is in “end of life” or “end of support” status, we may designate the element or service as “unsupported,” “non-standard,” “best efforts,” “reasonable endeavor,” “one-off,” “EOL,” “end of support,” or with like term in the Order (referred to in this Section as an “Unsupported Service”).

Zephyr Cloud Corp. makes no representation or warranty whatsoever regarding any Unsupported Service, and you agree that Zephyr Cloud Corp. will not be liable to you for any loss or damage arising from the provision of the Unsupported Service. Any Service Level Agreement will not apply to the Unsupported Service, or any other aspect of the Services that is adversely affected by the Unsupported Service. You acknowledge that Unsupported Services may not interoperate with Zephyr Cloud Corp.’s other services.

**35. SERVER IMAGES.** If you provision a Zephyr Cloud Corp. Server or other Service using a non-standard or non-Zephyr Cloud Corp. image or installation (even if such image is made available to you by Zephyr Cloud Corp. during configuration, provided that it is identified as such), then Zephyr Cloud Corp. shall have no obligation to provide Support for that Service, and any Support provided shall be on an AS IS basis.

### 36. MAIL SERVICES.

**36.1 Access.** You may access your Mail Services over the web via the Zephyr Cloud Corp. website, or via a Zephyr Cloud Corp.-provided API. Zephyr Cloud Corp. may modify its control panel or APIs at any time, or may transition to new APIs.

**36.2 Management of the Service.** Zephyr Cloud Corp. will provision your initial mail environment, but you are otherwise responsible for managing your mail service, including adding mailboxes, adding wireless or other service components, adding storage capacity, managing settings, and configuring spam filters.

**36.3 Filtering.** Zephyr Cloud Corp. will provide email filtering services designed to filter spam, phishing scams, and email infected with viruses. Zephyr Cloud Corp. recommends that you employ additional security measures, such as a desktop virus scanner and firewall, on computers that are connected to the Internet.

Email that is quarantined by the filtering system is excluded from the Service Level Agreements. Zephyr Cloud Corp. will use commercially reasonable efforts to deliver your email messages. Third party filtering services may from time to time prevent successful delivery of your messages. You acknowledge that the technological limitations of the filtering service will likely result in the capture of some legitimate email and the failure to capture some unwanted email, including email infected with viruses.

You hereby release Zephyr Cloud Corp. and its employees, agents, affiliates, and third party suppliers from any liability for damages arising from the failure of Zephyr Cloud Corp.'s filtering services to capture unwanted email or from the capture of legitimate email, or from a failure of your email to reach its intended recipient as a result of a filtering service used by the recipient or the recipient's email service provider.

**36.4 Memory Limitations.** Mail that exceeds the storage limit when received may be permanently lost. You may adjust the storage capacity of your individual mailboxes via the control panel, and it is your obligation to monitor and adjust the storage capacity of individual mailboxes as needed. An individual email message that exceeds the per-message size limit of 25 MB (including attachments) may also be permanently lost.

**36.5 Content Privacy.** Your email messages and other items sent or received via the mail service will include:

- (i) The content of the communication ("content"), and
- (ii) Certain information that is created by the systems and networks that are used to create and transmit the message (the "message routing data"). The content includes things like the text of email messages and attached media files, and is generally the information that could be communicated using some media other than email (like a letter, telephone call, CD, DVD, etc.)

The message routing data includes information such as server hostnames, IP addresses, timestamps, mail queue file identifiers, and spam filtering information, and is generally information that would not exist but for the fact that the communication was made via email.

The content of your items is your Confidential Information and is subject to the restrictions on use and disclosure described in these Terms of Service. However, you agree that we may view and use the message routing data for our general business purposes, including maintaining and improving security,

improving our services, and developing products. In addition, you agree that we may disclose message routing data to third parties in aggregate statistical form, provided that we do not include any information that could be used to identify you.

**36.6 Usage Data.** We collect and store information related to your use of the Services, such as use of SMTP, POP3, IMAP, and filtering choices and usage. You agree that we may use this information for our general business purposes and may disclose the information to third parties in aggregate statistical form, provided that we do not include any information that could be used to identify you.

**37. INTENTIONALLY OMITTED.**

**38. ROLE-BASED ACCESS CONTROL.** Your designated account administrator is responsible for role administration. You may self-manage role administration via the Zephyr Cloud Corp. Cloud Control panel or API. When making permission changes with Role-Based Access Control, there may be a delay before the implementation of changes, including self-managed changes. Zephyr Cloud Corp. is not responsible for any loss that may occur due to the delayed implementation of changes.

**Questions or Suggestions**

If you have questions or concerns about our Terms and Conditions, please contact us. [support@zephyrcloud.com](mailto:support@zephyrcloud.com)

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