

# Unitrends Cloud Services Terms and Conditions

Last Revised: November 1, 2019

This Agreement is a legal and enforceable agreement between Customer and Unitrends and governs the license and use of Unitrends Cloud Services and all related Documentation provided to Customer directly from Unitrends or indirectly through a Channel Partner. It is effective as of the Service Effective Date. No Channel Partner is authorized to make any amendment or modification to this Agreement. No oral or written information or advice given by Unitrends or its Channel Partners shall create any warranty or in any way increase any warranty provided herein.

**\*\*\* IMPORTANT – PLEASE READ CAREFULLY BEFORE USING THE CLOUD SERVICE \*\*\***

Customer acknowledges that Customer has read this Agreement, understand it and agree to be bound by its terms and conditions. If Customer is not willing to be bound by the terms of this Agreement, do not access or use the Unitrends Cloud Services.

If Customer is using the Unitrends Cloud Services in its capacity as employee or agent of a company or organization, then any references to “Customer” in this agreement shall refer to such entity. Customer warrants that it is authorized to legally bind the company or organization on whose behalf Customer is accessing and using the Unitrends Cloud Services. If Customer is not so authorized, then neither Customer nor its company or organization may use the Unitrends Cloud Services in any manner whatsoever.

CUSTOMER ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT AND UNDERSTANDS IT AND THAT BY ACCESSING AND/OR USING THE UNITRENDS CLOUD SERVICES, CUSTOMER AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. THIS AGREEMENT SUPERSEDES ALL PRIOR AND CONTEMPORANEOUS ORAL AGREEMENTS, PROPOSALS OR UNDERSTANDINGS, AND ANY OTHER COMMUNICATIONS RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

Definitions.

“Acceptable Use Policy” means Unitrends’ Acceptable Use Policy set forth at [www.unitrends.com](http://www.unitrends.com) as updated from time to time.

“Affiliate” means, with respect to a party, any entity which directly or indirectly controls, is controlled by, or is under common control with such party, where “control” means the power, directly or indirectly, to direct, or to cause the direction of, the management and policies of an entity, through majority ownership of voting securities or equity interests.

“Agreement” means these Unitrends Cloud Services Terms and Conditions, the Service Schedules and any other documents referenced herein.

“Channel Partner” means a Unitrends’ authorized reseller or distributor.

“Claim” means a claim, suit or cause of action.

“Confidential Information” means (a) any confidential, proprietary or trade secret information of the disclosing party (“Discloser”) that if in tangible form is marked as confidential, secret or with a comparable legend or if disclosed orally or visually is identified as confidential at the time of disclosure; and (b) discussions relating to such information. Discloser shall use reasonable efforts to mark its confidential information in tangible form as confidential; however, tangible information that does not bear such a legend and the discussions relating thereto, will be protected hereunder as Confidential Information if the receiving party (“Recipient”) knew or should have reasonably known under the circumstances that the information is confidential.

“Customer” means the legal entity or individual that has ordered the Services from Unitrends.

“Customer Content” means any files, documents, data, information and other materials of the Customer or its Users that is uploaded by Customer or its Users using the Services and stored by Unitrends or its agents within the Unitrends Cloud Services.

“Disaster” or “DR Event” means any unplanned event or condition that renders Customer unable to use the Protected Servers at their on-premise location for their intended computer processing and related business production purposes.

“Disaster Recovery Environment” or “DR Environment” means a secured and isolated portion of the Unitrends Cloud Services that maintains the Customer’s Protected Servers, and is available to the Customer via SSL Client VPN during DR Testing or DR Events.

“Disaster Recovery Service” or “DRaaS” means Unitrends’ Disaster Recovery Service that is available for purchase by Customer in conjunction with the Unitrends Cloud Services. The Service Schedule for DRaaS is set forth at [www.unitrends.com](http://www.unitrends.com)

“Disaster Recovery Testing” or “DR Testing” provides the means to validate the Customer disaster recovery plan and Unitrends DRaaS. Testing includes the steps and operations designed to ensure that the Customer’s disaster recovery processes and systems provide the necessary environment for running the Customer’s business and ultimately restoring the Customer’s environment.

“DRaaS Prep Kit” means documentation containing information about the Protected Servers and the disaster recovery environment on the Unitrends Cloud.

“Documentation” means the then-current, generally available, written instructions, user guides and user manuals for the Unitrends Cloud, if applicable, whether in electronic, paper or other equivalent form, provided by Unitrends or its Channel Partners and in connection with any updates, modifications and improvements to the Unitrends Cloud Services, regardless of form or media.

“Fees” means all Unitrends Fees applicable to the Services and, if purchased, DRaaS.

“Intellectual Property Rights” means, collectively, all worldwide intellectual property rights in and to any works of authorship, moral rights, copyrights, trademarks, service marks, patents, designs, trade secrets and algorithms.

“Order” means an order submitted by Customer to a Channel Partner and which is accepted by Unitrends.

“Protected Server” means those Customer servers designated by Customer during the Unitrends Cloud Services onboarding process that are backed up and replicated to the Unitrends Cloud which Unitrends will use to provide DRaaS.

“Replicate” or “Replication” means the movement of Customer Content from the Customer’s premises to the Unitrends Cloud Services.

“Replicated Content” means Customer Content which has been Replicated.

“Retention” means Replicated Content that is retained in the Unitrends Cloud for the period specified in the Service Schedule.

“Service Schedule(s)” mean the overview and other terms applicable to the Unitrends Cloud Services, as amended from time to time, and found at [www.unitrends.com](http://www.unitrends.com) and applicable to DRaaS, as amended from time to time, and found at [www.unitrends.com](http://www.unitrends.com). Notwithstanding the foregoing, if any amendments to the Service Schedules materially reduce the service entitlements from those available on the Service Effective Date, Customer may terminate this Agreement without penalty in accordance with Section 10.3 by providing Unitrends with written notice within forty-five (45) days from the earlier of the date Customer is notified of such amendment(s) or first becomes aware of such amendment(s). All Services set forth in the Service Schedules may not be available to all customers.

“Service Effective Date” means the date as defined in Section 2.1 of the Agreement.

“Services” or “Unitrends Cloud Services” means the Unitrends’ Cloud software as a service product which is provided by Unitrends to Customer over the Internet using the Unitrends Cloud and (i) provides off-site automated Customer Content Replication and Retention, and (ii) hosts Customer’s virtual machines after a declaration of Disaster, all as further described in the applicable Service Schedules. The Unitrends Cloud Services are provided to Customer

on a subscription basis as hosted by Unitrends using the Unitrends Cloud and includes all Updates. Service availability for subsequent orders is subject to the then-current Unitrends product lifecycle policy. Unitrends may update the Services with Updates at any time in its sole discretion.

“Subscription Term” means the period during which Customer may use the Services and/or DRaaS, as applicable, which are set forth in an Order and for which Customer has paid the applicable Fees.

“Support Services” means technical support services provided by Unitrends with respect to the Unitrends Cloud Services as set forth in the Unitrends Cloud Services Service Schedule.

“Unitrends Cloud” means the computer hardware and software (including, without limitation, software applications, software interfaces, operating system and databases), storage capacity and all other resources (including, without limitation, telecommunications equipment) used by Unitrends to make Services available to, and usable by, Customer via the Internet.

“Taxes” means all applicable transactional taxes on Services (including but not limited to withholding tax, sales tax, services tax, value-added tax (VAT), goods and services tax (GST), tariffs, and/or duties) imposed by any government entity or collecting agency based on the Services. Taxes shall not include those taxes based on Unitrends’ net income, and/or those taxes for which Customer has provided a valid certificate confirming Customer is exempt.

“Third Party Contractor” means a third party engaged by Customer to provide services to Customer that is not a competitor of Unitrends.

“Third-Party Software” means any software licensed as a standalone product or as a part of other software, which is not owned by Unitrends or its subsidiaries.

“Unitrends” means Unitrends, Inc. and its Affiliates.

“Updates” means any corrections, bug fixes, new features or functions added or removed from the Services, but shall not include any new Services versions that Unitrends markets and sells separately.

“Users” means Customer’s and its Affiliate’s employees, contractors and agents.

“Use Level” means the model by which Unitrends measures, prices and offers the Services to Customer as set forth on the applicable Unitrends or Channel Partner Order, price list, websites, and/or Service Schedule.

Unitrends Cloud Services; DRaaS2.1      Service Effective Date. Following acceptance of the applicable Order for the Services, Unitrends will provide Customer with information or documentation necessary for Customer to access and use the Services and upon the delivery

of such information, the Services shall be deemed delivered (the date of such delivery, the “Service Effective Date”).

2.2 Right to Use Services for Customer’s Business. Subject to the Agreement, Unitrends will provide the Services set forth in any Order that Unitrends has accepted for Customer’s own internal business use in accordance with the Agreement, the applicable Service Schedule and applicable Use Levels. Unitrends hereby grants to Customer a limited, personal, non-exclusive, non-transferable, non-sublicensable right to access and use the Services for its own internal business purposes. Technical support for the Services is provided as set forth in the applicable Service Schedule. Updates to the Services are included in the Fees. Customer shall use the then-current version of the Service, including any Updates, as made available by Unitrends. Customer may permit its Affiliates and/or Third Party Contractors to access and use the Services for the sole benefit of Customer, provided, that Customer shall require its Affiliates and Third Party Contractors to comply with the terms and conditions of the Agreement and Customer will be liable to Unitrends in the event any Affiliate or Third Party Contractor fails to so comply.

2.3 Limitations on Use. Except to the extent permitted by applicable law, Customer agrees, on behalf of itself and its Users, not to directly or indirectly: (i) modify, distribute, prepare derivative works of, reverse engineer, reverse assemble, disassemble, decompile or attempt to decipher any code relating to the Services and/or Unitrends Cloud; (ii) knowingly or negligently access or use the Services in a manner that abuses or disrupts the Unitrends’ Cloud or Unitrends’ or its third party providers’ networks, security systems, user accounts, or Services of Unitrends or any third party, or attempt to gain unauthorized access to any of the above through unauthorized means, (iii) transmit through or post on the Services and/or Unitrends Cloud any material that is deemed abusive, harassing, obscene, slanderous, fraudulent, libelous or otherwise objectionable or unlawful; (iv) market, offer to sell, and/or resell the Services and/or Unitrends Cloud or sublicense, lease, rent, loan, distribute or transfer or otherwise make available the Services to any third party; (v) use the Services and/or Unitrends Cloud to send unsolicited or unauthorized advertising, junk mail, or spam; (vi) use the Services and/or Unitrends Cloud to process Customer Content or provide any service bureau activity for any third party; (vii) transmit through or store on the Services and/or Unitrends Cloud any material that may infringe the intellectual property rights or other rights of third parties, including trademark, copyright, data privacy or right of publicity; (viii) transmit or store on the Services and/or Unitrends Cloud any material that contains software viruses or other harmful or deleterious computer code, files or programs; (ix) use the Services and/or Unitrends Cloud to develop a competitive product or use the Services and/or Unitrends Cloud directly or indirectly for competitive benchmarking or other competitive analysis, unless permitted under applicable law; (x) submit to, or store in the Services, any Protected Health Information (“PHI”) unless Customer has complied with Section 5.1 below; (xi) otherwise use the Services and/or Unitrends Cloud except as expressly allowed under the Agreement; (xii) violate any local, state, federal or foreign law, treaty, regulation or convention applicable to Customer in connection with its or its Users’ use of the Services and/or Unitrends Cloud; (xiii) willfully tamper with the security of the Unitrends

Cloud or tamper with other customer accounts of Unitrends; (xiv) attempt to access data on the Unitrends Cloud not belonging to or intended for Customer; (xv) attempt to probe, scan or test the Unitrends Cloud or to breach the security or authentication measures without proper authorization; or (xvi) willfully render any part of the Unitrends Cloud unusable, or (xvii) use the Services and/or Unitrends Cloud in violation of Unitrends' Acceptable Use Policy. Customer agrees that Users will not knowingly use Services or the Unitrends Cloud to communicate any message or material that (a) is known, or reasonably should be known, to be libelous, harmful to minors, obscene or constitutes pornography; (b) is known, or reasonably should be known, to infringe the copyrights, patents, trade secrets, trademarks, trade names or other proprietary rights of a third party or is otherwise unlawful; or (c) would otherwise give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense, under any applicable law or regulation. Customer is solely responsible for the collection, accuracy, currency, quality, legality, completeness and use of Customer Content that is processed using the Services or is stored on the Unitrends Cloud, or disclosed to or used by Customer or Users in connection with their use of the Unitrends Cloud.

2.4 DRaaS. If Customer has purchased DRaaS pursuant to an Order, Unitrends shall provide Customer with DRaaS in accordance with the DRaaS Service Schedule set forth at [www.unitrends.com](http://www.unitrends.com). The Limitations on Use set forth in Section 2.3 shall also apply to DRaaS to the extent applicable and Customer agrees to comply with same.

2.5 Services Trial. Unitrends may make the Services or DRaaS available to Customer on a demonstration or trial basis ("Trial Period"), as specified in the applicable Order. The Trial Period shall terminate (i) at the end of the stated Trial Period, or (ii) if no such date is specified, thirty (30) days from the date of Customer's initial access to the Services and/or provision of DRaaS. Following expiration of the Trial Period, the Services and DRaaS will cease or automatically continue unless cancelled by Customer as specified in the Order, and Customer is responsible for payment of the applicable Fees set forth in the Order. During the Trial Period, UNITRENDS PROVIDES THE SERVICES AND DRAAS "AS IS" AND WITHOUT WARRANTY OR INDEMNITY, TO THE EXTENT PERMITTED BY LAW, AND ALL OTHER TERMS OF THIS AGREEMENT OTHERWISE APPLY. Unitrends reserves the right to modify or discontinue any trials or promotions at any time without notice.

2.6 Suspension of Services. Unitrends may temporarily suspend the Services and/or DRaaS if Unitrends determines, in its sole discretion, that continued provision would compromise the security of the Services or the Unitrends Cloud due to, without limitation, hacking attempts, denial of service attacks, mail bombs or other malicious activities, and Unitrends will take action to promptly resolve any such security issues. Unitrends agrees to notify Customer of any such suspension and subsequent reactivation of the Services and DRaaS.

3. Customer Responsibilities.

3.1 Backup and Replication. Customer is responsible for performing regular backups of Customer Content using Unitrends' on-premise backup appliances to the Unitrends Cloud. The Unitrends Cloud will Replicate Customer Content in accordance with the selections the Customer makes through the Services' web-based interface. Unitrends does not make any guarantee, expressed or implied, that the Services will Replicate any Customer Content on or off of the Customer's premises beyond the particular Customer Content indicated by the Customer in the web interface for the Services. Customer must monitor all backup activity by reviewing backup notifications and using the Services' web-based interface and/or other authorized Unitrends tools. Customer shall report to Unitrends any errors in executing such backups promptly by web submission, e-mail or telephone. Unitrends will provide Customer with the ability to view the condition of the overall Replication status through the Services via the web-based interface or other tool. It is the Customer's sole and exclusive responsibility to verify that the Customer Content the Customer intends to Replicate is accurately backed up and setup in the web-based interface and is being Replicated by the Services and reporting no errors.

3.2 Failed Replication. Unitrends will use commercially reasonable efforts to maintain reliable and redundant infrastructure to store Customer Content in the Unitrends Cloud and complete selected Replications via the Services within 72 hours subject to delays caused by Customer or its network or systems or by telecommunications failures, utility outages or the Internet. If the Customer Content selected for Replication is not Replicated within this time frame, Unitrends will provide Customer with notice via Services' web interface. The success of the Replication is contingent on Customer maintaining the Customer's network and infrastructure as required by the Service Schedule for the Services, including without limitation the condition of the Customer's network and all physical and Internet connectivity requirements to enable the Services to perform properly. Properly Replicated Customer Content is limited to Customer Content that the web interface for the Services shows as successfully Replicated and for which there are no backup process warnings or errors reported in the web interface for the Services. The Customer is solely responsible for verifying that the necessary files and directories and other Customer Content infrastructure required to restore specialized software systems, such as databases and other data environments, are being created and are included in the Customer Content that Unitrends is backing up for the Customer. If the Services indicate that Customer Content has been successfully Replicated and it is determined that the Customer Content was not Replicated as a direct result of a defect or error with the Services or the Unitrends Cloud, as Customer's sole and exclusive remedy, and Unitrends sole liability, Unitrends will refund to Customer the total fees paid by the Customer for the Unitrends Cloud Services for the immediately preceding thirty (30) days. Except for the foregoing sentence, Unitrends shall have no liability for any failure of the Customer Content to successfully Replicate to the Unitrends Cloud.

3.3 Content Restoration. Unitrends provides various tools for Customer to restore Customer Content that has been Replicated. In addition, Unitrends will also provide telephone assistance and technical support as described in the Service Schedule for the Services.

3.4 Required Infrastructure and Communications Equipment. Customer is responsible for procuring and maintain all required software, hardware and other equipment and all Internet, communication and other services necessary to access and use the Services. Customer is responsible for implementing a high-quality uplink to the Internet to ensure the availability of the Services to Customer and is responsible for implementing reasonable security and encryption policies and procedures to protect the Customer Content.

## 4. Orders, Fees and Payment

4.1 Orders. Customer may order Services using the Unitrends' then-current ordering processes. All Orders are subject to acceptance by Unitrends in its discretion. All Customer information provided by or on behalf of Customer must be current, complete and accurate and Customer is responsible for keeping such information updated. Order information is subject to automatic processing by Unitrends for the purposes of managing Customer's account. Customer may order additional Services at any time. Additional Services may or may not be available on a coterminous basis.

4.2 Fees; Payment. Customer is responsible for all Fees and Taxes. If Customer fails to pay Taxes, Customer agrees to reimburse Unitrends for any such Taxes assessed against Unitrends and indemnify and hold Unitrends harmless against any other claim, liability and/or penalties resulting therefrom. Customer will be invoiced for any overages above the contracted Use Level each month at the appropriate incremental Use Level. Except as expressly otherwise set forth herein, all fees are non-refundable. Unitrends reserves the right, in its discretion, to (i) suspend or terminate the Services or any portion thereof for non- payment of undisputed Fees, and (ii) impose a charge to restore archived Customer Content from delinquent accounts. Customer must notify Unitrends about any billing problems or discrepancies within sixty (60) days after receipt of the applicable invoice. If Customer does not bring such problems or discrepancies to Unitrends' attention within such sixty (60) day period, Customer agrees that it waives the right to dispute such problems or discrepancies.

## 5. Customer Content and Customer Accounts

5.1 Customer Content. Customer retains all rights to any and all of its Customer Content and Unitrends shall not own or license any data, content, information or material in such Customer Content. Each party shall apply reasonable technical, organizational and administrative security measures to keep Customer Content protected in accordance with industry standards, and Customer shall retain a current copy of Customer Content outside the Services. Unitrends will not monitor Customer's or its Users' use of the Services, and Unitrends will not view, access or process any Customer Content, except: (i) for the sole purpose of providing the Services, (ii) as directed or instructed by Customer and its Users, and/or (iii) for compliance with Unitrends' policies, applicable law, regulation, or governmental request. Customer shall comply with all intellectual property laws related to the Customer Content and legal duties applicable to Customer as a data controller by virtue of the submission or storage of Customer Content within the Services, including providing all

information or notices Customer is required by law to provide to Users and obtain consent of the Users, where required. Customer and its Users shall not submit to or store any personal health information (“PHI”) in any Service, unless Customer has notified Unitrends at least thirty (30) days in advance of PHI upload, in which case, the Business Associate Agreement (“BAA”) posted at [www.unitrends.com](http://www.unitrends.com) is hereby incorporated herein by reference and shall then apply to such PHI. The BAA may be updated by Unitrends in its sole discretion from time to time without notice (but updates will be posted and may be identified by their last updated date). Unitrends has no obligation to maintain Customer Content following expiration of the Subscription Term. Customer shall have thirty (30) days to download Customer Content after expiration, and must contact Unitrends technical support for download access and instructions. Notwithstanding anything in this Agreement to the contrary, this Section 5.1, and Section 5.2 below, expresses the entirety of Unitrends’ obligations with respect to Customer Content.

5.2 Authorization to Release Customer Content. Notwithstanding anything to the contrary contained in this Agreement, if Customer requests that Unitrends provide assurances to any governmental agency, regulatory organization or similar institution, (collectively, “Regulatory Agencies”) regarding the Services provided by Unitrends, Customer authorizes Unitrends to furnish to such Regulatory Agencies all Customer Content, including e-mail and other records stored by Customer on the Unitrends Cloud. Customer authorizes Unitrends to provide to the Regulatory Agencies assurances that Unitrends will comply with any requests for Customer Content received from a Regulatory Agency. For purposes of clarification, the parties acknowledge that if a Regulatory Agency obtains a warrant, subpoena or court order for disclosure of Customer Content, Unitrends will notify Customer of such requirement unless such notification is forbidden by law, and Unitrends will make such disclosure to the Regulatory Agency as required by law. Further, if Customer has designated a person (whether by email, orally, by registering such person with Unitrends, or by granting such person access to Customers’ username and password) to have access to its Replicated Content, Customer hereby grants Unitrends the right to give that person access to its Replicated Content. Customer agrees to indemnify and hold harmless Unitrends from and against any and all claims relating to or arising from Unitrends’ compliance with this provision or release of such Customer Content.

5.3 Customer Accounts; Encryption. Customer is solely responsible and liable for (i) the configuration of Customer’s Services’ account, including without limitation designating its own key for the optional encryption of Customer Content (if Customer loses its encryption key, it may not be able to access its Customer Content), (ii) the operation, performance and security of Customer’s equipment, networks and other computing resources, infrastructure and services used to connect to the Services, (iii) ensuring all Users exit or log off from the Services at the end of each session, (iv) maintaining the confidentiality and security of Customer’s accounts, user id’s, passwords, encryption keys and personal identification numbers used in conjunction with the Services, and (v) all uses of the Services by Customer

and its Users. Customer will notify Unitrends immediately of any unauthorized use of its account or any other breach of security. Unitrends will not be liable for any loss that Customer may incur as a result of a third party using Customer's passwords or account or Customer's failure to encrypt Customer Content. Unitrends reserves the right to review Customer's account to the extent necessary to confirm compliance with applicable Use Levels, and to terminate or suspend Customer's access for overuse and/or misuse. Customer agrees to pay for any overage in excess of permitted Use Levels.

5.4 Deletion of Replicated Content. Unitrends Cloud saves a copy of the Customer Content that the Customer designates through the Services' web-based interface. The Unitrends Cloud periodically scans these files for changes and newly designated files and creates a copy of modified or newly designated files. Customer will not be able to restore files that the Unitrends Cloud has not completed Replicating or files that have been changed but not yet Replicated or not eligible for Replication. If Customer's license to use Services, the Unitrends Cloud Services or any other associated product or service expires, is terminated, is not renewed, or is otherwise discontinued for any reason, Unitrends may, without notice, delete or deny Customer access to any of Customer's Replicated Content or Retained Content and Customer Content may not be available to Customer. Customer agrees that Unitrends may retain (but shall have no obligation to retain) Customer's Replicated Content or Retained Content for a period of time following any termination, expiration or lapse of Customer's subscription in connection with Unitrends' making such Customer Content available to Customer should Customer later decide to purchase, renew or extend its subscription to the Unitrends Cloud Services.

## 6. Confidentiality; Proprietary Rights

6.1 Obligations. Each party acknowledges that, in the course of the performance of this Agreement, it may obtain Confidential Information of the other party. Confidential Information will be subject to the terms of this Agreement during the term of this Agreement and for three (3) years following termination or expiration of this Agreement or, with respect to technical or trade secret information, until such time as such information meets an exception set forth in Section 6.2 below. Recipient shall implement measures to protect the Confidential Information which are at least as protective as the measures it uses to protect its own information of like kind and shall not disclose the Confidential Information of Discloser to any employees or third parties except to employees (including independent contractors), subsidiaries and consultants of Recipient who have at least an equivalent confidentiality obligation to Recipient and who have a need to know such Confidential Information on condition that Recipient shall be liable for any breach by such individual or entity. However, the parties acknowledge and agree that, notwithstanding such measures taken to prevent unauthorized disclosure, use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to Confidential Information. Accordingly, Recipient cannot and does not (and nothing in this

Agreement is intended to) guarantee the privacy, security or authenticity of any information so transmitted over or stored in any system connected to the Internet. The Confidential Information disclosed by Discloser may only be used by Recipient as necessary to perform its obligations or exercise its rights under this Agreement.

6.2 Exception. The obligations set forth herein will not apply to any information that a Recipient can evidence by its written records: (a) is or becomes generally available to the public or within the industry to which the information relates other than as a result of a breach of this Agreement; (b) was known to Recipient prior to receipt from Discloser; (c) is disclosed to Recipient by a third party (other than employees or agents of either party) which in making such information available to Recipient, is not in violation of any obligation of confidentiality to Discloser; or (d) is independently developed by Recipient without use of or reference to the Confidential Information. A disclosure of Confidential Information (i) in response to a valid order by a court or other governmental body, or (ii) otherwise required by law, will not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that Recipient will provide prompt written notice thereof to Discloser to enable Discloser to seek a protective order or otherwise prevent such disclosure.

6.3 Proprietary Rights. Except for the limited subscription rights granted herein, Customer has no right, title or interest in or to the Unitrends Cloud, the Services, DRaaS, or any components provided by Unitrends in connection with the Services or any intellectual property rights related thereto. Customer acknowledges that Unitrends or its licensors retain all proprietary right, title and interest in and to, or practiced in connection with, the Unitrends Cloud, the Services, DRaaS, and any components, including, without limitation, all Updates and all modifications, enhancements, derivative works, configurations, translations, upgrades and interfaces thereto, and all intellectual property rights therein and thereto, all of which will at all times be deemed the sole and exclusive property of Unitrends and/or its licensors. All rights not expressly granted herein are reserved.

6.4 Feedback. Customer and its users may, from time to time, make known to Unitrends suggestions, enhancement requests, techniques, know-how, comments, feedback or other input to Unitrends with respect to the Services, DRaaS or the Unitrends Cloud (collectively, "Suggestions"). Unless otherwise agreed to in writing by the parties with respect to any Suggestion, Unitrends shall have a royalty-free, worldwide, irrevocable, perpetual license to use, disclose, reproduce, license, distribute and exploit any Suggestion without restriction or obligation of any kind, on account of confidential information, intellectual property rights or otherwise, and may incorporate into its services any service, product, technology, enhancement, documentation or other development ("Improvement") incorporating or derived from any Suggestion with no obligation to license or to make available the Improvement to Customer or any other person or entity.

Limited Warranty; Disclaimer7.1 Limited Warranty. Customer assumes all responsibility for the selection of, use of and results obtained from the Services. The limited warranties set

forth below in this Section 7.1 extend solely to Customer and not to any third parties.

Unitrends warrants to Customer that Services will conform in all material respects to the applicable Service Schedule. For any breach of this limited warranty and to the extent not otherwise covered by Support Services, Customer's sole and exclusive remedy and Unitrends' sole and exclusive liability, will be for Unitrends to use reasonable efforts to promptly correct any nonconformities such that the Services so conform. If, after a reasonable number of attempts, Unitrends is unable to provide Services in compliance with this limited warranty, either party may terminate this Agreement upon written notice to the other party and Unitrends will refund Customer any pre-paid fees for the unexpired portion of the unused remaining Subscription Term.

**7.2 Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 7.1, UNITRENDS MAKES NO WARRANTY, CONDITION, REPRESENTATION, TERM, UNDERTAKING OR GUARANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT AND THE SERVICES, THE UNITENDS CLOUD AND DRAAS ARE PROVIDED "AS IS," WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON INFRINGEMENT. UNITRENDS MAKES NO WARRANTY THAT THE SERVICES, UINTRENDS CLOUD OR DRAAS ARE COMPATIBLE WITH CUSTOMER'S CONTENT, DATA, HARDWARE, SOFTWARE OR OTHER EQUIPMENT OR SYSTEMS, WILL MEET THE NEEDS OR REQUIREMENTS OF CUSTOMER OR ITS USERS, WILL OPERATE IN THE COMBINATIONS THAT MAY BE SELECTED FOR USE BY CUSTOMER OR ITS USERS, WILL BE TIMELY, UNINTERRUPTED, SECURE, ACCURATE, RELIABLE OR ERROR FREE, OR THAT ALL ERRORS WILL BE CORRECTED. THE SERVICES, UINTRENDS CLOUD AND DRAAS ARE NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. UNITRENDS SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNITREND'S LIABILITY UNDER ANY IMPLIED OR STATUTORY WARRANTY, CONDITION, TERM, REPRESENTATION, UNDERTAKING OR GUARANTY WHICH CANNOT BE LEGALLY EXCLUDED IS LIMITED IN RESPECT OF THE SERVICES TO SUPPLYING THE SERVICES AGAIN OR PAYING THE COST OF SUPPLYING THE SERVICES AGAIN.**

## Indemnification

### 8.1 By Unitrends.

(i) Subject to Section 8.3 and Section 9, Unitrends shall defend any Claim brought against Customer or its Affiliates or their respective officers, directors or employees by any third party alleging that the Services infringe, misappropriate or violate that third party's patent rights, trademark rights, copyright rights or rights under trade secret laws, each as recognized in the United States (each an "Infringement Claim"). Unitrends shall pay all damages and

costs awarded against Customer and its indemnified parties, by judgment or in settlement, in connection with such an Infringement Claim as well as any costs incurred by Customer in response to a request by Unitrends to assist with the defense of the Infringement Claim.

(ii) If Customer's use of any of the Services is, or in Unitrends' opinion is likely to be, enjoined as a result of an Infringement Claim, Unitrends shall, at its sole option and expense, in its sole discretion and at its expense: (a) procure for Customer the right to continue to use Services as contemplated herein; or (b) replace or modify the Services to make them non-infringing without material degradation in performance or material reduction in functionality. If Unitrends determines that none of these alternatives is reasonably available, then Unitrends may terminate this Agreement upon written notice to Customer and shall refund Customer any prepaid unused Fees.

(iii) Unitrends will have no responsibility or liability for Infringement Claims to the extent such Infringement Claim is based upon: (a) any use of the Services after receipt of notification to discontinue use; (b) use of the Services in combination with any products or services not developed by Unitrends; (c) Third Party Software; or (d) any use of the Services in violation of this Agreement, the Acceptable Use Policy or the Service Schedule or any other misuse or unauthorized use of the Services or failure to comply with its obligations hereunder or under the Service Schedules. Customer understands and agrees that Unitrends has no control over the particular conditions or circumstances under which Customer uses the Products and that Unitrends shall not incur any liability as a result thereof.

(iv) The foregoing sets forth Unitrends' sole and exclusive liability and Customer's sole and exclusive remedy for intellectual property infringement claims.

8.2 By Customer. Customer shall defend any Claim brought against Unitrends or its Affiliates or their respective officers, directors or employees by any third party arising from or related to Customer's: (a) actual or alleged violations of law or regulations in connection with the use of the Services; (b) actual or alleged infringement of a third party's Intellectual Property Rights (except to the extent such infringement is covered by Unitrends' indemnification obligations set forth in Section 8.1 above); (c) failure to encrypt Customer Data in transit or at rest or failure to properly protect passwords or other access credentials; or (d) use of the Services in violation of this Agreement, the Acceptable Use Policy or the Service Schedule, including without limitation a breach of Section 2.3. Customer shall pay all damages and costs awarded against Unitrends and its indemnified parties, by judgment or in settlement, in connection with such a Claim as well as any costs incurred by Unitrends in response to a request by Customer to assist with the defense of the Claim.

8.3 Procedure. Each party's indemnification obligations are contingent upon the indemnifying party receiving: (a) prompt written notice of the Claim; (b) all reasonably necessary assistance, information and authority to defend the claim and perform its obligations under this section; and (c) sole control of the defense and settlement of such claim and all associated negotiations. The indemnifying party agrees not to settle any claim,

action, suit or proceeding for which it is indemnifying the other party in a manner that would impose additional obligations on the other party without first consulting with the other party and obtaining its consent thereto (which shall not be unreasonably withheld or delayed); provided, however, such consent shall not be required where the settlement results in the full and unconditional release of all Claims against and obligations of the indemnified party. An indemnified party may, at its option and expense, participate in the defense or settlement of any Claim, provided that the indemnifying party retains control over the defense or settlement thereof.

## 9. Limitation of Liability

9.1 Waiver of Consequential Damages. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER UNITRENDS NOR ITS SUPPLIERS SHALL BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO ACCESS OR USE CUSTOMER CONTENT, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF PRIVACY, LOSS OR CORRUPTION OF DATA OR CONTENT, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SERVICES, THE UNITRENDS CLOUD OR DRAAS OR OTHERWISE ARISING OUT OF THIS AGREEMENT, AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT FORESEEABLE AND EVEN IF UNITRENDS OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

9.2 Cap on Direct Damages. TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNITRENDS' TOTAL AGGREGATE LIABILITY TO CUSTOMER FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY CLAIM OR CAUSE OF ACTION ARISING HEREUNDER (WHETHER IN CONTRACT, TORT, OR OTHERWISE), WILL BE LIMITED TO THE FEES PAID BY CUSTOMER TO UNITRENDS FOR THE SERVICES DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE.

9.3 Exclusions. THE FOREGOING LIMITATIONS SHALL NOT LIMIT A PARTY'S LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IF PROHIBITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO CUSTOMER. Customer acknowledges and agrees that his limitation of liability shall apply even if the exclusive remedies provided in this Agreement fail of their essential purpose. The Warranty Disclaimer and Limitation of Liability set forth above are fundamental elements of the basis of the agreement between the parties and Unitrends and its suppliers would not be able to provide the Services, the Unitrends Cloud or DRaaS on an economic basis without such provisions.

## 10. Term and Termination.

10.1 Term. The Licensee will be bound for the entire Term of this Agreement. "Term" is defined as the period of time beginning on the Effective Date and ending on the date set forth in the quote, statement of work, purchase order, or other document that describes the commercial terms, services and/or deliverables licensed under the Agreement ("Order Form"), or, if later, the expiration date of any Order Form. If the Order Form does not contain a termination date, the Term shall be deemed to end on the later of the three-year anniversary of the Effective Date and the expiration date of any Order Form. Except as otherwise specified in an Order Form, at the end of any Term, subscriptions will automatically renew for additional Terms equal to the greater of the expiring Term length or three (3) years, unless either party gives the other party notice of non-renewal at least 30 days and no more than 60 days before the end of the relevant Term. Except as otherwise specified in an Order Form, pricing during any automatic renewal Term will be the same as that during the immediately preceding Term plus an increase not to exceed five percent (5%) plus any increase in the Consumer Price Index published by the U.S. Bureau of Labor Statistics during the immediately prior year, in Unitrends's sole discretion.

10.2 Termination. Either party may terminate this Agreement and all licenses and services provided hereunder upon written notice: (a) if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receiving written notice from the non-breaching party; (b) if the other party files a petition for bankruptcy, insolvency or reorganization under any bankruptcy law or is adjudicated bankrupt; (c) if a petition in bankruptcy is filed against the other party and such petition is not dismissed within sixty (60) days of the filing date; (d) if the other party becomes insolvent or makes an assignment for the benefit of its creditors pursuant to any bankruptcy or insolvency law; or (e) if a receiver is appointed for the other party or its business. In addition, Unitrends may either (x) suspend the Services and Customer's access to Unitrends Cloud, including Customer Content or Support Services or (y) terminate this Agreement, in each case, effective immediately, if (i) Customer fails to pay any portion of the Fees when due within ten (10) days after receiving written notice that payment is past due or (ii) Customer materially breaches Section 2.3 or the Acceptable Use Policy and fails to cure such breach within ten (10) days after receiving written notice. Fees will continue to accrue during any such suspension.

10.3 Termination For Convenience by Customer and Early Termination Fee. In addition to those termination rights set forth above, during the initial Subscription Period, Customer may terminate this Agreement for convenience upon thirty (30) days written notice to Unitrends and payment of an early termination fee equal to (a) the monthly subscription fee in effect for the term then in effect at the time that Unitrends receives the termination notice, multiplied by (b) the number of months remaining in the then-current term.

10.4 Obligations upon Termination. Upon the termination or expiration of this Agreement, Customer shall promptly pay in full all outstanding payments to Unitrends (but in any event, no later than ten (10) days following the date on which termination or expiration is effective). Customer understands and agrees that following termination or expiration of the Services, Unitrends may delete all of the Customer Content from the Unitrends Cloud and will have no liability for such action. The expiration or termination of this Agreement does not relieve

either party of any obligations that have accrued on or before the effective date of the termination or expiration.

10.5 Survival. Sections 1, 6, 7.2, 8, 9, 10.4, 10.5 and 11 shall survive the termination or expiration of this Agreement.

## 11. General

11.1 Entire Agreement; Order of Precedence. These Terms and Conditions, including without limitation the Order, the Service Schedules and the Acceptable Use Policy, constitutes the entire agreement between the parties and supersedes all previous and contemporaneous agreements, understandings and arrangements with respect to the subject matter hereof, whether oral or written. Customer agrees that any varying or additional terms contained in any purchase order or other written notification or document issued by

Customer in relation to the Services, the Unitrends Cloud Services or DRaaS shall be of no effect and all such terms or conditions shall be null and void. Customer acknowledges and agrees that Customer's agreement hereunder is not contingent upon the delivery of any future functionality or features not specified herein or dependent upon any oral or written, public or private comments made by Unitrends with respect to future functionality or features for the Services, the Unitrends Cloud or DRaaS. For the avoidance of doubt, Customer acknowledges and agrees that Unitrends' channel partners do not have the right to make modifications to the Agreement or to make any additional representations, warranties or commitments binding on Unitrends. Any item or service furnished by Unitrends in furtherance of the Unitrends Cloud Services, the Services and DRaaS, although not specifically identified herein, shall nevertheless be covered by the Agreement unless specifically covered by some other agreement entered into in written or electronic form between the parties. If there is a conflict among the terms of the documents, the order of precedence shall be as follows: (i) these Unitrends Cloud Terms and Conditions, (ii) the Schedules, (iii) the Acceptable Use Policy, and then (iv) the Order. Notwithstanding the foregoing, if an Order or Schedule explicitly identifies a provision in the Unitrends Cloud Terms and Conditions that the parties intend to be superseded or modified by a provision in the Order or Schedule, the provision of that Order or Schedule shall prevail

11.2 Amendment. The Agreement may be amended or supplemented only by a writing that refers explicitly to this Agreement and that is signed by both parties. Any modification or change in the Agreement proposed or offered by Customer shall not become a part of the Agreement unless accepted in a writing dated after the Service Effective Date and signed by an authorized officer of Unitrends. Should there be any conflict in terms between the Agreement and any other document, the terms and conditions set forth in the Agreement shall govern.

11.2 Waiver; Headings. No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether express or implied, will constitute consent to, waiver of, or excuse of any other, different or subsequent breach by either party. The

titles and headings herein are for reference purposes only and will not in any manner limit the construction of this Agreement, which will be considered as a whole.

11.3 Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree that any invalid provision will be deemed to be restated so as to be enforceable to the maximum extent permissible under law consistent with the original intent and economic terms of the invalid provision.

11.4 Assignment. Neither party will indirectly or directly transfer or assign this Agreement, in whole or part, without the prior written consent of the other party. Notwithstanding the foregoing, Unitrends may, without the prior written consent of

Customer, assign this Agreement to a subsidiary or affiliated entity as part of a divestiture, corporate reorganization or consolidation or to another party in connection with a merger, acquisition, or sale of substantially all assets or stock, provided the successor agrees in writing to assume all of the Unitrends' obligations hereunder. Additionally, Customer may, without the prior written consent of Unitrends, assign this Agreement to a subsidiary or affiliated entity as part of a divestiture, corporate reorganization or consolidation or to another party in connection with a merger, acquisition or sale of substantially all assets or stock, provided the successor agrees in writing to assume all of the Customer's obligations hereunder. Customer shall provide notice to Unitrends upon completion of any permitted assignment. Any assignments contrary to this section will be void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns. Customer acknowledges and agrees that Unitrends may use third party service providers in the ordinary course of business to provide the Services and the Unitrends Cloud.

11.5 Compliance with Laws. Each party shall be responsible for its own compliance with laws, regulations and other legal requirements applicable to the conduct of its business and this Agreement and agrees to comply with all such laws, regulations and other legal requirements. Customer will neither use nor allow the Services to be used for, any purposes prohibited by United States federal or state law.

Without limiting the foregoing:

Customer agrees to comply strictly with all laws and regulations relating to the use of the Services and Unitrends Cloud and acknowledges that Customer has the responsibility to obtain licenses to export, re-export, or import as may be required.

Customer may not use the Services or the Unitrends Cloud if Customer is a citizen, national, or resident of, or are under control of any country to which the United States has prohibited export. Each time Customer or its Users use Unitrends Cloud Customer represent, warrant, and covenant that:

Customer is not a citizen, national, or resident of, nor under the control of, any country to which the United States has prohibited export;

Customer will not download or otherwise export or re-export the Services, directly or indirectly, to such countries nor to citizens, nationals or residents of those countries;

iii. Customer is not listed on the U.S. Department of Treasury's Lists of Specially Designated Nationals, Specially Designated Terrorists, and Specially Designated Narcotic Traffickers, the U.S. Department of State's List of Statutorily Debarred Parties, or the U.S. Department of Commerce's Denied Persons List, Entity List, or Unverified List Table of Denial Orders;

Customer will not export or re-export the Services or DRaaS, directly or indirectly, in violation of the foregoing or to persons on the above mentioned lists.

11.6 Force Majeure. Except for Customer's payment obligations, neither party will be liable for any failure or delay in performance under this Agreement which is due in whole or in part, directly or indirectly, to any contingency, delay, failure, or cause of any nature beyond the reasonable control of such party. If, however, a party's performance is prevented for thirty (30) days or more, then the other party will be entitled to terminate this Agreement on written notice to the party suffering the force majeure at any time prior to resumption of performance by the party suffering the force majeure.

11.7 Governing Law; Jurisdiction. This Agreement will be governed by and construed under the laws of the United States and the Commonwealth of Massachusetts, without regard to its conflicts of laws principals. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods and UCITA will not apply to this Agreement. The parties hereby submit to the exclusive jurisdiction of, and waive any venue objections against, the state or federal courts located in Boston, Massachusetts, in any litigation arising out of or in connection with this Agreement.

11.8 Notices. All notices, consents and approvals under this Agreement must be delivered in writing by e-mail, by courier, by overnight mail service or by certified or registered mail (postage prepaid and return receipt requested) to the other party at: (i) for Customer, the address for Customer set forth in the Order (or if none is specified, that address to which Unitrends sends invoices) and (ii) for Unitrends, Unitrends' Legal Department at 200 Wheeler Road, Burlington, MA 01803, United States, and will be effective upon receipt. Either party may change its address by giving written notice of the new address to the other party in writing.

11.9 Limitation on Actions. Unless otherwise required by law, an action or proceeding by Customer to enforce an obligation, duty or right arising under this Agreement or by law must be commenced within one year after the cause of action accrues.

11.10 Third Party Beneficiaries. Customer acknowledges and agree that each member of the group of companies of which Unitrends may be the parent (or of which Unitrends may be a subsidiary) shall be third party beneficiaries to this Agreement and that such other companies shall be entitled to directly enforce, and rely upon, any provision of this Agreement that confers a benefit on (or rights in favor of) them. Other than this, no other person or company shall be third party beneficiaries to this Agreement. Neither party shall be deemed to be an employee, agent or other legal representative of the other party for any purpose whatsoever, or have the right or authority to assume or otherwise create any obligation or responsibility, express or implied on behalf of the other party or to bind the other party in any manner whatsoever.

11.11 Costs of Enforcement. Customer agrees to reimburse Unitrends for any costs or fees related to its enforcement of this Agreement, including without limitation the expert fees and attorney fees regularly charged by the experts and legal counsel chosen by Unitrends.

11.12 Publicity. Customer agrees to be identified as a customer of Unitrends and agree that Unitrends may refer to Customer by name, trade name and trademark, if applicable, and may briefly describe Customer's business in Unitrends's marketing materials and web site. Customer hereby grants Unitrends a license to use Customer's name and any of its trade names and trademarks solely in connection with the rights granted to Unitrends pursuant to this section.

11.13 U.S. Government Restricted Rights. If Customer is an agency of the United States Government, or the license granted hereunder is pursuant to a contract with either a defense or civilian agency of the United States Government, Customer agrees that the Services and DRaaS are provided with the commercial license rights stated herein and as set forth in FAR 52.244.6 and DFAR 227.7202.4, as applicable, or in successor provisions, as well as the terms set forth in this Agreement.