

Symform™ Reseller Agreement

Last updated: September 21, 2009

This Reseller Agreement ("Agreement") is a contract for a Reseller ("Reseller") of the backup and storage cloud service ("Service") of Symform, Inc. ("Symform") to enable End Users (defined below) to use the Service. By indicating your acceptance of this Agreement below, registering for a Reseller account or using the Service, you agree to the following Agreement on behalf of yourself individually and, if applicable, the business or organization ("Company") on whose behalf you register to become a Symform Reseller (as specified in your Reseller account registration information on the Symform website at symform.com ("Site")). You represent that either (a) your Company is registering to be the Reseller and you are an authorized representative of your Company with authority to bind your Company to this Agreement, in which case the term "you" refers collectively to both you individually and your Company, or (b) you will be using the Service as a Reseller solely in your personal capacity as an individual or sole proprietorship, in which case the term "you" refers to you individually. As used in this Agreement, the term "End User" means any individual, corporation, partnership, joint venture, association, organization, trust, governmental authority or other entity who uses the Software (defined below) to access the Service through your Reseller account. If you use the Software and Service for the storage of your own data, the term "End User" includes you.

Symform reserves the right to modify this Agreement at any time and in Symform's sole discretion by sending notice of changes to the email and/or mailing address specified in your Registration Data (defined below). Any changes will be effective thirty (30) days after Symform's notice to you of such changes (or such later effective date as may be specified in the notice). Symform also will indicate at the top of this Agreement posted on the Site the date such document was last updated. If you do not agree to the changes, you should terminate this Agreement cancel your Service before the effective date of such changes, as provided below. In addition, Symform may provide other methods by which you may accept or receive notice of this Agreement or changes to this Agreement.

IMPORTANT:

- YOU MUST PROVIDE A COPY OF THE SYMFORM CLIENT APPLICATION SOFTWARE END USER LICENSE AGREEMENT (AND ANY OTHER DISCLOSURES OR CONSENTS REQUIRED BY SYMFORM) TO EACH END USER, AS DESCRIBED BELOW. A COPY OF THE CURRENT END USER LICENSE AGREEMENT IS ATTACHED BELOW.
- YOU MUST ALSO NOTIFY AND OBTAIN THE PROPER CONSENT OF ALL END USERS WHO STORE DATA THROUGH, OR OTHERWISE USE, THE SOFTWARE PRIOR TO THEIR USE AS DESCRIBED BELOW OR OTHERWISE REQUIRED BY LAW.

1. Appointment.

- a. **Grant.** Subject to the terms and conditions of this Agreement, Symform appoints you as a nonexclusive Reseller to provide the Service to End Users (defined below) during the term of this Agreement, and grants to you a nontransferable, nonexclusive license to do the following during the term of this Agreement: (i) promote and market the Service to End Users, and (ii) use the Licensed Trademarks (defined below) to promote and identify the Service. Further, as a Reseller, you may install, use and update the latest version of Symform client application software (including any updates and upgrades, manuals, specifications, guidelines, application programming interfaces, developer tools, and other documentation and materials) provided by Symform to you ("Software") on your servers or the servers of End Users to facilitate End Users' use of the Service, pursuant to the terms and conditions of the end user license agreement accompanying such Software ("EULA"). You represent and warrant that you are authorized by End Users to install the Software on the servers of End Users. As used in this Agreement, the term "Licensed Trademarks" means the company name and current logo of Symform and such other trademarks as Symform may provide to you from time to time specifically for use as a Licensed Trademark under this Agreement.

- b. **Limitations on Use.** Section 2(a) sets forth the entirety of your rights to access, use, market, distribute and otherwise deal with the Service or Software. Symform reserves any rights not expressly granted to you in this Agreement, including, without limitation, the right to appoint other Resellers of the Service and to license and distribute the Software directly or indirectly to End Users and to third party original equipment manufacturers, value-added resellers or distributors for distribution. Without limiting the foregoing, you shall not:
- i. Access, decrypt, redistribute or otherwise use any data received from third party data storage servers and networks running the Software (“Nodes”) for storage on your Nodes or the Nodes of End Users, or interfere with the transfer of data between your servers and networks and other Nodes utilized by the Service, or attempt to do any of the foregoing;
 - ii. Distribute or sell the Software;
 - iii. Use the Software or Service in any unlawful manner or for any unlawful purposes;
 - iv. Use the Software for any purpose other than as authorized under this Agreement;
 - v. Modify, edit, reverse engineer, decompile, disassemble or attempt to discover any part of the Software or Service (including any code, technology, algorithm, technology or methodology used in connection with the Software or Service);
 - vi. Use or attempt to use the Reseller account that is not yours;
 - vii. Damage, disable, overburden or impair the Service (or Nodes, servers or networks used by the Service) or otherwise interfere with anyone's use of the Service;
 - viii. Use the Service for any mission or life-critical purposes, including the storage of any data which, if lost or corrupted, could endanger the health or safety of any person; or
 - ix. Use or facilitate the use of the Service in violation of any usage policies or guidelines published on the Site.
- c. **Use of the Licensed Trademarks.** You may include the Licensed Trademarks in all advertising, promotional literature, documentation and other marketing materials related to the Service (“Marketing Materials”) solely to identify your use and resale of the Service, provide any necessary disclosures required by applicable law or under this Agreement, and accurately describe the features of the Service and Software. You shall comply with the trademark guidelines and procedures established by Symform in your use of the Licensed Trademarks. You shall not adopt brands, logos, trademarks, trade names or other marks which are the same as or confusingly similar to the Licensed Trademarks. Symform may revoke or limit the foregoing rights to use the Licensed Trademarks at any time upon written notice to you. Without limiting the foregoing, you shall not issue any press release or other public statement regarding Symform or the Service without Symform's prior review and approval. Notwithstanding Symform's review or approval, you are solely responsible for your advertising, marketing and resale of the Service, including any Marketing Materials you use in connection with the Service. Neither party acquires any right or interest in the other's brands, logos, trademarks, trade names or other marks by virtue of this Agreement.
- d. **Feedback.** You agree that any suggestions or feedback provided by you (including your Company or any other employee or representative of your Company) to Symform regarding the Service (including the Site) or Software, other products and services of Symform, any Symform-related technologies, or other offerings of Symform or its affiliates that you provide to Symform (“Suggestions”) are non-confidential. You agree to grant, and hereby grant, to Symform a perpetual, worldwide, nonexclusive, royalty-free, fully sublicensable and irrevocable license to use and otherwise fully exploit any Submissions and all intellectual property and proprietary rights therein for any purposes. Further, you agree to waive and forego asserting any moral rights you may have in the Submissions. By submitting a Submission to Symform, you represent and warrant that you have authority to provide such Submission to Symform and grant the rights to the Submission granted herein, and that doing so does not and will not constitute the infringement or misappropriation of the trade secrets or other confidential information of any third party. You agree to execute such documents and otherwise provide such reasonable assistance, and to cause your affiliates to execute and provide such assistance, as is necessary to give full force and effect to this paragraph.

2. Reseller Responsibilities.

- a. **EULA.** Prior to installing the Software or enabling any End User to use the Software or Service, you shall furnish a copy of the current applicable EULA to each End User. The current version of the EULA for the Software is attached to this Agreement. From time to time, Symform may furnish revised versions of the EULA to you or require acceptance of a revised EULA to update or continue use of the Software. You will furnish a copy of such revised EULA to each End User within seven (7) days after your receipt of the revised EULA.
- b. **Disclosures.** You shall furnish to End Users copies of all notices and disclosures that Symform may provide to you from time to time. Upon request, you shall obtain and maintain a copy of written acknowledgements signed by authorized representatives of your End Users of their receipt of or consent to such notices and disclosures. You will furnish a copy of written such acknowledgements and consents to Symform upon request.
- c. **Marketing and Support.** In your promotion and marketing of the Service and support of End Users' use of the Service, you will (a) cooperate with any promotional, marketing or advertising programs sponsored by Symform, (b) maintain such organization and resources as necessary for performance of this Agreement, and (c) give immediate attention to and use best efforts to promptly and equitably respond to, adjust and settle (without incurring any obligation or liability on behalf of Symform) any complaints arising out of or in connection with your activities hereunder. You will not engage in any spamming activities in connection with the promotion or marketing of the Service and shall otherwise conduct any promotional, marketing and advertising activities relating to the Service in compliance with all applicable laws.
- d. **Systems.** You agree to operate and maintain all hardware, software, networks, Internet services and other equipment and services necessary to operate the Software and provide the Services for End Users.
- e. **Subcontractors.** You are fully responsible for the acts and omissions of your agents and subcontractors in connection with the Service.
- f. **No Unauthorized Warranties.** You will not make or extend on behalf of Symform any written or oral warranty, service level guarantees, or other assurances with respect to the Service or Software except as may be contained in the documentation furnished by Symform to you, as may be amended by Symform from time to time. You will indemnify, defend and hold harmless Symform, its affiliates, independent contractors and service providers, and each of their respective members, directors, officers, employees and agents (collectively, "Symform Parties") from any claims, damages, liability, losses, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or in connection with any such unauthorized representation or warranty. Symform's warranties and support obligations under this Agreement are solely for the benefit of you and may be asserted only by you and not by any End User. Symform's warranty and support obligations to any End User that uses the Software are limited to those obligations, if any, specified in the EULA. You shall promptly report to Symform all complaints of End Users related to the Service or Software (including warranty claims). Except as set forth in this Section 2(f), you will be responsible for all maintenance, warranty or other support for, and any representations or warranties made to, any End User with respect to the Service or Software or any of your products or services.
- g. **Compliance with Laws.** You shall comply with all applicable laws, regulations, rules, orders and other requirements, now or hereafter in effect, of any applicable governmental authority, in your performance of this Agreement and your distribution and use of the Software and Service. You acknowledge that the laws and regulations of the United States restrict the export and re-export of software, commodities and technical data of United States origin. You will comply with all export control laws and regulations of the United States in dealing with the Service and Software. Without limiting the foregoing, you will not use or allow the Service or Software to be used, downloaded or otherwise exported (i) by or to a national or resident of any country to which the U.S. has embargoed goods or services; or (ii) by or to anyone on the Specially Designated Nationals List, Entities List, Denied Persons List, the Debarred Parties List, and any other listing by a U.S. regulatory authority that restricts trade or business dealings with identified persons or entities. Further, you shall immediately notify Symform of any inquiries, discovery requests, subpoenas, court orders or other governmental

actions with respect to any matter relating to the Service or Software, except to the extent you are not permitted to do so under applicable law.

- h. **Unauthorized Use.** You shall promptly notify Symform of any unauthorized use of the Service or Software which comes to your attention. In the event of any such unauthorized use by your employees, agents or representatives, you shall use best efforts to terminate such unauthorized use and to retrieve any copy of the Software in the possession or control of the person or entity engaging in such unauthorized use. You shall immediately notify Symform of any legal proceeding initiated by you in connection with such unauthorized use. Symform may, at its option and expense, participate in any such proceeding and, in such event, you shall provide such authority, information and assistance related to such proceeding as Symform may reasonably request to protect Symform's interests.

3. Service; Reseller Registration.

- a. **Service Description.** The Service (together with the Software) enables you to (i) create encrypted versions of data for storage, (ii) distribute various fragments of the data to third party Nodes for storage, (iii) retrieve the data fragments, and (iv) recompile and decrypt the data fragments, provided that you have and maintain in good standing a Preferred Reseller account with Symform. Symform reserves the right to change or cancel the Service at any time. Symform may also make other related services available as part of the Service from time to time, and this Agreement will apply to such related services unless Symform specifically provides a separate agreement for such related services.
- b. **Registration.** Symform reserves the right to refuse registration for or refuse or limit access to a Reseller account to anyone in Symform's sole discretion. You agree to provide accurate, current and complete information about you on any and all registration forms on the Site or in connection with the Service ("Registration Data") and to maintain the security of the username and password associated with such Preferred Reseller account. You agree to maintain and promptly update the Registration Data, and any other information provided to Symform, to keep it accurate, current and complete. YOU UNDERSTAND THAT ANY PERSON WITH YOUR USERNAME AND PASSWORD WILL BE ABLE TO ACCESS AND USE THE RESELLER ACCOUNT, INCLUDING ANY DATA STORED THROUGH SUCH ACCOUNT. YOU ACCEPT ALL RISKS OF UNAUTHORIZED ACCESS TO AND USE OF THE PREFERRED RESELLER ACCOUNT BY MEANS OF THE USER NAME AND PASSWORD. You will promptly notify Symform if you discover or otherwise suspect compromise of such user name or password or any other security breaches related to the Service.
- c. **Disclosure and Use of Reseller Account and Related Information.** Although it is not Symform's preference to provide governmental authorities with access to Preferred Reseller account information, you acknowledge that Symform may be required to do so from time to time. As such, you authorize Symform to deliver or furnish any information about the Reseller account (including usage information and Registration Data), access to the Reseller account (including any data stored through such account), and such other information in connection with your use of the Service, to such governmental authorities as may order or demand the same, with or without notice to you or your End Users. You shall conspicuously disclose this obligation to each of your End Users prior to their use of the Software or Service.

4. Fees.

- a. **Service Fees.** Symform's fees for the Service are as set forth in the applicable pricing schedule posted to the Site or such other pricing schedule as Symform may separately provide to you ("Pricing Schedule"). Symform may change the Pricing Schedule from time to time by posting a revised Pricing Schedule to the Site or sending a revised Pricing Schedule to the email and/or mailing address specified in your Registration Data. You will pay to Symform the applicable fees for your use of the Service as set forth in the then-current Pricing Schedule. In the event Symform increases any fees for Service, you may terminate this Agreement immediately by sending written notice of termination to Symform within thirty (30) days after Symform announces such fee increase.

- b. **Taxes.** The fees payable under this Agreement are net amounts and do not include retail sales, use, value-added, foreign withholding or any other taxes except for income and business and occupation taxes levied on Symform with respect to such fees within the United States. All such taxes will be paid or reimbursed by you. You may be able to avoid certain taxes by furnishing Symform satisfactory evidence of exemption. If you are required to withhold any such taxes from the amounts payable to Symform under this Agreement, such amounts payable by you hereunder shall be increased to the amount necessary to make the actual net amount received by Symform equal to the fee amounts specified in this Agreement.
- c. **Payment.** Symform accepts payment by credit card, electronic funds transfer, or other means through one or more third party payments service providers as specified by Symform on the Site. By submitting your payment information on the Site, you authorize Symform or the applicable payments service provider to charge your card or other payment method for the applicable fees described in the Pricing Schedule. Except as otherwise stated on the Pricing Schedule or elsewhere on the Site, there are no refunds for amounts paid under this Agreement.
- d. **Reports and Audit.** Within fourteen (14) days after the end of each calendar month during the Term of this Agreement, you will provide to Symform an accurate written report in form and content acceptable to Symform detailing the identity and contact information of all End Users. You will promptly furnish to Symform such additional information regarding its activities under this Agreement as Symform may request. Further, Symform shall have the right, once per quarter, upon seven (7) days written notice, to audit and analyze your accounting and computer systems records to ensure compliance with this Agreement. If fees due are more than three percent (3%) in error, you shall reimburse Symform for its audit expenses and shall immediately pay any payment shortfall.

5. Term and Termination

- a. **Testing Phase.** Prior to the general public launch of the Service, Symform may conduct "alpha," "beta" and other tests of the Service (including the Site), Software, and related offerings (such period of time, the "Testing Phase"). During the Testing Phase, this Agreement and your access to and use of the Service may be terminated by Symform at any time, with or without notice to you, and you may terminate this Agreement by closing your Reseller account. Upon the general public launch of the Service after the conclusion of the Testing Phase, if you continue using the Service, this Agreement will automatically continue for the initial term as described below.
- b. **Term.** The initial term of this Agreement will commence upon the later of (i) the general public launch of the Service after the conclusion of the Testing Phase, or (ii) Symform's confirmation of your successful registration as a Reseller. The initial term of this Agreement will continue for one (1) year, unless sooner terminated under this Agreement. The initial term will automatically renew for successive one (1) year renewal periods unless either party gives the other party written notice of termination at least thirty (30) days before the end of the then-current term (the initial term together with all renewal terms and (as applicable) the Testing Phase, the "Term").
- c. **Termination without Cause.** Either party may terminate this Agreement in its sole discretion, for any reason or no reason and with or without cause, upon thirty (30) days written notice to the other party. In the event Symform modifies this Agreement as provided above, you may terminate this Agreement at any time prior to the effective date of such modification by sending written notice of termination to Symform.
- d. **Termination for Cause.** In the event of a breach of or default under of this Agreement by either party, the nondefaulting party may terminate this Agreement by giving the defaulting party written notice of the breach or default and the nondefaulting party's intention to terminate. The Agreement shall automatically terminate thirty (30) days after delivery of such notice unless the defaulting party cures the breach or default in all material respects before the expiration of the thirty (30) day period. Further, Symform may terminate this Agreement immediately upon written notice to you in the event of any of the following: (i) your attempted transfer or assignment of this Agreement or any right or obligation hereunder without Symform's prior written approval; (ii) any failure to pay, when due, any indebtedness owing

by you to Symform; or (iii) your breach of any terms of this Agreement regarding confidentiality, data security, compliance with laws, misuse of the Service or Software, or the provision of the EULA, notices and consents to and obtaining written confirmations or acknowledgments of agreement or consent from End Users.

- e. **Effect of Termination.** Upon the expiration or termination of the Term, all licenses granted in this Agreement will terminate and you will immediately cease to market, promote, sell, distribute or use the Service and cease use of the Licensed Trademarks. Your payment obligations under this Agreement and Sections 6, 7, 8, 9, 10, 11, and all other provisions that may reasonably be construed as surviving the termination or expiration of the Term, will survive the termination or expiration of the Term.

6. Disclaimers. THE SERVICE (INCLUDING THE SITE) AND SOFTWARE ARE PROVIDED "AS IS," WITH ALL FAULTS, DEFECTS AND ERRORS, AND WITHOUT WARRANTY OF ANY KIND. SYMFORM DISCLAIMS ALL WARRANTIES (EXPRESS OR IMPLIED AND ARISING BY LAW OR OTHERWISE) REGARDING THE SERVICE AND SOFTWARE AND THEIR PERFORMANCE OR SUITABILITY FOR YOUR INTENDED USE OR THE INTENDED USE OF ANY END USERS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. WITHOUT LIMITING THE FOREGOING, SYMFORM DOES NOT WARRANT THAT THE SERVICE OR SOFTWARE WILL BE FREE OF BUGS, ERRORS, VIRUSES OR OTHER DEFECTS, THAT THE SERVICE WILL BE AVAILABLE WITHOUT INTERRUPTION, OR THAT THE SOFTWARE OR SERVICE WILL PROTECT OR SECURE DATA FROM LOSS, CORRUPTION, DELETION, OR UNAUTHORIZED USE OR UNAUTHORIZED ACCESS. SYMFORM SHALL HAVE NO LIABILITY OF ANY KIND FOR THE USE OF OR INABILITY TO USE THE SERVICE OR SOFTWARE (INCLUDING ANY RESELLER ACCOUNT).

7. Indemnification. You will indemnify, defend and hold harmless the Symform Parties from and against all claims, damages, costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or related to (a) your use of, or inability to use, the Service or Software, (b) any End User's or other third party's use, or inability to use, the Service or Software facilitated through or on behalf of you, and (c) your breach of this Agreement (including your failure to provide any disclosures or obtain any consent from End Users as required by applicable law or under this Agreement).

8. Limitations

- a. **Excused Performance.** Symform will not be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond Symform's reasonable control.
- b. **Dollar Limitation.** SYMFORM'S LIABILITY (WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE WHETHER ACTIVE, PASSIVE OR IMPUTED) OR ANY OTHER THEORY) ARISING UNDER OR WITH REGARD TO THIS AGREEMENT OR THE SERVICE, SOFTWARE OR OTHER ITEMS FURNISHED HEREUNDER SHALL NOT EXCEED THE TOTAL FEES PAID BY YOU TO SYMFORM UNDER THIS AGREEMENT.
- c. **Limitation of Damages.** IN NO EVENT WILL SYMFORM HAVE ANY OBLIGATION OR LIABILITY (WHETHER BASED ON CONTRACT, WARRANTY TORT (INCLUDING NEGLIGENCE WHETHER ACTIVE, PASSIVE OR IMPUTED) OR OTHER THEORY) FOR THE COST OF COVER OR FOR ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LIABILITIES (INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF DATA, REVENUE, PROFIT OR BUSINESS) ARISING OUT OF OR PERTAINING TO THIS AGREEMENT OR THE SERVICE, SOFTWARE OR OTHER ITEMS FURNISHED HEREUNDER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. Confidentiality; Data Security

- a. **Proprietary Data.** During the Term of this Agreement and perpetually thereafter, you will protect any keys, passwords, and information you receive or to which you have access in

connection with the Service (collectively, "Proprietary Data"). You will not access, use or disclose any Proprietary Data except that Proprietary Data of an End User may be accessed, used or disclosed as expressly authorized by that End User subject to limitations under the EULA. You represent and warrant that you will not do or attempt to do any of the following with respect to third party data stored or transmitted using an End User's servers and networks in connection with the Service: attempt to defeat the encryption of such data; access, remove, disclose or alter such data; or prevent transmission or storage of such data. Notwithstanding the foregoing, you may disclose or produce third party data and Proprietary Data if and to the extent required by law under any discovery request, subpoena, court order or governmental action, provided that you give Symform and the owner of the Proprietary Data reasonable advance notice of the same so as to afford Symform and such owner a reasonable opportunity to appear, object and obtain a protective order or other appropriate relief regarding such disclosure.

- b. **Safeguards.** You are solely responsible for implementing and maintaining commercially reasonable, administrative, physical and technical safeguards ("Safeguards") on systems and servers you control used in connection with the Service..
- c. **Policies.** You shall comply with any written security policies that Symform provides to you or publishes to the Site, not less than thirty (30) days prior to the effectiveness of such written policies. Compliance with such policies shall not otherwise relieve you of your duties to protect the Proprietary Data.
- d. **Security Upgrades.** Symform may automatically download upgrades to the Software to the computer on which it is installed to update, enhance and further develop the Service. You shall not bypass any automatic update downloads or installations, and you shall comply with any notices Symform provides to you to download necessary security upgrades to the Software. Such upgrades shall be installed not less than twenty-four (24) hours following delivery of such notices.
- e. **Security Breaches.** You shall immediately notify Symform of any actual, probable or reasonably suspected Security Breach (defined below). You shall: (i) assist Symform in investigating, remedying and taking any other action Symform deems necessary regarding any Security Breach and any dispute, inquiry or claim that concerns the Security Breach; and (ii) shall provide Symform with assurance satisfactory to Symform that such Security Breach or potential Security Breach will not recur. Unless prohibited by an applicable statute or court order, you shall also notify Symform of any third-party legal process relating to any Security Breach, including, without limitation, any legal process initiated by any governmental entity (foreign or domestic). As used in this Agreement, "Security Breach" means any actual, probable or reasonably suspected breach of any safeguards or of any other actual, probable or reasonably suspected unauthorized access too, or acquisition, use, loss, destruction, compromise or disclosure of, any information maintained on your networks, systems and premises.
- f. **Equitable Relief.** In the event of any breach of this section, Symform and any affected owner of Proprietary Data may suffer irreparable harm and have no adequate remedy at law. In such event or the threat of any such event, Symform and the owner of such Proprietary Data will be entitled (in addition to any and all other remedies) to injunctive relief, specific performance and other equitable remedies without proof of monetary damages or the inadequacy of other remedies, and without necessity of posting a bond or other security.

10. Insurance. During the Term, you will maintain appropriate insurance coverage for your activities in furtherance of this Agreement (including, without limitation, general liability insurance and professional liability (errors and omissions) insurance, each with limits of not less than \$1,000,000 per claim). Such insurance will name Symform as an additional insured, contain a waiver of any rights of the insurer to subrogation against Symform and afford Symform not less than thirty (30) days advance notice of any cancellation or material change. Upon Symform's request, you will provide Symform with such certificates of insurance and other evidence of such insurance as Symform may reasonably request.

11. Miscellaneous

- a. **Independent Contractor.** You are an independent contractor, not an employee, agent, or franchisee of Symform. You will not represent or hold itself out as an employee, agent, or franchisee of Symform. You will not be entitled to and will not attempt to create or assume any obligation, express or implied, on behalf of Symform. This Agreement will not be interpreted or construed as creating or evidencing any association, joint venture, or partnership among the parties or as imposing any partnership or franchisor obligation or liability on any party.
- b. **Notices.** Any notice or other communication under this Agreement given by either party to the other shall be in writing. You agree that Symform may deliver notices to you to the email and/or mailing address specified in your Registration Data.
- c. **Assignment.** You may not assign this Agreement (by operation of law or otherwise) without the prior written consent of Symform, and any attempted assignment will be void. Subject to the foregoing restriction on assignment by you, this Agreement will be fully binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns.
- d. **Entire Agreement.** This Agreement constitutes the entire agreement, and supersedes any and all prior agreements, between Symform and you with regard to the Service and Reseller accounts. Symform will not be bound by, and specifically objects to, any term, condition, or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is proffered by you in any order, receipt, acceptance, confirmation, correspondence, or otherwise, unless Symform specifically agrees to such provision in writing signed by an authorized representative of Symform. Except as otherwise stated in this Agreement, no amendment of any of the provisions of this Agreement will be valid unless set forth in a written instrument signed by both parties.
- e. **Nonwaiver.** The failure of either party to insist upon or enforce strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provisions, rights, or remedies in that or any other instance; rather, the same will be and remain in full force and effect. Further, no waiver will be valid unless set forth in a written instrument signed by the party to be bound thereby.
- f. **Governing Law; Jurisdiction.** Unless expressly prohibited by local law, this Agreement is governed by the laws of the State of Washington, without regard to any conflict of law principles to the contrary. You hereby irrevocably consent to jurisdiction of the state and federal courts located in King County, Washington with respect to any proceeding regarding this Agreement or the Service. You will not prosecute any action, suit, proceeding or claim arising under or by reason of this Agreement or the Service except in such courts.
- g. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the remainder of this Agreement will remain in full force and effect.

Symform™
End User License Agreement (“EULA”)

This End User License Agreement (“EULA”) is a contract between you and Symform, Inc. ("Symform" or "we") to use the Symform backup and storage cloud software ("Software") to access and use the Symform backup and storage cloud service (“Service”) for offsite backup and storage of data from your computer or server using a distributed online network of third party systems and networks. This EULA applies to clients and customers of a Symform Reseller who install or use the Software to access and use the Service through the Reseller’s Symform account, as well as to any Symform Reseller who uses the Software for the storage of its own data.

PLEASE READ THIS EULA CAREFULLY. IT CONTAINS IMPORTANT TERMS THAT AFFECT YOU AND YOUR USE OF THE SOFTWARE AND SERVICE. BY CLICKING "I ACCEPT," BY INSTALLING,

COPYING OR USING THE SOFTWARE, OR BY USING THE SERVICE, YOU AGREE TO THE FOLLOWING EULA ON BEHALF OF YOURSELF INDIVIDUALLY AND, IF APPLICABLE, THE BUSINESS OR ORGANIZATION ("ORGANIZATION") ON WHOSE BEHALF YOU INSTALL, COPY OR USE THE SOFTWARE OR USE THE SERVICE. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT INSTALL, COPY, OR USE THE SOFTWARE OR USE THE SERVICE.

You represent that either (a) you are an authorized representative of the Organization with authority to bind the Organization to this EULA, in which case "you" refers collectively to both you individually and the Organization, or (b) you will be using the service solely in your individual capacity as an individual or sole proprietorship, in which case the term "you" refers to you individually.

1. **Consent to Use and Transfer of Data.** You understand and agree to the following use of data from your computer or server. The Software is designed to access and copy the data from your computer or server that you choose to back up then encrypt your copied data and shred it into small fragments. Your encrypted data fragments will then be sent over the Internet and randomly distributed for storage on a number of data storage servers and networks running the Software ("Nodes"). These Nodes are owned or operated by you or your service provider(s) and other third party users of the Service. By using the Software and Service you consent to the transfer of your encrypted data fragments to these third parties for the purposes of storage of your data.

2. **Protection of Your Data.** You will restrict access to the Software and any encryption keys to your employees and service providers who have a need to access your data. You are solely responsible for protecting the key in your, or your representative's, possession from disclosure, loss or unauthorized use.

3. **Consent to Use of Your Computer or Server for Storage and Transmission.** The Software may store and transfer encrypted fragments of data of other third party users of the Service on and using your computer or server. By using the Software or Service you consent to the use of your computer or server for storage and transfer of such third party data. You represent and warrant that you will not attempt to defeat the encryption of such data; access, remove, disclose or alter such data; or prevent transmission or storage of such data.

4. **Privacy.** In order to operate and provide the Service, we collect certain information about and from you. The Software sends non-personally identifiable information about your data and your IP addresses to storage Nodes operated by third parties. In addition, the software transmits information about service performance, your computer or server, your service use, information relating to your data (such as file names) and the data you store (including the identity of the Nodes to which your data has been transmitted and stored as well as information about the encryption used for your data) to Symform. We may automatically download upgrades to the Software to your computer to update, enhance and further develop the Service. In particular, we may access or disclose information about or from you, in order to: (a) comply with the law or respond to lawful requests or legal process; (b) protect the rights or property of Symform or our customers, including the enforcement of our agreements or policies governing your use of the Service; or (c) act on a good faith belief that such access or disclosure is necessary to protect the personal safety of Symform employees, customers or the public. Information and data collected from you may be stored and processed on servers and Nodes in the United States and any other country. By using the service, you consent to transfer of such information and data outside of your country.

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