

Cloud Backup Terms and Conditions

www.redeyenetWORKS.com/legal/cloudbackupTERMS)

The Cloud Backup Terms and Conditions along with an applicable Statement of Work (“SOW”) provided (herein, the “Agreement”) are entered into by RedEye Network Solutions, LLC (“RedEye”) and the entity or person agreeing to these terms (“Customer”, “You”, or “Your”) and govern Customer’s access to and use of Cloud Backup Service (the “Services.”). If you are accepting on behalf of Customer, you represent and warrant that (i) you have full legal authority to bind Customer to this Agreement; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of Customer, to this Agreement. If Customer has entered into other agreements with RedEye, the terms of this Agreement shall take precedence for Services.

SERVICE OFFERING. RedEye agrees to provide the Services referenced in this Agreement. This Agreement between Customer and RedEye sets forth the legal rights and obligations governing RedEye’s provisioning or delivering the Services to Customer and the use of the Services by Customer. In addition, RedEye may update Terms and Conditions available at www.redeyenetWORKS.com/legal/cloudbackupTERMS from time to time and should be periodically reviewed by Customer. Acceptance of Agreement or use of the Services by Customer constitutes acceptance.

RedEye agrees to provide the Services subject to this Agreement, within the United States of America. The Customer agrees to provide RedEye with any and all necessary technical data, and other current and accurate information, reasonably required by RedEye to setup the Services.

ORDERING. RedEye reserves the right to indicate the method(s) by which it will receive and accept orders for a given Service.

DEFINITIONS.

Cloud Backup refers to the end-to-end delivery and management of cloud backup repository that a customer transmits Customer Data to for storage in the event a customer needs to restore it at a later date.

Customer Data refers to any customer content and application data that is transmitted from the customer location to RedEye’s Services.

Acceptable Use Policy refers to an agreement that outlines the constraints or appropriate use of access to the RedEye network and services.

Subscription Package refers to the features available to a customer that are paid at a recurring price at regular intervals for access to the services.

Cloud Storage refers to the site physical or virtual location that data is stored external to the customer’s network.

Termination Date refers to the calendar date that a customer will no longer use or receive services.

Time and Materials refers to an open-ended scope of work that reimburses RedEye based on an established hourly rate and for any material costs used to complete work by RedEye.

1. SERVICE and SERVICE USE.

1.1 Description. Cloud Backup Services is a hosted and co-managed cloud backup repository populated with data and files by Customer.

1.2 Subscription Package. Customers may order a pre-defined Subscription Package that includes descriptions, features, and pricing set forth at <https://redeyenetWORKS.com/subscriptions>.

1.3 Subscription Packages are restricted to a set capacity for both virtual and/or physical machines and storage of data. Additional capacity can be added to the subscription package upon request at any time during the terms of the Agreement for an additional fee that will be added to the monthly subscription price to include the cost of Services and taxes where applicable.

Customers are permitted to make changes to the Subscription Package at any time to upgrade or downgrade the original SOW Subscription Package. Additional charges will apply for upgrades to a higher tier Subscription Package. RedEye does not charge penalty fees for making changes to the Subscription Package.

1.4 Storage of data. By using the Services, Customer acknowledges that Customer Data will be stored in RedEye's Cloud Storage.

1.5 Restoration of Files. Customer may initiate the restoration of backup files to restore Customer Data. If desired, RedEye will assist Customer in the restoration of data from the Services for up to two (2) hours per month at no additional cost and upon request within a commercially reasonable response time. Unused hours during the monthly period do not rollover. Additional hours of assistance will be billed by RedEye to Customer at RedEye's standard Time and Materials rate at the time of the request.

1.6 Deletion of Data. A request to delete Customer Data during the use of the Services requires a written notice to RedEye via electronic mail or letter from an authorized person. RedEye reserves the right to validate the request and/or requestor before executing the request.

1.7 Web Portal. RedEye will assign Customer access to a management web portal. Customer must provide RedEye a public internet protocol (IP) address that will be permitted access to the management web portal. Customer is responsible for protecting the user account and password assigned to Customer to access the management web portal.

1.8 Acceptable Use Policy. Use of the Services is subject to RedEye's Acceptable Use Policy found at: <https://redeyenetWORKS.com/legal/aup> ("AUP"). As the Customer, You acknowledge that You have read the AUP and agree to be bound by the current version of the AUP, which may be updated from time to time. You are encouraged to review the current version of the AUP periodically for updates of Your own accord.

1.9 Support. Request for support is available at: <https://portal.redeycare.com>. RedEye will provide support only to the contacts listed on Customer's account. Customer is responsible for protecting the user account(s) and password(s) assigned to Customer to access the support portal.

1.10 Free Trial Use. Use of Services under the Free Trial is subject to the terms of the Agreement except as otherwise specified in the Free Trial Terms and Conditions herein. RedEye may provide the Services to Customer at no charge specifically for trial purposes ("Free Trial"). Only new RedEye Cloud

Backup customers are eligible to participate in the Free Trial. Existing Cloud Backup Services customers are excluded from the Free Trial.

1.10.2 Subject to Customer's compliance with this Section, RedEye grants Customer a limited, personal, non-exclusive, non-transferable, non-assignable, revocable right to use the Free Trial solely for internal, non-commercial evaluation purposes for thirty (30) days from Customer's access to the Free Trial, unless otherwise specified by RedEye in writing in its sole discretion ("Trial Term").

1.10.3 Customer may receive periodic communications from RedEye at the contact information submitted/linked during the Free Trial sign up and associated with the Free Trial account, such as training and on-boarding materials related to the Services.

1.10.4 RedEye warranty and indemnity do not apply to use of the Services under the Free Trial.

1.10.5 RedEye may terminate or modify the Free Trial at any time with or without notice to Customer.

1.10.6 When the Free Trial ends or terminates, Customer will no longer have access to the Services. If the Customer selects to use the Services, the Customer will be governed by the Agreement and not the Free Trial terms and conditions.

1.10 Out of Scope Services. If Customer requires assistance with other services not defined in this Agreement, RedEye will bill the Customer at the standard Time and Materials rate at the time of the request. RedEye will assume no responsibility other than to deliver such services in good faith and best effort unless a separate agreement detailing the scope and deliverables is executed.

1.11 Maintenance. Customer acknowledges and agrees that RedEye may take one or more portions of Services offline to perform planned routine maintenance and major upgrades. The standard maintenance window is every Friday from 3PM to 5PM Central Time. RedEye will notify Customer for any downtime that extends past the standard maintenance window or that is unplanned and cannot be completed within the standard maintenance window.

2. LIMITATIONS AND ADDITIONAL REQUIREMENTS.

2.1 RedEye will coordinate with Customer the establishment of an encryption password for all Customer backup activities. RedEye will not possess nor have access to the encryption password. Customer acknowledges that RedEye cannot assist to restore data for which Customer has lost the associated password, and it is recommended that Customer establish a secure storage method for the password. Assistance to change this secure password will be performed upon Customer request by RedEye.

2.2 Customer is responsible for establishing and maintaining an available and stable Internet connection that can accommodate the network traffic transactions between Customer and RedEye, and all associated costs.

2.3 Data is encrypted in transit between the Customer and RedEye Cloud Storage. Customer is solely responsible for data at rest encryption prior to transmitting data backups to RedEye Cloud Storage. RedEye does not have or need access to Customer data.

2.4 Customer is responsible for selecting appropriate Customer Data to backup to Cloud Storage, the testing of the restoration of backups, and the monitoring of the backup job(s) status. Customer assumes all risk of the loss, damage, corruption, or mistransmission of Customer data ("Loss of Data") in any way related to or resulting from Customer's use of the Service (including, without limitation, the Internet connection, the equipment, the updates, the deliverables, and the services).

2.5 RedEye at its sole discretion will perform software updates on its network and systems related to the Services. RedEye will also remotely assist Customer with updating or upgrading the Services-related software implemented on Customer site upon request per the terms of the Agreement. Customer must provide RedEye temporary remote access to the Customer network to provide assistance. RedEye is not liable for any losses or damages related to the lack thereof or updates and/or upgrades of the Services software on Customer site.

2.6 Customer is responsible for understanding the regulatory requirements applicable to its business and selecting and using the Services in a manner that complies with the applicable requirements.

3. SOFTWARE LICENSE. RedEye grants Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable, standard software license at no additional cost to connect the Customer to RedEye and transfer backup data, and solely for the intended purpose of the Service. Customer's use of the software is subject to the terms and conditions of the End User License Agreement (EULA). Customer is free to use any other available features of the license but support of the use of such features is not supported by RedEye and must be used at Customer's own discretion.

3.1 Customer will not, and will not allow any third party to: (i) modify, alter, tamper with, repair, or otherwise create derivative works of the software; (ii) sell, sublicense, rent, lease, distribute, market, or commercialize the software; (iii) decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source for any portion of the software, except and solely to the extent that the foregoing restriction is impermissible pursuant to applicable law or third party license; (iv) remove, alter or obscure any proprietary notices of RedEye, its licensors or suppliers included in the software; or (v) publicly disseminate performance information about or analysis of the software, including benchmarking test results. No third party may access, view, or use the software under this Agreement.

4. RATES AND PAYMENT.

4.1 In a "Monthly Subscription," You, the Customer, sign up for the Services on a month-to-month basis and accept responsibility for all recurring charges until you terminate Your subscription per the terms of this Agreement.

4.2 Customer will pay all applicable taxes related to the Services, e.g., sales, use, value added, etc. other than the tax based on RedEye's net income or assets. Applicable taxes are a separate line item on

the invoice. If Customer is tax exempt, Customer shall provide a valid copy of its tax exemption certificate before RedEye initiates invoicing.

4.3 Customer has the right to dispute any charge on a RedEye invoice agreeing to remit full payment for any undisputed charges on the invoice to RedEye prior to the invoice due date. Customer agrees to submit written documentation to RedEye to identify and substantiate the disputed amount. If Customer does not report a billing dispute within sixty (60) days following the invoice date, Customer shall have waived its right to dispute that invoice. RedEye and Customer agree to use commercially reasonable efforts to resolve any billing dispute within ten (10) business days after RedEye receives written notice of the dispute. Any disputed charges subsequently resolved in favor of Customer shall be credited on the next invoice following final resolution. Any disputed charges determined to be payable to RedEye shall be due within ten (10) business days following final resolution.

4.4 RedEye may evaluate and determine at its sole discretion it necessary to revise the Subscription Package pricing from time to time. RedEye will notify Customer of changes to the pricing via electronic mail at least thirty (30) days prior to the effective date of the pricing change. Continued use of the Services will constitute consent to such changes and such use shall be subject to this Agreement. If Customer does not agree to the revised Subscription Package pricing, Customer must notify RedEye via letter to not continue Services in accordance with section 5. Term and Termination and discontinue using Services at the end of the current monthly contract term.

5. TERM AND TERMINATION.

This Agreement will be binding and effective upon acceptance of the SOW or use of the Services and will continue on a month-to-month basis until such time it is terminated. Either Party may terminate the Agreement and Services at any time for any reason or no reason upon thirty (30) days written notice via letter to the other party.

5.1 To the extent the Services have been prepaid prior to the Termination Date of the Services by Customer, RedEye will reimburse Customer on a pro-rata factor over the contract period for any unused months of prepaid Services exceeding the Termination Date.

5.2 AUP Violations. Where Customer does not meet the intent of the AUP, RedEye may terminate the Agreement and the Services used by the Customer in accordance with the terms of the AUP.

6. EFFECTS OF TERMINATION.

6.1 Upon termination or expiration of the Agreement for any reason, all licensed rights granted by RedEye in the Agreement will immediately cease to exist. Customer must promptly discontinue all use of Services.

6.2 Customer Data will be destroyed within thirty (30) days after the effective Termination Date from Services.

7. INTELLECTUAL PROPERTY; OWNERSHIP; GRANT OF LICENSES. Except as otherwise provided herein or in any applicable SOW, the parties agree that RedEye retains all rights, title, and interest in and

to (i) RedEye Services, documents, designs, inventions, products, pricing, costs, future plans, business information, process information, technical information, customer lists, computer programs, computer systems, data, computer documentation, ideas, processes, techniques, know-how, knowledge and other proprietary and/or tangible materials created by or for, or licensed to RedEye; and (ii) any updates, upgrades, improvements, modifications, or derivative works of any of the foregoing ((i) and (ii) collectively, "RedEye Technologies.") including all Intellectual Property Rights. Customer agrees that RedEye Technologies is provided on a non-exclusive basis and not sold, and that no transfer of ownership of Intellectual Property Rights will occur. You further acknowledge and agree that portions of the RedEye Technologies, including but not limited to the source code and the specific design and structure of individual modules or programs, constitute, or contain trade secrets and other Intellectual Property Rights of RedEye and its licensors.

8. CONFIDENTIALITY.

A party disclosing Confidential Information shall herein be referred to as the "Disclosing Party," and a party receiving Confidential Information hereunder shall herein be referred to as the "Receiving Party."

8.1 Confidential Information. "Confidential Information" shall mean, without limitation, (i) any idea, proposal, plan, information, procedure, technique, formula, technology or method of operation, any written or oral information of a proprietary nature, and any intellectual property owned or licensed by a Disclosing Party or relating to a Disclosing Party's or any of its principals' or affiliates' business, projects, operations, finances, activities or affairs, whether of a technical nature or not (including trade secrets, know-how, processes, and other technical or business information), and any proposed change thereto; (ii) any other information disclosed by a Disclosing Party and designated by a Disclosing Party as confidential; and (iii) the Services and Customer data. By way of illustration, but not limitation, Confidential Information includes, without limitation, information regarding (i) all of the computer software and technologies, systems, structures, architectures, processes, formulae, compositions, improvements, devices, know-how, inventions, discoveries, concepts, ideas, designs, methods, and information and databases developed, acquired, owned, produced or practiced at any time by a Disclosing Party or any affiliate thereof, software programs and documentation licensed by third parties to a Disclosing Party, and any other similar information or material; (ii) customer lists, telemarketing lists, vendor lists, fee schedules, employee personnel information and policies and procedures; (iii) a Disclosing Party's products and services; (iv) business or financial information directly or indirectly related to a Disclosing Party's companies and investments; and (v) other processes and procedures employed by a Disclosing Party.

8.2 Notwithstanding Section 8.1, Confidential Information shall not include information: (i) in the public domain (other than as a result of a breach of this Agreement); (ii) in a Disclosing Party's possession prior to its receipt from Receiving Party pursuant to this Agreement; (iii) independently developed by a Receiving Party or known through a party other than Disclosing Party, which party has no duty of confidentiality to Disclosing Party, as demonstrated by written record; or (iv) disclosed pursuant to applicable law or regulation or by operation of law, provided that the Receiving Party may disclose only such information as is legally required, and provided further that the Receiving Party shall provide reasonable notice to the Disclosing Party of such requirement and a reasonable opportunity to object to such disclosure.

8.3 Obligations. The Receiving Party will only use the disclosing party's Confidential Information to exercise its rights and fulfill its obligations under the Agreement, and will use commercially reasonable care to protect against disclosure of the Disclosing Party's Confidential Information. The Receiving Party may disclose Confidential Information only to its affiliates, officers, employees and consultants who have an absolute need to know such Confidential Information who are informed of and agree to be bound by the confidentiality obligations set forth herein, provided that Receiving Party will be liable for breach by any such person or entity.

8.4 Required Disclosure. Notwithstanding any provision to the contrary in this Agreement, the Receiving Party may also disclose Confidential Information to the extent required by applicable federal, state, and local laws and regulations; provided that the Receiving Party uses commercially reasonable efforts to (a) promptly notify the other party of such disclosure before disclosing and (b) comply with the other party's reasonable requests regarding its efforts to oppose the disclosure. Notwithstanding the foregoing, subsections (a) and (b) above will not apply if the Receiving Party determines that complying with (a) and (b) could (i) result in a violation of applicable federal, state, or local law and regulations; (ii) obstruct a governmental investigation; or (iii) lead to death or serious physical harm to an individual.

8.5 Title. Except as otherwise provided herein, title or the right to possess Confidential Information as between the parties shall remain in Disclosing Party. Receiving Party shall not gain any interest or rights in or to the Confidential Information by virtue of its being disclosed to Receiving Party.

8.6 Return of Confidential Information. Unless the Receiving Party has a license to use the Confidential Information pursuant to Section 7, upon any termination of this Agreement, or at any time upon Disclosing Party's request, Receiving Party shall promptly, at Disclosing Party's option, return or destroy all (or, if Disclosing Party so requests, any part) of the Confidential Information previously disclosed, and all copies thereof, and Receiving Party shall certify in writing as to its compliance with the foregoing.

8.7 Injunctive Relief. The parties agree that, in the event of any breach of any provision hereof, the non-breaching party will not have an adequate remedy in money or damages. The parties therefore agree that, in such event, the non-breaching party shall be entitled to obtain injunctive relief against such breach in any court of competent jurisdiction, without the necessity of posting a bond even if otherwise normally required. Such injunctive relief will, in no way, limit the non-breaching party's right to obtain other remedies available under applicable law.

9. Service Warranties and Exclusions.

9.1 Customer and RedEye each agree that each has the requisite authority to enter into this Agreement, and that neither is prohibited from entering into it.

9.2 Warranties of RedEye. RedEye represents and warrants that: (a) Services will be performed in a commercially reasonable manner in accordance with the standards generally prevailing in the industry; (b) it has all necessary rights and authority to execute and deliver this Agreement and perform its obligations hereunder; (c) neither this Agreement nor RedEye's performance of its obligations hereunder will place RedEye in breach of any other contract or obligation and will not violate the rights of any third

party; and (d) the Services produced by RedEye will not infringe upon or violate any patent, copyright, trade secret or other property right of any former employer, client, customer or other third party.

9.3 Warranties of Customer. Customer represents and warrants to RedEye that: (i) it has all the necessary rights and authority to execute and deliver this Agreement and perform its obligations hereunder; (ii) neither this Agreement nor Customer's performance of its obligations hereunder will place Customer in breach of any other contract or obligation and will not violate the rights of any third party; (iii) Customer understands and appreciates the risks inherent to Customer and Customer's business that comes from accessing the Internet; and (iv) Customer owns, or has a license to use, all data transmitted and stored using Services.

9.4. DISCLAIMER

THE CLOUD BACKUP SERVICE IS PROVIDED ON AN AS-IS AND AS-AVAILABLE BASIS, AND WITH ALL FAULTS. OTHER THAN AS EXPRESSLY SET OUT IN PARAGRAPH 9.2, REDEYE HAS NOT, AND DOES NOT, MAKE ANY WARRANTIES, EITHER EXPRESS OR IMPLIED. THIS DISCLAIMER INCLUDES, BUT IS NOT LIMITED TO, WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND TITLE. REDEYE DOES NOT WARRANT THAT THE CLOUD BACKUP SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT ANY ADVICE GIVEN IN A COMMUNITY FORUM IS RELIABLE, ACCURATE OR WILL NOT DAMAGE CUSTOMER. REDEYE IS NOT LIABLE, AND EXPRESSLY DISCLAIMS ANY LIABILITY, FOR THE CONTENT OF ANY DATA TRANSFERRED EITHER TO OR FROM CUSTOMER, OR STORED BY CUSTOMER OR AN END USER. REDEYE SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES REGARDING CLOUD BACKUP SERVICES PROVIDED BY THIRD PARTIES, REGARDLESS OF WHETHER THOSE CLOUD BACKUP SERVICES APPEAR TO BE PROVIDED BY REDEYE. NO WARRANTIES MADE BY THESE THIRD-PARTY ENTITIES TO REDEYE SHALL BE PASSED THROUGH TO CUSTOMER, NOR SHALL CUSTOMER CLAIM TO BE A THIRD-PARTY BENEFICIARY OF SUCH WARRANTIES. SOME STATES DO NOT ALLOW REDEYE TO EXCLUDE CERTAIN WARRANTIES. IF THIS APPLIES TO CUSTOMER, CUSTOMER'S WARRANTY IS LIMITED TO 90 DAYS FROM THE EFFECTIVE DATE FOR THAT INDIVIDUAL ASPECT OF THE PARTICULAR CLOUD BACKUP SERVICE.

10. Indemnification

10.1 RedEye Indemnity. RedEye shall indemnify, defend, and hold harmless Customer from and against any claims, liabilities, losses, expenses, or damage awards ("Damages") caused by the performance of Services by RedEye that infringes any patent, copyright, trade secret, trademark, or intellectual property of a third party. RedEye's obligations hereunder do not apply with respect to any claim that arises out of: (a) any unauthorized use, reproduction or distribution of Services; (b) providing industry standard functionality; (c) Services being modified after delivery without RedEye's prior written authorization; or (d) Customer's continued use of the allegedly infringing Services after RedEye modified Services to be non-infringing. If any claim arises, RedEye may, at its sole option and expense: (A) replace or modify the affected Services to make it non-infringing; (B) procure a license for Customer's continued use of the affected Services; or if (A) and (B) are not commercially viable (as determined by RedEye in its sole discretion), terminate Customer's rights thereto, in which case RedEye will process a pro-rated refund for any unused Services payments to Customer. This Section 10.1 (Indemnification by RedEye)

states Customer's sole and exclusive remedy, and RedEye's sole liability, with respect to infringement of third-party intellectual property rights.

10.2 Customer Indemnity. Customer agrees to defend and indemnify RedEye from and against any loss, damage, or cost arising from a third-party claim that Customer's provision or use of Customer Data violates a third party's rights.

11. Insurance Requirements

The liability insurance limits required herein may be obtained through any combination of primary, excess or umbrella liability insurance. Upon written request, each party will deliver to the other party certificates of insurance which evidence the minimum levels of insurance set forth above and provide not less than thirty (30) days prior written notice of material modification to or cancellation of any herein required policy. Such insurance policies shall provide that the insurance company and any approved self-insured employer waive all rights of subrogation for such amounts against the other party and its respective affiliates, officers, directors, and employee.

12. Limitation of Liability

12.1 IN NOT EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER ANY CLAIM OR CIRCUMSTANCE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST REVENUES, LOSS OF DATA, BUSINESS INTERRUPTION, OR LOST GOODWILL) ARISING OUT OF OR RELATING TO THIS AGREEMENT WHETHER SUCH CLAIMS ARISE IN CONTRACT, TORT, STRICT LIABILITY, INDEMNIFICATION OR OTHER LEGAL THEORY, EVEN IF SUCH DAMAGE WAS REASONABLY FORSEEABLE OR SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, AND NOT WITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

12.2 REDEYE SHALL NOT BE LIABLE TO CUSTOMER FOR: (i) ANY DAMAGE THAT CUSTOMER MAY SUFFER ARISING OUT OF THE USE OF OR THE INABILITY TO USE ANY EQUIPMENT, SOFTWARE OR SERVICE UNLESS SUCH DAMAGE IS CAUSED BY REDEYE'S GROSS NEGLIGENCE OR WILFULL MISCONDUCT; (ii) SERVICE IMPAIRMENTS CAUSED BY ACTS WITHIN THE CONTROL OF CUSTOMER, ITS EMPLOYEES OR AUTHORIZED AGENTS; (iii) INTEROPERABILITY OF SPECIFIC CUSTOMER APPLICATIONS UNLESS AGREED UPON IN NTHE APPLICABLE SOW; (iv) PERFORMANCE IMPAIRMENTS ON THE INTERNET; (v) ANY COST OF PROCURING SUBSTITUTE EQUIPMENT, SOFTWARE OR SERVICES; OR (viii) DAMANGES RESULTING FROM DELAYS CAUSED BY A FORCE MAJEURE EVENT.

12.3 NOTWITHSTANDING ANYTHING CONTAINED HEREIN, WITH RESPECT TO ANY CLAIMS ARISING FROM ANY ACTUAL OR ALLEGED BREACH BY REDEYE OF ANY REPRESENTATION, WARRANTY, TERM OR CONDITION CONTAINED IN THIS ADDENDUM RELATED TO THE SERVICES PERFORMED HEREUNDER, THE RECOVERABLE DAMAGES TO CUSTOMER SHALL NOT EXCEED THE FEES PAID BY CUSTOMER FOR THE SPECIFIC SERVICES GIVING RISE TO THE DAMAGES CLAIM. THE LIMITATION OF LIABILITY IS CUMMULATIVE AND NOT PER INCIDENT.

12.4 RedEye does not guarantee that the Services will eliminate all risk or prevent damage

from system or network security breaches including, but not limited to: (i) unauthorized or electronic access; (ii) internal abuse of access rights; (iii) external snooper, hacker, or denial or service attacks; or (iv) viruses, Trojan horses, time bombs, etc., unless caused or introduced by RedEye's gross negligence or willful misconduct.

13. Force Majeure. Neither party shall be deemed in default or otherwise liable for any delay in or failure of its performance under this Agreement or any SOW (other than payment obligations) by reason of any Act of God, fire, natural disaster, accident, riot, act of government, strike or labor dispute, shortage of materials or supplies, failure of transportation or communication or of suppliers of goods or services, or any other cause beyond the reasonable control of such party. Performance times shall be considered extended for a period of time equivalent to the time lost because of such delay.

14. Governing Law; Entire Agreement. This Agreement and each SOW shall be governed by and construed in accordance with the laws of the State of Arizona, without regard to its conflict of provision of law. The exclusive jurisdiction and venue for all legal actions arising out of or related to this Agreement shall be in courts of competent subject matter jurisdiction located in the Maricopa County, Arizona, and the parties hereby consent to the jurisdiction of such courts. This Agreement, together with any SOW executed pursuant hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all previous or contemporaneous agreements, proposals, understandings and representations, written or oral, with respect to the subject matter hereof. Neither this Agreement nor any SOW may be modified or amended except in a writing signed by duly authorized representatives of each party. To the extent there is such a conflict between the terms and conditions of a SOW and the terms and conditions of this Agreement, the terms and conditions of the SOW shall govern and control unless otherwise specified in the SOW. CUSTOMER AND REDEYE EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

15. Survival

In the event of any termination of this Agreement, the parties agree that Sections 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 16, 17, and 18 shall survive such termination. In addition, certain terms in the SOW shall also survive the termination of the Agreement if so specified therein. In addition, the parties agree that certain other terms and conditions may, by their nature, survive any termination of this Agreement.

16. Waiver. No waiver or forbearance by either party hereto of any rights hereunder in any particular instance shall act to preclude such party from exercising those rights in any other instance.

17. Assignment. The parties shall not assign their rights, duties, or obligations under this Agreement, in whole or in part, without the prior written consent of the other party.

18. Conflict. The terms of this Agreement, including all SOW executed pursuant hereto, shall prevail notwithstanding any different or additional terms and conditions of any purchase order or other form for purchase or payment submitted by Customer to RedEye, all of which are hereby rejected.

19. Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

20. Counterparts. This Agreement may be executed on separate counterparts, any one of which need not contain signatures of more than one party, but all of which when taken together shall constitute one and the same agreement.