

## End User License Agreement

These online terms and conditions govern your, your agents', your representatives', and any other person or entity you allow to have access to this Portal (collectively defined as "**User**"), access to and use of the Services (defined below) and Portal ("**End User License Agreement**" or "**EULA**"). This EULA also provides the terms by which PacketFabric, Inc., its affiliates, subsidiaries, and assigns (collectively referred to as "**PacketFabric**") agree to provide the User a limited, personal, nontransferable, non-exclusive, revokable, and non-sublicensable license of use to the Portal and Services ("**License**"). PacketFabric and User may be referred to individually as "**Party**" and collectively as "**Parties**."

**1. Portal.** PacketFabric provides User a License to use PacketFabric's proprietary platform to electronically perform various administrative functions relating to the Services ("**Portal**"). User may designate which Users are allowed to perform which functions, via various access levels and permissions on the Portal account. User is solely responsible for establishing and maintaining the security and confidentiality of its usernames, passwords, and other security data. User is solely liable for its use of the Portal. User agrees to immediately notify PacketFabric if there is any unauthorized use of User passwords or other security data, or any use inconsistent with the terms of this EULA. PacketFabric may change or discontinue any application program interface ("**API**") for the Services from time to time but will use commercially reasonable efforts to continue supporting the previous version of any API changed. PacketFabric reserves the right to temporarily deactivate User's access to the Portal in the event no activity has been logged for at least six (6) months; in the event User wants access, PacketFabric will reactivate the account with new logins.

**2. Services and Support.** User has access to the Portal due to its contractual relationship with its provider who has ordered certain services from PacketFabric ("**Service(s)**"). In the event that User's provider stops paying PacketFabric, or breaches the contract entered into by and between PacketFabric and User's provider, PacketFabric may terminate User's access to the Portal and Services. In exchange for User's adherence to the terms and conditions of this EULA, PacketFabric will provide User with Support. As used herein, "**Support**" shall mean responding to User's inquiries and assisting User with questions regarding the use of Services.

**3. Suspension of Service.** In the event that User's use of the Service or Portal (i) poses an immediate and severe security risk to the Services or any third-party, (ii) could subject PacketFabric, its affiliates, or any third-party to immediate liability, or (iii) in PacketFabric's reasonable judgement, could be fraudulent, PacketFabric may suspend User's access to or use of the Portal and all or any portion of the applicable Service(s) immediately. PacketFabric will remove the suspension promptly after the cause(s) of the suspension have been removed.

**4. Intellectual Property.** User may not transfer, redistribute, or sublicense the License granted herein. User may not copy, reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Portal, Services, any updates, or any part thereof. PacketFabric, or its affiliate, R-Stor, Inc., own all intellectual property rights in and to the Portal and Services. Nothing contained in this EULA grants User any rights, implied or otherwise, to the PacketFabric, or its affiliate, R-Stor, Inc.'s content or any of its intellectual property.

**5. Mutual Warranties.** Each Party represents and warrants that it has the legal power to enter into and adhere to this EULA. PacketFabric represents and warrants that it will comply with all laws, rules, and regulations applicable to its performance of obligations under this EULA. User represents and warrants that it will comply with all laws, rules, and regulations applicable to its use of the Portal and Services.

**6. No Portal, Service, nor Support Warranty.** PACKETFABRIC MAKES NO GUARANTEE, WARRANTY, NOR REPRESENTATION THAT ANY SERVICE NOR ACCESS TO THE PORTAL WILL BE ERROR-FREE OR UNINTERRUPTED. USER AGREES THAT FROM TIME TO TIME PACKETFABRIC MAY REMOVE THE SERVICES FOR INDEFINITE PERIODS OF TIME, CANCEL THE SERVICES AT ANY TIME, OR OTHERWISE LIMIT OR DISABLE YOUR ACCESS TO THE SERVICES WITHOUT NOTICE TO YOU. PACKETFABRIC MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES AS TO ANY SERVICE PROVISIONED, SUPPORT PROVIDED, OR USE AND FUNCTIONALITY OF THE PORTAL. USER EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE SERVICE AND PORTAL IS AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PORTAL AND ANY SERVICES PERFORMED OR PROVIDED BY PACKETFABRIC ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. PACKETFABRIC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, PERFORMANCE, OR INTEROPERABILITY OF THE SUPPORT, PORTAL, OR SERVICE WITH ANY USER-PROVIDED EQUIPMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

**7. LIMITATION OF LIABILITY.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES. TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL PACKETFABRIC BE

LIABLE FOR, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, PERSONAL INJURY, CORRUPTION OR LOSS OF DATA, SALES, FAILURE TO TRANSMIT OR RECEIVE ANY DATA, BUSINESS INTERRUPTION, DATA USE, GOODWILL, OR REPUTATION, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THE SERVICE, SUPPORT PROVIDED, OR USE AND FUNCTIONALITY OF THE PORTAL, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE) AND EVEN IF PACKETFABRIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO USER. In no event shall PacketFabric's total liability to you for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of three hundred and fifty dollars (\$350.00). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

**8. PacketFabric's Policies.** User is responsible for all information and data transmitted or accessed using the Portal or Services. Users consents to PacketFabric's collection, use and disclosure of information about User and each of them in accordance with PacketFabric's privacy and acceptable use policies found here: <https://packetfabric.com/legal>

**9. Indemnification.** User will indemnify, defend, and hold PacketFabric harmless from and against any claims that arise or are alleged to have arisen as a result of negligent or intentional acts or omissions of User or breach by User of any terms of this EULA. PacketFabric will give VAR prompt notice of third-party claims against PacketFabric or its Affiliates, and cooperate in the investigation, settlement, and defense of such claims.

**10. Governing Law.** This EULA and the relationship between User and PacketFabric shall be governed by the laws of the state of Colorado, excluding its conflicts of law provisions. User agrees to submit to the personal and exclusive jurisdiction of the courts located within the county of Denver, Colorado, to resolve any dispute or claim arising from this EULA and the relationship between the Parties.

**11. Consent.** By clicking "Consent", creating an account in the Portal, or using the Portal, Services, or seeking PacketFabric's Support, User understands and agrees: (a) this agreement was sent in furtherance of User's request for access to PacketFabric's Portal, use of PacketFabric Services, or seeking PacketFabric's Support; (b) to be bound by all the terms and conditions of this EULA, which User acknowledges having reviewed and agrees to be bound by; (c) User had the option to sign a paper copy of the agreement with a handwritten signature, but User instead elects to accept with a click acceptance; and (d) User has the authority to enter into this EULA, and that if User does not have the authority or does not agree with the terms provided herein, in with not use the Services and will contact User's provider to return the Services.

**Exhibit 1**  
**Transmission Services Exhibit**

This Transmission Services Exhibit is attached to and incorporated into that certain EULA entered into between the undersigned Parties.

**1. Services.** The terms and conditions of this Transmission Exhibit apply only to Cloud Router Service, Core Services, Transporter, and Type 2 Services. **“Cloud Router Service”** is a Border Gateway Protocol (BGP) enabled, distributed, layer 3 routing service which provides User with any to any connectivity between: i) all major cloud service providers, via a direct, private connectivity service (not the Internet), ii) Core Services, or iii) any remote Internet-attached device. **“Core Services”** means a physical port on equipment owned by PacketFabric, or a virtual circuit, that provides direct connectivity to User’s equipment and does not include any ancillary Type 2 Services. **“Transporter”** is a cloud-to-cloud data transmission service allowing User to move large objects from one cloud service provider to another cloud service provider via a fully integrated API connection between two cloud service providers. **“Type 2 Services”** means services procured by PacketFabric from a third-party service provider on User’s behalf, including, for example, local access services from a User’s premise location to a PacketFabric point-of-presence (POP), cross-connects within a data center, or other network service provider offers integrated into the Portal.

**2. Provisioning of Services, other than Type 2 Services.** Upon full execution of the Order, VAR is responsible for activating its account in the Portal in order to allow its User to receive the Services. User may need to obtain cross-connect services from the data center provider in order to make use of the Services. The ordering, payment, and disconnection of cross-connects is User’s responsibility and will not alter the Billing Start Date for the Services. The Billing Start Date is the date the Services are available for User’s use.

**3. Provisioning of Type 2 Services.** Delivery of Type 2 Services is dependent on the underlying provider; PacketFabric will work with User and the underlying provider to coordinate desired delivery timelines but is not responsible for any delays caused by the underlying provider. Where an Order also includes Type 2 Services, the Billing Start Date for any Services dependent on Type 2 Services will be the same date as the associated Type 2 Services. The Billing Start Date for Type 2 Services is the date the Services are available for User’s use.

**4. Service Level Agreement (“SLA”).** PACKETFABRIC MAKES NO GUARANTEE THAT ANY SERVICE WILL BE ERROR-FREE OR UNINTERRUPTED. As such, User’s sole and exclusive remedy for any Service Outage shall be an outage credit provided to User’s billing provider as more specifically delineated in the SLA entered into with PacketFabric and User’s billing provider.

**5. User Data.** All of the Service provided in this Transmission Exhibit involve Ethernet transmission of User’s Data. In order for User’s Data to be transmitted to a recipient, it must contain routing instructions such as IP addresses and packet header information which PacketFabric’s system uses to create a communication channel between the sender and the recipient of such User’s Data. PacketFabric does not access User’s Data, nor does it utilize technology to intercept, record or capture User’s Data. The User’s routing instructions used to route the User’s Data is deleted immediately after the communication channel between the sender and recipient is terminated. Given that PacketFabric does not have access to User’s Data, User is solely responsible for its content, protection, and encryption. PacketFabric does not assume any obligations with respect to User’s Data other than as expressly set forth in this Transmission Exhibit or the Agreement or as required by applicable law.

**6. User’s Personal Information.** As provided in the T&Cs, PacketFabric offers User the ability to manage and order Services via its Portal. User’s use of such Portal will require User to input User’s authorized representatives, contact information, and billing information. If User uses the Portal to manage or order Services, PacketFabric will adhere to all security and privacy laws required for such information in accordance with the Data Process Exhibit attached to and incorporated into this Transmission Exhibit as Schedule 1.

**7. Termination by User for Convenience.** User may terminate a Service for convenience at any time during its Service Term, subject to the early termination charge, if any, specified below; however, User must pay all amounts due and owing before the termination is effective. When requesting to disconnect a Service, User is responsible for delivering a disconnect completion notice for any and all cross-connects related to that Service; User will continue to be charged for the Service until the related cross-connect is disconnected.

**7.1 Month-to-Month Order.** An Order having a one-month Initial Period, or in month-to-month renewal status, may be terminated or reduced anytime, with 30 days’ notice, without any early termination charge.

**7.2** Orders of more than one month. If User terminates or reduces the quantities of an Order prior to the end of the Initial Period, User shall pay an early termination charge equal to 50% of all MRCs for Core Services for the remainder of the Initial Period, and 100% of all MRCs for Type 2 Services, storage service for the remainder of the Initial Period.

**Schedule 1**  
**Data Processing Addendum**

1. Data Processing. PacketFabric does not extract, compile, store, synthesize or analyze any User Data which traverses through PacketFabric's network during User's use of the Service. PacketFabric, however, expressly acknowledges that User Data is Confidential Information and exclusively owned by User. No title to or ownership of any of User Data or other Confidential Information of User, is transferred to PacketFabric under this Addendum. PacketFabric represents and warrants to User that it will comply, at its sole expense, with all federal, state, and local laws, regulations, codes, executive orders, and other legal requirements, that apply to PacketFabric and the T&Cs, including without limitation all applicable privacy and data security laws.
2. Ownership and Rights in User Data. User is solely responsible for the content of all User Data. User will encrypt, secure and maintain all rights in its data. PacketFabric does not assume any obligations with respect to User Data other than as expressly set forth in the T&Cs, this Addendum, or as required by applicable law. As a general matter, PacketFabric will not have access to, and will not attempt to have access to, the User Data traversing through PacketFabric's network during User's use of the Service, and therefore will not copy, modify, or disclose the User Data, except if required by law.
3. Portal. Although PacketFabric does not have access to the User Data which traverses through PacketFabric's network during User's use of the Service, PacketFabric will have user accounts, contact information, configuration and history data in the event User uses PacketFabric's online Portal ("**User Account Data**"). PacketFabric will use, at a minimum, industry standard encryption, technical and organizational security measures to transfer User Account Data in a manner designed to protect the integrity and privacy of User Account Data and guard against unlawful or unauthorized access or use.
4. Security of Portal. PacketFabric will maintain sufficient procedures to detect and respond to any unauthorized, access, possession, modification, disclosure, use or other security breaches involving its Portal. PacketFabric will: (a) notify User as soon as reasonably practicable, but in no event, more than forty-eight (48) hours after it becomes aware of any actual or reasonably suspected security breaches or unauthorized or attempted access to User Data within the Portal or control of PacketFabric; and (b) furnish User with all details of the unauthorized or attempted access, possession, disclosure, use or knowledge of such breach. PacketFabric will fully cooperate with User in investigating such breach or unauthorized access and preventing the recurrence of any unauthorized or attempted possession, use of the User Data. PacketFabric will take all action to identify, mitigate and remediate the effects of such breach and implement any other reasonable and appropriate measures in response to the breach. PacketFabric will also provide User with all available information regarding such breach to assist User in implementing its information security response program, and if applicable, in notifying its customers. In the event of a breach or threatened breach of this Transmission Exhibit by PacketFabric, User shall, in addition to any other rights or remedies it may have, be entitled to obtain equitable relief, including an injunction, without the necessity of posting any bond or surety.
5. Privacy and Data Security. In connection with this Addendum, PacketFabric represents, warrants, and covenants that PacketFabric, including without limitation PacketFabric personnel and any authorized subcontractors, will not access nor otherwise process any Personally Identifiable Information. If at any time PacketFabric determines that it has accessed Personally Identifiable Information, or may require access to Personally Identifiable Information in connection with this Addendum, PacketFabric shall: (i) notify User immediately in writing; (ii) maintain strict confidentiality and security measures to protect the Personally Identifiable Information; (iii) not disclose the Personally Identifiable Information to any other party; (iv) notify User immediately if there is any potential or actual breach of security involving the Personally Identifiable Information; and (v) execute additional privacy and data security contractual terms with User and any of its Affiliates as required in User's sole judgment to comply with applicable privacy and data security laws in all relevant jurisdictions, including but not limited to the following, in each case, as amended or supplemented: the Gramm-Leach-Bliley Act ("**GLBA**"), the Dodd-Frank Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Truth in Lending Act, the Service members Civil Relief Act, the Telephone Consumer Protection Act, the Fair Debt Collection Practices Act, the CAN-SPAM Act, California Financial Information Privacy Act, the Federal Trade Commission Act, state data breach and data security laws, international data protection and security laws, including but not limited to Directive 95/46/EC of the European Parliament and of the Council and, when effective, the General Data Protection Regulation (the "**EU Data Law**"), and analogous local, state, federal, and international laws relating to the processing, privacy, usage, protection and security of PII. If, in User's reasonable judgment, the performance of the Services would violate any applicable law, or in the event the Parties are unable to reach agreement on additional contractual terms required by subpart (v) above, User may require PacketFabric to immediately suspend the Services. In the event PacketFabric needs to suspend User's use of the Service, such action shall not constitute a default under the T&Cs. In such event, the Parties will use commercially reasonable efforts to implement an alternative method of performing the Services. If an alternative method cannot be reasonably

implemented, the T&Cs will be terminated and PacketFabric will refund any fees pre-paid by User for Services not performed or not delivered.

- a. Personally Identifiable Information. As used in this Section, the term “**Personally Identified Information**” or “**PII**” means any (a) information that identifies or can be used to identify an individual either alone or in combination with other readily available data; (b) personally identifiable financial or insurance information, including but not limited to “non-public personal information” as that term is defined in GLBA; and (c) any other combination of data that, if compromised, would require notice or reporting under any applicable Privacy Laws.

## Exhibit 2 Storage Services Exhibit

This Storage Services Exhibit ("**Storage Exhibit**") is attached to and incorporated into that certain EULA entered into between the Parties.

**1. Services.** The terms and conditions of this Storage Exhibit apply only to PacketFabric's "**Storage Service**" which is a S3 (Amazon Simple Storage Service) compatible object storage repository, an internal replication, and retention system. Additionally, the Storage Service includes user management tools, access interfaces, and billing tools via PacketFabric's software-as-a-service ("**SaaS**") platform. The term "**SaaS**" shall also include all updates, upgrades, enhancements, accompanying documentation, functionality, and tools provided via the software.

**2. Software Use.** Subject to the terms and conditions of the Agreement, User is granted a limited, personal, non-transferable, non-exclusive, revokable, and non-sublicensable license of use to the Storage Service during the Service Term. PacketFabric and its licensors shall retain sole and exclusive ownership of the SaaS (and all whole or partial copies thereof), including all intellectual property rights therein. User acknowledges that it has and shall acquire no rights therein, other than the limited rights expressly granted under this Storage Exhibit.

**3. Security and Access.** With regard to the Storage Service and those locations where any User's Data is processed by PacketFabric, PacketFabric will maintain and enforce safety, physical and computer system security procedures and safeguards that are at least equal to industry standards for such types of service locations. Additionally, PacketFabric will adhere to the processing (as defined in the GDPR and CCPA) requirements applicable to User's Data and User's personal information input into the SaaS and Portal, as more specifically delineated in the Data Protection Exhibit attached to and incorporated into this Service Exhibit as Exhibit B. "**CCPA**" is the California Consumer Privacy Act of 2018 and "**GDPR**" is the General Data Protection Regulation (EU) 2016/679.

- a) User acknowledges that PacketFabric exercises no control over the content of the information passing through User's use of the Services. User acknowledges that PacketFabric is a passive conduit for the content of its customers, and as such has no control over any such content. With this in mind, User acknowledges that, except as required by applicable law, PacketFabric will have no liability hereunder for the content of any materials sent, posted, linked or otherwise communicated by its customers, nor does PacketFabric have the obligation to control or monitor any of the foregoing.

**4. Security Incident Reporting.** PacketFabric will report to User any actual or suspected Security Incident or a suspected event that is believed to be sufficiently plausible to warrant further investigation. "**Security Incident**" means any actual or suspected unauthorized access to or use of any User's property or Confidential Information. Upon request from User, PacketFabric will reasonably cooperate in the investigation of any Security Incident and will produce logs and other documentation from the device(s) which are, or may be, related to a Security Incident. Except as required by Applicable Law, PacketFabric will not disclose to third parties any actual or suspected Security Incident without User's prior written approval.

**5. Export Control Restrictions.** User agrees that its use of the Storage Service shall comply with all export control laws and agrees to indemnify, defend, and hold harmless PacketFabric from any liability, claim, loss or expense suffered or incurred by PacketFabric as a result of a breach of this section.

**6. Termination by User.** User understands and agrees that the Storage Service provided pursuant to an Order shall become a non-cancellable, binding obligation for the purchase of the Storage Service for the duration of the Service Term provided in the Order.

**7. Service Level Agreement ("SLA").** PACKETFABRIC DOES NOT GUARANTEE THE STORAGE SERVICE WILL BE ERROR-FREE, NOR DOES PACKETFABRIC GUARANTEE THE STORAGE SERVICE WILL NEVER EXPERIENCE UNAVAILABILITY. In the event the Storage Service experiences unavailability PacketFabric will provide User's billing provider an outage credit as more specifically delineated in the SLA entered into with PacketFabric and User's billing provider.

**SCHEDULE A**  
**DATA PROTECTION AGREEMENT (“DPA”)**

This DPA applies to all activities related to the Agreement and in which employees of PacketFabric or third parties commissioned by PacketFabric may Process Personal Data on behalf of User. It contains, in conjunction with the Agreement, the documented instructions for the Processing of Personal Data as well as the subject-matter, duration, nature, purpose of the Processing, and shall govern the rights and obligations of the parties in connection with the Processing of Personal Data.

**1. Definitions**

- 1.1 For the purpose of this DPA (i) as the context requires, the reference to “User” in this DPA may include its customers, agents, and users (as defined in the T&Cs); (ii) “**Data Controller**” means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data; (iii) “**Data Processor**” means a natural or legal person, public authority, agency or other body which processes Personal Data on behalf of the Data Controller; (iv) “**Personal Data**” means any information relating to an identified or identifiable natural person (“**Data Subject**”) or household; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person; (v) “**Processing**”, “**Process**”, “**Processed**” means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction; (vi) “**Sell**” means any sharing or disclosure of Personal Data to a third party in exchange for monetary or other valuable consideration.

**2. Processing Personal Data on behalf of User**

- 2.1 Any Processing of Personal Data by PacketFabric under this DPA shall occur only:
- 2.1.1 on behalf of User; and
  - 2.1.2 in accordance with the Agreement; and
  - 2.1.3 for the purpose of fulfilment of User’s instructions.
- 2.2 Without limiting the generality of Sections 2.1.1 through 2.1.3, PacketFabric agrees that it shall not: (i) Sell the Personal Data; (ii) retain, use, or disclose the Personal Data for any purpose other than for the specific purpose of performing functions under the Agreement, including retaining, using, or disclosing the Personal Data for a commercial purpose other than performing functions under the Agreement; (iii) retain, use, or disclose the Personal Data outside of the direct business relationship between PacketFabric and User. PacketFabric hereby certifies that it understands the restrictions set forth in this Section 2.2 and will comply with them.
- 2.3 User’s instructions for the Processing of Personal Data shall comply with applicable data protection laws and regulations. User shall have sole responsibility for the legitimacy, adequacy and accuracy of Personal Data and the means by which User acquired or collected Personal Data. If PacketFabric considers that an instruction of User may violate applicable data protection regulations, it shall notify User accordingly without any undue delay. This subsection 2.3 does not create an obligation of PacketFabric to actively monitor User’s instructions for legal compliance.
- 2.4 This DPA and the Agreement are User’s complete and final instructions at the time of signature of this DPA to PacketFabric for the Processing of Personal Data. However, such instructions may be amended, supplemented or replaced by User in documented form at any time (new instruction). If such new instructions from User exceed the scope of the Agreement, they shall be considered as request to amend the Agreement and the Parties shall commence good faith negotiations on this change request.
- 2.5 If, for any reason, PacketFabric is unable to comply with an agreed instruction, PacketFabric will inform User of this fact without undue delay. User may then suspend the transfer of Personal Data to PacketFabric, restrict the access to it, request all Personal Data to be returned to User and / or terminate the Agreement as per the terms of the Agreement.
- 2.6 PacketFabric will Process Personal Data as necessary to perform the Storage Services and as further instructed by User in its use of the Storage Services.
- 2.7 PacketFabric will Process Personal Data for the duration of the Agreement, unless otherwise agreed upon in writing or required / allowed by applicable law.
- 2.8 The categories of data subjects affected by the Processing of Personal Data on behalf of User within the scope of this DPA result from the Agreement and in particular from User’s individual usage of Storage Services or other technology solutions



provided by PacketFabric. The categories of data subjects typically include: employees, agents, advisors, freelancers of User (who are natural persons), etc.

- 2.9 The types of Personal Data affected by the Processing on behalf of User within the scope of this DPA result from the Agreement and in particular from User's individual usage of (and input into) the Storage Services or other technology solutions provided by PacketFabric. They typically include: name, contact information (company, title / position, email address, phone number, physical address), connection data, location data, video / call (recordings) data and metadata derived thereof, etc.

### 3. PacketFabric's personnel

- 3.1 PacketFabric shall:
  - 3.1.1 ensure all employees involved in Processing of Personal Data on behalf of User have committed themselves to confidentiality in writing or are under an appropriate statutory obligation of confidentiality, are prohibited from Processing Personal Data without authorization and have received appropriate training on their responsibilities; and
  - 3.1.2 appoint in country / global data protection officer, to the extent required by the applicable law, and publish the contact details.

### 4. Security of processing

- 4.1 PacketFabric has implemented and shall maintain technical and organizational security measures that are appropriate with respect to the Processing of Personal Data that is undertaken on behalf of User. PacketFabric shall ensure a level of security appropriate to the risk of varying likelihood and severity for the rights and freedoms of natural persons and regularly check their abidance.
- 4.2 PacketFabric shall be entitled to modify its technical and organizational measures as long as an at least equivalent level of security appropriate to the risk of varying likelihood and severity for the rights and freedoms of natural persons is maintained. Additional technical and organizational measures and information concerning such measures may be specified in the Agreement.

### 5. Sub-processors (sub-contractors) and international Personal Data transfers

- 5.1 PacketFabric may engage sub-processors (sub-contractors) to Process Personal data on behalf of User and shall comply with any applicable data privacy law regarding the engagement of sub-processors (sub-contractors). PacketFabric shall make sure that at least equivalent data protection obligations, as set out in this DPA, are imposed on all sub-processors Processing Personal Data on behalf of European Economic Area or Switzerland ("EEA / CH") based Users by way of a contract or other legal act, in particular providing sufficient guarantees to implement appropriate technical and organizational measures.
- 5.2 Only applicable for EEA / CH based Users: A list of sub-processors that may be engaged by PacketFabric to Process Personal Data on behalf of EEA / CH based Users can be requested by emailing legal@PacketFabric.com Any objections of this list of sub-processors shall be sent by e-mail to security@PacketFabric.com (i) referencing the full legal name (and other credentials) of User and the affected Agreement, (ii) including the copy of the respective purchase order, and (iii) providing the reason for the objection. If User exercises its right to objection, PacketFabric shall at its choice and sole discretion:
  - 5.2.1 refrain from using the objected sub-processor to Process Personal Data on behalf of User and confirm this to User in writing, or
  - 5.2.2 contact User and seek for an agreement on mitigation of the reason for the objection. If an agreement between the parties is reached, User shall revoke the objection, or
  - 5.2.3 have the right to terminate the Agreement entirely or only with respect to the Processing on behalf of User for which the objected new sub-processor shall be engaged.
- 5.3 PacketFabric shall comply with any applicable data privacy law regarding international transfers of Personal Data. For any transfer of Personal Data from the EEA / CH to a country outside the EEA / CH the requirements of Chapter V GDPR must be fulfilled.
  - 5.3.1 The transfers of Personal Data between PacketFabric Affiliates shall be governed by PacketFabric's Binding Corporate Rules. The PacketFabric Binding Corporate Rules (Processor) Policy is available by requesting via email to legal@PacketFabric.com and is incorporated herein by reference.
  - 5.3.2 If PacketFabric transfers Personal Data originating from the EEA / CH to third party sub-processors (i.e., PacketFabric's sub-contractors that are not PacketFabric Affiliates) located in countries outside the EEA / CH that have not received a binding adequacy decision by the European Commission, such transfers shall be subject to (i) the terms of Standard Contractual Clauses (as per European Commission's Decision 2010/87/EU); or (ii) other appropriate transfer mechanisms that provide an adequate level of protection in compliance with the GDPR.

## 6. Requests from Data Subjects

- 6.1 PacketFabric shall, in accordance with applicable laws, promptly notify User if PacketFabric receives a request from Data Subject to exercise his rights, such as: right of access, right to rectification, restriction of Processing, erasure (“right to be forgotten”), data portability, object to the Processing, or right not to be subject to an automated individual decision making, etc. Taking into account the nature of the Processing, PacketFabric shall assist User by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of User’s obligation to respond to Data Subject request under applicable data protection laws and regulations, including complying with a Personal Data deletion request if required by law. In addition, to the extent User, in its use of the services and / or products and / or other technology solutions provided by PacketFabric, does not have the ability to address Data Subject Request, PacketFabric shall upon User’s request assist User in responding to such Data Subject request, to the extent PacketFabric is legally permitted to do so and the response to such Data Subject request is required under applicable data protection laws and regulations. To the extent legally permitted, User shall be responsible for any costs arising from PacketFabric’s provision of such assistance.

## 7. Notification and incidents

- 7.1 PacketFabric shall:
- 7.1.1 Notify User of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed ("**Personal Data Breach**") without undue delay after becoming aware of it;
- 7.1.2 Promptly provide User with full cooperation and assistance in respect of any Personal Data Breach and all information in PacketFabric's possession concerning the Personal Data Breach, including the following: (i) the possible cause and consequences of the breach; (ii) the categories of Personal Data involved; (iii) a summary of the possible consequences for the relevant Data Subjects; (iv) a summary of the unauthorized recipients of Personal Data; and (v) the measures taken by PacketFabric to mitigate any related risk and / or loss or damage or (potential loss or damage);
- 7.1.3 Not make any announcement or publish or otherwise authorize any broadcast of any notice or information about a Personal Data Breach (the "**Breach Notice**") without the prior written consent from User; and prior written approval by User of the content, media and timing of the Breach Notice unless such Beach Notice is mandatory under the applicable law.

## 8. Assistance to User

- 8.1 Upon written request of User and subject to reasonable remuneration which shall be subject to a separate agreement, PacketFabric shall assist User in ensuring compliance with any obligations applicable to User as per Articles 32 (Security of processing) 35 (Data protection impact assessment) and 36 (Prior consultation) GDPR, taking into account the nature of processing and the information available to PacketFabric. To the extent any other applicable data privacy law requires PacketFabric to assist User in ensuring compliance with such law, PacketFabric shall provide the mandatory assistance to User, subject to a separate agreement.

## 9. Return and deletion of User Personal Data

- 9.1 Personal Data (including any copy of it) shall not be kept longer than is required for the Processing purposes, unless (i) a longer retention period is required by applicable law or (ii) User instructs PacketFabric in writing (a) to keep certain Personal Data longer and PacketFabric agrees to follow such instruction or (b) return or delete certain Personal Data earlier.
- 9.2 The return of any data storage medium provided by User to PacketFabric shall be conducted without undue delay (i) after termination / expiration of the Processing activity or (ii) earlier as instructed by User.

## 10. Audits

- 10.1 Upon prior written request by User PacketFabric shall supply User with all information necessary to effectively perform an audit on PacketFabric’s compliance with the terms of this DPA.
- 10.2 Upon prior written notice and within a reasonable term PacketFabric shall grant User access to its data Processing facilities, data files and documentation relevant for the Processing activities during its usual business hours without disturbances to the normal course of operations for the purpose of auditing PacketFabric’s compliance with the terms of this DPA. For clarity purposes PacketFabric is not under an obligation to provide User with an access to its systems which Process Personal Data of other PacketFabric’s customers / Users (Data Controllers). The engagement of a third- party auditor to conduct the audit on behalf of User shall be subject to PacketFabric’s prior written consent, which may only be refused on due cause, and to an executed written confidentiality agreement between the third-party auditor, User and PacketFabric. User will provide PacketFabric any audit report(s) generated in connection with any audit under this Section 10.2. User may use the audit

report(s) only for the purposes of meeting its regulatory audit requirements and / or confirming compliance with the requirements of this DPA. The audit report(s) shall constitute confidential information of the parties under the terms of the Agreement. This right to audit may be exercised once a year, unless any specific cause requires exceptional further audits.