

MRE TECHNOLOGY SERVICES, LLC ("MRETS")

STANDARD TERMS AND CONDITIONS OF SALE

FOR TECHNOLOGY PRODUCTS AND SERVICES

1. Offer and Acceptance: MRETS offers to sell and deliver products and services (referred to herein as "products") in accordance with the terms and conditions set forth herein. Acceptance of this offer is expressly limited to such terms. MRETS hereby objects to and rejects any additional or different terms proposed by Buyer, including those contained in Buyer's purchase order, unless MRETS expressly agrees to such terms in writing.
2. Prices and Releases: MRETS's price in effect on the actual ship date for the quantity actually shipped shall apply.
3. Title and Delivery: If products are shipped from MRETS facilities, shipments inside the U.S. shall be delivered F.O.B. MRETS's offices in Houston, Texas. Shipments outside the U.S. shall be delivered FCA (Incoterms 2000) Buyer's designated carrier. Title and liability for loss or damage shall pass to Buyer upon MRETS's delivery to Buyer's designated carrier. Any subsequent loss or damage shall not relieve Buyer from its obligations. Buyer shall reimburse MRETS for insurance and transportation costs on international shipments and shall be responsible for all import duties, taxes and any other expenses incurred or licenses or clearances required. MRETS may deliver products in installments. Delivery dates are estimates. MRETS shall not be liable for any damage, losses or expenses incurred by Buyer if MRETS fails to meet the estimated delivery dates. If shipment of products is made directly from a distributor or manufacturer to Buyer, the shipping rules and conditions stated in their policies shall apply.
4. Payment Terms: If MRETS extends credit to Buyer, payment terms shall be net thirty (30) days after MRETS's invoice. MRETS may change or withdraw credit amounts or payment terms at any time for any reason. If the products are delivered in installments, Buyer shall pay for each installment in accordance with the above payment terms. If Buyer fails to make any payment when due, MRETS may suspend or cancel performance under any agreements in which MRETS has extended credit to Buyer. MRETS's suspension of performance may result in rescheduling delays. If, in MRETS's judgment, Buyer's financial condition does not justify the payment terms specified herein, then MRETS may terminate this contract unless Buyer immediately pays for all products that have been delivered and pays in advance for all products to be delivered. Termination in accordance with this clause shall not affect MRETS's right to pursue any other available remedies.
5. Taxes: Prices do not include applicable taxes or duties. Buyer is solely responsible for paying all applicable taxes and duties. MRETS will add sales taxes to the sales price where required by applicable law, and Buyer will pay such taxes unless Buyer provides MRETS with a duly executed sales tax exemption certificate. If Buyer is required by law to withhold any amount of tax from its payment to MRETS, Buyer shall promptly pay such amount to the appropriate tax authority and take all reasonable steps to minimize such withholding tax.

6. Contingencies: MRETS shall not be in breach of this contract and shall not be liable for any non-performance or delay in performance if such non-performance or delay is due to a force majeure event or other circumstances beyond MRETS's reasonable control, including but not limited to shortages of labor, energy, fuel, machinery or materials, technical or yield failures, war, civil unrest, any government act, law or regulation, including any judicial order or decree, any communication or power failure, labor dispute, natural disaster, fire, flood, earthquake, explosion, terrorist act or Act of God.

7. Warranties and Related Remedies:

7.1 Products not manufactured by MRETS shall carry only the warranty offered by the original manufacturer, unless specified otherwise in the offering or agreed upon by MRETS. Services shall be good and workmanlike. MRETS's warranty shall not apply to products that have been improperly installed, installed in an improper application, damaged by accident or abuse, or if Buyer alters them or fails to maintain them in accordance with the manufacturer's specifications or good practice. All labor costs and transportation costs are the responsibility and the expense of Buyer or as stated in the warranty of the original manufacturer. Buyer agrees to follow all applicable return policies of the manufacturer or the manufacturer's representative with respect to refund or repair procedures. MRETS shall not be liable for any defects that result from Buyer's design, specifications or instructions for such components.

7.2 EXCEPT AS SET FORTH ABOVE, PRODUCTS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS." MRETS DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING PRODUCTS AND SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.3 Buyer agrees that prior to using or distributing any systems that include MRETS products, Buyer will thoroughly test such systems and the functionality of such MRETS products as used in such systems. MRETS may provide technical, applications or design advice, quality characterization, reliability data or other services. Buyer agrees that providing these services shall not expand or otherwise alter MRETS's warranties, as set forth above, and no additional obligations or liabilities shall arise from MRETS providing such services.

7.4 No MRETS products are authorized for use in FDA Class III (or similar life-critical medical equipment) unless authorized officers of the parties have executed a special agreement specifically governing such use. Only those MRETS components which MRETS has specifically designated as military grade are designed and intended for use in military/aerospace applications or environments. Buyer acknowledges and agrees that any military or aerospace use of MRETS products which have not been so designated is solely at the Buyer's risk, and that Buyer is solely responsible for compliance with all legal and regulatory requirements in connection with such use.

7.5 Notwithstanding anything to the contrary, SOFTWARE PRODUCTS AND EXPERIMENTAL AND DEVELOPMENT PRODUCTS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS." MRETS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING SUCH SOFTWARE PRODUCTS AND EXPERIMENTAL AND DEVELOPMENT PRODUCTS, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. Intellectual Property Indemnification:

**8.1 MRETS will not pay any damages, liabilities or costs and will not defend, indemnify or hold harmless Buyer against any claim, suit or proceeding brought against Buyer, insofar as such claim, suit or proceeding is based on an allegation that products supplied by MRETS to Buyer directly infringe any patent, copyright, or trade secret.**

THE FOREGOING STATES THE SOLE LIABILITY OF THE PARTIES FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO. BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING INTELLECTUAL PROPERTY INDEMNIFICATION TERMS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT, AND THAT IN THE ABSENCE OF SUCH TERMS, THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

9. Limitations and Damages Disclaimer:

9.1 General Limitations. IN NO EVENT SHALL MRETS BE LIABLE FOR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS CONTRACT OR THE USE OF THE PRODUCTS PROVIDED HEREUNDER, REGARDLESS OF WHETHER MRETS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, ANCILLARY COSTS TO THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, RE-TESTING, OUTSIDE COMPUTER TIME, LABOR COSTS, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF USE, LOSS OF DATA, OR BUSINESS INTERRUPTION. NO CLAIM, SUIT OR ACTION SHALL BE BROUGHT AGAINST MRETS MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS OCCURRED.

9.2 Specific Limitations. IN NO EVENT SHALL MRETS'S AGGREGATE LIABILITY FROM ANY WARRANTY, INDEMNITY, OR OTHER OBLIGATION ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, OR ANY USE OF ANY MRETS PRODUCT PROVIDED HEREUNDER, EXCEED THE TOTAL AMOUNT PAID TO MRETS FOR THE PARTICULAR UNITS SOLD OR SERVICES RENEDERED UNDER THIS CONTRACT WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH THE CLAIM AROSE, WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. THE EXISTENCE OF MORE THAN ONE CLAIM AGAINST THE PARTICULAR UNITS OR SERVICES SOLD TO BUYER UNDER THIS CONTRACT SHALL NOT ENLARGE OR EXTEND THIS LIMIT.

9.3 BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

9.4 ATTORNEYS' FEE WAIVER. If there is any dispute concerning these terms and conditions or the performance of either party pursuant to these terms and conditions, and either party retains counsel for the purpose of enforcing any of these terms and conditions or asserting these terms and conditions in defense of suit filed against it, each party will be solely responsible for its own costs and attorneys' fees incurred in

connection with the dispute irrespective of whether or not a lawsuit is actually commenced or prosecuted to conclusion, and regardless of whether applicable law provides for attorneys' fees as a recoverable cost or element of damage in such a claim or suit.

10. Cancellations and Rescheduling. No cancellation or rescheduling of orders by Buyer within fifteen (15) days of MRETS's estimated shipping date for the component will be accepted.

11. Non-waiver of Default: In the event of any default by Buyer, MRETS may decline to make further shipments. If MRETS elects to continue to make shipments, MRETS's action shall not constitute a waiver of any such default or affect MRETS's legal remedies for any such default.

12. Governing Law: This contract shall be governed by and interpreted in accordance with the laws of the State of Texas, without reference to conflict-of-laws principles. If for any reason a court of competent jurisdiction finds any provision of this contract to be unenforceable, that provision will be enforced to the maximum extent possible to effectuate the intent of the parties, and the remainder of this contract will continue in full force and effect. This contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, or by the Uniform Computer Information Transactions Act (UCITA). Buyer agrees that non-exclusive jurisdiction for any dispute arising out of or relating to this contract lies within courts located in the State of Texas and consents to venue in Harris County, Texas. Notwithstanding the foregoing, any judgment may be enforced in any United States or foreign court, and MRETS may seek injunctive relief in any United States or foreign court.

13. Export Control:

13.1 Buyer agrees that unless prior authorization is obtained from the U.S. Department of Commerce, neither Buyer nor its subsidiaries shall export, re-export, or release, directly or indirectly, any technology, software, or software source code (as defined in Part 772 of the Export Administration Regulations of the U.S. Department of Commerce ("EAR")), received from MRETS, or export, re-export, or release, directly or indirectly, any direct product of such technology, software, or software source code (as defined in Part 734 of the EAR), to any destination or country to which the export, re-export or release of the technology, software, software source code, or direct product is prohibited by the EAR. Buyer furnishes the assurances provided herein to MRETS in compliance with Part 740 (Technology and Software Under Restriction) of the EAR.

13.2 Buyer further agrees to obtain any necessary export license or other documentation prior to the exportation or re-exportation of any product, technical data, software or software source code acquired from MRETS under this contract or any direct product of such technical data, software or software source code. Accordingly, Buyer shall not sell, export, re-export, transfer, divert or otherwise dispose of any such product, technical data, software or software source code directly or indirectly to any person, firm, entity, country or countries prohibited by US or applicable non-US laws. Further, Buyer shall give notice of the need to comply with such laws and regulations to any person, firm or entity which it has reason to believe is obtaining any such product, technical data, software or software source code from Buyer with the intention of exportation. Each party shall secure, at its own expense, such licenses and export and import documents as are necessary for each respective party to fulfill its obligations under this contract. If government approvals cannot be obtained,

MRETS may terminate, cancel or otherwise be excused from performing any obligations it may have under this contract.

13.3 Any product export classification made by MRETS shall be for MRETS's internal use only and shall not be construed as a representation or warranty regarding the proper export classification for such product or whether an export license or other documentation is required for the exportation of such product. This Section 13 shall survive termination of this contract.

14. Assignment: This contract shall not be assignable by Buyer without MRETS's prior written consent. Any unauthorized assignment shall be null and void.

15. Entire Agreement: This contract and the manufacturer's and distributor's instructions, warranties, warranty disclaimers and policies incorporated herein by reference or otherwise constitute the entire agreement between the parties relating to the sale of the products and supersedes all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof. No prior representations or statements relating to the sale of the products made by any MRETS representative, which are not stated herein, shall be binding on MRETS. No addition to or modification of any provision of this contract shall be binding upon MRETS unless made in writing and signed by a duly authorized MRETS representative. No course of dealing or trade usage or course of performance shall be relevant to explain or supplement any term in this contract. These terms and conditions shall prevail notwithstanding any different, conflicting or additional terms and conditions that may appear on any purchase order or other writing not expressly incorporated herein, including but not limited to data sheets, application notes and purchase order acknowledgements. The section headings contained in this contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this contract. The distributor's terms and conditions for use, warranties and disclaimers, limitations of liability and remedies and other terms which are incorporated into this contract are attached hereto as Exhibit A.

# TERMS OF SERVICE

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These Terms govern Your use of any Carbonite service offerings or features, including free services, the Carbonite websites, any downloadable client software which is provided solely for the purpose of accessing the Services (a "Client"), and any updates and written documentation (together with the Client, the "Services"). Your continued use of the Services following modification to the Services or these Terms, constitutes Your agreement to be bound by the application of the Terms to the modified Services or the modified Terms. To stay informed of any changes, please review the most current version of these Terms at [www.carbonite.com/terms](http://www.carbonite.com/terms). If You do not agree to be bound by these Terms, You may not use the Services.

## YOUR ACCOUNT

To access and use the Services, You must create a Carbonite account that is protected by a username and password (Your "Account"). You agree to provide Carbonite with accurate and complete information when You register for an Account. You agree to keep Your password and other Account details secret, and not share them with anyone else, in order to prevent unauthorized access to Your Account. If Your contact information or other Account information changes, You must update Your Account details promptly. After You create an Account, You may upload, download and access content and materials (Your "User Data") for which You have a legal right to copy, publish, share, store, or otherwise use.

If You obtained access to the Services through a legal entity such as Your business, or through a Carbonite authorized reseller, You acknowledge and agree that other users may have been designated to access, control or manage Your Account and Your User Data. You, not Carbonite, are solely responsible for Your Account and User Data. Carbonite is not liable for any loss or damage arising from any access to, sharing or use of, Your Account and User Data. If You believe there has been unauthorized access to Your Account or Your User Data, You must notify [privacy@carbonite.com](mailto:privacy@carbonite.com) immediately.

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## YOUR SUBSCRIPTION

Your subscription to the Services will begin on the earliest of (1) the day and time You click the "I AGREE" button, (2) when You first use the Services or (3) the start date of the Subscription Period (as defined below) as provided to You by an authorized Carbonite representative. Subscriptions last for a fixed period of time, for example, 15 day free trial, 1 year subscription, 3 year subscription, etc., unless it is a free Service as defined below or a pay-as-you-go service charged by a third-party provider (the "Subscription Period").

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**Free Services.** Carbonite may offer free Services. Free Services require an active Account and may be subject to certain usage limits, which are explained in the documentation for each free Service. Free Services associated with Your Account that remain inactive for a period of ninety days may be removed and Your User Data deleted. Carbonite may discontinue free Services at any time and from time-to-time, at which point Your access to the free Service will end and any User Data will be deleted.

**Beta Services.** Carbonite may designate certain enhancements and new releases of the Carbonite Services as "Beta Services." Beta Services are not intended for use in a production environment. You acknowledge and agree that (1) Beta Services are experimental in nature, have not been fully tested and may be discontinued at any time, (2) Beta Services may not meet Your requirements or perform as intended, (3) use of Beta Services may not be uninterrupted, error free or free of faults, (4) Your use of Beta Services are for the sole purpose of evaluating and testing the service and providing feedback to Carbonite, and (5) You shall inform Your employees and other users regarding the nature of Beta Services. By using Beta Services You acknowledge the above conditions and expectations of performance and reliability. Your use of Beta Services is and shall be subject to these Terms.

## YOUR CONDUCT

**Compliance with Law.** You are solely responsible for ensuring that Your use of the Services is in compliance with all applicable federal, state and local laws, foreign laws, rules and regulations. The Services provide for the uploading and downloading of User Data, and the accessing, hosting, storing, sharing and/or publishing of such User Data. You shall be solely responsible for Your User Data. Carbonite does not endorse and has no control over the content of User Data submitted by other users. Carbonite assumes no responsibility whatsoever in connection with or arising from User Data or for actively monitoring User Data for inappropriate or illegal content. In addition, the Services may use data received or obtained from Your device to determine Your location ("Location Data"). By using the Services, You hereby consent and permit Carbonite to use Location Data in order to provide the Services to You. Carbonite does not make any representation, warranty or guarantee of accuracy, completeness or timeliness with respect to any Location Data.

It is Your responsibility to use the Services in accordance with these Terms of Service. You shall defend, indemnify and hold Carbonite, its officers, directors, shareholders, affiliates, suppliers and licensors, harmless from and against any and all damages, fines, penalties, assessments, liabilities, losses, costs and expenses (including attorneys' fees, expert fees and out-of-pocket expenses) in connection with Your use of the Services, Your violation of these Terms, any violation of the rights of any other person or entity by You, including any intellectual property rights, any misuse or fraudulent use of credit and debit cards, any claims that the Services or any party thereof were exported or otherwise shipped or transported by You in violation of applicable laws, rules and regulations, or any claim of misuse of the Services, including but not limited to, any claim that Your use of the Services, Your User Data, or Location Data is illegal.

**Your Conduct.** Carbonite may, immediately and without notice to You, terminate Your access to and use of the Services, including if You (1) harm, disrupt or otherwise engage in activity that diminishes the Carbonite brand, Services, computer system or network, (2) misrepresent Your identity, impersonate any person or attempt to gain access to or illegally track any Account, computers or networks related to the Services, without authorization, (3) use or manipulate a Service in any manner not specified by Carbonite, (4) use the Services in a manner that results in excessive bandwidth usage, as determined by Carbonite, (5) use the Services for any illegal purpose, or to store, backup or distribute any illegal or unauthorized files or data, (6) use the Services to store, backup or distribute material protected by intellectual property rights of a third-party unless You own or have appropriate rights to such material, (7) use the Services to store, backup or distribute material that contains viruses, Trojan horses, worms, corrupted files or any other similar software that may damage the operation of the Services or another person's Device, data or property, (8) directly or indirectly reverse engineer, decompile, disassemble, modify, reproduce or create derivative works of the Services, (9) alter or modify any disabling mechanism which may be included in the Services, (10) assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the Services, or (11) remove or alter any proprietary notices (e.g., copyright, trademark notices, legends, etc.) from the Services.



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USER DATA FROM YOUR DEVICE AND DO NOT RESTORE IT WITHIN 30 CALENDAR DAYS AFTER DELETION, OR YOU DELETE A DEVICE FROM YOUR CARBONITE ACCOUNT, (4) YOU MOVE USER DATA TO A LOCATION ON YOUR DEVICE THAT IS NOT AUTOMATICALLY SCANNED TO SELECT FILES FOR BACKUP OR SYNCING, OR YOU UPGRADE YOUR OPERATING SYSTEM RESULTING IN CHANGES TO YOUR FILE MAPPING, (5) YOUR DEVICE IS UNABLE TO ACCESS THE INTERNET OR NETWORK SERVICE, (6) CARBONITE SERVERS OR NETWORK SERVICE IS UNABLE TO MAKE A CONNECTION WITH YOUR DEVICE, (7) YOU FAIL TO FOLLOW CARBONITE'S TECHNICAL REQUIREMENTS AND DOCUMENTATION FOR UTILIZING THE BACKUP SERVICES, INCLUDING UPGRADING THE VERSION OF THE SERVICES AS REQUIRED AND PERIODICALLY TESTING YOUR BACKUPS AND RESTORES, OR (8) YOU TERMINATE YOUR LICENSE OR FAIL TO RENEW YOUR SUBSCRIPTION TO THE SERVICES.

THE SERVICES MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. YOU ACKNOWLEDGE AND AGREE THAT CARBONITE DOES NOT OPERATE OR CONTROL THE INTERNET AND THAT (1) VIRUSES, WORMS, TROJAN HORSES AND OTHER UNDESIRABLE DATA OR SOFTWARE, OR (2) UNAUTHORIZED USERS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE YOUR USER DATA, WEBSITES, DEVICES AND NETWORKS. CARBONITE IS NOT RESPONSIBLE FOR SUCH ACTIVITIES. YOU ARE SOLELY RESPONSIBLE FOR THE SECURITY AND INTEGRITY OF YOUR ACCOUNT, YOUR USER DATA AND YOUR DEVICES. YOU ACKNOWLEDGE AND AGREE THAT CARBONITE SHALL HAVE NO LIABILITY ASSOCIATED WITH OR ARISING FROM YOUR FAILURE TO MAINTAIN ACCURATE CONTACT OR OTHER INFORMATION, INCLUDING, BUT NOT LIMITED TO, YOUR FAILURE TO RECEIVE CRITICAL INFORMATION ABOUT THE SERVICES. THE SERVICES AND THIRD-PARTY COMPONENTS ARE PROVIDED "AS IS," "WHERE IS," "AS AVAILABLE," "WITH ALL FAULTS" AND, TO THE FULLEST EXTENT PERMITTED BY LAW, WITHOUT WARRANTY OF ANY KIND. CARBONITE DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SERVICES AND THIRD-PARTY COMPONENTS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES REGARDING QUIET ENJOYMENT, RELIABILITY, TIMELINESS AND PERFORMANCE OF THE SERVICES. CARBONITE DOES NOT WARRANT THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SERVICES WILL BE CORRECTED, OR THAT ENCRYPTION ALGORITHMS, ASSOCIATED KEYS AND OTHER SECURITY MEASURES WILL BE SECURE OR EFFECTIVE. YOU UNDERSTAND AND AGREE THAT NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CARBONITE SHALL CREATE ANY ADDITIONAL CARBONITE WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF CARBONITE'S OBLIGATIONS HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL CARBONITE BE LIABLE TO YOU OR ANY THIRD-PARTY FOR ANY COST TO PROCURE SUBSTITUTE SERVICES OR USER DATA, OR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR ANY OTHER DAMAGES, INCLUDING DAMAGES FOR PERSONAL INJURY, LOST PROFITS, LOSS OF DATA, LOSS OF USER DATA OR BUSINESS INTERRUPTION, ARISING OUT OF YOUR USE OR INABILITY TO USE THE SERVICES, EVEN IF CARBONITE HAS BEEN ADVISED ABOUT THE POSSIBILITY OF SUCH DAMAGES (WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE). IN ANY CASE AND WITHOUT LIMITING THE FOREGOING, THE ENTIRE LIABILITY OF

CARBONITE FOR ALL DAMAGES OF EVERY KIND AND TYPE (WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) SHALL BE LIMITED TO THE SUBSCRIPTION FEES PAID BY YOU TO CARBONITE IN THE 12 CALENDAR MONTHS IMMEDIATELY PRIOR TO THE DAMAGES ARISING. IF THE SERVICES ARE PROVIDED TO YOU WITHOUT CHARGE, THEN CARBONITE SHALL HAVE NO LIABILITY TO YOU WHATSOEVER. THE FOREGOING TERMS SET A LIMIT ON THE AMOUNT OF DAMAGES PAYABLE AND ARE NOT INTENDED TO ESTABLISH LIQUIDATED DAMAGES. YOU EXPRESSLY RECOGNIZE AND ACKNOWLEDGE THAT SUCH LIMITATION OF LIABILITY IS AN ESSENTIAL PART OF THESE TERMS AND CARBONITE'S AGREEMENT TO PROVIDE YOU THE SERVICES, AND IS AN ESSENTIAL FACTOR IN ESTABLISHING THE PRICE OF THE SERVICES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR THE LIMITATION ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE FOREGOING TERMS MAY NOT APPLY TO YOU.

## GENERAL LEGAL TERMS

**Government Use.** The Services constitute Commercial Off the Shelf ("COTS") items as that term is defined in the U.S. Government Federal Acquisition Regulations ("FAR"). Government use rights are limited to those minimum rights required by the appropriate provisions of the FAR.

**Export; Terms of Service for Non-U.S. Residents.** You shall not export the Services or any part thereof, directly or indirectly, to any country for which the United States requires an export license or other governmental approval. In particular, You acknowledge that the Services or any part thereof, may not be exported or re-exported to, or otherwise used in, any U.S.-embargoed countries or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Persons or Entity List. By using the Services, You represent and warrant that You are not located in any such country or on any such list. Carbonite, Inc. and Carbonite datacenters are based in the United States. Carbonite also offers, and You may choose to utilize, third-party cloud storage providers in which case the terms and conditions of such third-party cloud storage providers shall apply. Additional country-specific terms may be found [here](#) or at [www.carbonite.com](http://www.carbonite.com).

**Governing Law and Arbitration.** These Terms shall be governed, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts without reference to conflicts of law principles. The parties agree that the exclusive jurisdiction of any actions arising out of, relating to or in any way connected with these Terms, shall be in the state or federal courts, as applicable, located in the City of Boston or the County of Suffolk, Massachusetts. Any dispute, controversy or claim arising out of or relating to this Agreement, including the arbitrability of the matter or the formation, interpretation, scope, applicability, termination or breach thereof, shall be referred to and finally determined by arbitration in accordance with the JAMS Streamlined Arbitration Rules and Procedures, or JAMS International Arbitration Rules, if the matter is deemed "international" within the meaning of that term as defined in the JAMS International Arbitration Rules. The arbitration shall be administered by JAMS, shall take place before a sole arbitrator and shall be conducted in Boston, Massachusetts. If the JAMS International Arbitration Rules apply, the

language to be used in the arbitral proceedings will be English. Judgment upon the arbitral award may be entered by any court having jurisdiction. This section shall apply to and require arbitration of all disputes, controversies and claims, regardless of whether such disputes, controversies or claims concern a single individual, entity or other person, multiple individuals, entities or other persons, or classes of individuals, entities or other persons.

**Linking.** The Services may contain links to other websites and resources and are provided for convenience only. Carbonite has not reviewed the linked websites and is not responsible for the content or availability of any linked websites. The inclusion of any link to a website does not imply endorsement by Carbonite of the website or their entities, products or services.

**General.** These Terms constitute the entire understanding of the parties and supersede all prior and contemporaneous written and oral agreements with respect to the subject matter hereof. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of these Terms. If one or more of the provisions herein shall be held invalid, illegal or unenforceable in any respect, the validity, legality and enforcement of the remaining provisions shall not be affected or impaired. Any inconsistency between these Terms in English and these Terms in any other language shall, to the fullest extent permitted by applicable law, be resolved by reference to the English version. The failure to enforce or the waiver by either party of a default or breach of the other party shall not be considered to be a waiver of any subsequent default or breach. You may not assign or delegate any rights or obligations under the Terms. Any purported assignment and delegation shall be ineffective. Carbonite may freely assign or delegate all rights and obligations under the Terms, fully or partially, with or without notice to You. Carbonite may also substitute, by way of novation, any third-party that assumes our rights and obligations under these Terms. If You or Carbonite cannot perform its obligations under these Terms because of any act of God, accident, strike, court order, fire, riot, war, failure of third-party equipment or any other cause not within the affected party's reasonable control and that could not be avoided through the exercise of reasonable care and diligence (a "Force Majeure Event"), then the non-performing party will, if possible and reasonable, (1) promptly notify the other party, (2) take reasonable steps to resume performance as soon as possible, and (3) not be considered in breach during the duration of the Force Majeure Event. If a Force Majeure Event continues for five (5) days, Carbonite may terminate Your subscription to the Services and these Terms by providing electronic notice to You. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT. The following provisions shall survive termination or expiration of this Agreement: Your Account, Your Subscription, Your Conduct, Carbonite Property, Disclaimer of Warranties; Limitation of Liability; and General Legal Terms.

Updated August 2013

# PRIVACY POLICY

This Privacy Policy is subject to and incorporated into the terms of service (the "Terms") between You and Carbonite. You may access the Terms at [www.carbonite.com](http://www.carbonite.com) or by clicking [Terms](#). Capitalized words used in this Privacy Policy without definition have the meaning given to them in the Terms. By agreeing to the Terms and installing, accessing or using the Services, You are agreeing to this Privacy Policy and the terms contained herein.

This Privacy Policy applies to Carbonite's collection and use of personally identifying information that Carbonite may gather when You contact us, visit our web site or purchase, license or use the Services. By installing, accessing or using the Services, You expressly consent to the collection, processing and use of Your personal information according to this Privacy Policy.

## HOW CARBONITE USES INFORMATION

**Personal Information.** Carbonite collects personal information relevant to Your subscription with Carbonite, including Your name, mailing address, phone number, e-mail address and credit card information. This information collected will only be used by Carbonite in order to service Your account and in accordance with the terms of this Privacy Policy.

**Cookies and Other Technologies.** Carbonite uses "cookies" and other technologies to collect data that enables us to better understand and improve the usability, performance and effectiveness of our website. Cookies are files sent to Your browser and stored on Your computer. If You do not want Carbonite to send cookies to Your browser, You can set Your browser options to reject cookies or notify You when a website tries to put a cookie into Your browser. Rejecting cookies may affect Your ability to use some features of the Services.

Carbonite also gathers general information about visits to our website, the files You have marked for backup, the configuration of Your computer, Your use and configuration of the Services, including, without limitation, performance metrics and configuration settings, and Your computer's interaction with Carbonite. Carbonite may use this information without restriction in order to provide the Services, understand traffic and downloads on our website, provide You with technical support, improve the website and provide the best online experience possible for our customers.

**Use of Your Personal Information.** Carbonite will not sell Your personal information to third parties. Carbonite may, from time to time, share with You information about other services that we think You may find to be of interest. If You wish to change the types of communications You receive from us, You may do so by clicking on the appropriate "Manage Communications" link in Carbonite's e-mail communications to You or by e-mailing Your request to Carbonite at [customersupport@carbonite.com](mailto:customersupport@carbonite.com). Please note that opting-out of

receiving promotional email will not affect receipt of service-related, transactional, or legal communication via email in accordance with the [Terms](#).

Carbonite will not view the contents of Your Account. Carbonite may view Your file system information (file folder names, file extensions, sizes etc., but not Your file contents) to provide incremental backups and file comparisons, quality control and technical support. Carbonite will not disclose Your personal information, including the contents of Your Account, to third parties unless disclosure is necessary to comply with the law.

**How You Can Access Or Correct Your Personal Information.** You can update Your personal information by accessing the password-protected, web-based Carbonite administrative console by supplying Your valid login credentials or e-mailing Carbonite at [privacy@carbonite.com](mailto:privacy@carbonite.com).

## REGARDING CHILDREN

Carbonite is very concerned about protecting the privacy of children. Carbonite does not intend to collect any personally identifiable information from children under 13 years old or knowingly distribute such information. Children under 13 are not permitted to use Carbonite's website, and we request that children under 13 not submit any personally identifiable information to Carbonite. If a child under 13 has provided Carbonite with personally identifiable information, the parent or guardian of that child should contact Carbonite immediately at [privacy@carbonite.com](mailto:privacy@carbonite.com) to delete this information from our files.

## EUROPEAN PERSONALLY IDENTIFIABLE INFORMATION

Carbonite has committed to handling personally identifiable information from users in the European Union and the European Economic Area in accordance with the European Union's Safe Harbor Principles and to refer unresolved privacy complaints to an independent dispute resolution mechanism, the BBB EU Safe Harbor, operated by the Council of Better Business Bureaus. If you do not receive timely acknowledgement of your complaint, or if your complaint is not satisfactorily addressed by Carbonite, please visit the BBB EU Safe Harbor website at [www.bbb.org/us/safe-harbor-complaints](http://www.bbb.org/us/safe-harbor-complaints) for more information and to file a complaint.

Carbonite's self-certification on the U.S. Department of Commerce's Safe Harbor List can be found at <http://export.gov/safeharbor>.

To contact Carbonite's privacy officer, please email [privacy@carbonite.com](mailto:privacy@carbonite.com).

# SECURITY POLICY

This Security Policy is subject to and incorporated into the terms of service (the "Terms") between You and Carbonite. You may access the Terms at [www.carbonite.com](http://www.carbonite.com) or by clicking [Terms](#). Capitalized words used in this Security Policy without definition have the meaning given to them in the Terms. By agreeing to the Terms and installing, accessing or using the Services, You are agreeing to this Security Policy and the terms contained herein. For Zmanda products please see the Addendum section at the end of this document for additional information.

## SECURE FEATURES

Carbonite takes Your right to privacy and the security of Your data very seriously. Carbonite is built with a series of administrative, physical and technical safeguards designed to protect Your Account.

## SECURE TRANSFER

Your backed-up files are encrypted with 128-bit Blowfish encryption prior to transfer and then sent through an encrypted 128-bit SSL tunnel to Carbonite data centers.

## SECURE STORAGE

After the secure transfer to Carbonite data centers, Your backed-up files are maintained and stored with Carbonite using 128-bit Blowfish encryption. Your backed-up files are accessible only by supplying Your valid login credentials. You can choose to use Carbonite's 1024-bit encryption key or manage Your own encryption key. If You choose to manage Your own encryption key, You must safely archive it because, if lost, You will not be able to restore or otherwise access Your data.

## PHYSICAL SECURITY

Carbonite servers are located in secure data centers, protected with features such as gated perimeter access, 24 x 7 x 365 on-site staffed security and technicians, electronic card key access and security cameras inside and outside of the buildings..

## RESTRICTED ACCESS

Your backed-up files may be accessed using the password-protected, web-based Carbonite administrative console by supplying Your valid login credentials and via (1) an Internet-enabled computer other than the computer registered with Carbonite using remote file access, or (2) certain software applications, including the iPhone and BlackBerry applications. Although Carbonite makes good faith efforts to store Your backed-up files in a

secure operating environment that is not accessible to unauthorized users, Carbonite cannot guarantee complete security. By using such products and services, You knowingly accept this risk.

## NETWORK SECURITY

Carbonite utilizes independent, third-party consultants to review the safety and security of Your backed-up files and routinely checks its systems for vulnerabilities to ensure that Your backed-up files are safe.

## CARBONITE'S PRIVACY POLICY

Additional information about Carbonite's security program is available at [www.carbonite.com/privacy](http://www.carbonite.com/privacy) or by clicking [Privacy Policy](#).

If you would like to contact Carbonite directly with security or privacy questions, please email Carbonite at [security@carbonite.com](mailto:security@carbonite.com).

## Addendum for Zmanda Products

### SECURE TRANSFER

AES 256-bit encryption and transfer over a 128 bit SSL tunnel are optional features.

### SECURE STORAGE, PHYSICAL SECURITY AND NETWORK SECURITY

Carbonite may utilize third-party cloud storage providers in which case the terms and conditions of such third-party cloud storage providers may also apply. If You choose to enable encryption You must safely archive Your encryption key because You will not be able to restore or otherwise access Your data if Your key is lost. For additional information, please contact Your Zmanda sales representative.

## PRICING POLICY

This Pricing Policy is subject to and incorporated into the terms of service (the "Terms") between You and Carbonite. You may access the Terms at [www.carbonite.com](http://www.carbonite.com) or by clicking [Terms](#). Capitalized words used in this Pricing Policy without definition have the meaning given to them in the Terms. By agreeing to the Terms and installing, accessing or using the Services, You are agreeing to this Pricing Policy and the terms contained herein.

## PAYMENTS



Carbonite accepts payment via a valid credit or debit card. Fees paid for subscriptions to the Services are non-refundable. If Your subscription has been suspended for non-payment, it will only be reactivated upon payment, in full, of all overdue fees. Your subscription will not be activated or reactivated without prior payment.

## SUBSCRIPTION RENEWALS

Fees are due and payable prior to Your subscription renewal date. Incomplete or incorrect Account information may result in cancellation of your subscription and inactivation of Your Account. The prices for renewals may be different than those paid for a prior subscription. To cancel Your subscription to any Service prior to the expiration date of Your subscription, You must notify Carbonite.

## LAWFUL USE

It is a violation of law for You to misuse or fraudulently use credit and debit cards. Carbonite will report all misuse and fraudulent use to government authorities, credit reporting services, financial institutions and credit card companies.

## DISCREPANCIES

Your right to raise billing discrepancies and any associated recovery is waived unless reported to Carbonite at [customersupport@carbonite.com](mailto:customersupport@carbonite.com) within sixty (60) calendar days after such discrepancy occurs.

ACCEPTED BY and Date: \_\_\_\_\_