

EMPOWER SOFTWARE HOSTED SERVICES AGREEMENT

1. **AGREEMENT.** THIS HOSTED SERVICES AGREEMENT IS A BINDING CONTRACT between Empower Software, Inc. (“Empower” or “we”) and you and/or the company or other legal entity that you represent (collectively, the “Client” or “you”) for the use of Empower’s Hosted based version of Storage Commander V5 (the “Hosted Services”). Empower and Client are referred to individually as a “party” and collectively as the “parties”. If you are entering into this Agreement as an individual, you represent and warrant that you are over the age of eighteen (18) and possess the legal capacity to bind yourself to its terms and conditions. If you are entering into this Agreement on behalf of a business organization or entity, you represent and warrant that you are duly authorized to bind that entity to this Agreement.

2. **SERVICES.** All Hosted Services made available to you under this Agreement, including any related support services or Documentation we may provide, are collectively referred to in this Agreement as the “Hosted Services”. The Hosted Services, including use of all Cloud Servers, are unmanaged. We reserve the right to modify the Hosted Services at any time and without advance notice. At no time, and under no circumstances, does this Agreement represent a sale or license of the intellectual property contained within the Hosted Server or any software version of Storage Commander (including any copy or update of the same) to you.

3. **TERM.** The term of this Agreement (“Term”) will begin when the first of the following occurs: (i) you complete the registration process for your Hosted Services account and deliver your signed order form and/or upon use of the Hosted Services (thereby accepting the terms and conditions of this Agreement) regardless of whether you have delivered the signed order form. This Agreement will remain in effect until terminated by you or us in accordance with Section 4 or 5.

4. TERMINATION OR SUSPENSION.

(a) **EMPOWER TERMINATION OR SUSPENSION.** In our sole discretion, we may immediately (and without prior notice) suspend or terminate the Hosted Services by sending you a written or electronic notice of suspension or termination if one or more of the following occurs: (i) you fail to comply with any provision of this Agreement; (ii) you fail to timely renew this Agreement or fail to make any payment when due (i.e. your credit card is declined); (iii) we determine, in our sole discretion, that your use of the Hosted Services poses a threat to the security or performance of our network or to any of our clients or suppliers; (iv) we determine, in our sole discretion, that your use of the Hosted Services is illegal, or that it misappropriates or infringes the property rights of Empower or a third party; or (v) we discover that you provided us with false information when you registered for Hosted Services, or that you lacked the capacity to enter into this Agreement at the time of its consummation. All other terms of this Agreement shall survive upon such termination.

(b) **CLIENT TERMINATION.** Client may terminate this Agreement at any time by giving Empower 30 days advance notice pursuant to Section 17.

5. EFFECT OF SUSPENSION AND TERMINATION.

(a) **SUSPENSION.** During any period of suspension, the Hosted Services will be unavailable in whole or in part and you may not have access to your data. Notwithstanding the same, data may continue to be hosted by Empower (at its sole discretion) and fees may continue to accrue. In order for you to again gain access to the Hosted Services, we may charge you, in addition to the standard advance payment

of fees associated with the Hosted Services, a reinstatement fee following any such suspension. All other terms of this Agreement shall survive upon such suspension.

(b) TERMINATION. Effective immediately upon the termination of this Agreement, the Hosted Services will no longer be available and we will permanently erase all data stored on the Infrastructure. All other terms of this Agreement shall survive upon such termination.

6. AMENDMENTS. Empower may amend this Agreement by mailing the modified version to the address referenced in this agreement. Your continued use of the Hosted Services after the effective date of an amendment to this Agreement will be deemed to be your acceptance of that amendment.

7. FEES AND BILLING.

(a) FEES. Any fees paid for under this Agreement are non-refundable. You agree to pay all fees for the Hosted Services at the applicable rate set forth in the original purchase order. Hosted Services are automatically charged on a quarterly basis, in advance on the first day of every quarter, in U.S. dollars and will be charged to your credit card without invoice. It is your sole responsibility to provide accurate billing contact information and to notify us of any changes to your billing contact information in accordance with the notice provisions in Section 17 below.

(b) FEE INCREASES. We may increase your fees for the Hosted Services on thirty (30) days' prior notice sent in accordance with the notice provisions in Section 17.

You are solely responsible for all fees relating to Hosted Servers that are associated with your Hosted Services account and for any fees that you incur until they are terminated. If for any reason we cannot process your credit card or you fail to make a payment, you agree to pay our costs of collection, including all reasonable attorneys' fees and expenses. We may charge interest on overdue fees at the lesser of 1.5% per month or the maximum rate permitted by law.

8. SECURITY. NEITHER WE NOR ANY OF OUR EMPLOYEES, AGENTS, REPRESENTATIVES, ASSIGNS OR SERVICE SUPPLIERS WILL BE LIABLE FOR UNAUTHORIZED ACCESS (I.E., HACKING) INTO THE HOSTED SERVERS OR YOUR TRANSMISSION FACILITIES, PREMISES OR EQUIPMENT, OR FOR UNAUTHORIZED ACCESS TO DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THEREON, UNLESS AND ONLY TO THE EXTENT THAT THIS DISCLAIMER IS PROHIBITED BY APPLICABLE LAW.

9. DISCLAIMER OF WARRANTY. THE HOSTED SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. FURTHER, THE COMPANY DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE HOSTED SERVICES OR ITS ACCOMPANYING WRITTEN MATERIALS (IF ANY) IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, OR OTHERWISE. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE HOSTED SERVICES IS ASSUMED BY YOU. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE COMPANY, ITS DEALERS, DISTRIBUTORS, AGENTS, OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY, AND YOU MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

NEITHER THE COMPANY NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, OR DELIVERY OF THE HOSTED SERVICES SHALL BE LIABLE FOR ANY DIRECT OR INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS

INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

10. LIMITATION OF DAMAGES. EMPOWER's entire liability for all claims in the aggregate arising from your use of a Hosted Service acquired hereunder will not exceed the amount of any actual direct damages up to the amounts paid in the prior three (3) months for the Hosted Service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to EMPOWER, its subsidiaries and contractors. EMPOWER will not be liable for special, incidental, exemplary, indirect or economic consequential damages, lost profits, business, revenue, goodwill, or anticipated savings.

11. INDEMNIFICATION. You agree to indemnify, defend and hold Empower and its employees, agents, shareholders, officers, directors, successors and assigns harmless from and against any and all claims, damages, liabilities, costs, settlements, penalties and expenses (including attorneys' fees, expert's fees and settlement costs) arising out of or relating to any suit, action, proceeding, arbitration, subpoena, claim or demand brought or asserted by a third party pursuant to any theory of liability against Empower arising out of or relating to any one or more of the following: (i) a breach by you of this Agreement; (ii) the use of the Hosted Services by you or your end users, or any Content or information on the Hosted Services; (iii) the alleged or actual infringement or misappropriation of any intellectual property right or other proprietary right by you, or by your agents, representatives or end users; (iv) your relationship with the manufacturer of any software installed or stored on the Hosted Services; or (v) your failure to use reasonable security precautions. We will provide you with written notice of the existence of any basis for indemnification and we will select our defense counsel. You will have the right to approve any settlement, but you may not unreasonably withhold your approval. You agree to indemnify us from all costs, expenses and liabilities as they become due.

12. BACKUPS. The Hosted Service automatically backs up client data multiple times within each twenty-four (24) hour period; however, there is NO function whereby the client may initiate their own backup within the Hosted Service.

13. MAINTENANCE; SERVICE MODIFICATIONS AND DISCONTINUANCE. In addition to our right to suspend or terminate the Hosted Services in accordance with Section 4, we may suspend all or part of the Hosted Services without liability or prior notice to you (i) in order to maintain (i.e., modify, upgrade, patch, or repair) our Infrastructure or any Hosted Servers; (ii) as we determine may be required by law or regulation; or (iii) as we determine to be necessary to protect our Infrastructure and clients from unauthorized access or an attack on the Hosted Services. Notwithstanding the foregoing, we will endeavor in good faith to provide you with advance notice of any suspension or termination under this Section 21 in accordance with the notice provisions in Section 18 and we will provide you with notice of the suspension or termination as soon as it becomes practicable for us to do so.

14. SUPPORT. Empower Software Technologies offers full product support Monday through Saturday (certain holidays excluded) via telephone or online.

15. GOVERNING LAW; VENUE; JURISDICTION; WAIVER OF JURY TRIAL; ATTORNEYS FEES. This Agreement, including without limitation, its Disclaimer of Warranty and Limited Warranty, are governed by the laws of the State of California. All disputes and controversies arising out of or relating to this Agreement must be resolved in Riverside, California, and each of us irrevocably consents to the exclusive

venue and personal jurisdiction of those courts for the resolution of such disputes and waives all objections thereto. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY IRREVOCABLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PARTIES' RELATIONSHIP. In the event either the Empower or Client is required to retain the services of any attorney to enforce their rights under this Agreement, and the same results in legal action being filed, then the prevailing party shall be entitled to all reasonable and necessary attorneys' fees, court costs and disbursements.

16. INTELLECTUAL PROPERTY. Empower will own all right, title and interest in and to the Storage Commander Content and the Hosted Services and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by the Customer or any other party relating to the Hosted Services. This Agreement is not a sale and does not convey any rights of ownership in or related to the Hosted Services or other intellectual property owned by Empower to the Customer. The Empower name, the Empower logo, and the product names associated with the Hosted Services are trademarks of Empower or third parties, and no right or license is granted to use them.

17. NOTICES. (a) FROM US. Except as otherwise provided herein, notices we send to you under this Agreement must be sent by U.S. Mail to the address included in this agreement. You are responsible for keeping your address current and accurate at all times. Any notice we send to the then-current address will be deemed to be received when it is sent even if you do not actually receive it. (b) FROM YOU. Except as otherwise provided herein, notices you send to us under this Agreement must be in writing and sent by U.S. Mail to Empower Software Technologies Ink., 41695 Date St., Murrieta, CA 92562. Notice under this Agreement is deemed received within three days after mailing.

18. CONFIDENTIALITY. Each party agrees and undertakes that during the term of this Agreement and thereafter in perpetuity it will keep confidential and will not use for its own purposes nor without the prior written consent of the other party disclose to any third party any information of a confidential nature (including without limitation trade secrets and information of commercial value) which may become known to that party from the other party ("Confidential Information") unless the information (i) is public knowledge or (ii) is already known to that party at the time of disclosure or (iii) subsequently becomes public knowledge other than by breach of this Agreement or (iv) subsequently comes law fully into the possession of that party from a third party or (v) is required to be disclosed by law or court order provided that the recipient promptly notifies the discloser in writing of the requirement for disclosure and limits the content and distribution of such disclosure to the extent reasonably possible.

19. ASSIGNMENT; SUBCONTRACT; RESALE; BINDING EFFECT. You may not assign this Agreement or resell the right to use the Hosted Services without our prior written consent. We may assign or subcontract this Agreement at any time. This Agreement will be binding upon and inure to the benefit of all of our successors and assigns, which will be bound by all of the obligations of their predecessors or assignors.

20. NON-WAIVER. Empower's failure at any time to require strict performance from Client of any of the provisions hereof shall not waive or diminish Empower's right thereafter to demand strict compliance therewith or with any other provision. Waiver of any default shall not waive any other default. Empower's rights hereunder are cumulative and not alternative.

21. SEVERABILITY. Should any portion of this Agreement be held to be invalid, unenforceable or void, such holding shall not have the effect of invalidating the remainder of this agreement or any other part

thereof, the parties hereby agreeing that the portion so held to be invalid, unenforceable, or void shall, if possible, be deemed amended or reduced in scope or entirely severable as necessary

22. FORCE MAJEURE. Empower will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond Empower's reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

23. SCOPE OF AGREEMENT; ENTIRE AGREEMENT. This instrument contains the entire agreement between the parties hereto with respect to the subject matter contained herein. There are no other agreements, written or unwritten, that shall bind the parties. Additional or different terms in any written communication from you, including any purchase order or request for Hosted Services, are void.

Client full address:

Signature

Printed

Title

Date

Empower Software Technologies, Inc.
41695 Date St., Suite A
Murrieta, CA 92562

Signature

Printed

Title

Date