

(<https://www.faronics.com/>)

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Deep Freeze Cloud Terms of Service

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TERMS OF SERVICE AGREEMENT – DEEP FREEZE CLOUD

READ CAREFULLY THIS AGREEMENT (THE “**AGREEMENT**”) IS A LEGALLY BINDING CONTRACT BETWEEN FARONICS CORPORATION, A CANADIAN CORPORATION LOCATED AT 1400 – 609 GRANVILLE ST., VANCOUVER, BRITISH COLUMBIA V7Y 1G5 (“**FARONICS**”) AND SUBSCRIBER. PLEASE READ IT CAREFULLY AS IT GOVERNS ALL USE OF THE SERVICES.

BY CHECKING THE ADJACENT "I AGREE" BOX, OR BY DOWNLOADING OR OTHERWISE USING ANY OF THE SERVICES, SUBSCRIBER AGREES TO THE TERMS OF THIS AGREEMENT.

IF SUBSCRIBER DOES NOT AGREE TO ALL TERMS OF THIS AGREEMENT , SUBSCRIBER WILL: (1) IMMEDIATELY CEASE USING THE SERVICES; (2) RETURN, DELETE OR DESTROY ALL COPIES OF THE SOFTWARE; AND (3) CONFIRM THAT SUBSCRIBER HAS DONE SO UPON FARONICS' REQUEST..

1. DEFINITIONS

In this Agreement:

“**Account**” means the account created and maintained by Subscriber in order to access the Services and located upon the Infrastructure;

“**Content**” has the meaning given in Section 4.3;

Deep Freeze Cloud Services means Faronics' software as a service platform accessible through the Internet, which hosts the following software products of Faronics: DEEP FREEZE, ANTI-EXECUTABLE, ANTI-VIRUS, WINSELECT, POWER SAVE, and which may include other software products, services, materials, and applications that Faronics elects to include as a part of Deep Freeze Cloud Services from time to time;

“**Device**” means Windows® or non-Windows computers, servers, workstations or any mobile devices upon which or through which the Services are used or installed;

“**Faronics Agents**” means the affiliated entities within the Faronics group of companies and their respective employees and third party suppliers and licensors;

“**Infrastructure**” means the technical systems, hardware and all connected devices of Faronics or its third party suppliers;

“**Order**” means the agreement to purchase Services as between Subscriber and Faronics, or between Subscriber and

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an authorized reseller of Faronics, each as approved by Faronics in writing;

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"Parties" means Faronics and Subscriber and either one of them is a "Party";

"Permitted Usage" means Subscriber's permitted usage of the Services as set out in and in accordance with Subscriber's Order, any other agreement between Subscriber and Faronics specifically referencing any part of the Services, and Subscriber's profile as provided by Faronics as a part of the Services;

"Privacy Laws" means any applicable privacy, personal information or data protection laws, including the *Data Protection Act 1998 and Regulation 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (or applicable national legislation implementing that Regulation)*, the *California Consumer Privacy Act of 2018*, the *Personal Information Protection and Electronic Documents Act (Canada)*, the *Personal Information Protection Acts (BC and Alberta)*, the *Personal Information Protection and Identity Theft Prevention Act (Manitoba)*, and *An Act Respecting the Protection of Personal Information in the Private Sector (Quebec)*, all as amended, extended or re-enacted from time to time and any similar legislation or regulations enacted in Canada and its Provinces and Territories;

"Services" means the various Deep Freeze Cloud Services and components thereof, the Software, any on and offline documentation, as well as any modifications, derivatives, updates or upgrades to any of the foregoing as may be offered by Faronics from time to time, and which are subscribed to by Subscriber through a Subscription;

"Software" means any downloadable client software which is provided solely for the purpose of accessing the Services;

"Subscriber" means an individual or entity to whom Faronics agrees to provide Services;

"Subscription" means the non-exclusive, non-transferable right to use one or more of the Services that may be offered by Faronics from time to time, as ordered or accessed by Subscriber, subject to the terms of this Agreement and the timely payment of the Subscription Fees;

"Subscription Fees" means the fees payable in respect of an Order as set out in each Order;

"Subscription Period" means the period of time that Subscriber is permitted to use the Services as set out in the Order or in any Agreement between Subscriber and Faronics, and in respect of DEEP FREEZE ON DEMAND IN THE DEEP FREEZE CLOUD means a period of time as determined by Faronics in its sole discretion;

"Support Services" has the meaning given in Section 4.2; and

"Virus or Malware" means programming or software code designed to damage, destroy or otherwise interfere with programmes, software, and/or devices, including Trojans, any Windows temporary files of any kind (such as *.p or ~*.~ files), worms and corrupted files.

2. AMENDMENTS TO THIS AGREEMENT

Faronics may amend the terms of this Agreement at any time, in which case it will post the most current version at www.deepfreeze.com (<http://www.deepfreeze.com/>). Subscriber is responsible for checking www.deepfreeze.com (<http://www.deepfreeze.com/>) regularly for any amendments. If Subscriber continues to use the Services following an amendment to the Services or this Agreement, Subscriber will be deemed to have consented to the amended Agreement.

3. USE AND SUBSCRIPTION

3.1 Right to Use. Subject to payment of the Subscription Fees, Faronics grants Subscriber, for the duration of the Subscription Period, a revocable, limited, non-transferable, non-sublicenseable (except in accordance with a separate written agreement with Faronics, if applicable), non-exclusive license to access the Services and use the object code form of the Software for Subscriber's own use and only in accordance with the technical specification and other documentation generally made available with the Software, if any, all in accordance with Subscriber's Permitted Usage, pursuant and subject to the terms of this Agreement. During the Subscription Period, Faronics may monitor the Devices, including monitoring for compliance with the Permitted Usage, the other terms of this Agreement, Subscriber's Order and Subscriber's profile. Subscriber acknowledges and agrees that the Software is licensed and not sold.

3.2 Subscription. Subscriber may use the Services only in accordance with Subscriber's Permitted Usage and subject to the terms and conditions of this Agreement. This Agreement applies to Subscriber whether Subscriber uses the Services or installs, otherwise uses or permits the installation of the Software on one or more Devices owned, operated or overseen by Subscriber to facilitate the provision of monitoring, reporting, or any other services provided to Subscriber by Faronics.

Except for Deep Freeze Cloud Services made available to Subscriber on an evaluation basis pursuant to Section 7.1, the Subscription begins at the time Subscriber's Subscription is activated by Faronics and thereafter continues in effect until the end of the Subscription Period, unless terminated by Faronics in accordance with the terms hereof. Subscription Fees are non-refundable in the event of any termination of the Subscription or this Agreement regardless of the reason for such termination. For any Deep Freeze Cloud Services made available to Subscriber on a trial basis the Subscription Period shall be the period of time as determined by Faronics in its sole discretion from time to time.

3.3 Renewal. Subscriber and Faronics may agree to renew the Subscription, in which case such renewal will be undertaken in accordance with an Order and only with the Parties' mutual agreement.

3.4 Updates and Copies. This Agreement covers any new releases of, or updates to, the Services or Software which Faronics may periodically make available to Subscriber. Subscriber may install multiple copies of the Software on different Devices provided that such installation is in accordance with Subscriber's Permitted Usage. Subscriber may make one (1) copy of the Software for back-up purposes only.

4. ACCESS, SUPPORT, UPDATES

4.1 Account Access. To access and use the Services, Subscriber must create an Account that is protected by a username and password. When creating an Account, and at all times thereafter, Subscriber will provide Faronics with complete and accurate information. Subscriber will promptly notify Faronics of any changes to Subscriber's information. Subscriber will keep any passwords and other Account details strictly confidential. Subscriber is solely responsible for providing: (1) its own access to the Internet; (2) all equipment necessary to access the Internet; and (3) payment of all fees associated with accessing the Internet. Subscriber will ensure that each Subscriber Device connects to the Services at least once every 60 days, otherwise Faronics may terminate access to the Services by that Device.

4.2 Support Services. Faronics will, during the Subscription Period, use commercially reasonable efforts to provide Subscriber with the support services described in this Section (the "**Support Services**") from Monday through Friday,

12 am to 5 pm Pacific Standard Time, provided that Faronics may suspend Support Services temporarily for periods not exceeding 12 hours. Faronics will provide Subscriber with prior notice of any such planned suspension by
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posting the notice at support.faronics.com (<http://www.support.faronics.com/>). Subject to any changes Faronics may make to the Support Services at its sole discretion, the Support Services will consist of: (1) telephone or electronic support to Subscriber in order to help Subscriber locate and, on Subscriber's own, correct problems with the Services; and / or (2) supplying extensions, enhancements and other changes that Faronics may make to the Services and which are made publicly available, without additional charge, to other Subscribers of the Services that are entitled to receive Support Services. For clarity, Faronics does not warrant or represent that it will commercially release any updates, extensions, enhancements and other changes, including version updates, to any of the Services. Subscriber acknowledges that it does not have the right to require Faronics to correct or resolve specific problems with the Services.

4.3 Service Updates. To optimize performance, Faronics may provide to Subscriber, in a variety of formats (such as feeds and definition files), content that is automatically synchronised or updated periodically with Faronics' servers or systems (collectively, "**Content**"). Such Content may be provided for a limited time, from time to time, in accordance with an applicable Service. Subscriber consents to the respective Service automatically contacting Faronics to receive Content and in the event that any of the following occur: (1) Subscriber successfully installs or configures the Service; (2) Subscriber fails to successfully install or configure the Service; or (3) the Service is uninstalled. Subscriber may be required to download Software and the Services may automatically update the Software installed on any Device when a new version is available. By accepting these terms, in accordance with Canada's Anti-SPAM legislation ("**CASL**"), if applicable, Subscriber has expressly consented to the installation and acceptance of the Software and the Services as well as all updates to Services and Software as described above. Subscriber agrees that Faronics has satisfied any consent requirements pursuant to CASL. Subscriber confirms that Subscriber is entitled to receive updates or upgrades under the terms of the express consent and the update or upgrade is installed in accordance with those terms. Subscriber further agrees that as long as it is using the Software or Services, or has the Software installed, it has an "existing business relationship" as it is defined in CASL.

5. PRIVACY AND SECURITY

5.1 Privacy Policy. Faronics' Privacy Policy, as modified from time to time, can be found at [www.deepfreeze.com/privacy](https://www.faronics.com/privacy) (<https://www.faronics.com/privacy>).

5.2 Consent to Collect and Use Data. Subscriber acknowledges and agrees that Faronics and the Faronics Agents may collect, process and use Subscriber's data to provide the Services to Subscriber, as well as to comply with applicable laws. In addition, with Subscriber's consent, Faronics may contact Subscriber or permit Faronics' partners to contact Subscriber about goods and services that may be of interest to Subscriber. Non-personal (non-identifying) data may be collected automatically to offer first-class service, especially to facilitate and improve the provision of Software updates, Support Services, Content and other services to Subscriber, and for use for Faronics' other business purposes.

5.3 Privacy and Data Protection. The Parties will comply with their respective obligations under applicable Privacy Laws. Neither Party will do any act that puts the other Party in breach of its obligations as set out in this Section, nor will anything in this Agreement be deemed to prevent any Party from taking any action it reasonably deems necessary to comply with Privacy Laws. Should Faronics, in its sole discretion, determine Subscriber's actions are such that a breach of Privacy Laws has or is at risk of occurring, Faronics may discontinue providing the Services at any time without any liability.

Subscriber is solely responsible for obtaining consents or providing notice of collection, use and disclosure with respect to any personal information provided directly or indirectly to Faronics in the course of Subscriber's use, or Subscriber's employees', agents' and contractors' use of the Account and the Services.

Subscriber represents, warrants and agrees that: (1) in respect of data Subscriber collects, accesses or otherwise uses, Subscriber alone will determine the purposes for which and the manner in which personal data is, or will be, processed; (2) Subscriber is at all times a "data controller" in respect of all "personal data" that is processed and Faronics will be a "data processor"; and (3) by sending its personal data to Faronics, Subscriber consents and, if Subscriber processes any third party data, has obtained the consent from such third party, to the collection, processing, transmission and disclosure of such information and data by Faronics to Faronics Agents and any third party data processors pursuant to this Agreement within the European Economic Area, Canada and the USA in order for Faronics to perform its obligations under this Agreement.

Faronics will: (1) process such personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by Subscriber in writing; and (2) maintain appropriate technical and organisational measures to protect against unauthorised or unlawful processing of such personal data and against accidental loss or destruction of, or damage to, that personal data. Faronics may cease at any time to provide the Services if Subscriber limits the purposes for which and the manner in which personal data is or will be processed by Faronics in such a manner that does not reasonably enable Faronics to continue providing the Services.

The terms "personal data", "data processor", "data subject", "process", and "data controller" used in this Agreement: (1) are as defined in Regulation 2016/679 of the European Parliament known as the General Data Protection Regulation ("GDPR") with regard to the processing of personal data (or applicable national legislation implementing that Regulation) only in jurisdictions where Regulation 2016/679 and such implementing national legislation applies; and (2) will have their ordinary meaning in all other jurisdictions.

Subscriber warrants and agrees that any instructions given by Subscriber to Faronics will at all times be in accordance with the requirements of Privacy Laws. Subscriber will fully indemnify Faronics against any loss, damages, liability and costs (including legal fees) incurred by Faronics which is not the result of its own negligence and is related to the Services or the data subject to this Agreement, including but not limited to any breach of Privacy Laws by Subscriber, erroneous or corrupt data, access or disclosure requirements. For further clarity, Subscriber will fully indemnify Faronics for all costs (including legal fees) related to dealing with and responding to any request, inquiry, process or proceeding by any legitimate regulatory authority in respect of the Services or the data subject to this Agreement and is not due to Faronics' own negligence. Faronics may comply with requests for information from legitimate judicial, legal or regulatory authorities or pursuant to any court order or a subpoena, discovery request or other lawful process that Faronics receives. Faronics may comply with these subpoenas or court orders with or without notice to Subscriber.

5.4 Account Security. Subscriber is solely responsible for access to, content in or sharing and use of its Account. Faronics will not be liable for any loss or damage arising from any access to, or sharing and use of Subscriber's Account. If Subscriber believes or suspects there has been any unauthorized access to the Account, Subscriber will notify Faronics immediately by email to legal@faronics.com (<mailto:legal@faronics.com>).

6. SUBSCRIBER'S CONDUCT

6.1 Compliance with Applicable Laws and Required Consents. In respect of this Agreement and any actions, rights or obligations under this Agreement, Subscriber will at all times comply all applicable local, provincial, state, federal, and international laws and treaties. Subscriber represents and warrants that it has obtained sufficient consent and rights to (1) access any third party's systems or networks, and (2) access, use and store all data and files on the Infrastructure or otherwise use via the Services such data and information.

6.2 Restrictions on Use of the Services. Subscriber will not and will not permit any third party to: (1) use the Services in any manner not expressly authorized by this Agreement; (2) use the Services in a manner that results in excessive bandwidth or storage or exceeds the Permitted Usage, as determined by Faronics; (3) make error corrections to or otherwise modify, create a derivative work of, or adapt the Services or decompile, decrypt, disassemble, reverse engineer or attempt to reconstruct or discover any source code or underlying ideas, algorithms, file formats or programming or interoperability interfaces of the Services or of any files contained or generated using the Services by any means whatsoever or otherwise reduce the Services to human-readable form, except to the minimum extent expressly permitted under applicable law notwithstanding this restriction and then only with prior written notice to Faronics; (4) attempt to alter, circumvent or provide the method or means to circumvent any disabling mechanism in the Services; (5) distribute, sell, sublicense, rent, or lease the Services, or use or permit the Services to be used to perform services for third parties, whether for time sharing, hosting, provision of services, as a service bureau or for like purposes; (6) alter, remove or fail to reproduce any proprietary or other notices from the Services; (7) misrepresent any person or entities' identity, impersonate any person or attempt to gain access to any Account, the Infrastructure or the networks or property of any third person, without authorization; (8) harm, disrupt or otherwise engage in activity that diminishes the Faronics brand, Services, or Infrastructure; (9) publicly disseminate performance information or analysis (including benchmarks) from any source relating to the Services; or (10) permit any third party to benefit from the use or functionality of the Services, except as and only to the extent explicitly permitted by this Agreement.

6.3 Export Controls. Subscriber represents, warrants and agrees that the Services will not be used, shipped, transferred or exported into any country or to anyone in any manner prohibited by the export laws or regulations of Canada, the United States or the European Union, including: (1) in any manner prohibited by the United States Export Administration Act, the EU Common Foreign and Security Policy, or any other export laws or regulations; (2) on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders; (3) for which the EU (or relevant EU Member State) or UN has embargoed goods; or (4) listed in any enacted Common Position on restrictive measures imposed by the EU. By using the Services, Subscriber represents and warrants that Subscriber is not located in, under the control of, or a national or resident of any such country or on any such list and Subscriber takes full and sole responsibility for such use.

6.4 Right to Access Account and Remove Data. In addition to Faronics' rights under Section 3.1, Faronics may access and monitor the Account and remove any data or content of data or files stored on its Infrastructure that Faronics believes or suspects: (1) infringes the intellectual property rights or any other rights of any third party; (2) is illegal, libellous, abusive, threatening, harmful, vulgar, pornographic, obscene, or used in such a manner as to cause offense or harass; (3) is used for the purpose of spamming, chain letters or the use or dissemination of objectionable material of any kind; (4) is a Virus or Malware; or (5) otherwise breaches the terms of this Agreement.

7. EVALUATIONS

7.1 Evaluation of Services. Subscriber may, with Faronics' consent and in its sole discretion, evaluate the Services once for up to thirty days at no cost provided that the sole purpose of the evaluation is to determine whether to license the Services. Subscriber will either license the Services or stop using the Services at the end of the evaluation period.

7.2 Beta Testing. Faronics may provide beta versions of the Services to Subscriber, in which case such beta versions will be provided: (1) without warranty of any kind on an "as is" basis; (2) subject to the confidentiality obligations under this Agreement; (3) only for the purpose of assisting Faronics with testing functionality or compatibility; and (4) on the condition that Subscriber give Faronics accurate and complete feedback and analysis in the format requested by Faronics (a "**Contribution**"). Subscriber acknowledges that its participation in any beta testing will be on a volunteer basis and that it will have no right in the beta Services or Contribution, whether in original form (as provided to Subscriber) or in respect of any derivative work (whether or not based upon, in whole or in part, on any participation or feedback Subscriber may make). Notwithstanding the foregoing, Subscriber hereby grants to Faronics a royalty-free, perpetual, transferable license to commercially use and sub-license in Faronics' sole discretion any and all Contributions.

8. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIAL INFORMATION

The Services may be protected by world-wide copyright, trademark, patent and other intellectual property laws and treaties and the Services (including the Software) belong to Faronics, its licensors and any other applicable Faronics Agent. Subscriber acknowledges and agrees that: (1) Subscriber will have no rights or title in, or to, the Services other than the limited right to use them in accordance with this Agreement and that irrespective of the use of any of the words "purchase", "sale" or like terms hereunder no ownership rights are being conveyed to Subscriber under this Agreement; and (2) open source and / or third-party software are incorporated into the Services. Faronics, its licensors and any applicable third parties, own all right, title, and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Services and all copies thereof. All other rights are expressly reserved by Faronics. The Services are a trade secret of and proprietary to Faronics and its suppliers and licensors, including but not limited to, the specific internal code, design and structure of individual programs and software, the display and associated interface information.

Subscriber acknowledges that Subscriber may obtain confidential or proprietary information relating to the Services (including the Software), including code, technology, know-how, ideas, algorithms, testing procedure, structure, interfaces, specifications, documentation bugs, problems reports, analysis and performance information, and may obtain other technical, business and product information and data of Faronics or the Faronics Agents or those with whom any of them conducts business (collectively, the "**Confidential Information**"). Subscriber will not disclose any Confidential Information to any third party or use Confidential Information for any purpose other than as strictly necessary to access and use the Services on the terms set out in this Agreement.

If Subscriber provides technical information to Faronics pursuant to the use of the Services, Faronics may use this information for its business purposes, including support and development; however, such information will not be used in a way that identifies Subscriber.

Faronics may refer to Subscriber's name and logo identifiers, both internally and in externally- published media, for the purpose of identifying Subscriber as a Faronics customer. Faronics will obtain Subscriber's prior consent should it wish to use Subscriber's name and logo identifiers for any other purpose.

Some Software and future updates and patches may now or later include third party components, including open source software components. These third party components may be provided to Subscriber under the terms and conditions of this Agreement or they may be provided to Subscriber under separate terms and conditions different from this Agreement, typically found in a separate license agreement, the header file of the component source code or in a README link located at www.deepfreeze.com/osreadme (<http://www.deepfreeze.com/osreadme>) in which case such third party's license terms and use restrictions will solely govern the use of such components. To the extent that there may be conflict between this Agreement and an applicable third party's license terms and use restrictions, the third party's license terms and use restrictions will control to the extent of the conflict. The Bitdefender SDK, used in Faronics' Anti-Virus product, is © 1997 to present. Other third party components used in the Software are owned by the licensors thereof.

10. DISCLAIMER, LIABILITY, INDEMNITY

10.1. DISCLAIMER. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (A) THE SERVICES ARE PROVIDED TO SUBSCRIBER ON AN "AS IS" AND "AS IS AVAILABLE" BASIS; AND (B) SUBSCRIBER'S LIMITED REMEDIES SET OUT HEREIN ARE EXCLUSIVE AND IN LIEU OF (AND FARONICS AND THE FARONICS AGENTS HEREBY DISCLAIM) ALL REPRESENTATIONS, WARRANTIES AND ANY OTHER REMEDIES, WHETHER ORAL, EXPRESS, IMPLIED OR STATUTORY INCLUDING WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY AND WARRANTIES FOR LATENT OR HIDDEN DEFECTS. FARONICS DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR ANY SPECIFICATIONS OR FUNCTIONS CONTAINED IN THE SERVICES WILL MEET SUBSCRIBER'S REQUIREMENTS, OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ANY DEFECTS IN THE SERVICES WILL BE CORRECTED. FURTHERMORE, FARONICS DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE USE OR THE RESULTS OF THE USE OF THE SERVICES PROVIDED, WHETHER IN RESPECT OF ITS CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE, OR THE SUPPORT SERVICES.

10.2. LIMITATION OF LIABILITY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (A) IN NO EVENT WILL FARONICS OR THE FARONICS AGENTS BE LIABLE UNDER CONTRACT, EQUITY, NEGLIGENCE, TORT, STRICT LIABILITY, OR OTHERWISE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF GOODWILL, PROFITS OR OTHER BUSINESS LOSS, OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR LOSS OR INACCURACY OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, SYSTEM DOWNTIME, FAILURE OF SECURITY MECHANISMS, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SERVICES, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, UNDER ANY THEORY OF LAW OR FAULT OF FARONICS OR ANY OF THE FARONICS AGENTS, AND EVEN IF FARONICS OR ANY OF THE FARONICS AGENTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (B) FARONICS AND FARONICS AGENTS EXCLUDE ANY LIABILITY FOR FAILURE TO REPAIR ANY SERVICES OR REPLACE ANY SOFTWARE; (C) THE MAXIMUM LIABILITY THAT FARONICS WILL INCUR HEREUNDER OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT AND THE SERVICES, WHETHER BASED ON AN ACTION OR

CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHERWISE, WILL BE LIMITED TO ONE TWELFTH (1/12) OF THE SUBSCRIPTION FEE ACTUALLY PAID BY SUBSCRIBER FOR THE RESPECTIVE SERVICE AT ISSUE FOR THE SUBSCRIPTION PERIOD DURING WHICH THE APPLICABLE CLAIM AROSE.

SUBSCRIBER AGREES THAT THE LIMITATIONS OF THIS SECTION 10.2 AND SECTION 10.1 ARE ESSENTIAL AND THAT SUBSCRIBER WOULD NOT BE PERMITTED TO USE THE SERVICES ABSENT THE TERMS OF SUCH SECTIONS. SUCH SECTIONS WILL SURVIVE AND APPLY EVEN IF ANY REMEDY SPECIFIED IN THIS AGREEMENT WILL BE FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

THE SERVICES ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN ANY HAZARDOUS ENVIRONMENT REQUIRING FAIL-SAFE PERFORMANCE OR OPERATION. THE SERVICES ARE NOT FOR USE IN THE OPERATION OF AIRCRAFT NAVIGATION, NUCLEAR FACILITIES, OR COMMUNICATION SYSTEMS, WEAPONS SYSTEMS, DIRECT OR INDIRECT LIFE-SUPPORT SYSTEMS, AIR TRAFFIC CONTROL, OR ANY APPLICATION OR INSTALLATION WHERE FAILURE COULD RESULT IN DEATH, SEVERE PHYSICAL INJURY OR PROPERTY DAMAGE.

10.3. Indemnification. Subscriber agrees to indemnify, defend, and hold Faronics and the Faronics Agents, harmless from and against any and all damages, fines, penalties, assessments, liabilities, losses, costs and expenses (including legal fees, expert fees and out-of-pocket expenses) in connection with (i) Subscriber's use of the Services, (ii) Subscriber's violation of the terms of this Agreement, (iii) Subscriber's violation of any third-party rights, including any intellectual property rights, (iv) Subscriber's misuse or fraudulent use of credit and debit cards, (v) any claims that the Services or any party thereof were exported or otherwise shipped or transported by Subscriber in violation of applicable laws, rules and regulations, or (vi) any claim of misuse of the Services, including but not limited to any claim that Subscriber is storing illegal files or data in its Account.

11. TERMINATION

11.1 Termination. Faronics may, without notice, immediately terminate and/or suspend this Agreement and Subscriber's Subscription and use of and access to the Services, in whole or in part, without prejudice to any other rights: (1) if Subscriber defaults under any of its payment obligations (including the Subscription Fees) and such default continues for 5 days after receiving written notice of such default from Faronics; (2) if Subscriber defaults under any of Subscriber's other obligations hereunder, and in any other agreement between Subscriber and Faronics, and such default continues for 15 days after receiving written notice of such default from Faronics; (3) if any resolution is passed or order made or other steps taken for Subscriber's bankruptcy, insolvency, liquidation, winding up or other termination of existence; (4) if the then current Subscription Period expires without renewal; or (5) at any time for any reason effective immediately on written notice to Subscriber. As of the effective date of termination or expiration, all rights granted to Subscriber hereunder will immediately terminate and Subscriber will no longer be able to access or use the particular Services which have been terminated or expired. Upon termination or expiry of all of the Services, Subscriber will immediately destroy all copies of the Software in its possession or under its control or on its systems (and certify to Faronics that it has done so).

11.2 Survival. Sections 5, 6, 8, 9, 10, 11 and 12 will survive the termination of this Agreement.

12. GENERAL AND MISCELLANEOUS TERMS

12.1 Interpretation. The division of this Agreement into Sections and the insertion of headings is for convenience only and will not be used to affect the construction or interpretation of this Agreement. The word "including" will not

language other than English, the English version will prevail in the event of a conflict or discrepancy between the English and non-English versions.

12.2 Law of Agreement. This Agreement, and the rights and obligations of the Parties hereunder, will be interpreted according to and governed by the laws of the Province of British Columbia and the laws of Canada applicable therein. Subscriber hereby irrevocably submits to the exclusive jurisdiction of the courts of British Columbia in any proceeding related to this Agreement and agrees that it will not commence a proceeding related to this Agreement in any other jurisdiction. For greater certainty, this Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods unless expressly provided otherwise by local law.

12.3 Notices. Each notice to a Party under this Agreement must be in writing. In order to be effective, notices to Faronics must be mailed by registered mail or sent by courier to the Chief Executive Officer at the address set out below, or sent via email to legal@faronics.com (<mailto:legal@faronics.com>) (provided the recipient confirms transmission).

Faronics Corporation 1400 - 609 Granville Street PO Box 10362 Pacific Centre Vancouver, BC, V7Y 1G5 Canada Attn: Chief Executive Officer

Notices to Subscriber may be provided by registered mail or courier to the address on file with Faronics, electronically through notification while providing the Services, or via e-mail to the last known e-mail address of Subscriber. All notices under this Agreement will be effective on the date that is three days following the date of mailing, couriating or permitted electronic transmission.

12.4 Waivers and Unenforceable Provisions. No waiver of any provision of this Agreement is binding unless it is in writing and signed by both Parties, except that any provision which does not give rights or benefits to a particular Party may be waived in writing, signed only by that Party who has rights under, or holds the benefit of, the provision being waived. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. If any provision of this Agreement is held to be void, illegal or otherwise unenforceable by a court of competent jurisdiction or arbitral tribunal, such provision will be of no force and effect and will not impair the enforceability of any other provision of this Agreement, and in such circumstances the Parties agree that such provision will be deemed replaced by a valid provision that differs as little as possible from the unenforceable provision, taking into effect the purpose of this Agreement.

12.5 Remedies. The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties will be entitled to equitable relief, including injunctive relief or specific performance, without any requirement to post bond or guarantee, in addition to any other remedy to which they are entitled at law or in equity. Unless otherwise stated herein, the rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

12.6 Assignment and Benefit. Faronics may assign this Agreement by giving notice to this effect to Subscriber. Subscriber may not assign, sublicense, pledge or otherwise transfer this Agreement, nor any rights or obligations hereunder in whole or in part, without Faronics prior written consent. Any such purported assignment will be void. This Agreement is for the sole benefit of Faronics and Subscriber and nothing herein, express or implied, is intended

12.7 Uncontrollable Events. Faronics will not be liable to Subscriber for any breach or delay in the performance of its obligations under this Agreement caused by circumstances beyond Faronics' control, including laws or regulations of any governmental authority, war, civic commotion, labour disturbances, fire, earthquake, storm, failure of public utilities or common carriers, failure of third party suppliers, or acts of God.

12.8 U.S. Government Rights. The Services are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, duplication, modification, reproduction, release, performance, display, disclosure, or transfer of the Services by the U.S. Government shall be governed solely by the terms of this Agreement. The Services were developed fully at private expense. All other use is prohibited.

12.9 Export Compliance Subscriber acknowledges that the Services or parts thereof including the Software may be subject to export restrictions by the United States government and import restrictions by certain foreign governments. Subscriber will not and will not allow any third-party to remove or export from the United States or allow the export or re-export of any part of the Services, including the Software, or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country; (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Subscriber understands that Faronics is not responsible for Services or part thereof that are exported by Subscriber or transferred to another representative in the United States or another country. Subscriber agrees to the foregoing and warrants that Subscriber is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Services are further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government.

12.10 Entire Agreement. This Agreement (including permitted amendments hereto), any End User License Agreement that refers to any part of the Services, and all Orders constitute the entire agreement between Subscriber and Faronics relating to the Services and the Support Services and supersede any other oral or written communications, proposals and representations with respect to the Services or Support Services. To the extent that any Order, any applicable End User License Agreement, or any Faronics' policies or programs conflict with the terms of this Agreement, the terms of this Agreement will prevail. In addition, the terms of this Agreement will prevail over any and all additional or conflicting terms or provisions contained in any document of Subscriber, whether set out in a purchase order or alternative license, and any and all such additional or conflicting terms will be void and will have no effect. This Agreement is in addition to and does not have any effect on any other agreement between Faronics and Subscriber not relating to the Services and the Support Services.

12.11 Audit. If requested, Subscriber will certify in writing that Subscriber is using the Software on the number of Devices, with the number of copies, and is otherwise using the Services in accordance with the restrictions set out in this Agreement or in any documentation generally made available with the Software or the other Services. In addition and without limitation to Faronics' right to monitor the Devices, Subscriber will permit Faronics or Faronics'

representatives to otherwise audit Subscriber's use of the Software and the other Services at least semi-annually and to inspect (and make copies of) all relevant records in order to determine whether Subscriber is complying with this Agreement.s

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