

# M-Files® Cloud Vault Agreement

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M-FILES INC., having its principal place of business at 5050 Quorum Drive, Suite 600, Dallas, TX (EIN: 90-0444506), phone: +1 972 516 4210, fax: +1 972 516 4211, electronic mail: [m-files@m-files.com](mailto:m-files@m-files.com) (hereinafter referred to as “the Service Provider”) is the provider of the M-Files Cloud Vault Service, which is subject to the following terms and conditions (hereinafter “the Agreement”).

## A. AVAILABILITY OF THE M-FILES SYSTEM

THE SERVICE PROVIDER PROVIDES THE END-USER CUSTOMER, WHETHER A NATURAL PERSON OR A CORPORATION (hereinafter “You” or “Customer”), WITH A SERVICE THAT INCLUDES THE POSSIBILITY OF ACCESSING AND USING THE M-FILES SYSTEM WHILE HAVING ITS COMPONENTS MAINTAINED AND SUPPORTED BY THE SERVICE PROVIDER (“the Service”). BY USING THE SERVICE, RELATED SOFTWARE, OR ANY FUNCTIONALITY THEREOF, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU REPRESENT AND WARRANT THAT YOU ARE COMPETENT TO ENTER INTO THIS AGREEMENT AND THAT YOU HAVE READ THE AGREEMENT AND UNDERSTAND ALL OF ITS TERMS AND CONDITIONS.

Installation and use of files, documents, and other content offered to You by the Service Provider for purposes of running, use, and display of software tools and client interface on Your terminal devices (“Client Software”) is governed by the M-Files End User License Agreement (“EULA”). By using the Client Software, You acknowledge and agree to the EULA. Since the M-Files System is offered to You in modules, You understand that Your use of the various modules is governed by different contracts. The “**M-Files System**” is an entity composed of the M-Files Cloud Vault Service and/or M-Files Server Software and Client Software. It can be set up according to Your preferences, but You must at all times have purchased the necessary licenses for each module and each user of the M-Files System.

This Agreement is a service agreement and a license to use the M-Files Server software in accordance with the terms and conditions hereunder. It is intended to provide You with the option of building the M-Files System without having to use your own server hardware. You are, however, responsible for procuring the devices and equipment for Your use of the M-Files System.

You will be provided with access to the M-Files System environment maintained by the Service Provider. The server hardware equipment consists of a number of elements, which may be situated in various locations. The use of server capacity is optimized and decentralized. Your use of M-Files Server software and Your processing of digital content will take place on a virtual server of several servers in the system. Your virtual server is accessed over the Internet by means of Your ID and password (“User Credentials”).

Service level terms and general terms applicable to support are set forth in the M-Files Maintenance Agreement, which forms an integral part of the Agreement. By using the Service, You accept the terms and conditions of the Maintenance Agreement.

Should You have any questions concerning this Agreement, please contact the Service Provider.

More information on the system can be found at <http://www.m-files.com/cloudvault/>, hereinafter referred to as "the Site."

## **B. SERVICE FEE AND PURCHASE OF THE SERVICE**

When purchasing the Service, You are expected to choose the initial fixed term for the Agreement, as well as the number of users. You will be invoiced accordingly. Unless You notify the Service Provider in writing ("writing" hereunder to include e-mail) at least thirty (30) days before the end of the then current term, the Agreement will be automatically renewed on all of its terms on the day after the end of the previous Agreement term. The new term shall be the same length as the previous one and, unless otherwise agreed in writing, covers the same number of users.

If payment for the new term is not completed within 30 days from the beginning of a new Agreement term, Your account may be locked and become inaccessible until all outstanding payments have been processed by the Service Provider. You are liable for outstanding payments even if You decided to terminate the Service after the term has been automatically renewed.

Upon entering into this Agreement and payment of the applicable Service fees, You will receive the User Credentials for accessing the Service. Any and all User Credentials that You have must be held in confidence. You are fully responsible for the use of Your User Credentials and for all actions taken in the system with Your User Credentials, and you agree to notify the Service Provider immediately of any unauthorized use of Your User Credentials or any other breach of security.

When purchasing the Service, You must provide true, accurate, current, and complete information about Yourself as requested by the Service Provider.

ANY BREACH OF THE OBLIGATION TO PROVIDE CORRECT AND COMPLETE INFORMATION CONSTITUTES A FUNDAMENTAL BREACH AND CAUSES THE AGREEMENT TO TERMINATE AUTOMATICALLY, WITH THE TERMINATION TAKING EFFECT IMMEDIATELY.

## **C. CONSENT TO PROCESSING OF PERSONAL INFORMATION, ELECTRONIC COMMUNICATIONS, AND SOLICITATION**

You understand and accept that collection and processing of information about You and Your use of the Service is necessary for the purposes of providing the Service to You.

BY ENTERING INTO THIS AGREEMENT, YOU AUTHORIZE THE SERVICE PROVIDER TO COLLECT AND USE YOUR PERSONAL INFORMATION AS WELL AS ANY INFORMATION THAT IS NECESSARY FOR THE PURPOSE OF THIS AGREEMENT. SOME ELEMENTS OF THE SERVICE MAY BE HOSTED ON

SERVICES LOCATED OUTSIDE OF YOUR COUNTRY. THE LAWS APPLICABLE TO THE PROTECTION OF PERSONAL INFORMATION MAY BE DIFFERENT FROM THOSE APPLICABLE IN YOUR COUNTRY. BY USING THE SERVICE, YOU CONSENT TO INFORMATION ABOUT YOU BEING TRANSFERRED OUTSIDE OF YOUR COUNTRY.

In addition to what is required for technical purposes related to the Service, the Service Provider may send You communications or data regarding the Service, including but not limited to (i) notices about Your use of the Service, including any notices related to violations of applicable terms of use; (ii) updates; and (iii) promotional information and materials regarding document management products and services, via electronic mail.

#### **D. SERVICES**

**SOFTWARE LICENSE:** Subject to your entry into this Agreement and payment of the Service fee, the Service Provider makes the M-Files System available for Your use and authorizes You to access the M-Files System and the files that are needed for displaying Your content and processing Your data. You are not authorized to make any permanent or temporary copies of any software included in the M-Files System, other than what is technically needed for use of the Service. You may not make any changes or adaptations to any software in the M-Files System.

The Service Provider authorizes You to make the necessary copies of the documentation offered to You by the Service Provider, which is intended to help You in Your use of the M-Files System. Your accessing of the M-Files System is governed by the EULA.

**MAINTENANCE:** The M-Files servers and the software therein shall be in the sole control of the Service Provider, which is also responsible for maintaining them. The Service Provider updates the M-Files System from time to time. The upgrade/update schedule and any decisions relating to upgrading or updating of the M-Files System shall be at the sole discretion of the Service Provider.

**SUPPORT:** The Service Provider offers You technical support as agreed in the Maintenance Agreement.

THE SERVICE CAN BE ACCESSED VIA THE INTERNET, BUT THE SERVICE PROVIDER IS NOT AN INTERNET OR COMMUNICATION SERVICE PROVIDER. YOU ARE RESPONSIBLE FOR PROCURING YOUR INTERNET SUBSCRIPTION SEPARATELY. THE SERVICE PROVIDER DOES NOT HAVE ANY OBLIGATIONS RELATED TO YOUR ACCESS OR CONNECTION TO THE INTERNET.

#### **E. THE M-FILES SYSTEM – INTELLECTUAL PROPERTY**

Any intellectual property rights on a worldwide basis, including, without limitation, patentable inventions (whether or not applied for), patents, patent rights, copyrights, work of authorship, moral rights, trademarks, service marks, trade names, trade dress, trade secrets and all applications and registrations of all of the foregoing resulting from, or relating to, the performance of the Service that are conceived, developed, discovered or reduced to practice by the Service Provider (the “Intellectual Property Rights”), shall be the exclusive property of the Service Provider and its

affiliates and licensors. Specifically, the Service Provider and its affiliates and licensors shall exclusively own all rights, title and interest (including, without limitation, all Intellectual Property Rights throughout the world) in and to the Service and any and all inventions, works of authorship, layouts, know-how, ideas or information discovered, developed, made, conceived or reduced to practice, by the Service Provider, in the course of the performance of the Service.

“M-Files Cloud Vault,” the M-Files Cloud Vault logo, and the M-Files name and logo are trademarks, service marks, or registered trademarks of M-Files Corporation or its affiliates, and they may not be copied, imitated, or used, in whole or in part, without the prior written consent of M-Files Corporation.

## **F. CUSTOMER CONTENT**

You authorize the Service Provider to make technically necessary copies and modifications in order to be able to organize the data processing services for You in accordance with the Agreement. The Service Provider may use servers in multiple locations and create virtual servers for its customers in order to optimize the processing capacity of the hardware. The servers are in different locations and accessed via the open Internet. However, all connections established between servers and Client Software You use, are encrypted, and Your content is transferred over the publicly used network infrastructure in an unreadable form. You hereby grant the Service Provider all necessary licenses and global rights for processing of Your content.

YOU REPRESENT AND WARRANT THAT YOU HAVE ALL NECESSARY RIGHTS TO GRANT THE AFOREMENTIONED LICENSE AND LEGAL AUTHORIZATION TO GOVERN, CONTROL, AND DECIDE ABOUT ANY AND ALL CONTENT YOU ENTER IN THE M-FILES SYSTEM. YOU ALSO TAKE FULL RESPONSIBILITY FOR YOUR CONTENT AND AGREE TO COMPENSATE FOR ANY DIRECT OR INDIRECT DAMAGE THAT YOUR USE OR CONTENT CAUSES OR IS CLAIMED TO HAVE CAUSED.

By entering Your content in the M-Files System you authorize the Service Provider to technically process Your content as well as to fulfill any rights and obligations the Service Provider under this Agreement. In no event will entering Your content in the system transfer any rights. You continue to possess all rights and/or ownership that You have to Your content. You are responsible for all of Your content.

The Service Provider respects intellectual property rights and requires that the M-Files System be kept free of infringing content. If You believe that Your copyright has been infringed by another user and You have reason to believe infringing copies are in the M-Files System, please send written notice to the Service Provider. Notices will be evaluated and addressed in accordance with applicable law and the Agreement.

YOU AGREE TO INDEMNIFY, DEFEND, AND HOLD THE SERVICE PROVIDER, ITS AFFILIATES, EMPLOYEES, LICENSORS, AND AGENTS HARMLESS AGAINST ANY CLAIM, LIABILITY, DAMAGES, LOSSES, JUDGMENTS, AND OTHER EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY’S FEES AND COURT COSTS ARISING OUT OF OR RESULTING FROM ANY THIRD PARTY

CLAIMS MADE OR PROCEEDINGS BROUGHT AGAINST THE SERVICE PROVIDER TO THE EXTENT SUCH LIABILITY ARISES IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT AND RESULTS FROM YOUR 1) NEGLIGENCE OR WILLFUL MISCONDUCT, OR 2) BREACH OF THIS AGREEMENT.

The Service Provider reserves the option of taking control over any infringement procedure related to Your use of the M-Files System, and You will fully cooperate with the Service Provider in asserting any available defense and stand for the expenses as stated above.

#### **G. LINKS TO THIRD-PARTY CONTENT**

The Service may contain links to content, such as websites owned and/or operated by third parties ("Third Party Content"). You may be able to access, review, display or use Third Party Content via the Service. Such links to Third Party Content are provided for informational purposes only. We are not responsible for any such Third Party Content and do not have control over Third Party Content. Our inclusion of a link to Third Party Content in the Service does not in any way imply our endorsement, advertising, or promotion of such Third Party Content. By accessing Third Party Content you accept that we do not exercise any control over such Third Party Content. We have no responsibility of the Third Party Content, and you acknowledge and agree that we have no liability to you or any third party for any harm, injuries or losses suffered as a result of your access to, reliance on or use of such Third Party Content. We encourage you to familiarize yourself with the terms of service applicable to any Third Party Content. You acknowledge sole responsibility for and assume all risk arising from your access to, use of or reliance upon any Third Party Content.

#### **H. PRIVACY AND CONTENT MANAGEMENT**

The Privacy Policy of the Service Provider governs the processing of personal data by the Service Provider. If You have any questions about the Privacy Policy, please contact the Service Provider.

The Service Provider generally does not monitor any information submitted to the Service by You, but should it incidentally learn about, or be advised of, any infringing activity and/or content, the Service Provider has the right to respond. The Service Provider has the right, but no obligation, to remove or require customers to remove all content that the Service Provider finds to be in violation of applicable law and/or any content that is harmful or malicious toward the Service or otherwise. The Service Provider may, at its sole discretion, discontinue any storage and/or processing of offensive, insulting, deceitful, discriminatory, or other unlawful and/or unethical materials or materials that infringe the rights of third parties. Prior to the removal, the Service Provider may, at its sole discretion, contact the Customer whose Credentials have been used for uploading infringing content.

Please notify the Service Provider about any content that You believe might violate applicable law or Your intellectual property rights, or about any malicious or offensive material.

#### **I. TERMINATION**

The Service Provider reserves the right to terminate the Agreement with 30 days' prior written notice. Once the Agreement terminates, Your account, User Credentials, and access to the Service may be discontinued and all data within the Service may be deleted.

Moreover, the Service Provider may terminate this agreement in the event of a Material Breach (as defined hereunder) of the terms of this Agreement by You and/or Your employees, in the event You fail to remedy any such breach capable of being cured within seven (7) days after being provided written notice thereof (the "Cure Period"). If the breach is not cured by you within the Cure Period, the Agreement shall automatically terminate, effective immediately. You will be deemed to have cured such Material Breach if within the Cure Period you take steps reasonably adequate to alleviate any damage to the Service Provider resulting from the Material Breach and to prevent a similar future Material Breach.

THE FOLLOWING CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT:

1. Attempts to harm or disrupt, or otherwise engage in activity that diminishes, the Site, computer systems, network, or Service.
2. Attempts to interfere with any other person's use of the Service.
3. Misrepresentations of Your or Your employee's identity or impersonating any person.
4. Attempts to use the Service to send or otherwise make available any material that contains viruses, Trojan horses, worms, corrupted files, or any similar software that may impair the operation of another's computer or other property.
5. Attempts to gain access to any account, computer, or network related to the Service without authorization.
6. Attempts to obtain any data by means that You are not authorized to use.
7. Attempts to use the Service for infringing the privacy of a third party or violating the legal rights of others.
8. Using the Service for intentional and systematic violation of third-party intellectual property rights or other property.
9. Attempts to use the Service to gain access to content that has been made available for You by another user but that has been disseminated or reproduced by infringing rights of a third party.
10. Attempts to modify, translate, adapt, edit, copy, decompile, disassemble, or reverse engineer any software used or provided by the Service Provider in connection with the Site or Service.
11. Exports content against applicable restrictions or obligations set forth in the law.

12. Use of the Service to violate any code of conduct or other guidelines provided to You that may be applicable to the Service or the Site.

The Service Provider will not give any refunds for any reason in the event that the Agreement is terminated due to a Material Breach.

You may terminate this agreement and Your account upon written notice to the Service Provider in accordance with the terms of the applicable Delivery Agreement. Once the Agreement terminates, You will no longer necessarily have access to Your content. Your content and data may be deleted after 30 days have passed from termination.

## **J. BACKUP COPIES**

If the Agreement is terminated by the Service Provider for breach of the Agreement or because of outstanding payments, or if the Agreement terminates due to Your Material Breach of the Agreement as set out in Section I, provision of backup copies shall be at the sole discretion of the Service Provider. Should the Service Provider choose to provide the backup copies, said services are invoiced in accordance with the price list then in force.

If the Service Provider terminates the Agreement for a reason other than Your breach of this agreement or failure to pay the Service fee, the Service Provider will provide You with a full backup of Your data free of charge. The files will be sent to You on a medium or system selected by the Service Provider.

If You terminate the Agreement, You may request a full backup of Your data, which the Service Provider will make available for You within 30 days and in accordance with the price list then in force.

UPON YOUR TERMINATION OF THE AGREEMENT, YOU MUST NOTIFY THE SERVICE PROVIDER IF YOU WANT YOUR DATA TO BE COPIED AND PROVIDED TO YOU.

Since all of Your data may be deleted after 30 days have elapsed from termination, You are strongly advised to include the backup request in your notice of termination. After 30 days from this termination, the Service Provider shall have no obligations related to any data stored on Your account, or obligations to save data or forward any to You or any third party.

## **K. WARRANTY**

THE SERVICE PROVIDER PROVIDES THE SITE, SOFTWARE, AND THE SERVICE "AS IS" AND DOES NOT REPRESENT OR WARRANT SATISFACTORY QUALITY, NON-INFRINGEMENT, PERFORMANCE, OR ACCURACY OF THE SERVICE. THE SERVICE PROVIDER DOES NOT WARRANT THAT THE SOFTWARE, SITE, OR SERVICE WOULD BE ERROR-FREE OR FIT FOR YOUR INTENDED OR ANY OTHER PURPOSE. IF YOUR JURISDICTION DOES NOT ALLOW THE LIMITATION OR EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. HOWEVER, IN NO EVENT SHALL THE SERVICE PROVIDER'S ENTIRE LIABILITY FOR

OPERATION OF THE SERVICE EXCEED 15% OF YOUR SERVICE FEE FOR ONE MONTH, REGARDLESS OF THE CAUSE OF DEFECTS OR THE NUMBER OF CAUSES THEREOF.

## **L. DAMAGES**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WHATSOEVER SHALL NEITHER M-FILES NOR ITS AFFILIATES, OR THEIR RESPECTIVE EMPLOYEES, OFFICERS, SHAREHOLDERS, AGENTS, LICENSORS OR REPRESENTATIVES, BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, OR FOR ANY LOSS OF PROFITS OR REVENUE, INCLUDING BUT NOT LIMITED TO LOSS OF SALES, DATA, PROFIT, REVENUE, GOODWILL, BUSINESS INTERRUPTION, LOSS OF INFORMATION, OR UNAUTHORIZED ACCESS TO INFORMATION AND THE LIKE, EVEN IF THE SERVICE PROVIDER OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE SERVICE PROVIDER BE LIABLE TO YOU FOR AN AMOUNT IN EXCESS OF 15% OF THE MONTHLY SERVICE FEE YOU HAVE PAID TO THE SERVICE PROVIDER.

## **M. CHANGES TO THE SERVICE**

The Service Provider may change this Agreement at any time, at the Service Provider's sole discretion, provided that such changes are reasonable and consistent with applicable law and general industry norms. Any changes made during the term of this Agreement will become effective and applicable to the Customer following the Service Provider's reasonable written notice to Customer describing such changes. If the change materially and adversely affects Customer and Customer does not accept such changes, Customer may terminate the Agreement by giving written notice of Customer's intent to terminate the Agreement, no later than thirty (30) days following the date the change becomes effective, stating such grounds. If Customer terminates the Agreement because the change adversely affects Customer, the Service Provider may, at the Service Provider's option, either (a) not enforce that change with respect to this Agreement and keep this Agreement in place for the remainder of the term or (b) permit Customer to terminate this Agreement without requiring Customer to pay the applicable Service fees for the remainder of the term of the Agreement.

The Service Provider may also make improvements or other changes to any information concerning the Service at any time with no prior notice.

## **N. CONFIDENTIALITY**

You may not disclose to any third parties any confidential information without the prior written consent of the Service Provider. For the purposes of this Agreement, the Service and all related communication is considered confidential information. In addition, any technical and commercial information that the Service Provider discloses in connection with providing the Service is confidential information, with the exception of any information that:

- was in Your possession prior to the Service Provider's disclosure,



- is in the public domain and became so without breach of confidentiality, or
- has been independently developed by You.

#### **O. APPLICABLE LAW AND RESOLUTION OF DISPUTES**

This Agreement shall be governed by and construed in accordance with, the laws of the United States of America to the extent that they apply and otherwise by the laws of the State of Texas, without regard to the conflicts of laws principles thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. Should any provision or portion of this Agreement be found unenforceable or void, the rest of the Agreement remains in full force and effect.

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be Dallas, Texas and the number of arbitrators shall be one (1).

#### **P. EXPORT**

The Service Provider undertakes to comply with all export control legislation concerning the use of Server Software. You undertake to use Your content and the M-Files System in accordance with any and all export control regulations and provisions set forth in applicable legislation.