

## **ROOTBOX, LLC Terms of Service**

PLEASE REVIEW THESE TERMS OF SERVICE CAREFULLY AS THEY REPRESENT A BINDING LEGAL AGREEMENT BETWEEN YOU AND ROOTBOX, LLC. BY USING ROOTBOX'S SERVICES OR BY SIGNING UP FOR AN ACCOUNT, YOU AGREE TO THESE TERMS OF SERVICE. IF YOU DO NOT ACCEPT THESE TERMS OF SERVICE, THEN YOU MAY NOT USE THIS WEBSITE OR THE SERVICES.

This Website and our Services are offered and available to users who 18 years of age or older. By using this Website, you represent and warrant that you are of legal age to form a binding contract with RootBox, LLC and meet all of the foregoing eligibility requirements. If you do not meet all of these requirements, you must not access or use the Website or use the Services.

### **1. General Terms.**

- a. **Scope.** These Terms of Service (“Agreement”) define the terms and conditions under which you are allowed to use the services offered through ROOTBOX (“ROOTBOX”, “We”, “Us”, “Our”) as described on this Website (“Services”). You understand that Our Services involve the use of third party services, and their terms of service or use may contain additional or different terms will also apply to your use of their services. We may change the specifications or details of the Services at any time but we have no obligation to change the Services. Additionally, the third parties We contract with to provide Services may change their offering between the time of purchase and the date the Services are delivered. We will use commercially reasonable efforts to inform you of changes to the Services.
- b. **Services Offering.** ROOTBOX offers a number of different products and services, including those listed below. This Agreement and our policies apply to all Services, whether or not listed below. Details are available on the websites indicated:
  - i. Virtual Private Server (VPS): [https://www.ovh.com/world/support/termsofservice/Special\\_conditions\\_for\\_dedicated\\_server.pdf](https://www.ovh.com/world/support/termsofservice/Special_conditions_for_dedicated_server.pdf)
  - ii. Web Hosting Services: <https://cpanel.com/privacy-policy.html>
- c. **Agreement.** This Agreement hereby incorporates the Privacy Policy available at [[https://govps.com/templates/hostrocket/legals/Privacy\\_Policy.pdf](https://govps.com/templates/hostrocket/legals/Privacy_Policy.pdf)], as updated from time to time. This Agreement governs any Services, and other deliverable marketing communications ordered through the order forms or any statements of work made through the Website or with ROOTBOX which incorporates this Agreement. In the event of any conflict between the terms of this Agreement and the other incorporated documents, the conflict shall be resolved in the following order of precedence: 1) This Agreement; 2) Privacy Policy; and 3) any other document.

- i. **OVH:** Virtual Private Servers are provided through a third party. When you subscribe for use of OVH with any of the Services, you agree to be bound by OVH's End User License Agreement (the "OVH Terms"), available at: [https://www.ovh.com/world/support/termsofservice/OVH\\_US\\_VPS2016.pdf](https://www.ovh.com/world/support/termsofservice/OVH_US_VPS2016.pdf), including, without limitation, the following provisions:
1. You acknowledge and agree that you shall provide valid contact information (first name, surname, organization if applicable, mailing address, telephone number, and email address) for any site or sites hosted by you within 72 hours of any request from OVH for such information. OVH reserves the right to suspend its service upon failure to comply;
  2. You acknowledge and agree that any content, hypertext links and any activity hosted on or conducted via the Virtual Private Server do not infringe any applicable laws, regulations or the rights of any third parties, including (without limitation) material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights (as defined in the OVH Terms) such as copyrights, patent rights, trademarks and other intellectual property right;
  3. You acknowledge and agree that you will solely bear the consequences of a malfunction of the Virtual Private Server or any relating losses resulting from any use of the Virtual Private Server by you or any employee or agent of yours or any other person to whom you have provided the confidential password(s) provided to you. Moreover, you will solely bear any consequences resulting from the loss of the aforementioned password(s);
  4. You agree not to send any unsolicited emails, or spam, from your Virtual Private Server. A failure to comply with this provision could result in the suspension of the Virtual Private Server from which the unsolicited emails have been sent and/or the termination of the service; and
  5. YOU ACKNOWLEDGE AND AGREE THAT YOU ASSUME ALL RISKS RELATED TO YOUR ACTIVITIES. YOU ARE SOLELY LIABLE AND EXCLUSIVELY RESPONSIBLE WITH REGARD TO USE OF THE SERVICES, ANY WEBSITES HOSTED ON YOUR VIRTUAL PRIVATE SERVER, THE CONTENT OF ANY INFORMATION TRANSMITTED, POSTED, OR COLLECTED, INCLUDING OPERATIONS, UPDATES, FILES (INCLUDING

ADDRESS FILES). YOU ACKNOWLEDGE AND AGREE THAT: (1) YOU WILL BE LIABLE FOR ANY MISUSE OF THE WEBSITE OR SERVICES, AS SET FORTH IN THE “RESTRICTIONS” SECTION HEREIN, INCLUDING ANY DAMAGES SUFFERED BY OTHER USERS IN CONNECTION WITH YOUR MISUSE AND ANY RESULTING SUSPENSION OF SERVICES BY ROOTBOX’S THIRD PARTY DATACENTER AND SERVER PROVIDER, AND (2) YOU WILL COMPLY WITH THE RIGHTS OF THIRD PARTIES, HUMAN RIGHTS, AND INTELLECTUAL PROPERTY RIGHTS, SUCH AS COPYRIGHTS, PATENT RIGHTS, AND TRADEMARKS.

Please be sure to review OVH’s Terms of Use before use of OVH-related Services.

ii. **cPanel:** Web hosting services are provided through a third party. When you subscribe for use of cPanel with any of the Services, you agree to be bound by cPanel’s End User License Agreement (the “cPanel EULA”), available at: <http://cpanel.com/legal-store.html>, including, without limitation, the following provisions:

1. You acknowledge and agree that you may not alter, merge, modify, prepare derivative works based upon, adapt or translate the cPanel Software in any manner whatsoever, decompile, reverse engineer, disassemble, or otherwise reduce the cPanel software program (including corresponding documentation, source code, updates, or any other kind of documentation, the “cPanel Software”) to any human-readable form, or use the cPanel Software to develop any application having the same primary functions as the cPanel Software;
2. You acknowledge and agree that cPanel owns all right, title and interest in and to the cPanel IP Rights (as defined in the cPanel EULA);
3. cPanel disclaims all warranties and representations with respect to the cPanel Software as set forth in Section 6.3 of the cPanel EULA;
4. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CPANEL WILL NOT BE LIABLE FOR ANY LOST PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, BUSINESS INTERRUPTION, OR FOR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF

OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED, AND UNDER WHATEVER CAUSE OF ACTION OR THEORY OF LIABILITY BROUGHT (INCLUDING, WITHOUT LIMITATION, UNDER ANY CONTRACT, NEGLIGENCE OR OTHER TORT THEORY OF LIABILITY) EVEN IF CPANEL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES;

5. You acknowledge and agree that you may use the cPanel Software only on the Licensed Server and only within the Territory (as defined in the cPanel EULA);
6. You acknowledge and agree that your right to use the cPanel Software shall automatically expire without notice upon the expiration or termination of this Agreement for any reason whatsoever;
7. You acknowledge and agree that cPanel may in its sole discretion terminate, disable or suspend the use of and access to the cPanel Software by You in the event of (i) any breach of this Agreement by You or (ii) any breach by a third party user of any provision concerning cPanel or the cPanel Software in any third party agreement;
8. You acknowledge and agree that cPanel is a third party beneficiary of any third party agreement applicable to the cPanel Software with the full right to enforce the provisions of the third party agreement as they pertain to cPanel and the cPanel Software;
9. You acknowledge and agree that cPanel may in its sole discretion (i) monitor use of the cPanel Software; (ii) use the Authentication System (as defined in the cPanel EULA); and (iii) collect and use the cPanel Usage Data as set forth in Section 2.5 of the cPanel EULA;
10. You hereby waive any and all claims (whether under law, equity or any other theory of liability) against cPanel and its affiliates that may arise from your inability to use the cPanel Software in the event (i) of the expiration or termination of this Agreement for any reason whatsoever; or (ii) that cPanel disables or suspends access to the cPanel Software as set forth in Section 2.2 of the cPanel EULA; and
11. You may verify the licensed or unlicensed status of the cPanel Software and obtain other information about the license applicable to the Licensed Server (as defined in the cPanel EULA) by using the cPanel License Verification System located at <http://verify.cpanel.net/> or such other URL as cPanel may designate from time to time.

Please be sure to review cPanel's End User License Agreement before use of cPanel-related Services.

- d. **Changes to these Terms.** ROOTBOX may revise and update these Terms of Service from time to time in its sole discretion. All changes are effective immediately when we post them, and apply to all access to and use of the Services thereafter. However, any changes to the dispute resolution provisions set out in Governing Law and Jurisdiction will not apply to any disputes for which the parties have actual notice before the date the change is posted on the Website. Your continued use of our Services following the posting of revised Terms means that you accept and agree to the changes. You are expected to check this page each time you access this Website so you are aware of any changes, as they are binding on you.
- e. **Account Registration and Access.** In order to gain access and utilize our Services, you are required to create an account with Us ("User Account"). It is a condition of your use of the Services that all the information you provide is correct, current, and complete. You are advised to keep your User Account information confidential, and you must not disclose it to any other person or entity. You agree to notify Us immediately of any unauthorized access to or use of your User Account or any other breach of security, otherwise you will be deemed solely responsible for all activities that occur under your User Account, whether or not specifically authorized by you, and for any damages, expenses or losses that may result therefrom.

## 2. Services.

- a. **Subscription Services.** Services are offered through [monthly] subscription [plus a one-time setup fee]. Services are offered on various Plan Levels. You are responsible for obtaining all hardware, software, and services necessary to access and utilize our Services. You acknowledge and agree that certain features of the Services depend on the continuing availability of Third-Party Services. If the providers of such Third-Party Services cease to make their services or products available, We may cease providing or modify any affected Services and/or features without refund, credit, or compensation to you.
- b. **Bandwidth.** Accounts are allocated bandwidth depending on the Plan Level you select. The bandwidth for Services purchased does not rollover and is not creditable across periods. In the event you require more bandwidth than you have purchased, your account may be suspended until the next period, you may purchase additional bandwidth by upgrading your account, your account may be terminated for a violation of the terms of the package you purchased, or we may charge you an additional fee for the overage, in our sole discretion.
- c. **Operations.** It is your responsibility to make sure that all Services being provided to you are setup to resume operations automatically upon reboot or restart of the

particular Service you have with us. ROOTBOX will not be held responsible for any problems or service outages caused due to reboots during standard maintenance periods. WE HAVE NO RESPONSIBILITY FOR DOWNTIME RESULTING FROM YOUR ACTIONS.

### 3. Term.

- a. **Term.** The Agreement between you and Us is formed upon registration of your User Account, and the term of the Agreement (“Term”) shall begin at that time. The Term shall continue for as long as you maintain a User Account or until the Agreement is terminated by either party pursuant to this Agreement, whichever comes first. Your signing up for a User Account and clicking the appropriate box means you have accepted this Agreement and the Term has begun.
- b. **Termination.** You may discontinue to use and request to cancel your User Account and/or any of Our Services at any time in accordance with this Agreement or applicable instructions. The effective date and time for cancellation of a User Account shall be the date and time in which you have completed the cancellation process, and the effective date for cancellation of any paid Services shall be at the end of the applicable paid Services subscription period. Notwithstanding the foregoing, all automatically-renewed subscriptions to paid Services will be discontinued only upon the expiration of the respective period for which you have already made payment. The cancellation process may take several days, so cancellation requests should be made at least one week prior to expiration of the then-current service period to avoid automatic payment charges. We may cancel or suspend, in our discretion, your User Account and any Services for your failure to comply with any of terms of this Agreement and/or your failure to pay any Plan Fees when due.

### 4. Fees, Payment, and Taxes.

- a. **[Setup Fees.** Account Users shall pay a one-time, non-refundable setup fee, due at signup.]
- b. **Plan Fees.** Applicable Service Fees will be billed monthly at the applicable Plan Level rate. You will be responsible for all payments of all applicable Service Fees set forth in your specific plan level. The Service Fees are subject to change at any time in our sole discretion and are effective upon notice to you. If you do not agree to such changes, you must contact Us to cancel your User Account. We will use Our good-faith efforts to provide you notice of Service Fee changes and their effective date.
- c. **Payment of Fees.** We are not bound to perform Services until we receive payment from you when you checkout through our web platform. All applicable Service Fees shall be paid by credit card or direct debit from a financial account. All the fees including recurring fees (including third party transaction fees), and any other

applicable fees will be charged automatically to the credit card or financial account on file. You authorize Us to charge any due amount to your credit card or financial account on file on a recurring basis. Anyone using a credit card represents and warrants that such person is authorized to use that credit card, and that any and all charges may be billed to that credit card and won't be rejected. If we're unable to process your credit card order, we'll try to contact you by email and suspend your account until your payment can be processed.

- d. **Taxes.** All Service Fees and other amounts payable by you under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, you are responsible for all sales, use, and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by you hereunder, other than any taxes imposed on Our income.
- e. **Billing Disputes.** In the event you dispute in good faith any portion of a charge by Us, you must submit notice of such dispute to Us in writing within 30 days of the date such charges are incurred. You agree that any disputes not submitted within the 30 day period are waived, and all charges will be final and not subject to dispute.

## 5. Intellectual Property.

- a. **License Grant.** By using the Services, submitting any information (including names, email addresses, or phone numbers), data, text, software, photographs, graphics, audio/visual media, data, metadata, and/or other materials ("Content") through the Services, or providing any Content to Us, you hereby grant ROOTBOX and its subcontractors a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, fully paid, sublicensable and transferable license to use, process, store, edit, modify, aggregate, combine, reproduce, distribute, display, perform, and prepare derivative works of the Content in connection with the Services. For avoidance of doubt, the foregoing license granted to ROOTBOX and its subcontractors, does not affect your ownership or license rights in the Content (excluding any pre-existing intellectual property) unless otherwise agreed in writing. You represent and warrant that you have all rights to grant such licenses to ROOTBOX and its subcontractors without infringement or violation of moral rights or any third party rights, including, without limitation, any privacy rights, publicity rights, copyrights, trademarks, contract rights, or any other intellectual property rights. You represent and warrant that you either own or have permission to use all of the Content you submit to Us in the course of using the Services.
- b. **ROOTBOX's Proprietary Rights.** ROOTBOX retains all rights, title and interest in and to this Website and the Services, including any and all copyrightable materials or any other content thereof which is or may be subject to any intellectual property rights under any applicable law. Subject to your full compliance with this Agreement,

ROOTBOX hereby grants you, a non-exclusive, non-transferable, non-sublicensable, fully revocable, limited license to use the Services and applicable licensed content solely as expressly permitted under this Agreement. ROOTBOX does not convey any right or interest in or to ROOTBOX's intellectual property (or any part thereof), except only for the limited license expressly granted above. Nothing in these Terms of Service constitutes an assignment or waiver of ROOTBOX's intellectual property rights under any law.

- c. **User Feedback.** You may provide feedback, suggestions, and comments to Us regarding the Services ("Feedback"). You hereby grant to Us a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, fully paid, sublicensable and transferable license to use, process, store, edit, modify, aggregate, combine, reproduce, distribute, display, perform, prepare derivative works, and otherwise fully exploit such Feedback in any medium or format, whether now known or later developed.
- d. **Rights of Publicity.** You hereby agrees that We may reference you (or any legal entity associated with you) in marketing and public relations materials, including a press release announcing you as a customer. You hereby grant Us a nonexclusive, worldwide license to use and display your trademarks, trade names and logos in connection with the foregoing.

## 6. Restrictions on Use.

- a. **Prohibited Use of Services.** You may use the Services only for lawful purposes and in accordance with these Terms of Service. You agree not to use our Services:
  - i. In any way that violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the U.S. or other countries).
  - ii. For the purpose of exploiting, harming or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information or otherwise.
  - iii. To send, knowingly receive, upload, download, use or re-use any material which does not comply with the Content standards set out in this Agreement.
  - iv. To transmit, or procure the sending of, any advertising or promotional material, including any "junk mail", "chain letter" or "spam" or any other similar solicitation.
  - v. To impersonate or attempt to impersonate Us, Our employees or agents, another user or any other person or entity (including, without limitation, by using e-mail addresses or screen names associated with any of the foregoing).



vi. To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of our Services, or which, as determined by us, may harm Us or users of our Services or expose them to liability.

b. **Restrictions on Use of this Website.** Additionally, you agree not to:

- i. Use our Website in any manner that could disable, overburden, damage, or impair Our Website or interfere with any other party's use of the Website, including their ability to engage in real time activities;
- ii. Use any robot, spider or other automatic device, process or means to access the Website for any purpose, including monitoring or copying any of the material on this Website;
- iii. Use any manual process to monitor or copy any of the material on this Website or for any other unauthorized purpose without our prior written consent;
- iv. Use any device, software or routine that interferes with the proper working of our Website;
- v. Introduce any viruses, trojan horses, worms, logic bombs or other material which is malicious or technologically harmful;
- vi. Attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of our Website, the servers on which this Website is stored, or any server, computer or database used to provide our Website or Services;
- vii. Attack this Website via a denial-of-service attack or a distributed denial-of-service attack;
- viii. Act in a manner that is damaging to Our reputation and/or goodwill, or which may bring Us disrepute;
- ix. Otherwise attempt to interfere with the proper working of the Website or our Services.

## 7. **Privacy and Acceptable Use**

- a. **Your Privacy Notice.** As a condition of using the Services, you are required to adopt and comply with your own privacy notice. Your privacy notice shall be posted so that your users, if any, have notice of your data collection and use practices, including your practices with respect to the use of personal data, if any, and that you otherwise comply with applicable law.

- b. **No Spam.** You agree that you will not use our Services to send spam, as defined here.
  - c. **Sensitive Information.** You agree that you will not provide any Content to Us that contains any sensitive information, including the following: credit card numbers, financial account information, social security numbers, security credentials, personal health information, biometric data, health data of any kind, employment information, information about children under the age of 16, or any other information that is or could be considered sensitive personal information.
  - d. **Data Backup.** You are solely responsible and shall take all required measures to ensure the backup of your data. ROOTBOX is not responsible for any data loss or corruption, including any resulting from: (i) our authorized actions, (ii) those actions you take using the Services, (iii) hardware failures, or (iv) any software or other technology failures.
8. **Your Products or Services.** You are solely responsible for all statements, advertising, and information made with respect to your products, sales, services, promotions, deals, campaigns, or similar events, including compliance with any laws related thereto. We are not a party to or responsible for your relationship with any third parties, including the intended recipients of your marketing communications, or for their actions. Additionally, you agree to the following:
- a. You shall be responsible for and bear all costs of and responsibility for procuring and delivering your products and/or services;
  - b. You are solely responsible for any and all statements and promises you make and for all assistance, warranty and support regarding your products and/or services, and shall provide accurate and complete contact information in your marketing communications for any questions, complaints or claims;
  - c. You may not offer or sell any products, or provide any information, content or material regarding such products, which may be deemed hazardous, counterfeit, stolen, fraudulent, offensive or abusive; which are prohibited for sale, distribution or use; or which otherwise fail to comply with any applicable laws, including with respect to consumer rights, intellectual property or privacy rights, product safety, trade regulations and sanctions, support, maintenance and export;
  - d. You shall inform your customers and any recipients of any marketing communications that ROOTBOX is not responsible for your products, sales, services, promotions, deals, campaigns, or similar events contained or referred to in your marketing communications.
9. **Third Party Products/Services.** As stated, you acknowledge and accept that Our Services are based on the continued availability of various third party products or services (the “Third

Party Services”). In order to utilize our Services, you may be required to register for accounts with Third Party Service providers and provide Us access to such services. In doing so, you:

- a. acknowledge and agree that access and use of such Third Party Services are governed solely by the terms and conditions of such Third Party Services to which you agree to be bound;
- b. hereby permit Us to access and use such Third Party Services on your behalf and as your agent;
- c. hereby permit the transmission of and access to your customer account and related information to such Third Party Services;
- d. agree to take all actions necessary to facilitate our use of such Third Party Services as are contemplated by this Agreement and the provision of Services;
- e. agree that We are not liable for damage or loss caused or alleged to be caused by or in connection with our access or use of any Third Party Services;
- f. Waive all claims against Us with respect to any such Third Party Services; and
- g. acknowledge and agree that We do not endorse, are not responsible or liable for, and make no representations as to any aspect of such Third Party Services, including, without limitation, their content or the manner in which they handle, protect, manage or process data (including your data) or any interaction between end users and the provider of such Third Party Services.

## 10. Miscellaneous Terms

- a. **Headers.** The headings in the Agreement do not affect its interpretation. References to sections are to sections of this Agreement.
- b. **Force Majeure.** ROOTBOX will not be liable for any delays or failure in performance of any part of the Services, from any cause beyond ROOTBOX’s control. This includes, but is not limited to, acts of God, changes to laws, embargoes, war, terrorist acts, riots, fires, earthquakes, nuclear accidents, floods, strikes, power blackouts, and acts of hackers or third party internet service providers.
- c. **Notices.** Notices to you will be effective when We post them to our Website or send them to the email address associated with your User Account. Notices to Company will be effective when delivered to Company at:

ROOTBOX, LLC

88 Seaspray West

Laguna Niguel, CA 92677

- d. **Governing Law.** The laws of the State of California, excluding its conflict of laws rules, will apply to any and all disputes arising out of or relating to the use of the Website, the Services or this Agreement (“Disputes”). All legal actions in connection with a Dispute under this Agreement will be subject to the non-exclusive jurisdiction of the courts exercising jurisdiction in California. The United Nations Convention on Contracts for the International Sale of Goods (the “Vienna Sales Convention 1980”) is excluded from this Agreement.
- e. **No Warranties.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE PROVIDE THE WEBSITE AND THE SERVICE AS-IS. THIS MEANS THAT, EXCEPT AS EXPRESSLY STATED IN THESE TERMS OF SERVICE, WE DON’T PROVIDE WARRANTIES, CONDITIONS, OR UNDERTAKINGS OF ANY KIND IN RELATION TO THE WEBSITE AND/OR SERVICE, EITHER EXPRESS OR IMPLIED. THIS INCLUDES, BUT ISN’T LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDED FROM THE AGREEMENT.
- f. **Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, ROOTBOX SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES REGARDING SERVICES PROVIDED BY THIRD PARTIES, REGARDLESS OF WHETHER THOSE SERVICES APPEAR TO BE PROVIDED BY US. NO WARRANTIES, EITHER EXPRESS OR IMPLIED, MADE BY THESE THIRD PARTY ENTITIES TO ROOTBOX SHALL BE PASSED THROUGH TO YOU, NOR SHALL YOU CLAIM TO BE A THIRD PARTY BENEFICIARY OF THOSE WARRANTIES.
- g. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU ASSUME FULL RESPONSIBILITY FOR ANY LOSS THAT RESULTS FROM YOUR USE OF THE WEBSITE AND THE SERVICE, INCLUDING ANY DOWNLOADS FROM THE WEBSITE. ROOTBOX WON’T BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES UNDER ANY CIRCUMSTANCES, EVEN IF THEY’RE BASED ON NEGLIGENCE OR WE’VE BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. IN ANY CALENDAR MONTH, OUR TOTAL LIABILITY TO YOU ARISING UNDER OR IN CONNECTION WITH THE TERMS—WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE—WILL BE NO MORE THAN WHAT YOU PAID US FOR THE SERVICE THE PRECEDING MONTH.

IN ADDITION, FOR THE AVOIDANCE OF DOUBT, IN NO INSTANCE WILL ROOTBOX BE LIABLE FOR ANY LOSSES OR DAMAGES YOU SUFFER IF YOU USE THE SERVICE IN VIOLATION OF OUR TERMS, REGARDLESS OF WHETHER WE TERMINATE OR SUSPEND YOUR ACCOUNT DUE TO SUCH VIOLATION.

- h. **Indemnity.** You agree to indemnify and hold Us harmless from any losses, including legal fees and expenses, that directly or indirectly result from (a) your Content, (b) your use of the Service, (c) your violation of any laws or regulations, (d) third-party claims that you or someone using your password did something that, if true, would violate any of these Terms of Service, (e) any misrepresentations made by you, or (f) a breach of any representations or warranties you've made to us.
- i. **Disputes.** YOU AND ROOTBOX AGREE THAT ANY DISPUTE AGAINST THE OTHER MAY ONLY BE BROUGHT ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED, AND CUSTOMER IS FOREGOING A JURY TRIAL AND WAIVING ANY RIGHT TO PARTICIPATE IN A CLASS ACTION AGAINST ROOTBOX. All Disputes shall be resolved finally and exclusively by binding individual arbitration with a single arbitrator administered by the American Arbitration Association ([www.adr.org](http://www.adr.org)) or JAMS ([www.jamsadr.org](http://www.jamsadr.org)) according to this provision and the applicable arbitration rules for that forum. Consumer claimants (individuals whose use of the Services is intended for personal, family, or household use) may elect to pursue their claims in their local small-claims court rather than through arbitration. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, fully applies. If you are a consumer bringing a claim relating to personal, household, or family use, any arbitration hearing will occur within the county or parish where consumer resides. Otherwise, any arbitration hearing will occur in Orange County, California, or another mutually agreeable location. The arbitrator's award shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. For purposes of this arbitration provision, references to you and ROOTBOX also include respective subsidiaries, affiliates, agents, employees, predecessors, successors and assigns as well as authorized users or beneficiaries of the Services.
- j. **Remedies.** Each party acknowledges and agrees that any actual or threatened breach of this Agreement will constitute immediate, irreparable harm to ROOTBOX for which monetary damages would be an inadequate remedy, that injunctive relief is an appropriate remedy for such breach, and that if granted, the breaching party agrees to waive any bond that would otherwise be required. If any legal action is brought by a party to enforce this Agreement, the prevailing party will be entitled to receive its

attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive from the non-prevailing party.

- k. **Export Control.** The Services made available by ROOTBOX may be subject to the export control Laws of the United States and other jurisdictions. You shall comply with all applicable export laws, and, without limiting the generality of the foregoing: (a) You represent that you are not named on any U.S. government list of persons or entities prohibited from receiving exports; and (b) You shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.
- l. **Anti-Corruption.** You agree that you have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of ROOTBOX's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If you hear of any violation of the above restriction, you will use reasonable efforts to promptly notify ROOTBOX at support@rootbox.host.
- m. **Assignment.** Neither this Agreement nor any right or obligation under this Agreement may be transferred, assigned or delegated by you, by operation of law or otherwise, without the prior written consent of ROOTBOX. Any attempted assignment or transfer in violation of the foregoing will be null and void and shall not confer any rights or remedies upon any person or entity not a party hereto. This Agreement may be assigned or transferred by ROOTBOX without your consent. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective representatives, heirs, administrators, successors and permitted assigns.
- n. **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, joint venture, agency, or fiduciary relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as employment related taxes. Unless otherwise specified herein, no rights for third party beneficiaries are created by this Agreement. Nothing in this Agreement is intended to confer any rights or remedies on any person or entity which is not a party to this Agreement.
- o. **Waivers.** Any waiver by ROOTBOX must be in writing and signed by an authorized ROOTBOX representative. No waiver by ROOTBOX of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No failure or delay by ROOTBOX in enforcing any right or provision under this Agreement shall be construed as a waiver of such right or provision or of any other right or provision.

- p. **Entire Agreement.** The Agreement, and any language incorporated herein by reference, makes up the entire agreement between Us in relation to its subject matter and supersede all prior agreements, representations, and understandings.
- q. **Severability.** If any provision of this Agreement is held invalid, illegal or otherwise unenforceable, it shall be deemed modified to render it enforceable while preserving the parties' original intent to the fullest extent, and the rights and obligations of the parties shall be construed and enforced accordingly. If the provision cannot be modified, then that provision will be deemed severed from this Agreement and all other provisions will remain in full force and effect.
- r. **Electronic Signatures.** This Agreement may be executed in one or more counterparts, each of which when so executed and delivered or transmitted by facsimile, e-mail or other electronic means, shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.