



## S & D AGREEMENT (AMERICAS)

### *LINBIT Support Service Use and Subscription Agreement (Americas)*

LINBIT Support Services and Subscription Repository is an Internet based solution for support and management of High Availability clusters (the "Service"). This LINBIT Support Service Use and Subscription Agreement (the "Agreement") is between LINBIT USA, LLC ("LINBIT") and all users of, and subscribers to, the Service ("you" or "Customer"). The Effective Date of this Agreement is the earlier of the date that the Customer accepts this Agreement or the date that the Customer uses the Service.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING OR SUBSCRIBING TO THE SERVICE OR PROFILING, REGISTERING OR ENTITLING A SYSTEM WITH THE SERVICE. BY USING OR SUBSCRIBING TO THE SERVICE, OR BY PROFILING, REGISTERING OR ENTITLING A SYSTEM WITH THE SERVICE, YOU SIGNIFY YOUR ASSENT TO THIS AGREEMENT. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, THEN YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN PLEASE DO NOT ACCESS, USE OR SUBSCRIBE TO THE SERVICE AND DO NOT PROFILE, REGISTER OR ENTITLE A SYSTEM WITH OR FOR THE SERVICE.

#### 1. Use and Subscription Conditions

- You are responsible for securing Internet access to use the Service.
- You must provide a valid, unique email address to LINBIT for each account creation.
- LINBIT reserves the right to modify the Service at any time and for any reason.
- Certified support binaries are not to be redistributed to 3rd parties without prior consent from LINBIT.
- Your subscription is limited to the number of support packages purchased from LINBIT's Support Network. Support packages are sold on a per-node basis (for additional information please see the DRBD Support Product Brief).

#### 2. Password and Security

Customer will be issued a username, password, and account designation at the time Customer subscribes for Service. It is the Customer's duty to keep this user information confidential. Customer must notify LINBIT immediately upon discovering any unauthorized use of Customer's account. Customer must have a



subscription for a system to entitle such system to receive Service. The Service may be used only for the benefit of the Customer and only for the systems with subscriptions. Customer may not use one subscription for Services for more than one system concurrently. Any unauthorized use of the Service will be deemed to be a material breach of this Agreement.

### 3. End User License Agreement

All of the software programs provided by means of the LINBIT Network (the "Software") are copyrighted and are subject to individual end user license agreements (each, a "EULA") that are applicable to the Software Programs. These EULA's are located in the source code to the Software Programs. You agree to review, and that you are subject to, each such EULA. Most of the EULA's permit you to copy, modify and redistribute the Software Programs, in both source code and binary code forms. Pre-compiled and certified binaries provided by LINBIT are not to be redistributed, resold or made available to any third party. The Software Programs provided by means of the Service, including source code, documentation, appearance, structure and organization are proprietary products of LINBIT and others and are protected by copyright and other laws. Title to these Software Programs, or to any copy, modification or merged portion of the Software Programs, shall at all times remain with the aforementioned, subject to the terms and conditions of the applicable EULA related to the Software Programs under consideration.

LINBIT®, the LINBIT logo, DRBD®, the DRBD logo and LINSTOR® and the LINSTOR logo are trademarks or registered trademarks of LINBIT in Austria, the United States and other countries. You are not permitted to distribute the Software Programs utilizing LINBIT's trademarks.

### 4. Warranty and Limitation of Liability

#### Warranty

Except as specifically stated in this Agreement, the Service and any Software Program provided by means of the Service are provided and licensed "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, NON-



INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. LINBIT DOES NOT GUARANTEE THAT THE USE OF SERVICE OR THE SOFTWARE PROGRAMS WILL NOT BE INTERRUPTED OR ERROR FREE.

#### Limitation of Liability

To the maximum extent permitted by applicable law, IN NO EVENT WILL LINBIT BE LIABLE TO YOU FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN TORT OR IN CONTRACT, INCLUDING LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF (A) THE SERVICE, THE SOFTWARE PROGRAMS (B) ANY INTERRUPTION OF USE OF THE SERVICE OR THE SOFTWARE PROGRAMS OR (C) FOR LOSS, INACCURACY OR CORRUPTION OF DATA, EVEN IF LINBIT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LINBIT'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNT THAT CUSTOMER PAID TO LINBIT FOR THE SERVICES FOR ONE YEAR.

#### 5. Payment Obligations Applicable to Subscribers

If Customer has purchased a subscription to the Service, then Customer agrees to the following: All fees are stated, and must be paid in, United States Dollars. All fees are exclusive of any foreign, federal, state or local sales, excise, use or similar taxes. Customer agrees to pay all such taxes, when applicable, regardless of whether such taxes appears on an original invoice or are later levied (excluding any taxes levied solely on the income of LINBIT). Any renewal of this Agreement will be at LINBIT's list prices in effect at the time of the renewal. All payments are non-refundable.

Customer agrees to provide LINBIT with accurate and complete billing information (including legal name, address, telephone number, and billing or credit information). Customer will report to LINBIT all changes to this information within thirty (30) days of the change. Customer shall direct any questions regarding its account to LINBIT's customer service department. All charges are considered valid unless disputed within thirty (30) days of the billing date. Adjustments will not be made for charges that are more than 30 days old. LINBIT reserves the right to suspend or cancel Service for non-payment. LINBIT is not responsible for Customer's credit card or debit card fees or expenses. In the event that the Service is purchased through a reseller rather than directly through LINBIT, the Customer's Service will be suspended if the reseller fails to pay all amounts due to LINBIT.



## 6. Term of this Agreement and Modification of Services.

**Annual Subscriptions.** For annual subscriptions to the Service, the initial term of this Agreement shall commence on the Effective Date and shall continue for one (1) year. **Demo Subscriptions.** For demo subscriptions to the Service, this Agreement is effective for thirty (30) days from the Effective Date until terminated earlier by either party in accordance with this Agreement. Customer may terminate this Agreement at any time by providing notice of termination in writing to LINBIT by email, registered or certified mail, return receipt requested, to the following address: LINBIT USA, LLC, Customer Service, 3720 SW 141st. Ave. Suite 100, Beaverton, Oregon 97005, or by calling Customer Service at (877)-4-LINBIT.

**All Subscriptions.** LINBIT may terminate this Agreement, use of the Service or password access to the Service at any time without prior notice, if LINBIT in its sole discretion determines that there has been a violation of this Agreement, applicable policies or failure to pay charges when due. LINBIT may terminate this Agreement at any time by providing notice of termination to you in any reasonable manner.

Sections 3 through 7 of this Agreement shall survive any termination of this Agreement. LINBIT reserves the right to modify the Service at any time and for any reason or no reason.

## 7. General

This Agreement is governed by Oregon law without regard to its conflict of laws provisions. Customer consents to the jurisdiction of the federal and state courts of the State of Oregon with respect to any disputes or issues arising out of this Agreement. This Agreement shall constitute the exclusive terms and conditions with respect to the Services provided under this Agreement to Customer by LINBIT, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by Customer in such transactions. This Agreement contains the final, complete and exclusive statement of the agreement between the parties with respect to the transactions contemplated herein and all prior written agreements and all prior and contemporaneous oral agreements with respect to the subject matter herein are merged herein. This Agreement and the Services may not be transferred or assigned without the prior written consent of LINBIT. The unenforceability of any provision of this Agreement shall not effect the remaining provisions of this Agreement. LINBIT reserves the right to amend or modify this Agreement at any time and in any manner by providing reasonable



notice to the Customer. Customer agrees that reasonable notice may be provided by posting on LINBIT's web site, the Customer's start pages, email or other written notice.

## 8. Commercial Documents

LINBIT releases some documents under a commercial license. Those documents are labelled as "Commercial" within the first 5 pages.

Those documents that are assigned a commercial license have distribution terms:

- LINBIT's commercial documents can be shared via private mediums: e-mail, chat, internal company website (intranet), instant message, etc.
- LINBIT's commercial documents can NOT be shared via public mediums: websites, blogs, slideshare, wiki's, etc.
- LINBIT's commercial documents have restricted purposes. LINBIT may grant additional rights through other agreements. Those agreements will specify the rights.