

Datto BCDR Product Terms of Use

BCDR PRODUCT TERMS OF USE

These Product Terms of Use ("Terms of Use") form a binding, legal contract between Datto, Inc. or one of our subsidiaries or affiliates depending on where you are located ("Datto" or "us") and you regarding your access to and use of Datto image-based business continuity and disaster recovery products (referred to in these Terms of Use as the "Product" or "Products").

PLEASE READ THESE TERMS OF USE CAREFULLY. BY CLICKING "I AGREE" BELOW OR BY INSTALLING, ACCESSING OR USING ANY PRODUCT YOU ACKNOWLEDGE YOU HAVE READ, UNDERSTAND AND AGREE TO THESE TERMS OF USE, INCLUDING ALL APPLICABLE POLICIES AND THIRD PARTY TERMS INCORPORATED THROUGHOUT. IF YOU ACCEPT ON BEHALF OF A BUSINESS OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT LEGAL ENTITY TO THESE TERMS OF USE AND "YOU" WILL REFER TO THAT LEGAL ENTITY.

If you accept these Terms of Use solely as a third party Product Administrator (not as a Content Owner), you represent and warrant that you have the full authority needed to agree to these Terms of Use with respect to access, use and support of the Product and Content for the Content Owner.

If you do not agree to these Terms of Use, you may not register, access or use the Datto Product.

Capitalized words are defined in the last section or when first used throughout these Terms of Use.

1. USE OF PRODUCTS

- 1.1. **Right to Use.** Subject to these Terms of Use and the receipt by us of all fees applicable to the Product, Datto grants you a limited, revocable, non-sublicensable, non-exclusive right and license to access and use the Product in accordance with the Product Specifications. If you are a Content Owner, you may use the Product solely for your internal business purposes. If your use of the Product involves the use of backup agent software, you hereby agree to the terms of all applicable Agent Software Licenses.
- 1.2. **Ongoing Payment Requirement.** The continued right to use a Product requires that it be enrolled in a Service Subscription and we continue to receive payment with respect to such use. If a Product is not properly registered in a current paid Service Subscription we have no obligation to allow access to or use of the Product, nor to provide any related Services.
- 1.3. **Limited Rights.** Datto Software is licensed, not sold. Except for the limited rights granted in these Terms of Use, we and our licensors retain all right, title, interest and Intellectual Property Rights in Datto Software and Services, and all copies thereof. The Products contain material that is protected by copyright, patent and trade secret law of jurisdictions throughout the world, and by international treaty provisions. All Intellectual Property Rights and other rights in and to Products not expressly granted under these Terms of Use are expressly reserved by us and our licensors.
- 1.4. **Third Party Technology.** Certain Products may involve or allow the use of third party technology, the use of which is subject to such third parties' license terms. These terms are located under the heading "Third Party License Terms" on the Online Portal. You agree that your use of a Product is deemed your express consent to all such applicable Third Party License Terms. As to all such third party technology: (i) it is provided by us on an "AS IS" basis, without

warranty of any kind and (ii) we will not be liable for damages of any kind, including direct, indirect, incidental, special, exemplary, punitive, or consequential damages, nor will we indemnify you for any claims related to any third party technology. Except as may be provided in the Third Party Terms, or in any separate agreement between you and the provider of the applicable third party technology, your sole and exclusive remedy with regard to any defect, claim, or other dispute relating to the third party technology is to cease its use.

- 1.5. Beta Products. We may designate enhancements to a Product or a new Product as “Beta Product.” Such Beta Product will not be ready for use in a production environment and its operation may be unpredictable and lead to erroneous results. You are under no obligation to use a Beta Product. If you choose to use a Beta Product, you agree the Beta Product (i) is experimental and has not been fully tested; (ii) may not meet your requirements; (iii) use or operation may not be uninterrupted or error free and is for purposes of evaluating and testing the product and providing feedback to us. You agree to report promptly to us any errors or other deficiencies in the Beta Product and will hold all information relating to use and performance of the Beta Product in strict confidence and not disclose such information to any unauthorized third parties. Use of any Beta Product is otherwise subject to these Terms of Use. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS OF USE, ALL BETA PRODUCT IS PROVIDED “AS-IS” AND “AS-AVAILABLE,” WITHOUT WARRANTIES OF ANY KIND. You hereby waive any and all claims, now known or later discovered, that you may have against us and our suppliers and licensors arising out of your use of any Beta Product.
- 1.6. Evaluation Use. If the Product is being used during a trial or evaluation, all of these Terms of Use (except for the payment obligation) will apply for the purpose and term of such authorized evaluation or trial period only, and not for the term of a valid Service Subscription for the Product. We reserve the right to terminate any such evaluation use of the Product at any time in our sole discretion.

2. LIMITATIONS ON RIGHTS OF USE

- 2.1. General Restrictions. You may not nor may you permit, facilitate or authorize any third party to: (i) use any Product other than as permitted under these Terms of Use; (ii) remove or destroy any copyright notices or other proprietary markings or identifications contained on or in any Product or its Specifications; (iii) access or use any Product in any manner that could damage, disable, overburden, or otherwise interfere with or disrupt such Product, any networks or security systems; (iv) reverse engineer, decompile, disassemble, or otherwise attempt to extract the source code from any Product, except to the extent that this restriction is expressly prohibited by Applicable Law; (v) copy, modify or create derivative works of any Product; (vi) alter any disabling mechanism which may reside in a Product; (vii) assign, sublicense, rent, timeshare, loan, pledge, lease, or otherwise transfer the Products, or directly or indirectly permit any unauthorized third party to use or copy the Product; (viii) conduct, disclose or publicize the results of any form of benchmarking of the Products; (ix) extract portions of the Datto Software or Device files for use in other applications; or (x) access any Product to (1) build a competitive product or service; (2) copy any, or build a product using, similar ideas, features, functions, or graphics of the Product.
- 2.2. Limitation on Product Use/Content. Use of the Products and Content must at all times be in compliance with all Applicable Laws. The Products and Content may not (i) be used to send

any unsolicited commercial email or invitation; (ii) be used to request, collect, store, transmit or disclose any unencrypted personally identifiable data (such as payment card numbers or social security numbers) in violation of any applicable privacy law or regulation; (iii) be deceptive, fraudulent, harmful, abusive, harassing, threatening, indecent, obscene, racially, ethnically, or otherwise objectionable, hateful, tortious, libelous, defamatory, slanderous, or otherwise in violation of Applicable Law; (iv) infringe or misappropriate any Intellectual Property Rights or other rights of any third party; (v) be used in a manner which constitutes or encourages conduct that could be a criminal or civil offense under any Applicable Law; (vi) contain or be used to transmit or otherwise make available any viruses or similar malicious software that may damage the operation of any computer, network, system or the Products; (vii) violate the terms of any license agreement or other agreement or terms of use to which the Content Owner, Product Administrator or Content is subject; or (viii) be used to send materials to individuals under the age of majority in his or her place of residence (“Minors”), or to harm Minors in any way, or that would subject us to any Applicable Law governing children's privacy or otherwise related to protecting Minors.

- 2.3. **Datto’s Rights.** In the event we reasonably believe any Product use or Content: (i) violates any of the restrictions in the foregoing sections; (ii) may disrupt or threaten the operation or security of any computer, network, system or the Products; or (iii) may otherwise subject us to liability, we reserve the right to refuse or disable access to the Product or Content. We may also take such action pursuant to the Digital Millennium Copyright Act and/or as required to comply with Applicable Law. We will use reasonable efforts to contact an Administrator prior to taking such action. Notwithstanding the foregoing, we may restrict access to any Product or Content without prior notice including as necessary to comply with Applicable Law or protect against threats to our network or any Product. If we take any such action without prior notice, we will provide notice to an Administrator, unless prohibited by Applicable Law.
- 2.4. **Certain Uses Not Supported.** Use of the Products is not authorized, will not be supported by us, and any warranties will be void, if the Products are modified in any way or used in a manner for which they are not intended, including but not limited to (i) using software or hardware that is not intended, recommended or approved by us for the Product; (ii) installing a different operating system (OS) on a hardware Device; (iii) except for a limited testing period or in the event of a documented business continuity event, using a Product in a virtualized production environment instead of as a backup application; or (iv) use, access and support of any Product by other than authorized personnel who are knowledgeable about the Product, Service and Content involved and are able to demonstrate the required level technical competency with respect to the use of the Product.
- 2.5. **Your Obligations.** You agree to immediately notify us of any unauthorized use, copying, or disclosure of the Product or Content, of which you become aware and agree to immediately take such actions as are necessary to end and prevent any such use, copying, or disclosure. You acknowledge and agree that any breach of this Section 2 will cause immediate and irreparable injury to us, and in such event, we may seek and obtain injunctive relief, without bond or other security, in addition to other remedies available at law and in equity.

3. RIGHTS AND RESPONSIBILITIES REGARDING CONTENT

- 3.1. Content Owner Rights and License to Content. On behalf of or as the Content Owner, you (i) represent and warrant that the Content Owner has sufficient rights and all third party consents, permissions or licenses in and to the Content as may be necessary and appropriate for use of the Content with the Products; and (ii) hereby grant to Datto a limited, royalty-free, non-exclusive, assignable license to copy, reformat, disclose, transmit, display and otherwise use the Content as necessary or desired, in each case solely for the purposes of providing the Product or Service or as otherwise necessary for Datto to exercise its rights under these Terms of Use.
 - 3.2. Third Party Administrator Responsibilities Regarding Content and Product Use. If you are a third party Administrator managing or using any Product on behalf of a Content Owner, you represent and warrant that you are acting as an agent on behalf of the Content Owner (who is the principal) and that you are acting within the scope of your agency. Accordingly, you agree to obtain Content Owner's authorization and comply with Content Owner's instructions at all times with respect to use of the Product and access to Content, including but not limited to: Service Subscription, Device settings, backup settings, access controls, management, retention and deletion of Content, transition of Product or Content to a different Administrator, and transition assistance and cooperation upon termination or expiration of any relationship between or among an Administrator, Content Owner and/or Datto. Datto expressly may rely on the authorization of any Administrator with respect to access and control of Content.
 - 3.3. Business Associate Agreements. If you are a third party Administrator managing or using a Product for a Content Owner that is a Covered Entity or Business Associate, as defined under U.S. law, you agree to enter into and comply with the terms of an applicable Business Associate Agreement with the Content Owner. Furthermore, you agree to notify us in such event so that you and we may enter into a valid Business Associate Agreement prior to the transfer of any Content related to the Product. Upon our request you agree to send us a copy of each such Business Associate Agreement between you and the Content Owner. The terms "Covered Entity," "Business Associate" and "Business Associate Agreement" will have the same meanings as set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act), and such regulations as may be further amended from time to time (collectively, the HIPAA Standards).
 - 3.4. Datto's Use of Content. Except for the limited license granted hereunder, Content Owner retains all of its existing rights in and to Content. We will use the Content only as necessary to provide and support the Products and will not otherwise access Content other than as permitted under these Terms of Use, as described in our Privacy Policy, or as authorized by an Administrator for support.
4. MAINTENANCE, SUPPORT AND TRAINING
 - 4.1. Datto's Maintenance and Support. We will provide reasonable support for the Products in accordance with our then-current maintenance and support Policies, and any applicable Service Level Agreement located on an Online Portal, as the same may be updated by us from time to time.
 - 4.2. Your Support. An Administrator is responsible for providing first level support for each Product. By requesting support services directly from us, you represent that you are

authorized to do so for that Product and are knowledgeable about the Product, Service and Content involved and are able to demonstrate the required level of technical competency with respect to use of the Product. We reserve the right not to provide direct support to any individual not meeting these requirements.

- 4.3. Support Authorization. You agree to cooperate in good faith to implement our suggestions and solutions, and assist us in maintenance and troubleshooting issues, with respect to support of the Products. By requesting support services from us, you authorize us to access the Product, Content and/or the system being backed up as needed for the purpose of providing the requested Product support. We may rely on the instructions and authorizations given to us by any Administrator with access to a Product, and we will have no obligation to inform any other Administrator of the Product of the same.
- 4.4. Training. We make available opportunities for training on the Products. Our training provides instruction on the general use and functionality of the Products but is not the same, and should not be relied on, as advice in specific technical support situations. You acknowledge and agree that we will not be liable for any statements or omissions made during training or contained in training materials.

5. TERM AND TERMINATION.

- 5.1. Term. These Terms of Use will apply to you and your right and license to use a Product will commence at the earlier of when (1) you purchase and/or register the Product; and/or (2) you are authorized to be an Administrator of a Product, and continue in effect with respect to that Product until terminated as set forth in this Section 5. The right and license of any third party Administrator to use a Product continues only as long as such Administrator continues to be authorized to act on behalf of the Content Owner.
- 5.2. Termination. Without prejudice to any other of our rights, we may terminate your right to use a Product and the provision of any Service, in our sole discretion, on 10 calendar days' notice if you fail to comply with these Terms of Use, or if there is a failure to pay any fees due to us for use of the Product and there is a failure to cure such breach within the notice period. We may terminate immediately in the event: (a) there is any breach of Section 1 (Use of Product), Section 2 (Limitations on Rights of Use), or Section 9 (Confidentiality); or (b) there is or we reasonably believe there may exist a basis for a claim of Intellectual Property Rights infringement by any third party relating to the Product.
- 5.3. Effect of Termination. In the event of termination for any reason you must immediately stop using the Product and securely destroy all related media and Specifications, if any. The licenses granted hereunder and all Services with respect to a given Product will automatically terminate on expiration or termination under this Section 5. We reserve the right to permanently delete or disable access to all related Content from any remotely located servers owned by or under our control, without liability for such deletion, 60 days after the termination.
- 5.4. Survival. Notwithstanding anything to the contrary, the following provisions will survive termination: those that by their express terms survive or by their nature may be reasonably inferred to survive, as well as sections 8 (Use of Information), 9 (Confidentiality), 10 (Warranty and Disclaimer), 11 (Limitation of Liability), 12 (Indemnification), 13 (Export Controls and

Government Uses), 14 (Arbitration/Class Action Waiver); 15 (Additional Provisions) and 16 (Definitions).

6. ACCESS AND SECURITY

- 6.1. Your Responsibility for Account and Product Access. You are responsible for any action that you permit, assist or facilitate any person or entity to take related to the Product and associated Content. You are responsible for the security of all access credentials, including all passwords, to the Product. You are responsible for maintaining the security of any access codes, passwords, technical specifications, connectivity standards or protocols, assigned to you and/or created by you to gain access to an Online Portal, Product and/or Content. You are responsible for all activities that occur in your Online Portal account ("Account"), including any Product or Content access you allow, regardless of whether the activities are undertaken by you, by others on your behalf (including any of your administrative users and/or any Content Owner you authorize). Your Online Portal account may be hosted in the U.S. regardless of where you, the Product or Content related to the Product may be located. You are responsible for securing any necessary consents, if any, related to the hosting location of your Online Portal account. If you lose your encryption key, you may not be able to access the Content associated with the Product. You agree to notify us immediately if you learn of any unauthorized use of any access credentials or any other known or suspected breach of security. You agree that we will not be liable for any loss of any kind resulting from a) any party using your Account access credentials; and b) activity within your Account, either with or without your knowledge or authorization.
- 6.2. Your Responsibility for Security. You are responsible for the proper configuration and maintenance of physical, administrative and technical safeguards as they relate to access to and use of the Product and Content. In no event will we be responsible, nor will we have any liability, for physical, administrative, or technical controls related to the Product that you control, including but not limited to local Device access, network connectivity and internet connectivity. We use physical, technical and administrative safeguards designed to secure Content under our control against accidental or unauthorized loss, access or disclosure. However, no password-protected system of data storage and retrieval can be made entirely impenetrable and you acknowledge and agree that despite the measures employed, the Products and Content are not guaranteed against all security threats or other vulnerabilities and you use the Products with all Content at your own risk.

7. UPDATES AND TESTING

- 7.1. Right to Change Products. We reserve the right at any time, in our sole discretion, to make Enhancements to, replace, modify, discontinue or add to the Products, including revisions to any and all Specifications for the Products. We will use reasonable commercial efforts to provide you notice of any material changes.
- 7.2. Remote Testing and Updates. You agree that we may and hereby authorize us, at any time and from time to time, to interact remotely with any deployed Product in order to test, troubleshoot, or update such Product.
- 7.3. Changes to Terms of Use/ Policies/Specifications. We reserve the right at any time to modify these Terms of Use and updated Terms of Use will be posted within the applicable Product or Online Portal. Your continued use of any Product after an update will indicate your

acceptance of any updated Terms of Use. Updated Terms of Use that contain material modifications will be presented to you for acceptance the next time you access the applicable Product or Online Portal following the update. If you do not agree to any updated Terms of Use, you must terminate your use of the Product and your Online Portal account immediately. If you provide written notice of any such termination, we will provide a refund of any pre-paid but unused fees applicable to the Product. We may also modify and update Policies, Third Party License Terms, Specifications, and other support materials. All such changes are effective immediately upon posting to the Online Portal and you should review such materials on a regular basis so that you will be apprised of any changes.

8. USE OF INFORMATION

- 8.1. Use of Feedback. If you provide us with reports, comments, suggestions, ideas or other feedback regarding the Products or our business, whether written or oral (collectively “Feedback”), either directly or through any third party, you do so without any expectation of compensation. You hereby grant us a worldwide, irrevocable, perpetual, royalty-free right and license to use the Feedback to improve the Products and for any other purpose, including in all media now known and later developed. Feedback is strictly voluntary and we are not required to hold it in confidence.
- 8.2. Use of Aggregate Data. Notwithstanding anything else in these Terms of Use or otherwise, we may evaluate and process use of Products and Content in an aggregate and anonymous manner, and compile statistical and performance information related thereto (referred to as “Aggregate Data”). We may use and share such Aggregate Data to improve the Products, develop new products, understand and/or analyze usage, demand, and general industry trends, develop and publish white papers, reports, and databases summarizing the foregoing, and generally for any purpose related to our business. We retain all Intellectual Property Rights in Aggregate Data. For clarity, Aggregate Data does not include personally identifiable information or information that can identify any Administrator or Content Owner.
- 8.3. Use of Log Data. Operational data concerning use of the Products, including but not limited to, information servers automatically record relating to the access and use of the Products, such as IP address, authentication tokens, machine identification, access logs, device settings and Online Portal settings are used by us to provide the Products and you agree that we may use such Log Data without restriction.

9. CONFIDENTIALITY

- 9.1. Protection of Confidential Information. Both you and we agree to (i) maintain the confidentiality of the Confidential Information of the other party; (ii) hold in confidence and protect such Confidential Information from dissemination to, and use by, any third party except as necessary for the purpose of using or providing the Products or otherwise in complying with these Terms of Use; (iii) use the same care to prevent disclosure of the Confidential Information of the other party to third parties as it employs to avoid disclosure of its own information of a similar nature, but in no event less than a reasonable standard of care; (iv) use the Confidential Information of the other party solely for the purpose of using or providing the Products or otherwise in complying with these Terms of Use.

- 9.2. Products are Datto Confidential Information. The Products, including their structure, organization and source code, are comprised of commercially valuable assets belonging to us or our licensors, the development or acquisition of which required the investment of substantial time, effort and cost. You acknowledge and agree that the Products may contain trade secrets and they (and all portions thereof) are our Confidential Information and are proprietary to us. Accordingly, you hereby agree to use the highest degree of care to maintain the confidentiality of the Products.
- 9.3. Types of Data. Content, Feedback, Aggregate Data and Log Data will not be deemed to be Confidential Information. Our responsibilities regarding Content are set forth in Section 3.4. Our use of Feedback, Aggregate Data and Log Data are set forth in Section 8.
- 9.4. Permitted Disclosures. Each party may disclose Confidential Information of the other party to its employees, officers, agents, subcontractors and independent contractors (collectively "Representatives") who have a need to know such Confidential Information in order to perform their duties provided they have a legal duty to protect the Confidential Information. A party receiving Confidential Information of the other party assumes full responsibility for the acts and omissions of its Representatives with respect to such Confidential Information.
- 9.5. Required Disclosures. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with Applicable Law, provided that the party required to make any such disclosure, where permitted by Applicable Law in the reasonable judgment of that party's counsel, will first have given written notice to the other party in order to allow the disclosing party to seek, at its sole cost and expense, a protective order or other remedy to limit such disclosure.
- 9.6. Injunctive Relief. Each party acknowledges that any breach of any provision of this Section 9 (Confidentiality) by the receiving party, or its Representatives, may cause immediate and irreparable injury to the disclosing party, and in the event of such breach, the injured party will be entitled to seek and obtain injunctive relief to the extent provided by a court of applicable jurisdiction, without bond or other security, and to any and all other remedies available at law or in equity.
- 9.7. Return of Confidential Information. Unless it is expressly authorized to retain the other party's Confidential Information, a party will promptly return or use commercially reasonable efforts to destroy, at the other party's option, the other party's Confidential Information upon request or upon any termination of these Terms of Use.

10. WARRANTY AND DISCLAIMER

Limited Datto Hardware Warranty. Warranty terms for physical hardware Devices are available on an Online Portal.

YOU ACKNOWLEDGE THAT THE PRODUCTS, INCLUDING ANY SERVICES, ARE PROVIDED AS IS AND WITH ALL FAULTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY, DATA SECURITY, QUIET ENJOYMENT, TITLE, AND/OR NON-INFRINGEMENT OR ANY WARRANTIES ARISING OUT OF ANY

COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. WE DO NOT WARRANT THAT THE PRODUCTS WILL MEET ANY CONTENT OWNER, ADMINISTRATOR, OR USER REQUIREMENTS OR THAT THE OPERATION OF ANY PRODUCT WILL BE SECURE, UNINTERRUPTED, OR ERROR-FREE, FREE OF HARMFUL COMPONENTS OR THAT ALL ERRORS WILL BE CORRECTED. WE MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT ANY PRODUCT'S COMPLIANCE WITH LAWS AND REGULATIONS SPECIFICALLY APPLICABLE TO ANY CONTENT OWNER OR INDUSTRY AND DISCLAIM ALL LIABILITY ASSOCIATED THEREWITH.

THE PRODUCTS MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER RISKS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. WE ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

WE DISCLAIM ANY DUTIES OF A BAILEE, AND YOU HEREBY WAIVE ALL RIGHTS AND REMEDIES OF A BAILOR (ARISING UNDER COMMON LAW OR STATUTE), RELATED TO OR ARISING OUT OF ANY POSSESSION, STORAGE, TRANSMISSION OR SHIPMENT OF CONTENT BY US.

WE MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO ANY THIRD PARTY COMPONENTS IN ANY PRODUCTS. WE EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, QUALITY OF INFORMATION, QUIET ENJOYMENT AND FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE THIRD PARTY COMPONENTS. YOU SHOULD CONSULT THE RESPECTIVE VENDOR OR MANUFACTURER OF THE THIRD PARTY COMPONENT FOR WARRANTY AND PERFORMANCE INFORMATION.

NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY US OR ANY RESELLER, ADMINISTRATOR OR OTHER PARTY WILL CREATE ANY ADDITIONAL DATTO WARRANTIES, ABROGATE THE DISCLAIMERS SET FORTH ABOVE OR IN ANY WAY INCREASE THE SCOPE OF OUR OBLIGATIONS HEREUNDER.

11. LIMITATION OF LIABILITY

- 11.1. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT WILL WE OR OUR LICENSORS OR SUPPLIERS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR COSTS, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, COSTS OF DELAY, FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR THE COST OF RECREATING THE SAME, ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCTS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE). IN NO EVENT WILL WE BE LIABLE FOR THE PROCUREMENT OF SUBSTITUTE SERVICES OR PRODUCTS.
- 11.2. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, OUR ENTIRE CUMULATIVE LIABILITY (AND THAT OF OUR SUPPLIERS/LICENSORS) FOR ALL CLAIMS AND DAMAGES OF EVERY KIND AND TYPE (WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT OR STRICT LIABILITY) WILL BE LIMITED TO DIRECT DAMAGES ONLY THAT DO NOT EXCEED AN AMOUNT EQUAL TO THE FEES WE RECEIVE FOR THE INDIVIDUAL APPLICABLE PRODUCT IN THE 12 FULL CALENDAR

MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE EVENT INVOLVING THAT PRODUCT GIVING RISE TO THE CLAIM OCCURRED.

- 11.3. THESE LIMITATIONS OF LIABILITY ARE INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THESE TERMS OF USE HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

Essential Basis. The disclaimers, exclusions and limitations of liability set forth in Sections 10 and 11 form an essential basis of these Terms of Use and have been relied on by both you and us, and absent such disclaimers, exclusions and limitations of liability, these Terms of Use and the fees applicable to the Products would be substantially different.

12. INDEMNIFICATION

- 12.1. Indemnification by Datto. We agree to defend you from and against third party claims that a Product in the form supplied to you under these Terms of Use infringes or misappropriates a third party's patent, copyright or trademark rights and we will indemnify and hold you harmless from all damages, costs, and similar liabilities ordered by a court or agreed upon by Datto in settlement in connection with any such claim. Our indemnification obligations will not apply to (i) claims of infringement to the extent based on your combination of the Product with other products, services or software or marks if the infringement could have been avoided by the use of such Product not in such combination; (ii) any modifications to the Product not made by us; (iii) any damages incurred as a result of your failure to use any update to the Product we provide; or (iv) use of a Product in a manner that does not conform to its Specifications (these exceptions (i) through (iv) collectively will be referred to as "IP Exclusions"). If we determine that a Product is or may become subject to an infringement claim, we may, at our option: (1) procure for you the right to continue to use the Product; or (2) replace or modify the Product so it becomes non-infringing. If we determine that neither of these options is commercially practicable, we may terminate your use of the Product and will issue a refund of the fees paid (not including Service usage fees for Services already provided) to acquire the initial use of the allegedly infringing Product less reasonable depreciation. This Section 12.1 represents your sole and exclusive remedy and Datto's sole and exclusive liability for any infringement claims based on the Products.
- 12.2. Your Indemnification of Datto. You agree to defend us, our licensors and affiliates, and the officers, directors, employees and representatives of each of them (each a "Datto Indemnified Party"), from and against all damages and costs incurred as a result of a third party claim and you will indemnify and hold any and all Datto Indemnified Parties harmless from all damages, costs, and similar liabilities ordered by a court or agreed upon by you in settlement in connection with any such claim, to the extent the claim arises out of (i) your breach of these Terms of Use; (ii) your negligence or other acts or omissions resulting, in whole or in part, in a third party claim being asserted against us; (iii) any of the IP Exclusions referenced in section 12.1; (iv) if you are a third party Administrator, your failure to cause each Content Owner to agree to the applicable Product Terms of Use and/or Content Owner Terms or your actions in excess of the authority granted to you by any Content Owner; (v) your failure to secure Content, any personally identifiable or Confidential Information in accordance with these Terms of Use, any applicable agreement with a Content Owner, any applicable Business Associate Agreement, and Applicable Law.

- 12.3. Process. The foregoing indemnification obligations are conditioned on any of the indemnified parties: (a) notifying the indemnifying party promptly in writing of such action; (b) reasonably cooperating and assisting in such defense; and (c) giving sole control of the defense and any related settlement negotiations to the indemnifying party with the understanding that the indemnifying party may not settle any claim in a manner that admits guilt or otherwise prejudices the indemnified party, without consent.

13. EXPORT CONTROL AND GOVERNMENT USES

- 13.1. Export Compliance. You represent and warrant that in connection with your use of the Products and Content you: (i) will comply with all export laws, restrictions, national security controls, and regulations of the United States or other applicable authority; (ii) will not export or re-export or allow the export or re-export of the Products (or Content through use of the Products) in violation of any such export laws, restrictions, controls or regulations.
- 13.2. Government Entities. If Products are to be used in the performance of a government contract or subcontract, no government requirements or regulations will be binding upon Datto unless specifically agreed to by Datto in writing. If the Content Owner is a U.S. Government entity or person, the Product is being provided as a "Commercial Item" as that term is defined in the U.S. Code of Federal Regulations (see 48 C.F.R. § 2.101), and the rights granted in the Product to such Content Owners are the same as the rights granted to all others under these Terms of Use.

14. ARBITRATION; CLASS ACTION WAIVER

- 14.1. Arbitration / No Class Action. All claims and disputes arising out of these Terms of Use or the use of any Product, except for those set forth below, that can't be settled informally between us will be settled by binding arbitration in accordance with the rules then in effect of the American Arbitration Association ("AAA"). Arbitration must be on an individual basis and neither of us may join or consolidate claims in arbitration or arbitrate claims as a representative or member of a class. Arbitration proceedings must be initiated within the statute of limitations and within any deadlines imposed under AAA rules for the pertinent claim. Any settlement offer made by either party may not be disclosed to the arbitrator until after the arbitrator's determination of any award. Judgment upon the award rendered by way of such arbitration may be entered in any court having jurisdiction thereof. Costs of arbitration (including reasonable attorneys' fees) will be made a part of the arbitrator's award. The arbitration will take place in Fairfield County, Connecticut. All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, will be strictly confidential.
- 14.2. Claims Not Subject To Arbitration. Notwithstanding the foregoing, any claims involving the following are not subject to mandatory arbitration: (i) alleged infringement or misappropriation of the other party's Intellectual Property Rights; (ii) any claims involving a party's right to indemnification under this Agreement; (iii) your breach Section 2 of these Product Terms of Use; (iv) any claim for temporary or permanent injunctive relief.
- 14.3. Courts. In any circumstances where the parties may litigate in court, the parties hereby waive any right to a trial by jury and hereby submit to the personal jurisdiction of the courts set forth in section 15.4.

- 14.4. No Class Actions. All disputes arising out of or related to this Agreement or any Product must be brought on an individual basis, and you hereby waive your right to, and agree that you will not, bring (or join) a claim as a plaintiff or a class member in a class, consolidated, or representative arbitration, litigation or other proceeding.

15. ADDITIONAL PROVISIONS

- 15.1. Construction. The section headings in these Terms of Use are for convenience only, will not be deemed to be substantive and will not be referred to in connection with the construction or interpretation of these Terms of Use. Any rule of construction that ambiguities are to be resolved against the drafting party will not be applied in the interpretation of these Terms of Use.
- 15.2. Governing Law. These Terms of Use, if with Datto, Inc., will be governed, construed and enforced in accordance with the laws of the State of Connecticut without reference to conflicts of law principles. The parties agree that exclusive jurisdiction for any permitted actions connected with this Agreement will be in the Superior Courts of Fairfield County, Connecticut or the United States District Court for the District of Connecticut. This Agreement, if not with Datto, Inc., will be governed in accordance with the laws of the jurisdiction where the applicable Datto affiliate or subsidiary is located and nothing in this Agreement will be deemed to exclude or limit the liability of either party which cannot be limited or excluded by such applicable law. This Agreement will not be governed by the U.N. Convention on Contracts for the International Sale of Goods.
- 15.3. Enforceability. If any provisions herein are deemed invalid, illegal, or unenforceable, the validity, legality and enforcement of the remaining provisions will not be affected or impaired.
- 15.4. Electronic Communications. You consent to receive communications from us in electronic form and agree that this Agreement and all notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement as if in writing.
- 15.5. Assignment. You may not assign these Terms of Use or any rights or obligations hereunder (including with respect to any individual Product or Content), without our express written consent. Any assignment or transfer in violation of the foregoing will be null and void. We reserve the right to assign this Agreement to any (i) affiliate; or (ii) any entity in connection with the sale, combination, or transfer of all or substantially all of the assets or capital stock or from any other corporate form of reorganization by or of us. Subject to all of the terms and conditions hereof, this Agreement is binding upon the parties, their permitted successors and assigns
- 15.6. Force Majeure. Any delay in or failure of performance of either of us will not constitute a default under these Terms of Use or give rise to any claim for damages to the extent such delay or failure of performance is caused by a force majeure event, including acts of god, fire, flood, explosion, war, strikes, loss of any necessary power or communications sources or connections, failures in or affecting the Internet or associated intranets, any computer virus or other malicious code released by a third party, the terrorist, illegal or malicious acts of a third party, changes or modifications in international, national, or industry standards or protocols, and the existence of or changes in laws prohibiting or imposing criminal penalties or civil liability for performance hereunder; provided that, any such delay does not extend beyond 30 calendar days.

- 15.7. No Waiver. The failure to enforce or the waiver by either of us of one default or breach by the other will not be considered to be a waiver of any subsequent default or breach.
- 15.8. No Third Party Beneficiaries. There are no third party beneficiaries to these Terms of Use.
- 15.9. English Language. These Terms of Use have been drafted in the English language and such version will be controlling in all respects and any non-English version is solely for accommodation purposes.
- 15.10. Notices. All notices required or permitted hereunder will be in writing and delivered by nationally recognized overnight courier (e.g., UPS, FedEx) and will be deemed effective upon receipt as evidenced by courier delivery confirmation. Notices to you will be sent to you at the address specified in an Online Portal. Notices to us must be sent to 101 Merritt 7, Norwalk, CT 06851 Attn: General Counsel. In addition, we may send any notice required or permitted hereunder to you at the email address specified in an Online Portal and such notice will be deemed effective upon our receipt of email delivery notification.
- 15.11. Entire Agreement. These Term of Use, Third Party License Terms, any applicable backup Agent Software Licenses, and applicable Policies available on the appropriate Online Portal constitute the entire understanding of the parties with respect to the subject matter hereof, and supersede all prior and contemporaneous written and oral agreements with respect to the subject matter. No modification of this Agreement will be binding on us unless it is in writing and signed by us.

16. DEFINITIONS.

- 16.1. "Administrator" means (i) a Content Owner that controls, manages, uses and/or supports any Product for its own internal use; or (ii) a third party person or entity, other than Datto, authorized by a Content Owner to control, manage and/or use a Product for that Content Owner. A Product may have multiple Administrators and Datto expressly may rely on the authorization and instructions of any Product Administrator that agrees to these Terms of Use, until Datto receives written instructions to the contrary.
- 16.2. "Applicable Law" means any applicable law, rule, regulation, directive, code, order or other requirement in any jurisdiction contemplated by these Terms of Use.
- 16.3. "Confidential Information" means any information, other than Content, whether oral, written, electronic, or in any other format disclosed by either you or Datto to the other related to the operations of either party or a third party that has been identified by the disclosing party as confidential or that by the nature of the circumstances surrounding disclosure are reasonably to be treated as confidential. Confidential Information specifically excludes Content. The Products and information available to you through an Online Portal are Datto Confidential Information.
- 16.4. "Content" means data, content or other materials stored, backed-up, hosted, displayed, transmitted, routed, virtualized, processed or communicated using a Product.
- 16.5. "Content Owner" means the person or entity that owns, licenses, lawfully controls or uses Content, or for whose benefit Content is held or transmitted, in connection with a Product.
- 16.6. "Datto Software" means the software technology and all Intellectual Property Rights of Datto and its licensors in any Product, including any embedded software on or comprising Devices.
- 16.7. "Device" means any storage or image-based business continuity and disaster recovery product instance, regardless of whether it is physical hardware, or in virtual or imaged form.

- 16.8. “Enhancement” means any upgrade, update or modification to a Product. All Enhancements will be subject to these Terms of Use.
- 16.9. “Intellectual Property Rights” means all intellectual property rights, however arising and in whatever media, whether or not registered, including patents, copyrights, trademarks, service marks, trade names, design rights, database rights, domain names, trade secrets or other proprietary rights and any applications for the protection or registration of such rights and all renewals and extensions thereof throughout the world.
- 16.10. “Online Portal” means a remote web-based application or portal provided by Datto that contains information related to the Product, including the ability to configure, manage, monitor, support and use the Product.
- 16.11. “Product(s)” means any Datto image based business continuity and disaster recovery solutions subject to these Terms of Use, including Devices, Datto Software, and Services as well as all Enhancements to Products.
- 16.12. “Policies” means the terms and conditions of any policies applicable to access, use, management and support of the Products. Policies are published on an Online Portal.
- 16.13. “Services” means all services provided by or on behalf of Datto, including without limitation, business continuity, backup and disaster recovery, technical support, training, Online Portals or other applications provided by Datto. Datto Services may be provided through any of the following, or any combination of the following, or any later developed or implemented, means: (i) the use of Devices owned by or under the control of the Content Owner, Administrator or other party; (ii) the use of remotely located servers owned by or under the control of Datto (“Datto Cloud”) ;(iii) the use of Datto Software licensed for use by Content Owner or an Administrator.
- 16.14. “Service Subscription” means the type of Service, Service Term, Payment Term and Retention Plan in which a Device is enrolled, as set forth in the Datto BCDR Service Policies.
- 16.15. “Specifications” means the Policies, documentation, user manuals and any technical publications and materials, as applicable, relating to the Products. Specifications may be published on an Online Portal.

March 2017

DATTO BCDR Product Content Owner Terms

These Content Owner Terms (“Terms”), including any Exhibits, apply to you as the person or entity that owns, licenses, or lawfully controls the data, files or other content (“Content”) with which a Datto backup and disaster recovery product (“Product”) will be used. Datto does not provide the Product directly to you. The Product is sold and provided by Datto, Inc. or one of its subsidiaries or affiliates (“Datto”) directly to the reseller/managed service provider (“Administrator”) that will use and manage the Product on your behalf with your Content. These Terms apply only if the Product is used and managed by an Administrator other than you. If you access, use or manage the Product yourself, including for support, you must register with Datto as an Administrator of the Product and accept and agree directly with Datto to the Product Terms of Use.

1. RIGHTS TO THE PRODUCT

- 1.1. You acknowledge that Datto and its licensors own all intellectual property rights in and to the Product. You will not engage in or authorize any activity that is inconsistent with such ownership.
- 1.2. The Product may involve the use of third party technology licensed by Datto, the use of which is subject to such third parties’ license or other customer terms. These terms are attached hereto as Exhibit A.

2. DATTO’S RIGHTS AND RESPONSIBILITIES REGARDING CONTENT

- 2.1. Datto’s Use of Content. Datto will use Content only as necessary to provide and support the Product and will not otherwise access Content other than as permitted under the applicable Terms of Use, as described in the Datto Privacy Policy, or as authorized by an Administrator for support. You and any Administrator you appoint are responsible for your Content and the consequences of its use in connection with the Product.
- 2.2. Datto’s Rights. In the event that Datto reasonably believes Content or related Product use violates the Product Terms of Use, may disrupt or threaten the operation or security of any computer, network, system or the Product, or may otherwise subject Datto to liability, Datto reserves the right to refuse or disable access to the Product or Content. Datto may also take such action pursuant to the Digital Millennium Copyright Act and/or as required to comply with law or any judicial, regulatory or other governmental order or request. Datto will use reasonable efforts to contact the Administrator prior to taking such action. Notwithstanding the foregoing, Datto may restrict access to any Product or Content without prior notice as required to comply with law or any judicial, regulatory or other governmental order or request. In the event that Datto takes any such action without prior notice, Datto will provide notice to the Administrator, unless prohibited by law.
- 2.3. Use of Aggregate Data. Notwithstanding anything else in these Terms or otherwise, Datto may evaluate and process use of the Product and Content in an aggregate and anonymous manner, and compile statistical and performance information related thereto (referred to as “Aggregate Data”). Datto may use and share such Aggregate Data to improve the Products, develop new products, understand and/or analyze usage, demand, and general industry trends, develop and publish white papers, reports, and databases summarizing the foregoing, and generally for any purpose related to Datto’s business. Datto retains all intellectual property rights in Aggregate Data. For clarity, Aggregate Data does not include any personally identifiable information nor identify any Content Owner or individual.

3. ADMINISTRATOR

- 3.1. Datto will interact with the Administrator(s) you authorize to operate and manage use of the Product with your Content. You are not a third party beneficiary of any agreement between Datto and an Administrator.
- 3.2. An Administrator is not an agent of Datto and is not authorized to make any representations or warranties on behalf of Datto regarding the Product or its use.
- 3.3. You are responsible for instructing and authorizing the Administrator with respect to use of the Product including backup settings, management of Content, deletion of Content, and transition of Product or

Content to a different Administrator, and transition assistance and cooperation upon termination or expiration of any relationship between or among Administrator, you and/or Datto.

- 3.4. You expressly agree that Datto may rely on the instructions and authorization of the Administrator with respect to use and support of the Product and access and control of your Content.

4. SECURITY

- 4.1. Datto has implemented and maintains physical, technical and administrative measures designed to help secure Content under Datto's control against accidental or unlawful loss, access or disclosure. However, no password-protected system of data storage and retrieval can be made entirely impenetrable and you acknowledge and agree that despite the reasonable measures employed, the Products and Content are not guaranteed against all security threats or other vulnerabilities.
- 4.2. You acknowledge and agree that the Administrator you authorize to manage use of the Product with your Content has access to and manages your Content. You and/or the Administrator are responsible, and in no event will Datto be responsible, for any physical, administrative, or technical controls related to Products or Content not under the exclusive control of Datto, including but not limited to local Product access, LAN or internet connectivity. You and/or the Administrator are responsible for the proper configuration and maintenance of security measures and for determining the security measures appropriate for the Content, including local encryption of sensitive Content.

5. INDEMNIFICATION

You will defend, indemnify and hold harmless Datto from and against any loss, cost, liability or damage, including attorneys' fees, for which Datto becomes liable arising from any claim relating to your Content, including if it a) infringes or misappropriates the intellectual property rights or other rights of a third party; b) violates any applicable law; or c) otherwise is in violation of these Terms or the Product Terms of Use.

6. LIMITATIONS OF LIABILITY

- 6.1. THE DATTO PRODUCT, INCLUDING ANY THIRD PARTY COMPONENTS OR TECHNOLOGY, ARE PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DATTO DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY, DATA SECURITY, QUIET ENJOYMENT, TITLE, AND/OR NON-INFRINGEMENT OR ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. DATTO DOES NOT WARRANT THAT THE PRODUCT WILL MEET ANY SPECIFIC REQUIREMENTS OR THAT THE OPERATION OF ANY PRODUCT WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.
- 6.2. DATTO MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE PRODUCT'S COMPLIANCE WITH LAWS AND REGULATIONS SPECIFICALLY APPLICABLE TO ANY USER OR INDUSTRY AND DISCLAIMS ALL LIABILITY ASSOCIATED THEREWITH.
- 6.3. THE PRODUCT MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER RISKS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. DATTO IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.
- 6.4. DATTO DISCLAIMS ANY DUTIES OF A BAILEE, AND YOU HEREBY WAIVE ALL RIGHTS AND REMEDIES OF A BAILOR (ARISING UNDER COMMON LAW OR STATUTE), RELATED TO OR ARISING OUT OF ANY POSSESSION, STORAGE, TRANSMISSION OR SHIPMENT OF CONTENT BY OR ON BEHALF OF DATTO.

- 6.5. TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT WILL DATTO OR ANY DATTO LICENSOR OR SUPPLIER BE LIABLE FOR ANY DIRECT, INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR COSTS, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, COSTS OF DELAY, FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR THE COST OF RECREATING THE SAME, EVEN IF DATTO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL DATTO BE LIABLE FOR THE PROCUREMENT OF SUBSTITUTE SERVICES OR PRODUCTS.
- 6.6. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY DATTO, ANY RESELLER, ADMINISTRATOR OR OTHER PARTY WILL CREATE ANY ADDITIONAL DATTO WARRANTIES, ABROGATE THE DISCLAIMERS SET FORTH ABOVE OR IN ANY WAY INCREASE THE SCOPE OF DATTO'S OBLIGATIONS HEREUNDER.

EXHIBIT A to Content Owner Terms

MSP SERVICES AGREEMENT MINIMUM CUSTOMER TERMS

TERMS AND CONDITIONS REGARDING USE OF STORAGECRAFT SOFTWARE: This document concerns your use of StorageCraft Technology ("StorageCraft") software provide to you by _____ (hereinafter referred to as "**Company**"). Company will provide software services to you as described below, which may include associated media, printed materials, and "**online**" or electronic documentation, including certain StorageCraft software products that it offers on an MSP basis, including without limitation ShadowSnap® (individually and collectively, the "**Licensed Software**"). Company does not own the Licensed Software and its use is subject to certain rights and limitations of which Company needs to inform you. Your right to use the Licensed Software is subject to your customer service agreement ("**agreement**") with Company and your compliance with and consent to the following terms and conditions, which Company does not have authority to alter or amend.

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2. **COPIES.** You may not make any copies of the Licensed Software. You must uninstall, erase or destroy all Licensed Software installed on your computer(s) upon termination or cancellation of your agreement with Company, notice from Company, or transfer of your computer(s) to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the Licensed Software.
3. **LIMITATIONS ON REVERSE ENGINEERING, DECOMPILE AND DISASSEMBLY.** You may not reverse engineer, decompile, or disassemble the Licensed Software, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.
4. **NO RENTAL.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Licensed Software to any third party, and you may not permit any third party to have access to and/or use the functionality of the Licensed Software.
5. **TERMINATION.** Without prejudice to any other rights, Company may suspend or terminate your rights to use the Licensed Software if you fail to comply with these terms and conditions. Further, your rights to use the Licensed Software may be suspended or terminated in the event that Company violates its agreement with StorageCraft or that Agreement is otherwise terminated. In the event of suspension, termination or cancellation, the functionality of the Licensed Software may cease, the Licensed Software may deactivate, and/or you may be required to stop using the Licensed Software and destroy all copies of the Licensed Software and all of its component parts.
6. **COOPERATION.** Upon termination of your rights to use the Licensed Software, you will cooperate in: (a) removing or deactivating all copies of the Licensed Software from your computers on which it is installed; and (b) returning or destroying all media containing the Licensed Software.
7. **NO WARRANTIES, LIABILITIES, OR REMEDIES BY STORAGECRAFT.** ANY WARRANTIES, LIABILITY FOR DAMAGES, AND REMEDIES ARE PROVIDED SOLELY BY COMPANY AND NOT BY STORAGECRAFT. TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU DISCLAIM ALL WARRANTIES BY STORAGECRAFT AND ANY LIABILITY BY STORAGECRAFT OR ITS SUPPLIERS FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, OR CONSEQUENTIAL, ARISING FROM THE USE OF THE LICENSED SOFTWARE OR YOUR AGREEMENT OR RELATIONSHIP WITH THE COMPANY.
8. **PRODUCT SUPPORT.** Any product support for the Licensed Software is provided to you by Company and not by StorageCraft.
9. **NO-FAULT TOLERANT.** THE LICENSED SOFTWARE CONTAINS TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE LICENSED SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.
10. **EXPORT RESTRICTIONS.** The Licensed Software is of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and national laws that apply to the Licensed Software, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.
11. **UNITED STATES GOVERNMENT RESTRICTED RIGHTS RESTRICTED RIGHTS LEGEND.** All StorageCraft products and documentation are commercial in nature. The Licensed Software and associated documentation are "**Commercial Items**", as that term is defined in 48 C.F.R. section 2.101, consisting of "**Commercial Computer Software**" and "**Commercial Computer Software Documentation**", as defined in 48 C.F.R. section 252.227-7014(a)(5) and 48 C.F.R. section 252.227-7014(a)(1), and used in 48 C.F.R. section 12.212 and 48 C.F.R. section 227.7202, as applicable. Consistent with 48 C.F.R. section 12.212, 48 C.F.R. section 252.227-7015, 48 C.F.R. section 227.7202 through 227.7202-4, 48 C.F.R. section 52.227-14, and other relevant sections of the Code of Federal Regulations, as applicable, the Licensed Software and documentation are licensed to United States Government end users with only those rights as granted to all other end users, according to the terms and conditions contained in the end user license agreement.

KROLL EULA

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AUDIT RIGHTS. You shall maintain accurate records containing all necessary data required for verification of compliance with the terms of this Agreement. Kroll Ontrack may, during normal business hours, and upon reasonable prior notice to you, audit and analyze your records to verify compliance hereunder.

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