

CLICKING “I AGREE” AT THE END OF THESE PLATFORM TERMS AND CONDITIONS CREATES A LEGALLY BINDING CONTRACT. MOREOVER, BY ACCESSING OR OTHERWISE USING THE PRODUCTS (DEFINED BELOW), SERVICE PROVIDER (DEFINED BELOW) AGREES TO BE BOUND BY THESE PLATFORM TERMS AND CONDITIONS AS COMPANY MAY UPDATE THEM FROM TIME TO TIME. IF SERVICE PROVIDER DOES NOT AGREE TO THESE PLATFORM TERMS AND CONDITIONS, SERVICE PROVIDER MAY NOT ACCESS OR USE THE PRODUCTS. THE DATE THAT SERVICE PROVIDER CLICKS “I AGREE” OR FIRST ACCESSES OR OTHERWISE USES THE PRODUCTS AFTER ANY UPDATE TO THESE PLATFORM TERMS AND CONDITIONS IS THE “EFFECTIVE DATE” OF THE PLATFORM TERMS AND CONDITIONS THEN IN EFFECT.

ACRONIS PLATFORM TERMS AND CONDITIONS

INTRODUCTION

- A. These Platform Terms and Conditions (these “*Terms*”) refer to the company that accepts the Terms by clicking “I Agree” at the end of these Terms or by first accessing or using the Products as “*Service Provider*.”
- B. Acronis International GmbH (“*AIG*”) or one of its affiliates (“*Company*”) has entered into a contract with a company (“*Distributor*”) that is authorized to distribute certain of AIG’s software as a service (“*SaaS*”) products.
- C. If the Service Provider purchased the Products (as defined below) directly from Company, then all the references to Distributor in these Terms will be interpreted as references to Company and the terms and conditions of the Order (as defined below) will control over any conflicting provisions of these Terms.
- D. These Terms refer to each of Service Provider and Company individually as a “*Party*” and jointly refers to them as the “*Parties*.”
- E. Service Provider wants to license from Company certain of AIG’s SaaS products as detailed in a purchase order or other contract between Service Provider and Distributor (“*Order*”).
- F. Service Provider’s license will enable it to access the Products through AIG’s management console (the “*Platform*”).
- G. Company currently offers the SaaS products Acronis Disaster Recovery Cloud, Acronis Backup Cloud, Acronis Files Cloud, and Acronis Storage through the Platform.
- H. Subject to the further definition of the term in Section 1.2 below, the term “*Products*” means the SaaS products that Service Provider will license from Company from time to time and access through the Platform, which Products include the Platform, and all related documentation that Company does not make public on its websites.
- I. Service Provider may at its option, have Company host, or cause to be hosted, data stored using the Products, and these Terms refer to the hosting services Company provides, if any, as the “*Services*.”
- J. Service Provider may use the Platform to manage the use of the Products, other than the Platform, by the entities and individuals who use one or more of such Products for their intended purposes (each, an “*End User*”).
- K. In these Terms, a “*Downstream Service Provider*” means a company other than Service Provider that pursuant to a contract with an entity other than Company uses the Platform to manage use of the Products by other companies and to manage End Users’ use of the Products other than the Platform.
- L. The Platform also allows Service Provider to resell the Products to “*Resellers*,” which term includes (i) Downstream Service Providers, and (ii) companies who merely offer the Products for resale to other entities, whether those entities be Downstream Service Providers or those who simply purchase for subsequent resale.
- M. These Terms describe the terms and conditions upon which Company is willing to license the Products to Service Provider.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, Company and Service Provider agree as follows:

1. SCOPE OF LICENSE GRANT

1.1. Grant of License. Subject to these Terms, Company hereby grants to Service Provider a non-exclusive license to use the Products and Services directly, to resell the Products and Services, and to provide related services to its Resellers and to End Users within the Territory (defined in Section 1.3 below). Service Provider may sublicense the rights granted in this license only to its Resellers in connection with the sale of the Products and only as specifically provided in these Terms.

1.2. Licensed Products. The Products that Company licenses to Service Provider under Section 1.1 include only those Products and Services identified in Schedule A that are specified in any Order. The terms of Schedule A apply to Service Provider only to the extent that those terms relate to a Product purchased under an Order. The terms of Schedule A that relate to other Products do not apply. The Parties may amend Schedule A from time to time as specified in this Section 1.2 if Service Provider wants to license from Company a product available for sale through the Platform that is not then subject to an existing order and not already included in Schedule A as the Parties may have amended it (a “*New Product*”). Distributor or Company may give Service Provider notice of the availability of a New Product. Upon Distributor’s or Service Provider’s request, Company will give Service Provider a copy of the updates to Schedule A containing the terms under which Company proposes to authorize Service Provider to resell the New Product (the “*Updates*”). Such notice may contain the form of an amendment to these Terms under which Service Provider consents to the Updates. Service Provider hereby accepts and agrees to be bound by the Updates upon the earlier of (A) the written execution and delivery of the Updates to Company, (B) a click-through acceptance of the Updates using the Platform, or (C) the date of Service Provider’s first use or resale of the New Product. From and after the first to occur of the event that any of clauses (A) through (C) in the preceding sentence describe, the term “Products” will be deemed to have been amended to include the New Product.

1.3. Territory. Service Provider may only do business with Resellers and End Users located in the territory specified in the Order (“*Territory*”). If the Order does not specify a Territory, then the Territory is the country (or any political subdivision thereof) under whose laws Service Provider was organized or formed. This limitation is subject to the further restrictions in Section 12 below.

A. Without limiting the generality of the foregoing, the Products are not authorized for use by any End User in any country under U.S. embargo, or by any End User to whom export is restricted or prohibited under U.S. law, regulation, government order, or policy.

B. Company cannot predict when or if a sale to any End User in any country may be embargoed, prohibited, or restricted by U.S. law, regulation, government order, or policy. Therefore, Service Provider undertakes at its own risk the pursuit of business in the Territory.

1.4. Term. The “*Term*” of the agreement established by Service Provider’s acceptance of these Terms will begin on the Effective Date and, subject to Sections 1.5 and 13, continue as provided for in the Order, as the Order may be amended.

1.5. Platform Terms and Conditions. Service Provider acknowledges that its use and any Reseller’s use of the Platform is subject to their agreeing to Company’s Platform Terms and Conditions then in effect from time to time, the current version of which is located at <https://www.acronis.com/en-us/download/docs/platform/terms/>.

1.6. EULA/White Labeling. All End Users of Products other than White Labeled Products (defined below) will be required to agree to the then current Company end user license agreement (“*EULA*”) before such End Users are permitted to begin using the Products. The EULA is located at <https://www.acronis.com/en-us/download/docs/eula/corporate/>.

A. If the Order permits distribution of one or more Products or Services branded by Service Provider (a “*White Labeled Product*”) then Service Provider must have any End User to whom a White Labeled Product is distributed agree before commencing use to an end user license agreement that provides Company at least those protections contained in, and that is otherwise substantially similar to, the EULA in effect on the date that the End User commences use of the White Labeled Product.

1.7. Licensing Policy. The licenses granted in and under these Terms are subject to the terms of Company's Licensing Policy, except those provisions of that policy relating to Maximum Allotment, as Company's licensing policy may be updated from time to time. Company's Licensing Policy is located at <https://www.acronis.com/en-us/company/licensing.html>.

2. LICENSE RESTRICTIONS

2.1. No Reverse Engineering. Service Provider will not reverse engineer, decompile, disassemble, adapt, or otherwise attempt to derive the source code, techniques, processes, algorithms, know-how, or other information from any portion of any Product (collectively, "**Reverse Engineering**"), or permit or induce the foregoing by others, in whole or in part. If, however, directly applicable law prohibits enforcement of the foregoing, Service Provider may engage, and may permit its Resellers or End Users to engage, in Reverse Engineering solely for purposes of obtaining such information as is necessary to achieve interoperability of independently created software with the Products, or as otherwise and to the limited extent permitted by directly applicable law, but only if: (A) Reverse Engineering is strictly necessary to obtain such information, and (B) Service Provider has first requested such information from Company and Company has failed to make such information available (for a fee or otherwise) under reasonable terms and conditions. Any information supplied to Service Provider or that Service Provider obtains under this Section 2.1: is Company's Confidential Information (as Section 8.2 defines that term); is subject to the obligations of Section 8; may only be used by Service Provider, and any applicable Reseller or End User, for the purpose described in this Section 2.1; and will not otherwise be disclosed to any third party or used to create any software which is substantially similar to the expression of any of the Products. With respect to the Products and Confidential Information of Company, Service Provider will not circumvent any software copyright management or security features, fail to display any copyright or other proprietary notices or develop software or services that compete with Company using information obtained through Reverse Engineering and will not permit others to do so.

2.2. No Unauthorized Derivative Works. Subject to Section 2.1, Service Provider will not modify, adapt, alter, translate, or create derivative works of any Product in any manner and will not assist or permit others to do so.

2.3. Source Code. Service Provider's licensing rights granted under these Terms do not include any license, right, power, or authority to subject any Product in whole or in part to any of the terms of an Excluded License. An "**Excluded License**" means any "open source" or other license that requires as a condition of use, modification and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be: (A) disclosed or distributed in source code form; (B) licensed for the purpose of making derivative works; or (C) redistributable at no charge.

2.4. Service Provider's Service. Service Provider will operate at its own expense and risk under Service Provider's own name. Service Provider will not act or communicate in any manner that may imply that Service Provider has the right to represent or act on Company's behalf, as agent or otherwise. The Platform provides Service Provider with the technical capability to suspend service and/or restrict access to the Products and Services by Reseller and End Users. Service Provider's use of this capability is entirely at its own risk. Company will not be liable in any way for any claims arising from Service Provider's suspending or restricting such access.

3. TRADEMARKS; PRESS RELEASES

3.1. Branding. Company authorizes Service Provider's limited use of Company's registered or unregistered trademarks ("**Marks**") in association with marketing the Products and Services within the Territory in accordance with the trademark usage guidelines published at www.acronis.com/company/trademark.html.

3.2. List of Marks. Company publishes a list of frequently used Marks at <http://www.acronis.com/company/ipnotice.html>. The termination or suspension of Service Provider's rights under these Terms will automatically terminate Service Provider's rights under this Section 3. Service Provider recognizes and agrees that its use of any of Company's Marks will be for the exclusive benefit of Company. Company reserves the sole and exclusive right at its discretion to assert claims for infringement or misappropriation of its intellectual property rights to the Marks.

3.3. Rights in Marks. Company and its suppliers or licensors reserve all rights to their respective trademarks in all countries, including but not limited to those countries within the Territory. Service Provider will not have or obtain any right, title or interest in and to the Marks, which will remain the sole and exclusive property of Company, its affiliates or licensors. Service Provider will not take any action that would in any way infringe or interfere with Company's rights in the Marks. Service Provider will not at any time adopt or register any name, internet domain, designation, or trademark that is the same as or

confusingly or deceptively similar to any Mark, and Service Provider hereby assigns to Company any of the foregoing if, in Company's reasonable determination, it is the same as or is confusingly or deceptively similar to any Mark. Service Provider agrees not to contest Company's rights to or ownership of the Marks anywhere in the world.

3.4. Mark Assignment. Should any right, title or interest to any Mark or any goodwill arising out of Service Provider's use of any Mark become vested in Service Provider by operation of law or otherwise, Service Provider will hold the same in trust for Company and will immediately and unconditionally assign (with full title guaranty) free of charge any such right, title, interest or goodwill to Company and agrees to unconditionally execute any documents and do all acts that Company requires for the purpose of properly assigning the same. If Service Provider fails to execute and deliver any such documents or do any such act within five (5) days of Company's written request, Service Provider hereby irrevocably appoints and authorizes Company to execute the same on its behalf as its authorized agent and attorney will full power to act in its stead.

3.5. Press Releases. All Service Provider's press releases, advertisements or publications involving, including and/or referencing the Products, Services or Company must be approved by Company prior to release, publication or distribution.

4. SUPPORT

4.1. Support. Company may, but is under no obligation to provide support to the Service Provider. In the event Company provides support to the Service Provider, Company will strive to adhere to the metrics available at <https://www.acronis.com/en-us/support/serviceproviderguidelines/> ("**Support Guidelines**"), but will not be liable for any failures to meet them. To receive any support from Company Service Provider must (A) adhere to any requirements of the Support Guidelines, as Company may update them from time to time, and (B) provide reasonable assistance to Company in resolving any support incidents. Without limiting the generality of the foregoing, to receive any support from Company Service Provider must have a reasonable number of Company-certified employees based on the Service Provider's install base, but not less than two (2) Company-certified employees. As between Company and Service Provider, Service Provider is solely responsible for providing support to its Resellers and the End Users of Service Provider and its Resellers.

4.2. Prior Versions. Company will only support Products and Services installations that are no older than two (2) prior released versions. Service Provider must update to a new version of the Products and Services within six (6) months of its release.

5. SOFTWARE DELIVERY

5.1. Orders and Delivery. Service Provider must submit an Order for at least one Product to Distributor that is accepted by Distributor to obtain a license to use the Platform and the ordered Products. Service Provider may obtain a license to additional Products with additional Orders or amendments to existing Orders, as determined by Distributor and pursuant to Section 1.2. Service Provider and its Resellers will be permitted to use only those log-in credentials for the Platform that Company provides to them.

6. REPORTING

6.1. Reporting. The Platform will automatically generate reports of Service Provider's use of the Products and Services and send them to Distributor on a monthly basis (the "**Monthly Platform Report**"). Except as specified in this Section 6.1, within five business (5) days from the end of each month Service Provider must provide to Distributor a full and accurate report of how many instances of the Products Service Provider has used, sold, and/or installed during that month ("**Monthly Usage Report**"). Service Provider does not have to include in the Monthly Usage Report any information regarding its use of the Products contained in the Monthly Platform Report. In addition to the Monthly Usage Report, Service Provider will provide to Distributor any other information that Distributor may reasonably request from time to time for the purpose of calculating the amounts that Service Provider owes to Distributor for the use of the Products and Services.

6.2. Books and Records. Service Provider will keep complete, accurate, and current books and records relating to the supply and distribution of the Products and Services. While the Term remains in effect and for three (3) years thereafter Company or its authorized representatives may audit Service Provider's use of the Products and Services to confirm compliance with these Terms. That audit is subject to at least fourteen (14) calendar days' prior written notice by Company and will not unreasonably interfere with Service Provider's business activities. Company may conduct no more than one (1) audit in any twelve (12) month period, and only during normal business hours. Service Provider will reasonably cooperate with Company and any third

party auditor and will, without prejudice to Company's other rights, address any non-compliance identified by the audit by promptly paying the related additional fees. Service Provider will promptly reimburse Company for all reasonable costs of the audit if the audit reveals either underpayment of more than five (5%) percent of the Product and Service fees properly due from Service Provider to Company for the period audited, or that Service Provider has materially failed to maintain accurate records of its use of the Products and Services.

7. SOFTWARE SUSPENSION

7.1. Right to Suspend. Company may at any time suspend Service Provider's access to the Products and Services, in whole or in part, for the following reasons:

- A.** in order to comply with any contractual, statutory, and/or regulatory obligation, a request or order from law enforcement, or a competent judicial, governmental, supervisory or regulatory body;
- B.** if Company has reasonable grounds to suspect that Service Provider or any of its Resellers or End Users have acted or will act fraudulently, unlawfully, in a criminal way, or in a way that could prejudice Company, Service Provider, or any of its Resellers or End Users;
- C.** in case Service Provider, or any of its Resellers or End Users violate any contractual, legal, regulatory, statutory, or administrative obligation;
- D.** in case of Force Majeure, as defined in Section 14.7 below;
- E.** if Service Provider informs Company that Product access credentials have been compromised;
- F.** at Service Provider's request for specific Reseller's or End Users, to the extent that it is technically possible;
- G.** if Company establishes or has a reasonable belief that (i) Service Provider or any of its Resellers or End Users impairs or endangers the operational availability of any Product or Service; (ii) such action is necessary to prevent or protect against fraud, tricks, tampering, schemes, false or invalid numbers, false credit devices, electronic devices, or any other fraudulent means or devices; or (iii) such action is necessary to protect Company, its affiliates and their respective officers, directors, shareholders, employees and agents, and/or others against actual or potential adverse financial effects;
- H.** if Service Provider fails or refuses to provide information, or provides false information, regarding Service Provider's past or current use of the Products and Services, or characteristics pertaining to its use or planned use of the Products or Services;
- I.** where necessary for the maintenance of Company APIs, Company infrastructure, or any of Company services; or
- J.** if Service Provider continues to use any Product or Service that is at or past the end of its life (i.e., after Company ceases to provide support and/or security patches for that Product or Service).

7.2. Notice. If reasonably practicable under the circumstances, Company will inform Service Provider in advance of the suspension, stating the reason(s) for the suspension. Without prejudice to Company's right to directly inform any Reseller or End User (all of which Company expressly reserves), Service Provider is primarily responsible for informing affected Resellers and End Users of the suspension and will bear all liability arising from any default or delay in providing such information.

7.3. Suspension Length. Company will use commercially reasonable efforts to limit the scope and length of the suspension in cases where Service Provider is not responsible for the suspension or the need for the suspension did not arise because of the failure of Service Provider to comply with its obligations to Company.

7.4. Consequences of Suspension. Company will not be liable to anyone for any loss or damage arising from or related suspension of access to the Products or Services for any of the causes mentioned in Section 7.1.

8. CONFIDENTIALITY

8.1. User Data. Company hereby acknowledges that it acquires no ownership right, title, or interest to any data that Service Provider, any of its Resellers, or any of their End Users processes, stores, or transmits using the Products or Services ("**User Data**"). Subject to Company's normal access and security procedures and privacy policy (found at <https://www.acronis.com/en-us/company/privacy.html>), Service Provider hereby grants Company a non-exclusive,

transferable license to use the User Data that belongs to Service Provider as necessary to provide Service Provider with the Products and Services. Service Provider agrees that it will ensure that any Reseller or End User in Service Provider's network also grants Company a non-exclusive, transferable license to use such party's User Data as necessary to provide such party with the Products and Services as a condition of such party's use thereof. Any Company employee or subcontractor that accesses User Data pursuant to this Section 8.1 will be bound by confidentiality restrictions at least as restrictive as those in these Terms. Without the owner's consent (which it may withhold in its sole discretion), the User Data may not be: (A) used by Company other than as permitted under these Terms; or (B) individualized, sold, assigned, or leased by Company. Company will have the right to monitor and analyze Service Provider's use of the Products and Services and to use the results of such monitoring to improve the Products and Services during and after the Term. Service Provider represents and warrants that: (i) it has obtained and will obtain, all consents and approvals necessary to provide the User Data to Company, and for Company to use the User Data in accordance with these Terms; and (ii) it has all rights necessary to grant the license in this Section 8.1.

8.2. Confidential Information. "*Confidential Information*" means User Data (defined in Section 8.1), the Products and Services, these Terms, and valuable, proprietary and confidential information with respect to a Party's business, including without limitation, information that may relate to the Party's financial information, condition, or affairs, financial projections, financial analysis, corporate organizational documents, business plans, forecasts, products, whether in distribution or under development, trade secrets, computer source code and object code, software and other product designs and specifications, methodologies, data, developments, ideas, improvements, product and marketing plans, customer and vendor lists, and other oral, visual, or written information that the Party designates as confidential or proprietary at the time of disclosure or that, under the circumstances surrounding disclosure, or by the nature of the information, would reasonably be understood by the other Party to be confidential or proprietary, including without limitation any of the foregoing that is Confidential Information of a Party's customers, vendors, partners, licensors or other third parties with respect to which that Party has an obligation of confidentiality. The Products and Services contain trade secrets and are Confidential Information. The term "Confidential Information" does not include information of one Party that (A) is disclosed in a printed or web publication available to the public, is otherwise in the public domain at the time of disclosure, or becomes publicly known through no wrongful act or omission on the part of the other Party, or (B) is obtained by the other Party lawfully from a third party who is not under an obligation of secrecy to the first party and is not under any similar restrictions as to use. If a Party is required to disclose any of the other Party's Confidential Information by a judicial or governmental order, the Party will give the other Party reasonable advance notice of the disclosure and the opportunity for the other Party to contest, at its own expense, the disclosure of the Confidential Information, where such notice is not prohibited by law or government order.

8.3. Confidentiality Obligations. Service Provider will not disclose or provide access to the Products and Services or any part thereof to anyone for any purpose except as contemplated by these Terms. Each Party agrees that it will maintain other's Confidential Information in confidence, prevent its disclosure, and protect it from unauthorized use with at least the same degree of care that it uses to protect its own most critical proprietary information, but in no event less than a reasonable amount of care. Each will take all reasonable steps to protect the other Party's Confidential Information from unauthorized access by anyone for any purpose other than by employees or other parties authorized under these Terms for the purpose of exercising the rights expressly granted under these Terms. Each will prevent copying or use by its employees and others except for the purpose of exercising the rights expressly granted under these Terms. Each will immediately notify the other Party if it becomes aware of such unauthorized copying or use. Service Provider will ensure that anyone to whom it makes disclosures about, or provides access to the Products and Services are bound by confidentiality obligations at least as protective of Company as are in these Terms.

8.4. Monitoring. Service Provider understands and acknowledges that Company may monitor the operation and usage of the Products and Services through reporting functions in the Products and Services. Service Provider agrees to facilitate such monitoring by ensuring that all firewall ports required for such monitoring are open and to notify Company if there are any operational issues that could prevent remote monitoring. Subject to Section 8.1, Company will have the right to use any and all data and information related to Service Provider's, and any Reseller's or End User's use of the Products and Services for any lawful purpose including without limitation invoicing, statistical analysis, benchmarking, and research purposes.

8.5. Feedback. Service Provider is welcome to provide suggestions, ideas or other feedback regarding Company's products and services ("*Feedback*"). To the extent that Service Provider provides Company any Feedback, Company will be free to use the Feedback in any manner and for any reason (including to incorporate the Feedback into future versions of Company's products and services), with no obligation of confidentiality or compensation to Service Provider and without restriction of any

kind.

8.6. Return of Data. Upon request by Service Provider, Company will (A) return to Service Provider, for free over the network, or for a fee in accordance with Company's then-current pricing if Service Provider requests special handling or use of any media, all the User Data (or such portion of the User Data as requested by Service Provider), and (B) erase all or any part of the User Data, in each case to the extent so requested by Service Provider. Company will certify to Service Provider that all such copies have been erased. Notwithstanding the foregoing, Company may use any archival media containing the User Data only for backup purposes and will maintain such backup copies of the User Data as Confidential Information of Service Provider.

8.7. Data Controller. Service Provider agrees that, as between it and Company, Service Provider is the data controller of the User Data and is solely responsible for compliance with all applicable laws, rules, and regulations pertaining to data controllers. Service Provider acknowledges that Company does not know what data is contained in the User Data. If the User Data includes the personal data of individuals in the European Union protected by the General Data Protection Regulation commonly known as GDPR, and Service Provider licensed the Products directly from Company, Company can at Service Provider's request deliver via DocuSign® to Service Provider Company's form of data processing addendum for execution by Service Provider.

9. PROPRIETARY RIGHTS

9.1. Ownership. The Products and Services are licensed and not sold under these Terms, notwithstanding any references herein to "sale" or "sold." The Products and Services are and will remain the sole and exclusive property of Company or its suppliers or licensors, as applicable, whether the Product or Services are separate or combined with any other products. Company's or its suppliers' or licensors' rights, as applicable, under this subsection will include, but are not be limited to: (A) all copies of the Products, in whole or in part; (B) all intellectual property rights in the Products and Services; and (C) all modifications to, and derivative works based upon, the Products. Service Provider will not delete or in any manner alter the intellectual property rights notices, if any, appearing on the Products or Services as delivered or made available to Service Provider. As a condition of the license rights granted to Service Provider in these Terms, Service Provider will reproduce and display such notices on any copy of any Products or Services.

9.2. Third-Party Infringement. Service Provider hereby agrees to use reasonable efforts to protect Company's intellectual property rights contemplated herein and will report promptly to Company any infringement of such rights of which Service Provider is aware or becomes aware. Company reserves the sole and exclusive right at its discretion to assert claims against third parties for infringement or misappropriation of its intellectual property rights in the Products and Platform.

10. WARRANTY

10.1. Power and Authority. Each Party represents and warrants that it has sufficient right and authority to grant to the other Party all licenses and rights granted under these Terms.

10.2. Disclaimer of Other Warranties. Company makes no warranty to Service Provider except the warranty in the preceding [Section 10.1](#). All Products and Services and accompanying documentation, and all other materials that Company may provide to Service Provider under these Terms are provided "**AS-IS**." To the maximum extent allowed by applicable law, the warranties in [Section 10.1](#) above are the sole and exclusive warranty of any kind, express or implied, that is made by Company in connection with these Terms, and COMPANY SPECIFICALLY DISCLAIMS ALL STATUTORY OR OTHER WARRANTIES, INCLUDING -- BUT NOT LIMITED TO -- IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. Without limiting the generality of the foregoing, Company specifically does not warrant that the Products and Services will meet the requirements of Service Provider, any Reseller or any End User, or that the operation of the Products and Services will be accurate, uninterrupted, reliable, without loss of data, or error-free. To the extent that Company may not disclaim any warranty as a matter of applicable law, the scope and duration of such warranty will be the minimum permitted under such law.

11. LIMITATIONS OF LIABILITY

11.1. Exclusion of Damages. In no event will either Party be liable to the other Party for any special, incidental, indirect, or

consequential damages (including for lost profits or lost data), whether based on breach of contract, tort (including negligence), product liability, or otherwise, and whether or not such Party has been advised of the possibility of such damage.

11.2. Limitation of Damages. In addition to and not in derogation of Section 11.1 above, the total cumulative liability of Company under these Terms to Service Provider, and to its Resellers and End Users, whether in contract, in tort (including negligence or strict liability), or any other legal theory, will not exceed the amount of license fees that Service Provider has paid to Distributor in the twelve (12) month period preceding the circumstances giving rise to the first claim at issue. The existence of multiple claims by any one party or from multiple parties with respect to the same underlying acts, omissions or occurrences will not expand this limit. Moreover, Company will have no liability to anyone for the loss or misappropriation of any User Data that the owner of such data fails to encrypt using the encryption available in any Product that the owner used to process that User Data.

11.3. Exceptions. The limitations in Section 11.1 do not apply to breaches of Sections 9 or to any other misappropriation of the other Party's intellectual property. The limitations in Section 11.2 do not apply to breaches of Section 8, Section 9 or any other misappropriation of the other Party's intellectual property.

11.4. Failure of Essential Purpose. The Parties acknowledge that these limitations reflect the allocation of risk set forth in these Terms and that Company would not enter into these Terms without the limitations on its liability in this Section 11. The Parties agree that the limitations specified in this Section 11 will survive and apply even if any limited remedy specified in these Terms is found to have failed of its essential purpose.

12. ACCEPTABLE USE AND CONDUCT

12.1. Lawful Use. Service Provider will use the Products and Services only in accordance with these Terms and with all applicable laws. Without limiting the foregoing:

A. Service Provider warrants and represents that it has the legal capacity and authority to enter into this legally binding agreement and to adhere to these Terms and that Service Provider you will use the Products only in accordance with the license granted herein and with all applicable laws. The individual accepting these Terms on Service Provider's behalf warrants, represents, and covenants to Company that such individual is duly authorized to legally bind Service Provider to these Terms. The Products are intended, and offered, only for lawful use by individuals or organizations with the legal capacity and authority under applicable law to enter into a contract to use the Products. Company does not offer the Products to minors or where prohibited by law.

B. Service Provider will (i) not engage in any deceptive, misleading, illegal, or unethical practices in its marketing, sale or use of the Products; (ii) be solely liable for any representations, warranties, or guarantees concerning the Products that are inconsistent with or in addition to those made by Company, and (iii) comply with all applicable federal, state, and local laws and regulations applicable to its marketing, sale, and use of the Products.

C. Service Provider acknowledges and agrees that the Products and Services may be subject to export controls of the United States and other countries. Service Provider agrees to comply with all United States export laws and regulations and with all export or import regulations of other countries, and will not allow any third-party to remove or export from the United States or allow the export or re-export of any part of the Products or Services or any direct product thereof (i) into (or to a national or resident of) any embargoed or terrorist-supporting country, (ii) to anyone on the U.S. Commerce Department's Denied Persons List, the U.S. Treasury Department's Specially Designated Nationals and Blocked Persons List, or the U.S. Department of State's List of Statutorily Debarred Parties (collectively, the "**Lists**"), or (iii) to any country, entity or person to which such export or re-export is restricted or prohibited, or as to whom the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval. Service Provider assumes sole responsibility for any required export approval and/or licenses and all related costs and for the violation of any export law or regulation.

D. Service Provider may not use or enable the use of the Products or Services by any Reseller or End User which/who is a citizen, national, or resident of, or is under control of any of the governments of any country to which the United States has prohibited export, which as of the Effective Date include: Cuba, Iran, Sudan, North Korea, Syria, Myanmar and the Crimea region of Ukraine. Each time Service Provider uses or enables the use of the Products or Services, Service Provider represents, warrants, and covenants that none of Service Provider, its Resellers or the End Users of any of them

(i) are a citizen, national, or resident of, nor under the control of the government of any such country to which the United States has prohibited export; (ii) will download or otherwise export or re-export any Product or Service, directly or indirectly, to the above mentioned countries nor to citizens, nationals, or residents of those countries, or permit any third party to do so; (iii) are listed in any of the Lists; or (iv) will use nor allow the use of the Products and Services for any purposes prohibited by United States federal or state law, including, without limitation, for the development, design, manufacture, or production of nuclear, chemical, or biological weapons of mass destruction or their proliferation; or (v) are using or permitting others to use the Products or Services to create, store, backup, distribute, or provide access to child pornography or any other content or data which is illegal under the applicable law, including that where Service Provider is domiciled.

12.2. Decryption. Company cannot decrypt any files that Service Provider or any of its Resellers or their End Users have elected to encrypt. Encryption is the best way for Service Provider, Resellers, and End Users to protect themselves against certain data losses.

13. TERMINATION

13.1. Termination. Either Party will have the right to terminate the agreement created by Service Provider's acceptance of these Terms if the other Party breaches any material term or condition of these Terms and fails to cure such breach within thirty (30) days after written notice, ten (10) days in the case of payment default. A Party may, at its option, and upon written notice to the other Party, terminate the agreement created by Service Provider's acceptance of these Terms or suspend its performance if the other Party ceases doing business.

13.2. Convenience. Company may terminate the agreement created by Service Provider's acceptance of these Terms without cause and without liability to Service Provider or any Reseller or End User if it provides Service Provider at least sixty (60) days' prior written notice.

13.3. Termination of Distribution Agreement. If the right of Distributor to distribute the Products terminates for any reason during the Term and Service Provider has an existing Order with a term that extends past the termination date of Distributor's distribution rights, Company will work with Service Provider at Company's then-current rates to transition Service Provider to another distributor.

13.4. Termination upon Change of Control. Company may terminate the agreement created by Service Provider's acceptance of these Terms upon thirty (30) days written notice to Service Provider if Service Provider undergoes: (A) any consolidation or merger of Service Provider with or into any other entity, or a similar transaction, in each case after which the holders of Service Provider's outstanding shares or other ownership interest immediately before such consolidation, merger or similar transaction do not, immediately after such consolidation, merger or similar transaction, retain equity representing a majority of the voting power of the surviving entity; (B) the sale, transfer or assignment of equity in Service Provider representing a majority of the voting power of Service Provider's outstanding voting equity; or (C) the sale of all or substantially all of Service Provider's assets relating to these Terms.

13.5. Termination upon Bankruptcy. The agreement created by Service Provider's acceptance of these Terms will terminate without notice or further action, if a proceeding is commenced or a petition is filed by or against a Party seeking relief under any bankruptcy, insolvency, dissolution, liquidation, receivership, or similar law, or seeking the appointment of a receiver, trustee, custodian, sequestrator, conservator, judicial manager, or similar official for the Party or for a substantial part of its property or assets, or if a Party makes an assignment or trust arrangement for the benefit of creditors, or if a Party takes any action for the purpose of effecting any of the foregoing or any other proceedings with a similar purpose.

13.6. Effect of Termination. Upon termination or expiration of the agreement created by Service Provider's acceptance of these Terms: (A) all licenses granted Service Provider by these Terms will terminate; (B) Service Provider will confirm to Company that all installed instances of the Products have been removed and uninstalled from all Service Provider's machines; and (C) Service Provider will return any Company-owned hardware to Company at Service Provider's expense and using shipping methods designated by Company.

13.7. Damage Limitations. Neither Party will be liable to the other for damages of any kind, including incidental or consequential damages, on account of, based upon, or growing out of, the expiration of the Term in accordance with these Terms or its termination under Section 13.2, including without limitation for reimbursement or damages for the loss of goodwill,

prospective profits, or anticipated income, or on account of any expenditures, investments, leases, or commitments made by either Party, or for any other reason. Service Provider waives any right it may have to receive any compensation or reparations upon such expiration or termination of the Term under the law of any country in the Territory or otherwise, other than as expressly provided in these Terms.

14. GENERAL PROVISIONS

14.1. Professional Services. If Service Provider elects to have Company provide professional services to Service Provider in connection with the Products and Services, Company will provide the professional services under a separate contract.

14.2. Non-exclusive Remedy. Except as otherwise expressly provided herein, the exercise by either Party of any remedy under these Terms will be without prejudice to its other remedies under these Terms, at law, in equity, or otherwise.

14.3. Survival. The rights and obligations of the Parties contained in Section 2 (License Restrictions), Section 3 (Trademarks/Press Release), Section 6.2 (Books and Records), Section 8 (regarding Confidentiality), Section 9 (Proprietary Rights), Section 10.2 (Disclaimer of Other Warranties), Section 11 (Limitations of Liability), Section 13 (Termination) and Section 14 (General Provisions) will survive the termination or expiration of the Term.

14.4. Assignment. These Terms will bind and inure to the benefit of each Party and to the Parties' permitted successors and assigns. Service Provider may not assign its rights under these Terms, in whole or in part, by operation of law or otherwise, without Company's written consent. Any assignment by Service Provider of any its rights under these Terms without the express written consent of Company will be null and void. Service Provider's assignment of any of its rights under these Terms with Company's consent will not relieve Service Provider from liability as the primary obligor under these Terms.

14.5. Governing Law and Venue. If Service Provider was formed in any country in North or South America, then the interpretation and enforcement of these terms will be governed by, and construed in accordance with, the laws of The Commonwealth of Massachusetts without giving effect to any choice of law principles that would require the laws of a different country or state and the exclusive venue for the resolution of any dispute that the Parties cannot resolve amicably will be the federal and state courts sitting in Boston, Massachusetts, USA. If Service Provider was formed anywhere else in the world, then the interpretation and enforcement of these terms will be governed by, and construed in accordance with, the laws of Switzerland without giving effect to any choice of law principles that would require the laws of a different country or state and the exclusive venue for the resolution of any dispute that the Parties cannot resolve amicably will be the courts sitting in Zurich, Switzerland. The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

14.6. Severability. If a court of law holds that any provision of these Terms is invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of these Terms will remain in full force and effect.

14.7. Force Majeure. Neither Party will be responsible for any failure to perform due to causes beyond its reasonable control (each a "*Force Majeure*"), including, but not limited to, acts of God, war, riot, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, or fuel crises.

14.8. Notices. Unless specified otherwise in these Terms, all notices, requests and other communications under these Terms must be in writing and must be delivered to: (A) Service Provider using the administrative email address that Service Provider registers in the Platform, and (B) Company at c/o Legal Notices, Acronis, Inc., One Van de Graaff Drive, Suite 301, Burlington, MA 01803, or such other address notice of which Company thereafter gives to Service Provider. Such notice to Company will be delivered personally or sent by certified or registered postal mail or nationally-recognized express courier, return receipt requested. Notice delivered personally or by courier will be deemed given on the date of delivery. Notice by postal mail will be deemed given on the date that is five (5) days after deposit with the mail.

14.9. Relationship between the Parties. The Parties are entering into these Terms as independent contractors. Nothing in these Terms will be deemed to create an employer/employee, principal/agent, or joint venture relationship. Neither Party will have the authority to enter into any contracts in the name of or on behalf of the other Party or otherwise bind such other Party.

14.10. Entire Agreement. These Terms are the complete agreement between the Parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter.

14.11.No Implied Waivers. The waiver by either Party of a breach of any provision of these Terms will not be a waiver of the provision itself or a waiver of any breach thereafter, or a waiver of any other provision herein.

SCHEDULE A – SOFTWARE, LICENSES

This **Schedule A** consists of the following terms, plus the terms listed in one or more Exhibits commencing with **Exhibit A** and progressing directly through the alphabet, that outline details about each Product that Service Provider may license from Company under these Terms as provided for in **Section 1.2** of the Terms to which this **Schedule A** is attached.

1. GENERAL TERMS

1.1. Additional Definitions. The terms Server, Virtual Machine (“*VM*”), Workstation, and Device are defined in Company Licensing Policy, which may be found at <http://www.acronis.com/en-us/company/licensing.html>. Each End User may only use Company-provided login credentials and may not share the login credentials with any other person or entity.

1.2. EULA. After End Users accept the EULA, they can begin the installation and register their devices. Devices are registered to the online account in the relevant Product platform by entering the End User’s account credentials for the relevant Product.

1.3. Data Location. If Company stores Service Provider’s data, it will be stored in a data center Service Provider chooses using the Platform. If no selection is made, Company reserves the right to store Service Provider’s data in the Data Center location of Company’s choice. Upon thirty (30) days’ advance notice to Service Provider, however, Company may elect to move the data to another data center within the same country, except in the case of data centers in the European Union, where Company may move the data to another data center within the European Union.

EXHIBIT A – ACRONIS BACKUP CLOUD

1. OVERVIEW

1.1. Components. The Acronis Backup Cloud Product consists of three main components: that part of the Platform that relates to Acronis Backup Cloud (the “*Acronis Backup Cloud Platform*”), Acronis Backup Cloud Software, and Acronis Hosted Storage Service as this Exhibit A explains those terms.

2. ACRONIS BACKUP CLOUD PLATFORM

2.1. Platform Description. Company hosted and web-based Acronis Backup Cloud Platform offers Service Provider a management console with the functionality to create, review, update, delete, and assign administrators to sub accounts.

2.2. Account Overview. The Acronis Backup Cloud Platform offers Service Provider a comprehensive overview of the account structure and its devices and backup-clients registered to the End User accounts. This overview contains information about settings of specific devices, the status of the last backup, and the next scheduled backup. The Acronis Backup Cloud Platform automatically sends email notifications to account administrators and End Users in case a backup fails. Account administrators and End Users bear the sole responsibility for the consequences of failing to take appropriate steps in response to such email notifications. Company will have no liability to anyone for such failure. The Acronis Backup Cloud Platform provides log-files for each individual backup plan error to assist with error analysis and troubleshooting.

2.3. Reporting. All accounts can generate monthly usage reports or request ad-hoc reports for a specific time period. These are sent via email in a table or text format with an attached .csv file and contain the following information: Date, Group, Id, Storage space used/quota, Protected/quota, Physical Windows and Linux servers, Physical windows workstations, Virtual machines, Mobile devices.

2.4. API. The Acronis Backup Cloud Platform can also be accessed through a REST API (documentation can be provided upon request).

3. ACRONIS BACKUP CLOUD SOFTWARE

3.1. Clients. After activation of their accounts End Users can download and install backup clients for Windows/Linux Servers, Windows/Mac workstations, Virtual Machines (Hyper-V, VMware, Virtuozzo), Mobile Devices (iOS, Android), and Applications (Microsoft SQL Servers, Microsoft Exchange Server).

3.2. Backup Options. The Acronis Backup Cloud Product supports the backup of individual files or a complete Image of a Server, VM, and Workstation.

3.3. Backup Process. Through the Acronis Backup Cloud Platform, End Users can define their backup plans on a per device basis and configure the backup, including the AES 256-bit data encryption. The backup client connects over secure SSL to the selected storage destination. In the backup plan, the maximum bandwidth usage for backup data transfer can also be set.

3.4. Acronis Backup Cloud Data Centers. Company hosts and operates the Acronis Backup Cloud Platform and Acronis Backup Storage in secure third-party Tier-III data centers. Company will plan, provide, maintain, operate and manage its data centers as necessary to provide the Services. Detailed specifications for each individual data center are available upon request.

4. HOSTED STORAGE SERVICE (OPTIONAL)

4.1. Default Destination. Acronis Hosted Storage is the default destination for the data backed up using Acronis Backup Cloud if Service Provider does not install and define an alternative storage destination in the Platform.

4.2. Location and Process. This is located in the same data center(s) as is Service Provider’s Platform and/or Backup Cloud Platform, but physically separated within different hardware (“*Acronis Hosted Storage*”). The storage software used is proprietary Acronis Storage Software that is based on Reed-Solomon code to protect the backups and files from data loss in case of any failure. Platform Data is not replicated or backed up to other data centers. If selected during the backup plan’s creation, the Acronis Backup Cloud Data is stored encrypted (AES 256-bit).

4.3. Retrieval. Backup data can be retrieved through a separate secure web console or by downloading a complete ISO image for a bootable medium.

EXHIBIT B – ACRONIS FILES CLOUD

1. OVERVIEW

1.1. Components. The Acronis Files Cloud Product consists of that part of the Platform that relates to Acronis Files Cloud (the “*Files Cloud Platform*”), Acronis Files Cloud Software and Acronis Hosted Storage Service.

2. FILES CLOUD PLATFORM

2.1. Platform Description. Company hosted and web-based Acronis Files Cloud Platform offers Service Provider a File Sync and Share Service. Acronis Files Cloud Platform provides office and mobile users with file access, sync, and share across desktop PCs, mobile devices, or web browsers.

2.2. Management Console. Acronis Files Cloud uses the same management console as Acronis Backup Cloud. The management console has the functionality to create, review, update, delete, and assign administrators to sub-accounts, as well as set storage quotas for Resellers and/or End Users, as further explained in Section 2.3 of this **Exhibit B** below.

2.3. Storage Quotas. The storage quotas for Resellers do not limit the amount of data they can consume in the service. However, when a Reseller exceeds the set storage quota, the Reseller will receive a notification through Acronis Files Cloud informing the Reseller that it has exceeded the storage quota. Service Provider may configure the storage quotas for End Users to either function in the same way as the storage quotas for Reseller, or to limit the amount of data the End Users can consume in Acronis Files Cloud.

2.4. Provisioning Tools. Service Provider may use third-party provisioning tools as permitted by the capabilities of the Platform, the management console, and the REST APIs.

2.5. Reporting. Usage reports can be generated for each Reseller for a specific time period. These are sent via email in table or text format with an attached .csv file and contain the following information: Date, Tenant (Reseller) ID, Tenant (Reseller) Name, Storage space used / quota by tenant, Number of licensed End Users, List of End Users with storage space used/quota by End User.

3. ACRONIS FILES SOFTWARE

3.1. Clients. After activation of their accounts, End Users can download and install Acronis Files clients for Windows/Mac workstation and Mobile Devices (iOS, Android, Windows).

3.2. Features. The Acronis Files clients provide features to access the End User’s files, including sharing files with colleagues and syncing files for offline use. A full description of the features of the Acronis Files clients can be found in the online documentation (<https://www.acronis.com/en-us/support/documentation/>).

4. HOSTED STORAGE SERVICE (OPTIONAL)

4.1. Default Destination. Acronis Hosted Storage is the default destination for the data stored by the Acronis Files Cloud Product if Service Provider does not install and define an alternative storage destination in the Platform.

4.2. Location and Process. This Platform storage is located in the same data center(s) as is Service Provider’s Platform and/or Files Cloud Platform, but physically separated within different hardware (“*Acronis Hosted Storage*”). The storage software used is proprietary Acronis Storage Software that is based on Reed-Solomon code to protect the backups and files from data loss in case of any failure. Platform Data is not replicated or backed up to other data centers. All Files Cloud data is stored encrypted (AES 256-bit).

4.3. Retrieval. Backup data can be retrieved through a separate secure web console or by downloading a complete ISO image for a bootable medium.

EXHIBIT C – ACRONIS STORAGE

1. OVERVIEW

1.1. Documentation. The documentation for Acronis Storage 2.0, which includes a product description, is available at <http://www.acronis.com/download/docs/acronisstorage/quickstart/>.

1.2. Capacity. Pricing of Acronis Storage 2.0 is based on certain usage metrics, such as “*Capacity*,” which is defined as effective used storage space. Capacity is the logical data volume, which is independent of the number of replicas or raw data in a storage cluster.

2. LICENSING MODELS

2.1. License Compliance. Service Provider will comply with the EULA with respect to Products supplied by Company to Service Provider for use by Service Provider. Service Provider will not reproduce, lend, rent, or otherwise transfer those Products except as expressly permitted in the applicable EULA or under these Terms. Service Provider may not circumvent any Product locking or other copy protection system in any manner or instruct or assist any third party to do so.

EXHIBIT D - ACRONIS DISASTER RECOVERY CLOUD

1. OVERVIEW

1.1. Components. Acronis Backup Cloud is a prerequisite requirement for Acronis Disaster Recovery Cloud. The Acronis Disaster Recovery Cloud Product consists of two additional components: Acronis Disaster Recovery Software and Local Cloud Appliance (when it becomes available).

2. SOFTWARE

2.1. Acronis Disaster Recovery Software. The Acronis Disaster Recovery Cloud Platform requires the Acronis Backup Cloud Platform.

2.2. VPN. For VPN network setup, Service Provider can download and install an agent to establish simple VPN network connectivity. VPN network connectivity is required for initial setup and capture of network changes.

2.3. Failover. The Acronis Disaster Recovery Software supports the test and production failover, compute and failback of servers and VMs.

3. ACRONIS DISASTER RECOVERY PLATFORM

3.1. Platform. The part of the Platform that relates to Acronis Disaster Recovery Cloud (the “*Acronis Disaster Recovery Cloud Platform*”) offers Service Provider a management console for establishing simple VPN network connectivity, adding, removing or disabling disaster recovery protection to Windows and Linux servers and VMs previously setup for backup using the Acronis Backup Cloud Platform and provisioning primary or always-on compute resources. Through the Platform Service Provider can also initiate and stop test and production failovers and failbacks.

3.2. Overview. In addition to the overview provided by the Acronis Backup Cloud Platform, the Acronis Disaster Recovery Cloud Platform offers Service Provider a comprehensive overview of the servers and VMs with disaster recovery protection, VPN network connectivity, and associated settings.

3.3. Reporting. Through the combined Acronis Backup Cloud Platform and Acronis Disaster Recovery Cloud Platform, all accounts can generate monthly usage or request ad-hoc reports for a specific time period. These are sent via email in table or text format with an attached .csv file.

3.4. API. The combined Acronis Backup Cloud Platform and Acronis Disaster Recovery Cloud Platform can also be accessed through REST API (documentation can be provided upon request).

3.5. Resources. The Acronis Disaster Recovery Cloud Platform provides Service Provider with three (3) disaster recovery usage resources.

A. Disaster Recovery Storage is the backup size in the latest recovery point per protected server and VM. Disaster Recovery Storage is allocated by Company in the event of production failover.

B. Compute resources are standard pre-configured vCPU and RAM configurations with assigned per hour compute point

Type	vCPU	RAM	Per Hour
F1	1 vCPU	2 GB	1 point
F2	1 vCPU	4 GB	2 points
F3	2 vCPU	8 GB	4 points
F4	4 vCPU	16 GB	8 points
F5	8 vCPU	32 GB	16 points
F6	16 vCPU	64 GB	32 points
F7	16 vCPU	128 GB	64 points
F8	16 vCPU	256 GB	128 points

values. Compute resources for each individual server in use are tracked by minute through each consecutive period of use, then divided by sixty (60), and multiplied by the corresponding configuration per hour compute points value from the table below. The resulting values per server are summed up at the end of the month and rounded up to the nearest full compute point. Compute resources can be always on or activated for test and production failover.

C. Public IP Address is a dedicated public facing IP addresses. These IP addresses can optionally be added to servers that require external network access from the Internet.

3.6. Changes. Changes initiated to the disaster recovery resources using the Acronis Disaster Recovery Platform by Service Provider are the responsibility of Service Provider and will not be verified by Company.

3.7. Activity. Activity initiated within the Acronis Disaster Recovery Platform that results in an object state change is subject to detailed audit logging which Service Provider may examine upon request.

3.8. Quality. Company reserves the right, as reasonably necessary or convenient for Company’s own purposes, to (A) improve the quality of service to Service Provider; (B) change rules of operation, identification procedures, policies, types of equipment utilized by Company at its data centers, system interfaces, and operating and other system and network software and utilities upon thirty (30) days’ advance notice to Service Provider; and (C) implement enhancements or updates to the Acronis Disaster Recovery Platform or the Acronis Disaster Recovery Software.

4. ACRONIS DISASTER RECOVERY DATA CENTERS

4.1. Locations. Company hosts and operates the Acronis Disaster Recovery Cloud Platform in secure third-party Tier-III data centers. Detailed specifications for each individual data center are available upon request. Company does not store any Acronis Disaster Recovery Cloud data, except as part of a response to a production failover event. In the event of a production failover, Company will move Service Provider’s Acronis Backup Cloud data to Acronis Disaster Recovery Cloud storage in the same data center as Service Provider’s Acronis Backup Cloud Product data center. If Acronis Disaster Recovery Cloud is not available in the data center where Service Provider is storing its Acronis Backup Cloud data, then Service Provider cannot use Acronis Disaster Recovery Cloud in that data center.

5. THIRD PARTY SOFTWARE

5.1. Software. “*Third Party Software*” means third-party software products that Company makes available to Service Provider for use either on Service Provider’s premises or via the Disaster Recovery Cloud Product. Company will provide Service Provider access to Third Party Software only during the applicable Term and solely to facilitate the use of disaster recovery resources, subject to these Terms.

5.2. Third Party License Terms. The terms of the end user license agreements for the following Third Party Software are set out in the corresponding links:

- A. Microsoft Windows Server 2008 R2 - <https://www.microsoft.com/en-us/useterms>; and
- B. VMware Vsphere - https://www.vmware.com/download/eula/esxi50_eula.html.

5.3. Participation. Company is not a party to (or in any way liable under) any Third Party Software end user license agreement. Third Party Software may include software that is subject to “open source” or “free software” licenses (“*Open Source Software*”). Open Source Software is licensed under the terms of the end user license that accompanies such Open Source Software (which in some cases may be included in the end user license agreement), which terms will control over any conflicting provision of these Terms. Without limiting the generality of the foregoing, nothing in these Terms limits the End User’s rights under, or grants the End User rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Company will make such Open Source Software, and Company’s modifications to that Open Source Software, available at no charge by written request to Company at the address specified above.

6. SERVICE PROVIDER OBLIGATIONS

6.1. Cooperation and Assistance. Service Provider will (i) provide Company with good-faith cooperation and such information as may be reasonably required by Company in order to deliver the Disaster Recovery Cloud Product, and (ii) agrees to comply with the following:

A. Service Provider will create, monitor, and maintain a VPN to Company Data Center using Acronis Disaster Recovery Cloud VPN agent or as otherwise reasonably instructed by Company.

B. Service Provider is wholly responsible for the installation, monitoring, management, and maintenance of any of Service Provider's software installed on its local and cloud Servers.

C. Service Provider is responsible for allocating sufficient resources to complete implementation of the Product in a timely manner.

D. Service Provider is responsible for providing the name and email address of Service Provider employee who will be responsible for receiving alerts.

E. Service Provider is responsible for monitoring its local and cloud servers, and setting up alerts from the Platform. Alerts must be initially set up during implementation, and Service Provider is responsible for responding to and testing those alerts to ensure the solution is working properly.

F. Service Provider is responsible for scheduling and performing periodic testing to ensure that the solution will work as expected in a disaster situation.

G. Service Provider is responsible for establishing recovery point objectives to determine how often its data is backed up.

H. Service Provider is responsible for defining and maintaining End User names and passwords for their Servers.

6.2. Disclaimer. Company expressly disclaims any and all liability for failure on the part of Service Provider to take the affirmative actions as outlined in [Section 6.1](#), along with its failure to acknowledge and respond to any email notification alerts in regards to the Acronis Disaster Recovery Cloud Product. Those to whom such email notification alerts are addressed, whether that be one or more of Service Provider, any Reseller, and any End User, will bear the sole responsibility for the consequences of failing to take appropriate steps in response to such email notification alerts. Company will have no liability to anyone for such failure.