

**Carahsoft Rider to Manufacturer Agreements
(for U.S. Government End Users)**

1. **Scope.** This Carahsoft Rider and the Manufacturer Agreement establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").
2. **Applicability.** The terms and conditions in the attached Manufacturer Agreement are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's Agreement's are inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's contract #GS-35F-0119Y, including, but not limited to the following:
 - (a) **Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under Government contracts as set forth in Government Order 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.
 - (b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.
 - (c) **Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - (d) **Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering

Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this Agreement.

- (e) **Termination.** Clauses in the Manufacturer Agreement referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the License Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court..

- (f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer Agreement referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer Agreement referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
- (h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer Agreement are hereby deemed to be deleted.
- (i) **Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer Agreement are hereby deemed to be deleted.
- (j) **Customer Indemnities.** All Manufacturer Agreement clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All Manufacturer Agreement clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

- (l) **Renewals.** All Manufacturer Agreement clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) **Future Fees or Penalties.** All Manufacturer Agreement clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (o) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer Agreement, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer Agreement and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- (r) **Limitation of Liability: Subject to the following:**
- Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.
- (s) **Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.
- (t) **Public Access to Information.** Manufacturer agrees that the Agreement and this Rider contain no confidential or proprietary information and acknowledges the Agreement and this Rider will be available to the public.
- (u) **Confidentiality.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court.

Licensing & Pricing

End-User License Agreement (EULA)

ACRONIS End User License Agreement (EULA)

BEFORE USING THE ACRONIS SOFTWARE ("SOFTWARE") OR ACRONIS ONLINE BACKUP SERVICE ("SERVICE"), THE GSA CUSTOMER ("YOU") SHOULD CAREFULLY READ THE FOLLOWING LICENSE AGREEMENT ("AGREEMENT") THAT APPLIES TO THE SERVICE. YOU FULLY ACCEPT AND AGREE TO ALL OF THE PROVISIONS OF THIS AGREEMENT. OTHERWISE, PLEASE DO NOT REGISTER FOR THIS SERVICE. THIS IS A BINDING AGREEMENT BETWEEN YOU AS THE PERSON USING THE SERVICE ("LICENSEE") AND ACRONIS INTERNATIONAL GMBH LOCATED AT: VERWALTUNG EURO HAUS RHEINWEG 9, SCHAFFHAUSEN, CH-8200, SWITZERLAND, ("LICENSOR"). IF YOU DO NOT ACCEPT ALL OF THE TERMS OF THIS AGREEMENT, YOU SHALL HAVE NO RIGHT TO DOWNLOAD OR USE THE SOFTWARE OR SERVICE.

You acknowledge and agree that Acronis may occasionally send you administrative communications regarding your account or the Software and/or Service via email.

TERMS AND CONDITIONS

ACCOUNTS, PASSWORDS, AND SECURITY

The Software and Service are intended and offered only for lawful use by Government agencies and instrumentalities with the legal capacity and authority under applicable federal law to enter into a contract for such products or services. Acronis does not offer the Software or Service to minors or where prohibited by federal law. You represent and warrant that you have the legal capacity and authority to enter into a binding agreement, and that you will use the Software or Service only in accordance with these Terms and Conditions and with all applicable federal laws. If an individual is registering or using the Software or Service on behalf of a Government agency or instrumentality, that individual warrants, represents, and covenants to Acronis that such individual is duly authorized to agree to these Terms and Conditions on behalf of the Government agency or instrumentality and to bind such entity to them. You agree to instruct your employees, agents, consultants and/or independent contractors (collectively referred to as "personnel," hereinafter) to provide accurate and complete information when they register for the Service and you agree to inform your personnel to keep such information accurate and complete during the entire time that they use the Service. Only registered users may access the Service. You are solely responsible for any consequences arising in whole or in part out of the failure of any of your personnel to maintain the confidentiality of his or her username and/or password. You will be solely responsible and liable for any activity that occurs under the user name of any of your personnel. You may access the Software or Service only through the interfaces and protocols provided or authorized by Acronis. You agree that you will not access the Software or Service through unauthorized means, such as unlicensed software clients. Certain Software or Services backup only certain types of files. You agree not to circumvent these limitations in any way, including but not limited to, changing file extensions or header information.

If you or any of your personnel lose his or her password or the encryption key for their accounts, you or your personnel may not be able to access your data. You are solely responsible for protecting the information on your computers such as by installing anti-virus software, updating your applications, password protecting your files, and not permitting third party access to your computers. You understand that the Software or Services may back-up files that are no longer usable due to corruption from viruses, software malfunctions or other causes. This might result in you restoring files that are no longer usable.

CUSTOMER EXPERIENCE PROGRAM

Acronis has instituted an Acronis Customer Experience Program (CEP), the details of which can be found At <http://www.acronis.com/company/cep-policy.html>, which also contains information regarding your ability to opt in/opt out of the CEP and provided for informational purposes.

ACCEPTABLE USE AND CONDUCT

You are solely responsible for the conduct of your personnel and your data related to the Service. The Software and Service are made available to you only for your use, which use must be in compliance with all applicable federal laws, rules and regulations and must not infringe or knowingly violate third party rights. You may not make commercial use of the Software or Service, including but not limited to selling or distributing the Software and/or Service to any third party. Any unauthorized use of any Acronis software or service is a violation of this Agreement and certain federal and state laws. Such violations may subject you and the unauthorized user to civil and criminal penalties.

You may not use the Software or Service for any unlawful purpose. Without limiting generality of the foregoing:

(a) The Software or Service may not be used to store, backup, or distribute child pornography and may not be used in violation of U.S. export control laws or the export or import regulations of other countries. You agree to comply strictly with all such laws and regulations and acknowledge that you have the responsibility to obtain licenses to export, re-export, or import as may be required.

(b) You may not use the Software or Service if any of your personnel citizens, nationals, or residents of, or are under control of, the government of Myanmar, Cuba, Iran, Sudan, Libya, North Korea, Syria, or any other country to which the United States has prohibited export. You represent, warrant, and covenant that: you will not download or otherwise export or re-export the Software, directly or indirectly, to the above mentioned countries nor to citizens, nationals or residents of those countries. You will not download or otherwise export or re-export the Software, directly or indirectly, to persons on the U.S. Department of Treasury's Lists of Specially Designated Nationals, Specially Designated Terrorists, and Specially Designated Narcotic Traffickers, the U.S. Department of State's List of Statutorily Debarred Parties, or the U.S. Department of Commerce's Denied Persons List, Entity List, or Unverified List Table of Denial Orders; (iii) you will not download or otherwise export or re-export the Software, directly or indirectly, to persons on the above mentioned lists; (iv) you will neither use nor allow the Software to be used for, any purposes prohibited by United States federal law, including, without limitation, for the development, design, manufacture or production of nuclear, chemical, or biological weapons of mass destruction. The Software will not be exported, directly, or indirectly, in violation of these laws, nor will the Software or Services be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation. You are not using or permitting others to use the Software or Service to create, store, backup, distribute, or provide access to child pornography.

Acronis will not decrypt your files unless i) it reasonably believes that it must do so to troubleshoot problems with the Service or ii) it reasonably believes it must do so in order to comply with any federal law, subpoena, warrant, order, or regulation. Acronis may also provide access to your data to government authorities if Acronis suspects or believes that the data contains child pornography or other prohibited data or that the data is being used for illegal purposes.

The Software or Service is designed to serve the needs of particular types of users, i.e. individual consumers or business or Government accounts. If you have purchased a Service that is inappropriate for your actual usage, Acronis may request that you to switch to an appropriate Service. We reserve the right to monitor our system to identify excessive consumption of network resources and we will immediately notify you if your consumption is deemed in excess of the limits specified in the applicable GSA Customer Purchase Order. If the GSA Customer's usage is deemed to be in excess of the limits specified in the applicable Order, Acronis will afford the GSA Customer the opportunity to execute a new or modified Order for any undisputed amount or network resources required to bring its consumption into compliance with this Agreement. .

CONSENT TO COLLECT NON-PERSONAL INFORMATION; USE OF DATA; ENCRYPTION

The Software and Service may collect certain non-personally identifiable information that resides on your computers, including, without limitation, statistics relating to how often backups are started and completed, performance metrics relating to the Software, and configuration settings. This information collected will be sent to Acronis, subject to Government security requirements and may be used by Acronis solely to facilitate

performance under this Agreement. . . You further acknowledge that depending upon the Software or Service you use or the features of the Software or Service you use that accessing your backup data from any Internet enabled computer many not be possible.

CHANGES TO THE SERVICE AND TERMS AND CONDITIONS

From time to time, Acronis may issue new releases, revisions, or enhancements to the Software or Service available to you free of charge or subject to the execution of a new or modified Order. New releases, revisions or enhancements may be licensed, downloaded, and installed only to the extent that you hold a valid license to use the Software or Service being updated or upgraded, and you may use them only in accordance with this Agreement and any additional license terms that may accompany them.

USE OF SOFTWARE

1. Offline Software. Subject to the terms and conditions of this Agreement, upon purchase of a license to Acronis' "offline" Software (i.e. not hosted by Acronis), Acronis grants and you accept a non-exclusive, nontransferable, non-assignable license to use Software in accordance with its documentation, only for your own internal use solely on the specific number of computers that you have licensed. Installation of the Software is your responsibility. If Acronis identifies the Software as an evaluation version, trial version or beta version, you have the right to use the Software for such limited purpose for the period of time stated in the applicable Order.(the "Trial Period") unless extended by Acronis in writing. Software licensed under such a limited license may not be used in a production environment. At the conclusion of the Trial Period, unless you execute a new GSA Customer Purchase Order, you will delete the Software from your computer(s) and have no further license or other rights with respect to the Software except as to the rights and responsibilities in this Agreement. By virtue of licensing Software and registering your Software with Acronis, you are entitled to: (1) "patch" or "dot releases (e.g., 11.01, 11.02, and 11.03 etc.) of the Software. A major release(s) of the Software (e.g., Version 12 Version 13, etc) is not included in support and would be provided subject to the execution of a new or modified Order.; (2) support consistent with Acronis' support policies (3) other electronic services that Acronis may make generally available to its customers, such as an electronically available base of knowledge ("Knowledge Base") to assist in answering general questions about the Software.. Proof of payment and/or registration is required to obtain support.

2. Online Software. Subject to the terms and conditions of this Agreement, Acronis grants you a non-exclusive, nontransferable, non-sublicensable license to, for your internal use only, install and execute one (1) copy of the Software (in executable code form only) only on a single computer and only for the purpose of accessing and using the Service.

3. General Terms Applicable to Software and Service. The Software and its structure, organization, source code, and documentation contain valuable trade secrets of Acronis and its licensors, and accordingly you agree not to (and agree not to allow third parties to) (1) sublicense, lease, rent, loan, transfer, or distribute the Software and/or Service or any derivative thereof to any third party, (2) modify, adapt, translate, or prepare derivative works from the Software or Service, (3) decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Software or Service, (4) decrypt data or extract portions of the Software's files for use in other applications, (5) remove, obscure, or alter Acronis' or any third party's trademarks or copyrights or other proprietary rights notices affixed to or contained within or accessed in conjunction with or through the Software or Service, (6) use or permit the Software or Service to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Acronis, or (7) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software or Service. In addition, certain third party code may be provided with the Software and/or Service. For your information, the third-party license terms accompanying such code, which may be found at <http://kb.acronis.com/content/7696> and in the license.txt file located in the root installation directory. You may use a license for the Software or Service, with only one computer at a time unless the Software or Services you use are explicitly designed and marketed to operate on more than one computer at a time concurrently. The type of license you have (including such variables as whether the license permits use of Software or Service on more than one computer, whether the licenses fees are based on the number of computers, volume of data, or both, and the length of the license periods, etc.) is set forth as part of the Software or Service description available at

www.acronis.com provided for informational purposes. Should your license for the Software or Service you use be designed for only one computer at a time, you may transfer your license to another computer in the event that you cease to use the computer on which the Software was originally installed. If you wish to protect multiple computers, you must obtain a separate paid license for each computer or you must obtain a multi-computer license which will be applicable to the number of computers stated in the applicable Order.

You agree that if i) you mark a file to no longer be backed-up, ii) you delete a file from your computer, iii) move a file to a location on your computer that is not marked for back-up, iv) you delete a computer from your Software or Service account, v) your computer is unable to access the Service, or vi) you terminate or allow your trial or license to terminate, non-renew, or otherwise lapse for any reason, that the files you have marked, deleted, moved or stored on a deleted, inaccessible, or unlicensed computer may not be available to you should you wish to restore them.

INTELLECTUAL PROPERTY

You acknowledge that Acronis or third parties own all right, title and interest in and to the Software and Service, portions thereof, or software or content provided through or in conjunction with the Software or Service, including without limitation all intellectual property rights. [Except for the](#) license granted in this Section, all rights in and to the Software and Service are reserved, and no implied licenses are granted by Acronis.

If you have comments on the Software or Service or ideas on how to improve them, please email us at gaoni@acronis.com. Please note that by doing so, you also grant Acronis a perpetual, royalty-free, irrevocable, transferable license, with right of sublicense, to use and incorporate your ideas or comments into the Software or Service (or third party software, content, or services), and to otherwise exploit your ideas and comments, in each case without further compensation.

SUPPORT

Acronis is under no obligation to provide technical support under the terms of this license, and provides no assurance that any specific errors or discrepancies in the Software will be corrected.

TERM AND TERMINATION

This Agreement is effective upon the date executed below and remains in effect until your account expires or is terminated according to the FAR, the underlying GSA Schedule Contract and/or any GSA Customer Purchase Orders. When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Acronis shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

You agree that, upon expiration or termination of this Agreement, you will destroy and permanently erase all copies of the Software and that your access rights to the Service will immediately terminate. The terms of the Sections entitled Consent to Collect Non-Personal Information, Intellectual Property, Disclaimer of Warranties, Limitation of Liability, and Miscellaneous will survive expiration or termination.

If this Agreement expires or terminates,, Acronis will use commercially reasonable efforts to make your data available for you to download for a period of three (3) days. Acronis has no obligation to provide you with a copy of your data and may remove and discard any data after three days. You also agree that Acronis may retain your personal information and related account information for a reasonable time after your license expires or has been terminated.

FEEDBACK FROM LICENSEE

It is expressly understood, acknowledged and agreed that Licensee shall, regardless of whether or not formally requested to do, provide to Acronis reasonable suggestions, comments and feedback regarding the Software, including but not limited to usability, bug reports and test results, with respect to Software testing (collectively, "Feedback"). Contingent upon all of the terms and conditions herein and especially upon Licensee's obligations to provide Feedback, Licensee grants Acronis, under all of Licensee's intellectual property and proprietary rights, the following worldwide, non-exclusive, perpetual, irrevocable, royalty free, fully paid up rights: (i) to make, use, copy, modify, sell, distribute, sub-license, and create derivative works of, the Feedback as part of any Acronis product, technology, service, specification or other documentation (individually and collectively, "Acronis Products"); (ii) to publicly perform or display, import, broadcast, transmit, distribute, license, offer to sell, and sell, rent, lease or lend copies of the Feedback (and derivative works thereof) as part of any Acronis Product; (iii) solely with respect to Licensee's copyright and trade secret rights, to sublicense to third parties the foregoing rights, including the right to sublicense to further third parties; and (iv) to sublicense to third parties any claims of any patents owned or licensable by Licensee that are necessarily infringed by a third party product, technology or service that uses, interfaces, interoperates or communicates with the feedback or portion thereof incorporated into a Acronis Product, technology or service. Further, Licensee warrants that Licensee's Feedback is not subject to any license terms that would purport to require Acronis to comply with any additional obligations with respect to any Acronis Products that incorporate any Feedback; however, Licensee may require payment for such a license for Licensee's Feedback.

DISCLAIMER OF WARRANTIES

THE SOFTWARE AND SERVICE ARE PROVIDED "AS IS," WITH NO WARRANTIES WHATSOEVER. ACRONIS EXPRESSLY DISCLAIMS TO THE FULLEST EXTENT PERMITTED BY FEDERAL LAW ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS AND ANY WARRANTIES REGARDING THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SOFTWARE OR SERVICE AND SUCH THIRD PARTY SOFTWARE OR SERVICES. ACRONIS DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE OR SERVICE WILL MEET YOUR REQUIREMENTS THAT THE OPERATION OF THE SOFTWARE OR SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE OR SERVICE WILL BE CORRECTED. ACRONIS DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE OR SERVICE IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. ACRONIS DOES NOT REPRESENT OR WARRANT THAT USERS WILL BE ABLE TO ACCESS OR USE THE SOFTWARE OR SERVICES AT TIMES OR LOCATIONS OF THEIR CHOOSING, OR THAT ACRONIS WILL HAVE ADEQUATE CAPACITY FOR ANY USER'S REQUIREMENTS. NO ORAL OR WRITTEN STATEMENT, INFORMATION OR ADVICE GIVEN BY ACRONIS, OR ITS RESPECTIVE EMPLOYEES, DISTRIBUTORS, DEALERS, OR AGENTS SHALL CREATE ANY WARRANTIES.

YOU UNDERSTAND AND AGREE THAT YOUR DOWNLOAD AND/OR USE OF THE SOFTWARE AND SERVICE, , IS AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF THE SOFTWARE OR SERVICE.

SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE AND JURISDICTION TO JURISDICTION.

LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES SHALL ACRONIS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING FROM OR RELATED TO THE

SOFTWARE OR SERVICE, WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, (EVEN IF ANY SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). WITHOUT LIMITING THE FOREGOING, THE TOTAL AGGREGATE LIABILITY OF ACRONIS, ARISING FROM OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT, IF ANY, PAID BY YOU TO ACRONIS FOR THE SOFTWARE OR SERVICE. IF THE SOFTWARE AND SERVICE ARE PROVIDED WITHOUT CHARGE, THEN ACRONIS SHALL HAVE NO LIABILITY TO YOU WHATSOEVER.

THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON THE SOFTWARE OR SERVICE, FROM INABILITY TO USE THE SOFTWARE OR SERVICE, TO USE OR RETRIEVE ANY BACKUP DATA, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF THE SOFTWARE OR SERVICE. SUCH LIMITATION SHALL APPLY NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE FULLEST EXTENT PERMITTED BY FEDERAL LAW.

THE SOFTWARE AND SERVICE ARE NOT INTENDED FOR USE IN CONNECTION WITH ANY NUCLEAR, AVIATION, MASS TRANSIT, OR MEDICAL APPLICATION OR ANY OTHER INHERENTLY DANGEROUS APPLICATION THAT COULD RESULT IN , CATASTROPHIC DAMAGE, OR MASS DESTRUCTION, AND LICENSEE AGREES THAT LICENSOR WILL HAVE NO LIABILITY OF ANY NATURE AS A RESULT OF ANY SUCH USE OF THE SOFTWARE. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY (1) TO PERSONAL INJURY OR DEATH CAUSED BY ACRONIS' NEGLIGENCE; (2) FOR FRAUD; (3) FOR EXPRESS REMEDIES UNDER THE CONTRACT; OR (4) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

GOVERNMENT END USERS

This Agreement applies to all Software and Service acquired directly or indirectly by or on behalf of the United States Government. The Software and Service are commercial products, provided on the open market at market prices, and was developed entirely at private expense and without the use of any U.S. Government funds.. The Government acquires only the the license rights as stated herein pursuant to FAR 52.227-14 "Rights in Data" (Dec. 2007), DFARS 252.227.7015 "Technical Data-Commercial Items" (Jun. 2013) and other applicable DFARS provisions.

MISCELLANEOUS PROVISIONS

You acknowledge and agree that the Software which is the subject of this Agreement may be controlled for export purposes. You agree to comply with all United States export laws and regulations, and you shall not and shall not allow any of your personnel to remove or export from the United States or allow the export or re-export of any part of the Software or Service 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 Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; or (iii) to any country to which such export or re-export is restricted or prohibited, or as to which 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.. The Software and Service are further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity. You assume sole responsibility for any required export approval and/or licenses and for the violation of any United States export law or regulation in connection with your attempted export or re-export of the Software or Services. This Agreement shall be governed by the Federal laws of the United States, exclusive of its conflicts of laws provisions and without regard to the United Nations Convention on Contracts for the International Sale of Goods, Jurisdiction and venue will be determined by the underlying federal statute.

The failure of Acronis to exercise or enforce any right or provision of this Agreement does not constitute a waiver of such right or provision. If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, the remainder of this Agreement will continue in full force and effect. This

Agreement, the underlying GSA Schedule Contract, the Schedule Price List and any applicable Orders, constitute the entire agreement between the parties with respect to the subject matter hereof and supersede and replace all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. This Agreement, however shall not take precedence over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer's Purchase Order.

Any waiver of any provision of this Agreement will be effective only if in writing and signed by both parties.. You may not assign or transfer any of your rights or obligations under this Agreement to a third party without the prior written consent of Acronis. . Assignment by Acronis is subject to FAR 52.232-23 "Assignment of Claims" (Jan. 1986) and FAR subpart 42.12 "Novation and Change-of-Name Agreements" (Sep. 2013).