BCDR PRODUCT TERMS OF USE

**Business Continuity & Disaster Recovery (BCDR) Product and Services Terms of Use**

Updated as of June 2020

These BCDR Product and Services Terms of Use ("**BCDR Terms**") govern your use of Datto’s BCDR Products and Services. By purchasing or using Datto’s BCDR Products or Services, you agree to be bound by these BCDR Terms, which are incorporated into the Datto Partner Agreement between you and Datto. Capitalized terms not defined in these Terms of Use have the meaning given to them in the Datto Partner Agreement.

If you do not agree to these BCDR Terms, do not register, access or use any Datto Product or Service.

**USE OF BCDR PRODUCTS**

Right to Use. Subject to your compliance with these BCDR Terms, the Datto Partner Agreement and the receipt by us of all fees applicable to the Product, Datto grants you a limited, revocable, non-sublicensable, non-exclusive right and license to access and use the Product in accordance with the Product Specifications. If your use of the Product involves the use of backup agent software, you hereby agree to the terms of all applicable agent software licenses.

Third Party Technology/License Terms. - Certain Products may involve or allow the use of third party technology, the use of which is subject to such third parties’ terms. These terms are located under the heading “[BCDR Third Party Terms](https://portal.dattobackup.com/resources/active-agreements#third-party-license-terms)” on the Online Portal. You agree that your use of a Product is deemed your express consent to all such applicable BCDR Third Party Terms.

Additional Data Processing Terms. Products may be configured to designate the geographic region where Content associated with a Product is stored. The [European Data Processing Addendum](https://portal.dattobackup.com/resources/active-agreements#european-data-processing-addendum) is incorporated into these Terms of Use if a Product is configured to store Content in the European Economic Area or the United Kingdom.

Rights and Responsibilities Regarding Content and Product Use.

License to Content. On behalf of or as the End User, you (i) represent and warrant that you and/or the End User has sufficient rights and all required third party consents, permissions or licenses in and to the Content as may be necessary and appropriate for use of the Content with the Products; and (ii) hereby grant to Datto a limited, royalty-free, non-exclusive, assignable license to copy, reformat, disclose, transmit, display and otherwise use the Content as necessary or desired, in each case solely for the purposes of providing the Product or Service or as otherwise necessary for Datto to exercise its rights under these Terms of Use.   
Third Party Administrator Responsibilities Regarding Content and Product Use. If you are a third party Administrator managing or using any Product on behalf of an End User, you represent and warrant that you are acting as an agent on behalf of the End User (who is the principal) and that you are acting within the scope of your agency. Accordingly, you agree to obtain End User’s authorization and comply with End User’s instructions at all times with respect to use of the Product and access to Content, including but not limited to: Service Subscription, Device settings, backup settings, access controls, management, retention and deletion of Content, transition of Product or Content to a different Administrator, and transition assistance and cooperation upon termination or expiration of any relationship between or among an Administrator, End User and/or Datto. Datto expressly may rely on the authorization of any Administrator with respect to access and control of Content.

Datto’s Use of Content. Except for the limited license granted hereunder, the End User retains all of its existing rights in and to Content. Datto will use and process the Content only as necessary to provide and support the Products and will not otherwise access Content other than as permitted under the Partner Agreement, these Terms of Use, as described in our Privacy Policy, or as authorized by an Administrator for support.

End User Terms. If you resell to an End User, act as a Product Administrator for an End User or if you authorize an End User to directly use or support a Product, you must ensure that the End User for each Product agrees to the End User Terms in substantially the form attached as Exhibit A hereto as part of a valid, enforceable contract between you and the End User.

**SERVICE SUBSCRIPTIONS**

Service Subscription Required. The right to use a Product requires that it be enrolled in a Service Subscription for which we receive timely payments.

Registration. You are required to register each Product with us in order to use the Products and Services. During registration, you agree to provide accurate and complete information, and you further agree to promptly update this information should it change. If a Product is not properly registered in a current paid Service Subscription we have no obligation to allow access to or use of the Product, nor to provide any related Services.

Service Plan. Each Service Subscription specifies a particular Service Plan. All Service Plans include licenses to the technology needed to perform backup and business continuity functions and access to Datto Technical Support. Some Service Plans also provide for replicated storage (see Datto Cloud Service Plan - Retention Schedules). Examples of Service Plans include: Datto Cloud - 1 Year Cloud Retention; Datto Cloud - Infinite Cloud Retention; Datto Cloud - Capacity Based Storage; and Siris Private.

Term Length.

The term of a Service Subscription is indicated on the applicable Order. A term is either for one month (a Monthly Term) or for a defined number of consecutive months (a Committed Service Term). Certain Products and/or hardware discounts may be available only when purchased with a Committed Service Term.

A Service Subscription shall commence on the “**Activation Date**.” The Activation Date for a Monthly Term (and the associated payment obligation) shall be the date you register a Product with us. The Activation Date for a Committed Service Term (and the associated payment obligation) shall be the earlier of (a) the date you register a Product with us and (b) the date that is sixty (60) days following the date of purchase.  If your purchase involves a Product that includes a physical device, the purchase date for the purposes of this Section shall be the shipment date of the Product.

The Activation Date for Products sold on a per license basis (for example, Datto Cloud Continuity) is the purchase date, regardless of when the licenses are registered. If licenses in a Service Subscription are purchased for a Committed Service Term, that Committed Service Term will apply for those licenses and for any additional licenses of the same Product (unless you purchase additional licenses for a Monthly Term, if permitted for such Product). The number of licenses, including any licenses added after the start of the original Service Subscription, may not be decreased during the Committed Service Term. Additional licenses, if any, are prorated for the remainder of the then-current Committed Service Term as provided in the Order.

Renewals.

The term of Service Subscription for Products sold on a per license basis (for example, Datto Cloud Continutiy) will automatically renew for the same term (Committed Service Term or Monthly Term), unless terminated by your providing Datto with timely written notice of cancellation.

For all other BCDR Products, the term of a Service Subscription for a Monthly Term or a Committed Service Term will automatically renew on a month-to-month basis unless renewed by you for an additional Committed Service Term or terminated by your providing Datto with timely written notice of cancellation.  Any such Service Subscription that is not renewed for an additional Committed Service Term or timely cancelled as required below will be renewed automatically for the following month on the date immediately following the date on which such notice of cancellation was required under this Section.

For a Monthly Term, notice of cancellation must be received by Datto no later than fifteen (15) calendar days prior to the effective month of cancellation. For a Committed Service Term, notice of cancellation must be received by Datto no later than thirty (30) calendar days prior to the effective month of cancellation.

Payment Terms:

Monthly Service Subscription fees are set forth in the applicable Order. Service Subscription fees will be due and payable commencing on the first day of the month following the Activation Date, and are billed monthly in advance on the first day of the month. In the first month following the Activation Date, an additional bill will be generated covering the period from the Activation Date through the end of that month.

Monthly payments for a Service Subscription is due on the **third** business day of each month by your payment method indicated in your Partner Portal account.

You may also choose to prepay a Service Subscription. In the event of termination of a prepaid Service Subscription, no refund for unused Service will be given unless otherwise agreed in writing.

You agree to pay Service Subscription fees for the entire Committed Service Term. If you terminate Service at any time during a Committed Service Term, a lump sum payment (equal to 100% of the monthly unpaid Service Subscription fee times the number of months remaining in the Committed Service Term less any amounts already prepaid) will be due immediately and charged to your preferred payment method.

Datto may terminate any Service Subscription at its discretion, effective immediately, for non-payment that is not substantially cured within thirty (30) days after your receipt of written notice.

**ACCESS AND SECURITY**

Your Responsibility for Account and Product Access. You are responsible for any action that you permit, assist or facilitate any person or entity to take related to the Product and associated Content. You are responsible for the security of all access credentials, including all passwords, to the Product. You are responsible for maintaining the security of any access codes, passwords, technical specifications, connectivity standards or protocols, assigned to you and/or created by you to gain access to an Online Portal, Product and/or Content. You are responsible for all activities that occur in your Online Portal account ("Account"), including any Product or Content access you allow, regardless of whether the activities are undertaken by you, by others on your behalf (including any of your administrative users and/or any End User you authorize). Your Online Portal account may be hosted in the U.S. regardless of where you, the Product or Content related to the Product may be located. You are responsible for securing any necessary consents, if any, related to the hosting location of your Online Portal account. If you lose your encryption key, you may not be able to access the Content associated with the Product. You agree to notify us immediately if you learn of any unauthorized use of any access credentials or any other known or suspected breach of security. You agree that we will not be liable for any loss of any kind resulting from a) any party using your Account access credentials; and b) activity within your Account, either with or without your knowledge or authorization.

Your Responsibility for Security. You are responsible for the proper configuration and maintenance of physical, administrative and technical safeguards as they relate to access to and use of the Product and Content. In no event will we be responsible, nor will we have any liability, for physical, administrative, or technical controls related to the Product that you control, including but not limited to local Device access, network connectivity and internet connectivity. We use physical, technical and administrative safeguards designed to secure Content under our control against accidental or unauthorized loss, access or disclosure. However, no password-protected system of data storage and retrieval can be made entirely impenetrable and you acknowledge and agree that despite the measures employed, the Products and Content are not guaranteed against all security threats or other vulnerabilities and you use the Products with all Content at your own risk.

**CHANGES TO TERMS OF USE.**We reserve the right at any time to modify these Terms of Use and updated Terms of Use will be posted within the applicable Product or Online Portal. We will make reasonable efforts to notify you of material changes and your continued use of any Product after an update will indicate your acceptance of any updated Terms of Use. If you do not agree to any updated Terms of Use, you must terminate your use of the Product immediately. If you provide written notice of any such termination, we will provide a refund of any pre-paid but unused fees applicable to the Product. We may also modify and update third party license terms, Specifications, policies and other support materials. All such changes are effective immediately upon posting to the Online Portal and you should review such materials on a regular basis so that you will be apprised of any changes.

**WARRANTY**

**Standard Limited Hardware Warranty**.New Datto business continuity and disaster recovery physical device hardware is warranted against defects in materials and workmanship under normal use, handling and installation for a warranty period, which starts on the date the associated device is shipped to you and which continues for the period of time applicable to the associated product (see chart below). With respect to any device covered by this Standard Limited Hardware Warranty (Standard Warranty) that is found by Datto to be defective during the warranty period, Datto's obligations under this Standard Warranty are limited to, at Datto's option, either: (i) repairing the device using new or refurbished parts that are equivalent to new in performance and reliability; (ii) replacing the device with one that is new or formed from new and/or refurbished parts that are equivalent to new in performance and reliability; or (iii) issuing a credit for the device. In order to be eligible for warranty service, a device must be enrolled in an active Service Subscription for which payment is current. This Standard Warranty does not extend to or include software included with the associated device. The warranty period on the device is determined at the time of purchase, and is not affected by subsequent software updates or hardware upgrades. All warranty claims must be received by Datto within the applicable warranty period.

The Standard Limited Warranty does not cover device defects or failures resulting from 1) accident, neglect or abuse; 2) improper installation or maintenance; or 3) modifications, repairs, improvements, installation of third party software, or other changes to the hardware or software components of the device that have not been authorized in writing by Datto. You are responsible for any costs related to the foregoing exclusions.

A device that has been repaired or is a replacement of a device will continue to be under warranty for a period equal to the greater of (i) the balance of the existing warranty period for the original device; or (ii) sixty (60) days.

If you have previously purchased an extended warranty for certain devices, all terms, conditions, procedures and limitations of the Standard Warranty will apply during the period of the extended warranty.

| **Device Hardware Type** | **Standard Warranty Period** |
| --- | --- |
| Siris 3 Business, Siris 3 Professional, Siris 3 X Professional, Siris 3 Enterprise, Siris 4 | 5 years |
| NAS 3 Business Performance, NAS 3 Professional Performance, NAS 3 X Professional Performance, NAS 3 Enterprise Performance, NAS 4 | 5 years |
| All other Datto devices | 3 years |

THIS WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY DATTO AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, EACH OF WHICH IS HEREBY EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

**RETURNS**

All Datto Products may be returned at any time within sixty (60) days of purchase. If your purchase involves a Product that includes a physical device, the purchase date for the purposes of this Section shall be the shipment date of the Product.  Please contact your Datto Sales Representative to request an RMA email that will include return instructions and, as applicable, a return shipping label.

For device returns, please follow the applicable Product Return Guidelines. To be eligible for a full refund, the device must be returned in its original packaging in an undamaged, working condition and must include all accessories originally shipped with the device. If hardware is returned missing parts, in damaged condition or if damage occurs while in shipment due to poor packaging, your refund may be reduced to cover the damaged hardware. For all other Product returns, please follow any return instructions included with your RMA materials.

**PRODUCT RETURN GUIDELINES**

**Step 1**- Notification:

*Warranty Return*: Once our Technical Support team has authorized the warranty return, a replacement device or part will be sent to you. You will be provided with the return shipping instructions and label with the replacement device or part. If you cannot locate this return label then we will have a new shipping label sent to you. To do so, if you are located in the United States, Canada, Singapore, or Australia, please contact us at [returns@datto.com](mailto:returns@datto.com); if you are located in the EMEA region, please open a support ticket so that support may provide you with a new shipping label.

*Credit Return, Upgrade or Trial Return*: We will provide you with return shipping instructions and label once a return request is processed through your Sales Representative. If you cannot locate this return label then we will have a new shipping label sent to you. To do so, if you are located in the United States, Canada, Singapore, or Australia, please contact us at [returns@datto.com](mailto:returns@datto.com); if you are located in the EMEA region, please open a support ticket so that support may provide you with a new shipping label.

Note: When we email you a shipping label, it will come from an automated sender with the shipper’s domain (e.g., ups.com or fedex.com). If you do not receive your label, please check your spam folder. If not found and you are located in the United States, Canada, Singapore, or Australia, please contact us at [returns@datto.com](mailto:returns@datto.com). If you are located in the EMEA region, please open a support ticket so that we may assist you.

Note: To avoid inadvertent data loss, we will not automatically cancel a Service Subscription on a device that has been authorized for return. We will terminate the Service Subscription as of the last day of the month we receive a returned device. If you do not return a device to us that is being replaced (for warranty, upgrade, or any other reason), billing will continue on the device until you cancel the Service Subscription.

**Step 2** - Pack and ship: After receiving the shipping label, package your original device or part in the original or like packaging, ensure that it is protected, and return it to Datto within 45 days of receipt of the shipping label or you will be charged for the applicable device or part. If Datto determines after receipt of the original device or part subject to a warranty return that there is no defect found or the defect is due to one of the exclusions listed under our warranty, you will be charged for the part or the difference between the cost of the replacement device and the value of the original returned device. All devices must be returned in adequate packaging, and if damage occurs while in shipment due to poor packaging, fees may be charged to you to cover damaged hardware.

**RETENTION**

Retention determines how and/or for how long data associated with a Product is retained. Certain Products have local retention settings that control how data is retained on the local Product and that are set by the user. The retention settings for replicated or offsite data associated with Products enrolled in Siris Private Service and Datto Cloud Capacity Based Storage are also set by the user.

As used in this section, a Retention Schedule refers to how and/or for how long data associated with a Product enrolled in Datto Cloud Service is retained. Data associated with Products enrolled in any Datto Cloud Service Plan will be retained, as specified in the applicable Retention Schedule associated with the purchased Service Plan, for as long as the Product is under an active Service Subscription for which payments are current. If a Service Subscription terminates, Datto reserves the right to delete, after 60 days, the backed up data in the Datto Cloud associated with your Product. It is your responsibility, prior to or during this period, at your expense, to request a copy of the data if you would like to retain a copy of the backed up data in the Datto Cloud associated with your Product. See our Reverse Round Trip Procedures for further information. For Datto Cloud Continuity, access to data in the Datto Cloud terminates at the same time as the Service Subscription so you must export your data prior to termination.

**DATTO CLOUD SERVICE PLAN - RETENTION SCHEDULES**.The Datto Cloud Service Plan options are: (1) 1-Year Cloud Retention; (2) Infinite Cloud Retention; (3) Capacity Based Storage; (4) Live Dataset Retention; and (5) Mirrored Cloud Retention.

**1-Year Cloud Retention**- The 1-Year Cloud Retention (also known as 1 Year Time Based Retention) plan is not limited to a pre-defined amount of Datto Cloud storage. Rather, incremental data backups are maintained for one year on a rolling basis, with the oldest incremental backups deleted first after one year. Automatic consolidation of incremental backup recovery points is applied on a rolling basis as shown below.

**Infinite Cloud Retention**- The Infinite Cloud Retention service plan uses a set retention schedule for the storage of cloud data. The plan is not limited to a pre-defined amount of Datto Cloud storage. Instead, incremental backups are retained for an indefinite period of time for as long as the Infinite Cloud Retention Service Plan Service Subscription for the Product is current. Automatic consolidation of incremental backup recovery points is applied on a rolling basis as shown below.

**Capacity Based Storage**- Capacity Based Storage (previously known as Total Cloud Retention) allows you to set your own retention schedule. The plan provides for a pre-defined amount of Datto Cloud storage in the monthly Service Subscription fee. Usage of Datto Cloud storage in excess of the pre-defined allotment for the Product is charged an additional amount as described in the applicable pricing sheet.

**Live Dataset Retention**- Live Dataset Retention is a legacy retention option according to which Products are allocated the lesser of 2 times the local storage capacity of the Product or the most recent 12 months of incremental backups. Data is automatically pruned, oldest first, once the amount of data has reached the allotted storage (lesser of 12 months or 2 times the local storage capacity). Live Dataset Retention is no longer available for purchase with new Products.

**PRUNING OF INCREMENTAL BACKUPS FOR INFINITE CLOUD OR TIME-BASED RETENTION SCHEDULES.**With respect to Infinite Cloud Retention, 1-Year Cloud Retention, or any previously offered multi-year time-based Service Plan, we use the following schedule for consolidating incremental backups, stored in the Datto Cloud. For Products under a previously offered multi-year time-based Service Plan, monthly backups are deleted oldest first after the retention period selected (i.e., 2-10 years).

| **Pruning of Incremental Offsite Backups:** | **Takes Place After:** |
| --- | --- |
| Intra-dailies | 7 Days |
| Dailies | 2 Weeks |
| Weeklies | 45 Days |
| Monthlies | Depends upon service plan |

**SERVICE PLAN CONVERSION**

If your Product is not subject to a Committed Service Term, you may switch from any Service Plan to any other currently offered Service Plan available for your Product model (Note: some limitations may apply in switching between certain Service Plans, please contact your Datto Sales Representative for additional information).

If a Product is subject to a current Committed Service Term, the Product may be converted to another Service Plan only if monthly Service Subscription fees under a new Service Plan are higher than under the current Service Plan. **Service Plan conversions may require a different Retention Schedule or involve deletion of data backups and you are responsible for understanding the consequences of any conversion to a different Service Plan.**

Regardless of whether a Product is subject to a Committed Service Plan, some fees may apply in switching a Product's Service Plan to Infinite Cloud Retention.

**CUSTOM BUILT DEVICES.**Select Datto devices can be custom-built by starting with a pre-configured device and adding more RAM and/or a more powerful CPU. In some cases, a RAM and/or CPU change may necessitate using a different motherboard as well. These standard approved configurations are provided by Datto. The price for a custom-built device is the price of the pre-configured model,plusthe price of the additional hardware. Each device that is custom-built by Datto using standard approved configurations comes with the same Standard Warranty as the pre-configured device on which it is based. To learn more about custom-built options, please contact your Datto Sales Representative.

**UPGRADES**

**Standard Upgrades**.

Our Standard Upgrade Policy allows you to purchase a new device (the Upgrade device) and return an existing device (the Original device) to Datto for upgrade credit equal to the price you paid for the Original device. In no event will the upgrade credit exceed the lesser of the cost of the Upgrade device, or the amount paid for the Original device.

To be eligible for any upgrade, the Upgrade device must be in a higher product tier and purchased with a higher priced Service Subscription than the Service Subscription for the Original device. The Service Subscription price for the Original device will be the price at the time of the Original device order or the price at the time of the upgrade order, whichever is greater. The only hardware discounts available on an Upgrade device purchase are any standard discounts for Committed Service Terms. Please contact your Datto Sales Representative for available upgrade paths for your device. If the Original device undergoing a Standard Upgrade is subject to a current Committed Service Term, the Upgrade device must be purchased together with a new Committed Service Term at least as long as the time remaining in the Committed Service Term on the Original device. For example, if the Original device has 6 months remaining on a 36 month Committed Service Term at the time of Standard Upgrade, and the shortest Committed Service Term offered is 12 months in length, then the Upgrade device must be purchased together with a Committed Service Term of at least 12 months. A device transferred from the Partner that originally purchased it is not eligible for an upgrade credit under the Standard Upgrade Policy; only the Partner that originally purchased that device can take advantage of a Standard Upgrade for that device.

To perform a Standard Upgrade, you must contact a Datto Sales Representative and purchase an eligible Upgrade device. Once you receive the Upgrade device, you must connect the Upgrade device and the Original device to the same local network, then migrate the data from the Original device to the Upgrade device (this may require the assistance of Datto Technical Support). After migration is complete and the Upgrade device is operational, you must return the Original device to Datto following the Product Return Guidelines to receive an upgrade credit. Once you register the Upgrade device, you will be billed at the new monthly Service Subscription rate for the Upgrade device. In order to ensure uninterrupted service, Service billing on the Original device continues until we either receive the Original device or you cancel the Service Subscription on the Original device. To receive the upgrade credit, the Original device must be returned in undamaged, working condition in adequate packaging. If damage occurs while in shipment to us due to poor packaging, your upgrade credit may be reduced to cover damaged hardware.

A Standard Upgrade can only be applied one time within three years from purchase of the Original device. An Upgrade device obtained with a Standard Upgrade comes with a new Standard Warranty applicable to the Upgrade device, but may not be used in a further Standard Upgrade under this policy.

**Field Upgrades.**

For any of the upgrade paths for which a Field Upgrade is an option, in the event you would like to perform an upgrade to a different model, you must select a Field Upgrade rather than a Standard Upgrade.

Different from the Standard Upgrade, a Field Upgrade does not require physically swapping an Original device for an Upgrade device. Instead, you may purchase from Datto and install on-site a Field Upgrade Kit, consisting of hard disk drives and in some cases RAM. In most cases a Field Upgrade Kit will upgrade a device to match the specs of a larger model in the same product line. Field Upgrade Kits are available only for certain devices - please see your sales representative for further information.

You may purchase Field Upgrade Kits through a Datto Sales Representative, paying the difference between the list price (at the time of upgrade) for the Original device and the list price (at the time of upgrade) of the Upgrade device. The price of the Service Subscription applicable to the device after the Field Upgrade must be higher than before the Field Upgrade.

Once the Field Upgrade Kit has been received, you should initiate the installation by contacting Datto Technical Support. A Support Representative will guide you through the process of adding the RAM to the motherboard, and adding the new drives via the hot-swap bays. Multiple drive swaps and/or resilvering operations may be required. The Field Upgrade process can be suspended should you need to perform a recovery from the local device. For further details, please consult the Partner Portal, or contact your Sales Representative.

The new Service Subscription rate on the Upgraded device will begin in the month immediately following the completed Field Upgrade.

If the device that has undergone a Field Upgrade has a prepaid Service Subscription, you will be charged a prorated amount equal to the difference between the original monthly Service Subscription rate and the new monthly Service Subscription rate times the number of months remaining in the prepaid term, rounded down to the nearest month. Discounts originally applied to a prepayment do not extend to new Service Subscription charges resulting from a Field Upgrade.

A Field Upgrade does not affect a Committed Service Term on the device, which will remain in force at the new service Subscription rate.

A Field Upgrade can be applied at any point during the three-year period following purchase of the device, but at no time after. Performing a Field Upgrade does not extend the device's Standard Warranty and all components installed from a Field Upgrade Kit fall under the device's original Standard Warranty. At no point will the Field Upgrade Kit components be under warranty when the Standard Warranty for the Original device in which they have been installed has lapsed.

**ROUNDTRIPS**

Datto RoundTrip service is used to expedite the replication of large data sets from a local Datto device to the Datto Cloud (standard RoundTrip) or to retrieve large data sets from the Datto Cloud (reverse RoundTrip). RoundTrip service involves the use of a physical storage device, called a RoundTrip device/drive, supplied by Datto or by you, that makes a “round trip" (either from Datto to you and back with a Datto supplied RoundTrip drive; or from you to Datto and back when you supply the physical storage device). RoundTrip service allows synchronization of data to the Datto Cloud, or retrieval of data from the Datto Cloud, in far less time than it takes to transfer large data sets over internet connections.

The primary purpose of standard RoundTrip service is to facilitate the initial replication of full images from a newly deployed Datto device to the Datto Cloud. After such initial cloud seeding, standard RoundTrip service should be used only to resolve off-site synchronization issues and not to compensate regularly for inadequate bandwidth at a local device site.

Reverse RoundTrip service is a fee-based service. Datto requires proper written authorization for all reverse RoundTrip orders before we send any data from the Datto Cloud. You must represent that you have the authority to request and receive a copy of the data in the Datto Cloud and are acting on the instructions of and for the benefit of the owner of the data. You are responsible for any misrepresentation involving your authority to receive data from the Datto Cloud that has not in fact been authorized by the owner of the data.

All RoundTrip service is subject to the RoundTrip Procedures. Datto is not responsible for any delayed or incorrect RoundTrip service caused by your improper ordering of RoundTrip service, incorrect shipments or shipment information, or any other failure by you to follow instructions or the RoundTrip Procedures. You are responsible for and agree to pay the full current replacement cost of a RoundTrip device/drive supplied by Datto if damage occurs to it (a) while in your custody or control; (b) due to your shipment using to inadequate shipping materials; or (c) if you fail to return it to Datto in the time specified in the RoundTrip Procedures. You are also fully responsible for all consequences of your delay in returning a RoundTrip device/drive that results in incomplete data synchronization between a Datto device and the Datto Cloud and the need for that data in the event of a disaster or other business continuity event.

**Exhibit A**

**BCDR End User Terms**

These End User Terms ("Terms"), including any Exhibits, apply to you as the person or entity that owns, licenses, or lawfully controls the data, files or other content (“Content”) with which a Datto backup and business continuity product (“Product”) will be used. Datto does not provide the Product directly to you. The Product is sold and provided by Datto, Inc. or one of its subsidiaries or affiliates (“Datto”) directly to the reseller/managed service provider (“Administrator”) who will (a) use and manage the Product on your behalf with your Content; and who may also (b) authorize you to access, use or manage the Product yourself, either through the Product interface or through a portal account, in which case you will be considered an additional authorized administrator of the Product.

RIGHTS TO THE PRODUCT

You acknowledge that Datto and its licensors own all intellectual property rights in and to the Product. You will not engage in or authorize any activity that is inconsistent with such ownership.

The Product may involve the use of third party technology licensed by Datto, the use of which is subject to such third parties’ license or other end user customer terms.

DATTO’s RIGHTS AND RESPONSIBILITIES REGARDING CONTENT

Datto’s Use of Content. Datto will use Content only as necessary to provide and support the Product and will not otherwise access Content other than as permitted herein, as described in the Datto Privacy Policy, or as authorized by an Administrator for support.

Datto’s Rights. In the event that Datto reasonably believes Content or related Product use violates these terms, may disrupt or threaten the operation or security of any computer, network, system or the Product, or may otherwise subject Datto to liability, Datto reserves the right to refuse or disable access to the Product or Content. Datto may also take such action pursuant to the Digital Millennium Copyright Act and/or as required to comply with law or any judicial, regulatory or other governmental order or request. Datto will use reasonable efforts to contact the Administrator prior to taking such action. Notwithstanding the foregoing, Datto may restrict access to any Product or Content without prior notice as required to comply with law or any judicial, regulatory or other governmental order or request. In the event that Datto takes any such action without prior notice, Datto will provide notice to the Administrator, unless prohibited by law.

Use of Aggregate Data. Notwithstanding anything else in these Terms or otherwise, Datto may evaluate and process use of the Product and Content in an aggregate and anonymous manner, meaning in such a way that the individual is not or no longer identified or identifiable and compile statistical and performance information related thereto (referred to as “Aggregate Data”). Datto may use, process and share such Aggregate Data with third parties to improve the Products, develop new products, understand and/or analyze usage, demand, and general industry trends, develop and publish white papers, reports, and databases summarizing the foregoing, and generally for any purpose related to Datto’s business. Datto retains all intellectual property rights in Aggregate Data. For clarity, Aggregate Data does not include any personally identifiable information nor identify any End User or individual.

Right to Change Products. Datto may make changes to its Products through updates and upgrades that offer new features, functionality, and efficiencies ("Enhancements"). Datto reserves the right to add new Products and Enhancements and to replace or discontinue Products or Enhancements at any time.

Right to Interact with Products**.**You agree that Datto may and you hereby authorize Datto to interact remotely with any deployed Product in order to test, troubleshoot, update, analyze use of or modify the Product or the environment in which it operates.

ADMINISTRATOR

Datto will interact with the Administrator(s) you appoint to operate and manage use of the Product with your Content. You are not a third party beneficiary of any agreement between Datto and an Administrator.

An Administrator is not an agent of Datto and is not authorized to make any representations or warranties on behalf of Datto regarding the Product or its use.

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

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