

These SaaS Protection Terms of Use (“Terms of Use” or “Terms”) describe the terms under which Datto, Inc. or one of its direct or indirect subsidiaries (“Datto” or “we or “us”) provides access to and use of SaaS Protection products (referred to in these Terms of Use as the “Product” or “Products”). Capitalized terms not defined elsewhere in these Terms will have the meanings set forth in the last section.

PLEASE READ THESE TERMS OF USE CAREFULLY. BY CLICKING “I AGREE”, BY EXECUTING AN ORDER FORM THAT REFERENCES THESE TERMS, OR BY INSTALLING, ACCESSING OR USING ANY PRODUCT YOU ACKNOWLEDGE YOU HAVE READ, UNDERSTAND AND AGREE TO THESE TERMS OF USE, INCLUDING APPLICABLE POLICIES REFERENCED THROUGHOUT. IF YOU ACCEPT ON BEHALF OF A BUSINESS OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT LEGAL ENTITY TO THESE TERMS OF USE AND "YOU" WILL REFER TO THAT LEGAL ENTITY AND ITS AFFILIATES.

If You accept these Terms of Use solely as a third party Product Administrator (not as a direct Customer) managing or using any Product on behalf of a Customer, You represent and warrant that You are acting as an agent of the Customer and You have the full authority to agree to these Terms of Use with respect to access, use and support of the Product and Backedup Data. You agree to obtain Customer’s authorization and comply with Customer’s instructions at all times with respect to use of the Product and access to and management of Backedup Data, transition of Product or Backedup Data to a different Administrator, and transition assistance and

cooperation upon termination or expiration of any relationship between or among an Administrator, Customer and us.

If You do not agree to these Terms of Use, You may not use the Product.

1. ORDERS

1.1. These Terms of Use are incorporated into each Order for the Product. Unless otherwise specified, Customer will receive the current standard Product features and functionality (such as number and frequency of backups or retention schedule) for the standard Subscription Term described in the current Policies for the Product, for the number of Users and/or data allotment specified in an Order.

2. FREE TRIAL

2.1. If the Product is being used during a free trial, these Terms of Use (except for payment obligations) will apply for the purpose and term of such authorized evaluation or trial period only. We reserve the right to terminate any such evaluation use of the Product at any time in our sole discretion. ANY BACKEDUP DATA SAVED DURING A FREE TRIAL WILL BE PERMANENTLY DELETED FOLLOWING THE TRIAL PERIOD UNLESS A PAID ORDER IS PLACED FOR THE SAME PRODUCT. CUSTOMER MAY EXPORT BACKEDUP DATA PRIOR TO THE END OF THE TRIAL.

2.2. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS OF USE, ALL PRODUCT FOR A FREE TRIAL USE IS PROVIDED "AS-IS" AND "AS-AVAILABLE," WITHOUT WARRANTIES OF ANY KIND. You hereby waive all claims, now known or later discovered, against us arising out of use of any Product for a Free Trial.

3. USE OF PRODUCTS

3.1. Subject to these Terms of Use and receipt by us of all fees applicable to the Product, we hereby grant a limited, revocable, non-sublicensable, non-exclusive right to access and use the Product during the Subscription Term for the number of Users and /or the applicable data storage allotment set forth in an Order. Customer may use the Product solely for internal business purposes and not for further resale or distribution.

3.2. Each Product is licensed, not sold. The Product contains material that is protected by copyright, patent and trade secret law of jurisdictions throughout the world, and by international treaty provisions. Except for the limited rights granted in these Terms of Use, we and our licensors retain all right, title, interest and Intellectual Property Rights in the Product.

3.3. We reserve the right at any time to make Enhancements to, replace, modify, discontinue or add to the Products, including revisions to Specifications, features and functionality. We will use reasonable commercial efforts to provide You notice of any material changes by updating relevant information in the applicable Online Portal.

3.4. We may designate enhancements to a Product or a new Product as "Beta Product" that we may make available at no charge. Such Beta Product will not be ready for use in a production environment and its operation may be unpredictable and lead to erroneous results. You are under no obligation to use a Beta Product. If You choose to use a Beta Product, You agree the Beta Product (i) is experimental and has not been fully tested; (ii) may not meet Your requirements; (iii) use or operation may not be uninterrupted or error free and is for purposes of evaluating and testing the product and providing feedback to us. You agree to report

promptly to us any errors or other deficiencies in the Beta Product and will hold all information relating to use and performance of the Beta Product in strict confidence and not disclose such information to any unauthorized third parties. Use of any Beta Product is otherwise subject to these Terms of Use. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS OF USE, ALL BETA PRODUCT IS PROVIDED "AS-IS" AND "AS-AVAILABLE," WITHOUT WARRANTIES OF ANY KIND. You hereby waive all claims, now known or later discovered, that You may have against us and our suppliers and licensors arising out of use of any Beta Product.

3.5. Additional Data Processing Terms. A Product may be configured to designate the geographic region where Backedup Data associated with the Product is stored. The [European Data Processing Addendum](#) is incorporated into these Terms of Use if a Product is configured to store Backedup Data in the European Economic Area.

4. RESTRICTIONS ON PRODUCT ACCESS AND USE

4.1. You may not nor may You permit, facilitate or authorize any third party to: (i) use any Product other than as permitted under these Terms of Use; (ii) remove or destroy any copyright or other proprietary markings for a Product or its Specifications; (iii) access or use any Product in any manner that could damage, disable, or overburden such Product, any networks or security systems; (iv) reverse engineer, decompile, disassemble, or otherwise attempt to extract source code from any Product, except to the extent this restriction is expressly prohibited by Applicable Law; (v) copy, modify or create derivative works of any Product; (vi) alter any disabling mechanism which may reside in a Product; (vii) assign, sublicense, rent, timeshare, loan, pledge, lease, or otherwise transfer the Products, or

directly or indirectly permit any unauthorized party to use or copy the Product; (viii) conduct or disclose the results of any form of benchmarking of a Product; (ix) extract any software for use in other applications; or (x) access a Product to (1) build a competitive product or service; (2) copy any, or build a product using, ideas, features or graphics sourced from the Product.

4.2. Use of the Products and Backedup Data must at all times be in compliance with all Applicable Laws. The Products and Backedup Data may not (i) be used to send any unsolicited commercial email or invitation in violation of Applicable Law; (ii) be used to process or disclose any unencrypted personally identifiable data (such as payment card numbers or social security numbers) in violation of any Applicable Law; (iii) be deceptive, fraudulent, harmful, abusive, harassing, threatening, indecent, obscene, racially, ethnically, or otherwise objectionable, hateful, tortious, libelous, defamatory, slanderous, or otherwise in violation of Applicable Law; (iv) infringe or misappropriate any Intellectual Property Rights or other rights of any third party; (v) be used to transmit any viruses or similar malicious software that may damage the operation of any computer, network, system or the Products; or (vii) violate the terms of use of the Backedup Site or any other agreement.

4.3. If we reasonably believe any Product use or Backedup Data: (i) violates any of the restrictions in the foregoing sections; (ii) may disrupt or threaten the operation or security of any computer, network, system or the Products; or (iii) may otherwise subject us to liability, we reserve the right to refuse or disable access to the Product or Backedup Data. We may also take such action pursuant to the Digital Millennium Copyright Act and/or as required to comply with Applicable Law. We will use reasonable efforts to

contact an Administrator prior to taking such action. However, we may restrict access to any Product or Backedup Data without prior notice as necessary to comply with Applicable Law or to protect against damage or security threats. If we take any such action without prior notice, we will later provide notice to an Administrator, unless prohibited by Applicable Law.

5. BACKEDUP DATA

5.1. Customer represents and warrants it has all rights (including from Backedup Sites and Users) as necessary to permit access, copying and use of Backedup Data with the Product. Customer is responsible for the accuracy, quality and legality of the Backedup Data, and the means by which Customer acquired rights to the Backedup Data for use with the Product. For purposes of this Agreement, Backedup Data is the property of Customer, not any User, and we are under no obligation to inform Users that Customer controls such information with us.

5.2. Customer, for itself and its Users, authorizes us to access and interact with the Backedup Site to retrieve Backedup Data and grants us a limited, royalty-free, non-exclusive, assignable license to use, copy, reformat, display, disclose and distribute the Backedup Data solely for providing the Product as described in these Terms of Use, including as authorized by an Administrator for support, and as described in our Privacy Policy.

5.3. Customer retains all its right, title and interest in and to the Backedup Data, and we neither own nor acquire rights in the Backedup Data other than the rights expressly granted under this Agreement.

5.4. We will use physical, technical and administrative safeguards, consistent with commercially reasonable industry practices, designed to

secure the confidentiality, integrity and availability of Backedup Data under our control against accidental or unauthorized loss, access or disclosure. We use the same safeguards for all Backedup Data, regardless of its nature or contents. We are a processor and not a controller of all Backedup Data.

5.5. Customer must maintain authorization and access to the Backedup Sites so that we are regularly able to access Backedup Data for purposes of providing the Product. Customer agrees and acknowledges that Backedup Data may not be available or restorable a) if Customer changes such access authority or otherwise restricts our access to such Backedup Site; b) due to unavailability of the Backedup Site; c) with respect to modifications to the Backedup Data that are not captured in the backup frequency or retention schedule for the Product.

5.6. Unless otherwise agreed to in writing in a separate Business Associate Agreement, You agree that Backedup Data will not contain Protected Health Information and Your use of a Product will not otherwise make us a Business Associate of Customer or any Administrator. You must request that we enter into a valid Business Associate Agreement with the appropriate party and ensure such agreement is in place prior to the transfer of any Backedup Data that requires a Business Associate Agreement. The terms "Protected Health Information" "Business Associate" and "Business Associate Agreement" will have the same meanings as set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act), and such regulations as may be further amended from time to time (collectively, the HIPAA Standards).

6. USE OF OTHER INFORMATION

6.1. If You provide us with comments or other feedback regarding the Products or our business (collectively “Feedback”), directly or through any third party, You do so without any expectation of compensation and hereby grant us a worldwide, irrevocable, perpetual, royalty-free right and license to use the Feedback to improve the Products and for any other purpose. Feedback is strictly voluntary, and we are not required to hold it in confidence.

6.2. Notwithstanding anything else in these Terms of Use or otherwise, we may evaluate and process use of Products and Backedup Data in an aggregate and anonymous manner and compile related statistical and performance information (“Aggregate Data”). We may use and share such Aggregate Data to improve the Products, develop new products, analyze usage, and generally for any purpose related to our business. We retain all Intellectual Property Rights in Aggregate Data. For clarity, Aggregate Data does not include personally identifiable information or information that can identify any individual Customer or natural person.

6.3. Operational data concerning use of the Products (“Log Data”), that servers automatically record relating to the access and use of the Products, IP address, authentication tokens, machine identification, access logs, and settings are used by us to provide the Products and operate our business and you agree that we may use such Log Data for such purposes.

7. FEES AND PAYMENTS FOR DIRECT CUSTOMERS

7.1. This Section on Fees and Payments apply only when Customer orders a Product directly from us. Where Customer orders a Product through an

authorized reseller or other third party, Customer will pay all fees for the Product to such party according to the terms and at the prices agreed to between Customer and such third party.

7.2. When You order a Product, the terms of this Agreement will govern, and not any other terms such as those pre-printed on Your purchase order. You may place an Order directly on line or by confirming a phone, electronic or written quote, Order or invoice we place or enter on Your behalf.

7.3. Unless quoted separately by us in writing, current prices are set forth in an Online Portal. We reserve the right to change our prices. Our standard payment terms, described in an Online Portal, apply unless we expressly authorize different terms in writing.

7.4. You agree to pay all applicable charges for the Products ordered by you, including prepaid charges, monthly recurring charges, and any additional usage based charges. Fees and payments will be calculated by us based solely on records maintained by us. You must notify us of any payment dispute in writing within fifteen (15) days of receipt of a disputed invoice. Prices do not include taxes, duties, and fees (such as shipping and handling) unless otherwise quoted. You will pay and be solely liable for all taxes including sales, use, excise and any other taxes, duties or charges with respect to the Products, but excluding taxes based on our net income.

7.5. All new orders for physical Products will be shipped from us freight prepaid and billed to You; title and risk of loss to such physical Products will pass to You upon shipment to the destination designated in Your order or to any customs officials or border authority.

7.6. You must provide us with complete and accurate billing and contact information including Your complete legal name, street address, e-mail address and the name and telephone number of an authorized billing contact. You agree to update this information within three (3) days of any change. You must provide an approved payment method ("Payment Method") with each Order. By providing us with a Payment Method, You authorize us to automatically charge that Payment Method, or any updated Payment Method provided by You, for all charges and fees incurred in connection with the Product You order. We reserve the right to change our approved Payment Methods at any time and will use reasonable commercial efforts to alert You to any such changes.

7.7. All amounts payable by You will be made without setoff, deduction or withholding. We may charge interest at the rate of 1.5% per month (or the highest rate permitted by law) on late payments. If we are unable to collect any amount owed, we may take any other steps deemed necessary to collect such fees, and You will be responsible for all our incurred costs such as collection fees, court costs and attorneys' fees. Furthermore, in the event of non-payment, following notice of such non-payment, we may suspend or terminate access to and use of a Product until payment is made in full.

8. YOUR RESPONSIBILITY FOR ACCESS TO YOUR PRODUCT ACCOUNT

8.1. You are responsible for the security of all Your access credentials to the Product, including any action You permit any person or entity to take related to the Product and Backedup Data using your access credentials. You are responsible for the proper configuration and maintenance of

safeguards as they relate to access to and use of the Product and Backedup Data, including but not limited to individual Administrator and User permissions, local Device access, network connectivity and internet connectivity.

8.2. You agree to notify us as soon as practicable of any unauthorized use of any access credentials, password or account or any other known or suspected breach of security.

9. SUPPORT

9.1. We will provide reasonable support for the Products in accordance with our current support Policies. An Administrator authorized by Customer is responsible for providing first level support for each Product. By requesting support services, Customer authorizes us to access the Product and/or the Backedup Data for the purpose of providing the requested Product support. We may rely on the instructions and authorizations given to us by any Administrator with access to a Product, and we will have no obligation to inform any other Administrator of the Product of the same.

10. UPDATES AND TESTING

10.1. You agree that we may, and You hereby authorize us, from time to time, to interact remotely with any deployed Product in order to test, troubleshoot, or update such Product. During maintenance windows the Product may not be accessible; we will make reasonable efforts to notify You of such maintenance windows.

11. CONFIDENTIAL INFORMATION

11.1. Both You and we agree to employ reasonable safeguards to (i) maintain the confidentiality of each other's Confidential Information using the same care to prevent disclosure as each of us employs to avoid disclosure of our own information of a similar nature, but in no event less than a reasonable standard of care; (ii) limit access to Confidential Information to those persons or entities involved in providing or supporting the Products or otherwise in complying with these Terms of Use, its affiliates, its financial or legal advisors, all of whom have a legal duty to protect the Confidential Information.

11.2. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party, (ii) was known to the receiving party prior to its disclosure by the disclosing Party without breach of any obligation owed to the disclosing party, (iii) is received from a third party without breach of any obligation owed to the disclosing party, (iv) was independently developed by the receiving party; (v) is approved for release or disclosure by the disclosing party without restriction; or (vi) is Feedback, Aggregate Data, Log Data or Backedup Data.

11.3. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with Applicable Law, provided that the party required to make any such disclosure, where permitted by Applicable Law in the reasonable judgment of that party's counsel, will first have given written notice to the other party in order to allow the disclosing party to seek, at its sole cost and expense, a protective order or other remedy to limit such disclosure.

11.4. Each party acknowledges that any breach of any provision of this Section on Treatment of Confidential Information by the receiving party may cause immediate and irreparable injury to the disclosing party, and in the event of such breach, the injured party will be entitled to seek and obtain injunctive relief to the extent provided by a court of applicable jurisdiction, without bond or other security, and to any and all other remedies available at law or in equity.

12. WARRANTIES AND DISCLAIMERS

12.1. Each of us represents and warrants that it has validly entered into this Agreement; has the legal power to do so; and (iii) by entering into this Agreement it is not in violation of any previous agreement or obligation between it and any third party.

12.2. During an applicable Subscription Term, we will provide the Product using a commercially reasonable level of skill and care in material accordance with the applicable Specifications. Your exclusive remedy in the event that we do not do so is to terminate this Agreement or any Order for cause as specified in section 17b.

EXCEPT FOR THE LIMITED WARRANTIES HEREIN, THE PRODUCTS ARE PROVIDED AS IS AND WITH ALL FAULTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA SECURITY,

OR WARRANTIES ARISING OUT OF ANY COURSE OF DEALING,
COURSE OF PERFORMANCE OR USAGE OF TRADE.

WE MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT ANY
PRODUCT'S COMPLIANCE WITH LAWS AND REGULATIONS
SPECIFICALLY APPLICABLE TO ANY CUSTOMER OR INDUSTRY AND
DISCLAIM ALL LIABILITY ASSOCIATED THEREWITH.

WE ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY
FAILURES, OR OTHER DAMAGE RESULTING FROM RISKS INHERENT
IN THE USE OF THE INTERNET AND ELECTRONIC
COMMUNICATIONS.

WE DISCLAIM ANY DUTIES OF A BAILEE, AND YOU HEREBY WAIVE
ALL RIGHTS AND REMEDIES OF A BAILOR (ARISING UNDER
COMMON LAW OR STATUTE), RELATED TO OR ARISING OUT OF
ANY POSSESSION, STORAGE, OR TRANSMISSION OF DATA BY US.
YOU ACKNOWLEDGE THAT NO PASSWORD-PROTECTED SYSTEM
OF DATA STORAGE CAN BE MADE ENTIRELY IMPENETRABLE AND
AGREE THAT THE PRODUCTS AND BACKEDUP DATA ARE NOT
GUARANTEED AGAINST ALL SECURITY THREATS OR OTHER
VULNERABILITIES.

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

13. LIMITATION OF LIABILITY

13.1. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR COSTS, REGARDLESS OF THE NATURE OF THE CLAIM, ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCTS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE). IN NO EVENT WILL WE BE LIABLE FOR THE PROCUREMENT OF SUBSTITUTE SERVICES OR PRODUCTS.

13.2. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, OUR ENTIRE CUMULATIVE LIABILITY FOR ALL CLAIMS AND DAMAGES (WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT OR STRICT LIABILITY) WILL BE LIMITED TO DIRECT DAMAGES ONLY THAT DO NOT EXCEED AN AMOUNT EQUAL TO THE FEES WE RECEIVE FOR THE INDIVIDUAL APPLICABLE PRODUCT IN THE 12 FULL CALENDAR MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE EVENT INVOLVING THAT PRODUCT GIVING RISE TO THE CLAIM OCCURRED.

13.3. The disclaimers, exclusions and limitations of liability set forth in Sections 12 and 13 form an essential basis of this Agreement and have been relied on by both You and us, and absent such disclaimers, and limitations of liability, these Terms of Use and the fees applicable to the Products would be substantially different.

14. INDEMNIFICATION

14.1. We agree to defend You from third party claims that a Product in the form supplied to You under these Terms of Use infringes or misappropriates a third party's patent, copyright or trademark rights and we will indemnify and hold You harmless from all damages, costs, and similar liabilities ordered by a court or agreed upon by us in settlement in connection with any such claim. Our indemnification obligations will not apply to (i) claims of infringement to the extent based on Your combination of the Product with other products, services software, data or marks if the infringement could have been avoided by the use of such Product not in such combination; (ii) any modifications to the Product not made by us; (iii) any damages incurred as a result of Your failure to use any update to the Product we provide; or (iv) use of a Product in a manner that does not conform to its Specifications (these exceptions (i) through (iv) collectively will be referred to as "IP Exclusions"). If we determine that a Product is or may become subject to an infringement claim, we may, at our option: (1) procure for You the right to continue to use the Product; or (2) replace or modify the Product so it becomes non-infringing. If we determine that neither of these options is commercially practicable, we may terminate Your use of the Product and will issue a refund of the fees paid (not including usage fees for services already provided) to acquire the initial use of the allegedly infringing Product less applicable reasonable depreciation. This Section represents Your sole and exclusive remedy and our sole and exclusive liability for any infringement claims based on the Products.

14.2. You agree to defend us, our suppliers and affiliates, and the officers, directors, employees and representatives of each of them (each an "Indemnified Party"), from all damages and costs incurred as a result of a third party claim and You will indemnify and hold any and all "Indemnified Parties harmless from all damages, costs, and similar liabilities ordered by

a court or agreed upon by You in settlement in connection with any such claim, to the extent the claim arises out of (a) Your breach of these Terms of Use, including Your failure to comply with Applicable Law; or (b) if You are a third party Administrator, Your failure to cause each Customer to agree to the applicable Product Terms of Use and/or Customer Terms or Your actions in excess of the authority granted to You by any Customer.

14.3. Any indemnification obligations set forth in this Agreement will be subject to the following conditions: (a) the party seeking indemnification will notify the indemnifying party in writing promptly upon learning of any claim for which indemnification is sought; (b) the indemnifying party will have control of the defense or settlement; and (c) the indemnified Party will reasonably cooperate with the defense, at the indemnifying Party's expense.

15. EXPORT CONTROL AND GOVERNMENT USES

15.1. You represent and warrant that Your use of the Products and the Backedup Data will comply with all export laws, restrictions, national security controls, and regulations of the United States or other applicable authority. You will not export or re-export or allow the export or re-export of the Products (or Backedup Data through use of the Products) in violation of any such export laws, restrictions, controls or regulations.

15.2. If Products are to be used in the performance of a government contract or subcontract, no government requirements or regulations will be binding upon us unless specifically agreed to by us in writing. If Customer is a U.S. Government entity or person, the Product is being provided as a "Commercial Item" as that term is defined in the U.S. Code of Federal Regulations (see 48 C.F.R. § 2.101), and the rights granted in the Product

to such Content Owners are the same as the rights granted to all others under these Terms of Use.

16. ARBITRATION; CLASS ACTION WAIVER

16.1. All claims and disputes arising out of this Agreement or the use of any Product, except for those set forth below, that can't be settled informally between us will be settled by binding arbitration in accordance with the rules then in effect of the American Arbitration Association ("AAA").

Arbitration proceedings must be initiated within the statute of limitations and within any deadlines imposed under AAA rules for the pertinent claim. Any settlement offer made by either party may not be disclosed to the arbitrator until after the arbitrator's determination of any award. Judgment upon the award rendered by way of such arbitration may be entered in any court having jurisdiction thereof. Costs of arbitration (including reasonable attorneys' fees) will be made a part of the arbitrator's award. The arbitration will take place in Fairfield County, Connecticut. All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, will be strictly confidential.

16.2. Notwithstanding the foregoing, any claims involving the following are not subject to mandatory arbitration: (i) alleged infringement or misappropriation of Intellectual Property Rights; (ii) any claims involving a party's right to indemnification under this Agreement; or any claim for temporary or permanent injunctive relief.

16.3. In any circumstances where the parties may litigate in court, the parties hereby waive any right to a trial by jury and hereby submit to the personal jurisdiction of the courts set forth in section 18.

16.4. All disputes arising out of or related to this Agreement or any Product must be brought on an individual basis, and You hereby waive Your right to, and agree that You will not, bring (or join) a claim as a plaintiff or a class member in a class, consolidated, or representative arbitration, litigation or other proceeding.

17. TERM AND TERMINATION

17.1. Term. A Subscription Term will commence on the date specified in the Order and will continue for the initial term specified in the Order. If no Subscription Term is specified, the standard Subscription Term described in our current Policies will apply. Unless otherwise specified, each Subscription Term will automatically renew for a Subscription Term of equal length unless either party provides written notice of its desire to terminate as specified in our current Policies. These Terms of Use will continue until all Subscription Terms have expired or been terminated.

17.2. Termination for Breach. Either party may terminate this Agreement or an individual Order for cause upon 30 days' notice of a material breach of any of its duties, obligations or responsibilities under this Agreement, provided that the breaching party has failed to cure such breach (or provide an acceptable plan for curing such breach) within the thirty (30) day notice period.

17.3. Access to Backedup Sites. If a Backedup Site amends its API guidelines in such a way that materially affects our ability to access the Backedup Site to provide the Product in accordance with the Specifications, and if we are unable to perform substantially the same functionality, either party may terminate the applicable Order by providing to the other thirty (30) days' written notice. We will refund any unused

prepaid fees for the remainder of the applicable Subscription Term as your sole and exclusive remedy.

17.4. Effect of Termination. Upon any termination of a Subscription Term, Customer will immediately discontinue all use of the Product. For up to sixty (60) days after the effective date of termination, we will, upon written request allow Customer to export or download a copy of its Backedup Data as provided in the Specifications. After such period, we have no obligation to maintain or provide any Backedup Data and may thereafter delete or destroy all copies of the Backedup Data, unless legally prohibited.

17.5. We reserve the right at any time to modify these Terms of Use and updated Terms of Use will be posted within the applicable 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 Policies, Specifications, and other support materials. All such changes are effective immediately upon posting to the Online Portal and You should review such materials on a regular basis so that You will be apprised of any changes.

18. MISCELLANEOUS

18.1. Construction. The section headings in these Terms of Use are for convenience only and will not be deemed to be substantive; any rule of

construction that ambiguities are to be resolved against the drafting party will not be applied in the interpretation of these Terms of Use.

18.2. Governing Law. This Agreement, if with Datto, Inc., will be governed, by Connecticut law, without reference to conflicts of law principles. The parties agree that exclusive jurisdiction for any permitted actions connected with this Agreement will be in the Superior Courts of Fairfield County, Connecticut or the United States District Court for the District of Connecticut. This Agreement, if not with Datto, Inc., will be governed in accordance with the laws of the jurisdiction where the applicable Datto subsidiary is located and nothing in this Agreement will be deemed to exclude or limit the liability of either party which cannot be limited or excluded by such applicable law. This Agreement will not be governed by the U.N. Convention on Contracts for the International Sale of Goods.

18.3. Independent Contractors. Nothing contained herein will be construed or implied to create an agency, partnership or employer and employee relationship between the Parties.

18.4. Enforceability. If any provisions herein are deemed invalid, illegal, or unenforceable, the validity, legality and enforcement of the remaining provisions will not be affected or impaired.

18.5. Electronic Communications. You consent to receive communications from us in electronic form and agree that this Agreement and all notices, disclosures, and other communications that we provide to You electronically satisfy any legal requirement as if in writing.

18.6. Assignment. You may not assign this Agreement (including with respect to any individual Product or Backedup Data), without our express

written consent. Any assignment or transfer in violation of the foregoing will be null and void. We reserve the right to assign this Agreement to any (i) affiliate; or (ii) any entity in connection with the sale, combination, or transfer of all or substantially all of the assets or capital stock or from any other corporate form of reorganization by or of us. Subject to all of the terms and conditions hereof, this Agreement is binding upon the parties, their permitted successors and assigns.

18.7. Force Majeure. Any delay in or failure of performance of either of us will not constitute a default under these Terms of Use or give rise to any claim for damages to the extent such delay or failure of performance is caused by a force majeure event, including acts of god, fire, flood, explosion, war, strikes, loss of any necessary power or communications sources or connections, failures in or affecting the Internet or associated intranets, any computer virus or other malicious code released by a third party, the terrorist, illegal or malicious acts of a third party, changes or modifications in international, national, or industry standards or protocols, and the existence of or changes in laws prohibiting or imposing criminal penalties or civil liability for performance hereunder; provided that, any such delay does not extend beyond 30 calendar days.

18.8. No Waiver. The failure to enforce or the waiver by either of us of one default or breach by the other will not be considered to be a waiver of any subsequent default or breach.

18.9. Survival. The applicable sections titled Fees and Payment, Use of Other Information, Confidential Information, Warranties and Disclaimer, Limitations of Liability, Indemnification, Term and Termination, Arbitration

and Class Action Waiver, Miscellaneous and Definitions will survive the termination or expiration of this Agreement.

18.10. No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

18.11. English Language. These Terms of Use have been drafted in the English language and such version will be controlling in all respects and any non-English version is solely for accommodation purposes.

18.12. Notices. All notices required or permitted hereunder will be in writing and delivered by nationally recognized overnight courier (e.g., UPS, FedEx) and will be deemed effective upon receipt as evidenced by courier delivery confirmation. Notices to You will be sent to You at the address specified in Your Order or in an Online Portal. Notices to us must be sent to 101 Merritt 7, Norwalk, CT 0685 Attn: General Counsel. In addition, we may send any notice required or permitted hereunder to You at the email address specified in an Online Portal and such notice will be deemed effective upon our receipt of email delivery notification.

18.13. Entire Agreement. These Term of Use, applicable Order and applicable Policies constitute the entire understanding of the parties with respect to the subject matter hereof and supersede all prior and contemporaneous written and oral agreements with respect to the subject matter. No modification of this Agreement will be binding on us unless it is in writing and signed by us.

18.14. Publicity. You agree that we may publicly refer to Customer on our website and sales presentations, as a customer of ours and may use Customer's logo for such purposes.

19. DEFINITIONS

19.1. "Administrator" means one or more persons or entities authorized by Customer to manage or use the Product on Customer's behalf, including access to and control of Backedup Data. A Product may have multiple Administrators and we expressly may rely on the authorization and instructions of any Product Administrator, until we receive written instructions to the contrary.

19.2. "Agreement" means an Order for a Product together with and subject to these Terms of Use.

19.3. "Applicable Law" means any applicable law, rule, regulation, directive, code, order or other requirement in any jurisdiction contemplated by these Terms of Use.

19.4. "Backedup Data" means the data and content that Customer designates for copying, backup and use with a Product.

19.5. "Backedup Site" means a third party application or service with which the Product interacts, upon Customer's authorization, to obtain copies of the Backedup Data.

19.6. "Confidential Information" means all operational written or oral information, disclosed by either party to the other that has been identified by the disclosing party as confidential or that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as

confidential, but not including Feedback, Aggregate Data, Log Data or Backedup Data.

19.7. “Customer” is the entity that owns the Backedup Site account. References to “Customer” shall in the applicable context also refer to any Administrator acting on Customer’s behalf.

19.8. “Device” means any hardware-based component of a Product offering.

19.9. "Enhancement" means any upgrade, update or modification to a Product. All Enhancements will be subject to these Terms of Use.

19.10. "Intellectual Property Rights" means all intellectual property rights, however arising and in whatever media, whether or not registered, including patents, copyrights, trademarks, service marks, trade names, design rights, database rights, domain names, trade secrets or other proprietary rights and any applications for the protection or registration of such rights and all renewals and extensions thereof throughout the world.

19.11. “Online Portal” means a web-based application or interface that contains information related to the Product, including the ability to order, pay for, manage, monitor, support and/or use the Product.

19.12. “Order” means an order for a Product that specifies such things as the Backedup Site, data storage allotment and/or number of Users. An Order may be created at the time of Product setup, by separate written or electronic document or by an Administrator or reseller on behalf of Customer.

19.13. "Product" means any SaaS Protection product provided through the use of Software, web-based Services, or Devices, including all Enhancements to Products, all subject to these Terms of Use.

19.14. "Policies" means the terms and conditions applicable to order, configure, access, use, and support of the Products. Policies are published on an Online Portal.

19.15. "Specifications" means any Policies, documentation, user manuals or other materials relating to the Products. Specifications as may be published on an Online Portal.

19.16. "Subscription Term" means the initial and any renewal term during which Customer agrees to subscribe to a Product, as specified in an Order and these Terms of Use and Policies.

19.17. "Terms of Use" means these terms and conditions, as amended from time to time, that together with an Order form a binding agreement between the Parties regarding use of the Product.

19.18. "User" means an individual affiliated with Customer who Customer authorizes to use or have use of the Product. For purposes of this Agreement, the Customer will be the owner of the Backedup Data and Customer is responsible for the acts and omissions of its Users.

19.19. "You" means, in the applicable context, the person or entity agreeing to these Terms of Use, either a Customer or an authorized Administrator acting on behalf of a Customer.

Last updated May 2018