

# Datto Business Continuity and Disaster Recovery (BCDR) Product Terms of Use

Updated as of September 25, 2023

These BCDR Product and Services Terms of Use ("**BCDR Terms**") govern your use of Datto's BCDR Products, including the Datto SIRIS, Datto ALTO, Datto NAS, Datto Endpoint Backup for PCs, Datto Backup for Microsoft Azure, Datto Workplace and Datto File Protection (collectively, "**BCDR Products**" or "**Products**"). By purchasing or using Datto's BCDR Products, you agree to be bound by these BCDR Terms, which are incorporated into the [Kaseya Master Agreement](#) (the "**Agreement**") between you, Datto and Datto's affiliated companies including its parent company Kaseya Holdings, Inc. and Kaseya's affiliates ("**Datto**"). Certain Products have additional terms specific to those Products, which can be found at the end of these Terms of Use ("**Product Specific Terms**") or in the Product Specifications. For clarity, the Products includes the Kaseya Services related to the Products. In the event of any conflict between the Agreement and these Terms, these Terms will take precedence with respect to the Products. In the event of any conflict between Product Specific Terms and the remainder of these Terms, the Product Specific Terms will take precedence with respect to that Product.

Capitalized terms not defined in these Terms have the meaning given to them in the Datto Partner Agreement. For clarity, BCDR Products includes the Datto Services related to the Products.

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

## 1. USE OF BCDR PRODUCTS

- a. **Right to Use.** Subject to your compliance with these BCDR Terms, the 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 agent Software, you hereby agree to the terms of all applicable agent Software licenses.
- b. **Third Party Technology/License Terms.** - Certain Products may involve or allow the use of third party technology, which is subject to such third parties' terms. These terms are located under the heading "[BCDR Third Party 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.
- c. **End User Terms.** If you use or manage a Product on behalf of another entity (a "**Client**"), if you resell a Product to another entity, or if you authorize a Client to directly use or support a Product, you must ensure that the Client or customer 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.
- d. Any additional Licenses, add-on features or other usage added to a Service Subscription after initial registration either by you, a Client or any authorized administrator of the Product, either manually or through any enabled automatic add features, will be automatically provisioned

and will be deemed to modify the Order. You acknowledge that you are responsible for any features you enable for each Service Subscription, or that you allow your Client to enable, either upon initial registration or at any time thereafter, including but not limited to, automatic add and License cap features.

e. Fair Use. Datto BCDR Products provide backup, recovery and business continuity functions in an emergency setting, and are not for extended use as a production environment. Accordingly, Datto reserves the right to disable virtualizations that extend beyond the term of a documented business continuity event or a limited testing period. Further, all access and use of BCDR Products are subject to the Fair Use policies set forth in the Agreement, which prohibit use that:

- Results in excessive consumption of Datto resources;
- Harms Datto services, networks or other resources; and/or
- Circumvents the intended use of the Product.

## **2. SERVICE SUBSCRIPTIONS AND SERVICE PLANS**

a. Service Subscription Required. All rights to use the Products are conditioned upon enrollment in a valid Service Subscription for which we receive timely payment. A Service Subscription includes a Service Plan, Term and License/usage measure.

b. Service Plan. All Service Plans include applicable Licenses to the technology needed to perform the core functions for that Service Plan and access to Technical Support. Available Service Plans vary depending on the Product and are described herein or in the current Product Specifications.

c. Registration. You are required to register each Product with us in order to use the Products. 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.

d. Service Subscription Term. The term of a Service Subscription is indicated on the applicable Order and is for a defined number of consecutive months (a Committed Service Term). Service Subscription Term options vary by Product and not all options are available for all Products. Billing for a Service Subscription begins on the Activation Date, or "Effective Date" as set forth on the applicable accepted Quote.

e. Automatic Renewals and Cancellation of Services. Service Subscription Terms for BCDR Products will automatically renew for subsequent Committed Service Terms of 12 months each unless you provide us with timely notice of cancellation using the tools or methods described in the Product Specifications. However, for purchases of Datto Siris, Datto Alto and Datto NAS made prior to September 1, 2022, an expiring Committed Service Term will automatically renew on a month-to-month basis. Service Subscription will continue until affirmatively cancelled by you and incur Service Subscription fees, even if has no remaining enrolled Protected Systems, or

is otherwise no longer taking backups. You may cancel automatic renewal by providing written notice to Datto at least thirty (30) days prior to the end of the current Committed Service Term.

### **3. USE OF DATTO BACKUP FOR MICROSOFT AZURE**

a. Description of Product and Use. Datto Backup for Microsoft Azure protects Content associated with one or more applications running on Microsoft Azure virtual machines controlled by you or your Client (each a “**Protected System**”). Protected System(s) are designated by you at the time of registration of the Datto Backup for Microsoft Azure Service Subscription. You or any other entity on behalf of which you manage or use the Product (a “**Client**”), and not Datto, are responsible for each Protected System environment, including its access, security, rights, structure, configuration and all charges applicable to use of the Protected System.

b. Special Subscription Considerations for Datto Backup for Microsoft Azure. All Protected Systems in a Datto Backup for Microsoft Azure Service Subscription must have the same Service Term and Service Plan, and must be located in the same Azure region. You are responsible for the proper configuration of Protected Systems.

c. Access to Protected Systems. You must maintain authorization and access to the Protected Systems so that we are regularly able to access it for purposes of providing the Product. You acknowledge and agree that Content may not be available or restorable (i) if our access authority to a Protected System is changed or otherwise restricted (including restrictions due to changes in the Protected System provider’s API, permissions or access guidelines); (ii) due to unavailability of the Protected System; and/or (iii) with respect to modifications to the Content that are not captured in the backup frequency or retention schedule for the Service Plan chosen.

### **4. PAYMENTS**

a. Monthly Service Subscription Fees and Invoicing. The Service Subscription Fees are set forth in the applicable Order. Service Subscription fees are due and payable upon invoice receipt 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, additional charges may be due covering the partial month period from the Activation Date through the end of that month. A Service Subscription ends on the last day of a calendar month.

b. Committed Service Terms.

i. For calculation of Committed Service Terms, a Committed Service Term will commence on the first of the month following the start of the Service Subscription and will remain in effect for the defined number of consecutive months. If any Service Subscription includes an initial period with no charge (or reduced charge), the Committed Service Term will be extended automatically by the length of such period.

ii. 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.

c. Prepayment of Service Subscription Fees. You may prepay a Service Subscription for certain Products. In the event of termination of a prepaid Service Subscription, no refund for unused Service will be given unless otherwise agreed in writing.

## 5. ACCESS AND SECURITY

a. 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, accounts 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 network connectivity and internet connectivity.

b. Our Security Measures. We use physical, technical and administrative safeguards designed to secure the Products and 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.

## 6. BCDR RETENTION SCHEDULES AND TERMINATION

a. Local and Cloud Backups and Retention Schedules. Depending on the BCDR Product, Products may retain backups on a local device and/or in the Cloud. Data associated with Products enrolled in a Datto Cloud Service Plan will be retained as specified in the applicable Retention Schedule associated with the Datto Cloud Service Plan that you purchase for as long as the Product is under an active Service Subscription. Settings that control how data is retained on a local Product are set by you. It is your obligation to understand how retention works, including the pruning schedules that are associated with each Cloud Service Plan.

b. Examples of Cloud Service Plans. Datto Cloud Service Plans include the following, however, details of the different retention options are set forth in the BCDR Product Specifications and must be consulted to understand the manner in which backups are “rolled-up” from intra-dailies to, eventually, monthly backups, and are “pruned.”

<b>Plan</b>	<b>Description</b>
<b>1-Year Cloud Retention (also known as 1 Year Time Based Retention)</b>	Incremental data backups are retained for one year on a rolling basis, with the oldest backups deleted after on year. Automatic consolidation/roll-ups of incremental backup recovery points is applied on a rolling basis
<b>Infinite Cloud Retention</b>	Incremental data backups are retained for an indefinite period of time for as long as the subscription is current. Automatic consolidation/roll-ups of backup recovery points is applied on a rolling basis.

Plan	Description
<b>Capacity Based Storage (previously known as Total Cloud Retention)</b>	This option allows you to set your own retention schedule, subject to a pre-defined amount of Datto Cloud storage. Use in excess of the allotment is charged as an additional amount.

c. Retention of Data After Termination. If a Service Subscription terminates, Datto reserves the right to delete the backed up data in the Datto Cloud associated with your Product as set forth in the following table. 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.

#### **BCDR Product Type Retention Period After Termination**

<b>Datto Backup for Microsoft Azure</b>	30 days, provided that if the Protected System is removed from the Service Subscription, then there is no retention, and export must be done prior to removal.
<b>Datto Endpoint Backup for PCs</b>	No Retention. Export must be done prior to termination.
<b>All other Datto BCDR Products</b>	60 days

d. Round Trips and Reverse Round Trips. Datto RoundTrip service is used to expedite the replication of large data sets from a local Datto device to the Datto Cloud. Reverse RoundTrip service is fee-based and used to retrieve large data sets from the Datto Cloud. These services involve the use of physical storage devices supplied by Datto or you. You are responsible to pay the cost of the RoundTrip storage device if it is damaged or lost in your custody or during shipments, or if you fail to return it. RoundTrip and Reverse RoundTrip services are subject to Datto's procedures and terms, which can be found in the Specifications and Knowledgebase articles for these services, and may not be available for all Products.

e. Upgrades. Datto typically allows you to purchase a new device and return an existing device in the form of an Upgrade. If you are interested in an Upgrade, please contact your Datto sales representative for any available Upgrade paths for your device, and consult Datto's policies and Knowledgebase articles to learn more about Upgrade options. Should you proceed with an Upgrade, Datto's Upgrade procedures and terms must be followed.

f. Return of Hardware Not Purchased. If you have been provided hardware for use under a subscription model (i.e., the hardware was not listed as a separate line item on your invoice), you must return the hardware at the end of the subscription term. If you wish to renew your subscription, please speak to your salesperson about options to either continue using your current hardware during the new subscription term, or replacing it with new hardware. **It is your obligation to remove all data from hardware before returning it.** You may contact Support to start a return process when needed, and must follow datto's standard return guidelines. Should

you fail to return hardware when required, Datto reserves the right to charge you the purchase price of the hardware.

## 7. WARRANTY

a. Standard Limited Hardware Warranty for New BCDR Hardware. Newly purchased BCDR hardware is warranted against defects in materials and workmanship under normal use, handling and installation for a warranty period as stated in the table below, which starts on the date the associated device is shipped to you. For hardware that is in-warranty and found by Datto to be defective, Datto's warranty obligations 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. To be eligible for warranty service, a device must be enrolled in an active Service Subscription for which payment is current. Datto's warranty does not extend to or include Software included with the associated device. All warranty claims must be received by Datto within the applicable warranty period.

<b>Device Hardware Type</b>	<b>Standard Warranty Period</b>
<b>Datto SIRIS 3 or later; Datto NAS 3 of later;</b>	5 years
<b>Datto ALTO and all other Datto devices</b>	3 years

b. Exclusions from Warranty. Datto's hardware 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.

c. Warranty on Repair/Replacement Devices. A replacement 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.

d. Warranty Returns. You will be required to follow Datto's standard RMA guidelines on packaging and shipping when returning defective Product for replacement or repair. An RMA may be commenced by contacting Technical Support. **To avoid inadvertent data loss**, please note that we will not automatically cancel a Service Subscription on a hardware device that has been authorized for return. Instead, 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.

e. Limit on Warranty. 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.

## 8. PRODUCT SPECIFIC TERMS.

### a. Datto Workplace

i. How Workplace is Organized and Charged. Workplace Manager is a web portal that allows you to provision and manage Datto Workplace for your Clients. Datto Workplace Clients are organized into Teams. User Licenses, Server Licenses and storage are allocated to Teams. Actual usage is calculated by adding allocated Licenses and storage to active Teams in your Workplace Manager portal ("**Actual Usage**"). You will be billed monthly at the greater of Actual Usage or the number of Licenses designated in your Service Subscription for a Committed Service Term.

ii. Service Plans. Each Team is configured under an available Service Plan. Full details and features of available Service Plans are set forth in the Specifications and may include plans that are unlimited or metered. You are responsible for creating, managing and deleting Teams in your Workplace Manager account, using permissions and security levels as available. You, and not Datto, are responsible for supporting your Teams and Clients.

iii. End user Terms. End User Terms for Datto Workplace are made available at time of registration of the individual users.

b. Datto File Protection. File Protection Manager is a web portal that allows you to provision Datto File Protection for your Clients. All provisioning of Datto File Protection must be initiated with a Datto sales representative.

## 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.

## 1. 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.

## 2. DATTO'S RIGHTS AND RESPONSIBILITIES REGARDING CONTENT

a. 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.

b. 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.

c. 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.

d. 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.

e. 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.

## 3. ADMINISTRATOR

a. Datto's Relationship with Administrators. Datto will interact with the Administrator(s) you appoint to operate and manage use of the Product with your Content. 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. 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.

b. Your Relationship With Administrators. You are responsible for instructing and authorizing the Administrator with respect to use of the Product including backup settings, management, retention and deletion of Content, and transition of Product or Content to a different Administrator, and transition assistance and cooperation upon termination or expiration of any relationship between or among Administrator, you and/or Datto.

#### **4. YOUR DIRECT USE OF A PRODUCT**

If the Administrator authorizes you to access or use a Product directly, through the Product interface or through a portal account, you are responsible for all actions you take with respect to use of the Product including backup settings and management, retention and deletion of Content and Datto may rely on your instructions as an authorized administrator of the Product. Any support for the Product is provided to you by the Administrator and not directly by Datto.

#### **5. SECURITY**

a. Datto's Security Measures. Datto has implemented and maintains physical, technical and administrative measures designed to help secure Content under Datto's control against accidental or unlawful loss, access or disclosure. However, no password-protected system of data storage and retrieval can be made entirely impenetrable and you acknowledge and agree that despite the reasonable measures employed, the Products and Content are not guaranteed against all security threats or other vulnerabilities.

b. Administrator's Security Measures. You acknowledge and agree that the Administrator you authorize to manage use of the Product on your behalf has access to and manages your Content. You and/or the Administrator are responsible, and in no event will Datto be responsible, for any physical, administrative, or technical controls related to Products or Content not under the exclusive control of Datto, including but not limited to local Product access, passwords or other access credentials, LAN or internet connectivity. You and/or the Administrator are responsible for the proper configuration and maintenance of security measures and for determining the security measures appropriate for the Content, including local encryption of sensitive Content.

#### **6. INDEMNIFICATION**

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

#### **7. LIMITATIONS OF LIABILITY**

THE DATTO PRODUCT, INCLUDING ANY THIRD PARTY COMPONENTS OR TECHNOLOGY, ARE PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DATTO DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY, DATA SECURITY, QUIET ENJOYMENT, TITLE, AND/OR NON-INFRINGEMENT OR ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. DATTO DOES NOT WARRANT THAT THE PRODUCT WILL MEET ANY SPECIFIC REQUIREMENTS OR THAT THE OPERATION OF ANY PRODUCT WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

DATTO MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE PRODUCT'S COMPLIANCE WITH LAWS AND REGULATIONS SPECIFICALLY APPLICABLE TO ANY USER OR INDUSTRY AND DISCLAIMS ALL LIABILITY ASSOCIATED THEREWITH.

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

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### **SCHEDULE I to BCDR End User Terms - Applicable only to Products using StorageCraft Technology**

MSP SERVICES AGREEMENT MINIMUM CUSTOMER TERMS TERMS AND CONDITIONS REGARDING USE OF STORAGECRAFT SOFTWARE: This document concerns your use of StorageCraft Technology ("**StorageCraft**") software provide to you by

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

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**NO-FAULT TOLERANT.** THE LICENSED SOFTWARE CONTAINS TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE LICENSED SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

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