ACRONIS #CYBERFIT TECHNOLOGY PARTNER PROGRAM AGREEMENT

REVISION DATE: OCTOBER 30, 2022

THIS AGREEMENT FOR MEMBERSHIP IN THE ACRONIS #CYBERFIT TECHNOLOGY PARTNER PROGRAM ESTABLISHES A RELATIONSHIP BETWEEN ACRONIS AND YOU AS AN INDIVIDUAL OR REPRESENTATIVE OF A COMPANY.

THE PURPOSE OF THE PROGRAM IS TO OFFER THE ABILITY TO CUSTOMIZE ACRONIS PRODUCTS, OR TO PROVIDE A FRAMEWORK FOR JOINT TECHNOLOGY PROJECTS AND ASSOCIATED BUSINESS ENGAGEMENTS WITH ACRONIS.

WHILE PROGRAM MEMBERSHIP MAY OFFER YOU CERTAIN BENEFITS AT DIFFERENT PROGRAM LEVELS AND ACCORDING TO THE TERMS IN THIS AGREEMENT AND OUR PROGRAM GUIDE (available at https://developer.acronis.com/partner-program/files/Acronis_CyberFit_Technology_Partner_Program_Guide.pdf) , YOU ARE NOT REQUIRED TO ACCESS OR USE ANY OF THESE BENEFITS OR PROVIDE ANY BENEFITS IN RETURN. THIS INCLUDES, FOR EXAMPLE, BOTH TECHNICAL BENEFITS LIKE **ACCESS TO THE ACRONIS DEVELOPER NETWORK**, OR BUSINESS BENEFITS OFFERED AT THE CONNECTED PARTNER OR ACCELERATED ALLIANCE TIERS.

CHECKING THE BOX NEXT TO A LINK TO THESE PROGRAM TERMS AND CONDITIONS, OUR PROGRAM GUIDE, AND OUR PRIVACY POLICY AND THEN CLICKING "ACCEPT AND SIGN UP" CREATES A LEGALLY BINDING CONTRACT.

MOREOVER, BY ACCESSING OR OTHERWISE USING THE BENEFITS (DEFINED BELOW AND IN OUR PROGRAM GUIDE), YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS AND AS ACRONIS MAY UPDATE THEM FROM TIME TO TIME. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY CHOOSE TO NOT ACCESS OR USE THE BENEFITS, OR TO NOT CLICK TO "ACCEPT AND SIGN UP" FOR MEMBERSHIP.

1. DEFINITIONS

1.1. "*Acronis*" means:

A. If Member's primary address is anywhere else in the world - Acronis International GmbH, a limited liability company (Gesellschaft mit beschränkter Haftung) organized and existing under the laws of Switzerland with its registered office in Neuhausen am Rheinfall, with its domicile at Rheinweg 9, 8200 Schaffhausen, Switzerland, registered under company number CHE-113.666.835;

B. If Member's primary address is in Eastern Asia (including Taiwan), South-eastern Asia (including the British Indian Ocean Territory and excluding the Democratic People's Republic of Korea), Southern Asia (excluding Iran), or Oceania, as defined in the United Nations Standard Country or Area Codes for Statistical Use on January 23, 2020 – Acronis Asia Pte. Ltd., a Singapore company with a principal place of business located at 8 Temasek Boulevard, #30-01/02 Suntec Tower 3, Singapore 03988;

C. If Member's primary address is in the Federal Republic of Germany – Acronis Germany GmbH, a German company with its principal place of business located at Landsberger Str. 110, 80339 Munich, Germany; or

D. If Member's primary address is in the United States of America – Acronis, Inc., a Delaware corporation with a principal place of business located at 1 Van de Graaff Drive, Suite 301, Burlington, MA 01803 USA; or

E. If Member's primary address is in the United Kingdom – and Acronis Limited, a United Kingdom company with a principal place of business located at C/O Dixcart House, Addlestone Road Bourne Business Park Addlestone, Surry KT15 2LE.

1.2. "**Acronis Marks**" means the Marks belonging to Acronis or licensed by its suppliers or other licensors.

1.3. "*Acronis Materials*" means all tangible property that Member either (A) receives from Acronis as part of Benefits, or (B) creates or commissions to be created based on a license that Acronis provides to Member as part of Benefits, including documents and all copies thereof, marketing collateral, and hardware.

1.4. "*Acronis's Software*" means licensed software, in object code form only, and accompanying documentation, made commercially available by Acronis to its customers, including web-based software, software-as-a-service solutions, cloud storage associated with such software, as well as pre-release or beta versions of software.

1.5. "*Affiliates*" means any entity, individual, firm, or corporation, that is directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Member.

1.6. "*Agreement*" means the agreement between Acronis and Member resulting from Member's acceptance of these Terms.

1.7. "*Agreement Term*" means the period of time between the Effective Date and the termination or expiration of the Agreement.

1.8. "*Benefits*" mean the one or more benefits that the Program Guide provides on a Program Level basis, which may include access to Acronis's Software, Services, security, technical, sales and marketing information and resources, as well as training courses.

1.9. "*Confidential Information*" means certain commercially valuable, proprietary and confidential information with respect to a Party's business, including, information that may relate to the Party's financial information, condition, or affairs, financial projections, financial analysis, corporate organizational documents, business plans, forecasts, products, whether in distribution or under development, trade secrets, computer source code and object code, software and other product designs and specifications, methodologies, data, developments, ideas, improvements, product and marketing plans, customer and vendor lists, and other oral, visual, or written information that the Party designates as confidential or proprietary at the time of disclosure or that, under the circumstances surrounding disclosure, or by the nature of the information, would reasonably be understood by the other Party to be confidential or proprietary, including any of the foregoing that is Confidential Information of a Party's customers, vendors, partners, licensors or other third parties with respect to which that Party has an obligation of confidentiality. Except for Customer-Ready Assets, all Benefits are Acronis's Confidential Information. The term "Confidential Information" does not include information of one Party that (A) is disclosed in a printed or web publication available to the public, is otherwise in the public domain at the time of disclosure, or becomes publicly known through no wrongful act or omission on the part of the other Party, or (B) is obtained by the other Party lawfully from a third party who is not under an obligation of secrecy to the first Party and is not under any similar restrictions as to use. In addition to and not in derogation of the foregoing sentence, "Confidential Information" does not include Feedback.

1.10. "*Customer-Ready Assets*" means certain materials that Acronis clearly and explicitly labels as "Customer-Ready" and provides as part of Benefits.

1.11. "*Development Tools*" mean tools, including code samples, that Acronis provides as part of Benefits to facilitate Member's development of Integrations.

1.12. "*Effective Date*" means the date when Member first accepts these Terms.

1.13. "*Evaluation*" means Acronis's evaluation of Member's compliance with the Requirements for eligibility for certain Program levels or tiers, as described in the Program Guide.

1.14. "*Excluded License*" means any "open source" or other license that requires as a condition of use, modification and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be: (A) disclosed or distributed in source code form; (B) licensed for the purpose of making derivative works; or (C) redistributable at no charge.

1.15. "*Feedback*" means suggestions, ideas or other feedback that Member provides to Acronis regarding the Program, including by posting on any Acronis-operated internet forum.

1.16. "*Integration*" means a technology solution developed by Acronis or by a Member that works with member's or Acronis's products, or tools used within a lab, production or service-delivery environment.

1.17. "*Internal Users*" means all individuals who Member permits directly or indirectly (such as, without limitation, through Member's Affiliates pursuant to Section 4.1.D (Access Restrictions)), to use or otherwise access the Products that Acronis provides to Member as part of the Benefits.

1.18. "*Marks*" means registered or unregistered trademarks.

1.19. "*Member*" means the individual or entity that accepts the Terms in the manner that the preamble to these Terms describes.

1.20. "*Membership*" means the status of being eligible to receive Benefits from Acronis at a certain Program Level subject to these Terms, as Acronis may grant such status pursuant to Section 2.3 (Increasing Program Level).

1.21. "*Portal*" means the website located at https://developer.acronis.com/ or a successor site designated by Acronis in its sole discretion from time to time.

1.22. "*Products*" means Acronis's Software and Services.

1.23. "*Program*" means the Acronis #CyberFit Technology Partner Program, including all activities of Member under these Terms and all activities of Acronis related to these Terms.

1.24. "*Program Guide*" means the guide to the Program that Acronis makes available on the Portal, as Acronis may update it from time to time,.

1.25. "*Program Level*" means a group of Benefits corresponding to a unique set of Requirements, established in the Program Guide.

1.26. "*Optional Benefit*" means an optional Benefit that Acronis may offer to Member which is not listed as a Benefit at a particular Program Level, which may or may not include a fee.

1.27. "*Optional Benefit Fees*" means payments that may become due from Member to Acronis as consideration of Acronis extending certain optional Benefits or parts thereof to Member.

1.28. "*Requirements*" mean the prerequisites that the Program Guide sets for Membership in a particular Program Level or for access to a particular set of Benefits.

1.29. "*Sample Code License*" means the terms and conditions that Acronis provides together with sample code for the use of that sample code and explicitly identifies as applying to Member's use of such sample code. As Products never include sample code, the terms and conditions accompanying Acronis's products never constitute a Sample Code License.

1.30. "*Services*" means installation, configuration, support, and other services that Acronis makes commercially available to its customers in connection with Acronis's Software, Hardware, or any combination of the two.

1.31. "*Terms*" means the Acronis #CyberFit Technology Partner Program Terms and Conditions within this agreement and our Program Guide.

1.32. "*Third-Party Content*" means materials, including websites, that do not belong to Acronis as well as links to such materials.

1.33. "*User Data*" means any data that Member or any of its Internal Users processes, stores, or transmits using Acronis's Products or Services.

2. PROGRAM

2.1. Overview. Subject to the terms and conditions of Terms and Member's continued acceptance of these Terms, as Acronis may update them from time to time in its sole discretion pursuant to Section 12.1 (Program Changes), Acronis may make certain Benefits available to Member as part of their membership according to their program level and eligibility.

2.2. Program levels. The Program is constructed in three progressive levels of relationship with Acronis, including:

A. Registered Developer. Membership is automatically granted upon registration and offers the benefit of access to our Acronis Developer Network community and its developer resources.

B. Connected Partner. Requires an application to Acronis to become a Partner and certification by Acronis of the integrated solution. Eligibility, requirements and process for application and certification is detailed within our Program

Guide. Membership may be granted for certain partners, in case Acronis developed an integration with the selected Partner.

    C.   **Accelerated Alliance.** Companies may be granted this status upon invitation from Acronis. More details are provided within the Program Guide.

2.3. **Increasing Program Level**. A Member at the Registered Developer level may apply to Acronis for participation at the Connected Partner level. Eligibility and requirements for application are provided within our Program Guide.

2.4. **Requirements and Evaluation**. While program membership at the Registered Developer level is automatically granted, the Program Guide outlines the eligibility and requirements for additional levels of membership. However, Acronis reserve the right at any time to:

    A.   Grant or deny for any reason: any application for Membership; request for an increase in Program Level; or to reduce any Membership; or

    B.   Waive any part of any applicable Requirements in each individual instance. Such waiver will be without prejudice to Acronis's ability to enforce any such Requirements in the future.

2.5. **Communication**. As a Member of the program at all program levels, you may opt in or out of program communications (except for mandatory notices) and exercise the privacy rights in according to the local law where Member is located.

2.6. **Third Party Content**. Acronis may provide Third-Party Content on the Program Portal, as part of the Benefits, or otherwise as part of the Program. The third party who produced the Third-Party Content is solely responsible for that content. Third-Party Content is not under Acronis's control and Acronis is not responsible for Third-Party Content. Acronis does not support or endorse any Third-Party Content and provides Third-Party Content solely for Member's convenience.

3.   PAYMENT

3.1. **Payment**. In the event that Member is required to pay Optional Benefit Fees in connection with Acronis granting Member an Optional Benefit, Member will pay the Optional Benefit Fees to the bank account that Acronis designates.

4.   BENEFITS

4.1. **Access Restrictions**. Member will not disclose or provide access to the Benefits or any part thereof to anyone for any purpose except as these Terms in this agreement and in our Program Guide explicitly allow. Without limiting the generality of the foregoing:

    A.   **In the event that Member is an individual, only Member may access the Benefits;**

    B.   Only Member's employees and consultants, and those of its Affiliates approved by Acronis under <u>Section 4.1.D</u> (Access Restrictions) below may use the Benefits;

    C.   Members may not share Benefits with its business partners, however, Member may refer such business partners to Acronis for potential participation in the Program; and

    D.   Member may not share Benefits with its Affiliates, except with Acronis's prior written approval with respect to each individual Affiliate, which approval Acronis may withhold or withdraw at any time in its sole and absolute discretion. Regardless of the number of Affiliates with which Member may be sharing Benefits pursuant to this <u>Section 4.1.D</u> (Access Restrictions), Acronis will not increase the scope or quantity of the Benefits.

4.2. **Internal Users and Affiliates**. Member shall be liable to Acronis for: any breach of these Terms by any Internal User and the failure of any Affiliate to comply with these Terms. The Parties agree that a breach of these terms by an Internal User or Affiliate is a breach of these terms by Member.

4.3. **Customer-Ready Assets**. Some program levels that include marketing benefits may include Customer-Ready Assets which are not Confidential Information of Acronis. All other Benefits are Confidential Information of Acronis unless otherwise specified in our Program Guide. Member may not edit, modify, or otherwise change any of the Customer-Ready Assets without Acronis's approval in each individual instance.

**4.4.	Publicity.** While some Program levels may offer publicity as a benefit, neither Member or Acronis may issue public statements without consent of the other Party, at any Program level.

**4.5.	Branding**. Some Program level benefits may include an Acronis license for a limited use of Acronis's Marks. All such licenses will be non-exclusive.	Acronis publishes a list of frequently used Acronis's Marks at http://www.acronis.com/Acronis/ipnotice.html. Only Members with eligibility for branding benefits may use these benefits.

> **A.**	Member recognizes and agrees that its use of any of Acronis's Marks must be (I) in association with marketing and distributing an Integration or as Acronis may otherwise explicitly approve in writing, (II) in accordance with the trademark usage guidelines published at www.acronis.com/company/trademark.html, and (III) for the exclusive benefit of Acronis.

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

> **C.**	Acronis reserves the sole and exclusive right at its discretion to assert claims for infringement or misappropriation of its intellectual property rights to the Acronis Marks.

> **D.**	Acronis and its suppliers or licensors reserve all rights to their respective trademarks in all countries. Member will not have or obtain any right, title or interest in and to the Acronis Marks, which will remain the sole and exclusive property of Acronis, its affiliates or licensors.

> **E.**	Member will not take any action that would in any way infringe or interfere with Acronis's rights in the Acronis Marks. Member will not at any time adopt or register any name, internet domain, designation, or trademark that is the same as or confusingly or deceptively similar to any Acronis Mark, and Member hereby assigns to Acronis any of the foregoing if, in Acronis's reasonable determination, it is the same as or is confusingly or deceptively similar to any Acronis Mark. Member agrees not to contest Acronis's rights, or those of its suppliers or licensors, to or ownership of the Acronis Marks anywhere in the world.

> **F.**	The termination or suspension of Member's rights under the Agreement will automatically terminate Member's rights under this Section 4.5 (Branding).

**4.6.	Products**. Certain Benefits may include Products.

> **A.**	Products that Acronis provides as part of Benefits may be subject to additional terms and conditions, including end-user license agreements or professional services agreements. Without limiting the generality of the foregoing:

>> **I.**	All such Products will be provided strictly for Member's internal use related to ongoing training with respect to Products, developing Product familiarity, testing Integrations, and providing demonstrations to Member's customers.

>> **II.**	All access to such Products is for non-production purposes only.

> **B.**	Acronis may freely change the scope, quantity, or composition of any Products that Acronis may provide as part of the Benefits in its sole discretion without notice to Member.

> **C.**	Acronis may agree to provide Products to Member outside the scope of the Program. Such Products will be subject to separate terms and conditions, which will not affect these Terms or the Agreement. Similarly, neither these Terms nor the Agreement will affect such separate terms and conditions.

> **D.**	Member may receive the same Products or parts thereof both as Benefits and outside the scope of the Program. However, Acronis will keep the two sets of Products separate, and will not mix or combine any of the quotas, metrics,

or other quantitative or qualitative measurements or restrictions associated with such Products. In the event that there is any uncertainty as to whether Member's use of any Product or part thereof falls under Section 4.6.A or under Section 4.6.B above, Acronis will decide in its reasonable discretion. Its decision will be final and binding on both Parties.

E. Member will not reverse engineer, decompile, disassemble, adapt, or otherwise attempt to derive the source code, techniques, processes, algorithms, know-how, or other information from any portion of any Product (collectively, "***Reverse Engineering***"), or permit or induce the foregoing by others, in whole or in part.

F. With respect to the Products and other Confidential Information of Acronis, Member will not circumvent any software copyright management or security features, fail to display any copyright or other proprietary notices, or develop software or services that compete with Acronis using information obtained through Reverse Engineering or the Program and will not permit others to do so.

G. Subject to Section 0, Member will not modify, adapt, alter, translate, or create derivative works of any Product in any manner and will not assist or permit others to do so.

H. Member's rights granted under the Agreement do not include any license, right, power, or authority to subject any Product in whole or in part to any of the terms of an Excluded License.

4.7. Right to Suspend. Acronis may at any time suspend Member's access to the Benefits, in whole or in part, without liability to Member, subject to the terms and conditions of this Section 4.7 (Right to Suspend).

A. Acronis may suspend Member's access for any of the following reasons:

I. to comply with any contractual, statutory, and/or regulatory obligation, a request or order from law enforcement, or a competent judicial, governmental, supervisory or regulatory body;

II. if Acronis has reasonable grounds to suspect that Member, or any of its Internal Users have acted or will act fraudulently, unlawfully, in a criminal way, or in a way that could prejudice Acronis or Member;

III. in case Member or any of its Internal Users violate any contractual, legal, regulatory, statutory, or administrative obligation;

IV. in case of Force Majeure, as defined in Section 12.9 (Force Majeure) below;

V. if Acronis is informed by Member that credentials used to access any Benefits have been compromised;

VI. at Member's request for specific Internal Users, to the extent that it is technically possible;

VII. if Acronis establishes or has a reasonable belief that (a) Member, or any of its Internal Users impairs or endangers the operational availability of any Benefit; (b) such action is necessary to prevent or protect against fraud, tricks, tampering, schemes, false or invalid numbers, false credit devices, electronic devices, or any other fraudulent means or devices; or (c) such action is necessary to protect Acronis, its affiliates and their respective officers, directors, shareholders, employees and agents, and/or others against actual or potential adverse financial effects;

VIII. if Member fails or refuses to provide information, or provides false information, regarding Member's past or current use of the Benefits, or characteristics pertaining to its use or planned use of the Benefits;

IX. where necessary for maintenance of Acronis APIs, Acronis infrastructure, or any Products; or

X. if Member continues to use any piece of Acronis's Software that is at or past the end of its life (i.e., after Acronis ceases to provide support and/or security patches for that piece of Acronis's Software).

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

C. Acronis will not be liable to anyone for any loss or damage arising from or related suspension of access to the Products for any of the causes mentioned in Section 4.7.A.

4.8. Reporting. Member must provide to Acronis any information that Acronis may reasonably request for the purpose of confirming Member's compliance with these Terms.

4.9. Listings. Certain Benefits may include Acronis posting information about Member or Member's Integration on the internet. Member may choose whether or not to be included, and will have right of approval of the contents of such postings. It will be at Acronis sole discretion, however, on their placement in relation to information about other participants in the Program or other Integrations.

4.10. Benefit Availability. Certain Benefits may be subject to availability, generally, or based on geographical location. The nature, quantity, and other specifics of Benefits may also vary by geographical location.

4.11. Delivery Timeframe. Acronis will deliver the Benefits if, as and when it deems it appropriate in its discretion.

4.12. Development Tools. Certain Benefits may include Development Tools.

> **A.**   Development Tools do not include any Products.

> **B.**   Except as the applicable Sample Code License may indicate, all Development Tools are Confidential Information of Acronis.

> **C.**   All sample code that Acronis provides as part of the Development Tools is subject to the Sample Code License. If no Sample Code License accompanies such code, then the code is not part of any Development Tools and Member may not use such code and Acronis reserves all rights with respect to such code.

4.13. Program Guide. Acronis reserves the right to change the Program Guide at any time, including by revoking any of its terms.   Membership in, and use of the Program, is at Member's sole risk.

4.14. Updates. Acronis may in its sole discretion periodically update the Benefits and may provide updated versions of certain Benefits to Member.

4.15. Distribution. Member may not distribute or otherwise sell any Benefits. The Program Guide will contain the terms of distribution of Integrations.

5.   CONFIDENTIALITY

5.1. Confidentiality Obligations. Each Party agrees that it will maintain other's Confidential Information in confidence, prevent its disclosure, and protect it from unauthorized disclosure using at least the same degree of care that it uses to protect its own most critical proprietary information, but in no event less than a reasonable amount of care. Each Party will prevent copying or use by its employees and others except for the purpose of exercising the rights expressly granted under these Terms. Each will immediately notify the other Party if it becomes aware of such unauthorized copying or use.

5.2. Required Disclosure. If a Party, the first Party, is required to disclose any of the other Party's Confidential Information by a judicial or governmental order, the first Party will give the other Party reasonable advance notice of the disclosure and the opportunity for the other Party to contest, at its own expense, the disclosure of the Confidential Information, where such notice is not prohibited by law or government order.

5.3. Feedback. Member is welcome to provide Feedback. Notwithstanding anything to the contrary, Acronis will be free to use any Feedback that Member provides in any manner and for any reason (including to incorporate the Feedback into future versions of the Program or into Products), or compensation to Member and without restriction of any kind.

6.   DATA PROCESSING

6.1. Data Privacy. Member accepts the risks of including personal data of individuals or any other sensitive data in the User Data.

6.2. Data Processing. Subject to Acronis's normal access and security procedures in effect from time to time and its privacy policy in effect from time to time (the current version of which can be found at https://www.acronis.com/en-us/company/privacy.html), Member hereby grants Acronis a non-exclusive, transferable license to use the User Data as necessary to provide Benefits to Member.

6.3. **Monitoring**. Acronis will have the right to monitor and analyze Member's participation in the Program in general and use of the Benefits in particular and to use the results of such monitoring and analysis to improve the Program during and after the Agreement Term. Acronis will have the right to use any and all data and information that Acronis collects and maintains related to Member's and Internal Users' use of the Benefits for any lawful purpose including statistical analysis, benchmarking, and research purposes.

7. PROPRIETARY RIGHTS

7.1. **Ownership**. The Benefits are and will remain the sole and exclusive property of Acronis or its suppliers or licensors, as applicable, whether the Benefits are separate or combined with any other products. Acronis's or its suppliers' or licensors' rights, as applicable, under this subsection will include, but are not be limited to: (A) all copies of the Benefits, in whole or in part; (B) all intellectual property rights in the Benefits; and (C) all modifications to, and derivative works based upon, the Benefits. Member will not delete or in any manner alter the intellectual property rights notices, if any, appearing on the Benefits as delivered or made available to Member. As a condition of the license rights granted to Member under the Agreement, Member will reproduce and display such notices on any copy of any Benefits.

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

7.3. **Integration**. Except for Products, which Member may use to test, but not create Integrations, Member may use Benefits to create Integrations. Except to the extent that any Sample Code License permits:

   A. Member may not create any derivative works, modifications, enhancements, improvements, translations, or other alterations to Acronis's intellectual property, including Products; and

   B. Integrations may not incorporate any Benefits or parts thereof, except for sample code.

8. WARRANTIES

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

8.2. **Member's Warranty**. Member represents and warrants that it has obtained, and will obtain, all consents and approvals necessary to provide the User Data to Acronis, and for Acronis to use the User Data in accordance with these Terms.

8.3. **Disclaimer of Warranties**. Acronis makes no warranty to Member except the warranty in the preceding <u>Section 8.1</u> (Power and Authority). All Benefits are provided "AS-IS." To the maximum extent allowed by applicable law, the warranty in <u>Section 8.1</u> (Power and Authority) above is the sole and exclusive warranty of any kind, express or implied, that Acronis makes in connection with these Terms, and ACRONIS SPECIFICALLY DISCLAIMS ALL STATUTORY OR OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE, NON INFRINGEMENT OF THIRD PARTY RIGHTS, OR ANY IMPLIED WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. Without limiting the generality of the foregoing, Acronis specifically does not warrant that the Benefits will meet Member's requirements, or that the operation of the Products will be accurate, uninterrupted, reliable, without loss of data, or error-free. To the extent that Acronis may not disclaim any warranty as a matter of applicable law, the scope and duration of such warranty will be the minimum permitted under such law.

9. LIMITATIONS OF LIABILITY

9.1. Exclusion of Damages. In no event will either Party be liable to the other Party for any special, incidental, indirect, or consequential damages (including for lost profits or lost data), whether based on breach of contract, tort (including negligence), product liability, or otherwise, and whether or not such Party has been advised of the possibility of such damage.

9.2. Limitation of Damages. In addition to and not in derogation of Section 9.2 (Exclusion of Damages) above, the total cumulative liability of Acronis under the Agreement to Member whether in contract, in tort (including negligence or strict liability), or any other legal theory, will not exceed the amount of Optional Benefit Fees that Acronis has received from Member in the twelve (12) month period preceding the circumstances giving rise to the first claim at issue. The existence of multiple claims by any one party or from multiple parties with respect to the same underlying acts, omissions or occurrences will not expand this limit.

9.3. Exceptions. The limitations in Sections 9.1 (Exclusion of Damages) and 9.2 (Limitation of Damages) do not apply to breaches of Section 5 (Confidentiality) or Section 7 (Proprietary Rights) or to any Party's misappropriation of the other Party's intellectual property. Moreover, Acronis will have no liability to anyone for the loss or misappropriation of any User Data that any Internal User fails to encrypt using the encryption available in any Product that the Internal User used to process that User Data.

9.4. Failure of Essential Purpose. The Parties acknowledge that these limitations reflect the allocation of risk set forth in these Terms and that Acronis would not enter into the Agreement without the limitations on its liability in this Section 9 (Limitations of Liability). The Parties agree that the limitations specified in this Section 9 (Limitations of Liability) will survive and apply even if any limited remedy specified in these Terms is found to have failed of its essential purpose.

10.   TERM AND TERMINATION

10.1. Term. The term of this Agreement established by Member's acceptance of these Terms will begin on the Effective Date and will continue until its termination ("***Term***"). Member may terminate this agreement created by Member's acceptance of these Terms on any anniversary of the Effective Date subject to a ninety (90) days' prior written notice.

10.2. Termination for Convenience. Acronis may terminate the Agreement without cause and without liability to Member if it provides at least thirty (30) days' prior written notice to the other party.

10.3. Effects of Termination. Upon termination of the Agreement:

    A.   all licenses Acronis granted to Member under the Agreement will immediately terminate;

    B.   Acronis will have no obligation to provide any Benefits to Member whatsoever;

    C.   Member will confirm to Acronis that all installed instances of the Products that Acronis provided as part of the Benefits have been removed and uninstalled from all of Member's machines;

    D.   at Acronis's discretion, Member will either destroy all of Acronis's Confidential Information and Acronis Materials in Member's possession and provide to Acronis a certificate of destruction thereof signed by an officer of Member or at Member's expense return to Acronis all such Confidential Information and Acronis Materials in Member's possession, using shipping methods Acronis designates; and

    E.   Member will continue to maintain and support the Integrations for twelve (12) months following the termination so that Acronis and Member may transition impacted End-Users.

10.4. Damage Limitations. Neither Party will be liable to the other Party in the event of expiration or early termination of the Agreement for compensation, reimbursement or damages on account of loss of prospective profits or anticipated sales, or on account of expenditures, investments, leases or commitments in connection with the business or goodwill of the other Party. Subject to Section 10.3.B (Effects of Termination), expiration or termination of the Agreement for any reason will be without prejudice to any right which will have accrued to the benefit of either Party before such expiration or termination. Each Party will remain liable to the other Party for any breach of the Agreement by the breaching Party which exists at the time of such expiration or termination. The non-breaching Party may seek such remedies against the breaching Party with respect to any such breach as are provided in these Terms or as are otherwise available at law or in equity.

11.   COMPLIANCE WITH LAWS

11.1. Compliance. Member, its Affiliates and all of their respective Internal Users, owners, directors, officers, employees, agents, or contractors (collectively "*Member*" for purposes of this Section 11) will use the Benefits only in accordance with these Terms and with all applicable laws. Without limiting the foregoing:

A.   Member acknowledges and agrees that the Products may be subject to economic sanctions and export controls of (I) the United States ("*US*"), (II) the United Nations Security Council, (III) the European Union or any member state thereof ("*EU*"), (IV) the United Kingdom ("*UK*"), (V) Switzerland, or (VI) the respective governmental institutions of any of the foregoing, including OFAC, the U.S. Department of Commerce, the U.S. Department of State, any other agency of the U.S. government, and Her Majesty's Treasury (each, a "*Sanctions Authority*"). Member agrees not to engage in any transaction or activity that would result in liability to Acronis under any Sanctions Authority's sanctions or export control law or regulation. Member agrees to comply with all Sanctions Authorities' economic sanctions and export control laws and regulations as if it were subject to each of them, and with all otherwise applicable export or import regulations of other countries. Member agrees that it will not allow any third-party to remove or export from the US, EU, UK or Switzerland (the "*Sanctions Authorities Jurisdictions*") or allow the export or re-export of any part of the Products or any direct product thereof (I) into (or to a resident of or entity incorporated under the laws of) any country subject to a comprehensive Sanctions Authority embargo, (II) to anyone on any of the lists of designated or sanctioned individuals or entities (or equivalent) issued by any Sanctions Authority, each as amended, supplemented or substituted from time to time, including the List of Specially Designated Nationals and Blocked Persons, Foreign Sanctions Evaders List, and Sectoral Sanctions Identifications List, each administered by OFAC; the Consolidated List of Persons, Groups and Entities Subject to EU Financial Sanctions; the Consolidated List of Financial Sanctions Targets in the UK and Ukraine; List of Persons Subject to Restrictive Measures in View of Russia's Actions Destabilising the Situation in Ukraine, each administered by Her Majesty's Treasury; and the Swiss Secretariat of Economic Affairs Overall list of sanctioned individuals, entities and organizations (collectively, the "*Lists*"), or (III) to any country, entity or person to which such export or re-export is restricted or prohibited, or as to whom any Sanctions Authority Jurisdiction requires an export license or other governmental approval at the time of export from within a Sanctions Authority Jurisdiction, respectively, or re-export without first obtaining such license or approval. Member assumes sole responsibility for any required export approval and/or licenses and all related costs and for the violation of any export law or regulation.

B.   Member represents and warrants that Member is not included on any of the Lists. Member will immediately inform Acronis if Member becomes included on any of the Lists and will cooperate with Acronis's investigation and/or reporting of such action to appropriate Sanctions Authorities, which may occur at Acronis's sole discretion.

C.   Member may not use or enable the use of the Products by any party who is a resident of, entity incorporated under the laws of, or under control of any of the governments of any country subject to a comprehensive Sanctions Authority embargo, which as of the date hereof includes: Cuba, Iran, North Korea, Syria and the Crimea region of the Ukraine (which region for the purpose of this paragraph may be referred to as a country). Each time Member uses or enables the use of the Products, Member represents, warrants, and covenants that none of Member or its Internal Users (I) is a resident of, an entity incorporated under the laws of, or under the control of the government of any country subject to a comprehensive Sanctions Authority embargo; (II) will download or otherwise export or re-export any Products, directly or indirectly, to the above mentioned countries or to residents or entities incorporated under the laws of those countries, or permit any third party to do so; (III) are listed in any of the Lists or subject to any Sanctions Authority's sanctions; or (IV) will use or allow the use of the Products for any purposes prohibited by any Sanctions Authority Jurisdiction law, including for the development, design, manufacture, or production of nuclear, chemical, or biological weapons, weapons of mass destruction or their proliferation; or (V) are using or permitting others to use the Products to create, store, backup, distribute, or provide access to child pornography or any other content or data which is illegal under the applicable law, including that where Member is domiciled.

D.   Acronis will not be liable to Member or any of its officers, directors, employees, agents, contractors, designees, customers and/or any other party, for any refusal or failure to provide Benefits, or any goods, software, services or technical data as a result of any action taken as a result of any inclusion of Member on any of the Lists.

E. If Acronis has a good faith belief that Member, or any third party acting on Member's behalf, intends to violate, has violated, or causes Acronis to violate, any Sanction Authority's export controls or sanctions law or regulation, Acronis may terminate the Agreement immediately, notwithstanding any other provision of the Agreement to the contrary. In the event of such termination, Acronis will be relieved of all liability and obligations of any kind under these Terms.

F. Member will indemnify and hold Acronis harmless for any and all claims, losses, damages, liabilities, expenses and costs of whatever nature, including reasonable attorneys' fees and expenses, arising out of Member's non-compliance with any Sanctions Authority's export control or sanctions laws or regulations or Member's inclusion on any of the Lists. Acronis will be relieved of all claims and liabilities arising from (I) termination pursuant to this Section 11 of these Terms, and (II) Acronis's refusal, failure or inability to perform as a result of Member's inclusion on any of the Lists.

G. Acronis may audit Member's compliance with this Section 11 (Compliance with Laws) on such terms as Acronis determines reasonable. Member will also, upon request of Acronis, provide to Acronis the names of all Internal Users.

H. Acronis may at any time suspend Member's access to the Products, in whole or in part, at any time without liability to Member if Member is subject to any Sanctions Authority's Sanctions, violates any Sanctions Authority's export controls, or violates Acronis's policies referenced in Sections 11.2 (Sanctions and Export Controls) and 11.3 (Anti-Corruption and Anti-Bribery) of these Terms.

11.2. Sanctions and Export Controls. Member hereby agrees to remain in full compliance at all times with Acronis's Sanctions and Export Controls Compliance Policy available at https://www.acronis.com/en-us/support/sanctions-and-export-controls-compliance-policy.html, as Acronis may update it in its own discretion from time to time without notice to Member. The terms and conditions at the foregoing link are in addition to and not in contravention of the provisions of these Terms.

11.3. Anti-Corruption and Anti-Bribery. Member hereby agrees to all the terms and conditions at https://www.acronis.com/en-us/support/anti-corruption-policy.html, as Acronis may update them in its own discretion from time to time without notice to Member. The terms and conditions at the foregoing link are in addition to and not in contravention of the provisions of these Terms.

11.4. Certification. Without in any way limiting the foregoing provisions of Section 11.3 (Anti-Corruption and Anti-Bribery), Member will certify to Acronis in writing compliance with its obligations under this Section 11 (Compliance with Laws), at least annually on or before March 31 of each calendar year, and at such other times as Acronis will request.

12.   MISCELLANEOUS

12.1. Program Changes. Acronis may change these Terms and the Program Guide from time to time in its sole discretion without advance notice by publishing their updated versions on the Portal. All changes will be binding on the Member from the date Acronis publishes them on the Portal.

12.2. Order of Priority. In the event of any conflict, inconsistency or discrepancy between these Terms, any license agreement accompanying any Products, or any Sample Code License the following order of priority will apply: (A) these Terms (B) a license agreement accompanying Products (solely with respect to the Products covered by such license agreement), and (C) a Sample Code License (solely with respect to the sample code it accompanies).

12.3. Notice. Unless specified otherwise in these Terms, all notices, requests and other communications under these Terms must be in writing and must be delivered to:

A. Member using the administrative email address that Member registers in the Portal. This notice will be deemed given upon the date that it is electronically sent, regardless of whether Acronis receives a delivery error message.

B. Acronis at c/o Legal Notices, Acronis, Inc., One Van de Graaff Drive, Suite 301, Burlington, MA 01803, or such other address notice of which Acronis hereafter gives to Member. Such notice to Acronis must be delivered personally, or sent by certified or registered postal mail or nationally-recognized express courier, return receipt requested. Notice delivered personally or by courier will be deemed given on the date of delivery. Notice by postal mail will be deemed given on the date that is five (5) days after deposit with the mail.

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

12.5. Survival. The rights and obligations of the Parties contained in, Sections 4.1 (Access Restrictions), 4.2 (Internal Users and Affiliates), 4.3 (Customer-Ready Assets), 4.5 (Publicity), 4.6 (Branding), 4.6 (Products), 4.12 (Development Tools), 4.15 (Distribution), 5 (Confidentiality), Section 6.3 (Monitoring), 7 (Proprietary Rights), 8.3 (Disclaimer of Warranties), 9 (Limitations of Liability), Section 11.1.G (Compliance Audits), (Termination), 12 (Miscellaneous), and those provisions that by their nature are intended to survive termination or expiration of the Agreement will so survive.

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

12.7. Governing Law. The law and venue of the Agreement depends on the Member's principal address:

A. If Member's principal address is in the United States of America, then the interpretation and enforcement of the Agreement will be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts without giving effect to any choice of law principles that would require the laws of a different country or state and the exclusive venue for the resolution of any dispute that the Parties cannot resolve amicably will be the federal and state courts sitting in the Suffolk County, Massachusetts, USA. The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

B. If Member's principal address is in the United Kingdom, then the interpretation and enforcement of these terms will be governed by, and construed in accordance with, the laws of England and Wales without giving effect to any choice of law principles that would require the laws of a different country or state and the exclusive venue for the resolution of any dispute that the Parties cannot resolve amicably will be the courts sitting in London, England.

C. If Member's principal address is in Germany, then the interpretation and enforcement of the Agreement will be governed by, and construed in accordance with, the laws of Germany without giving effect to any choice of law principles that would require the laws of a different country or state and the exclusive venue for the resolution of any dispute that the Parties cannot resolve amicably will be the courts sitting in Munich, Germany. The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

D. If Member's principal address is in Eastern Asia (including Taiwan), South-eastern Asia (including the British Indian Ocean Territory and excluding the Democratic People's Republic of Korea), Southern Asia (excluding Iran), or Oceania, as defined in the United Nations Standard Country or Area Codes for Statistical Use on January 23, 2020, then the interpretation and enforcement of the Agreement will be governed by, and construed in accordance with, the laws of Singapore without giving effect to any choice of law principles that would require the laws of a different country or state and the exclusive venue for the resolution of any dispute that the Parties cannot resolve amicably will be the courts sitting in Singapore. The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

E. If Member's principal address is anywhere else in the world, then the interpretation and enforcement of the Agreement will be governed by, and construed in accordance with, the laws of Switzerland without giving effect to any choice of law principles that would require the laws of a different country or state and the exclusive venue for the resolution of any dispute that the Parties cannot resolve amicably will be the courts sitting in Zurich 1, Switzerland. The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

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

12.9. Force Majeure. Neither Party will be responsible for any failure to perform due to causes beyond its reasonable control (each a "*Force Majeure*"), including the following where they make performance impossible or illegal - acts of God, war, riot,

acts of civil or military authorities, fire, floods, earthquakes, accidents, public health crisis, pandemic, epidemic, quarantine, strikes, or fuel crises.

12.10.Relationship between the Parties. The Parties are entering into the Agreement as independent contractors. Nothing in the Agreement will be deemed to create an employer/employee, principal/agent, or joint venture relationship. Neither Party will have the authority to enter into any contracts in the name of or on behalf of the other Party or otherwise bind such other Party. Member will operate at its own expense and risk under Member's own name. Member will not act or communicate in any manner that may imply that Member has the right to represent or act on Acronis's behalf, as agent or otherwise.

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

12.12.Construction. Unless the context otherwise, requires, whenever the words "including," "include" or "includes" are used herein, they will be deemed to be followed by the phrase "without limitation." Except where explicitly stated otherwise, all references to "days" in these Terms are references to calendar days and all references to "days" in the Program Guide are references to days which are not Saturdays, Sundays, bank holidays or public holidays in Schaffhausen, Switzerland.

12.13.No Implied Waivers. The waiver by either Party of a breach of any provision of the Agreement will not be a waiver of the provision itself or a waiver of any breach thereafter, or a waiver of any other provision of the Agreement.

12.14.Translations. Acronis may from time to time provide translations of these Terms into local languages ("*Translations*"). Translations are provided for convenience only. The English language version of these Terms with the same revision date provided at the top of this page will control in the event of any difference in meaning or interpretation between a Translation and the English language version with the corresponding revision date.