



You should carefully read this Agreement before installing the Software and /or the Products. By installing or using the SOFTWARE OR PRODUCTS, the Customer hereby agrees to and accepts this Agreement.

ARCserve PROOF OF CONCEPT AND EVALUATION AGREEMENT

THIS PROOF OF CONCEPT AND EVALUATION AGREEMENT (the "**Agreement**"), is made as of the date the Software and /or Products (as defined below), is downloaded by or shipped to the Customer (the "**Effective Date**"), and is by and between **Arcserve, LLC**, a Delaware limited liability company ("**Arcserve**") and its subsidiaries and affiliates, and the entity accepting the terms and conditions of this Agreement (the "**Customer**," "**Your**," "**You**" or "**company**"), each hereinafter referred to individually as a "party" and collectively as the "parties".

1. Definitions

"**Computer**" means the non-production central processing unit owned and operated by the Customer, which is located at the Site and which includes a maximum capacity of 2TB of cloud storage.

"**Evaluation Period**" means the period commencing on the Effective Date of this Agreement and continuing up to a maximum term of thirty (30) days, or as specified by Arcserve. The Evaluation Period is subject to modification by Arcserve, with or without prior notice to Customer.

"**Purpose**" shall mean the Customer's private testing, demonstration, in a non-production environment, of the Software and /or Products to existing or prospective customers of the Customer, subject to the provisions of this Agreement.

"**Site**" means the Customer's address provided by the Customer to Arcserve, including a valid company e-Mail address.

"**Software**" means the software program(s) including UDP 10.1 software or later versions, provided to the Customer through the Arcserve Cloud Cyber Resilient Storage site or any other relevant Arcserve site, in object code form only, together with any associated documentation relating thereto, and any future updates, releases or modifications thereof, solely to the extent that they may be provided by Arcserve to the Customer for the Purpose during the Evaluation Period.

"**Products**" means collectively (i) an appliance or other piece of hardware to be provided by Arcserve, (ii) a software product that is being installed and the associated current user guide and readmes as related thereto, (iii) any Arcserve software product embedded in a hardware product, and (iv) any SDK/API included within the software product.

2. License

Arcserve grants to the Customer a limited, personal, non-exclusive, non-transferable free of charge license, without the right to sublicense, to use the Software and /or Products on the Customer's non-production Computers at the Site solely for the Purpose during the Evaluation Period, and limited to a single license per company. Title and copyright in the Software and /or Products, including any modifications, enhancements, updates and new releases thereof remain solely with Arcserve.

3. License Exclusions

Without the prior written consent of Arcserve, the Customer shall NOT:

- a) copy, in whole or in part, the Software and /or Products, except for normal back-up and archive purposes;
- b) modify, alter, reverse compile, reverse engineer, disassemble, decompile, reverse assemble, attempt to service or maintain, derive or attempt to derive the source code, source files or structure of all or any portion of the Software, the Products and /or the software incorporated therein;
- c) distribute, market, rent, lease, transfer, assign or sublicense the Software and /or Products to third parties or export the Software and /or the Products in violation of US Dept. of Commerce regulations;
- d) publish or release benchmarks or other comparisons of the Software and /or Products without Arcserve's prior written consent;
- e) transfer the Software and /or Products to a different computer, location or site;
- f) permit any the Software and /or Products to be used in connection with any facility management or service bureau services, or otherwise for processing the data of any third parties; or
- g) use the Software and /or Products for productive use, commercial use, application development or any other purposes other than for the Purpose as described herein.

4. Termination

The Customer shall destroy or return the Software and /or Products, and all Arcserve Information (and any copies related thereto), to Arcserve prior to or at the end of the Evaluation Period and shall certify in writing by a duly authorized company representative, and submit to Arcserve that it has destroyed or returned all Software and /or Products to Arcserve. **AT THE END OF THE EVALUATION PERIOD ALL CUSTOMER DATA UPLOADED TO THE CLOUD WILL BE DELETED.** Arcserve may terminate this Agreement immediately on notice to the Customer in the event of breach by the Customer of any of the terms and conditions of this Agreement. Arcserve may terminate this Agreement at any time for any reason upon written notice to the Customer. If Customer elects to purchase the Software and /or Products at Arcserve's current MSRP price, prior to the end of the Evaluation Period, then Customer's cloud data may be retained and their evaluation trial account will be converted to a purchase production account.

5. Title & Confidentiality

- (a) Title, copyright, patent, trade secret, trademark, all other intellectual property rights and any and all proprietary rights



in and to the Software and /or Products, and any modifications, translations, derivative works or enhancements thereto shall belong solely to Arcserve.

(b) Confidentiality. For purposes of this section and by virtue of this Agreement, the Customer will have access to certain Arcserve confidential and non-public information ("Arcserve Information"), which shall include the Software and /or Products, together with all documents, materials, and information related to the Software and /or Products provided hereunder including, without limitation, those processes associated with the execution of the Software and /or Products, and all data, know-how, technical and non-technical materials and specifications relating to the Software and /or Products in tangible or non-tangible form. The Customer agrees to take reasonable steps to keep the Arcserve Information strictly confidential and prevent its disclosure, but which steps shall not be less restrictive than those the Customer uses to protect the confidentiality and to prevent the disclosure of its own confidential and proprietary information of a similar nature. Notwithstanding the foregoing, the Customer may privately demonstrate the Software and /or Products executing on the Computer at its Site solely for the Purpose during the Evaluation Period, to existing or prospective customers of the Customer which are subject to written agreements which contain obligations of non-disclosure and confidentiality that are no less restrictive than those applicable to the Customer hereunder, but which, in any event, preclude the ability for any such customer to further disclose any Arcserve Information obtained during such private demonstration. Information shall not be considered confidential "Arcserve Information" if it: (i) is or becomes public knowledge without violation of a duty of confidentiality owed to Arcserve, prior to the time of disclosure by Arcserve; (ii) was already known by the Customer at the time of the disclosure without violation of a duty of confidentiality owed to Arcserve, as shown by the Customer's files and records immediately prior to the time of disclosure; (iii) is obtained by the Customer from a third party lawfully in possession of such information and without a breach of such third party's obligations of confidentiality; or (iv) is independently developed by the Customer without use of or reference to the confidential Arcserve Information, as evidenced by contemporaneous documentation. The obligations of confidentiality undertaken by the Customer pursuant to this Agreement shall terminate *five (5) years* after the expiration or earlier termination of this Agreement, except for trade secrets which shall remain subject to this Agreement for so long as they are constituted as trade secrets under applicable law.

6. Limitations as to Warranty and Liability

CUSTOMER UNDERSTANDS THAT THE SOFTWARE AND THE PRODUCTS ARE PROVIDED BY ARCSERVE SOLELY ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IF THE CUSTOMER PURCHASES THE PRODUCTS, NORMAL WARRANTIES OFFERED BY ARCSERVE WILL APPLY AT THE TIME OF PURCHASE. IN NO EVENT WILL ARCSERVE BE LIABLE TO THE CUSTOMER OR TO ANY OTHER THIRD PARTY FOR ANY DAMAGES, LOSS OR LIABILITY, INCLUDING WITHOUT LIMITATION, DIRECT, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO DAMAGES RELATED TO LOST DATA, LOST PROFITS, LOSS OR LIABILITY, TIME, MONEY OR GOODWILL WHICH MAY ARISE DIRECTLY OR INDIRECTLY FROM OR RELATED TO CUSTOMER'S OR ANY OTHER THIRD PARTY'S USE OF SUCH SOFTWARE AND PRODUCTS WHETHER IN CONTRACT, TORT, OR BREACH OF STATUTORY DUTY OR OTHERWISE TO THE EXTENT PERMITTED BY LAW, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. Evaluation and Demonstration Use Limitation

Customer acknowledges and understands that the Software and /or Products are being provided by Arcserve to the Customer solely for the limited Purposes set forth herein. Accordingly, Arcserve shall not be obligated to provide any technical support or error correction services for the Software and /or Products. Arcserve may, but shall be under no obligation to, provide corrections, updates and new releases of the Software and /or Products to the Customer. Any such materials provided to the Customer shall be subject to the terms of this Agreement.

8. General

This Agreement, and all disputes arising out of or related to this Agreement, shall be governed by and construed under the laws of the State of Utah, USA, without reference to Utah's conflict of laws principles. Any action for provisional relief concerning this Agreement or the parties' relationship hereunder, including but not limited to seeking a temporary restraining order or preliminary injunction shall be brought exclusively in the state or federal courts located in Salt Lake City, Utah. The Customer may not assign or otherwise transfer this Agreement nor any rights or obligations under this Agreement in whole or in part without the prior written consent of Arcserve. Customer's use of the Software and /or Products during the Evaluation Period, and at all times thereafter must be in compliance with all applicable laws, rules and regulations, including but not limited to the U.S. Arms Export Control Act, the U.S. Export Administration Act and Regulations and other export regulations or limitations issued pursuant to these and other applicable export laws, and shall be subject to all requirements set forth in the applicable EULA located at <https://www.arcserve.com/arcserve-eula>, and in compliance with all third party software license terms and conditions. All notices or communications under this Agreement for Arcserve, shall be sent to Attn: Arcserve Legal, Arcserve, LLC, 6600 City W. Parkway, Suite 215, Eden Prairie, MN 55344, and *via email to:* notices@arcserve.com, and to legal@arcserve.com. This Agreement including all attachments and exhibits, constitutes the entire Agreement between the parties concerning Customer's use of the Software and /or Products. Customer's purchase order or other ordering document shall not add to or vary the terms of this Agreement. This Agreement supersedes any verbal understandings and any Customer ordering document and may only be modified or amended by a written amendment executed by both party's duly authorized officers.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ALL OF ITS TERMS AND CONDITIONS. FURTHERMORE, YOU REPRESENT THAT YOU ARE DULY AUTHORIZED TO BIND CUSTOMER TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.