

HARDWARE PRODUCT SCHEDULE

THIS HARDWARE PRODUCT SCHEDULE (the “**Schedule**”), is entered into by and between **Arcserve, LLC** or **StorageCraft, LLC**, an *Arcserve company* (collectively “**Arcserve**”), and the entity who has accepted this Schedule (the “**Customer**”), each individually a “party” and collectively the “parties”, as part of its acceptance of the End User License Agreement between the parties (the “**EULA**”) located at <https://www.arcserve.com/EULA>. This Schedule sets forth additional terms and conditions pursuant to Customer’s purchase of a Hardware Product. Capitalized terms not defined herein shall have the meaning as set forth in the EULA.

1. **SCOPE.** This Schedule is incorporated into and subject to the terms of the EULA and shall be effective and remain in force for so long as the EULA is a valid and binding agreement between the parties. Except as expressly stated otherwise in this Schedule or the Order Form, in the event of any conflict between the terms of the EULA, including any policies or schedules referenced therein, and the terms of this Schedule, the relevant terms of this Schedule shall take precedence.
2. **HARDWARE PRODUCT.** If any Software Product or Third-Party Software is embedded in the Hardware Product, such Software Product is licensed to the Customer and not sold. The license granted to the Customer shall be in accordance with the terms of the EULA. Notwithstanding any other term or provision contained herein, no right, title or interest in any Software Product or Third-Party Software will be granted or transferred to the Customer hereunder. In addition, if the Hardware Product includes an OneXafe appliance, in order for the OneXafe appliance to maintain full functionality, it requires active Product Support or a subscription to the OneSystem Service.
3. **PRICING.** Customer shall pay Arcserve the price as set forth on the Order Form for any Hardware Product(s) ordered hereunder.
4. **INVOICING AND PAYMENT TERMS.** Invoicing and payment terms for all Hardware Product(s) purchased hereunder shall be as set forth in the Order Form or EULA, as applicable.
5. **DELIVERY, ACCEPTANCE, TRANSFER OF TITLE AND RISK OF LOSS.** Delivery shall be F.O.B. Arcserve’s U.S. facility. Any delivery dates indicated by Arcserve or contained in an Order Form are approximate and Arcserve will not be liable for any delays. Acceptance, risk of loss and title shall pass to Customer upon delivery of the Hardware Product to Arcserve’s shipping/F.O.B. point.
6. **WARRANTY.**
 - A. Arcserve warrants that the Hardware Product will conform to its associated Documentation under normal use and operating conditions from the date of acceptance (as set forth in Section 5 above) for a period of thirty (30) days. If Customer notifies Arcserve within the specified warranty period that the Hardware Product is defective, Arcserve will, at its option and at its cost and expense: (i) repair or replace the Hardware Product alleged to be defective, or (ii) refund the amount paid by Customer for the Hardware Product which is alleged to be defective. If Arcserve requests the return of the Hardware Product, then any such refund may only be made after the defective Hardware Product has been returned to Arcserve, freight prepaid by Customer. Customer shall bear the risk of loss on any returned Hardware Product until such is received by Arcserve.
 - B. In addition to the exclusions set forth in Section 8(B) of the EULA, the foregoing warranty does not include repairs, replacements or adjustments required as a result of the following: improper installation; failure to operate the Hardware Product in accordance with the

associated Documentation; misuse; abuse; negligence; accident; failure to maintain environmental conditions for the Hardware Product; modifications, alterations, attachments or connections to other hardware, software or accessories that have not been supplied by Arcserve or approved by Arcserve in writing; or services rendered by persons other than Arcserve.

- C. THE FOREGOING IS THE SOLE WARRANTY PROVIDED BY ARCSERVE WITH RESPECT TO THE HARDWARE PRODUCTS AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE FOREGOING FURTHER PROVIDES CUSTOMER'S EXCLUSIVE REMEDY FOR ANY ALLEGED BREACH OF ANY SUCH WARRANTY.
- D. SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE AND LICENSEE MAY HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE OR BY JURISDICTION. IF ANY IMPLIED WARRANTY IS NOT DISCLAIMED UNDER APPLICABLE LAW, THEN SUCH IMPLIED WARRANTY IS LIMITED TO THIRTY (30) DAYS FROM LICENSEE'S ACCEPTANCE OF THE HARDWARE PRODUCT AS SET FORTH IN SECTION 5 ABOVE, SUBJECT TO THE EXCLUSIVE REMEDY PROVISION SET FORTH HEREIN.

Copyright ©2024 Arcserve, LLC. All Rights Reserved.