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16. GENERAL.

- A. All Software is provided FOB shipping point or electronic delivery. Acceptance is waived and deemed to have occurred at the earliest of point of physical shipment or delivery of keys/access codes for electronic delivery. Arcserve is the manufacturer of the Product. If the Order includes an Appliance or other hardware ("Hardware Product") to be provided by Arcserve, delivery shall be F.O.B. Arcserve's U.S. facility. Acceptance, risk of loss, title for such Hardware Product shall pass to You upon delivery of the Hardware Products to Arcserve's shipping/F.O.B. point.
- B. Any suggestions, feedback or proposed modifications to the Product (in any form) provided by Licensee to Arcserve may be freely used by Arcserve without limitation, and any modifications to the Product resulting from such suggestions, feedback or proposed modifications shall be exclusively owned by Arcserve.
- C. The Product contains technological copy protection or other security features designed to prevent unauthorized use of the Product, including features to protect against any use of the Product that is prohibited under Section 3.A. Licensee shall not, and shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security features.
- D. Licensee agrees to perform a self-audit upon ten (10) working days' prior written notice from Arcserve, calculating the number of Authorized Users, computers, servers or other applicable units benefiting from the Products. If Licensee's self-audit reveals that Licensee's actual usage exceeds the Authorized Use Limitations, Licensee shall procure the additional licenses required from Arcserve or its preferred reseller. If Licensee does not perform a self-audit upon request from

Arcserve, or if Arcserve has reason to doubt the results of such self-audit, upon prior written notice to Licensee, Licensee shall permit Arcserve or an independent certified accountant appointed by Arcserve to access Licensee's premises and inspect Licensee's books of account and records at any time during normal business hours for the purpose of inspecting, auditing, verifying or monitoring the manner and performance of Licensee's obligations under this Agreement, including without limitation the payment of all applicable Fees. Any such audit shall minimize the disruption to Licensee's business operations. Arcserve shall not be able to exercise this right more than once in each calendar year. If an audit reveals that Licensee has underpaid Fees to Arcserve, Licensee shall be invoiced for and shall pay to Arcserve or the applicable reseller within thirty (30) days of the date of invoice an amount equal to the shortfall between the Fees due and those paid by Licensee. If the amount of the underpayment exceeds five percent (5%) of the Fees due or the audit reveals a violation of any Authorized Use Limitations pursuant to this Agreement then, without prejudice to Arcserve's other rights and remedies, Licensee shall also pay Arcserve's reasonable costs of conducting the audit.

- E. Arcserve's remedies set forth in this Section are cumulative and are in addition to, and not in lieu of, all other remedies Arcserve may have at law or in equity, whether under this Agreement or otherwise.
- F. Licensee may not assign this Agreement nor transfer the Products to any third party without the prior written consent of Arcserve. If such consent is obtained from Arcserve, Licensee must ensure that (i) the entire Product is transferred to a single recipient and is not sub-divided, (ii) the Product is deleted by the Licensee at the time of transfer, (iii) the Licensee passes full details of the recipient to Arcserve, and (iv) the recipient agrees to be bound by the terms and conditions of this Agreement. Arcserve may assign this Agreement to any third party that succeeds to Arcserve's interests in the Product and assumes the obligations of Arcserve hereunder and Arcserve may assign its right to payment hereunder or grant a security interest in this Agreement or such payment right to any third party.
- G. If a court holds that any provision of this Agreement to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. No waiver of any breach of this Agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
- H. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, without regard to its choice of law provisions. Notwithstanding the foregoing, the laws of the country in which Licensee acquires a license for the Product shall govern this Agreement, except as otherwise provided below:

In Albania, Armenia, Belarus, Bosnia/Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kirghizia, Former Yugoslav Republic of Macedonia (FYROM), Moldova, Romania, Russia, Slovak Republic, Slovenia, and Ukraine, the laws of Austria shall govern this Agreement.
- I. The failure of Arcserve to comply with any provision of this Agreement due to an act of God, hurricane, war, fire, riot, earthquake, terrorism, and act of public enemy, actions of governmental authorities (excepting compliance with applicable codes and regulations) or other force majeure event will not be considered a breach of this Agreement.
- J. Failure by either party to enforce any particular term or condition of this License Agreement shall not be construed as a waiver of any of its rights under it.

- K. The illegality, invalidity or unenforceability of any part of this Agreement will not affect the legality, validity or enforceability of the remainder.
- L. This Agreement, the Schedule and the documents and policies referenced herein constitute the entire agreement between the parties relating to the licensing and use of the Products and supersede any other oral or written communications, agreements or representations with respect to the Products, except for any oral or written communications, agreements or representations made fraudulently.

17. COUNTRY SPECIFIC TERMS.

In the event Licensee acquires a license for the Product and/or Cloud Services outside of the United States, the provisions set forth at <https://www.arcserve.com/Country-Terms> will apply to the use of the Product and/or Cloud Services.