

Intronis End User License Agreement

PLEASE READ THIS AGREEMENT CAREFULLY!

BY PRESSING START TRIAL, END USER (THE INDIVIDUAL, ENTITY, OR ENTITY THAT RECEIVES THE BENEFIT OF OR USES THIS SOFTWARE) IS AGREEING TO BE BOUND BY THE AGREEMENT BELOW.

IF END USER DOES NOT AGREE, OR IF END USER CLICKS DISAGREE, END USER MAY NOT INSTALL OR USE THE SOFTWARE.

This agreement is between Online Backup Solutions a Massachusetts corporation (**Provider**) and the end user (**End User**). The Provider's software, updates, documentation and license keys provided to End User (**Software**) are licensed and are not sold.

- LICENSE.** Subject to the other terms of this agreement, Provider grants End User a limited duration non-exclusive, non-transferable license, only in conjunction with the Provider backup and recovery online service, to:
 - operate the Software for Customer's operational purposes ; and
 - make one copy of the Software for archival and backup purposes.

- RESTRICTIONS.** End User may not:

- assign, sublicense, or rent the Software or use it in any type of software service provider or outsourcing environment;
- reverse engineer (except to the extent expressly permitted by applicable law despite this limitation), decompile, disassemble, or attempt to discover the source code of the Software; or
- evaluate or use the Software for the purpose of competing with Provider.

Provider reserves all rights not expressly granted.

- PAYMENT.** The fees for the use of this this Software are determined between the Provider authorized reseller and the End User.

- PROPRIETARY RIGHTS AND CONFIDENTIALITY.**

- Proprietary Rights.** The Software, workflow processes, user interface, designs, know-how and other technologies provided by Provider as part of the Software are the proprietary property of Provider and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Provider. The Software is protected by applicable copyright, trade secret, and other intellectual property laws. End User may not remove any product identification, copyright, trademark or other notice from the Software.

- Confidentiality.** End User may not disclose Confidential Information to any third party or use the Confidential Information in violation of this agreement.

- Confidential Information** *means* all Provider information that is disclosed to End User by Provider (or reseller with respect to Provider), and includes, among other things: all technical and business information relating to products or services provided by Provider.

End User may disclose Confidential Information if required by law, but it will attempt to provide notice to Provider in advance so it may seek a protective order. End User acknowledges that any misuse of Confidential Information may cause irreparable harm for which there is no adequate remedy at law. Provider may seek immediate injunctive relief in such event.

- DISCLAIMER** PROVIDER DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE SOFTWARE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.

- TERM AND TERMINATION.** Either party may terminate this agreement with respect to the Software only, upon notice to the other party. In addition, either party may terminate this agreement upon a material breach of the other party after a 30 days notice/cure period, if the breach is not cured during such time period. Upon termination of this agreement or a license, End User must discontinue using the Software, de-install and destroy or return the Software and all copies, within 5 days. Upon Provider' request, End User will provide written certification of such compliance.

- ANNUAL SUPPORT.** End User should contact the authorized Provider reseller for support services.

- LIMITATION ON LIABILITY.** THERE MAY BE SITUATIONS IN WHICH, AS A RESULT OF MATERIAL BREACH OR OTHER LIABILITY, END USER IS ENTITLED TO MAKE A CLAIM FOR DAMAGES AGAINST PROVIDER. IN EACH SITUATION (REGARDLESS OF THE FORM OF THE LEGAL ACTION (E.G. CONTRACT OR TORT CLAIMS)) PROVIDER IS NOT RESPONSIBLE BEYOND THE AMOUNT OF ANY DIRECT DAMAGES UP TO THE AMOUNT PAID BY END USER TO THE AUTHORIZED RESELLER FOR USE OF THE SOFTWARE WITHIN PAST 12 MONTHS.

IN NO CIRCUMSTANCES IS PROVIDER RESPONSIBLE FOR ANY (EVEN IF IT KNOWS OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS):

- loss of, or damage to, data or information;
- lost profits, business, or goodwill; or
- other special, consequential, or indirect damages.

- GOVERNING LAW AND EXCLUSIVE FORUM.** THIS AGREEMENT IS GOVERNED BY THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES. ANY DISPUTE ARISING OUT OF OR RELATED TO THIS AGREEMENT MUST BE EXCLUSIVELY BROUGHT IN THE STATE AND FEDERAL COURTS FOR SUFFOLK COUNTY, MA. END USER CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURTS AND WAIVES ANY CLAIM THAT IT IS AN INCONVENIENT FORUM. THE PREVAILING PARTY IN LITIGATION IS ENTITLED TO RECOVER ITS ATTORNEYS' FEES AND COSTS FROM THE OTHER PARTY.

- MISCELLANEOUS.**

- Entire Agreement.** This agreement constitutes the entire agreement between the parties, and supersedes all prior or contemporaneous negotiations, representations or agreements, whether oral or written, related to this subject matter.
- Modification Only in Writing.** No modification or waiver of any term of this agreement is effective unless signed by both parties.
- Non-Assignment.** Neither party may assign or transfer this agreement to a third party, nor delegate any duty, except that the agreement and all orders may be assigned upon notice as part of a merger, or sale of all or substantially all of the business or assets, of a party.
- Export Compliance.** End User must comply with all applicable export control laws of the United States, foreign jurisdictions and other applicable laws and regulations.
- US GOVERNMENT Restricted Rights.** The Software and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. government or any agency thereof is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights at 48 C.F.R. 52.227-19, as applicable.
- Independent Contractors.** The parties are independent contractors with respect to each other.
- Enforceability.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect.
- Waiver.** Any waiver of a term of this agreement must be in writing to be valid.
- Survival of Terms.** All terms that by their nature survive termination or expiration of this agreement, will survive.
- UN Convention Does Not Apply.** United Nations Convention on Contracts for the International Sale of Goods does not apply.