

# Datto SaaS Protection Terms of Use

Updated as of July 1, 2020

These SaaS Protection Product Terms of Use ("Terms of Use") govern your use of Datto SaaS Protection Products and Services. By purchasing or using Datto's SaaS Protection Products and Services, you agree to be bound by these SaaS Protection Terms, which are incorporated into the Datto Partner Agreement. Capitalized terms not defined in these SaaS Protection Terms have the meaning given to them in the Datto Partner Agreement. If You do not agree to these SaaS Protection Terms, you may not register, access or use the Datto SaaS Protection Product or Services.

## 1. USE OF SAAS PROTECTION PRODUCTS

a. Right to Use. Subject to your compliance with these SaaS Protection Terms, the Datto Partner Agreement and the receipt by us of all fees applicable to the Product, Datto grants you a limited, revocable, non-sublicensable, non-exclusive right and license to access and use the Product for the number of licenses and/or the applicable data storage allotment in each SaaS Protection account in accordance with the Product Specifications. Unless otherwise specified, you will receive the current standard Product features and functionality (such as number and frequency of backups) for the applicable Service Plan and for the number of licenses in each SaaS Protection account under your Partner portal account.

b. Client Accounts and Licenses. Each SaaS Protection Client account (a "SaaS Account") backs up data of individual users associated with an existing domain account owned or controlled by a Client (each a "Domain"). SaaS Protection licenses are required for all protected users allocated to a SaaS Account regardless of status (e.g., active, paused, archived) or other specified seat usage in accordance with the Product Specifications. All SaaS Protection licenses allocated to a SaaS account must have the same Service Term and the same Service Plan.

c. Account Registration/Set up. You are required to set up each SaaS Account in accordance with the Product Specifications. During set up, you agree to provide accurate and complete information, and you further agree to promptly update this information should it change. Each user that is designated for backup upon account set up will automatically provision a SaaS Protection license or use an available license that has already been purchased. All users added to a SaaS Account after initial account registration either by You, a Client or any authorized Administrator, either manually or through any enabled automatic add features, will automatically provision an additional license or use an available license that has already been purchased. You acknowledge that you are responsible for any features you enable for each SaaS Account, either at set up or at any time, thereafter, including but not limited to, automatic add and license cap features.

d. Additional Data Processing Terms. SaaS Accounts can be configured to designate the geographic region where Content associated with the SaaS Account is stored. It is your responsibility to choose the appropriate geographic region for each SaaS Account. If a SaaS Account is configured to store Content in the European Economic Area or the United Kingdom, the European Data Processing Addendum is incorporated into these Terms of Use. If a SaaS Account is configured to store Content in the United States and it used to process personal information of California consumers, under the California Consumer Privacy Act of 2018, as amended from time to time, and the final regulations thereunder (collectively the "CCPA"), we are a "service provider" with respect to the personal



information of California consumers we process. We will not sell such personal information and will not retain, use or disclose such personal information for any purpose other than for the purpose described in these Terms of Use, or as otherwise permitted by the CCPA or applicable law.

e. Rights and Responsibilities Regarding Content and Product Use.

I. License to Content. On behalf of or as the Client, you (i) represent and warrant that you and/or the Client have sufficient rights and all required third party consents, permissions or licenses in and to the Domain and Content as may be necessary and appropriate for use of the Content with the Product; and (ii) hereby authorize us to access and interact with the Domain to retrieve Content; and (iii) hereby grant to Datto a limited, royalty-free, non-exclusive, assignable license to copy, reformat, disclose, transmit, display and otherwise use the Content as necessary or desired, in each case solely for the purposes of providing the Product or Service or as otherwise necessary for Datto to exercise its rights under these Terms of Use. The Client is responsible for the accuracy, quality and legality of the Content, and the means by which the Client acquired rights to the Content for use with the Product.

II. You must maintain authorization and access to the Domain(s) so that we are regularly able to access it for purposes of providing the Product. You agree and acknowledge that Content may not be available or restorable a) if our access authority to a Domain is changed or otherwise restricted; b) due to unavailability of the Domain; c) if the Domain provider amends its API guidelines in such a way that materially affects our ability to access the Domain to provide the Product; and/or d) with respect to modifications to the Content that are not captured in the backup frequency or retention schedule for the Service Plan chosen.

III. Third Party Administrator Responsibilities Regarding Content and Product Use. If you are a third party Administrator managing or using the Product on behalf of a Client, you represent and warrant that you are acting as an agent on behalf of the Client (who is the principal) and that you are acting within the scope of your agency. Accordingly, you agree to obtain the Client's authorization and comply with Client's instructions at all times with respect to use of the Product and access to Content, including but not limited to: Service Subscription, backup settings, access controls, management, retention and deletion of Content, transition of a SaaS Account or Content to a different Administrator, and transition assistance and cooperation upon termination or expiration of any relationship between or among an Administrator, Client and/or Datto. Datto expressly may rely on the authorization of any Administrator with respect to access and control of a SaaS Account or Content.

VI. Datto's Use of Content. Except for the limited license granted hereunder, the Client retains all of its existing rights in and to Content. Datto will use and process the Content only as necessary to provide and support the Products and will not otherwise access Content other than as permitted under the Datto Partner Agreement, these Terms of Use, or as authorized by an Administrator for support.

V. Client Terms for Partner Managed Accounts. If you resell Datto SaaS Protection to a Client, act as a Product Administrator for a Client or if you authorize a Client to directly use or support a Product, you must ensure that the Client agrees to the SaaS Protection Client Terms in substantially the form attached as Exhibit A hereto as part of a valid, enforceable contract between you and the Client.

VI. Terms for Client Managed Accounts. If you resell Datto SaaS Protection to a



Client who will act as a Product Administrator and you do not have access to any Content in the account, you must ensure that the Client agrees to the Datto SaaS Protection Client Managed Account Terms.

## 2. SERVICE SUBSCRIPTIONS

a. Service Subscription Required. All SaaS Protection licenses must be included in a valid Service Subscription for which we receive timely payment. A Service Subscription includes a group of licenses that have the same Term Length and Service Plan. A Service Subscription is either a License Pool Service Subscription or a SaaS Account Service Subscription, each as defined below.

I. License Pool Service Subscription. Except for licenses specifically designated in the ordering process for an individual SaaS Account, the Service Subscriptions for SaaS Protection licenses are consolidated for billing purposes into license pools. A license pool includes all SaaS Protection licenses in SaaS Accounts under your Partner portal account (other than those designated for an individual SaaS Account) that have the same Term Length and Service Plan.

II. SaaS Account Service Subscription. All licenses in a Service Subscription for an individual SaaS Account may be used for that Service Subscription only.

b. Service Plan. Each Service Subscription requires a particular Service Plan. All Service Plans include licenses to the technology needed to perform backup functions and access to Datto Technical Support. The retention applicable to each Service Plan determines how and for how long Content associated with a SaaS Account is retained. In general, Content associated with SaaS Accounts enrolled in any SaaS Protection Service Plan will be retained, as specified in the applicable Service Plan, for as long as the SaaS Account has appropriate licenses provisioned to it under an active SaaS Protection Service Subscription for which payments are current.

I. Time Based Retention Service Plan. In this Service Plan, incremental data backups are maintained for one year on a rolling basis, with the oldest incremental backups deleted first after one year. Automatic consolidation of incremental backup recovery points is applied on a rolling basis:

- 3x daily backups are retained for 30 days
- Daily backups are kept after 30 days
- Weekly backups are kept after 90 days, then stored rolling for up to 1 year

II. Infinite Cloud Retention Service Plan. In this Service Plan, incremental backups are retained for an indefinite period of time. Automatic consolidation of incremental backup recovery points is applied on a rolling basis:

- 3X daily backups are retained for 30 days
- Daily backups are kept after 30 days
- Weekly backups are kept after 90 days
- Monthly backups are kept after a year, then stored for selected retention period

Unless otherwise specified, SaaS Protection Service Plans and SaaS Accounts are not limited to a pre-defined amount of Datto Cloud storage. However, all access and use of all Datto SaaS Protection Service Plans and SaaS Accounts are subject to Fair Use policies that prohibit use that

- Results in excessive bandwidth or storage;
- Harms Datto services, networks or other resources; and/or
- Circumvents the intended use of the Product.



c. **Term Length.** The term of a Service Subscription is either for one month (a Monthly Term) or for a defined number of consecutive months (a Committed Service Term). A Service Subscription shall commence on the date the first SaaS Protection license in the Service Subscription is provisioned for a SaaS Account or the date on which an Order placed with a Datto account executive is accepted. A Service Subscription always ends on the last day of a calendar month. For invoicing and renewal purposes, a Committed Service Term will commence on the first of the month following the start of the Service Subscription and will remain in effect for the defined number of consecutive months.

d. **Committed Service Term High Watermark.** If licenses in a Service Subscription are purchased for a Committed Service Term, that Committed Service Term will apply for the initial license(s) and for any additional licenses added to the same Service Subscription. The number of licenses, including licenses added after the initial licenses in a Service Subscription, may not be decreased from the high watermark and are committed for the remainder of the then-current Committed Service Term so that all licenses in the Service Subscription terminate on the same date.

e. **Renewals.** Unless timely cancelled by you as described in the next section, the term of any Service Subscription for SaaS Protection licenses will automatically renew for the same term (Committed Service Term or Monthly Term) for the number of licenses as of the "license count date" immediately preceding the renewal date. The license count date shall be the date on which Datto measures the number of licenses in each Service Subscription. This date will be the same each month but is subject to change at Datto's sole discretion.

f. **Cancellations/Adjustments.** You may cancel or adjust the number of licenses in a Monthly Service Subscription in the manner described in the Product Specifications at any time. Changes must be made before the license count date of a particular month to be reflected in the next monthly invoice. You may cancel or adjust the number of licenses in a Committed Service Term Service Subscription in the manner described in the Product Specifications only in the last month of the Committed Service Term prior to the fifteenth calendar day of that month.

g. **Service Subscription Conversion.** If licenses provisioned to a SaaS Account are part of a License Pool Service Subscription with a Monthly Term, the SaaS Account can be converted to any other License Pool Service Subscription. The licenses attributed to that SaaS Account prior to conversion will be deprovisioned from the previous License Pool Service Subscription. Licenses attributed to the SaaS Account after conversion will be provisioned as new or available licenses from the new License Pool Service Subscription. If licenses provisioned to a SaaS Account are part of a License Pool Service Subscription with a Committed Service Term, the SaaS Account can be converted only to another License Pool Service Subscription with a Committed Service Term of at least the same duration. The licenses attributed to that SaaS Account prior to conversion will remain in the previous License Pool Service Subscription, but may be provisioned to another SaaS Account. Licenses attributed to the SaaS Account after conversion will be provisioned as new or available licenses from the new License Pool Service Subscription. Service Plan conversions may involve different retention of Content or involve deletion of data backups and you are responsible for and must understand the consequences of any conversion involving a different Service Plan.

h. **SaaS Account Termination.** For up to sixty (60) days after the effective date of termination of a SaaS account, we will, upon written request, allow you to export or



download a copy of Content as provided in the Product Specifications. After such period, we have no obligation to maintain or provide any Content and may thereafter delete or destroy all copies of the Content, unless legally prohibited. Depending on the Service Subscription, licenses applicable to the SaaS Account may remain.

i. License Invoicing and Financial Terms.

I. An Order for a license is generated when you provision a new license for a SaaS Account. An Order for one or more licenses may also be placed with your Datto sales executive.

II. Service Subscription fees are invoiced in advance monthly commencing on the first monthly invoice following the provision of the first license in the Service Subscription or acceptance of an Order placed with a sales executive. Monthly Service Subscription fees are based on the total number of licenses in each Service Subscription as of the license count date from the previous month.

III. Monthly payments for each Service Subscription are due upon receipt each month and will be charged to the applicable payment method indicated in your Partner Portal account.

IV. You agree to pay monthly Service Subscription fees for the entire Committed Service Term, if applicable. Unless otherwise agreed, you may not prepay for a Service Subscription. If you terminate your Service Subscription at any time during a Committed Service Term, a lump sum payment (equal to 100% of the monthly unpaid Service Subscription fee for the number of licenses in a Service Subscription as of termination times the number of months remaining in the Committed Service Term) will be due immediately and charged to your preferred payment method.

V. Datto may terminate any Service Subscription at its discretion, effective immediately, for non-payment that is not substantially cured within thirty (30) days after receiving written notice.

License Pool Service Subscription Fees: The monthly Service Subscription fee is charged for each SaaS Protection license and is based on the total number of SaaS Protection licenses in each license pool in your overall Partner portal account as of license count date. The monthly Service fee is the product of the total number of licenses in each license pool multiplied by the associated per license fee in the appropriate price tier for that license pool.

### 3. ACCESS AND SECURITY

a. Your Responsibility for SaaS Account Access. You are responsible for any action that you permit, assist or facilitate any person or entity to take related to any SaaS Account and associated Content. You are responsible for the security of all access credentials, including all passwords, to the all SaaS Accounts you manage. You are responsible for maintaining the security of any access codes, passwords, technical specifications, connectivity standards or protocols, assigned to you and/or created by you to gain access to an Online Portal, Product and/or Content. You are responsible for all activities that occur in your Online Portal account ("Account"), including any Product or Content access you allow, regardless of whether the activities are undertaken by you, by others on your behalf (including any of your administrative users and/or any Client you authorize). Your SaaS Protection management portal account may be hosted in the U.S. regardless of where you, the SaaS Accounts or Content related to them may be located. You are responsible for securing any necessary consents, if any, related to the hosting location of your Online Portal account. You agree to notify us immediately if you learn of



any unauthorized use of any access credentials or any other known or suspected breach of security. You agree that we will not be liable for any loss of any kind resulting from a) any party using your Account access credentials; and b) activity within your Account, either with or without your knowledge or authorization.

b. Your Responsibility for Security. You are responsible for the proper configuration and maintenance of physical, administrative and technical safeguards as they relate to access to and use of the Product and Content. In no event will we be responsible, nor will we have any liability, for physical, administrative, or technical controls related to the Product that you control, including but not limited to network connectivity and internet connectivity. We use physical, technical and administrative safeguards designed to secure Content under our control against accidental or unauthorized loss, access or disclosure. However, no password-protected system of data storage and retrieval can be made entirely impenetrable and you acknowledge and agree that despite the measures employed, the Products and Content are not guaranteed against all security threats or other vulnerabilities and you use the Products with all Content at your own risk.

#### 4. CHANGES TO TERMS OF USE.

We reserve the right at any time to modify these Terms of Use and updated Terms of Use will be posted within the applicable Product or Online Portal. We will make reasonable efforts to notify you of material changes and your continued use of any Product after an update will indicate your acceptance of any updated Terms of Use. If you do not agree to any updated Terms of Use, you must terminate your use of the Product immediately. If you provide written notice of any such termination, we will provide a refund of any pre-paid but unused fees applicable to the Product. We may also modify and update Specifications, policies and other support materials. All such changes are effective immediately upon posting to the Online Portal and you should review such materials on a regular basis so that you will be apprised of any changes.  
Exhibit A

#### SaaS Protection Client Terms

These Client Terms ("Terms"), apply to you as the entity that owns, licenses, or lawfully controls the content ("Content") in a Datto SaaS Protection product account ("Product"). Datto does not provide the Product directly to you. The Product is sold and provided by Datto, Inc. or one of its subsidiaries or affiliates ("Datto") directly to the reseller/managed service provider ("Administrator") who will (a) use and manage the Product on your behalf with your Content; or who may (b) authorize you to access, use or manage the Product yourself, in which case you will be considered Client Administrator of the Product.

#### RIGHTS TO THE PRODUCT

You acknowledge that Datto and its licensors own all intellectual property rights in and to the Product. You will not engage in or authorize any activity that is inconsistent with such ownership.

#### DATTO'S RIGHTS AND RESPONSIBILITIES REGARDING CONTENT

Datto's Use of Content. Datto will use Content only as necessary to provide and support the Product and will not otherwise access Content other than as permitted herein, as described in the Product Specifications or as authorized by an Administrator for support. Datto's Rights. In the event that Datto reasonably believes Content or related Product use violates these terms, including any Fair Use policies in the Product Specifications, may disrupt or threaten the operation or security of any computer, network, system or the Product, or may otherwise subject Datto to liability, Datto reserves the right to refuse or disable access to the Product or Content. Datto may also take such action pursuant to the





Digital Millennium Copyright Act and/or as required to comply with law or any judicial, regulatory or other governmental order or request. Datto will use reasonable efforts to contact the Administrator prior to taking such action. Notwithstanding the foregoing, Datto may restrict access to any Product or Content without prior notice as required to comply with law or any judicial, regulatory or other governmental order or request. In the event that Datto takes any such action without prior notice, Datto will provide notice to the Administrator, unless prohibited by law.

**Use of Aggregate Data.** Notwithstanding anything else in these Terms or otherwise, Datto may evaluate and process use of the Product and Content in an aggregate and anonymous manner, meaning in such a way that the individual is not or no longer identified or identifiable and compile statistical and performance information related thereto (referred to as "Aggregate Data"). Datto may use, process and share such Aggregate Data with third parties to improve the Products, develop new products, understand and/or analyse usage, demand, and general industry trends, develop and publish white papers, reports, and databases summarizing the foregoing, and generally for any purpose related to Datto's business. Datto retains all intellectual property rights in Aggregate Data. For clarity, Aggregate Data does not include any personally identifiable information nor identify any Client or individual.

**Right to Change Products.** Datto may make changes to its Products through updates and upgrades that offer new features, functionality, and efficiencies ("Enhancements"). Datto reserves the right to add new Products and Enhancements and to replace or discontinue Products or Enhancements at any time.

**Right to Interact with Products.** You agree that Datto may and you hereby authorize Datto to interact remotely with any deployed Product in order to test, troubleshoot, update, analyse use of or modify the Product or the environment in which it operates.

#### ADMINISTRATOR

Datto will interact with the Administrator(s) you appoint to operate and manage use of the Product with your Content. You are not a third-party beneficiary of any agreement between Datto and an Administrator.

An Administrator is not an agent of Datto and is not authorized to make any representations or warranties on behalf of Datto regarding the Product or its use.

You are responsible for instructing and authorizing the Administrator with respect to use of the Product including backup settings, management, retention and deletion of Content, and transition of Product or Content to a different Administrator, and transition assistance and cooperation upon termination or expiration of any relationship between or among Administrator, you and/or Datto.

You expressly agree that Datto may rely on the instructions and authorization of the Administrator with respect to use and support of the Product and access and control of your Content.

#### YOUR DIRECT USE OF A PRODUCT

If the Administrator authorizes you to access or use a Product directly, you are responsible for all actions you take with respect to use of the Product including backup settings and management, retention and deletion of Content and Datto may rely on your instructions as an authorized administrator of the Product.

Any support for the Product is provided to you by the Administrator and not directly by Datto.

#### SECURITY

Datto has implemented and maintains physical, technical and administrative measures designed to help secure Content under Datto's control against accidental or unlawful loss,



access or disclosure. However, no password-protected system of data storage and retrieval can be made entirely impenetrable and you acknowledge and agree that despite the reasonable measures employed, the Products and Content are not guaranteed against all security threats or other vulnerabilities.

You acknowledge and agree that the Administrator you authorize to manage use of the Product on your behalf has access to and manages your Content. You and/or the Administrator are responsible, and in no event will Datto be responsible, for any physical, administrative, or technical controls related to Products or Content not under the exclusive control of Datto, including but not limited to , passwords or other access credentials, LAN or internet connectivity. You and/or the Administrator are responsible for the proper configuration and maintenance of security measures and for determining the security measures appropriate for the Content

#### INDEMNIFICATION

You will defend, indemnify and hold harmless Datto from and against any loss, cost, liability or damage, including attorneys' fees, for which Datto becomes liable arising from any claim relating to your Content, including if it a) infringes or misappropriates the intellectual property rights or other rights of a third party; b) violates any applicable law; or

c) otherwise is in violation of these Client Terms or the applicable Product Terms of Use.

#### LIMITATIONS OF LIABILITY

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