



**END CUSTOMER SERVICE AGREEMENT**

This AXCIENT Service Agreement (“Agreement”) is made by and between AXCIENT, Inc. (“AXCIENT”) a Delaware Corporation with offices at 1161 San Antonio Road, Mountain View, CA 94043 and -CUSTOMER-, with offices at -ADDRESS- (“Customer”).

**AGREEMENT DATE:** [Click here to enter a date.](#) **(EXPIRES IF NOT EXECUTED BY** [Click here to enter a date.](#)**)**

**SERVICE FEES AND TERM OF AGREEMENT BEGIN THE LATER OF FIVE (5) DAYS AFTER DATA PROTECTION DEVICE SHIPS, OR THE DATE THIS AGREEMENT IS SIGNED (“EFFECTIVE DATE”).**

**TERM:** Choose an item.

**BILLING:** Choose an item.

**SERVICE**

- SERVERS: Choose an item. 1 \$
- VM HOSTS: Choose an item. 1 \$
- SERVICE PACKAGE: Enterprise
- INCLUDED DATA PROTECTION: # TB
- TOTAL SERVICE FEES: \$

**HARDWARE**

- DATA PROTECTION DEVICE: S21-T-1000 1 \$
- PROCUREMENT: Axcient (Purchase)
- SUPPORT: CAREPACK-T-1000 1 \$
- TOTAL HARDWARE AND SUPPORT FEES: \$

Choose an item. \$

**FREIGHT FEES:** Shipping and Handling shall be handled in accordance with Appendix A, Section 8D of DIR Contract No. DIR-TSO-3407.

**AMOUNT DUE UPON SHIPMENT:** \$ + Initial Prorated Invoice

DIR Contract No. DIR-TSO-3407 AND THIS SERVICE AGREEMENT, CONSTITUTE THE COMPLETE AND EXCLUSIVE UNDERSTANDING OF THE PARTIES, AND SUPERSEDES ALL PRIOR SALES PROPOSALS, NEGOTIATIONS, AGREEMENTS AND OTHER REPRESENTATIONS OR COMMUNICATIONS, WHETHER ORAL OR WRITTEN. IF THERE IS ANY CONFLICT BETWEEN THE TERMS AND CONDITIONS OF DIR CONTRACT NO. DIR-TSO-3407, ANY OTHER PURCHASE OR SALES DOCUMENT AND THE TERMS AND CONDITIONS OF THE SERVICE AGREEMENT, DIR CONTRACT NO. DIR-TSO-3407 SHALL CONTROL. THE SERVICE AGREEMENT MAY BE MODIFIED, REPLACED OR RECINDED ONLY IN WRITING SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF EACH PARTY.

<CUSTOMER>

<ADDRESS>

<CITY, ST ZIP> <COUNTRY>

Name: <NAME>

Title: <TITLE>

By: \_\_\_\_\_

Axcient, Inc.

1161 San Antonio Road

Mountain View, CA 94043 United States

Name:

Title:

By: \_\_\_\_\_

**TERMS AND CONDITIONS****1. Provision of Service.**

1.1 Subject to the terms and conditions of DIR Contract No. DIR-TSO-3407 and the Agreement, AXCIENT hereby agrees to provide to Customer during the term of this Agreement the AXCIENT Service, consisting of off-site automated data protection, backup, and recovery services described in the Agreement in connection with Customer's use of the Data Protection Device and Axcient Software. AXCIENT will provide online access to the Customer's backup data for restoration and recovery purposes on a continuous basis. AXCIENT reserves the right to physically ship the backup data on disk or other media to the Customer's site within 24 hours.

1.2 AXCIENT agrees to hold confidential all of Customer's data in its possession exercising the same degree of care that a company utilizing industry accepted business practices would exercise with similar data of its own. AXCIENT will implement reasonable security and environmental precautions to promote an appropriate level of system availability and data protection and recovery.

**2. Provision of Data Protection Device.**

2.1 AXCIENT hereby agrees to provide to Customer the Data Protection Device identified in the Agreement, solely for Customer's own internal business purposes and subject to the restrictions herein. The Data Protection Device is embedded with proprietary software of AXCIENT (the "Axcient Software"). Subject to DIR Contract No. DIR-TSO-3407 and the terms and conditions of this Agreement, AXCIENT hereby grants to Customer a non-exclusive, non-transferable license to use the Axcient Software as installed on the Data Protection Device and solely for Customer's internal business purposes and in accordance with DIR Contract No. DIR-TSO-3407 and the Agreement.

2.2 Customer shall not, and shall not have others, modify, customize, reverse engineer, reverse assemble or reverse compile the Data Protection Device or Axcient Software or any part thereof. In the event that Customer believes that the Data Protection Device or Axcient Software is not functioning according to standard written specifications, Customer shall contact AXCIENT immediately and inform them of the problem.

2.3 Title to the Data Protection Device shall occur upon full payment of the purchase price to

AXCIENT. Customer acknowledges and agrees that it is acquiring only the right to use Axcient Software during the term of the Agreement. AXCIENT shall retain all rights of ownership of the Axcient Software, all copyrights and other intellectual property rights vested in the Data Protection Device and Axcient Software, and all modifications to the Data Protection Device and Axcient Software (including derivative works), and changes to the Data Protection Device and Axcient Software made by AXCIENT under the Agreement. In no event shall title to all or any part of the Axcient Software pass to Customer. Customer agrees that, as between the parties, the Axcient Software (in whole or part) shall remain the exclusive property of AXCIENT and may not be copied or used except as expressly authorized by this Agreement. Any rights not expressly granted to the Customer under the Agreement are retained by AXCIENT.

**3. Customer Obligations.**

3.1 Customer will perform regular backups using the Axcient Software which is embedded in the Data Protection Device to hardware that AXCIENT owns and maintains at one of Axcient's data centers. Customer will report any errors in executing such backups promptly by entering them in the support portal, or via fax or e-mail to AXCIENT. Customer will arrange for and maintain communication services used to connect to AXCIENT's Data Center. Customer is responsible for any communication costs associated with the connection between Customer's site and AXCIENT's Data Center. Customer shall implement reasonable security and environmental precautions to ensure a high level of system availability and data protection and recovery.

3.2 Customer covenants and agrees that Customer shall not place any data in AXCIENT's offsite storage that (i) infringes the intellectual property rights or privacy rights of any third party, (ii) violates any law, statute, ordinance or regulation, (iii) is defamatory, libelous, unlawfully threatening or harassing, (iv) is obscene, or contains any viruses, Trojan horses, worms, time bombs, cancel bots or other programming routines that are intended to or have the effect of damaging, detrimentally interfering with, surreptitiously intercepting or expropriating any system, data or personal information.

#### 4. Price and Payment Terms.

4.1 Customer shall pay to AXCIENT the service fees described in the Agreement and as indicated in Appendix C of DIR Contract No. DIR-TSO-3407. Amounts shall be due and payable in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-3407. Invoices are prepared on a calendar month basis; hence the initial Service invoice is prorated to the beginning of the first full calendar month.

4.2 Taxes shall be handled in accordance with Appendix A, Section 8E of DIR Contract No. DIR-TSO-3407.

#### 5. Warranty Disclaimer and Limitation of Liability.

5.1 Customer acknowledges that it is responsible for determining whether the Axcient Service is appropriate for Customer's data protection needs. AXCIENT's sole warranty is that the Axcient Service shall substantially comply with any standard specifications provided in writing by AXCIENT. Customer's sole and exclusive remedy, and AXCIENT's entire liability under this Agreement shall be limited to the following: (i) AXCIENT shall use reasonable commercial efforts to correct any substantial non-compliance with the above warranty; (ii) if such non-compliance cannot be corrected after using commercially reasonable efforts, Customer may terminate the Agreement and receive a refund of all amounts paid.

5.2 EXCEPT FOR THE LIMITED WARRANTY IN SECTION 5.1 ABOVE, AXCIENT MAKES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE AXCIENT SERVICE, THE DATA PROTECTION DEVICE OR THE AXCIENT SOFTWARE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES IT HAS RELIED ON NO WARRANTIES WITH RESPECT TO THE AXCIENT SERVICE, THE DATA PROTECTION DEVICE OR THE AXCIENT SOFTWARE IN ENTERING INTO THIS AGREEMENT.

5.3 Limitation of Liability shall be handled in accordance with Appendix A, Section 10K of DIR Contract No. DIR-TSO-3407.

#### 6. Term and Termination.

6.1 The Agreement shall have an initial term of twelve (12) months with three (3) one (1)

year renewal options to be exercised by Customer providing Vendor thirty-day written notice prior to the then-expiration date unless terminated in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-3407.

6.2 Subject to record retention laws and policies, upon termination, Customer shall pay any undisputed amounts due and owing to AXCIENT, return the Axcient Software as instructed by AXCIENT and at AXCIENT's expense, and if AXCIENT Software has been installed by AXCIENT on a computer device other than the Data Protection Device, reinstall the Axcient Software and at AXCIENT's sole discretion, either destroy or return all Software copies and documentation. Customer shall certify to AXCIENT in writing within five (5) business days of a termination notice that Customer has complied with this Subsection 6.2 and that no Axcient Software is being used or retained on any computer or storage device.

6.3 AXCIENT agrees that upon termination, all data of Customer, including any data maintained in an Axcient datacenter, shall be removed and deleted.

6.4 The provisions of Sections 1.2, 2, 4, 5, 6 and 7 shall survive the termination of this Agreement.

#### 7. General.

7.1 Assignments shall be handled in accordance with Appendix A, Section 4Dnof DIR Contract No. DIR-TSO-3407.

7.2 DIR Contract No. DIR-TSO-3407 and the Agreement is the entire agreement of the parties and supersedes all previous and contemporaneous communications, representations, or agreements regarding the subject matter hereof. The Agreement may be modified only in writing signed by both parties. Waiver of any breach or failure to enforce any term of the Agreement shall not be deemed a waiver of any breach or right to enforce which may thereafter occur. If any provision of the Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

7.3 Force Majeure shall be handled in accordance with Appendix A, Section 11C of DIR Contract No. DIR-TSO-3407.

7.4 The Data Protection Device and the

Axcient Software are subject to the customs and export control laws and regulations of the United States and may be subject to the customs and export laws and regulations of the country in which the products are manufactured or received. If the Axcient Software is licensed for use outside of the United States the Customer agrees to comply fully with all relevant export laws and regulations of the United States and the country or territory in which the Axcient Software is used, to assure that neither the Axcient Software, nor any direct product thereof, are exported, directly or indirectly, in violation of such laws. Under United States law, the Data Protection Device and Axcient Software may not be sold, leased or otherwise transferred to restricted countries, or used by a restricted end-user or an end-user engaged in activities related to weapons of mass destruction.

7.5 Except as provided below, any and

all disputes arising from or relating to the subject matter of this Agreement or any interpretation of the Agreement shall be settled by dispute resolution in accordance with Appendix A, Section 11A of DIR Contract No. DIR-TSO-3407.

7.6 The agreement shall be governed by and construed under the laws of the State of Texas excluding its conflict of law rules. It shall not be governed by the United Nations Convention on the International Sale of Goods, the application of which is expressly excluded. The exclusive venue of any action with respect to this agreement shall be the state courts located in Travis County, Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas or the sovereign immunity or official immunity of the Customer or its officers or employees.