

Google Cloud Backup and DR Terms of Service v22.03

These Google Cloud Backup and DR Terms of Service (together, the "Agreement") are entered into by Actifio, Inc., a wholly-owned subsidiary of Google LLC ("Actifio") and the entity or person agreeing to these terms ("Customer") and govern Customer's access to and use of the Services.

This Agreement is effective when Customer clicks to accept it or accesses the Services (the "Effective Date"). If you are accepting on behalf of Customer, you represent and warrant that (i) you have full legal authority to bind Customer to this Agreement; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of Customer, to this Agreement.

1. Provision of the Services.

1.1 Services Use. During the Term, Actifio will provide the Services in accordance with the Agreement and Customer may use the Services in accordance with the Agreement. In addition, Actifio may provide a Free Trial for Services, as further described in Exhibit A of this Agreement.

1.2 Admin Console. Customer will have access to the Admin Console, through which Customer may manage its use of the Services.

1.3 Accounts. Customer must have an Account to use the Services and is responsible for the information it provides to create the Account, the security of its passwords for the Account, and for any use of its Account. Actifio has no obligation to provide multiple accounts to Customer.

1.4 Modifications.

(a) To the Services. Actifio may make commercially reasonable updates to the Services from time to time. Actifio will inform Customer if Actifio makes a material change to the Services that has a material impact on Customer's use of the Services provided that Customer has subscribed with Actifio to be informed about such change.

(b) To the Agreement. Actifio may make changes to this Agreement, including pricing (and any linked documents) from time to time. If Customer does not agree to the revised Agreement, Customer may stop using the Services. Customer may also terminate this Agreement for convenience under Section 8.3 (Termination for Convenience).

Customer's continued use of the Services after such material change will constitute Customer's consent to such changes.

(c) Discontinuation of Services. Actifio will notify Customer before discontinuing any Service (or associated material functionality) unless Actifio replaces such discontinued Service or functionality with a materially similar Service or functionality.

1.5 Software. Actifio may make Software available to Customer, including third-party software. Customer's use of any Software may be subject to additional terms therein.

1.6 Protection of Data Processing. Actifio will only access or use Customer Data to provide the Services and Technical Support Services to Customer or as otherwise instructed by Customer and will not use it for any other Actifio products, services, or advertising. Actifio has implemented and will maintain administrative, physical, and technical safeguards to protect Customer Data, as further described in the Data Processing and Security Terms.

1.7. Data Processing and Security Terms. The Data Processing and Security Terms are incorporated by reference into this Agreement.

1.8 Professional Services. Actifio will provide Professional Services, if any, in accordance with Exhibit B "Professional Services Schedule".

1.9 Personal Data. To the extent any Personal Data that is provided to Actifio is not Customer Data, Actifio's Privacy Policy will apply to such Personal Data.

2. Payment Terms.

2.1 Billing.

(a) For Services. The "Payment Terms" section as set forth in the GCP Marketplace Agreement will apply to your use of the Services.

(b) For Professional Services. Customer will pay all Fees for Professional Services ordered under the Agreement. Actifio will invoice Customer for the Fees. Customer will pay all invoiced amounts by the Payment Due Date. All payments are due in the currency described in the invoice. Wire transfer payments will include the bank information described in the invoice. Fees for some Professional Services are non-cancellable, as specified on a Statement of Work. Customer hereby consents to receiving invoices from and agrees to pay Fees to Google LLC or any of its Affiliates ("Google") should Actifio provide notice in writing that it desires Customer to make any

payments due under this Agreement to Google.

2.2 Taxes.

(a) Customer is responsible for any Taxes, and Customer will pay Actifio for the Professional Services without any reduction for Taxes. If Actifio is obligated to collect or pay Taxes, the Taxes will be invoiced to Customer and Customer will pay such Taxes to Actifio in addition to the Fees, unless Customer provides Actifio with a timely and valid tax exemption certificate.

(b) If required under applicable law, Customer will provide Actifio with applicable tax identification information that Actifio may require to ensure its compliance with applicable tax regulations and authorities in applicable jurisdictions. Customer will be liable to pay (or reimburse Actifio for) any taxes, interest, penalties, or fines arising out of any mis-declaration by Customer.

2.3 Invoice Disputes & Refunds. Any invoice disputes must be submitted before the payment due date. If the parties determine that certain billing inaccuracies are attributable to Actifio, Actifio will not issue a corrected invoice, but will instead issue a credit memo specifying the incorrect amount in the affected invoice. If the disputed invoice has not yet been paid, Actifio will apply the credit memo amount to the disputed invoice and Customer will be responsible for paying the resulting net balance due on that invoice. To the fullest extent permitted by law, Customer waives all claims relating to Fees unless claimed within 60 days after the invoice date. Refunds (if any) are at Actifio's discretion and will only be in the form of credit for the Services. Nothing in this Agreement obligates Actifio to extend credit to any party.

2.4 Delinquent Payments; Suspension. Late payments may bear interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) from the payment due date until paid in full. Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by Actifio in collecting such delinquent amounts. If Customer is late on payment for the Services, Actifio may Suspend the Services or terminate the Agreement for breach under Section 8.2 (Termination for Breach).

2.5 No Purchase Order Number Required. Customer is obligated to pay all applicable Fees without any requirement for Actifio to provide a purchase order number on Actifio's invoice (or otherwise).

3. Customer Obligations.

3.1 Compliance. Customer will (a) ensure that Customer and its End Users' use of the Services complies with the Agreement, (b) use commercially reasonable efforts to

prevent and terminate any unauthorized use of, or access to, the Services, and (c) promptly notify Actifio of any unauthorized use of, or access to, the Services, Account, or Customer's password of which Customer becomes aware. Actifio reserves the right to investigate any potential violation of the AUP by Customer, which may include reviewing Customer Data.

3.2 Privacy. Customer is responsible for any consents and notices required to permit (a) Customer's use and receipt of the Services and (b) Actifio's accessing, storing, and processing of data provided by Customer (including Customer Data, if applicable) under the Agreement.

3.3 Restrictions. Customer will not, and will not allow End Users to, (a) copy, modify, or create a derivative work of the Services; (b) reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract any or all of the source code of the Services (except to the extent such restriction is expressly prohibited by applicable law); (c) sell, resell, sublicense, transfer, or distribute any or all of the Services; or (d) access or use the Services (i) for High Risk Activities; (ii) in violation of the AUP; (iii) in a manner intended to avoid incurring Fees (including creating multiple Accounts to simulate or act as a single Customer Account or to circumvent Service-specific usage limits or quotas; (iv) to engage in cryptocurrency mining without Actifio's prior written approval; (v) to operate or enable any telecommunications service that allows Customer End Users to place calls or to receive calls from any public switched telephone network, unless otherwise described in the Service Specific Terms; (vi) for materials or activities that are subject to the International Traffic in Arms Regulations (ITAR) maintained by the United States Department of State; (vii) in a manner that breaches, or causes the breach of, Export Control Laws; or (viii) to transmit, store, or process health information subject to United States HIPAA regulations.

3.4 Documentation. Actifio may provide Documentation for Customer's use of the Services.

3.5 Copyright. Actifio provides information to help copyright holders manage their intellectual property online, but Actifio cannot determine whether something is being used legally without input from the copyright holders. Actifio will respond to notices of alleged copyright infringement and may terminate repeat infringers in appropriate circumstances as required to maintain safe harbor for online service providers under the U.S. Digital Millennium Copyright Act.

4. Suspension.

4.1 AUP Violations. If Actifio becomes aware that Customer's or any Customer End

User's use of the Services violates the AUP, Actifio will give Customer notice of the violation by requesting that Customer correct the violation. If Customer fails to correct the violation within 24 hours of Actifio's request, then Actifio may Suspend all or part of Customer's use of the Services until the violation is corrected.

4.2 Other Suspension. Notwithstanding Section 4.1 (AUP Violations), Actifio may immediately Suspend all or part of Customer's use of the Services if (a) Actifio believes Customer's or any Customer End User's use of the Services could adversely impact the Services, other customers' or their end users' use of the Services, or the Actifio network or servers used to provide the Services; (b) there is suspected unauthorized third-party access to the Services; (c) Actifio believes it is required to Suspend immediately to comply with applicable law; or (d) Customer is in breach of Section 3.3 (Restrictions). Actifio will lift any such Suspension when the circumstances giving rise to the Suspension have been resolved. At Customer's request, unless prohibited by applicable law, Actifio will notify Customer of the basis for the Suspension as soon as is reasonably possible.

5. Intellectual Property Rights; Protection of Customer Data; Feedback.

5.1 Intellectual Property Rights. Except as expressly stated in this Agreement, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, Customer owns all Intellectual Property Rights in Customer Data, and Actifio owns all Intellectual Property Rights in the Services and Software.

5.2 Customer Feedback. At its option, Customer may provide feedback or suggestions about the Services to Actifio ("Feedback"). If Customer provides Feedback, then Actifio and its Affiliates may use that Feedback without restriction and without obligation to Customer.

6. Technical Support Services.

6.1 By Actifio. Subject to payment of applicable support Fees, Actifio will provide TSS to Customer during the Term in accordance with the TSS Guidelines, which are incorporated by reference into this Agreement.

7. Confidential Information.

7.1 Obligations. The recipient will only use the disclosing party's Confidential Information to exercise its rights and fulfill its obligations under the Agreement, and will use reasonable care to protect against the disclosure of the disclosing party's Confidential Information. The recipient may disclose Confidential Information only to its Affiliates, employees, agents, or professional advisors who need to know it and who

have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The recipient will ensure that those people and entities use the received Confidential Information only to exercise rights and fulfill obligations under this Agreement.

7.2 Required Disclosure. Notwithstanding any provision to the contrary in this Agreement, the recipient may also disclose Confidential Information to the extent required by applicable Legal Process; provided that the recipient uses commercially reasonable efforts to (a) promptly notify the other party of such disclosure before disclosing and (b) comply with the other party's reasonable requests regarding its efforts to oppose the disclosure. Notwithstanding the foregoing, subsections (a) and (b) above will not apply if the recipient determines that complying with (a) and (b) could (i) result in a violation of Legal Process; (ii) obstruct a governmental investigation; or (iii) lead to death or serious physical harm to an individual.

8. Term and Termination.

8.1 Agreement Term. The "Term" of this Agreement will begin on the Effective Date and continue until the Agreement is terminated as stated in this Section 8 (Term and Termination).

8.2 Termination for Breach. Either party may terminate this Agreement if (a) the other party is in material breach of the Agreement and fails to cure that breach within 30 days after receipt of written notice or (b) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 90 days.

8.3 Termination for Convenience. Customer may stop using the Services at any time. Customer may terminate this Agreement for its convenience at any time on prior written notice and, upon termination, must cease use of the applicable Services. Actifio may terminate this Agreement for its convenience at any time with 30 days' prior written notice to Customer.

8.4 Effect of Termination. If the Agreement is terminated, then (a) all rights and access to the Services will terminate (including access to Customer Data, if applicable), unless otherwise described in this Agreement, and (b) all Fees owed by Customer to Actifio are immediately due upon receipt of the final electronic bill or as set forth in the final invoice.

8.5 Google Cloud Backup and DR on Google Cloud Platform. Once the Services become generally available as Google's first-party product on Google Cloud Platform, Google will notify Customer of its availability and Customer agrees to use commercially

reasonable efforts to migrate to such Google's first-party product. After migration, Customer's use of the Service will only be made available as a Google's first-party product and Customer's continued use of the Services will be governed by Google Cloud Platform Terms of Service, and this Agreement will automatically terminate.

9. Publicity. Customer is permitted to state publicly that it is a customer of the Services, consistent with the Trademark Guidelines. If Customer wants to display Actifio Brand Features in connection with its use of the Services, Customer must obtain written permission from Actifio through the process specified in the Trademark Guidelines. Actifio may include Customer's name or Brand Features in a list of Actifio customers, online or in promotional materials. Actifio may also verbally reference Customer as a customer of the Services. Neither party needs approval if it is repeating a public statement that is substantially similar to a previously-approved public statement. Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights to those Brand Features. A party may revoke the other party's right to use its Brand Features under this Section with written notice to the other party and a reasonable period to stop the use.

10. Representations and Warranties. Each party represents and warrants that (a) it has full power and authority to enter into the Agreement, and (b) it will comply with all laws and regulations applicable to its provision, receipt, or use of the Services, as applicable.

11. Disclaimer. Except as expressly provided for in the Agreement, to the fullest extent permitted by applicable law, Actifio (a) does not make any warranties of any kind, whether express, implied, statutory, or otherwise, including warranties of merchantability, fitness for a particular use, title, noninfringement, or error-free or uninterrupted use of the Services or Software and (b) makes no representation about content or information accessible through the Services.

12. Limitation of Liability.

12.1 Limitation on Indirect Liability. To the extent permitted by applicable law and subject to Section 12.3 (Unlimited Liabilities), neither party will have any Liability arising out of or relating to the Agreement for any (a) indirect, consequential, special, incidental, or punitive damages or (b) lost revenues, profits, savings, or goodwill.

12.2 Limitation on Amount of Liability. Each party's total aggregate Liability for damages arising out of or relating to the Agreement is limited to the Fees Customer paid during the 12 month period before the event giving rise to

Liability.

12.3 Unlimited Liabilities. Nothing in the Agreement excludes or limits either party's Liability for:

- (a) its fraud or fraudulent misrepresentation;**
- (b) its obligations under Section 13 (Indemnification);**
- (c) its infringement of the other party's Intellectual Property Rights;**
- (d) its payment obligations under the Agreement; or**
- (e) matters for which liability cannot be excluded or limited under applicable law.**

13. Indemnification.

13.1 Actifio Indemnification Obligations. Actifio will defend Customer and its Affiliates participating under the Agreement ("Customer Indemnified Parties") and indemnify them against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from an allegation that the Service or any Actifio Brand Feature infringes the third party's Intellectual Property Rights.

13.2 Customer Indemnification Obligations. Customer will defend Actifio and its Affiliates participating under this Agreement and indemnify them against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from (a) any Customer Data or Customer Brand Features; or (b) Customer's or an End User's use of the Services in breach of the AUP or Section 3.3 (Restrictions).

13.3 Exclusions. Sections 13.1 (Actifio Indemnification Obligations) and 13.2 (Customer Indemnification Obligations) will not apply to the extent the underlying allegation arises from (a) the indemnified party's breach of the Agreement or (b) a combination of the indemnifying party's technology or Brand Features with materials not provided by the indemnifying party under the Agreement, unless the combination is required by the Agreement.

13.4 Conditions. Sections 13.1 (Actifio Indemnification Obligations) and 13.2 (Customer Indemnification Obligations) are conditioned on the following:

- (a) The indemnified party must promptly notify the indemnifying party in writing of any allegation(s) that preceded the Third-Party Legal Proceeding and cooperate reasonably with the indemnifying party to resolve the allegation(s) and Third-Party Legal Proceeding. If breach of this Section 13.4(a) prejudices the defense of the Third-Party Legal Proceeding, the indemnifying party's obligations under Section 13.1 (Actifio Indemnification Obligations) or 13.2 (Customer Indemnification Obligations) (as applicable) will be reduced in proportion to the prejudice.
- (b) The indemnified party must tender sole control of the indemnified portion of the

Third-Party Legal Proceeding to the indemnifying party, subject to the following: (i) the indemnified party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from taking) any action, will require the indemnified party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

13.5 Remedies.

(a) If Actifio reasonably believes the Services might infringe a third party's Intellectual Property Rights, then Actifio may, at its sole option and expense (i) procure the right for Customer to continue using the Services; (ii) modify the Services to make them non-infringing without materially reducing their functionality; or (iii) replace the Services with a non-infringing, functionally equivalent alternative.

(b) If Actifio does not believe the remedies in Section 13.5(a) are commercially reasonable, then Actifio may Suspend or terminate Customer's use of the impacted Services.

13.6 Sole Rights and Obligations. Without affecting either party's termination rights, this Section 13 (Indemnification) states the parties' sole and exclusive remedy under this Agreement for any third-party allegations of Intellectual Property Rights infringement covered by this Section 13 (Indemnification).

14. U.S. Federal Agency Users. The Services were developed solely at private expense and are commercial computer software and related documentation within the meaning of the applicable Federal Acquisition Regulations and their agency supplements.

15. Miscellaneous.

15.1 Notices. Actifio will provide notices under the Agreement to Customer by sending an email to the Notification Email Address. Customer will provide notices under the Agreement to Actifio by sending an email to support@actifio.com. Notice will be treated as received when the email is sent. Customer is responsible for keeping its Notification Email Address current throughout the Term.

15.2 Emails. The parties may use emails to satisfy written approval and consent requirements under the Agreement.

15.3 Assignment. Neither party may assign any part of this Agreement without the written consent of the other, except to an Affiliate where (a) the assignee has agreed in writing to be bound by the terms of this Agreement, and (b) the assigning party has notified the other party of the assignment. Any other attempt to assign is void. If

Customer assigns this Agreement to an Affiliate in another jurisdiction such that there is a change in the Actifio may assign this Agreement to the new Actifio contracting entity or its Affiliate.

15.4 Change of Control. If a party experiences a change of Control (for example, through a stock purchase or sale, merger, or other form of corporate transaction), that party will give written notice to the other party within 30 days after the change of Control.

15.5 Force Majeure. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control, including acts of God, natural disasters, terrorism, riots, or war.

15.6 Subcontracting. Actifio may subcontract obligations under the Agreement but will remain liable to Customer for any subcontracted obligations.

15.7 No Agency. This Agreement does not create any agency, partnership, or joint venture between the parties.

15.8 No Waiver. Neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under this Agreement.

15.9 Severability. If any part of this Agreement is invalid, illegal, or unenforceable, the rest of the Agreement will remain in effect.

15.10 No Third-Party Beneficiaries. This Agreement does not confer any benefits on any third party unless it expressly states that it does.

15.11 Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.

15.12 U.S. Governing Law.

(a) For U.S. City, County, and State Government Entities. If Customer is a U.S. city, county, or state government entity, then the Agreement will be silent regarding governing law and venue.

(b) For U.S. Federal Government Entities. If Customer is a U.S. federal government entity, then the following applies: ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES WILL BE GOVERNED BY THE LAWS OF THE UNITED STATES OF AMERICA, EXCLUDING ITS CONFLICT OF LAWS RULES.

SOLELY TO THE EXTENT PERMITTED BY FEDERAL LAW, (I) THE LAWS OF THE STATE OF CALIFORNIA (EXCLUDING CALIFORNIA'S CONFLICT OF LAWS RULES) WILL APPLY IN THE ABSENCE OF APPLICABLE FEDERAL LAW; AND (II) FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CLARA COUNTY, CALIFORNIA.

(c) For All Other Entities. If Customer is any entity not stated in Section 15.12(a) or (b) then the following applies: ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES WILL BE GOVERNED BY CALIFORNIA LAW, EXCLUDING THAT STATE'S CONFLICT OF LAWS RULES, AND WILL BE LITIGATED EXCLUSIVELY IN THE FEDERAL OR STATE COURTS OF SANTA CLARA COUNTY, CALIFORNIA, USA; THE PARTIES CONSENT TO PERSONAL JURISDICTION IN THOSE COURTS.

15.13 Amendments. Except as stated in Section 1.4(b) (Modifications: To the Agreement), any amendment must be in writing, signed by both parties, and expressly state that it is amending this Agreement.

15.14 Survival. The following Sections will survive expiration or termination of this Agreement: Section 2 (Payment Terms), Section 5 (Intellectual Property Rights; Protection of Customer Data; Feedback), Section 7 (Confidential Information), Section 8.5 (Effect of Termination), Section 11 (Disclaimer), Section 12 (Limitation of Liability), Section 13 (Indemnification), and Section 15 (Miscellaneous).

15.15 Entire Agreement. This Agreement sets out all terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter. In entering into this Agreement, neither party has relied on, and neither party will have any right or remedy based on, any statement, representation, or warranty (whether made negligently or innocently), except those expressly stated in this Agreement. The terms located at a URL referenced in this Agreement are incorporated by reference into the Agreement. After the Effective Date, Actifio may provide an updated URL in place of any URL in this Agreement.

15.16 Conflicting Terms. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Data Processing and Security Terms, the Agreement, and the terms at any other URL.

15.17 Headers. Headings and captions used in the Agreement are for reference purposes only and will not have any effect on the interpretation of the Agreement.

15.18 Conflicting Languages. If this Agreement is translated into any language other than English, and there is a discrepancy between the English text and the translated text, the English text will govern unless expressly stated otherwise in the translation.

15.19 Definitions.

"Account" means Customer's Actifio account.

"Admin Console" means the online console(s) or dashboard provided by Actifio to Customer for administering the Services.

"Affiliate" means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with a party.

"AUP" means the then-current acceptable use policy for the Services stated at <http://cloud.google.com/terms/aup>.

"Brand Features" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.

"Confidential Information" means information that one party (or an Affiliate) discloses to the other party under this Agreement, and which is marked as confidential or would normally under the circumstances be considered confidential information. It does not include information that is independently developed by the recipient, is rightfully given to the recipient by a third party without confidentiality obligations, or becomes public through no fault of the recipient. Subject to the preceding sentence, Customer Data is considered Customer's Confidential Information.

"Control" means control of greater than 50 percent of the voting rights or equity interests of a party.

"Customer Data" means data provided to Actifio by Customer or End Users through the Services under the Account.

"Customer End User" means an individual that Customer permits to use the Services. For clarity, End Users may include employees of Customer Affiliates and other third parties.

"Data Processing and Security Terms" means the terms located at https://cloud.google.com/backup-disaster-recovery/docs/reference/Google-Cloud-Backup-and-DR-DPST-v.22.03_Final.pdf

"Documentation" means the Actifio documentation (as may be updated from time to time) in the form generally made available by Actifio to its customers for use with the Services at <https://cloud.google.com/backup-disaster-recovery/docs>.

"Fees" means the applicable fees for Service and Professional Services and any applicable Taxes.

"Actifio API" means any application programming interface provided by Actifio as part of the Services.

"GCP Marketplace Agreement" means the terms of service at <https://console.developers.google.com/tos?id=launcher> or another applicable and valid written agreement between Customer and Google governing Customer's use of the GCP Marketplace.

"High Risk Activities" means activities where the use or failure of the Services would reasonably be expected to lead to death, personal injury, or environmental damage (such as the creation or operation of nuclear facilities, air traffic control, life support systems, or weaponry).

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996 as it may be amended from time to time, and any regulations issued under it.

"including" means including but not limited to.

"Indemnified Liabilities" means any (i) settlement amounts approved by the indemnifying party and (ii) damages and costs finally awarded against the indemnified party and its Affiliates by a court of competent jurisdiction.

"Intellectual Property Rights" means current and future worldwide rights under patent, copyright, trade secret, trademark, and moral rights laws, and other similar rights.

"Legal Process" means an information disclosure request made under law, governmental regulation, court order, subpoena, warrant, or other valid legal authority, legal procedure, or similar process.

"Liability" means any liability, whether under contract, tort (including negligence), or otherwise, regardless of whether foreseeable or contemplated by the parties.

"Notification Email Address" means the email address(es) designated by Customer in the Admin Console, Order Form, or registration form.

"Privacy Policy" means then-current Actifio's privacy policy found at <https://www.actifio.com/privacy-policy/>

“Professional Services” means then-current advisory and implementation services described in the applicable Statement of Work designed to help Customer use Actifio products and services.

"Services" means an Actifio provided SaaS platform for VM, physical and database backup and recovery to Google Cloud Platform. Services do not include Third-Party Offerings.

"Software" means any downloadable tools, software development kits, or other such computer software that may be provided by Actifio in connection with the Services, and any updates Actifio may make to such Software from time to time. Software does not include Third-Party Offerings.

“Statement of Work” or “SOW” means an statement of work or other document issued by Actifio under the Agreement and executed by Customer and Actifio specifying the Professional Services Actifio will provide to Customer.

"Suspend" or "Suspension" means disabling or limiting access to or use of the Services or components of the Services.

"Taxes" means all government-imposed taxes, except for taxes based on Actifio's net income, net worth, asset value, property value, or employment.

"Term" has the meaning stated in Section 8 (Term and Termination) of this Agreement.

"Third-Party Offerings" means third-party services, software, products, and other offerings that are not incorporated into the Services or Software.

"Third-Party Legal Proceeding" means any formal legal proceeding filed by an unaffiliated third party before a court or government tribunal (including any appellate proceeding).

"Trademark Guidelines" means Actifio's Guidelines for Third Party Use of Actifio Brand Features which will be provided upon request

"TSS" means the then-current technical support service provided by Actifio to Customer under the TSS Guidelines.

"TSS Guidelines" means Actifio's technical support services guidelines then in effect for the Services. TSS Guidelines are at https://cloud.google.com/backup-disaster-recovery/docs/reference/Google-Cloud-Backup-and-DR-Support-Policy-2022-03-30_Final.pdf

Exhibit A: Free Trial Terms and Conditions

These Supplemental Terms and Conditions apply to Customer's participation in the Actifio Free Trial ("Free Trial").

1. Conditions.

1.1 Use of the Services under the Free Trial is subject to the terms of the Agreement except as otherwise specified in the Free Trial Terms and Conditions herein.

1.2 Only new Actifio customers are eligible to participate in the Free Trial.

1.3 The Free Trial starts when Actifio issues a temporary private offer link to Activate Free trial via Google Marketplace and Customer accepts the Agreement ("Free Trial Start Date") and will end on the agreed upon term.

2. Communications.

Customer may receive periodic communications from Actifio at the contact information submitted/linked during the Free Trial sign up and associated with the Free Trial account, such as training and on-boarding materials, product tips and updates, event information and special offers related to Actifio Service.

3. Limitations.

3.1 Actifio's warranty and indemnity do not apply to use of the Services under the Free Trial.

3.2 Actifio may terminate or modify the Free Trial at any time with or without notice to Customer.

4. Conclusion of the Free Trial.

4.1 When the Free Trial ends or terminates, Customer will no longer have access to the Services. Actifio may issue a private offer link to activate the Service and Customer's use of the Service will be governed by the Agreement and not the Free Trial Terms and Conditions.

5. Miscellaneous.

5.1 Sections 4 and 5 will survive any expiration or termination of the Free Trial Terms and Conditions.

5.2 If the terms of the Free Trial Terms and Conditions and the Agreement conflict, the terms of the Free Trial Terms and Conditions will govern.

Exhibit B: Professional Services Schedule

This Services Schedule applies to implementation and advisory services described in this Professional Services Schedule and the applicable Statement of Work. Terms defined in the Agreement apply to this Professional Services Schedule.

1. Services.

1.1 Provision of Professional Services. Actifio will provide Professional Services, including Deliverables, to Customer, subject to Customer fulfilling its obligations under Section 2.1 (Cooperation).

1.2 Personnel. Actifio will determine which Personnel will perform the Professional Services. If Customer requests a change of Personnel and provides a reasonable and legal basis for such request, then Actifio will use commercially reasonable efforts to replace the assigned Personnel with alternative Personnel.

1.34 Compliance with Customer's Onsite Policies and Procedures. Actifio Personnel performing Professional Services at Customer's facilities will comply with Customer's reasonable onsite policies and procedures made known to Actifio in writing in advance.

2. Customer Obligations.

2.1 Cooperation. Customer will provide reasonable and timely cooperation in connection with Actifio's provision of the Professional Services. Actifio will not be liable for a delay caused by Customer's failure to provide Actifio with the information, materials, consents, or access to Customer facilities, networks, or systems required for Actifio to perform the Professional Services. If Actifio informs Customer of such failure and Customer does not cure the failure within 30 days, then (a) Actifio may terminate any incomplete Professional Services and (b) in addition to Fees in Section 6(b) (Effect on Payment), Customer will pay actual costs incurred by Actifio for the cancelled Services.

2.2 No Personal Data. Customer acknowledges that Actifio does not need to process Personal Data to perform the Professional Services. Customer will not provide Actifio with access to Personal Data unless the parties have agreed in a separate agreement on the scope of work and any terms applicable to Actifio's processing of such Personal Data.

3. Intellectual Property.

3.1 Background IP. Customer owns all rights, title, and interest in Customer's Background IP. Actifio owns all rights, title, and interest in Actifio's Background IP. Customer grants Actifio a license to use Customer's Background IP to perform the Professional Services (with a right to sublicense to Actifio Affiliates and subcontractors). Except for the license rights under Sections 3.2 (Actifio Technology) and 3.3 (Deliverables), neither party will acquire any right, title, or interest in the other party's Background IP under this Professional Services Schedule.

3.2 Actifio Technology. Actifio owns all rights, title, and interest in Actifio Technology. To the extent Actifio Technology is incorporated into Deliverables, Actifio grants Customer a limited, worldwide, non-exclusive, perpetual, non-transferable license (with the right to sublicense to Affiliates) to use the Actifio Technology in connection with the Deliverables for Customer's internal business purposes. This Professional Services Schedule does not grant Customer any right to use materials, products, or services that are made available to Actifio customers under a separate agreement, license, or Professional Services Schedule.

3.3 Deliverables. Actifio grants Customer a limited, worldwide, non-exclusive, perpetual, fully-paid, non-transferable license (with the right to sublicense to Affiliates) to use, reproduce, and modify the Deliverables for Customer's internal business purposes.

4. Warranties and Remedies.

4.1 Professional Services Warranty. Actifio will perform the Professional Services in a professional and workmanlike manner, in accordance with practices used by other service providers performing services similar to the Professional Services. Actifio will use Personnel with requisite skills, experience, and qualifications to perform the Professional Services.

4.2 Remedies. Actifio's entire liability and Customer's sole remedy for Actifio's failure to provide Professional Services that conform with Section 4.1 (Professional Services Warranty) will be for Actifio to, at its option, (a) use commercially reasonable efforts to re-perform the Professional Services or (b) terminate the the applicable Statement of Work and refund any applicable Fees received for the nonconforming Professional Services. Any claim that Actifio has breached the warranty as described in Section 4.1 (Professional Services Warranty) must be made within 30 days after Actifio has performed the Professional Services.

5. Indemnification.

5.1 Indemnification Exclusions. Agreement Sections 13.1 (Actifio Indemnification Obligations) and 13.2 (Customer Indemnification Obligations) will not apply to the extent the underlying allegation arises from (a) modifications to the Actifio Indemnified Materials or Customer Indemnified Materials (as applicable) by anyone other than the indemnifying party or (b) compliance with the indemnified party's instructions, design, or request for customized features.

5.2 Infringement Remedies. The remedies described in Agreement Section 13.5 (Remedies) also apply to Deliverables.

6. Effects of Termination. If this Professional Services Schedule or a Statement of Work under this Professional Services Schedule expires or terminates, then:

(a) Effect on Professional Services. The rights under the Agreement granted by one party to the other regarding the Professional Services will cease immediately except as described in this Section 6 (Effects of Termination), and Actifio will stop work on the Professional Services.

(b) Effect on Payment. Customer will pay for (i) Professional Services, including work-in-progress, performed before the effective date of termination or expiration and (ii) any remaining non-cancellable Fees. Actifio will send Customer a final invoice for payment obligations under the Statement of Work.

(c) Survival. The following Sections of this Schedule will survive expiration or termination of this Professional Services Schedule: 3 (Intellectual Property), 5 (Indemnification), 6 (Effects of Termination), and 9 (Additional Definitions).

7. Insurance. During the term of the Agreement, each party will maintain, at its own expense, appropriate insurance coverage applicable to performance of the party's respective obligations under the Agreement, including general commercial liability, workers' compensation, automobile liability, and professional liability.

8. Termination of Previous Agreements. If Actifio and Customer have previously entered into an agreement for Actifio to perform similar Professional Services (including a Professional Services Agreement), then that agreement will terminate on the date of the last party's signature effectuating the Agreement, and the Agreement will govern the provision and use of the Professional Services going forward.

9. Additional Definitions.

“Background IP” means all Intellectual Property Rights owned or licensed by a party (a) before the effective date of the applicable Statement of Work or (b) independent of the Professional Services.

“Customer Indemnified Materials” means (a) Customer Background IP and any other information, materials, or technology provided to Actifio by Customer in connection with the Professional Services (in each case, excluding any open source software) and (b) Customer’s Brand Features. Customer Indemnified Materials do not include Actifio Technology or Deliverables.

“Deliverables” means work product created specifically for a Customer by Actifio’s Personnel as part of the Professional Services and specified as Deliverables in the applicable Statement of Work.

“Actifio Indemnified Materials” means (a) Deliverables and Actifio Technology (in each case, excluding any open source software) or (b) Actifio’s Brand Features. Actifio Indemnified Materials do not include Customer Background IP.

“Actifio Technology” means (a) Actifio Background IP; (b) all Intellectual Property and know-how applicable to Actifio products and services; and (c) tools, code, algorithms, modules, materials, documentation, reports, and technology developed in connection with the Professional Services that have general application to Actifio’s other customers, including derivatives of and improvements to Actifio’s Background IP. Actifio Technology does not include Customer Background IP or Customer Confidential Information.

“Notification Email Address” means the email address(es) designated by Customer in the applicable Statement of Work.

“Personal Data” means personal data that (a) has the meaning given to it in (i) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (“EU GDPR”) or (ii) the EU GDPR as amended and incorporated into UK law under the UK European Union (Withdrawal) Act 2018, if in force (“UK GDPR”), as applicable; and (b) would

cause Google to be subject to the EU GDPR or the UK GDPR (as applicable) as a data processor for Customer.

“Personnel” means a party’s and its Affiliates’ respective directors, officers, employees, agents, and subcontractors.

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