

ARCSERVE (USA) LLC  
END USER LICENSE AGREEMENT COUNTRY SPECIFIC TERMS

**Argentina**

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of Argentina. Any dispute hereunder shall be determined by the Tribunales de la Ciudad de Buenos Aires.

**Australia**

The following is added to each of the end of Sections 6:

Although Arcserve specifies that there are no warranties, Licensee may have certain rights under the Trade Practices Act 1974 and other state and territory legislation which may not be excluded but may be limited. To the full extent permitted by law Arcserve excludes all terms not expressly set out in the express terms of this Agreement, and limits any terms imposed by the Trade Practices Act 1974 and other state and territory legislation to the full extent permitted by the applicable legislation.

The last sentence of Section 16.H is deleted and replaced with:

The laws of the State or Territory in which the transaction is performed govern this Agreement. The following is added to Section 6:

Where Arcserve is in breach of a condition or warranty implied by the Trade Practices Act 1974 or other state and territory legislation, Arcserve's liability is limited, in the case of goods, to the repair or replacement of the goods, or payment for the repair or replacement of the goods, and in the case of services, the supplying of the services again or payment for the re-supply of the services, as Arcserve may elect. Where that condition or warranty relates to a right to sell, quiet possession or clear title, in respect of goods or if the goods supplied by Arcserve are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this Section apply.

**Austria**

Section 16.H is deleted and replaced with:

The laws of Austria govern this Agreement. The following is added to Section 16(E): In addition, Arcserve is entitled to bring action against Licensee in a court located in Licensee's place of incorporation, establishment or permanent residence.

The following is added to Section 8:

Any liability for the slight negligence of Arcserve is excluded. The following is added to the Agreement:

In the event the Licensee qualifies as a consumer according to Austrian Consumer Protection Act ("Konsumentenschutzgesetz" -"KSchG") Sections 6, 7, 8 and 11 of this Agreement are not applicable to the extent they reduce Arcserve's liability and the consumer's warranty.

## **Belgium**

Section 16.H is deleted and replaced with:

The courts of Arcserve's registered office shall have exclusive jurisdiction regarding any dispute that may arise between the parties dealing with the formation, execution, interpretation, or termination of this Agreement, including but not limited to measures of conservation, emergency proceedings, warranty proceedings, petition or in case of more than one defendant.

## **Brazil**

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of Brazil. Any dispute hereunder shall be determined by a court of the São Paulo City Hall.

## **Canada**

Section 16.H is deleted and replaced with:

The laws in the Province of Ontario shall govern this Agreement.

## **Chile**

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of Chile. Any dispute hereunder shall be determined by the Tribunales Ordinarios de la Ciudad de Santiago.

## **China**

Section 13 is revised to replace where applicable: All fees are inclusive of VAT.

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of the People's Republic of China, without regard to its choice of law provisions. Any dispute hereunder shall be determined by a competent court located in Beijing.

## **Colombia**

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of Colombia. Any dispute hereunder shall be determined by the Tribunales Ordinarios de la Ciudad de Bogotá.

## **Czech Republic**

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of the Czech Republic, without regard to its choice of law provisions. Any dispute hereunder shall be determined by a court of competent jurisdiction within the Czech Republic.

Section 6.A is deleted and replaced with:

Arcserve warrants that it can enter into this Agreement. Arcserve also warrants that the Product will operate substantially in accordance with the specifications set forth in the documentation for a period of ninety (90) days from Licensee's acquisition of the license for the Product and if the Licensee is a consumer (i.e. individual not acting within the scope of his/her business or independent carrying out of a profession) for a period of six (6) months from Licensee's acquisition of the license. If Licensee who is not a consumer notifies Arcserve in writing of a breach of this warranty during the warranty period set forth above, Arcserve's entire liability and Licensee's sole remedy shall be for Arcserve, at Arcserve's sole option (i) to correct, repair or replace the Product within a reasonable time, or (ii) if within a reasonable time after receiving Licensee's written notice of breach of the above warranty, Arcserve is unable to cause the Product to operate in accordance with Arcserve's written specifications, then either party may terminate this Agreement on written notice to the other party and Arcserve or the authorized reseller will refund the relevant license Fees Licensee paid for such non-compliant Product only when Licensee returns the Product to Arcserve or its authorized reseller from whom it obtained the Product, with the purchase receipt within the warranty period noted above. If the Licensee who is a consumer notifies Arcserve in writing of a breach of this warranty during the warranty period set forth above and (a) the breach is correctable the Licensee may claim either correction of the defect or reasonable discount from license Fees the Licensee paid for such non-compliant Product, (b) the breach is not correctable and hinders reasonable use of the Product, the Licensee may claim either reasonable discount from the license Fees the Licensee paid for such non-compliant Product or the Licensee may terminate this Agreement on written notice to Arcserve and Arcserve or the authorized reseller will refund the relevant license Fees the Licensee paid for such non-compliant Product only when Licensee returns the Product to Arcserve or its authorized reseller from whom it obtained the Product, with the purchase receipt. The warranties set forth in this Section do not apply to beta versions of the Product, Products licensed on a trial or evaluation basis or to Software Development Kits.

Section 6.D is deleted and replaced with:

Except as set forth above, to the full extent permitted by applicable law, no other warranties, whether express or implied, including, without limitation, any implied warranties or conditions of merchantability, satisfactory quality and fitness for a particular purpose, are made by Arcserve.

#### **Denmark**

The third paragraph of the Preamble is deleted and replaced with:

By installing, copying or using the product or by selecting the "I accept the terms of the License Agreement" radio button below, and the clicking on the "Next" button, you are:

- (I) Representing that you are not a minor and have full legal capacity and have the authority to bind yourself and your employer, as applicable, to the terms of this Agreement;
- (II) Consenting on behalf of yourself and/or as an authorized representative.

The following is added to the last paragraph of the Preamble:

In the event that you select the "I do NOT accept the terms of the License Agreement" radio button below, and then click on the "Cancel" button, the installation shall cease. You should delete all copies of the

Product from your computer systems and return, by registered first class post, the Product, complete with box and any documentation, to Arcserve or the authorized reseller from whom you purchased the Product with your proof of purchase within thirty (30) days of the date of purchase. You will promptly be issued a full refund of any license fees paid for the Product and, if applicable, maintenance fees paid. If requested at the time of return and provided that receipts of costs incurred are provided, Arcserve or the authorized reseller shall also refund to you any postage costs you incurred in returning the Product.

The second to last sentence of Section 11.A is deleted and replaced with:

Beta products are provided on an "as is" basis, without warranties or representations of any kind, either express or implied including, without limitation, any warranties, conditions or representations of merchantability or satisfactory quality and fitness for a particular purpose, as well as any express warranties provided elsewhere in this Agreement.

The last sentence of Section 11.C is deleted and replaced with:

Licensee's use of the product during the trial period is on an "as is" basis without any warranty, and Arcserve disclaims all warranties including, without limitation, any implied warranties or conditions of merchantability or satisfactory quality and fitness for a particular purpose, as well as any express warranties provided elsewhere in this Agreement.

Section 3.A(v) is deleted and replaced with:

Licensee may not disclose, de-compile, disassemble nor otherwise reverse engineer the Product save to the extent expressly permitted by law;

Section 3.A(viii) is deleted and replaced with:

Licensee may not permit the use of the Product by any third party without the prior written consent of Arcserve, save for contract staff of the Licensee who are acting on the Licensee's business, not engaged in facilities management and who the Licensee agrees as a condition of this Agreement to ensure such contract staff shall comply with all the terms of this Agreement, including without limitation, confidentiality provisions.

Section 6.D is deleted and replaced with:

Except as set forth above, to the full extent permitted by applicable law, no other warranties, whether express or implied, including, without limitation, any implied warranties or conditions of merchantability, satisfactory quality and fitness for a particular purpose, are made by Arcserve. For the avoidance of doubt, in the event that Licensee qualifies as a consumer under the Danish Sale of Goods Act, Licensee has a mandatory two-year right of complaint in relation to defects.

The following is added at the end of Section 8:

The foregoing exclusions and limitations upon liability shall not apply to any liability for damages arising from:

- a. Tangible property damage to the extent that such is due to the negligence of an employee or authorized agent of Arcserve, in which event Arcserve's maximum liability shall be limited to \$1,000,000 for each event or series of events;
- b. Death or personal injury caused by the negligence of an employee or authorized agent of Arcserve.

## **France**

Section 16.H is deleted and replaced with:

The Commercial Court of Paris shall have exclusive jurisdiction regarding any dispute that may arise between the parties dealing with the formation, execution, interpretation, or termination of this Agreement, including but not limited to measures of conservation, emergency proceedings, warranty proceedings, petition or in case of more than one defendant.

## **Germany**

The first sentence of Section 12.A is deleted and replaced with:

Licensee shall comply with all relevant import and export regulations, including those adopted by the Office of Export Administration of the US Department of Commerce, any competent EU government and German export regulations. Licensee understands and acknowledges that US, EU and German restrictions vary regularly and, depending on Product, Licensee must refer to then current US, EU or German regulations.

The following is added to Section 7.C:

Arcserve shall not be liable for any infringement based upon use of other than an unaltered release of the Product unless altered with Arcserve's prior written consent.

The following is added to Section 8:

In case of (i) willful misconduct, no limitation of liability applies;(ii) personal injury or damage to property, Arcserve's liability to Licensee is limited to the maximum amount that Arcserve will recover under its insurance policies; (iii) gross negligence that results in other damage than personal injury or damage to property, Arcserve's liability to Licensee shall be limited to an amount equal to the license fee for the Product; (iv) negligence that results in damages other than personal injury or damage to property, Arcserve's liability to Licensee shall be limited to an amount equal to fifty percent (50%) of the license fee for the Product. Notwithstanding the foregoing, the aggregated liability according to (iii) and (iv) above shall never exceed an amount equal to the purchase price of the Product. Except in case of willful misconduct or gross negligence, neither party shall be liable to the other for indirect, incidental, special or consequential damage, including but not limited to harm to services supplied by Licensee, or loss of business, loss of profit, or loss of data, arising out of or in connection with the implementation or the use of the Product. No actions, regardless of form, arising out of this Agreement may be brought by either party more than three (3) years after the cause of action has arisen, or, in the cause of non- payment, more than three (3) years from the date of the relevant invoice. Neither party shall be liable for delay in performing or failure to perform any of its obligations under this Agreement if the delay or failure results from events or circumstances outside its reasonable control. Such delay or failure shall not constitute a breach of this Agreement and time for performance shall be extended by time equivalent to the length of the delay caused by force majeure.

## **Greece**

Section 16.H is deleted and replaced with: Any dispute hereunder shall finally be determined by Athens Courts.

## **Hong Kong**

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of Hong Kong. The courts of Hong Kong will have sole and exclusive jurisdiction with respect to any disputes arising out of this Agreement.

The following is added at the end of Section 8:

The aforementioned liability limitation and the aforementioned maximum liability amount will not affect or prejudice the statutory rights of the licensee under the sale of goods ordinance, the supply of services (implied terms) ordinance or the control of exemption sections ordinance, nor will they limit or exclude any liability for death or personal injury solely caused by Arcserve's negligence.

### **India**

Section 16.H is deleted and replaced with:

This Agreement and the terms hereof shall be governed and construed in accordance with the laws of India and the courts of Mumbai shall have sole and exclusive jurisdiction with respect to any disputes arising out of this Agreement.

### **Indonesia**

Section 16.H is deleted and replaced with:

This Agreement and the terms hereof shall be governed and construed in accordance with the laws of Indonesia. The courts of Indonesia, located in Jakarta, will have the sole and exclusive jurisdiction with respect to any disputes arising out of this Agreement.

Section 6.A is amended by adding the following:

Licensee represents that Licensee (i) has full corporate power and authority; and (ii) is legally capable to execute, deliver and perform this Agreement. Arcserve and Licensee agree to waive any provisions, procedures and operation of any applicable law to the extent that a court order is required for termination of this Agreement.

### **Israel**

Section 16.H is deleted and replaced with:

Any dispute hereunder shall finally be determined by Tel Aviv Courts.

### **Italy**

Section 6.A shall be amended as below:

Arcserve warrants that it can enter into this Agreement. Arcserve also warrants that the Product will operate substantially in accordance with the specifications set forth in the documentation for a period of

1 year from Licensee's acquisition of the license for the Product. If Licensee notifies Arcserve in writing of a breach of this warranty during the warranty period set forth above, Arcserve's entire liability and Licensee's sole remedy shall be for Arcserve, (i) to correct, repair or replace the Product within a reasonable time, or (ii) to reduce the price of the Product proportionally to what incurred or (iii) if within a reasonable time after receiving Licensee's written notice of breach of the above warranty, Arcserve is unable to cause the Product to operate in accordance with Arcserve's written specifications, then either party may terminate this Agreement on written notice to the other party and Arcserve or the authorized reseller will refund the relevant license Fees Licensee paid for such non-compliant Product only when Licensee returns the Product to Arcserve or its authorized reseller from whom it obtained the Product, with the purchase receipt within the warranty period noted above. The warranties set forth in this Section do not apply to beta versions of the Product, Products licensed on a trial or evaluation basis or to Software Development Kits.

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of Italy. Any dispute hereunder shall finally be determined exclusively by the Court of Milan.

According to article 1341 of the Italian Civil Code, the Licensee expressly accepts the terms and conditions set in Sections 6 (Warranty), 7 (Indemnity), 8 (Limitation of Liability), 12 (Software Development Kit), 16.H (Court).

#### **Japan**

The second sentence of Section 17.B is deleted and replaced with:

Licensee agrees to pay any tariffs, duties or taxes imposed or levied by any government or governmental agency other than the taxes for which Arcserve is responsible upon a presentation of invoices by Arcserve.

Section 20.I is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of the country of Japan, without regard to its choice of law provisions. Any dispute hereunder shall finally be determined by Tokyo District Court located in Tokyo Japan.

In the event that additional or alternative information is provided on the Arcserve website located at [www.arcserve.com/jp](http://www.arcserve.com/jp), such information shall supersede the terms set forth above and in the End User License Agreement.

#### **Korea**

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of Republic of Korea, without regard to its choice of law provisions.

#### **Lybia, Egypt, Lebanon, Jordan, Iraq, Kingdom of Saudi Arabia, Kuwait, Qatar, United Arab Emirates, Oman, Yemen and Pakistan**

Section 16.H is deleted and replaced with:

This Agreement shall be interpreted according to, and governed by, the Laws of Dubai and the Federal Laws of the United Arab Emirates.

Any disputes shall be finally settled by arbitration in accordance with the Rules of Commercial Conciliation and Arbitration of the Dubai Chamber of Commerce & Industry, which Rules are deemed to incorporate reference to this Clause. The place of arbitration shall be Dubai. The arbitration proceedings and award shall be conducted and written in the English language. Judgment upon the award rendered may be executed by any court having jurisdiction, or application may be made to such court for a judicial recognition of the award or any order of enforcement thereof, as the case may be.

The award of the arbitration shall be the sole and exclusive remedy between the parties regarding any and all claims and counterclaims presented to the arbitrators.

### **Malaysia**

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of Malaysia. The courts of Malaysia will have sole and exclusive jurisdiction with respect to any disputes arising out of this Agreement.

The following is added to Section 6:

Although Arcserve specifies that there are no other warranties, Licensee may have certain rights under the Consumer Protection Act 1999 and the warranties are only limited to the extent permitted by the applicable legislation.

### **Mexico**

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of México. Any dispute hereunder shall be determined by the Tribunales de la Ciudad de México.

### **Netherlands**

The third paragraph of the Preamble is deleted and replaced with:

By installing, copying or using the product or by selecting the "I accept the terms of the License Agreement" radio button below, and then clicking on the "Next" button, you are

- (I) Representing that you are not a minor and have full legal capacity and have the authority to bind yourself and your employer, as applicable, to the terms of this Agreement;
- (II) Consenting on behalf of yourself and/or as an authorized representative.

The following is added to the last paragraph of the Preamble:

In the event that you select on "I do NOT accept the terms of the License Agreement" radio button below, and then click on the "Cancel" button, the installation shall cease. You should delete all copies of the Product from your computer systems and return, by registered first class post, the Product, complete with

box and any documentation, to Arcserve or the authorized reseller from whom you purchased the Product with your proof of purchase within thirty (30) days of the date of purchase. You will promptly be issued a full refund of any license fees paid for the Product and, if applicable, maintenance fees paid. If requested at the time of return and provided that receipts of costs incurred are provided, Arcserve or the authorized reseller shall also refund to you any postage costs you incurred in returning the Product.

The second to last sentence of Section 11.A is deleted and replaced with:

Beta products are provided on an "as is" basis, without warranties or representations of any kind, either express or implied including, without limitation, any warranties, conditions or representations of merchantability or satisfactory quality and fitness for a particular purpose, as well as any express warranties provided elsewhere in this Agreement.

The last sentence of Section 11.C is deleted and replaced with:

Licensee's use of the product during the trial period is on an "as is" basis without any warranty, and Arcserve disclaims all warranties including, without limitation, any implied warranties or conditions of merchantability or satisfactory quality and fitness for a particular purpose, as well as any express warranties provided elsewhere in this Agreement.

Section 3.A(v) is deleted and replaced with:

Licensee may not disclose, de-compile, disassemble nor otherwise reverse engineer the Product save to the extent expressly permitted by law;

Section 3.A(viii) is deleted and replaced with:

Licensee may not permit the use of the Product by any third party without the prior written consent of Arcserve, save for contract staff of the Licensee who are acting on the Licensee's business, not engaged in facilities management and who the Licensee agrees as a condition of this Agreement to ensure such contract staff shall comply with all the terms of this Agreement, including without limitation, confidentiality provisions.

Section 6.D is deleted and replaced with:

Except as set forth above, to the fullest extent permitted by applicable law, no other warranties, whether express or implied, including, without limitation, any implied warranties or conditions of merchantability, satisfactory quality and fitness for a particular purpose, are made by Arcserve.

The following is added at the end of Section 8:

The foregoing exclusions and limitations upon liability shall not apply to any liability for damages arising from:

- a. Tangible property damage to the extent that such is due to the negligence of an employee or authorized agent of Arcserve, in which event Arcserve's maximum liability shall be limited to \$1,000,000 for each event or series of events;
- b. Death or personal injury caused by the negligence of an employee or authorized agent of Arcserve, or

c. Willful misconduct or gross negligence of Arcserve.

## **New Zealand**

Notwithstanding Section 13.C, the applicable interest charge on invoices unpaid by Licensee is 1.5% per month.

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of New Zealand. The courts of New Zealand will have sole and exclusive jurisdiction with respect to any disputes arising out of this Agreement.

The following is added to Section 6:

Although Arcserve specifies that there are no warranties, Licensee may have certain rights under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods or services which Arcserve supplies, if Licensee acquires the goods and services for the purposes of a business as defined in that Act. Where the Product is not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

The following is added to Section 14.A:

Arcserve's rights under this Section shall also apply if any resolution is passed or proceedings are commenced for the liquidation or winding up of Licensee.

## **Norway**

The third paragraph of the Preamble is deleted and replaced with:

By installing, copying or using the product or by selecting the "I accept the terms of the License Agreement" radio button below, and then clicking on the "Next" button, you are:

- (I) Representing that you are not a minor and have full legal capacity and have the authority to bind yourself and your employer, as applicable, to the terms of this Agreement;
- (II) Consenting on behalf of yourself and/or as an authorized representative. The following is added to the last paragraph of the Preamble:

In the event that you select the "I do NOT accept the terms of the License Agreement" radio button below, and then click on the "Cancel" button, the installation shall cease. You should delete all copies of the Product from your computer systems and return, by registered first class post, the Product, complete with box and any documentation, to Arcserve or the authorized reseller from whom you purchased the Product with your proof of purchase within thirty (30) days of the date of purchase. You will promptly be issued a full refund of any license fees paid for the Product and, if applicable, maintenance fees paid. If requested at the time of return and provided that receipts of costs incurred are provided, Arcserve or the authorized reseller shall also refund to you any postage costs you incurred in returning

the Product.

The second to last sentence of Section 11.A is deleted and replaced with:

Beta products are provided on an "as is" basis, without warranties or representations of any kind, either express or implied including, without limitation, any warranties, conditions or representations of merchantability or satisfactory quality and fitness for a particular purpose, as well as any express warranties provided elsewhere in this Agreement.

The last sentence of Section 11.C is deleted and replaced with:

Licensee's use of the product during the trial period is on an "as is" basis without any warranty, and Arcserve disclaims all warranties including, without limitation, any implied warranties or conditions of merchantability or satisfactory quality and fitness for a particular purpose, as well as any express warranties provided elsewhere in this Agreement.

Section 3.A(v) is deleted and replaced with:

Licensee may not disclose, de-compile, disassemble nor otherwise reverse engineer the Product save to the extent expressly permitted by law;

Section 3.A(viii) is deleted and replaced with:

Licensee may not permit the use of the Product by any third party without the prior written consent of Arcserve, save for contract staff of the Licensee who are acting on the Licensee's business, not engaged in facilities management and who the Licensee agrees as a condition of this Agreement to ensure such contract staff shall comply with all the terms of this Agreement, including without limitation, confidentiality provisions. Section 6.D is deleted and replaced with:

Except as set forth above, to the full extent permitted by applicable law, no other warranties, whether express or implied, including, without limitation, any implied warranties or conditions of merchantability, satisfactory quality and fitness for a particular purpose, are made by Arcserve.

The following is added at the end of Section 8:

The foregoing exclusions and limitations upon liability shall not apply to any liability for damages arising from:

- a. Tangible property damage to the extent that such is due to the negligence of an employee or authorized agent of Arcserve, in which event Arcserve's maximum liability shall be limited to \$1,000,000 for each event or series of events.
- b. Death or personal injury caused by the negligence of an employee or authorized agent of Arcserve.
- c. Willful misconduct or gross negligence of Arcserve.

## **Peru**

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of Peru. Any dispute hereunder shall be determined by the Tribunales Ordinarios de La Ciudad de Lima.

## **Philippines**

Section 4.A is deleted and replaced with:

Title to the Product and all modifications thereto shall remain with Arcserve. The Product is a trade secret and the proprietary property of Arcserve or its licensors. Usage rights respecting the Product may not be exchanged for any other Arcserve product. Licensee and its employees will keep the Product and the terms of this Agreement strictly confidential. To the maximum extent permitted by applicable law, Licensee will not disclose, de-compile, disassemble nor otherwise reverse engineer the Product.

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of the Philippines.

The courts of Makati City will have sole and exclusive jurisdiction with respect to any disputes arising out of this Agreement.

Section 14.A is deleted and replaced with:

If Licensee breaches any term of this Agreement or if Licensee becomes insolvent or if bankruptcy or receivership proceedings are initiated by or against Licensee, Arcserve shall have the right to withhold its own performance hereunder and/or to terminate this

Agreement immediately upon notice and, in addition to all other rights of Arcserve, all amounts due or to become due hereunder will immediately be due and payable to Arcserve.

## **Poland**

If payments are to be made in PLN, Section 13.C is replaced as follows:

Any invoice which is unpaid by Licensee when due shall be subject to an interest charge equal to the lower of 1.5% per month or the statutory delay interest rate then applicable in Poland.

Section 16.H is deleted and replaced with: The laws of Poland govern this Agreement.

Section 14.A is deleted and replaced with:

If Licensee breaches any term of this Agreement or if Licensee becomes insolvent or if bankruptcy or receivership proceedings are initiated by or against Licensee, Arcserve shall have the right to withhold its own performance hereunder and/or, to the extent permitted by the applicable law, to terminate this Agreement immediately and, in addition to all other rights of Arcserve, all amounts due or to become due hereunder will immediately be due and payable to Arcserve.

## **Portugal**

Section 16.H is deleted and replaced with:

Any dispute hereunder shall finally be determined by Lisbon Courts.

## **Singapore**

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of Singapore. The courts of Singapore will have sole and exclusive jurisdiction with respect to any disputes arising out of this Agreement.

The following is added to the end of Section 6.D:

To the full extent permitted by applicable law, Arcserve disclaims all implied conditions or warranties of satisfactory quality or fitness for purpose.

The following is added at the end of Section 8:

The limitation of liability set forth in this Section above will not apply to any breach of Arcserve's obligations implied by Section 12 of the Sales of Goods Act (Cap 393). In addition, if you are a consumer, the limitation of liability will not apply to any breach of Arcserve's obligations implied by Sections 13, 14 or 15 of the Sale of Goods Act (Cap 393).

### **South Africa**

The following is added to the Preamble as Paragraph (VI):

(VI) Consenting to Your Personal Information (as defined in Chapter 1, Section 1 of Protection of Personal Information Act 4 of 2013) being shared with third parties outside of South Africa in accordance with Arcserve's Data Protection Agreement, Privacy Policy, and Business Associate Agreement, as applicable, for purposes of Arcserve providing the Product to You hereunder.

### **Sweden**

The third paragraph of the Preamble is deleted and replaced with:

By installing, copying or using the product or by selecting the "I accept the terms of the License Agreement" radio button below, and then clicking on the "Next" button, you are:

- (I) Representing that you are not a minor and have full legal capacity and have the authority to bind yourself and your employer, as applicable, to the terms of this Agreement;
- (II) Consenting on behalf of yourself and/or as an authorized representative.

The following is added to the last paragraph of the Preamble:

In the event that you select the "I do NOT accept the terms of the License Agreement" radio button below, and then click on the "Cancel" button, the installation shall cease. You should delete all copies of the Product from your computer systems and return, by registered first class post, the Product, complete with box and any documentation, to Arcserve or the authorized reseller from whom you purchased the Product with your proof of purchase within thirty (30) days of the date of purchase (but in no event less than fourteen (14) days from the date that You receive the Product). You will promptly be issued a full refund of any license fees paid for the Product and, if applicable, maintenance fees paid. If requested at the time of return and provided that receipts of costs incurred are provided, Arcserve or the authorized reseller shall also refund to you any postage costs you incurred in returning the Product.

The second to last sentence of Section 11.A is deleted and replaced with:

Beta products are provided on an "as is" basis, without warranties or representations of any kind, either express or implied including, without limitation, any warranties, conditions or representations of merchantability or satisfactory quality and fitness for a particular purpose, as well as any express warranties provided elsewhere in this Agreement.

The last sentence of Section 11.C is deleted and replaced with:

Licensee's use of the product during the trial period is on an "as is" basis without any warranty, and Arcserve disclaims all warranties including, without limitation, any implied warranties or conditions of merchantability or satisfactory quality and fitness for a particular purpose, as well as any express warranties provided elsewhere in this Agreement.

Section 3.A(v) is deleted and replaced with:

Licensee may not disclose, de-compile, disassemble nor otherwise reverse engineer the Product save to the extent expressly permitted by law;

Section 3.A(viii) is deleted and replaced with:

Licensee may not permit the use of the Product by any third party without the prior written consent of Arcserve, save for contract staff of the Licensee who are acting on the Licensee's business, not engaged in facilities management and who the Licensee agrees as a condition of this Agreement to ensure such contract staff shall comply with all the terms of this Agreement, including without limitation, confidentiality provisions. Section 6.D is deleted and replaced with:

Except as set forth above, to the full extent permitted by applicable law, no other warranties, whether express or implied, including, without limitation, any implied warranties or conditions of merchantability, satisfactory quality and fitness for a particular purpose, are made by Arcserve.

The following is added at the end of Section 8:

The foregoing exclusions and limitations upon liability shall not apply to any liability for damages arising from:

- a. Tangible property damage to the extent that such is due to the negligence of an employee or authorized agent of Arcserve, in which event Arcserve's maximum liability shall be limited to \$1,000,000 for each event or series of events;
- b. Death or personal injury caused by the negligence of an employee or authorized agent of Arcserve;
- c. Willful misconduct or gross negligence of Arcserve.

## **Switzerland**

The following is added at the end of Section 2.A:

The place of performance of any duties of Arcserve under this Agreement is Islandia, New York. Section 16.H is deleted and replaced with:

Any dispute hereunder shall be determined by a court of competent jurisdiction within the state of New York, U. S. A.

#### **Taiwan**

The first sentence of Section 13.B is deleted and replaced with: All fees are inclusive of VAT.

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of Taiwan, without regard to its choice of law provisions. Any dispute hereunder shall be determined by Taipei District Court.

#### **Thailand**

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of Thailand. The courts of Thailand will have sole and exclusive jurisdiction with respect to any disputes arising out of this Agreement.

#### **Turkey**

The following is added at the end of Section 15:

Licensee undertakes to keep all information of trade secret nature strictly private and confidential, and to use all necessary measures and its best efforts in order to assure and maintain the confidentiality thereof and to prevent and protect it, or any part thereof, from disclosure to any third person. Furthermore, Licensee hereby expressly undertakes:

- (I) Not to use a Arcserve trade secret directly or indirectly in any respect or for whatever reason on its own behalf or on behalf of any third party or allow it to be used for any other purpose except as expressly permitted by Arcserve;
- (II) Not to disclose, de-compile, disassemble nor otherwise reverse engineer the Product and to avoid such a disclosure in whatever form;
- (III) Not to copy or permit the others to copy without Arcserve's prior written consent. Licensee

acknowledges that in the event of a breach of any one of the obligations imposed upon it under this Section, Arcserve might suffer significant damage, notwithstanding the return of all copies of the Product, arising out of the fact that it has breached the aforesaid obligations. Consequently, Licensee undertakes to indemnify Arcserve in full against any such damage.

Licensee acknowledges that Arcserve has the right to prevent any threat to confidentiality or restrain ongoing infringement or breach of confidentiality by Licensee through legal proceedings and in case an order is obtained against Licensee for breach, Licensee shall reimburse Arcserve's juridical costs and expenses including the attorney fees.

The following is added at the end of Section 16:

In the event that Arcserve is rendered unable, wholly or in part, to perform or implement any of its warranties herein set forth, by force majeure which includes governmental controls or orders of the

government of Turkey, acts of God, wars, commotion or riot, epidemics, strikes, lockouts and any other events or forces beyond its reasonable control, it shall be relieved from such warranties and shall not be held liable for the non-fulfillment and/or suspended implementation thereof, as long as and to the extent that the effect of such events or forces remains unabated.

The following is added at the end of the second sentence of Section 8:

EXCEPT THAT MAY ARISE FROM ARCSERVE'S WILFUL FAULT OR NEGLIGENCE.

### **United Kingdom**

The third paragraph of the Preamble is deleted and replaced with:

By installing, copying or using the product or by selecting the "I accept the terms of the License Agreement" radio button below, and then clicking on the "Next" button , you are:

- (I) Representing that you are not a minor and have full legal capacity and have the authority to bind yourself and your employer, as applicable, to the terms of this Agreement;
- (II) Consenting on behalf of yourself and/or as an authorized representative.

The following is added to the last paragraph of the Preamble:

In the event that you select the "I do NOT accept the terms of the License Agreement, and then click on the "Cancel" button, the installation shall cease. You should delete all copies of the Product from your computer systems and return, by registered first class post, the Product, complete with box and any documentation, to Arcserve or the authorized reseller from whom you purchased the Product with your proof of purchase within thirty (30) days of the date of purchase. You will promptly be issued a full refund of any license fees paid for the Product and, if applicable, maintenance fees paid. If requested at the time of return and provided that receipts of costs incurred are provided, Arcserve or the authorized reseller shall also refund to you any postage costs you incurred in returning the Product.

The second to last sentence of Section 11.A is deleted and replaced with:

Beta products are provided on an "as is" basis, without warranties or representations of any kind, either express or implied including, without limitation, any warranties, conditions or representations of merchantability or satisfactory quality and fitness for a particular purpose, as well as any express warranties provided elsewhere in this Agreement.

The last sentence of Section 11.C is deleted and replaced with:

Licensee's use of the product during the trial period is on an "as is" basis without any warranty, and Arcserve disclaims all warranties including, without limitation, any implied warranties or conditions of merchantability or satisfactory quality and fitness for a particular purpose, as well as any express warranties provided elsewhere in this Agreement.

Section 3.A(v) is deleted and replaced with:

Licensee may not disclose, de-compile, disassemble nor otherwise reverse engineer the Product save to the extent expressly permitted by law;

Section 3.A(viii) is deleted and replaced with:

Licensee may not permit the use of the Product by any third party without the prior written consent of Arcserve, save for Licensee's contractors who are acting on the Licensee's business, not engaged in facilities management and who the Licensee agrees as a condition of this Agreement to ensure such contract staff shall comply with all the terms of this Agreement, including without limitation, confidentiality provisions.

Section 16.H is deleted and replaced with:

All disputes relating to this Agreement will be governed by the laws of England and Wales and will be submitted to the exclusive jurisdiction of the English courts.

Section 6.A shall be amended as below:

Arcserve warrants that it can enter into this Agreement. Arcserve also warrants that the Product will operate substantially in accordance with the specifications set forth in the documentation for a period of ninety (90) days from Licensee's acquisition of the license for the Product. If Licensee notifies Arcserve in writing of a breach of this warranty during the warranty period set forth above, Licensee's remedies include (i) ask for a full refund within thirty (30) days from the Licensee's acquisition of the license of the Product if the Licensee is a consumer as defined under Consumer Rights Act 2015; or (ii) ask Arcserve to correct, repair or replace the Product within a reasonable time, or (iii) if within a reasonable time after receiving Licensee's written notice of breach of the above warranty, Arcserve is unable to cause the Product to operate in accordance with Arcserve's written specifications, then either party may terminate this Agreement on written notice to the other party and Arcserve or the authorized reseller will refund the relevant license Fees Licensee paid for such non-compliant Product only when Licensee returns the Product to Arcserve or its authorized reseller from whom it obtained the Product, with the purchase receipt within the warranty period noted above. The warranties set forth in this Section do not apply to beta versions of the Product, Products licensed on a trial or evaluation basis or to Software Development Kits.

Section 6.D is deleted and replaced with:

Except as set forth above, to the full extent permitted by applicable law, no other warranties, whether express or implied, including, without limitation, any implied warranties or conditions of merchantability, satisfactory quality and fitness for a particular purpose, are made by Arcserve.

The following is added at the end of Section 8:

The foregoing exclusions and limitations upon liability shall not apply to any liability for damages arising from:

- a. Tangible property damage to the extent that such is due to the negligence of an employee or authorized agent of Arcserve, in which event Arcserve's maximum liability shall be limited to \$1,000,000 for each event or series of events;
- b. Death or personal injury caused by the negligence of an employee or authorized agent of Arcserve;
- c. Willful misconduct or gross negligence of Arcserve.

**Venezuela**

Section 16.H is deleted and replaced with:

This Agreement shall be governed by and interpreted in accordance with the laws of Venezuela. Any dispute hereunder shall be determined by the Tribunales Ordinarios de la Ciudad de Caracas.

If the Product contains third party software, and the licensor requires the incorporation of specific license terms and conditions for such software into this Agreement, those specific terms and conditions, which are hereby incorporated by this reference, are located below this Agreement.

Licensee acknowledges that this license has been read and understood and by selecting the ["I accept the terms of the License Agreement "] radio button, licensee accepts its terms and conditions. Licensee also agrees that this license (including any order form referencing this Agreement and any terms relating to third party software which are set forth below this Agreement) constitutes the complete Agreement between the parties regarding this subject matter and that it supersedes any information licensee has received relating to the subject matter of this Agreement, except that this Agreement (excluding the third party terms below) will be superseded by any written Agreement, executed by both licensee and Arcserve, granting licensee a license to use the product. This Agreement may only be amended by a written Agreement signed by authorized representatives of both parties.

Select the ["I accept the terms of the License Agreement"] radio button, and then click on the "Next" button to accept the terms and conditions of this Agreement as set forth above and proceed with the installation process.

Select the ["I do NOT accept the terms of the License Agreement"] radio button and then click on the "Cancel" button to halt the installation process.