

## **END USER'S LICENSE AGREEMENT**

**IMPORTANT INFORMATION** – ALL USE OF THE REDSTOR SOFTWARE, SUPPLIED BY REDSTOR OR ANY OF ITS AUTHORISED PARTNERS ARE AND SHALL BE, SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT.

BY UTILISING THE SOFTWARE OR SIGNING OFF ON ANY PRODUCT PURCHASE AGREEMENT OR THIS END-USER LICENSE AGREEMENT, THE END-USER ACCEPTS THE TERMS AND CONDITIONS HEREWITH.

### **1. DEFINITIONS**

- 1.1 **"Authorised Partners"** means Redstor appointed distributors, resellers, agents, OEM/MSP partners or any other business partner that may be appointed from time to time;
- 1.2 **"Commencement Date"** means the date upon which the End User installs the Redstor Software;
- 1.3 **"Redstor"** means Redstor Limited, a company incorporated in England under Registration number: 3556110, whose registered office is at Boyes Turner, Abbots House, Reading, RG1 3BD and any of its subsidiaries;
- 1.4 **"Derivative work"** means a work that is based on, or modifies, one or more pre-existing works, i.e. software;
- 1.5 **"Intellectual Property"** means all intellectual property of any nature whatsoever owned and/or controlled directly or under license by Redstor, including, without limiting the generality of the foregoing, the trademarks, and Redstor' rights, title and interest in and to all technology, source code/s, object code, trade secrets, logos, systems, methods, marks, trade names, styles, insignia, designs, patents and copyright relating to the software, whether registered or not;
- 1.6 **"Software"** means 'Redstor Backup Professional software, and the terms and conditions of this Agreement shall apply to, existing and future computer programs and any derivative works and / or add-ons of Redstor Backup Professional, as provided to End-User under license by Redstor or an Authorised Partner, and any upgrades, updates, bug fixes or modified versions thereto (collectively, "Upgrades") or backup copies of the Software Product licensed or provided to End-User by Redstor or an Authorised Partner, as part of the Software Product available in whatsoever format or media, including but not limited to (i) Redstor or third party computer information or software, (ii) related explanatory materials in printed, electronic, or online form ("Documentation");

### **2. TITLE & OWNERSHIP**

- 2.1 THIS IS A LICENSE AGREEMENT AND NOT AN AGREEMENT FOR SALE. The Software and the related documentation, ARE NOT FOR SALE and shall remain the sole property of Redstor;
- 2.2 The Software and the Software Documentation and the copyright and other Intellectual Property rights of whatever nature therein and thereto are and shall remain the property of Redstor;
- 2.3 The End-User acknowledges that the Software may contain technology / software that has been supplied to Redstor under license and that the copyright and all proprietary rights in such technology / software shall be with the relevant Licensor and / or owner;
- 2.4 Third party software supplied by Redstor for use in conjunction with the Redstor Software is licensed only for use in conjunction with Redstor Software and shall not be used for any other purpose or with any other software, collectively referred to as the Software. On termination of this License, the right to use the aforesaid third party software will also automatically and simultaneously terminate;

- 2.5 The End-User shall notify Redstor or any of its Authorised Partners immediately if it becomes aware of any unauthorised use of the whole or any part of the Software or Software Documentation;
- 2.6 The End-User will permit Redstor or selected Redstor Authorised Partner to check the use of the Software and Software Documentation at all reasonable times and the End-User hereby authorises Redstor represented by its employees or Authorised Partners to enter the location of the End-User and any premises under its control, for such purpose;
- 2.7 The End-User shall not remove or deface any trademark or trade names placed upon the Software or add any other Trademarks, unless agreed to in writing by Redstor;
- 2.8 Redstor shall defend and hold End-User harmless from liability resulting from infringement of any patent, trade secret or copyright of any third party, provided: (i) Redstor is notified in writing within 30 (thirty) days of any threats, claims and proceedings related thereto; (ii) Redstor receives reasonable assistance from the End-User in protecting its rights related thereto; and (iii) Redstor has the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise;
- 2.9 Redstor will not be responsible for any settlement that it does not agree to in writing. The foregoing obligation of Redstor does not apply with respect to Software or portions or components thereof: (i) not supplied by Redstor; (ii) made in whole or in part in accordance with End-User's specifications; (iii) which are modified by the End-User, if the alleged infringement relates to such modification; (iv) combined with other products (hardware or software), processes or materials where the alleged infringement relates to such combination; or (v) where End-User continues the allegedly infringing activity after being notified thereof and/or informed of modifications that would have avoided the alleged infringement. Licensee will indemnify Redstor from all damages, settlements, attorney's fees and expenses related to a claim of infringement or misappropriation as a result of End-User's infringement;
- 2.10 All rights not expressly set forth hereunder are reserved by Redstor.

### **3. GRANT OF LICENSE**

- 3.1 Subject to payment of applicable license fees and subject to the restrictions or usage terms specified herein and on the Software packaging included as part of the Documentation, Redstor hereby grants the End-User and the End-User hereby accepts a personal, non-exclusive, non-transferable and fully revocable limited License ("License Rights") to:
  - 3.1.1 use one copy of the Software on a single computer; or
  - 3.1.2 use the Software on a network server, however only to install or run the Software on other computers over an internal network, and subject to the acquisition of a dedicated named user Software license for each separate computer utilized for the purposes of the Softwarein executable form only, and only according to the terms of this Agreement.

### **4. PROHIBITED USES**

- 4.1 Except as specifically permitted in above, the End-User agrees NOT TO, or allow a 3<sup>rd</sup> party to:-
  - 4.1.1 transfer, sell, lease, assign, pledge, share or sublicense its license rights to any other person or entity, or use the Software on unauthorised Hardware, or use the Software concurrently, and End-User acknowledges that any attempted transfer, assignment, sublicense or use shall be void;
  - 4.1.2 make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same;
  - 4.1.3 modify, reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form in an attempt to discover the source code, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction;
  - 4.1.4 use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Redstor; or

- 4.1.5 disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Redstor. End-User shall implement reasonable security measures to protect such trade secrets;
- 4.1.6 Notwithstanding any other provision of this Agreement:
  - 4.1.6.1 the End-User has no license or right to use any additional copies or upgrades unless End-User, at the time of acquiring such copy or upgrade, already holds a valid license to the original Software and has paid the applicable fee for the upgrade or additional copies;
  - 4.1.6.2 use of Upgrades is limited to Redstor Software for which End-User is the original End-User purchaser or Lessee or who otherwise holds a valid license to use the Software which is being upgraded;
- 4.1.7 End-User may not remove any proprietary notices or labels on the Software.

## 5. SECURITY AND CONTROL

- 5.1 The End-User shall during the continuance of the License:
  - 5.1.1 Effect and maintain adequate security measures to safeguard the Software and Software Documentation from access or use by any unauthorised persons;
  - 5.1.2 Keep the Software and all copies thereof and the Software Documentation under the End-User's effective control.

## 6. LIMITED WARRANTY & DISCLAIMER

- 6.1 **Scope Of Warranty:** Subject to the conditions and limitations on liability stated herein, Redstor warrants that, when delivered and for a period of 60 (sixty) days thereafter, the Software licensed hereunder will materially conform to the Software as demonstrated to the End User prior to the installation thereof, however Redstor does not warrant that the operation will be uninterrupted or error free. All claims and remedies are limited in the manner expressly provided in this Agreement.
- 6.2 **Details Of Warranty:** The sole and exclusive remedy of End-User, insofar as this Agreement provides, for any breach of Redstor's warranty shall be to obtain from Redstor via the Authorised Partner the repair or replacement of the defective Software that is returned to Redstor's offices or the offices of its Authorised Partners, with the freight prepaid. Redstor's warranty shall apply for the period of 60 (sixty) days for the Software following the date Redstor or its Authorised Partners make Software available to End-User;
- 6.3 **Notices and Exclusions:** This warranty will only apply for problems reported in writing to Redstor or the applicable Authorised Partner during such warranty period and will not apply if:-
  - 6.3.1 the Software is not used in accordance with the Documentation;
  - 6.3.2 insignificant defects, such as errors that can be easily corrected and will not show up as a performance defect; and
  - 6.3.3 the Software or any part thereof has been altered, modified deleted or addition by End-User or any other 3rd Party without the prior written consent of Redstor;
  - 6.3.4 a defect in the Software has been caused by any of End-User's malfunctioning equipment; or
  - 6.3.5 any other use within the control of End-User results in the Software becoming inoperative.
- 6.4 **Exclusive Remedy.** Any liability of Redstor with respect to the Software or the performance thereof under any warranty, negligence, strict liability or other theory will be limited exclusively to, as per Redstor's sole discretion, Software repair or replacement or, if such repair or replacement is inadequate as a remedy or, in Redstor's opinion, impractical, the refund of the license fee paid, pro-rated over a 1 (one) year period from the Commencement date of this Agreement;
- 6.5 **Costs:** If the problem is found upon investigation not to be Redstor's responsibility under the provisions of this clause 7, Redstor or its Authorised Partners may charge the End-User forthwith for all reasonable costs and expenses incurred by Redstor or its Authorised Partner in the course of or in consequence of such investigation;

- 6.6 **Disclaimer:** Redstor disclaims all other warranties, either express or implied, including but not limited to warranties of merchantability, integration or fitness for a particular purpose or those implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law;
- 6.7 Further, Redstor does not warrant, guarantee, or make any representations regarding the use, or the results of the use, of the Software or written materials in terms of correctness, accuracy, reliability, or otherwise, or non-infringement of third party rights. Redstor makes no warranty that the software will be error-free or free from interruptions or other failures to that the Software will meet the End-User's requirements. The End-User assumes responsibility for selecting the Software, as part of the Product, and for the installation of the Software as part of the Product. End-User understands that Redstor is not responsible for and will have no liability for hardware, software, or other items or any services provided by any persons other than Redstor;

## 7. LIMITATION OF LIABILITY

- 7.1 Under no Circumstances and under no legal theory, whether in delict, contract or otherwise whatsoever to the extent that applicable law prohibits such limitation, shall Redstor, or its Authorised Partners or suppliers be liable to the End-User or to any other person for loss of profits, loss or damage to business earnings, loss of goodwill, or any indirect, special, incidental, or consequential damages, or damages for negligence of any character including, without limitation, damages for work stoppage, computer failure or malfunction, lost or damaged data or documentation, business interruption, or for any other damage or loss;
- 7.2 In no event shall Redstor, or it's Authorised partners or suppliers be liable for any damages in excess of the price paid for the Software, if any even if Redstor, or it's Authorised Partners or suppliers have been advised of the possibility of such damages;
- 7.3 This limitation shall not apply to liability for death or personal injury to the extent that applicable law prohibits such limitation. Furthermore, some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so this limitation and exclusion may not apply to the End-User. Redstor is acting on behalf of its suppliers and Authorised Partners for the purpose of disclaiming, excluding and/or limiting obligations, warranties and liability as provided in this Agreement, but in no other respects and for no other purpose. The foregoing provisions shall be enforceable to the maximum extent permitted by applicable law.

## 8. SOFTWARE MODIFICATION

- 8.1 Redstor will not be responsible to Licensee for loss of use of the Software or data or for any other liabilities arising from alterations, additions, adjustments or repairs which are made to the Software by other than Authorised Partners of Redstor, or at the discretion of Redstor. Redstor reserves the right to terminate this License immediately upon written notice to Licensee if any such alteration, addition, adjustment or repair adversely affects Redstor ability to render maintenance Service to the Software.

## 9. DATA

- 9.1 The End-User acknowledges that any data entry, conversion or storage is subject to the likelihood of human and machine errors, malicious manipulation, omissions, delays and losses including but not limited to inadvertent loss of data or damage to media that may result in loss or damage to licensee and/or their property and/or their detrimental reliance on maliciously manipulated data. Redstor or its Authorised Partners shall not be liable for any such errors, omissions, delays or losses;
- 9.2 The End-User is responsible for adopting reasonable measures to limit the impact of such problems, including safe keeping of Software encryption keys, adopting procedures to ensure the accuracy of input data, examining and confirming results prior to use, adopting procedures to identify and correct errors and omissions, replacing lost or damaged media and reconstructing data;

- 9.3 The End-User is also responsible for complying with all local, national and international laws pertaining to the use and disclosure of any data.

## **10. TERMINATION**

- 10.1 Redstor may immediately terminate this License if:
- 10.1.1 the Licensee breach any term of this License;
  - 10.1.2 the licensee or selected reseller convenes a meeting of creditors or passes a resolution for the winding up, or suffers a petition for winding up, or has an administrative receiver or receiver appointed over the whole or part of its assets, or compounds with its creditors; or
  - 10.1.3 the licensee comes to any arrangement with these creditors; or
  - 10.1.4 the licensee allows any judgment against it to remain unsettled for more than 10 (ten) days without taking immediate steps to have it rescinded and successfully prosecuting the application for rescission to its final end;
- 10.2 Redstor may terminate this Agreement forthwith if End-User attempts to assign or transfer this Agreement without the prior written consent of Redstor;
- 10.3 Certain rights under this Agreement are subject to licenses that have been agreed to between Redstor and certain Licensors; This Agreement is subject to those license agreements and may be terminated immediately by Redstor if any of the aforesaid licenses are terminated;
- 10.4 Upon termination of the License and this Agreement, for whatsoever reason, all of End-User's right to use the Software shall immediately cease and End-User shall (i) discontinue all further use (including without limitation sub-licensing) of the Software; and (ii) at its own cost, and at the election of Redstor, either return to Redstor, or destroy the Software and User Documentation and shall not remove any extracts, copies or summaries thereof, and (iii) furnish Redstor or its Authorised Partner with a certificate, signed by a duly authorised representative of the End-User, confirming the return or destruction, as the case may be, of the Software and User Documentation; (iv) immediately purge all copies of the Software from all CPUs and from any storage device on which the End-User has placed or permitted others to place copies of the Software in whole or in part; and
- 10.5 Any termination of the License or this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination. Upon termination any fees due under this Agreement that are unpaid shall be immediately payable and Redstor may remotely de-activate the Software.

## **11. GOVERNING LAW & JURISDICTION**

- 11.1 This Agreement shall be construed and governed in accordance with the laws of England and Wales (except for conflict of law provisions) and only the courts in England and Wales shall have jurisdiction in any conflict or dispute arising out of this Agreement;
- 11.2 The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

## **12. THIRD PARTY SOFTWARE**

If the Product contains any software provided by third parties, such third party's software is provided "As Is" without any warranty of any kind and the terms and conditions under this Agreement shall apply accordingly to all such third party software providers and third party software as if they were Redstor and the Product respectively.

## **13. GENERAL**

- 13.1 **Partial Invalidity.** Wherever possible, each provision of the Agreement shall be interpreted in such a way as to be effective and valid under applicable law. If a provision is prohibited by or invalid under applicable law, it shall be omitted from the Agreement without invalidating the remainder of such provision or the remaining provisions of the Agreement;
- 13.2 **Assignment.** The End-User shall not be entitled to assign, cede, sub-license or transfer any rights or obligation in terms of this Agreement in whole or in part to any other party or person without the prior written consent of Redstor;
- 13.3 **Entire Agreement.** The Agreement, represents the entire agreement between the parties, and expressly replaces, supersedes and cancels any prior oral or written agreements or communications on the subjects herein. Each party acknowledges that it is not entering into the Agreement on the basis of any representations not expressly contained herein. Other than as specified herein, the Agreement may only be supplemented or modified by an amendment in a writing executed by duly authorised representatives of the parties and expressly referring to the Agreement. No additional or conflicting term in a purchase order or other document shall have any effect;
- 13.4 **Successors and Assigns.** The provisions of the Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns;
- 13.5 **Waiver.** No indulgence, extension of time, relaxation or latitude which any party ("the grantor") may show grant or allow to the other ("the grantee") shall constitute a waiver by the grantor of any of the grantor's rights and the grantor shall not thereby be prejudiced and preclude the grantor from exercising any of its rights against the grantee which may have arisen in the past or which might arise in the future;
- 13.6 **Exhibits, Titles and Headings.** The attached Annexures or Attachments referred to in the Agreement are incorporated by reference as though set forth in full, and shall be construed as an integral part of the Agreement. Titles and headings to sections or paragraphs in the Agreement are inserted for convenience of reference only and are not intended to affect the interpretation or construction of the Agreement;
- 13.7 **Survival of obligations.** The provisions of this clause, together with any others which by their own nature are continuing, will survive any termination of this agreement;
- 13.8 **Severability.** In the event that any provision of this Agreement is found invalid or unenforceable pursuant to a final judicial decree, order or decision, or the binding order of any other authority of competent jurisdiction, the remainder of this agreement will remain valid and enforceable according to its terms and the parties will attempt in good faith to agree upon substitute provision for the invalid or unenforceable provision.