

## MRE TECHNOLOGY SERVICES, LLC

3800 Buffalo Speedway., Suite 200  
Houston, Texas 77098  
(713) 844-6400  
(713) 844-6401

## ORDER FORM

NUMBER	
DATE*	<a href="#">Click here to enter a date.</a>

### CUSTOMER INFORMATION:

Name:  
Billing Address:  
City, State, Zip:  
Work Phone:  
Fax:  
Email:  
Your Shipping Address (if different from billing)

### CUSTOMER'S INSTRUCTIONS:

- ☐ Shipment date:  
☐ Ship directly to purchaser  
☐ Ship to:  
☐ Other Instructions:  
☐ Contact:

Method of Payment: ☐ Check ☐ Wire ☐ Other/CC \*

ITEM #	DESCRIPTION	QTY.	CONDITIONAL UNIT PRICE	AMOUNT
ORDER SUBJECT TO: <input type="checkbox"/> MASTER SERVICES AGREEMENT OR <input checked="" type="checkbox"/> TERMS AND CONDITIONS OF SALE FOR TECHNOLOGY PRODUCTS AND SERVICES <input type="checkbox"/> ADDENDUM NO. 1 <input type="checkbox"/> ADDENDUM NO. 2 <input type="checkbox"/> ADDENDUM NO. 3 OR <input type="checkbox"/> BOTH			ITEMS SUBTOTAL	
			SHIPPING	
			TAXABLE	
			-----% SALES TAX	
			ORDER TOTAL	

ACCEPTED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

\*THIS ORDER FORM IS VALID FOR 10 DAYS FROM  
THIS DATE

MRE TECHNOLOGY SERVICES, LLC ("MRETS")

STANDARD TERMS AND CONDITIONS OF SALE

FOR TECHNOLOGY PRODUCTS AND SERVICES

1. Offer and Acceptance: MRETS offers to sell and deliver products and services (referred to herein as "products") in accordance with the terms and conditions set forth herein. Acceptance of this offer is expressly limited to such terms. MRETS hereby objects to and rejects any additional or different terms proposed by Buyer, including those contained in Buyer's purchase order, unless MRETS expressly agrees to such terms in writing.
2. Prices and Releases: MRETS's price in effect on the actual ship date for the quantity actually shipped shall apply.
3. Title and Delivery: If products are shipped from MRETS facilities, shipments inside the U.S. shall be delivered F.O.B. MRETS's offices in Houston, Texas. Shipments outside the U.S. shall be delivered FCA (Incoterms 2000) Buyer's designated carrier. Title and liability for loss or damage shall pass to Buyer upon MRETS's delivery to Buyer's designated carrier. Any subsequent loss or damage shall not relieve Buyer from its obligations. Buyer shall reimburse MRETS for insurance and transportation costs on international shipments and shall be responsible for all import duties, taxes and any other expenses incurred or licenses or clearances required. MRETS may deliver products in installments. Delivery dates are estimates. MRETS shall not be liable for any damage, losses or expenses incurred by Buyer if MRETS fails to meet the estimated delivery dates. If shipment of products is made directly from a distributor or manufacturer to Buyer, the shipping rules and conditions stated in their policies shall apply.
4. Payment Terms: If MRETS extends credit to Buyer, payment terms shall be net thirty (30) days after MRETS's invoice. MRETS may change or withdraw credit amounts or payment terms at any time for any reason. If the products are delivered in installments, Buyer shall pay for each installment in accordance with the above payment terms. If Buyer fails to make any payment when due, MRETS may suspend or cancel performance under any agreements in which MRETS has extended credit to Buyer. MRETS's suspension of performance may result in rescheduling delays. If, in MRETS's judgment, Buyer's financial condition does not justify the payment terms specified herein, then MRETS may terminate this contract unless Buyer immediately pays for all products that have been delivered and pays in advance for all products to be delivered. Termination in accordance with this clause shall not affect MRETS's right to pursue any other available remedies.
5. Taxes: Prices do not include applicable taxes or duties. Buyer is solely responsible for paying all applicable taxes and duties. MRETS will add sales taxes to the sales price where required by applicable law, and Buyer will pay such taxes unless Buyer provides MRETS with a duly executed sales tax exemption certificate. If Buyer is required by law to withhold any amount of tax from its payment to MRETS, Buyer shall promptly pay such amount to the appropriate tax authority and take all reasonable steps to minimize such withholding tax.

6. Contingencies: MRETS shall not be in breach of this contract and shall not be liable for any non-performance or delay in performance if such non-performance or delay is due to a force majeure event or other circumstances beyond MRETS's reasonable control, including but not limited to shortages of labor, energy, fuel, machinery or materials, technical or yield failures, war, civil unrest, any government act, law or regulation, including any judicial order or decree, any communication or power failure, labor dispute, natural disaster, fire, flood, earthquake, explosion, terrorist act or Act of God.

7. Warranties and Related Remedies:

7.1 Products not manufactured by MRETS shall carry only the warranty offered by the original manufacturer, unless specified otherwise in the offering or agreed upon by MRETS. Services shall be good and workmanlike. MRETS's warranty shall not apply to products that have been improperly installed, installed in an improper application, damaged by accident or abuse, or if Buyer alters them or fails to maintain them in accordance with the manufacturer's specifications or good practice. All labor costs and transportation costs are the responsibility and the expense of Buyer or as stated in the warranty of the original manufacturer. Buyer agrees to follow all applicable return policies of the manufacturer or the manufacturer's representative with respect to refund or repair procedures. MRETS shall not be liable for any defects that result from Buyer's design, specifications or instructions for such components.

7.2 EXCEPT AS SET FORTH ABOVE, PRODUCTS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS." MRETS DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING PRODUCTS AND SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.3 Buyer agrees that prior to using or distributing any systems that include MRETS products, Buyer will thoroughly test such systems and the functionality of such MRETS products as used in such systems. MRETS may provide technical, applications or design advice, quality characterization, reliability data or other services. Buyer agrees that providing these services shall not expand or otherwise alter MRETS's warranties, as set forth above, and no additional obligations or liabilities shall arise from MRETS providing such services.

7.4 No MRETS products are authorized for use in FDA Class III (or similar life-critical medical equipment) unless authorized officers of the parties have executed a special agreement specifically governing such use. Only those MRETS components which MRETS has specifically designated as military grade are designed and intended for use in military/aerospace applications or environments. Buyer acknowledges and agrees that any military or aerospace use of MRETS products which have not been so designated is solely at the Buyer's risk, and that Buyer is solely responsible for compliance with all legal and regulatory requirements in connection with such use.

7.5 Notwithstanding anything to the contrary, SOFTWARE PRODUCTS AND EXPERIMENTAL AND DEVELOPMENT PRODUCTS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS." MRETS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING SUCH SOFTWARE PRODUCTS AND EXPERIMENTAL AND DEVELOPMENT PRODUCTS, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. Intellectual Property Indemnification:

**8.1 MRETS will not pay any damages, liabilities or costs and will not defend, indemnify or hold harmless Buyer against any claim, suit or proceeding brought against Buyer, insofar as such claim, suit or proceeding is based on an allegation that products supplied by MRETS to Buyer directly infringe any patent, copyright, or trade secret.**

THE FOREGOING STATES THE SOLE LIABILITY OF THE PARTIES FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO. BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING INTELLECTUAL PROPERTY INDEMNIFICATION TERMS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT, AND THAT IN THE ABSENCE OF SUCH TERMS, THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

9. Limitations and Damages Disclaimer:

9.1 General Limitations. IN NO EVENT SHALL MRETS BE LIABLE FOR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS CONTRACT OR THE USE OF THE PRODUCTS PROVIDED HEREUNDER, REGARDLESS OF WHETHER MRETS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, ANCILLARY COSTS TO THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, RE-TESTING, OUTSIDE COMPUTER TIME, LABOR COSTS, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF USE, LOSS OF DATA, OR BUSINESS INTERRUPTION. NO CLAIM, SUIT OR ACTION SHALL BE BROUGHT AGAINST MRETS MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS OCCURRED.

9.2 Specific Limitations. IN NO EVENT SHALL MRETS'S AGGREGATE LIABILITY FROM ANY WARRANTY, INDEMNITY, OR OTHER OBLIGATION ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, OR ANY USE OF ANY MRETS PRODUCT PROVIDED HEREUNDER, EXCEED THE TOTAL AMOUNT PAID TO MRETS FOR THE PARTICULAR UNITS SOLD OR SERVICES RENEDERED UNDER THIS CONTRACT WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH THE CLAIM AROSE, WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. THE EXISTENCE OF MORE THAN ONE CLAIM AGAINST THE PARTICULAR UNITS OR SERVICES SOLD TO BUYER UNDER THIS CONTRACT SHALL NOT ENLARGE OR EXTEND THIS LIMIT.

9.3 BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

9.4 ATTORNEYS' FEE WAIVER. If there is any dispute concerning these terms and conditions or the performance of either party pursuant to these terms and conditions, and either party retains counsel for the purpose of enforcing any of these terms and conditions or asserting these terms and conditions in defense of suit filed against it, each party will be solely responsible for its own costs and attorneys' fees incurred in

connection with the dispute irrespective of whether or not a lawsuit is actually commenced or prosecuted to conclusion, and regardless of whether applicable law provides for attorneys' fees as a recoverable cost or element of damage in such a claim or suit.

10. Cancellations and Rescheduling. No cancellation or rescheduling of orders by Buyer within fifteen (15) days of MRETS's estimated shipping date for the component will be accepted.

11. Non-waiver of Default: In the event of any default by Buyer, MRETS may decline to make further shipments. If MRETS elects to continue to make shipments, MRETS's action shall not constitute a waiver of any such default or affect MRETS's legal remedies for any such default.

12. Governing Law: This contract shall be governed by and interpreted in accordance with the laws of the State of Texas, without reference to conflict-of-laws principles. If for any reason a court of competent jurisdiction finds any provision of this contract to be unenforceable, that provision will be enforced to the maximum extent possible to effectuate the intent of the parties, and the remainder of this contract will continue in full force and effect. This contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, or by the Uniform Computer Information Transactions Act (UCITA). Buyer agrees that non-exclusive jurisdiction for any dispute arising out of or relating to this contract lies within courts located in the State of Texas and consents to venue in Harris County, Texas. Notwithstanding the foregoing, any judgment may be enforced in any United States or foreign court, and MRETS may seek injunctive relief in any United States or foreign court.

13. Export Control:

13.1 Buyer agrees that unless prior authorization is obtained from the U.S. Department of Commerce, neither Buyer nor its subsidiaries shall export, re-export, or release, directly or indirectly, any technology, software, or software source code (as defined in Part 772 of the Export Administration Regulations of the U.S. Department of Commerce ("EAR")), received from MRETS, or export, re-export, or release, directly or indirectly, any direct product of such technology, software, or software source code (as defined in Part 734 of the EAR), to any destination or country to which the export, re-export or release of the technology, software, software source code, or direct product is prohibited by the EAR. Buyer furnishes the assurances provided herein to MRETS in compliance with Part 740 (Technology and Software Under Restriction) of the EAR.

13.2 Buyer further agrees to obtain any necessary export license or other documentation prior to the exportation or re-exportation of any product, technical data, software or software source code acquired from MRETS under this contract or any direct product of such technical data, software or software source code. Accordingly, Buyer shall not sell, export, re-export, transfer, divert or otherwise dispose of any such product, technical data, software or software source code directly or indirectly to any person, firm, entity, country or countries prohibited by US or applicable non-US laws. Further, Buyer shall give notice of the need to comply with such laws and regulations to any person, firm or entity which it has reason to believe is obtaining any such product, technical data, software or software source code from Buyer with the intention of exportation. Each party shall secure, at its own expense, such licenses and export and import documents as are necessary for each respective party to fulfill its obligations under this contract. If government approvals cannot be obtained,

MRETS may terminate, cancel or otherwise be excused from performing any obligations it may have under this contract.

13.3 Any product export classification made by MRETS shall be for MRETS's internal use only and shall not be construed as a representation or warranty regarding the proper export classification for such product or whether an export license or other documentation is required for the exportation of such product. This Section 13 shall survive termination of this contract.

14. Assignment: This contract shall not be assignable by Buyer without MRETS's prior written consent. Any unauthorized assignment shall be null and void.

15. Entire Agreement: This contract and the manufacturer's and distributor's instructions, warranties, warranty disclaimers and policies incorporated herein by reference or otherwise constitute the entire agreement between the parties relating to the sale of the products and supersedes all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof. No prior representations or statements relating to the sale of the products made by any MRETS representative, which are not stated herein, shall be binding on MRETS. No addition to or modification of any provision of this contract shall be binding upon MRETS unless made in writing and signed by a duly authorized MRETS representative. No course of dealing or trade usage or course of performance shall be relevant to explain or supplement any term in this contract. These terms and conditions shall prevail notwithstanding any different, conflicting or additional terms and conditions that may appear on any purchase order or other writing not expressly incorporated herein, including but not limited to data sheets, application notes and purchase order acknowledgements. The section headings contained in this contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this contract. The distributor's terms and conditions for use, warranties and disclaimers, limitations of liability and remedies and other terms which are incorporated into this contract are attached hereto as Exhibit A.

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#### **Section 6 Appointment of Designated Technician.**

- 6.1. Licensee shall designate an individual natural person as its Designated Technician, and Licensee's rights under this Agreement are subject to and conditioned upon Licensee's appointment of a Designated Technician. The Designated Technician is the only Licensee agent, employee, or representative authorized to use the Software. The Software is not licensed to be copied (except as provided herein), and is not licensed to be shared among agents, employees, or representatives of Licensee, nor is it licensed to be installed or redistributed.
- 6.2. The Software is to be used only by the Designated Technician to service a single computer at a time. There is no limit to the number of computers that may be serviced serially using the Software, provided that the Designated Technician does not make simultaneous use of the Software on more than one computer.
- 6.3. At StorageCraft's request, Licensee will provide the name and contact information of the Designated Technician to StorageCraft.

- 6.4. In the event that the Designated Technician becomes permanently unavailable to serve as Licensee's Designated Technician, Licensee may appoint a replacement Designated Technician within ten (10) days after the occurrence of the unavailability. To qualify as a replacement Designated Technician, the replacement Designated Technician must be an employee of the Licensee.
- 6.5. In the event a Designated Technician becomes unavailable for a period of fourteen (14) to ninety (90) days, Licensee may appoint a temporary Designated Technician, who shall be authorized to serve under this Agreement until the Designated Technician is again available. To qualify as a temporary Designated Technician, the temporary Designated Technician must be an employee of the Licensee.
- 6.6. For Trial, Monthly, and Quarterly Subscriptions, Licensee may appoint only one (1) temporary Designated Technician or replacement Designated Technician during the Subscription Period. For Annual Subscriptions, Licensee may appoint no more than two (2) temporary Designated Technicians or replacement Designated Technicians during the Subscription Period.
- 6.7. In the event that Licensee appoints a temporary Designated Technician or a replacement Designated Technician, Licensee shall notify StorageCraft of the name of the temporary or replacement Designated Technician within five (5) days of such appointment.

**Section 7 Support.** Licensee is entitled to Product Support during the Subscription Period.

**Section 8 Termination.** This Agreement is effective until terminated as permitted in this Section. Licensee may terminate this License for convenience at any time. In the event that Licensee breaches Sections 2, 3, 4, 5, or 6, StorageCraft may terminate this License effective immediately by providing a notice of breach to Licensee. StorageCraft may terminate this Agreement on ten (10) days written notice to Licensee if Licensee breaches any other provision of this Agreement and fails to cure such breach within ten (10) days after receiving written notice of the breach from StorageCraft. Upon termination of this License, Licensee must cease all use of the Software and Documentation, return the USB flash media containing the Original Copy, and destroy all copies of the Software and Documentation. On termination, Licensee shall not be entitled to a refund of any portion of the Subscription Fee.

**Section 9 Limited Warranty, Exclusive Remedy.** StorageCraft warrants that, for the lesser of (a) the Subscription Period or (b) sixty (60) days after the date Licensee first purchased the Software from StorageCraft or its reseller, distributor or authorized representative (collectively, the "**Warranty Period**"), that (a) the Software will perform substantially in accordance with its accompanying User Guide; and (b) the media on which the Software is provided will be free from defects in materials and workmanship under normal use. This warranty gives Licensee specific rights and Licensee may also have other rights that vary by jurisdiction. In the event of any breach of this limited warranty, Licensee's sole and exclusive remedy against StorageCraft and its agents, employees, representatives, officers, directors, contractors, dealers, and distributors is, at StorageCraft's option, either (a) return of the Subscription Fee paid by Licensee on a pro rata basis for the unused term of the Subscription Period; or (b) replacement of the defective media on which the Software is contained, provided that Licensee notifies StorageCraft of the nonconformance within the Warranty Period. Licensee must return the defective media to StorageCraft or its dealer, distributor or authorized representative at Licensee's expense, together with a copy of Licensee's proof of payment of the Subscription Fee within the Warranty Period. This limited warranty is void if the defect is the result of alteration, abuse, damage or misapplication. Any replacement media will be warranted for the remainder of the original Warranty Period, or thirty (30) days, whichever is longer.

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**Section 11 Limitation of Liability.** THE LIABILITY OF STORAGECRAFT AND THAT OF ITS DEALERS, DISTRIBUTORS AND AUTHORIZED REPRESENTATIVES TO LICENSEE FOR ANY LOSSES SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED THE SUBSCRIPTION FEE. IN NO EVENT SHALL STORAGECRAFT OR ITS DEALERS, DISTRIBUTORS OR AUTHORIZED REPRESENTATIVES BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF PROFITS, USE, OR DATA; OR BUSINESS INTERRUPTION), EVEN IF STORAGECRAFT OR ITS AGENTS OR REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. These limitations apply even in the event of fault, tort, negligence, misrepresentation, or strict or product liability. In no event shall any person who has contributed to any part of the Software be liable for any damages whatsoever, however caused, and on any theory of liability, whether in contract, strict liability, or tort (including negligence or otherwise) arising in any way out of the use of the Software, even if advised of the possibility of such damage. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to Licensee. Licensee releases StorageCraft from all liability in excess of the liabilities that are limited by this Section, including without limitation any claim for indemnification or contribution whether arising under statutory or common law or otherwise. End users in certain countries (such as Malaysia, New Zealand, and Australia) may be subject to certain consumer protection laws unique to their locale and that limit the ability to modify or exclude liability. If Licensee acquired the Software for the purposes of a business, Licensee confirms that any applicable consumer protection laws do not apply. If Licensee acquired the Software in Australia and if StorageCraft breaches a condition or warranty implied by applicable law and which cannot lawfully be modified or excluded by this Agreement then, to the extent permitted by law, StorageCraft's liability to Licensee is limited, at StorageCraft's option, to: (a) replacement or repair of the Software and/or re-supply of customer support; or (b) the cost of replacing or repairing the Software and/or the cost of re-supplying customer support.

**Section 12 United States Government Restricted Rights.** RESTRICTED RIGHTS LEGEND. All StorageCraft products and documentation are commercial in nature. The software and software documentation are "Commercial Items", as that term is defined in 48 C.F.R. § 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are defined in 48 C.F.R. § 252.227-7014(a)(5) and 48 C.F.R. § 252.227-7014(a)(1), and used in 48

C.F.R. § 12.212 and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.212, 48 C.F.R. § 252.227-7015, 48 C.F.R. § 227.7202 through 227.7202-4, 48 C.F.R. § 52.227-14, and other relevant sections of the Code of Federal Regulations, as applicable, StorageCraft's Software and Documentation are licensed to United States Government end users with only those rights as granted to all other end users, according to the terms and conditions contained in this Agreement.

**Section 13 Compliance with Export Law.** The Software is subject to export controls by the U.S. Department of Commerce (DOC), under the Export Administration Regulations ("EAR") (see <http://www.access.gpo.gov/bis/index.html>). Violation of U.S. law is strictly prohibited. Licensee agrees to comply with the requirements of the EAR and all applicable international, national, state, regional and local laws and regulations, including any applicable import and use restrictions. StorageCraft products are currently prohibited for export or re-export to certain countries subject to U.S. trade sanctions. Licensee agrees not to export, or re-export, directly or indirectly, any product to any country outlined in the EAR, nor to any person or entity on the DOC Denied Persons, Entities and Unverified Lists, the U.S. Department of State's Debarred List, or on the U.S. Department of Treasury's lists of Specially Designated Nationals, Specially Designated Narcotics Traffickers, or Specially Designated Terrorists. Furthermore, Licensee agrees not to export, or re-export, StorageCraft products to any military entity not approved under the EAR, or to any other person or entity for any military purpose, nor will Licensee sell any StorageCraft product for use in connection with chemical, biological, or nuclear weapons or missiles capable of delivering such weapons.

**Section 14 Assignment and Transfer of License Rights.** Licensee may transfer the rights granted under this Agreement on a permanent basis to another person or entity, provided that Licensee retains no copies of the Software; the transferee agrees, in writing, prior to such transfer, to the terms of this Agreement; and StorageCraft consents in writing to such transfer. Any other attempt by Licensee to transfer the rights or obligations under this Agreement will be null and void and will constitute a material breach of this Agreement.

**Section 15 Notices.** All notices required or permitted to be given or served under this Agreement shall be in writing and: (a) personally delivered to the Party to be notified, in which instance notice shall be deemed to have been given and received upon actual delivery; (b) sent by a reputable international overnight commercial courier service (such as Federal Express) addressed to the Party to be notified, in which instance notice shall be deemed to have been given one (1) business day after deposit with such courier service for delivery; (c) sent by email and facsimile, in which instance notice shall be deemed to have been given and received upon actual delivery; or (d) delivered to the Party to be notified by any other means where it can be established that the Party to be notified received such notice, in which instance notice shall be deemed to have been given and received upon the date of receipt. The point of contact of the Parties for notice by any of the foregoing means shall be as follows. If to StorageCraft: StorageCraft Technology Corporation, Attn: Legal; 11850 Election Rd, Suite 120, Draper, UT 84020; email: [legal@storagecraft.com](mailto:legal@storagecraft.com); facsimile: (801)545-4705; with a copy to: StorageCraft Technology Corporation, Attn: TLA Notice, P.O. Box 1149, Riverton, UT 84065; email: [notices@storagecraft.com](mailto:notices@storagecraft.com); facsimile: (801)545-4705. If to Licensee: to the Licensee address, facsimile, and/or email address provided by Licensee to StorageCraft. Either Party may change its contact information for notice purposes by giving ten (10) days' prior written notice to the other Party in the manner described above.

**Section 16 Microsoft® Windows® Preinstallation Environment License ("WinPE").** StorageCraft is a licensee under a license granted by Microsoft with respect to Microsoft Windows Preinstallation Environment software, including versions 2005 and 2.0. Licensee accepts the following terms and conditions concerning WinPE: the Software is limited to use as a boot, diagnostic, disaster recovery, set up, restoration, emergency services, installation, test/or configuration utilities program, and is not for use as a general purpose operating system or as a substitute for a fully functional version of any operating system products; THE SOFTWARE CONTAINS WINPE, WHICH INCLUDES A SECURITY FEATURE THAT WILL CAUSE THE COMPUTER SYSTEM TO REBOOT WITHOUT PRIOR NOTIFICATION TO THE LICENSEE AFTER TWENTY-FOUR (24) HOURS OF CONTINUOUS USE. THIS TIME-OUT FEATURE WILL RESET EACH TIME THE COMPONENT CONTAINING WINPE IS RELAUNCHED; any and all Microsoft and Microsoft affiliate's liability related to the Software are disclaimed in full and without condition; all customer support issues will be handled solely by StorageCraft; Licensee is specifically prohibited from reverse engineering, decompiling, or disassembling WinPE, except to the extent expressly permitted by applicable law; Licensee is specifically informed that the Software is subject to U.S. export jurisdiction; and in the event that Licensee's breach of this Agreement places StorageCraft in breach of its license agreement with Microsoft, Licensee agrees to indemnify and hold StorageCraft harmless from any such breach, notwithstanding the limitations on liability imposed elsewhere in this Agreement.

**Section 17 Third-Party Licensors.** The Software may contain or be delivered with code that StorageCraft has licensed from third-parties, including without limitation the Network Configuration Utility based on a derivative created by StorageCraft under a license granted by Pierre Mounir (The Truth), a proprietary software product copyrighted © 2003-2011 with all rights reserved.

#### **Section 18 Miscellaneous.**

- 18.1. Activation.** The Documentation describes the process of activating the Software, which involves recognition of each seat of licensed Software by StorageCraft's activation server. The records of StorageCraft's activation server are determinative in any question concerning whether a seat of licensed Software has been activated by Licensee.
- 18.2. Severability.** If any provision of this Agreement is unenforceable or invalid pursuant to any applicable law, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole, and such unenforceable or invalid provision will be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law.
- 18.3. Entire Agreement.** Unless Licensee has entered into a separate, written and signed agreement with StorageCraft or one of its dealers, distributors, resellers, or authorized representatives for the supply of the Software and which agreement expressly modifies or amends this Agreement, this Agreement is the complete and exclusive statement of the agreement between StorageCraft and Licensee concerning the Software and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the Parties.
- 18.4. Waiver or Modification.** This Agreement may not be modified except by a written addendum issued by a duly authorized representative of StorageCraft. No delay or failure to take action represents a waiver of the rights inherent to or granted to StorageCraft under this Agreement. Licensee acknowledges, understands, and agrees that Licensee's receipt of future releases of the Software, including Updates and Upgrades, will require Licensee's acceptance of a new Technician License Agreement which may alter, amend, or replace all or part of this Agreement and affect the Parties' obligations concerning the Software.
- 18.5. No Third Party Beneficiary.** No third party is or shall be a beneficiary of this Agreement and no third party shall have the right to enforce this Agreement.
- 18.6. Compliance.** For Software licensed for business or commercial purposes, during the period this Agreement remains in effect, and for three years thereafter, StorageCraft may verify Licensee's compliance with this Agreement on its premises during its normal business hours and in a manner that minimizes disruption to Licensee's business. StorageCraft may use an independent auditor for this purpose with Licensee's prior approval, which Licensee will not unreasonably withhold.
- 18.7. Headings and Captions.** The headings and captions used in this Agreement are for convenience or reference only and shall not modify, expand, limit, or describe the scope or intent of this Agreement or in any other way affect the terms or conditions of this Agreement.

- 18.8. Force Majeure.** No delay, failure or default in performance of any obligation of StorageCraft hereunder shall constitute a breach of the Agreement to the extent caused by a force majeure.
- 18.9. Applicable Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Utah, U.S.A., without application of any choice-of-law or conflict-of-law principles, rules, or provision that would result in the application of the laws of any jurisdiction other than Utah. Any action for provisional relief concerning this Agreement or the Parties' relationship hereunder, including but not limited to a temporary restraining order, preliminary injunction, attachment in aid of arbitration, or order for any interim or conservatory measure, shall be brought in Salt Lake County, State of Utah, U.S.A. The Parties consent and submit to the exclusive jurisdiction of the state or federal courts in Salt Lake County, State of Utah, U.S.A., for purposes of any action for such provisional remedy or interim or conservatory measure. The United Nations Convention on Contracts for the International Sale of goods does not apply to this Agreement.
- 18.10. Dispute Resolution.** The Parties expressly waive any right to trial by jury concerning any dispute arising from or relating to this Agreement. At the election of either Party to this Agreement, any dispute, controversy, or claim arising out of, relating to, or in connection with the following shall be submitted for final resolution by arbitration administered by the American Arbitration Association (the "AAA"): Licensee's purchase or use of the Software; the Software's performance, including without limitation any alleged deficiency or defect; the existence or breach of a contractual, statutory, or common-law warranty; the terms and obligations of this Agreement; the performance, termination, rescission, or alleged breach of this Agreement; and the Agreement's validity or enforceability, including without limitation any claim that all or any part of this Agreement is void, voidable, unconscionable, or unenforceable (collectively, "**Arbitratable Dispute**"). Notwithstanding the foregoing, any claim for infringement or violation of copyright, trademark, or other intellectual property rights is not an Arbitratable Dispute, but shall be brought before a court of competent jurisdiction in Salt Lake County, State of Utah, U.S.A. In the event of an Arbitratable Dispute, the election to arbitrate must be made in writing by a Party on or before the last day to answer and/or respond to a summons and/or complaint brought by the other Party. If Licensee is a U.S. resident or maintains a place of business in the U.S., the arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules in effect at the time of the arbitration, excepting any rules pertaining to class arbitrations. If Licensee is not a U.S. resident or does not maintain a place of business in the U.S., the arbitration shall be conducted in accordance with the AAA International Arbitration Rules in effect at the time of the arbitration, excepting any rules pertaining to class arbitrations. (The Commercial Arbitration Rules and International Arbitration Rules are collectively referred to as the "**Rules**". Copies of the Rules can be obtained, free of charge, at <http://www.adr.org/>.) The Parties intend that any arbitration between them shall involve only the dispute between the Parties. No other dispute between a Party and a third party shall be included in the arbitration. Class arbitration shall not be permitted.
- If the Arbitratable Dispute involves a claim for damages of \$20,000 U.S.D. or less, the arbitration shall be conducted by a single arbitrator selected in accordance with the Rules. All other Arbitratable Disputes shall be conducted by three arbitrators selected as follows: Each Party shall select one arbitrator and deliver written notice of such selection to the other Party and to the AAA within twenty (20) calendar days after the deadline for serving a statement of defense. In the event a Party fails to select an arbitrator or deliver notice of such selection to the other Party and to the AAA within such time period, upon request of either Party, such arbitrator shall instead be appointed by the AAA (as provided in the Rules) within fifteen (15) calendar days of receiving such request. The two arbitrators so appointed shall nominate a third arbitrator, notifying the Parties and the AAA of the nomination within fifteen (15) calendar days of their appointment. If the first two appointed arbitrators fail to nominate a third arbitrator within that time period, then, upon request of either Party, the third arbitrator shall be appointed by the AAA (as provided in the Rules). The third arbitrator shall serve as chairman of the arbitral tribunal. In the event that an arbitrator is no longer able or willing to serve as arbitrator, the method of selection used to select such arbitrator shall be used to select the replacement arbitrator. Any arbitrator must be fluent in the English language and a licensed attorney with experience in software licensing transactions. In the event of an arbitration conducted under the International Arbitration Rules, the arbitrator(s) must also have experience in international software licensing transactions.
- The place of arbitration shall be Salt Lake County, State of Utah, U.S.A. and shall be conducted in the English language, unless the Parties agree otherwise in writing. Any award by the arbitrator(s) must be a reasoned award that: fully sets forth findings of fact from the evidence presented; applies the findings of fact to the law of the case; fully sets forth conclusions of law based upon the Parties' respective legal theories; explains which legal theories were followed and why; and, if damages, costs, and/or fees are awarded, specifies the calculations of the types of damages, costs, and/or fees awarded as to each Party. Any award is final and binding on the Parties and may be challenged in a court of competent jurisdiction only upon those grounds allowed under the Utah Uniform Arbitration Act, Utah Code Ann. section 78B-11-101 et seq. In the absence of challenge, judgment on the award may be entered in any court of competent jurisdiction. Without limiting the authority conferred on the arbitrator(s) by this Agreement and the Rules, the arbitrator(s) shall have the authority to exercise equitable principles and award equitable remedies. By agreeing to Arbitration, the Parties do not intend to deprive any court of competent jurisdiction in Salt Lake County, State of Utah, U.S.A., of its ability to issue any form of provisional remedy, including but not limited to a temporary restraining order, preliminary injunction, attachment in aid of arbitration, or order for any interim or conservatory measure. A request for such provisional remedy or interim or conservatory measure by a Party to a court shall not be deemed a waiver of an agreement to arbitrate.
- 18.11. Customer Contact.** If Licensee has any questions concerning this Agreement, Licensee may contact StorageCraft as follows: website - [www.storagecraft.com](http://www.storagecraft.com); telephone – 801-545-4700; fax - 801-545-4705; mail – StorageCraft Technology Corporation, 11850 Election Road, Suite 120, Draper, Utah 84020, U.S.A.

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Vers. 04.08.11

## END-USER LICENSE AGREEMENT FOR SELECT STORAGECRAFT SOFTWARE PRODUCTS

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### Section 1 Definitions. Capitalized terms will have the meaning given in this Section 1.

- 1.1. “**Activation**” (and its variants “activate,” “activated” and the like) means a process in which the Software’s Product Key and certain machine related information is provided to StorageCraft, converting it from a Trial License into a fully-activated version of the Software. An “active” license or “active” seat is a seat of licensed Software for which the foregoing process has been completed and which has not been deactivated.
- 1.2. “**Archival Use**” means the creation and confidential storage of a single copy of the Software for use by you only in the event that the Original Copy fails to function properly. Archival Use does not include simultaneous use of the Original Copy and the archival copy, which simultaneous use is prohibited by this Agreement.
- 1.3. “**Deactivation**” (and its variants “deactivate,” “deactivated,” and the like) means a process that is the inverse of Activation, the result of which includes suspension of the ability to take backup images.
- 1.4. “**Desktop Operating System**” means any broadly released Microsoft Windows operating system intended for desktop computers. For a list of Desktop Operating Systems for which StorageCraft Products are compatible, please consult a StorageCraft customer service representative.
- 1.5. “**Documentation**” means all on-line help files or written instruction manuals and user guides addressing the use of the Software.
- 1.6. “**Effective Date**” means the date on which you accepted this Agreement.
- 1.7. “**End User**” means the person or entity who accepts this Agreement. In the case of MSP Software, the End User is the MSP.
- 1.8. “**ImageReady**” means a StorageCraft developed tool that extends and automates the functionality of the ShadowProtect native mount tools. Once configured by the end user, ImageReady will mount designated ShadowProtect image files for the purpose of then running custom, user defined, scripts. The types of functions that these scripts will perform are defined by the end user but a few examples would be; running tools to validate file system integrity or using native Microsoft Exchange tools to validate the integrity of an Exchange Database file. ImageReady installs as a subset of the ShadowProtect install and does not require a separate license.
- 1.9. “**Intellectual Property Rights**” means all of StorageCraft’s ownership rights associated with intellectual property and the Software, including but not limited to patents, copyrights, trademarks, trade secrets, know how, and any and all rights to exclude existing from time to time in a specified jurisdiction under patent law, copyright law, moral rights law, trade-secret law, trademark law, unfair competition law, or other similar law.
- 1.10. “**License Fee**” means the price you paid to StorageCraft or its reseller, distributor, or authorized representative in exchange for a license to use the Software in accordance with the limitations established in this Agreement.
- 1.11. “**Maintenance**” means, for the specific StorageCraft Product to which you are licensed in accordance with this Agreement, a time-limited right to (i) all Updates and Upgrades to the StorageCraft Product that StorageCraft releases during the period that Maintenance is in effect, subject to the terms and conditions imposed by this Agreement, and (ii) Product Support. Maintenance is provided on a per-Product Key or per-seat basis and expressly excludes any other StorageCraft Products, Updates to other StorageCraft Products, and separately licensed add-on modules, or features included in other StorageCraft Products. Updates, Upgrades, and additional features of StorageCraft Products will be released, added, or created at StorageCraft’s sole and complete discretion, and StorageCraft makes no warranty, promise, or commitment to make any such offering.
- 1.12. “**MSP**” means managed service provider.
- 1.13. “**MSP Software**” includes ShadowProtect for MSP and StorageCraft ImageManager for MSP, both of which are distributed by subscription and not on a perpetual basis, as well as HeadStart Restore, intelligentFTP, ShadowStream, ShadowProtect GRE, and ShadowControl CMD which are distributed on a perpetual as well as subscription basis.
- 1.14. “**Object Code**” means the output of a compiler after it processes StorageCraft source code in the form of an executable, dll, or library file.
- 1.15. “**Original Copy**” means the single copy of the Software provided to Licensee in conjunction with this Agreement.
- 1.16. “**Physical System**” means a computer hardware device supported by an installed operating system.

- 1.17. **“Product Key”** means a unique identifier associated with each Seat of Software that is required to activate each Seat of Software and which StorageCraft uses to determine the number of active licenses of Software. Solely at its discretion, StorageCraft may elect to permit a single Product Key to activate a designated number of Seats of Software.
- 1.18. **“Product Support”** means Standard Support or Premium Support for the specific StorageCraft Product to which you are licensed in accordance with this Agreement. **“Standard Support”** includes telephone support for Emergency Level Support Issues during StorageCraft’s regular business hours; StorageCraft’s on-line support system; the StorageCraft-moderated user forum; and the StorageCraft knowledge base, which is a question and answer resource that includes frequently asked questions. In the case of a Software purchase, one year of renewable Standard Support is included in the purchase price of the Software. In the case of a subscription to MSP Software, Standard Support is available while the subscription is in effect. **“Paid Support”** means **“Premium Support”** and **“Incident Support.”** Premium Support means one year of renewable technical support that is available to Software purchasers and which is purchased in addition to the Software, which support includes 24-hour telephone support for Emergency Level Support Issues; higher priority placement in the telephone queue; StorageCraft’s on-line support system; the StorageCraft-moderated user forum; and the StorageCraft knowledge base, which is a question and answer resource that includes frequently asked questions. Incident Support entitles you to Premium Support, but only for a single Support Issue. Incident Support is sold singly or in packs.
- 1.19. **“Seat”** means one license to the Software that has been activated or for which activation is available to the End User.
- 1.20. **“Server Operating System”** means any broadly released Microsoft operating system intended for server computers. For a list of Server Operating Systems for which StorageCraft Products are compatible, please consult a StorageCraft customer service representative.
- 1.21. **“Small Business Server Operating System”** means the Microsoft Windows Small Business Server family of products and the Microsoft Server Essentials family of products. For a list of Small Business Server Operating Systems for which StorageCraft Products are compatible, please consult a StorageCraft customer service representative.
- 1.22. **“Software”** means the specific StorageCraft Product to which you are licensed in accordance with this Agreement.
- 1.23. **“Subscription Fees”** means monthly fees paid by an MSP for the right to use MSP Software during a particular month. Subscription Fees are not included in the definition of License Fee.
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- 4.17. StorageCraft ImageManager**—StorageCraft ImageManager is an executable program used for the scheduled verification, retention, consolidation, monitoring, and management of ShadowProtect image files and includes the ImageManager Service and ImageManager Client. ImageManager is included with the purchase of ShadowProtect Server, ShadowProtect SBS, ShadowProtect Desktop, ShadowProtect Virtual, or a subscription to ShadowProtect for MSP. ImageManager can be used with the advanced license features of HeadStart Restore®, intelligentFTP®, and ShadowStream®, all of which are separately licensed on a per-job basis.
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**Section 11 MSP.** If you are an End User of MSP Software, you agree that you will, in writing, fairly and accurately advise your customers who benefit from your use of the MSP Software of the following: all terms in this Agreement that may adversely affect them if your rights to use the MSP Software are suspended or terminated due to your breach of this or any other agreement with StorageCraft; the technical and functional requirements necessary for your use of the MSP Software; that such customers are not end users of the MSP Software and therefore have no rights or privileges with respect to StorageCraft or the MSP Software pursuant to this Agreement; and that to the maximum extent permitted by applicable law, StorageCraft disclaims all warranties and conditions respecting the Software, whether express, implied, or statutory.

**Section 12 United States Government Restricted Rights.** RESTRICTED RIGHTS LEGEND. All StorageCraft products and documentation are commercial in nature. The Software and Software Documentation are "Commercial Items", as that term is defined in 48 C.F.R. § 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are defined in 48 C.F.R. § 252.227-7014(a)(5) and 48 C.F.R. § 252.227-7014(a)(1), and used in 48 C.F.R. § 12.212 and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. §§ 12.212, 252.227-7015, 227.7202 – 227.7202-4, and 52.227-14, and other relevant sections of the Code of Federal Regulations, as applicable, StorageCraft's Software and Documentation are licensed to United States Government end users with only those rights as granted to all other end users, according to the terms and conditions contained in this Agreement.

**Section 13 Compliance with Export Law.** StorageCraft, its employees and its agents are subject to U.S. export control laws that prohibit or restrict (i) transactions with certain parties, and (ii) the type and level of technologies and services that may be exported. These laws include without limitation, the Export Administration Act, the Arms Export Control Act, and the International Economic Emergency Powers Act, and regulations issued pursuant to these and other applicable export laws (the "Export Laws"). Licensee will comply fully with all Export Laws to assure that neither the Software, nor any direct products thereof are (1) exported, directly or indirectly, in violation of the Export Laws, or (2) are used for any purpose prohibited by Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation. None of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) Cuba, North Korea, Iran, Sudan, Syria or any other country subject to U.S. sanctions applicable to the export or re-export of goods; or (ii) to anyone on the U.S. Treasury Department's List of Specially Designated Nationals and Blocked Persons List, or the U.S. Commerce Department's Denied Persons List, Unverified List, Entity List, or Nonproliferation Sanctions. Licensee acknowledges that it can contact the U.S. Departments of Commerce and Treasury for guidance as to applicable export licensing requirements, sanctioned programs and other restrictions. By downloading or using the Software, Licensee agrees to the foregoing and represents and warrants that Licensee is not located in, under the control of, or a national or resident of any such country or on any such list, and that Licensee acknowledges Licensee is responsible to obtain any necessary U.S. government authorization to ensure compliance with U.S. law.

**Section 14 Notices.** All notices required or permitted to be given or served under this Agreement shall be in writing and: (a) personally delivered to the Party to be notified, in which instance notice shall be deemed to have been given and received upon actual delivery; (b) sent by a reputable international overnight commercial courier service (such as Federal Express) addressed to the Party to be notified, in which instance notice shall be deemed to have been given one (1) business day after deposit with such courier service for delivery; (c) sent by email or facsimile, in which instance notice shall be deemed to have been given and received upon actual delivery; or (d) delivered to the Party to be notified by any other means where it can be established that the Party to be notified received such notice, in which instance notice shall be deemed to have been given and received upon the date of receipt. The point of contact of the Parties for notice by any of the foregoing means shall be as follows. If to StorageCraft: StorageCraft Technology Corporation, Attn: Legal; 11850 Election Rd, Suite 100, Draper, UT 84020; email: legal@storagecraft.com; facsimile: (801)545-4705; with a copy to: StorageCraft Technology Corporation, Attn: Notice to StorageCraft, P.O. Box 1149, Riverton, UT 84065; email: notices@storagecraft.com; facsimile: (801) 545-4705. If to Licensee: to the Licensee address, facsimile, and/or email address provided by Licensee to StorageCraft. Either Party may change its contact information for notice purposes by giving ten (10) days' prior written notice to the other Party in the manner described above.

**Section 15 Passwords.** If you invoke any password-protection or encryption functionality of the Software, you understand that loss of your password may result in the loss of access to your data and/or access to image files created by the Software. You understand and acknowledge that StorageCraft does not keep, maintain, or monitor any password you create, and StorageCraft has neither liability associated with loss of your password nor obligation to assist in its recovery. By creating a password or encrypting your data, you assume all risk associated with loss of that password and the associated data.

#### **Section 16 Miscellaneous.**

- 16.1. Activation.** The Documentation describes the process of activating the Software, which involves recognition of each seat of licensed Software by StorageCraft's activation server. The records of StorageCraft's activation server are determinative in any question concerning whether a seat of licensed Software has been activated by Licensee.
- 16.2. Severability.** If any provision of this Agreement is unenforceable or invalid pursuant to any applicable law, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole, and such unenforceable or invalid provision will be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law.
- 16.3. Entire Agreement.** Unless you have entered into a separate, written and signed agreement with StorageCraft or one of its dealers, distributors, resellers, or authorized representatives for the supply of the Software, which agreement expressly modifies this Agreement (including without limitation an MSP agreement), this Agreement is the complete and exclusive statement of the agreement between you and StorageCraft concerning the Software and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the Parties.

- 16.4. Waiver or Modification.** This Agreement may not be modified except by a written and express addendum issued by a duly authorized representative of StorageCraft. No delay or failure to take action represents a waiver of the rights inherent to or granted to StorageCraft under this Agreement. You acknowledge, understand, and agree that your receipt of future releases of the Software, including Updates and Upgrades, will require your acceptance of a new End User License Agreement which may alter, amend, or replace all or part of this Agreement and affect the Parties' obligations concerning the Software.
- 16.5. No Third Party Beneficiary.** No third party is or shall be a beneficiary of this Agreement and no third party shall have the right to enforce this Agreement.
- 16.6. Assignment.** This Agreement is personal to you and may not be assigned or assumed (including by operation of law) without StorageCraft's prior written consent. A change of control of Licensee shall constitute an assignment.
- 16.7. Compliance.** For Software licensed for business or commercial purposes, during the period this Agreement remains in effect, and for three years thereafter, StorageCraft may verify your compliance with this Agreement on your premises during its normal business hours and in a manner that minimizes disruption to your business. StorageCraft may use an independent auditor for this purpose.
- 16.8. Headings and Captions.** The headings and captions used in this Agreement are for convenience or reference only and shall not modify, expand, limit, or describe the scope or intent of this Agreement or in any other way affect the terms or conditions of this Agreement.
- 16.9. Force Majeure.** No delay, failure or default in performance of any obligation of StorageCraft hereunder shall constitute a breach of the Agreement to the extent caused by fire, flood, explosion, war, terrorism, embargo, government requirement, civil, or military authority, act of God, act or omission of carriers, or other similar causes beyond its control.
- 16.10. Applicable Law.** This Agreement shall be governed and construed exclusively in accordance with the laws of the State of Utah, U.S.A., without application of any choice-of-law or conflict-of-law principles, rules, or provision that would result in the application of the laws of any jurisdiction other than Utah. The Parties irrevocably submit to the personal jurisdiction of the state or federal courts of Utah. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any action for provisional relief concerning this Agreement or the Parties' relationship hereunder, including but not limited to a temporary restraining order, preliminary injunction, attachment in aid of arbitration, or order for any interim or conservatory measure, shall be brought exclusively in Salt Lake County, State of Utah, U.S.A. The Parties consent and submit to the exclusive jurisdiction of the state or federal courts in Salt Lake County, State of Utah, U.S.A., for purposes of any action for such provisional remedy or interim or conservatory measure.
- 16.11. Dispute Resolution.** At the election of either Party to this Agreement, any dispute, controversy, or claim arising out of, relating to, or in connection with the following shall be submitted for final resolution by arbitration administered by the American Arbitration Association (the "AAA"), and in the event of such election, both Parties expressly waive any right to a trial by jury: Licensee's purchase or use of the Software; the Software's performance, including without limitation any alleged deficiency or defect; the existence or breach of a contractual, statutory, or common-law warranty; the terms and obligations of this Agreement; the performance, termination, rescission, or alleged breach of this Agreement; and the Agreement's validity or enforceability, including without limitation any claim that all or any part of this Agreement is void, voidable, unconscionable, or unenforceable (collectively, "Arbitrable Dispute"). Notwithstanding the foregoing, any claim for infringement or violation of copyright, trademark, or other intellectual property rights is not an Arbitrable Dispute, but shall be brought exclusively before a court of competent jurisdiction in Salt Lake County, State of Utah, U.S.A. In the event of an Arbitrable Dispute, the election to arbitrate must be made in writing by a Party on or before the last day to answer and/or respond to a summons and/or complaint brought by the other Party. If Licensee is a U.S. resident or maintains a place of business in the U.S., the arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules in effect at the time of the arbitration, excepting any rules pertaining to class arbitrations. If Licensee is not a U.S. resident or does not maintain a place of business in the U.S., the arbitration shall be conducted in accordance with the AAA International Arbitration Rules in effect at the time of the arbitration, excepting any rules pertaining to class arbitrations. (The Commercial Arbitration Rules and International Arbitration Rules are collectively referred to as the "Rules". Copies of the Rules can be obtained, free of charge, at <http://www.adr.org/>.) The Parties intend that any arbitration between them shall involve only the dispute between the Parties. No other dispute between a Party and a third party shall be included in the arbitration. Class arbitration shall not be permitted. The arbitration shall be conducted by a single arbitrator selected in accordance with the Rules. In the event of an arbitration conducted under the International Arbitration Rules, the arbitrator must also have experience in international software licensing transactions. The place of arbitration shall be Salt Lake County, State of Utah, U.S.A. and shall be conducted in the English language, unless the Parties agree otherwise in writing. Any arbitral award must be a reasoned award that: fully sets forth findings of fact from the evidence presented; applies the findings of fact to the law of the case; fully sets forth conclusions of law based upon the Parties' respective legal theories; explains which legal theories were followed and why; and, if damages, costs, and/or fees are awarded, specifies the calculations of the types of damages, costs, and/or fees awarded as to each Party. Any award is final and binding on the Parties and may be challenged in a court of competent jurisdiction only upon those grounds allowed under the Utah Uniform Arbitration Act, Utah Code Ann. section 78B-11-101 et seq. In the absence of challenge, judgment on the award may be entered in any court of competent jurisdiction. By agreeing to Arbitration, the Parties do not intend to deprive any court of competent jurisdiction in Salt Lake County, State of Utah, U.S.A., of its ability to issue any form of provisional remedy, including but not limited to a temporary restraining order, preliminary injunction, attachment in aid of arbitration, or order for any interim or conservatory measure. A request for such provisional remedy or interim or conservatory measure by a Party to a court shall not be deemed a waiver of an agreement to arbitrate.
- 16.12. CDDL.** The Software's executable, VBoxHDDXSP.dll, includes unmodified files containing VirtualBox Open Source Edition source code, which is licensed under the Common Development and Distribution License Version 1.0 ("CDDL"). StorageCraft made no "modifications" to the CDDL-licensed files and StorageCraft is not a "contributor" as those terms are defined in the CDDL. Irrespective of the CDDL, the Software is licensed and distributed solely in accordance with the terms and conditions of this Agreement and the CDDL gives Licensee no right, title or interest in or to the Software. Please refer to the README.RTF file included with the Software for links to the CDDL and all referenced CDDL-licensed source code.
- 16.13. No Fault Tolerance.** The Software contains technology that is not fault tolerant and is not designed, manufactured, or intended for use in environments or applications in which the failure of the Software could lead to death, personal injury, or severe physical, property or environmental damage.

- 16.14. Survival.** The provisions of this Agreement relating to payment of any fees or other amounts owed, warranties, limitation of liability, dispute resolution, matters of construction or interpretation, and other provisions that by their nature survive termination, shall survive any termination or expiration of this Agreement.
- 16.15. Electronic Transaction.** The Parties agree that this Agreement may be formed, executed, and/or delivered by electronic means, including the use of electronic signatures and/or electronic agents in accordance with the Utah Uniform Electronic Transactions Act, Utah Code Ann. § 46-4-101 et seq.
- 16.16. Electronic Communications.** You acknowledge and agree that StorageCraft may communicate with you regarding your account or the Software via email or other electronic communications. You consent to these communications and others regarding the latest StorageCraft developments, including new product releases, upgrades, special offers and other information that StorageCraft believes may be relevant to your use of the Software.
- 16.17. Customer Contact.** If Licensee has any questions concerning this Agreement, Licensee may contact StorageCraft as follows: website - [www.storagecraft.com](http://www.storagecraft.com); telephone – 801-545-4700; fax - 801-545-4705; mail – StorageCraft Technology Corporation, 11850 Election Road, Suite 100, Draper, Utah 84020, U.S.A.

Vers. 07.22.2013

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ACCEPTED BY: \_\_\_\_\_

DATE: \_\_\_\_\_