

TERMS AND CONDITIONS OF A RESELLER RELATIONSHIP WITH STORAGECRAFT TECHNOLOGY CORPORATION

The following terms and conditions apply to any reseller relationship (the "relationship") between you and StorageCraft Technology Corporation ("StorageCraft"). If StorageCraft accepts your reseller application, you agree to comply with all of these terms and conditions. PLEASE PRINT A COPY OF THIS AGREEMENT FOR YOUR RECORDS. If you do not agree to these terms and conditions, do *not* submit a reseller application to StorageCraft and do *not* check the box next to the statement: "I have read and accept the Terms and Conditions of a Reseller Relationship with StorageCraft."

1. **Authorization.** You understand and agree that you are authorized only to resell StorageCraft products to end users. You are not authorized to act as a distributor or managed service provider of StorageCraft products, unless you have entered into a separate written agreement with StorageCraft granting you that authority.

2. **Retention by StorageCraft of All Ownership Rights.** StorageCraft owns and retains all right, title, and interest associated with its software products and intellectual property, including but not limited to patents, copyrights, trademarks, logos, and trade secrets, 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 rights, whether related to specific StorageCraft products or otherwise (the "Intellectual Property Rights"). Your possession, access, sale, or use of StorageCraft products does not transfer any ownership of the products or any intellectual property rights to you.

3. **Protection of Intellectual Property Rights.** You agree to take reasonable precautions to protect StorageCraft's Intellectual Property Rights and other proprietary rights in associated documentation, including without limitation protecting StorageCraft products from unauthorized copying or use, or any other infringement of the Intellectual Property Rights. You agree that you will not decompile, decipher, disassemble, reverse engineer, or otherwise seek to determine the source code or content of StorageCraft products, and that you will not attempt or knowingly permit others to attempt to perform such activities. You agree to promptly notify StorageCraft of any unauthorized use of any StorageCraft product that comes to your attention. In the event of any infringement of StorageCraft's Intellectual Property Rights and/or rights in StorageCraft products by any of your customers or employees, you will cooperate with StorageCraft in any and all actions taken by StorageCraft with respect to such infringement.

4. **End User License Agreement.** Each seat of StorageCraft product that you sell shall include StorageCraft's End User License Agreement ("EULA") (or in the case of ShadowProtect IT Edition, a Technician License Agreement ("TLA")), which each end user must accept as a precondition to any use of the StorageCraft product.

5. **Microsoft® Windows® Preinstallation Environment License (Windows PE).** StorageCraft is a licensee under a license granted by Microsoft with respect to Microsoft Windows Preinstallation Environment software, including versions 2004, 2005 and 2.0. You understand and acknowledge that the Microsoft License specifically requires the end user to accept the following terms and conditions: (A) Windows PE 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; (B) some StorageCraft products include Windows PE, which contains a security feature that will cause the computer system to reboot without prior notification to the user after 24 hours of continuous use. THIS TIME-OUT FEATURE WILL RESET EACH TIME THE COMPONENT CONTAINING THE WINDOWS PREINSTALLATION ENVIRONMENT IS RELAUNCHED; (C) any and all Microsoft and Microsoft affiliate's liability related to StorageCraft products are disclaimed in full and without condition; (D) all customer support issues will be handled solely by StorageCraft; (E) you are specifically prohibited from reverse engineering, decompiling, or disassembling Windows PE, except to the extent expressly permitted by applicable law; and (F) you are specifically informed that Windows PE is subject to U.S. export jurisdiction.

6. **Term and Termination.** Either party may terminate the relationship effective immediately, and may do so at any time, for any reason, and with or without cause. In the event that the relationship is terminated, you understand and agree that you shall: (a) no longer be an authorized StorageCraft reseller and shall immediately cease all sales and distribution of StorageCraft products; (b) not represent yourself as an authorized StorageCraft reseller; (c) cooperate with StorageCraft in providing it end user information to ensure that end users remain informed of the status of their maintenance accounts; (d) remain liable to StorageCraft for any amounts due and owing under this Agreement; and (e) return all NFR Copies to StorageCraft and/or cooperate in their deactivation. The following paragraphs of this agreement shall survive the termination of the relationship: 1-3, 6, 9, 10-13, 15, 16(A), 16(D), 17.

7. **Export Restrictions.** StorageCraft products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and national laws that apply to StorageCraft products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.

8. **Restricted Rights Legend for Governmental End Users.** 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. section 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are defined in 48 C.F.R. section 252.227-7014(a)(5) and 48 C.F.R. section 252.227-7014(a)(1). StorageCraft's products and documentation are licensed to United States Government end users with only those rights that are granted to all other end users.

9. **Representations Concerning Products.** You agree not to make any representations, warranties, or guarantees with respect to the specifications, features or capabilities of StorageCraft products that are inconsistent with, or absent from StorageCraft's published product specifications, product packaging, user guides, and/or promotional materials provided by StorageCraft unless otherwise pre-authorized in writing by StorageCraft. You agree not to give or make any warranties or representations on behalf of StorageCraft as to quality, merchantable quality, fitness for a particular use or purpose, or any features of StorageCraft products. You agree not to incur or purport to incur any liabilities, obligations, or commitments on behalf of StorageCraft.

10. **NFR Copies.** An "NFR Copy" is a copy of a StorageCraft software product that StorageCraft may provide to you that is strictly for demonstration and training use. NFR Copies may not be distributed or resold. NFR Copies shall be returned to StorageCraft upon termination of the relationship and/or the associated licenses shall be deactivated.

11. **Confidentiality.** You understand and agree that StorageCraft may provide you with certain information that StorageCraft considers confidential and that you may not share with third parties (the "Confidential Information"). You shall hold Confidential Information in strict confidence and not disclose it to any third party without StorageCraft's prior written permission. Confidential Information is information that StorageCraft has marked "Confidential" and shall include without limitation StorageCraft's product development and product release plans, StorageCraft's reseller pricing information and reseller incentive programs, and competitive matrixes prepared by StorageCraft.

12. **Disclaimer and Limitation of Warranties.** *You understand and agree that the only warranties of any kind provided by StorageCraft are limited warranties provided to end users under the specific terms and conditions of the applicable EULA or TLA. StorageCraft products are provided and licensed "as is" and with all faults. There are no warranties, representations, or conditions, express or implied, written or oral, arising by statute, operation of law, or otherwise, regarding them. To the maximum extent permitted by applicable law, StorageCraft disclaims all warranties and conditions, whether express, implied, or statutory, including without limitation any (if any) warranties or conditions of or related to: merchantability, durability, fitness for a particular purpose, lack of viruses, noninfringement, accuracy or completeness of responses, correspondence to description, workmanlike effort, and lack of negligence. No agreements varying or extending the foregoing warranties or limitations will be binding unless in writing and signed by an authorized representative of both parties.*

13. **Limitations on Liability.** You understand and agree that, in no event shall StorageCraft be liable to you or to third parties for any: (a) consequential, indirect, incidental, exemplary, or special damages; and (b) damages for loss of profits or revenues, business interruption, interference with business relations, loss of goodwill, or loss of business information or data. These limitations apply even in the event of fault, tort, negligence, misrepresentation, or strict or product liability. StorageCraft's total cumulative liability, if any liability, shall be limited to your direct damages incurred in reasonable reliance upon StorageCraft up to an amount not to exceed one hundred percent (100%) of the amount you paid to StorageCraft pursuant to this agreement in the six (6) months immediately preceding your written notice to StorageCraft of such alleged damages. You agree to release StorageCraft from all liability in excess of the liabilities that are limited by this paragraph, including without limitation any claim for indemnification or contribution whether arising under statutory or common law or otherwise.

14. **High Risk Applications and Fault Tolerance.** There are certain environments and applications wherein the failure of the environment, application, or included technology could lead to death, personal injury, or severe physical, property, or environmental damage. Be advised that StorageCraft products contain technology that has *not* been tested for use in such environments or applications and is therefore *not* fault tolerant and *not* designed, manufactured, or intended for use in such environments or applications. You are prohibited from marketing or selling the products for use in such environments or applications.

15. **Governing Law.** You agree that this agreement and the parties' relationship 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 concerning this agreement or the parties' relationship shall be brought in Salt Lake County, State of Utah, U.S.A. In the event any action or proceeding is brought concerning the relationship or to enforce any of the provisions of this agreement, in addition to any damages that may be claimed, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such action or proceeding.

16. **Miscellaneous.** (A) The waiver of, or failure to enforce, any obligation, breach, or default hereunder shall not constitute the waiver of any other or subsequent obligation, breach, or default. (B) The relationship of the parties is that of independent third parties. Neither party will have, nor represent that it has, any power, right or authority to bind the other party, or to assume or create any obligation or responsibility, express or implied, on behalf of the other party or in the other party's name, except as expressly permitted herein. There is no employer/employee, franchiser/franchisee, or principal/agent relationship between the parties. (C) No third party is or shall be a beneficiary of this agreement and no third party shall have the right to enforce this agreement. (D) This agreement sets forth the entire agreement between the parties and supersedes any and all prior proposals, agreements, term sheets, and representations between them, whether written or oral. This agreement may be changed only by mutual written agreement of the parties. (E) You are over the age of eighteen (18) and the information you supplied in your reseller application is true and correct. (F) You agree to avoid deceptive, misleading, or unethical practices that are or might be detrimental to StorageCraft, its goodwill, or the reputation of StorageCraft products.

17. **No Signature Required.** You acknowledge that: (A) by checking the box next to the statement "I have read and accept the Terms and Conditions of a Reseller Relationship with StorageCraft" and (B) by submitting your reseller application electronically to StorageCraft, you will be legally bound by this agreement if StorageCraft accepts your reseller application. StorageCraft may accept your reseller application by email, facsimile, or other similar means of communication. You agree that the acceptance process outlined in this agreement is sufficient to reflect your consent to the terms and conditions of this agreement, that this process is an agreed substitute for both parties' written signatures, and that neither party's written signature is required for this agreement to be enforceable. PLEASE PRINT A COPY OF THIS AGREEMENT FOR YOUR RECORDS.

Vers. 11/23/09

© Copyright StorageCraft Technology Corporation 2009