

## END-USER LICENSE AGREEMENT FOR STORAGECRAFT® PRODUCTS

This license agreement (the “**Agreement**”) is a legal and enforceable contract between you, as the organization or person using a StorageCraft Product (“**you**” or “**End User**”), and StorageCraft Technology, LLC (“**StorageCraft**”) and contains the terms, conditions, rights, and limitations associated with your use of such Products. You are accepting this Agreement if you indicate your assent to its terms by clicking an “agree” or “acceptance” button; install the Software, including through a manual, silent, unattended or push installation; use the Software, including by installing, loading, running, executing, displaying, deploying or retaining the Software; open or break the seal on a package containing the StorageCraft Product; and/or otherwise indicate your assent to the terms of this Agreement. When you accept this Agreement for a particular StorageCraft Product, it constitutes your acceptance of this Agreement for all StorageCraft Products that you install using that Product or use in conjunction with that Product. If you accept this Agreement on behalf of a business or organization, you represent and warrant that you have the authority to bind that business or organization to its terms and your agreement will be treated as the agreement of the business or organization. If you accept this Agreement on behalf of another party, you hereby represent and warrant that you are authorized as that party’s agent to do so. If you do not agree to the terms of this Agreement, you may not install, access, or use the Software.

### Section 1 Definitions.

- 1.1. “**Activation**” (and its variants, “**Activate**”, “**Activated**”, and the like) means a process in which identification details about a StorageCraft Product and/or the environment in which it is used is provided to StorageCraft. An “**Active**” license or “**Active**” Seat is a Seat of Software for which the foregoing process has been completed and which has not been Deactivated.
- 1.2. “**Cluster**” means one or more OneXafe devices that share object-based data storage.
- 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process that is the inverse of Activation, the result of which includes the conversion of an Active Seat to one that is no longer Active. Deactivation of backup Software means that the Software no longer takes backups.
- 1.4. “**Documentation**” means the current user guide and readmes relating to the Licensed Product.
- 1.5. “**End User**” means a person, organization, or entity that accepts this Agreement. In the case of Subscription Software used by an MSP or Enterprise User, the End User is the MSP or the Enterprise User.
- 1.6. “**Enterprise User**” means an organizational End User using Subscription Software.
- 1.7. “**Fee**” means the fee you paid to StorageCraft or its authorized distributor or reseller in exchange for use of the Licensed Product in accordance with this Agreement.
- 1.8. “**Intellectual Property Rights**” means all of StorageCraft’s ownership rights associated with intellectual property and the StorageCraft Products, 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.
- 1.9. “**Internal Use**” means use of the Software for training, demonstration, evaluation, and similar purposes on a Machine that you own, use, and control. For the avoidance of doubt, the following uses DO NOT constitute Internal Use: the sale, lease, distribution or other transfer of the Licensed Product or the benefits of its use to a third party; permitting third parties to use or access the Licensed Product’s functionality; copying of the Licensed Product except as expressly permitted by this Agreement or applicable law; use of Subscription Software by an Enterprise User for purposes other than training, demonstration, testing, and similar purposes; and/or use of the Licensed Product to generate service revenue, manage someone else’s data, or provide services to third parties.
- 1.10. “**Licensed Product**” means the Seat of a particular StorageCraft Product in relation to which you accept this Agreement.
- 1.11. “**Machine**” means a Physical Machine or Virtual Machine.
- 1.12. “**Maintenance**” means, for the specific Licensed Product to which you are licensed under this Agreement, a time-limited right to (i) all Updates and Upgrades to the Software that StorageCraft releases while Maintenance is in effect, and (ii) Standard Support. The period for which Maintenance is in effect for the Licensed Product begins on the date that StorageCraft sells the Seat of Licensed Product. Maintenance is provided on a per-Product Key or per-Seat basis and expressly excludes any other StorageCraft Products, Updates to other StorageCraft Products, or separately licensed add-on modules.
- 1.13. “**Maintenance Renewal**” means an extension of Maintenance for a specified period of time.
- 1.14. “**MSP**” means managed service provider.
- 1.15. “**Object Code**” means the output of a compiler after it processes source code in the form of an executable, dll, or library file.
- 1.16. “**Party**” means you or StorageCraft. “**Parties**” means you and StorageCraft.
- 1.17. “**Perpetual Software**” means Software that StorageCraft has identified on the Price List as a product you may use on a perpetual basis.
- 1.18. “**Physical Machine**” means a tangible computer hardware device supported by an installed operating system.
- 1.19. “**Price List**” means one or more price lists or pricing calculators which StorageCraft publishes for particular geographical regions and which are used to determine the Fees charged for StorageCraft Products.
- 1.20. “**Product Key**” means a unique identifier associated with a Seat of Licensed Product that may be required to Activate the Licensed Product and which StorageCraft may use to determine the number of Active Seats of Licensed Product.
- 1.21. “**Product Support**” means Standard Support or Premium Support for a Support Issue associated with the Licensed Product which, at StorageCraft’s sole discretion, may be provided by StorageCraft, a StorageCraft affiliate, or third-party agent. For more information on “**Standard Support**” and “**Premium Support**” please refer to the “**Support Guidelines**” at [https://support.storagecraft.com/s/article/StorageCraft-Technical-Support-Guide?language=en\\_US](https://support.storagecraft.com/s/article/StorageCraft-Technical-Support-Guide?language=en_US).
- 1.22. “**Seat**” means one license to a StorageCraft Product that has been Activated or for which Activation is available to the End User.
- 1.23. “**Software**” means the software Products identified in [Annex 1](#) to this Agreement.
- 1.24. “**StorageCraft Portal**” means a password-protected area on a StorageCraft Internet website that that permits End Users of some Products to access certain functionality and information concerning the their account with StorageCraft.
- 1.25. “**StorageCraft Product(s)**” means any product or service made, sold, distributed, or licensed by StorageCraft, including the Products identified on the attached [Annex 1](#).

- 1.26. **“Subscription Software”** means Software that StorageCraft has identified on the Price List as a product you may use for a Subscription Period.
- 1.27. **“Subscription Period”** means the period during which StorageCraft grants you a license to use Subscription Software, which commences on the date StorageCraft sells the Seat of Subscription Software.
- 1.28. **“Support Issue”** means a technical question or issue associated with the Licensed Product.
- 1.29. **“Update”** means StorageCraft’s release of patches, issue corrections, and/or bug fixes to existing End Users of a particular version of Licensed Product in a particular geographical region. Updates are generally denoted by a change to the version number to the right of the far right decimal, such as from “Product X Version 8.1.2” to “Product X Version 8.1.3.”
- 1.30. **“Upgrade”** means StorageCraft’s public release of a Licensed Product that replaces the prior version of such Product on the Price List in a particular geographical region. Upgrades are generally denoted by a change to the version number to the left of the far-right decimal, such as from “Product Y Version 5.1.0” to “Product Y Version 6.0.1.”
- 1.31. **“Use”** means the ability to run, execute, load, deploy, or display the Licensed Product (or any part of the Licensed Product) in its Object Code form as it was provided to you by StorageCraft or its authorized distributor or reseller, but only in accordance with the terms of this Agreement.
- 1.32. **“Virtual Machine”** means a software emulation of a computer hardware device with an operating system.
- 1.33. **“Volume Product Key”** means a Product Key issued at StorageCraft’s discretion authorizing you to install and use Seats of Licensed Product on as many computers as are authorized by the Volume Product Key.

**Section 2 License Grant.** Subject to the terms and conditions of this Agreement, any applicable StorageCraft Product terms of use, and receipt of all Fees applicable to the Licensed Product, you are granted a limited, personal, non-transferable, non-exclusive, non-sublicenseable, as-is right to install and use the Licensed Product in its unaltered Object Code form on a Machine and for the term applicable to the particular Licensed Product.

**Section 3 Conditions and Restrictions Associated with Certain StorageCraft Products**

- 3.1. **Perpetual Software.** Perpetual Software may be used only on a Machine that you own. You may not use or install Perpetual Software on a Machine owned by a third party and/or use the functionality of the Software to provide managed or professional services to third parties. In addition to other remedies for breach of this Agreement, StorageCraft, in its sole discretion, may refuse to provide Product Support or functionality if it reasonably believes the Perpetual Software has been used in violation of this Section.
- 3.2. **Subscription Software.** If you are an MSP or in the business of providing managed or professional services to customers, you may install and use the Subscription Software on a Machine owned by your customer, provided that such installation and use does not otherwise violate this Agreement. If you are an Enterprise User, you may use the Subscription Software only for your Internal Use on a Machine owned by you. If you obtain the Subscription Software through a distributor, reseller, or master MSP, you understand and acknowledge that, in the event that such supplier fails to pay fees associated with use or distribution of the Subscription Software, or otherwise breaches its agreement with StorageCraft (or its subsidiary or corporate affiliate), the following may be suspended or terminated: your use of the Subscription Software, your access to the StorageCraft Portal, if any, and your access to Product Support. You further understand, acknowledge, and consent that your agreement with such supplier may be assigned to StorageCraft or its designee to permit continued delivery of Subscription Software and other StorageCraft Products. If you use Subscription Software as an MSP or as part of a business engaged in protecting, managing, and/or storing customer data, the following shall apply: (a) you will advise the customer in writing of all terms in this Agreement that may adversely affect the customer if this Agreement is terminated; (b) you are responsible for delivering any managed and professional services in compliance with this Agreement and ensuring your customers’ compliance with the requirements of this Agreement; (c) you shall enter into a written agreement with your customers, the terms of which shall include the following: (i) StorageCraft is the owner of the Licensed Product; (ii) the Licensed Product is licensed to you, not the customer; (iii) the Licensed Product is licensed “as is”, with all faults, and there are no warranties, representations, or conditions, express or implied, written or oral, arising by statute, operation of law, or otherwise relating to the Licensed Product; and (iv) StorageCraft is not liable for any damages, whether direct, incidental, indirect, special, punitive, or consequential (collectively, the **“Minimum Customer Terms”**); and (d) if you fail to advise customers of the Minimum Customer Terms, you shall indemnify and hold StorageCraft harmless from any and all claims, damages, and liabilities arising from such failure.
- 3.3. **OneXafe Data Protection Software.** In order to use OneXafe Data Protection Software in a Cluster, each OneXafe appliance in the Cluster must have an Activated Seat of OneXafe Data Protection Software.
- 3.4. **IT Edition.** A license to ShadowProtect IT Edition and/or ShadowProtect IT Edition Professional (collectively **“IT Edition”**) require you to identify a Designated Technician. A **“Designated Technician”** is the employee, agent, or representative you designate as its sole user and who maintains exclusive custody of the Product among your agents, employees, or representatives. You may appoint a successor Designated Technician once per calendar quarter. StorageCraft shall have the right to audit your use of IT Edition to determine compliance with this Agreement. IT Edition must be used directly from the USB flash media, or in unusual circumstances, from the Three-Day ISO, which shall not be downloaded more than once in any ten (10) day period and shall be used only in situations in which the USB flash media version of the Software is not capable of running on the target computer or the use of the StorageCraft license server is not a suitable solution. StorageCraft, in its sole discretion, may condition, suspend, or terminate your ability to access or create the Three-Day ISO. You shall not copy, install, redistribute, or share a Seat of IT Edition among your agents, employees, representatives, or third parties and shall not automate or script all or any portion of the functionality of IT Edition.
- 3.5. **OneSystem Service.** A license to the OneSystem Service is solely a right to remotely access the functionality of the OneSystem off-premises console management services Software (**“OneSystem Service”**). In order for the OneXafe appliance to maintain full functionality, it requires active Maintenance or a subscription to the OneSystem Service. You shall use commercially reasonable security precautions in your use of the Product.
- 3.6. **Evaluation License.** An Evaluation License is a time-limited right to use a Seat of Licensed Product to evaluate, test, and/or assess the Licensed Product’s features, functionality, and interoperability. An Evaluation License may not be sold, resold, or leased, and is subject to suspension, Deactivation, and/or termination at StorageCraft’s sole discretion. An Evaluation License does not include Maintenance.

- 3.7. Internal Use/Not-For-Resale (“NFR”) License.** An Internal Use/NFR License may be used solely for Internal Use, may not be sold, resold, transferred or leased, and is subject to suspension, Deactivation, and/or termination at StorageCraft’s sole discretion. An Internal Use/NFR License does not include Maintenance.
- 3.8. Trial License.** A Trial License is a time-limited license to a Seat of Licensed Product that may have limited functionality. A Trial License may not be sold, resold, or leased, and is subject to suspension, Deactivation, and/or termination at StorageCraft’s sole discretion. A Trial License does not include Maintenance.
- 3.9. APIs.** The Software may include one or more application programming interfaces, scripts, and/or associated tools (collectively “APIs”), which are subject to the following restrictions: the APIs shall be used, whether directly or indirectly, only by you and only for your personal use (except in the case of End Users of Subscription Software delivering managed services to third parties, who may use the API to benefit their customer); they shall be used solely in conjunction with the particular Product licensed to you; they shall be used only with the user interface delivered with the Licensed Product or with a StorageCraft-licensed or StorageCraft-approved third-party user interface, service, agent, or module; you shall not use the APIs in conjunction with or to develop products or services competitive to the particular Licensed Product licensed to you; and you shall not use the APIs in a manner that suggests ownership by you or anyone other than StorageCraft.

**Section 4 Proprietary Rights; Patents.** This is a license and not a sale. The Software and Documentation are proprietary to StorageCraft and/or its licensors and are protected under the laws of the United States and under international treaty provisions. Nothing in this Agreement constitutes a waiver of StorageCraft’s rights under U.S. or international copyright law or any other law. Notwithstanding anything to the contrary in this Agreement, StorageCraft owns and retains all right, title, and interest in and to (a) the Licensed Product and Documentation, including without limitation all copies, modifications, translations, localizations, components, and features, and (b) the Intellectual Property Rights in and associated with the Licensed Product and Documentation. Your rights to use the Licensed Product are limited to those rights expressly identified in this Agreement. You have no implied license rights in or to the Licensed Product or Documentation. This Agreement governs any Updates, Upgrades, releases, revisions, or enhancements to the Licensed Product. This Agreement does not include a grant of any ownership right, title, interest, security interest, or other interest in the source code or Object Code of the Licensed Product, in any copy of the Licensed Product or Documentation, or in StorageCraft’s Intellectual Property Rights. Various StorageCraft Products are protected by one or more patents, a listing of which can be found at <https://www.storagecraft.com/legal/patents>.

**Section 5 License Restrictions.** Unless expressly authorized by this Agreement, applicable law, or StorageCraft’s prior written consent, you shall not directly or indirectly do any of the following with respect to the Licensed Product and Documentation: (i) use them in violation of the terms of this Agreement; (ii) infringe StorageCraft’s Intellectual Property Rights in or related to any StorageCraft Product or Documentation; (iii) copy the Licensed Product or Documentation; (iv) permit concurrent use of any Activated Seat of the Licensed Product on more than one Machine or use the Licensed Product to protect or manage a number of Machines that exceeds the entitlements you have purchased or licensed; (v) grant a security interest in, rent, lease, transfer rights to, or otherwise dispose of the Licensed Product or Documentation (any such disposition made without such consent shall be null and void); (vi) permit third-party use of the Licensed Product or Documentation by persons other than you or your authorized employee, agent or contractor, which you have engaged for purposes of operating and using the Licensed Product or Documentation on your sole behalf; (vii) use the Licensed Product in any service bureau, facility management, or time sharing arrangement; (viii) remove, obscure or alter any notice of patent, copyright, trade secret, trademark, or other proprietary right; (ix) reverse engineer, decompile, or recompile the Licensed Product or otherwise attempt to discover source code or trade secrets related to the Licensed Product; (x) modify the Licensed Product or create derivative works of the Licensed Product; (xi) work around any technical or security limitations of the Licensed Product; (xii) separate the components of the Licensed Product by, among other things, installing them on different Machines; (xiii) use VirtualBoot in conjunction with image files created by software other than the specific Seat of Licensed Product with which VirtualBoot was provided to you; (xiv) in providing managed or professional services directly or indirectly to customers, participate in a scheme with third parties for the aggregation of Seats of Licensed Product in an attempt to achieve lower pricing; (xv) copy, frame or mirror any part or content of the OneSystem services, other than copying or framing on an intranet or otherwise for internal business purposes; (xvi) interfere with or disrupt the integrity or performance of the OneSystem services or third-party data contained therein; (xvii) access the License Product for purposes of building a competitive product or service; and/or (xviii) cause or permit any individual to do any of the foregoing.

**Section 6 Third-Party Products.** If you use the Licensed Product with a third-party product, service, or application (a “Third-Party Product”), this Agreement does not grant you a license, right, or permission to use the Third-Party Product. By using the Licensed Product with a third-party product, service, or application, you represent and warrant that such use does not and shall not violate intellectual property or licensing rights associated with the Third-Party Product. If your use of the Licensed Product and a Third-Party Product requires you to share or provide to StorageCraft and/or the Third-Party Product provider information or credentials associated with your use of the Licensed Product and/or Third-Party Product, you consent to such use of that information and/or those credentials by StorageCraft and/or the Third-Party Product provider. Plugins, APIs, and other Software constituting third-party integration tools are free tools and you assume all risk of interoperability issues arising from their use with other software with which they interact and interoperate, including Third-Party Products and applications. Further, in reference to the StorageCraft Recovery Environment and Recovery Environment Builder, you are licensed to use such Software only with the Licensed Product with which the Recovery Environment or Recovery Environment Builder were provided to you.

**Section 7 General Limitations.** The Software may cease to function if you violate the terms of this Agreement or the applicable term of the Licensed Product lapses or expires. A Licensed Product may require a reliable Internet connection permitting the Licensed Product to periodically connect with StorageCraft systems. The Licensed Product may lose functionality, cease to function, or Deactivate if necessary system requirements are not satisfied. Certain Software Products are licensed only for use and installation on a particular operating system or type of Machine.

**Section 8 Product Support.** StorageCraft provides Product Support for a Licensed Product in accordance with the Support Guidelines if Maintenance is in effect for the Product. As a condition of receiving Product Support, you shall provide all information reasonably requested by StorageCraft or its agent for the delivery of such support. YOU UNDERSTAND THAT SUCH INFORMATION MAY INCLUDE PERSONAL DATA UNDER APPLICABLE DATA PRIVACY LAWS AND THAT SUCH INFORMATION MAY BE TRANSFERRED TO STORAGECRAFT OR ITS DESIGNEE IN THE UNITED STATES. YOU WARRANT AND REPRESENT THAT YOU ARE AUTHORIZED TO PROVIDE SUCH INFORMATION TO STORAGECRAFT UNDER APPLICABLE DATA PRIVACY LAWS.

Product Support is not provided for plugins, APIs, integration tools, Evaluation Licenses, Internal Use/NFR Licenses, or generally any Product, utility, or tool for which a Fee or monetary consideration was not paid to StorageCraft.

**Section 9 Use of StorageCraft Portal.** If StorageCraft permits you to use the StorageCraft Portal, you are solely responsible for: (i) all transactions conducted through use of your Portal access credentials, (ii) all changes made to your data or account through use of such credentials, (iii) ensuring that only persons you have authorized to use the credentials have access to them, and (iv) timely payment of fees and charges due and owing for all StorageCraft Products and services deployed, issued, or provisioned through the StorageCraft Portal using your credentials. You shall indemnify and hold StorageCraft harmless from any claims, proceedings, or causes of action that relate to any alleged misuse or unauthorized use of the StorageCraft Portal by means of credentials owned or provided to you if such use is due to no fault of StorageCraft. If you become aware of unauthorized access to your account or credentials, you will notify StorageCraft immediately at [security@storagecraft.com](mailto:security@storagecraft.com). If StorageCraft determines that a security breach has occurred or is likely to occur, it may suspend your StorageCraft Portal account and require you to change your passwords and other credentials.

**Section 10 Versions.** 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.

**Section 11 Volume Product Keys.** In the case of Perpetual Software, all Seats subject to a Volume Product Key must be installed and used solely by you on Machines you own. In the case of Subscription Software used by an Enterprise User, all Seats subject to a Volume Product Key must be installed and used solely by the Enterprise User on Machines it owns. Any Upgrades of a Licensed Product obtained pursuant to a Volume Product Key may only be obtained in a quantity equal to the number of Seats licensed pursuant to the Volume Product Key. Using Seats licensed pursuant to a Volume Product Key other than as set forth in this Agreement voids all Seats associated with the Volume Product Key.

**Section 12 Compliance with Intellectual Property Obligations.** You acknowledge that certain StorageCraft Products include features and functionality that back up, replicate, store, manage, manipulate, and/or transfer electronic data and that these processes require the copying of such data, which may include digital files, software programs, and other data subject to third-party intellectual property rights, such as license agreements and/or copyrights. The requirements of license agreements vary, as do the laws and regulations governing the use and copying of data. You understand and agree that StorageCraft has no knowledge concerning the data you store, backup, replicate, manage, manipulate, or transfer through use of StorageCraft Products and that StorageCraft has no knowledge of the third-party intellectual property rights and obligations applicable to that data. You also understand and agree that this Agreement does not grant you authority or license to copy or transfer the data you store, backup, manage, manipulate, or transfer using StorageCraft Products. You acknowledge and agree that it is solely your obligation to understand and comply with legal requirements associated with such data. You represent and warrant that your use of StorageCraft Products violates neither applicable third-party license agreements or intellectual property rights nor applicable international, national, state, regional, or local laws or regulations, and you shall indemnify and hold StorageCraft harmless against claims, actions, costs, expenses, and liabilities arising from any claim that your use of StorageCraft Products violates applicable law or third-party intellectual property rights.

**Section 13 Passwords.** If you employ password-protection or encryption functionality of a StorageCraft Product, system, or Portal, you understand that loss of your password will result in the loss of access to your data and potential inability to use the StorageCraft Product, system, or Portal. StorageCraft shall not have any: obligation to keep, maintain, or monitor any password you create; liability associated with loss of your password; or 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 14 Activation.** The records of StorageCraft's activation server are determinative in any question concerning whether a StorageCraft Product has been Activated.

**Section 15 Documentation Review.** You shall review the Documentation relating to the Licensed Product and familiarize yourself with the Product's operation and functionality.

**Section 16 Breach; Termination.** This Agreement may terminate through the expiration of Subscription Software, a termination for convenience, or a termination for cause. Either Party may terminate this Agreement for convenience at any time by providing notice to the other Party. If, for its convenience, StorageCraft terminates this Agreement as to a Seat of Perpetual Software for which you paid a Fee, it shall refund the Fee you paid on a pro-rata basis calculated over thirty-six (36) months from the date the Fee was paid. If Maintenance is in effect for such Licensed Product, the portion of the Maintenance Fee corresponding to the unused Maintenance subscription shall also be refunded. (There shall be no refund for Seats of Perpetual Software purchased more than thirty-six (36) months earlier and for which Maintenance is not in effect at the time of termination.) If, for its convenience, StorageCraft terminates the Agreement as to a Seat of Subscription Software for which you paid a Fee, it shall refund a portion of the Fee on a pro-rata basis in an amount corresponding to any remaining unused period of the Subscription. The foregoing refunds are subject to satisfactory proof of purchase and Deactivation of the Software. StorageCraft may terminate this Agreement if you materially breach it or any other agreement you have entered into with StorageCraft. Your failure to timely pay Fees due and owing to StorageCraft, its authorized agent or representative, or its authorized reseller, distributor, or master MSP is a material breach and a basis for termination for cause. If StorageCraft terminates this Agreement for cause, StorageCraft will provide ten (10) days' written notice to you, after which period the Agreement will automatically terminate. Upon termination of this Agreement, you shall cease all use of the Licensed Product and Documentation and you shall reasonably cooperate in: (a) removing or deactivating all copies of the Licensed Product from computers on which it is installed; (b) returning or destroying all media containing the Software; and (c) satisfying all financial obligations you may have to StorageCraft or its authorized reseller, distributor, or master MSP, associated with your use of the Licensed Product, including without limitation payment of all Fees due and owing. If you terminate this Agreement for convenience or StorageCraft terminates this Agreement for cause, you shall not be entitled to return or refund of any portion of Fees you paid.

**Section 17 Suspension.** If StorageCraft determines that you have breached this or any other Agreement with StorageCraft, such as through nonpayment of Fees, StorageCraft may elect to suspend your access to certain functionality of the Licensed Product, access to Product Support,

and/or access to StorageCraft Portals until the breach is cured. StorageCraft's decision to suspend functionality or access is without prejudice to its right to terminate the Agreement for the same cause(s) underlying the suspension.

**Section 18 Limited Warranties; Exclusive Remedy.** StorageCraft warrants that it has the right to grant this license to the Licensed Product as set forth herein and that, for a period of thirty (30) days' following your purchase of the Licensed Product, the Licensed Product will function substantially as described in the Documentation under ordinary operating circumstances. With the exception of any return and exchange rights set forth in the StorageCraft Return Policy, and provided that you notify StorageCraft of a warranty claim within forty-five (45) days following your purchase of the Licensed Product, your sole and exclusive remedy against StorageCraft and its agents, employees, representatives, officers, directors, contractors, dealers, resellers, distributors, authorized representatives, licensors, and providers is, at StorageCraft's discretion: (a) replacement of the defective Licensed Product or (b) a refund of Fees paid to and received by StorageCraft for the defective Licensed Product. For any Software warranty claim accepted by StorageCraft, you must promptly return any defective media to StorageCraft or its dealer, distributor, reseller, or authorized representative at your own expense. This limited warranty is void if the defect is the result of alteration, abuse, damage, misapplication, or use of the Licensed Product for a purpose or application for which it was not intended or that violates this Agreement or applicable law. Notwithstanding any statement in this Agreement to the contrary, if you obtained the Licensed Product for free, or without the payment of monetary compensation, any above-described remedy will be provided at StorageCraft's sole discretion. This Section gives you specific rights and you may also have other rights that vary according to the state or country in which you reside.

**Section 19 Disclaimer of Other Warranties.** EXCEPT FOR THE WARRANTIES DESCRIBED IN SECTION 18 OF THIS AGREEMENT, THE LICENSED PRODUCT IS PROVIDED AND LICENSED "AS IS", WITH ALL FAULTS, AND THERE ARE NO WARRANTIES, REPRESENTATIONS, OR CONDITIONS, EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, OR OTHERWISE, REGARDING THE LICENSED PRODUCT OR ANY OTHER STORAGECRAFT PRODUCT OR SERVICE PROVIDED UNDER OR IN CONNECTION WITH THIS AGREEMENT. UNLESS OTHERWISE STATED IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, STORAGECRAFT, ITS CORPORATE AFFILIATES, SUBSIDIARIES, AGENTS, LICENSORS, AND AUTHORIZED REPRESENTATIVES DISCLAIM 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, WORKMANLIKE EFFORT, AND LACK OF NEGLIGENCE. THE LICENSED PRODUCT 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 LICENSED PRODUCT COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY, OR ENVIRONMENTAL DAMAGE. THIS IS AN ARM'S LENGTH TRANSACTION, YOU HAVE ENGAGED IN APPROPRIATE DUE DILIGENCE CONCERNING STORAGECRAFT AND THE LICENSED PRODUCT, AND UNLESS THIS AGREEMENT EXPRESSLY PROVIDES OTHERWISE, THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE LICENSED PRODUCT REMAINS WITH YOU. IF ANY IMPLIED WARRANTY IS NOT DISCLAIMED UNDER APPLICABLE LAW, THEN SUCH IMPLIED WARRANTY IS LIMITED TO THIRTY (30) DAYS FROM THE DATE YOU ACQUIRED THE LICENSED PRODUCT, SUBJECT TO THE EXCLUSIVE REMEDY PROVISION SET FORTH IN THIS AGREEMENT. SOME JURISDICTIONS DO NOT PERMIT LIMITATIONS ON CERTAIN WARRANTIES, SO THE FOREGOING THIRTY (30) DAY TIME LIMITATION ON IMPLIED WARRANTIES MAY NOT APPLY TO YOU. THE LIMITED WARRANTY HEREIN, IF ANY, GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS WHICH VARY BY JURISDICTION. WARRANTY INQUIRIES MAY BE SENT TO STORAGECRAFT AT: [NOTICES@STORAGECRAFT.COM](mailto:NOTICES@STORAGECRAFT.COM) OR TO THE NOTICE ADDRESS SPECIFIED IN THIS AGREEMENT.

**Section 20 Limitation of Liability.** ANY LIABILITY OF STORAGECRAFT, ITS CORPORATE AFFILIATES, SUBSIDIARIES, AGENTS, AUTHORIZED REPRESENTATIVES, AND LICENSORS FOR ANY LOSSES ARISING FROM THE LICENSED PRODUCT OR THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED ANY FEE YOU PAID FOR USE OF THE LICENSED PRODUCT, OR IN THE CASE OF YOUR USE OF SUBSCRIPTION SOFTWARE, SHALL NOT EXCEED ONE HUNDRED PERCENT (100%) OF THE AMOUNT YOU PAID TO STORAGECRAFT FOR SUCH USE IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING YOUR WRITTEN NOTICE TO STORAGECRAFT OF SUCH ALLEGED LOSSES. IN NO EVENT SHALL STORAGECRAFT, ITS CORPORATE AFFILIATES, SUBSIDIARIES, LICENSORS, AGENTS 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 AND REVENUES, USE, OR DATA; OR BUSINESS INTERRUPTION), EVEN IF STORAGECRAFT OR ITS CORPORATE AFFILIATES, SUBSIDIARIES, LICENSORS, AGENTS OR AUTHORIZED REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE USE OF THE LICENSED PRODUCT MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER RISKS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS AND STORAGECRAFT IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, DATA CORRUPTION, DATA LOSS, OR OTHER DAMAGE RESULTING FROM SUCH ISSUES. THE LIMITATIONS IMPOSED BY THIS SECTION, THE REMEDIES AVAILABLE, AND THE CONSIDERATION EXCHANGED REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES AND ARE AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THEM. THESE LIMITATIONS APPLY EVEN IN THE EVENT OF FAULT, TORT, NEGLIGENCE, MISREPRESENTATION, OR STRICT OR PRODUCT LIABILITY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. YOU RELEASE STORAGECRAFT FROM ALL LIABILITY IN EXCESS OF THE LIABILITIES THAT ARE LIMITED BY THIS SECTION, INCLUDING WITHOUT LIMITATION ANY CLAIM FOR INDEMNIFICATION OR CONTRIBUTION, NO MATTER HOW ARISING. CONSUMERS IN CERTAIN COUNTRIES MAY BE SUBJECT TO CERTAIN CONSUMER PROTECTION LAWS UNIQUE TO THEIR LOCALE AND WHICH MAY LIMIT THE ABILITY TO MODIFY OR EXCLUDE LIABILITY. IF YOU ACQUIRED THE SOFTWARE FOR BUSINESS PURPOSES, YOU CONFIRM THAT ANY APPLICABLE CONSUMER PROTECTION LAWS DO NOT APPLY TO YOU OR YOUR USE OF THE LICENSED PRODUCT. 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 MAXIMUM EXTENT PERMITTED BY LAW, STORAGECRAFT'S LIABILITY TO YOU IS LIMITED, AT STORAGECRAFT'S OPTION, TO: (A) REPLACEMENT OR REPAIR OF THE LICENSED PRODUCT AND/OR RE-SUPPLY OF PRODUCT SUPPORT; OR (B) THE COST OF REPLACING OR REPAIRING THE LICENSED PRODUCT AND/OR THE COST OF RE-SUPPLYING PRODUCT SUPPORT. YOU AGREE TO COMPLY WITH ALL THIRD-PARTY LICENSING REQUIREMENTS THAT MAY BE AFFECTED BY YOUR USE OF THE LICENSED PRODUCT AND TO INDEMNIFY AND HOLD STORAGECRAFT HARMLESS FROM ANY AND ALL CLAIMS, DAMAGES, AND/OR LOSSES RELATING TO YOUR USE OF THE LICENSED PRODUCT IN VIOLATION OF THIRD-PARTY LICENSING REQUIREMENTS

## **Section 21 Government Use**

**21.1. Application.** This Section 21 applies if you are an agency or instrumentality of the U.S. Federal Government ("Government End User"), or a prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement, or other activity with the U.S. Federal

Government. In such case, the terms and conditions of this Section shall pertain to the Government End User's use and disclosure of the Software and Documentation and shall supersede any conflicting terms or conditions.

**21.2. Acceptance.** If you are a Government End User purchasing a StorageCraft Product pursuant to a United States General Services Administration Schedule Contract or other applicable United States Government contract ("**U.S. Government Contract**"), you accept the terms of this Agreement by placing an order for the StorageCraft Product under the applicable U.S. Government Contract, effective as of the date of such order.

**21.3. Disputes.** Notwithstanding any language in this Agreement to the contrary, disputes with the U.S. Federal Government shall be subject to resolution pursuant to the Contract Disputes Act of 1978, as amended. This Agreement does not limit or disclaim any of the warranties specified in a valid Government Contract under Federal Acquisition Regulation 52.212-4(o). In the event of a breach of warranty, the U.S. Federal Government reserves all rights and remedies under the: (i) Government Contract under which it placed an order for the Software, (ii) Federal Acquisition Regulations, and (iii) Contract Disputes Act, 41 USC 7101-7109.

**21.4. United States Government Restricted Rights Legend.** All Software and Documentation are commercial in nature. The Software and 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)(1), (4)-(5), 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, 227.7202-1-4, and 52.227-14, and other relevant sections of the Code of Federal Regulations, as applicable, the Software and Documentation are licensed to United States Government end users (a) only as Commercial Items, and (b) with only those rights that are granted to all other end users of the Software, according to the terms and conditions contained in this Agreement.

**21.5. Sections Not Applicable.** Sections 3.2 (Subscription Software), 26 (Entire Agreement), 32 (Applicable Law), and 33 (Dispute Resolution) of this Agreement shall not apply to Government End Users but shall continue to apply to prime contractors and subcontractors of the U.S. Federal Government. All other provisions of this Agreement remain in effect as written.

**21.6. Intellectual Property Indemnification.** Notwithstanding any language in this Agreement to the contrary, StorageCraft will indemnify a Government End User and hold a Government End User harmless against costs, expenses and liabilities upon any claim that the Software infringes or violates any U.S. or foreign patent, copyright, trademark, or trade secret rights, provided that: (a) a Government End User notifies StorageCraft promptly in writing of any notice of any such claim; (b) a Government End User cooperates with StorageCraft in all reasonable respects in connection with the investigation and defense of any such claim; and (c) should the Software become, or in StorageCraft's opinion be likely to become, the subject of a claim of infringement or trade secret misappropriation, a Government End User will permit StorageCraft, at StorageCraft's option and expense, either to: (i) procure for a Government End User the right to continue using the Software; (ii) replace or modify the same so that it becomes non-infringing; or (iii) terminate this Agreement, accept the return of the Software, and refund to a Government End User the amount it paid for the Software, subject to the United States Government's statutory right to require continued performance. Notwithstanding anything herein to the contrary, however, StorageCraft shall have no obligation or liability to a Government End User under any provision of this Section if any infringement or trade secret misappropriation claim is based upon use of the Software in a manner other than that for which it was furnished by StorageCraft, or its authorized reseller, distributor or authorized representative, or upon any Software which has been modified by or for a Government End User in such a way as to cause it to become infringing.

**Section 22 Compliance with Law; Export Laws.** You shall comply with all applicable international, national, state, regional, and local laws and regulations concerning use of the Licensed Product. You agree that 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 from the U.S. These laws include without limitation, the Export Administration Act, the Arms Export Control Act, the International Economic Emergency Powers Act, and regulations issued pursuant to these and other applicable export laws (the "**Export Laws**"). You shall comply fully with all Export Laws to assure that neither the Licensed Product, nor any direct products thereof are: (1) exported, directly or indirectly, in violation of the Export Laws or (2) 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, the Crimea region of Ukraine, 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 and Foreign Sanctions Evaders List, or the U.S. Commerce Department's Denied Persons List, Unverified List, Entity List, or the Department of State's Nonproliferation Sanctions list. You are responsible for obtaining any necessary U.S. government authorizations and performing export clearance formalities required to ensure your compliance with the Export Laws. You acknowledge that you 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 Licensed Product, or, if you are a Government End User, by accepting the terms of this Agreement by placing an order for the Licensed Product under an applicable United States Government contract, you agree to the foregoing and represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list, and that you acknowledge you are responsible to obtain any necessary U.S. Government authorization to ensure compliance with U.S. law.

**Section 23 Foreign Corrupt Practices Act (FCPA).** You warrant and represent that neither you nor any of your officers, directors, employees, agents or other representatives have performed or will perform any of the following acts in connection with this Agreement, any sale made or to be made hereunder, or any compensation paid or to be paid hereunder: pay, offer or promise to pay, or authorize the payment of, any money, or give or promise to give, or authorize the giving of, any services or anything else of value, either directly or through a third party, to any official or employee of any governmental authority or instrumentality, or of a public international organization, or of any agency or subdivision thereof, or to any political party or official thereof or to any candidate for political office for the purpose of (i) influencing any act or decision of that person in his official capacity, including a decision to fail to perform his official functions with such governmental agency or instrumentality or such public international organization or such political party, (ii) inducing such person to use his influence with such governmental agency or instrumentality or such public international organization or such political party to affect or influence any act or decision thereof, or (iii) securing any improper advantage.

**Section 24 Notices.** All notices 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 FedEx) 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, 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. StorageCraft's notice address is: StorageCraft Technology, LLC, Attn: Legal; 380 W. Data Drive, Suite 300, Draper, UT 84020; email: [legal@storagecraft.com](mailto:legal@storagecraft.com) and [notices@storagecraft.com](mailto:notices@storagecraft.com). Your notice address is the address and/or email address you or your authorized StorageCraft distributor or reseller provided to StorageCraft. You agree that it is your obligation to provide StorageCraft with an accurate notice address and that, if you fail to do so, notice delivered by StorageCraft to your last know address or email address shall be sufficient under this Agreement. Either Party may change its contact information for notice purposes by giving ten (10) days' prior written notice to the other Party in any manner described above.

**Section 25 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.

**Section 26 Entire Agreement.** Unless you have entered into a separate, written and signed agreement with StorageCraft that expressly modifies this Agreement, this Agreement is the complete and exclusive statement of the agreement between you and StorageCraft concerning the Licensed Product and supersedes all previous communications, representations, understandings, and agreements, whether oral or written, between the Parties.

**Section 27 Waiver or Modification.** This Agreement may not be modified except by a written and express amendment or addendum issued by a duly authorized representative of StorageCraft. You understand and agree that StorageCraft, in its sole discretion, may amend, modify, and/or replace this Agreement at any time. Your continued use of the Licensed Product following such amendment, modification, and/or replacement of the Agreement constitutes your acceptance of the amendment, modification, or replacement version of this Agreement. Receipt of future releases of the Licensed Product, Updates, and Upgrades may be conditioned on your acceptance of an amended, modified, or replacement version of this Agreement. No delay or failure to act represents a waiver of the rights inherent to, retained by, or granted to StorageCraft under this Agreement.

**Section 28 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. This includes, without limitation, a third party from which you purchased the Licensed Product, a third party that provides services to you in relation to the Licensed Product, or a customer to which you provide services using the Licensed Product.

**Section 29 Assignment.** This Agreement is personal to you and you may not assign it (including by operation of law) unless (a) StorageCraft grants its prior written consent, which will not be unreasonably withheld, delayed, or conditioned, or (b) due to a Change of Control. A "Change of Control" means a transaction in which: (i) you become a subsidiary to another entity, (ii) there is the sale, exchange, or other disposition of 50% or more of your outstanding voting equity securities immediately prior to such transaction to another entity or group of affiliates of such entity, or (iii) there is a merger resulting in the owners of your outstanding voting equity securities immediately prior to such transaction owning less than 50% of the surviving entity's outstanding voting equity securities. Any other attempt by you to transfer the rights or obligations under this Agreement will be null and void and will constitute a material breach of this Agreement.

**Section 30 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.

**Section 31 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, labor strike, government requirement, civil, or military authority, act of God, act or omission of carriers, or other similar causes beyond its control.

**Section 32 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.

**Section 33 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: the Licensed Product's performance, including without limitation any alleged deficiency or defect; loss or corruption of data or damage to systems or infrastructure; breach or alleged breach of privacy or data privacy laws or regulations; the existence or breach of a contractual, statutory, or common-law warranty associated with this Agreement or a StorageCraft Product; the terms and obligations of this Agreement as they pertain to the foregoing; and the performance, termination, rescission, or alleged breach of this Agreement as they pertain to the foregoing (collectively, "Arbitral Dispute"). In the event arbitration is elected, both Parties expressly waive any right to a trial by jury for any claim constituting an Arbitral Dispute. Any claim by StorageCraft for infringement, violation of copyright, trademark, or Intellectual Property Rights, or breach of this Agreement arising from facts constituting infringement or violation of Intellectual Property Rights is not an Arbitral Dispute, but shall be brought exclusively before a court of competent jurisdiction in Salt Lake County, State of Utah, U.S.A. If the claimant is the Party electing arbitration, they must do so in writing before filing a complaint or otherwise bringing an action in court. If the respondent is the Party electing arbitration, they must do so in writing on or before the last day to answer and/or respond to a summons and/or complaint brought by the other Party. If you are a resident of or are headquartered in the U.S., the arbitration shall be conducted by the American Arbitration Association (the "AAA") in accordance with the AAA Commercial Arbitration Rules in effect at the time of the arbitration, except as those

rules may be modified by this Agreement or stipulation of the Parties. If you are not a U.S. resident or do not maintain a place of business in the U.S., the arbitration shall be conducted by the International Centre for Dispute Resolution (the “ICDR”) in accordance with the ICDR International Arbitration Rules in effect at the time of the arbitration, except as those rules may be modified by this Agreement or stipulation of the Parties. 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 shall be entitled to conduct discovery as follows: twenty (20) interrogatories, twenty (20) requests for production of documents, three (3) subpoenas to third parties, three (3) oral depositions, and one (1) written-question deposition. The Parties intend that any arbitration between them shall involve only the claims between the Parties and not any claims by a Party against a third party. 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 except that the arbitrator must be a retired state or federal judge or foreign equivalent. Filing fees, arbitrator fees, and other fees charged by the arbitral body shall be paid initially by StorageCraft. Arbitration shall be conducted in the English language. If you are a resident of or are headquartered in North America, the place of arbitration shall be Salt Lake County, State of Utah, U.S.A. If you are a resident of or are headquartered in a country located in Asia or Oceania (as those regions are defined by the United Nations Statistics Division M49 Standard), the place of arbitration shall be Sydney, Australia. If you are a resident of or are headquartered in a country located in a geographical region other than the two foregoing regions, the place of arbitration shall be Dublin, Ireland. 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. In the absence of challenge, judgment on the award may be entered in any court of competent jurisdiction. Without otherwise limiting the authority conferred on the arbitrator by this Agreement and the Rules, the arbitrator shall not have the authority to exercise equitable principles or 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 hear disputes that are not Arbitral Disputes or 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 the agreement to arbitrate. In the event that StorageCraft is the prevailing party in any Arbitral Dispute, the arbitrator shall award StorageCraft all its costs incurred in the proceeding, including without limitation filing, arbitrator, and administrative fees, and other fees imposed by the arbitrator.

**Section 34 Open Source.** The Software 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 you no right, title or interest in or to the Software. Please refer to the LICENSES.TXT file included with the Software for links to the CDDL and all referenced CDDL-licensed source code.

**Section 35 Survival.** The provisions of this Agreement relating to payment of any Fees or other amounts owed, infringement of Intellectual Property Rights, 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.

**Section 36 Electronic Transaction; Electronic Communications.** 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. StorageCraft shall be entitled to communicate with you regarding your account or StorageCraft Products via email or other electronic communications. You consent to these communications and others regarding the Licensed Product, new product releases, Upgrades, Maintenance, Product Support, and s other information that StorageCraft believes may be relevant to your use of StorageCraft Products.

**Section 37 Personal Information and Privacy.** Please consult StorageCraft’s Privacy Policy for information on StorageCraft’s collection and processing of personal data. Our Privacy Policy can be found at <https://www.storagecraft.com/privacy-policy>.

**Section 38 Customer Contact.** If you have any questions concerning this Agreement, you may contact StorageCraft as follows: website - [www.storagecraft.com](http://www.storagecraft.com); telephone – 801-545-4700; mail – StorageCraft Technology, LLC, 380 Data Drive, Suite 300, Draper, Utah 84020, U.S.A.

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Vers. 2021.03.31

**ANNEX 1**

<b>STORAGECRAFT PRODUCTS</b>
ShadowProtect Server
ShadowProtect Virtual
ShadowProtect Desktop
ShadowProtect SPX Server
ShadowProtect SPX Virtual
ShadowProtect SPX Virtual, Socket Based
ShadowProtect SPX Desktop
ShadowProtect SPX Server
ShadowProtect SPX for Small Business
ShadowXafe
StorageCraft Agent
ShadowProtect IT Edition
ShadowProtect IT Edition Professional
StorageCraft Granular Recovery for Exchange
ShadowProtect Granular Recovery for Exchange
StorageCraft ImageManager
StorageCraft ShadowControl
StorageCraft ShadowSnap
File Backup and Recovery with Backup Analyzer
OneSystem (Private or On-prem)
OneSystem Service (SaaS)
Object-Based File System for OneXafe
OneXafe Data Protection Software
Remote Replication
Encryption at Rest
OneXafe Converged Solution
HeadStart Restore
ShadowStream
iFTP
ConnectWise Plugin
VMWare vSphere Plugin
Microsoft System Center Plugin
Professional Services Automation Integration Service
ImageReady
ISO Tools
StorageCraft Diagnostics
StorageCraft Recovery Environment
StorageCraft Recovery Environment Builder
VirtualBoot
Mount Tools
StorageCraft Socket Licensing Service
Maintenance Renewal
Premium Support