

## END-USER LICENSE AGREEMENT FOR STORAGECRAFT® PRODUCTS

This license agreement (the “**Agreement**”) is a legal and enforceable contract between you and StorageCraft Technology Corporation (“**StorageCraft**”) and contains the terms, conditions, rights, and limitations associated with your use of StorageCraft Products, as that term is defined below. Each Software product is separately licensed. By installing or using the Software, even if through a manual, silent, unattended or push installation, you are accepting and agreeing to the terms of this Agreement. Acceptance of this Agreement for a particular Software product constitutes acceptance of this Agreement for all Software that you install using that product, such as through a push installation. StorageCraft is willing to license a StorageCraft Product to you as the individual, organization, or legal entity that will be using the particular StorageCraft Product (“**you**” or “**Licensee**” or “**End User**”), but only on the condition that you accept all terms of this Agreement. This Agreement becomes effective and you accept it and agree to its terms if you open a package containing a Software product, break the seal on a Software product, click the “I Agree” button, or otherwise indicate assent to the terms of this Agreement by using the Software product (e.g., by installing, loading, running, executing, displaying, deploying or retaining the Software product). If you do not agree to these terms and conditions, do not open the packaging, break the seal, click the “I Agree” button, install, or otherwise use the Software. If you install or otherwise use the Software under any trial, evaluation, or purchase transaction, your conduct constitutes acceptance of this Agreement and you will be bound by all of its terms and conditions. You may access, download, and/or print a copy of this Agreement from the StorageCraft website at [www.storagecraft.com/legal/](http://www.storagecraft.com/legal/). PLEASE READ THIS AGREEMENT AND PRINT A COPY FOR YOUR RECORDS.

### Section 1 Definitions.

- 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 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 an activated Seat 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.
- 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 and/or otherwise use the Software.
- 1.4. “**Designated Technician**” means the natural person you designate to use ShadowProtect IT Edition or ShadowProtect IT Edition Professional and to maintain exclusive custody of such Software. If you are an entity and not an individual, the Designated Technician must be your employee. If you are an individual, then you must be the Designated Technician.
- 1.5. “**Desktop Operating System**” means any broadly released Microsoft® operating system intended for desktop computers. For a list of Desktop Operating Systems with which Software is compatible, please consult a StorageCraft customer service representative.
- 1.6. “**Documentation**” means all on-line help files or written instruction manuals and user guides addressing the installation and use of the StorageCraft Products.
- 1.7. “**End User**” means the person, organization, or entity who accepts this Agreement. In the case of MSP Software, the End User is the MSP or an Enterprise User.
- 1.8. “**Enterprise User**” means an organizational End User that is not a natural person, which End User uses MSP Software for its Internal Use.
- 1.9. “**HeadStart Restore**”® HeadStart Restore, U.S. Patent No. 8,190,574, is Software employing an advanced license feature for use with ImageManager, and which is licensed on a per-Job basis. One HeadStart Restore Job permits ImageManager, by an automated process, to restore from a single computer one ShadowProtect image file (or a set of ShadowProtect image files) to a Virtual Machine on a VMDK, ESX, or Hyper-V platform. Additional Jobs must be purchased separately. HeadStart Restore may be licensed on a perpetual or subscription basis.
- 1.10. “**ImageReady**” is a StorageCraft Utility 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 running custom, user defined scripts. ImageReady installs as a subset of the ShadowProtect installation and does not require a separate license.
- 1.11. “**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.
- 1.12. “**intelligentFTP**”® is Software employing file transfer technology for use with ImageManager and which is licensed on a per-Job basis. One intelligentFTP Job permits ImageManager to transfer a ShadowProtect image file (or a set of ShadowProtect image files) from a single computer to a remote computer through an FTP server or LAN/WAN connection. intelligentFTP includes only the FTP client. intelligentFTP may be licensed on a perpetual or subscription basis. Additional Jobs must be purchased separately.
- 1.13. “**Internal Use**” means use of the Software for your internal business purposes only on a computer that you own and use as part of the operation of your business. The following uses DO NOT constitute Internal Use: the sale, lease, distribution or other transfer of the Software or the benefits of its use to a third party, including without limitation your customers or clients; use of the Software by someone other than you, including your customers or clients; use of the Software in a service bureau arrangement; copying of the Software except as expressly permitted by this Agreement or applicable law; and/or use of the Software to generate service revenue, manage someone else’s data, or provide services to third parties, including your customers or clients.
- 1.14. “**ISO Tool**” means a stand-alone StorageCraft Utility that is bundled with ShadowProtect and permits users to burn, rip, mount and author ISO files.
- 1.15. “**IT Edition Renewal Subscription**” or “**Renewal Subscription**” means one or more extension terms to the IT Edition Subscription Period granted by StorageCraft to you based on your payment of the applicable renewal IT Edition Subscription Fee during the term of a prior IT Edition Subscription Period. A Renewal Subscription commences immediately upon the expiration of the prior IT Edition Subscription Period.

and provides you with all the rights and benefits of the initial IT Edition Subscription Period, but for the term of the IT Edition Renewal Subscription.

- 1.16. **“IT Edition Subscription Fee”** means the fee you paid to StorageCraft or its authorized reseller or distributor in exchange for a license to use IT Edition during the IT Edition Subscription Period.
- 1.17. **“IT Edition Subscription Period”** means the term of the license granted by StorageCraft to you during which your Designated Technician may use IT Edition. An IT Edition Subscription Period commences the day you either activate the IT Edition or create a Three-Day ISO. The duration of the IT Edition Subscription Period may be as follows: A **“Two Week Subscription”** means a license granted by StorageCraft to you with an IT Edition Subscription Period of fourteen (14) calendar days. A **“One Month Subscription”** means a license granted by StorageCraft to you with an IT Edition Subscription Period of thirty (30) calendar days. A **“Three Month Subscription”** means a license granted by StorageCraft to you with an IT Edition Subscription Period of ninety (90) calendar days. An **“Annual Subscription”** means a license granted by StorageCraft to you with an IT Edition Subscription Period of three-hundred sixty-five (365) calendar days.
- 1.18. **“Job(s)”** means intelligentFTP Jobs, HeadStart Restore Jobs, and/or ShadowStream Jobs.
- 1.19. **“License Fee”** means the fee you paid to StorageCraft or its authorized distributor or reseller in exchange for a license to use the Software in accordance with the limitations established in this Agreement.
- 1.20. **“Maintenance”** means, for the specific Software to which you are licensed in accordance with this Agreement, a time-limited right to (i) all Updates and Upgrades to the Software that StorageCraft releases during the period that Maintenance is in effect, subject to the terms and conditions imposed by this Agreement, and (ii) Standard 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.
- 1.21. **“Mount Tools”** means the Software components necessary to mount a backup image file chain as a system resource, using either standard Windows® drive letters or a mount point.
- 1.22. **“MSP”** means managed service provider.
- 1.23. **“MSP Portal”** means a password-protected area on a StorageCraft Internet website that, at the sole discretion of StorageCraft, will permit an MSP to access certain functionality and information concerning the MSP’s account with StorageCraft or an authorized third-party.
- 1.24. **“MSP Software”** means any of the following Software licensed on a subscription basis: ShadowProtect Desktop, ShadowProtect Server, ShadowProtect for Small Business, ShadowProtect Virtual, ShadowProtect SPX Server, ShadowProtect SPX Virtual, ShadowProtect SPX for Small Business, ShadowProtect SPX Desktop, StorageCraft ImageManager, ShadowProtect GRE, HeadStart Restore, intelligentFTP, and ShadowStream.
- 1.25. **“MSP Subscription Fees”** means monthly fees paid by an MSP or an Enterprise User for the right to use MSP Software during a particular month. MSP Subscription Fees are not included in the definition of License Fee.
- 1.26. **“Object Code”** means the output of a compiler after it processes the Software source code in the form of an executable, dll, or library file.
- 1.27. **“Original Copy”** means the single copy of the Seat of activated Software which is licensed and provided to you under this Agreement. An Original Copy of IT Edition may be provided on USB flash media.
- 1.28. **“Party”** means you or StorageCraft under this Agreement. **“Parties”** means you and StorageCraft.
- 1.29. **“Perpetual Software”** means any of the following Software licensed on a perpetual basis: ShadowProtect Server, ShadowProtect for Small Business, ShadowProtect Desktop, ShadowProtect Virtual, ShadowProtect SPX Server, ShadowProtect SPX Virtual, ShadowProtect SPX for Small Business, ShadowProtect SPX Desktop, StorageCraft ImageManager, StorageCraft ShadowControl, ShadowProtect GRE, StorageCraft GRE, HeadStart Restore, intelligentFTP, and ShadowStream.
- 1.30. **“Physical System”** means a tangible computer hardware device supported by an installed operating system.
- 1.31. **“Product Key”** means a unique identifier associated with a 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.
- 1.32. **“Product Support”** means Standard Support or Paid Support for a Support Issue associated with the Software. **“Standard Support”** includes on-line and 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. Standard Support is only available for the current and immediately preceding version of the Software. **“Paid Support”** means Premium Support and Incident Support. **“Premium Support”** means Standard Support plus one year of technical support that is purchased in addition to the Software, which support includes 24-hour on-line and telephone support for Emergency Level Support Issues. **“Incident Support”** entitles you to Premium Support for a single Support Issue. Incident Support is sold singly or in packs. At StorageCraft’s sole discretion, Product Support may be provided by StorageCraft, a StorageCraft affiliate, or an agent of StorageCraft or its affiliate. For additional information concerning Product Support, visit [http://www.storagecraft.com/documents/StorageCraft\\_Technical\\_Support\\_Guide.pdf](http://www.storagecraft.com/documents/StorageCraft_Technical_Support_Guide.pdf).
- 1.33. **“Professional Services Automation Integration Service”** or **“PSAI Service”** or **“PSAI”** is a StorageCraft Utility that allows an MSP to synchronize certain MSP customer information contained in the MSP Portal with certain customer information in the MSP’s Professional Services Automation Tool (**“PSA”**). If you use the PSAI Service, you understand that in order to push data from the MSP Portal to a PSA, StorageCraft will require you to provide your PSA credentials. By using the PSAI Service, you consent to the use of your credentials for this purpose. Your PSA credentials will be maintained by StorageCraft in an encrypted form.
- 1.34. **“Seat”** means one license to a Software product which has been activated or for which Activation is available to the End User.
- 1.35. **“Server Operating System”** means any broadly released Microsoft or Linux operating system intended for server computers. For a list of Server Operating Systems with which Software is compatible, please consult a StorageCraft customer service representative.
- 1.36. **“ShadowProtect”** means the ShadowProtect® line of Software comprised of ShadowProtect Desktop, ShadowProtect Server, ShadowProtect for Small Business, ShadowProtect Virtual, ShadowProtect SPX, and ShadowProtect for MSP. ShadowProtect includes the executable program installed on the computer, the StorageCraft Recovery Environment, the StorageCraft Recovery Environment Builder and the

following components: Mount Tools, VirtualBoot, ISO Tool, ImageReady, ShadowProtect Console, and ShadowProtect Agent. ShadowProtect may be licensed on a perpetual basis or on a subscription basis as ShadowProtect for MSP or ShadowProtect SPX for MSP. ShadowProtect does not include separately licensed, fee-bearing products, services, or add-on modules. Each Seat of ShadowProtect Desktop, ShadowProtect Server, and ShadowProtect for Small Business is licensed for use on either a Physical System or a Virtual Machine, but not both. ShadowProtect Virtual is licensed only for use on a Virtual Machine.

- 1.37. “ShadowProtect Agent”** means a component of ShadowProtect or ShadowProtect SPX that runs as a Windows or Linux service and manages ShadowProtect operations on a particular system.
- 1.38. “ShadowProtect Console”** means the user interface for ShadowProtect and ShadowProtect SPX.
- 1.39. “ShadowProtect for Managed Service Providers” or “ShadowProtect for MSP”** is subscription-based Software which, upon installation, reports to StorageCraft the operating system of the computer on which the Software is installed, and based on that information, is activated as a subscription-based version of ShadowProtect Desktop, ShadowProtect for Small Business, ShadowProtect Server or ShadowProtect Virtual. ShadowProtect for MSP functions only while you have a valid subscription to the MSP Software. Seats of ShadowProtect for MSP must have an operating Internet connection permitting the Software to periodically communicate with StorageCraft’s activation server. If the Software is repeatedly unable to communicate with StorageCraft’s activation server, the Software will deactivate. ShadowProtect for MSP does not include separately licensed products, services, or add-on modules.
- 1.40. “ShadowProtect GRE”** means ShadowProtect Granular Recovery for Exchange, which is Software that works with licensed Microsoft Exchange Server database (“EDB”) files to permit, among other things, the recovery of mailbox items and the searching of email messages and attachments. ShadowProtect GRE will only work with mounted ShadowProtect image files that include the specified EDB file. ShadowProtect GRE may be licensed on a perpetual, subscription or fixed-term project basis. An MSP license for ShadowProtect GRE requires an initial one-year subscription and is not portable to an EDB file containing a new server name or a new Microsoft Exchange 2013 license key, as applicable. ShadowProtect GRE requires Microsoft Exchange Server files, which must be copied from a licensed and installed Exchange Server folder to the ShadowProtect GRE install folder or the IT Edition Professional GRE folder, as applicable. This Agreement does not grant a license to Microsoft Exchange Server. By using ShadowProtect GRE, you affirm that you have a valid license to use Microsoft Exchange Server.
- 1.41. “ShadowProtect IT Edition”** is subscription-based Software that is delivered on USB flash media and is intended to provide IT professionals with a bootable recovery environment to create and restore compressed and encrypted ShadowProtect image files. ShadowProtect IT Edition does not include separately licensed products or add-on modules. ShadowProtect IT Edition includes the ability to demonstrate ShadowProtect GRE in a trial mode, but does not allow you to use the restore or search capabilities of the licensed version of ShadowProtect GRE.
- 1.42. “ShadowProtect IT Edition Professional”** is subscription-based Software that is delivered on USB flash media and is intended to provide IT professionals with a bootable recovery environment to create and restore compressed and encrypted ShadowProtect image files. ShadowProtect IT Edition Professional includes a licensed copy of ShadowProtect GRE. With the exception of ShadowProtect GRE, ShadowProtect IT Edition Professional does not include separately licensed products or add-on modules.
- 1.43. “ShadowProtect SPX”** means the ShadowProtect SPX line of Software comprised of ShadowProtect SPX Desktop, ShadowProtect SPX Server, ShadowProtect SPX for Small Business, ShadowProtect SPX Virtual, and ShadowProtect SPX for MSP. ShadowProtect SPX Server and ShadowProtect SPX Virtual support both Windows and Linux operating systems. ShadowProtect SPX includes the executable program installed on the computer, the StorageCraft Recovery Environment, the StorageCraft Recovery Environment Builder and the following components: Mount Tools, VirtualBoot, ISO Tool, ShadowProtect Console, and ShadowProtect Agent. ShadowProtect SPX may be licensed on a perpetual basis or on a subscription basis, as ShadowProtect SPX for MSP. ShadowProtect SPX does not include separately licensed, fee-bearing products, services, or add-on modules. Each Seat of ShadowProtect SPX Desktop, ShadowProtect SPX Server, and ShadowProtect SPX for Small Business is licensed for use on either a Physical System or a Virtual Machine, but not both. ShadowProtect SPX Virtual is licensed only for use on a Virtual Machine.
- 1.44. “ShadowProtect SPX for Managed Service Providers” or “ShadowProtect SPX for MSP”** is subscription-based Software which, upon installation, reports to StorageCraft the operating system of the computer on which the Software is installed. If the operating system is a Windows operating system, in accordance with the type of Windows operating system, the Software will be activated as a subscription-based version of ShadowProtect SPX Desktop, ShadowProtect SPX for Small Business, ShadowProtect SPX Server, or ShadowProtect SPX Virtual. If the operating system is a Linux Server Operating System, in accordance with the type of Linux operating system, the Software will be activated as a subscription-based version of ShadowProtect SPX Server or ShadowProtect SPX Virtual. ShadowProtect SPX for MSP functions only while you have a valid subscription to the MSP Software. Seats of ShadowProtect SPX for MSP must have an operating Internet connection permitting the Software to periodically communicate with StorageCraft’s activation server. If the Software is repeatedly unable to communicate with StorageCraft’s activation server, the Software will deactivate. ShadowProtect SPX for MSP does not include separately licensed products, services, or add-on modules.
- 1.45. “ShadowStream”®** is Software employing an advanced file transfer technology for use with StorageCraft ImageManager. ShadowStream is licensed on a per-Job basis. One ShadowStream Job permits StorageCraft ImageManager to transfer a ShadowProtect image file (or a set of ShadowProtect image files) from a single computer to a remote computer over a high-latency link. It includes ShadowStream Server, which must be installed on the remote or receiving computer. ShadowStream may be licensed on a perpetual or subscription basis. Additional Jobs must be purchased separately.
- 1.46. “Small Business Server Operating System”** means the Microsoft operating systems that are compatible with ShadowProtect for Small Business and ShadowProtect SPX for Small Business. For a list of Small Business Server Operating Systems with which the Software is compatible, please consult either the StorageCraft website or a StorageCraft customer service representative.
- 1.47. “Software”** means any of the following: Perpetual Software, MSP Software, ShadowProtect IT Edition, ShadowProtect IT Edition Professional, and the StorageCraft Utilities to which you are licensed in accordance with this Agreement.
- 1.48. “StorageCraft Diagnostics”** is a StorageCraft Utility used to collect diagnostic information about a Physical System or Virtual Machine in order to facilitate the use of Software on the Physical System or Virtual Machine.

- 1.49. **“StorageCraft GRE”** means StorageCraft Granular Recovery for Exchange, which is Software that works with licensed EDB files to permit, among other things, the recovery of mailbox items and the searching of email messages and attachments. StorageCraft GRE may be licensed on a perpetual or fixed-term project basis. StorageCraft GRE requires Microsoft Exchange Server files, which must be copied from a licensed and installed Exchange Server folder to the StorageCraft GRE install folder. This Agreement does not grant a license to Microsoft Exchange Server. By using StorageCraft GRE, you affirm that you have lawfully licensed use of Microsoft Exchange Server.
- 1.50. **“StorageCraft ImageManager”** means Software that 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 can only be used in conjunction with Seats of ShadowProtect, and may be used with the advanced license features of HeadStart Restore, intelligentFTP, and ShadowStream, all of which are separately licensed on a per-job basis.
- 1.51. **“StorageCraft Product(s)”** means any of the following: Software and Paid Support.
- 1.52. **“StorageCraft Recovery Environment”** means StorageCraft Recovery Environment CrossPlatform and StorageCraft Recovery Environment for Windows, which are StorageCraft Utilities that provide a bootable operating system environment that runs ShadowProtect. This Agreement does not grant you a license to an operating system and/or application capable of being restored with the StorageCraft Recovery Environment. By using the StorageCraft Recovery Environment, you affirm that you have a valid license to use the underlying operating system and/or application in the restore process.
- 1.53. **“StorageCraft Recovery Environment Builder”** means a stand-alone StorageCraft Utility used to create an instance of the StorageCraft Recovery Environment for Windows.
- 1.54. **“StorageCraft ShadowControl”<sup>®</sup> or “ShadowControl”** is Software that is used to remotely monitor and/or manage Software installed on Physical Systems and/or Virtual Machines. ShadowControl includes two components: an agent that is installed on a Physical System or Virtual Machine and a software appliance created by a pre-configured ISO file that is installed on a dedicated Physical System or Virtual Machine. In addition, ShadowControl includes plug-in modules for VMWare Vsphere and Microsoft System Center. Certain functionality of ShadowControl works only in conjunction with a ShadowProtect and/or StorageCraft ImageManager installation. ShadowControl does not include separately licensed products or services.
- 1.55. **“StorageCraft Utility(ies)”** means any of the following: ImageReady, ISO Tool, StorageCraft Diagnostics, StorageCraft Recovery Environment, StorageCraft Recovery Environment Builder, PSAl, and/or Virtual Boot.
- 1.56. **“Support Issue”** means a technical question or issue associated with the Software, which StorageCraft ranks or categorizes according to severity level as a Low Level, Medium Level, High Level or Emergency Level Support Issue. **“Emergency Level”** severity means a Support Issue that arises notwithstanding proper installation and use of the Software and in which one or more of the following mission critical production issues is occurring: (i) a mission critical production server is not functioning and cannot be restored with the Software, or (ii) a mission critical production server is disabled when used with the Software. **“High Level”** severity means a Support Issue has occurred notwithstanding proper installation and use of the Software, but your operations can continue in a restricted fashion, although long-term productivity may be adversely affected. **“Medium Level”** severity means a Support Issue has occurred notwithstanding proper installation and use of the Software, but a problem has occurred with a limited adverse effect on your business operations. **“Low Level”** Support Issue includes all issues related to education, enhancement, Activation, licensing, information, general questions, or errors with little or no effect on critical production environments.
- 1.57. **“Three-Day ISO”** means a downloadable ISO file that permits you to create a temporary, bootable CD version of ShadowProtect IT Edition or ShadowProtect IT Edition Professional for use in situations in which (a) the USB flash media version of the Software is not capable of running on the target computer, and (b) the use of the StorageCraft license server is not a suitable solution. The Three-Day ISO version of ShadowProtect IT Edition and ShadowProtect IT Edition Professional expires and ceases to function seventy-two (72) hours after it is downloaded from StorageCraft’s website. The Three-Day ISO is intended and licensed for use only in exceptional and extraordinary circumstances. StorageCraft, in its sole discretion, may impose additional conditions on the use or download of the Three-Day ISO. If StorageCraft, in its sole discretion, determines that you have abused any right to use the Three-Day ISO or otherwise violated the terms of the EULA, StorageCraft may suspend or terminate your ability to access or download the Three-Day ISO.
- 1.58. **“Update”** means the process in which StorageCraft makes available patches, issue corrections, and bug fixes to existing users of Software. StorageCraft makes no warranty, promise, or commitment to create or release any Updates.
- 1.59. **“Upgrade”** means StorageCraft’s release to the public of a version of a Software product that replaces the prior version of such Software product on StorageCraft’s price lists pursuant to StorageCraft’s then-current Upgrade policies. Any Upgrades of a Software obtained pursuant to a Volume License Certificate may only be obtained in a quantity equal to the number of Seats licensed pursuant to the Volume License Certificate. StorageCraft makes no warranty, promise, or commitment to create or release any Upgrades.
- 1.60. **“Use”** means the ability to run, execute, load, deploy, or display the Software 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.
- 1.61. **“VirtualBoot”** is a StorageCraft Utility that uses the Oracle<sup>®</sup> open source VirtualBox Hypervisor to convert a ShadowProtect image file into a fully functional VirtualBox virtual machine. VirtualBoot functionality is included with ShadowProtect. StorageCraft does not distribute the Oracle VirtualBox Hypervisor, therefore, you are required to provide your own VirtualBox instance and agree to an Oracle license agreement specific to your VirtualBox product.
- 1.62. **“Virtual Machine”** means a software emulation of a computer hardware device with an operating system. VMware<sup>®</sup> and Virtual PC are examples of software that create virtual machines. **“Desktop Virtual Machine”** means a Virtual Machine employing a Desktop Operating System (e.g., VMware running the Microsoft Windows 7 operating system). **“Server Virtual Machine”** means a Virtual Machine employing a Server Operating System (e.g., VMware running the Microsoft Windows Server 2012 operating system).
- 1.63. **“Volume License Certificate”** means a license certificate issued by StorageCraft, at its sole discretion, authorizing you to install and use Seats of Software on as many computers as are authorized by the Volume License Certificate. In the case of Perpetual Software, all such Seats must be installed and used solely by you on your computers. In the case of MSP Software used by an MSP, all such Seats must be installed and used solely by you on a single customer’s computers. In the case of MSP Software used by an Enterprise User, all such Seats must be installed and used solely by you on computers owned by you. Using Seats of Software licensed pursuant to a Volume License Certificate other than as set forth in this subsection voids all Seats associated with the Product Keys identified in the Volume License Certificate.

**Section 2 Proprietary Rights.** This is a license and not a sale. The Software and Documentation are proprietary products of StorageCraft or its licensors and are protected under United States copyright laws and 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. Ownership of the Software and all copies, modifications, translations, components, features, and merged portions of the Software shall at all times remain with StorageCraft, including all copyrights, patent rights, trade secret rights, trademarks, know-how, and other Intellectual Property Rights in the Software and Documentation. Your rights to use the Software are limited solely to those rights identified in this Agreement. StorageCraft retains all rights not expressly granted to you in this Agreement. This Agreement governs any Updates, Upgrades, releases, revisions, or enhancements to the Software that StorageCraft may furnish to you. This Agreement does not include a grant of any: (a) ownership right, title, interest, security interest, or other interest in the source code or Object Code of the Software or in StorageCraft's Intellectual Property Rights; (b) Intellectual Property Rights relating to the Software or any copy of any part of the Software or the Documentation; (c) right or authority to modify the Software; (d) right to use the Software to develop derivatives or derivative works of the Software; (e) right to work around any technical limitations in the Software; (f) right to reverse engineer, decompile, or recompile the Software or otherwise attempt to discover source code or trade secrets related to the Software; (g) right to copy activated Seats of the Software except as expressly permitted in this Agreement; (h) right to sublicense, sell, lend, rent, lease, give, transfer, assign, or otherwise dispose of all or any portion of the Software or any interest in the Software without StorageCraft's prior written consent (any such disposition made without such consent shall be null and void); and/or (i) right to remove, obscure or alter any notice of patent, copyright, trade secret, trademark, or other proprietary right of StorageCraft.

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6. **Product Support.** StorageCraft has no obligation to provide Product Support directly to the MSP Customer.

7. **No Fault Tolerance.** THE MSP CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT STORAGECRAFT 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.

8. **Export Restrictions.** The Software is of U.S. origin for purposes of U.S. export control laws and MSP Customer agrees that it will comply with those laws, together with all applicable international and national laws that apply to the Software, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions imposed by the U.S. and other governments.

### Section 13 Government Use.

- 13.1 Application.** This Section 13 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.
- 13.2 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.
- 13.3 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.
- 13.4 United States Government Restricted Rights. 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.
- 13.5 Sections Not Applicable.** Sections 8, 12, 17.4, 17.11, 17.12 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.
- 13.6 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 14 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, the International Economic Emergency Powers Act, and regulations issued pursuant to these and other applicable export laws (the “**Export Laws**”). You 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) 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 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 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 Software, or, if you are a Government End User, by accepting the terms of this Agreement by placing an order for the StorageCraft 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 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 FedEx or DHL) 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; 380 Data Drive, Suite 300, 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 you: to the address, facsimile, and/or email address provided by you 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 Passwords.** If you employ any password-protection or encryption functionality of the Software, you understand that loss of your password will 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, StorageCraft has no liability associated with loss of your password, and it will not 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. KEEP YOUR PASSWORD SAFE AND SECURE AND DO NOT LOSE IT.

## **Section 17 Miscellaneous.**

- 17.1. Activation.** The Documentation describes the process of activating the Software, which involves recognition of each Seat of Software by StorageCraft's activation server. The records of StorageCraft's activation server are determinative in any question concerning whether a Seat of Software has been activated.
- 17.2. Documentation Review.** You agree that you will review the Documentation relating to the StorageCraft Products, including but not limited to on-line user guides outlining proper installation and use of the StorageCraft Products.
- 17.3. 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.
- 17.4. Entire Agreement.** Unless you have entered into a separate, written and signed agreement that 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 StorageCraft Products and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the Parties.
- 17.5. 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 or modify this Agreement at any time. 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 StorageCraft Products. No delay or failure to take action represents a waiver of the rights inherent to, retained by, or granted to StorageCraft under this Agreement.
- 17.6. 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, the beneficiaries of services provided by MSPs.
- 17.7. Assignment.** This Agreement is personal to you and you may not assign it (including by operation of law) except as provided in Section 5. A change of control of Licensee shall constitute an assignment. 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.
- 17.8. Compliance.** For Software licensed for business or commercial purposes, during the period this Agreement remains in effect, and for one year thereafter, subject to reasonable notice, 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.
- 17.9. 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.
- 17.10. 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.
- 17.11. 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.
- 17.12. 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") or the International Centre for Dispute Resolution ("ICDR"): the Software's performance, including without limitation any alleged deficiency or defect; the existence or breach of a contractual, statutory, or common-law warranty associated with this Agreement or the StorageCraft Products; 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. The AAA and ICDR are referred to as "Arbitral Bodies". Any claim by StorageCraft for infringement or violation of copyright, trademark, or 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. In the event of an Arbitral 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 you are a U.S. resident or maintain 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 you are not a U.S. resident or do not maintain a place of business in the U.S., the arbitration shall be conducted in accordance with the ICDR 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 shall be entitled to conduct discovery by interrogatory, request for production of documents, subpoena to third parties, and oral 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. Filing fees, arbitrator fees, and other fees imposed by the Arbitral Bodies shall be paid initially by StorageCraft. 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. §78B-11-101 et seq. 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 an agreement to arbitrate. In the event that StorageCraft is the prevailing party in any Arbitral Dispute, the Arbitral Body shall award StorageCraft its costs incurred in the proceeding, including without limitation filing fees, arbitrator fees, and other fees imposed by the Arbitral Body.

- 17.13. 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 you 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.
- 17.14. 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.
- 17.15. 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.
- 17.16. 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.
- 17.17. Electronic Communications.** You acknowledge and agree that StorageCraft may communicate with you regarding your account or StorageCraft Products via email or other electronic communications. You hereby 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 StorageCraft Products.
- 17.18. Personal Information and Privacy.** You understand and agree that when you activate the Software, StorageCraft collects the IP address and machine or computer name of the computer on which the activation is performed, a user name provided by you, and an organization name provided by you. StorageCraft collects this information to assist in providing Maintenance and Product Support and to comply with applicable export control laws. You also understand and agree that certain information you may provide to the party from whom you purchase or acquire the StorageCraft Product, such as a StorageCraft subsidiary, reseller, distributor, or authorized representative, may be shared with StorageCraft and its corporate affiliates and/or the StorageCraft distributor involved in your purchase or acquisition of the Software. This information is shared for purposes of reporting and delivery of Maintenance and Product Support, as well as user or customer account management. This information may include the following: your company name and company address, together with the name(s), telephone number(s), and email address(es) of any representative(s) you identify as contact persons for account, support or technical purposes relating to StorageCraft Products or their purchase or licensure. IF YOU PROVIDE INFORMATION TO STORAGECRAFT OR ITS SUBSIDIARY, A CORPORATE AFFILIATE, OR AUTHORIZED RESELLER, DISTRIBUTOR, OR REPRESENTATIVE, CONCERNING A THIRD PARTY, INCLUDING WITHOUT LIMITATION PERSONALLY IDENTIFIABLE INFORMATION, YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO PROVIDE SUCH INFORMATION OR YOU HAVE OBTAINED ANY NECESSARY CONSENT TO PROVIDE SUCH INFORMATION, INCLUDING APPROPRIATE CONSENT UNDER APPLICABLE DATA PRIVACY LAWS. StorageCraft and its corporate affiliates will use commercially reasonable safeguards to deter unauthorized use or disclosure of information provided to us. StorageCraft and its corporate affiliates will not access or use such information or disclose such information to third parties other than as permitted or required by law or this Agreement, or as necessary to deliver the StorageCraft Products and services pursuant to this Agreement or any other agreement

pertaining to the StorageCraft Products that you may have entered into with a third party. StorageCraft and its subsidiaries and corporate affiliates will never sell the information you provide to us. Please visit StorageCraft's website to review our Privacy Policy.

**17.19. 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; fax - 801-545-4705; mail – StorageCraft Technology Corporation, 380 Data Drive, Suite 300, Draper, Utah 84020, U.S.A.

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Vers. 03.06.15