

# STARWIND<sup>®</sup> LICENSE AGREEMENT

This StarWind License Agreement (the “Agreement”) is a legal agreement between the entity indicated on the signature page as ‘Licensee’ or the licensee entity on whose behalf this Agreement is electronically executed by the authorized user (the “Licensee”) and StarWind Software, Inc., a State of Delaware, USA corporation (“StarWind,” and collectively with Licensee, the “Parties” and each, (a “Party”)), that is entered into as of the date of acceptance hereof by both Parties hereto (the “Effective Date”).

Licensee is subject to the terms and conditions of this Agreement whether Licensee accesses or obtains StarWind Product directly from Website, or through any other source. By Using, installing, and/or Operating StarWind Product, Licensee agrees to be bound by the terms of this Agreement. If Licensee does not agree to the terms and conditions of this Agreement, StarWind is unwilling to license StarWind Product to Licensee. In such event, Licensee may not Use, install, and/or Operate StarWind Product in any way. The StarWind Product will not install and shall not be installed on any computers, workstations, personal digital assistants, smart phones, mobile phones, hand-held devices, or other electronic devices for which the Product was designed (each a “Client Device”), unless or until Licensee accepts the terms of this Agreement. Licensee may also receive a copy of this Agreement by contacting StarWind at: [info@starwind.com](mailto:info@starwind.com).

THIS DOCUMENT, UNTIL CONFIRMED BY STARWIND, CONSTITUTES AN OFFER BY LICENSEE, AND LICENSEE, BY EXECUTING THIS DOCUMENT AGREES TO THE TERMS SET FORTH HEREIN, PROVIDED THAT LICENSEE HEREBY EXPRESSLY AGREES THAT THIS AGREEMENT ONLY BECOMES EFFECTIVE UPON STARWIND’S FINAL ACCEPTANCE, APPROVAL AND EXECUTION THEREOF.

IF EXECUTED ELECTRONICALLY, LICENSEE WILL HAVE THE OPPORTUNITY TO ACCEPT THIS OFFER OF AGREEMENT THROUGH A CLICK-THROUGH PROCEDURE AND IF LICENSEE DOES NOT WISH TO ACCEPT THE TERMS OF THIS AGREEMENT, TO DECLINE THIS AGREEMENT, IN WHICH CASE LICENSEE SHALL NOT USE, INSTALL, OR OPERATE THE STARWIND PRODUCT. IF LICENSEE CHOOSES TO ACCEPT THE TERMS OF THIS AGREEMENT, LICENSEE MAY DO SO BY EITHER (1) CHECKING “I AGREE” USING THE DESIGNATED CHECK BOX, OR (2) PRINTING OUT THIS AGREEMENT, PHYSICALLY SIGNING IT, SCANNING THE SIGNED COPY, AND SENDING IT TO [info@starwind.com](mailto:info@starwind.com). LICENSEE’S CLICK OF THE “I AGREE TO TERMS OF THIS AGREEMENT” BUTTON IS A SYMBOL OF LICENSEE’S SIGNATURE AND BY CLICKING ON THE “I AGREE TO TERMS OF THIS AGREEMENT” BUTTON, LICENSEE CONSENTS TO BE BOUND BY AND BECOME A PARTY TO THIS AGREEMENT AND AGREES THAT THIS AGREEMENT IS ENFORCEABLE AGAINST LICENSEE PURSUANT TO ITS TERMS TO THE SAME EXTENT AS ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY LICENSEE. LIKewise, BEFORE LICENSEE REVIEWS, PRINTS, SIGNS, SCANS, AND SENDS THIS AGREEMENT TO STARWIND, LICENSEE SHOULD CAREFULLY READ ITS TERMS AND CONDITIONS. IF LICENSEE DOES NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THEN LICENSEE SHOULD NOT SIGN THE AGREEMENT AND LICENSEE WILL NOT BE ALLOWED TO USE, INSTALL, OR OPERATE THE STARWIND PRODUCT.

STARWIND MAY, IN ADDITION TO ELECTRONIC OR PHYSICAL EXECUTION OF THIS AGREEMENT, APPROVE THIS DOCUMENT AND THE LICENSEE AS PARTY HERETO BY SENDING A LICENSE REGISTRATION KEY TO LICENSEE. STARWIND RESERVES THE RIGHT TO TURN DOWN ANY OFFERS BY ANY LICENSEE IN ITS ABSOLUTE DISCRETION, AND IN CASE OF SUCH REFUSAL, IF LICENSEE MADE ANY PAYMENTS PRIOR TO STARWIND'S ACCEPTANCE THEREOF, SUCH PAYMENTS WILL BE REFUNDED TO LICENSEE. FOR AVOIDANCE OF DOUBT, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, STARWIND RESERVES THE RIGHT TO REFUSE ACCEPTING THIS AGREEMENT AND NOT TO PROVIDE LICENSEE WITH THE RIGHT TO USE, INSTALL, OR OPERATE THE STARWIND PRODUCT AS CONTEMPLATED HEREUNDER FOR ANY REASON WHATSOEVER OR NO REASON AT ALL.

## RESTRICTIONS

### 1. **Definitions. Each of the expressions indicated below will have, in this agreement, the meaning assigned to it, namely:**

- 1.1. **"Affiliate"** shall mean, with respect to a given Person, any person or entity which, directly or indirectly, controls, is controlled by, or is under common control with, the given Person; "control" (including, with its correlative meanings, "controlled by" and "under common control with") means possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).
- 1.2. **"Appliance"** shall mean any and all StarWind's hardware which may include a software component as listed at [www.starwindsoftware.com](http://www.starwindsoftware.com), as may be updated from time to time, including any hardware further detailed in Exhibit C, and, as applicable, sold and/or licensed to Licensee hereunder pursuant to the applicable PO.
- 1.3. **"ASM"** shall mean the terms and details of StarWind Annual Support and Maintenance located at <https://www.starwindsoftware.com/support>.

- 1.4. **“Confidential Information”** shall mean any information, product, document or other material of any nature relating to or concerning StarWind or Licensee and/or their Affiliates, that is provided or made available to receiving Party either before or after the Effective Date, directly or indirectly in any form whatsoever, including in writing, orally, and machine readable, and including, but not be limited to, any correspondence, memoranda, notes, e-mails, formulas, samples, equipment, compilations, blueprints, business information, technical information, know-how, information regarding patents, patent applications, software, computer Object Code or Source Code, algorithms, high-level structures, graphic user interfaces, ongoing research and development, business plans, business or marketing strategies or plans, products or product development strategies or plans, information concerning current and future products and services, customers, suppliers and markets, price lists and pricing information, financial statements and forecasts, computerized or other magnetically filed data, methods and techniques, manufacturing processes, developments, inventions, designs, drawings, engineering specifications, hardware configuration information, trade secrets, financial information of StarWind or Licensee and/or their Affiliates and any other business records and information, including without limitation the information about this Agreement, the use or disclosure of which might reasonably be construed to be contrary to the interests of disclosing Party, including information of third parties subject to confidentiality obligations and which one Party may share with the other Party, provided, however, that Confidential Information shall not include information which: (i) is already in the possession of receiving Party before receipt from disclosing Party; (ii) is or becomes rightfully in the public domain without fault of disclosing Party; (iii) is received by receiving Party from a third party who or which is not under any obligation of confidentiality or restriction on use or disclosure concerning such information, or (iv) is disclosed under operation of law to the public or to a third party without a duty of confidentiality. If a Party asserts one of the four exceptions to Confidential Information above, then such Party shall prove such assertion by proper forms of documentary evidence.
- 1.5. **“Configuration Certificate”** shall have the meaning set forth in Section 3.8(d).
- 1.6. **“Configuration Standards”** shall have the meaning set forth in Section 3.8(c).
- 1.7. **“Documentation”** shall mean user manuals, training materials, product descriptions and specifications, technical manuals, supporting materials, maintenance know how, text and graphic elements of all user interfaces and any modifications or upgrades of the foregoing, developed for use in connection with StarWind Materials, StarWind Software, and Product, provided or made available by StarWind from time to time.

- 1.8. **“Intellectual Property Rights”** shall mean all forms of intellectual property rights and protections that may be obtained for, or may pertain to StarWind Materials, Documentation, StarWind Software, Product, Confidential Information, and Parties’ trademarks and may include, without limitation:
- a) All right, title and interest in and to all patents and all filed, pending, or potential applications for patents, including any reissue, reexamination, division, continuation or continuation-in-part applications throughout the world now or hereafter filed;
  - b) All right, title and interest in and to all trade secrets and all trade secret rights and equivalent rights arising under the common law, state law, federal law of the United States of America, and laws of foreign countries;
  - c) All right, title and interest in and to all mask works, copyrights, other literary property or author’s rights, including Source Code, whether or not protected by copyright or as a mask work, under common law, state law, federal law of the United States of America, and laws of foreign countries; and
  - d) All right, title and interest in and to all proprietary indicia and designations of origin, trademarks, trade names, trade dress, service marks, service names, symbols, logos and/or brand names under common law, state law, federal law of the United States of America, and laws of foreign countries.
- 1.9. **“License Registration Key”** shall mean, as applicable, a serial number provided by StarWind that enables Licensee to activate and Use the StarWind Software.
- 1.10. **“License Fees”** shall mean any and all payments and fees due to StarWind from Licensee pursuant to the terms hereof and the applicable PO, and may include, as applicable, the purchase price for the hardware part of the Products, service charges and/or software license fees whether or not such charges are itemized in the applicable PO.
- 1.11. **“Licensee Marks”** shall mean all proprietary indicia and designations of origin, trademarks, trade names, trade dress, service marks, service names, symbols, logos and other distinct brand elements that appear from time to time in properties, products, ventures and services of Licensee or any of its Affiliates, together with any modifications to the foregoing made by such parties during the term of this Agreement.
- 1.12. **“Object Code”** shall mean computer programs assembled or compiled in a magnetic or electronic binary form on software media, which are readable and usable by machines, but not generally readable by humans without reverse-assembly, reverse-compiling, or Reverse Engineering.

- 1.13. **“Party” or “Parties”** shall have the meaning set forth in the preamble hereof.
- 1.14. **“Operate”** shall mean accessing, downloading, storing, loading, installing, executing, displaying, and copying StarWind Materials, Documentation, StarWind Software, and Product into the memory of a computer or otherwise benefiting from using the functionality of the StarWind Product in accordance with the Documentation.
- 1.15. **“PAS”** shall mean the ProActive Support further detailed at <https://www.starwindsoftware.com/starwind-pro-active-support>.
- 1.16. **“Person”** means any individual, partnership, limited liability licensee, corporation, association, joint stock company, trust, joint venture, labor organization, unincorporated organization, or governmental authority.
- 1.17. **“PO”** shall mean the Purchase Order delivered by Licensee to StarWind in a form acceptable to StarWind detailing types, quantities, and agreed prices for StarWind’s Products and related services.
- 1.18. **“Product”** shall mean StarWind products having functionalities as set forth in Exhibit A that contain StarWind Materials (as defined in Section 1.23), Appliance (as defined in Section 1.2), StarWind Software (as defined in Section 1.20), Third Party Hardware (as defined in Section 1.26), and Third Party Software (as defined in Section 1.27), which is technically characterized by the exclusive administration and storage of all master data, including, without limitation, variant management related information, such as feature models and variant models by specific components of the StarWind Software and all related Documentation included therewith in any form and on any media and all fixes, Updates, modifications, enhancements and new releases of the foregoing and those related materials sold and/or used in connection therewith.
- 1.19. **“Reverse Engineering”** shall mean the examination, disassembly, decompilation, decryption, simulation, code tracing of object code or executable code, debugging, or analysis of the Product or Confidential Information to determine its Source Code, structure, organization, internal design, constituent technologies, algorithms, or encryption devices.
- 1.20. **“StarWind Software”** shall mean StarWind proprietary software and solutions including all forms of code, such as source code and object code, any upgrades, modified versions, updates, and additions thereto, in any form and on any media including all fixes, modifications, enhancements and new releases of the foregoing, including without limitation VTL Free and VSAN Free.
- 1.21. **“Source Code”** shall mean the human-readable form of the computer programming code and related system documentation including all comments and any procedural code.

- 1.22. **“StarWind Marks”** shall mean all proprietary indicia and designations of origin, trademarks, trade names, trade dress, service marks, service names, symbols, logos and other distinct brand elements that appear from time to time in properties, Product, ventures and services of StarWind or any of its Affiliates, together with any modifications to the foregoing made by such parties during the Term of this Agreement.
- 1.23. **“StarWind Materials”** shall mean any and all hardware and software solutions and/or model concepts created and developed by StarWind, including Third Party Hardware and Third Party Software, and licensed to Licensee under this Agreement as further set forth in the Exhibit A.
- 1.24. **“StarWind Support”** shall mean all technical tools and personnel, including StarWind’s Technical Representative, for rendering technical support regarding the Services and Products provided hereunder, including diagnostics, configuration, troubleshooting, and resolution of technical issues as further detailed in Exhibit B.
- 1.25. **“Technical Representative”** shall have the meaning set forth in Section 3.8(a).
- 1.26. **“Third Party Hardware”** shall mean third party hardware supplied by third parties included in StarWind Materials to create Products and such third party hardware shall be deemed sold to Licensee outright pursuant to the terms hereof.
- 1.27. **“Third Party Software”** shall mean third party software products combined with StarWind Materials to create Products as licensed (and not sold) to Licensee hereunder and as may be used by Licensee solely in accordance with the licenses granted herein and by such third parties, as applicable, during and after the expiration of this Agreement.
- 1.28. **“Updates”** shall mean new versions of the Products provided by StarWind and to be implemented by Licensee as outlined in Section 2.3.
- 1.29. **“VTL Free”** shall mean the free version of the StarWind Virtual Tape Library Product consisting of StarWind Software with an unrestricted set of features and a GUI that works only in monitoring mode.
- 1.30. **“VSAN Free”** shall mean the free version of StarWind Virtual Storage Area Network Product consisting of StarWind Software and designed as a Command Line Interface oriented solution.
- 1.31. **“Website”** shall mean the Internet website(s) and other related electronic media maintained by or on behalf of StarWind from which the StarWind Product is available for license and purchase pursuant to the terms hereof as currently located at <https://www.starwindsoftware.com/>.

## 2. License and Appointment of License.

- 2.1. Single Commercial License Grant by StarWind. StarWind grants to Licensee the following rights and privileges (the "License") and Licensee hereby accepts such License:
- a) a worldwide, non-assignable, non-exclusive, and non-transferable license to use, store, load, install, execute, and display (to "Use") the StarWind Product and to provide access to Licensee's customers to the Product during the Term of this Agreement pursuant to the terms set forth herein, including as set forth in Section 2.5, or all other applicable documentation, including, without limitation the Terms of Use located at <https://www.starwindsoftware.com/terms> and the Privacy Policy located at <https://www.starwindsoftware.com/privacy-policy>, which are integrated herein by reference;
  - b) Licensee acknowledges and agrees that any and all hardware Products included in the applicable PO and made part of this Agreement shall be deemed sold and any and all software Products shall be deemed licensed hereunder; furthermore, some of the software either supplied or which may need to be acquired in order for the StarWind Products to be fully functional and operational, may be subject to additional licensing terms, requirements and fees imposed by the manufacturer or licensor of such Third Party Software (e.g., Licensee is responsible for acquiring necessary licenses for the Windows products required for the operations in accordance with the StarWind configuration requirements); and
  - c) Licensee may Use and Operate the Product pursuant to the terms and conditions hereto, provided that all the StarWind Products shall (i) retain all electronic prominent copyright notices referring to StarWind as originally placed by StarWind (e.g. "Copyright © 2018 StarWind Software, Inc. All rights reserved") and contain "Powered by StarWind: StarWind Software, Inc." notice, and (ii) Licensee shall not mask, frame, overlay, impair or otherwise materially alter, affect or impair such notices.
- 2.2. License Fees. Licensee shall transmit to StarWind License Fee(s) for the License as indicated on the Website and the applicable PO.
- a) Unless otherwise instructed by StarWind or agreed between StarWind and Licensee, License Fee shall be paid prior to Licensee obtaining the Product.
  - b) All payments hereunder shall be made to StarWind by methods indicated on the Website, the applicable PO or otherwise communicated by StarWind or its authorized resellers and distributors to Licensee.

- 2.3. Updates. StarWind may provide Licensee with Updates and upgrades to Products in Object Code at its sole discretion in such form as StarWind finds appropriate, from time to time, which Licensee will implement in Operating the Products on the Computer to optimize performance, provided, however, that (i) Licensee has an active, current License, and (ii) only Licensee's with an ongoing ASM shall be allowed to install Updates to Product. Licensee, prior to downloading and/or Operating an Update, shall ensure that an authorized representative of Licensee electronically executes an acknowledgement binding Licensee to the terms of the Agreement as amended or supplemented by the applicable Update and accompanying Documentation. If the Product is an Update to a previous version of the Product, Licensee must possess a valid license to such previous version in order to Use the Update. Licensee may continue to Use the previous version of the Product on Licensee Device after Licensee receives the Update to assist it in the transition to the Update, provided that: (i) the Update and the previous version are installed on the same Licensee Device; and (ii) Licensee acknowledges that any obligation that StarWind may have to support the previous version of the Product end upon availability of the Update. Except for the rights to free Updates during the Term, as further defined herein, nothing in this Agreement shall be construed as to grant Licensee any rights or licenses with regard to the new release or version of the Product or to entitle Licensee to any new release, version, or product. This Agreement does not obligate StarWind to develop or provide any Updates. Notwithstanding the foregoing, any Updates that Licensee may receive become part of the Product and the terms of this Agreement apply to them. Licensee expressly agrees that the Updates and upgrades to the Product received by Licensee hereunder do not in any way extend the Term of this Agreement, extend in any way the original allowed period for Operating the Product under any applicable License or renews the License received under this Agreement. Licensee hereby acknowledges that its failure to secure and install Updates, as provided herein, including, without limitation, failure to maintain the ASM, may cause issues with interoperability and performance of the Products.
- 2.4. Additional Protection Measures and Statistical Information. To the extent permitted under applicable law, solely for the purpose of preventing unlicensed use of the Product, the StarWind Software may install on the Licensee Client Device(s) technological measures that are designed to prevent unlicensed use, and StarWind may use this technology to confirm that Licensee has a licensed copy of the Product. The update of these technological measures may occur through the installation of the Updates. The Updates will not install on unlicensed copies of the Product. Please review StarWind's Privacy Policy for a detailed account of how and when personal information is stored, gathered and how it's being used, as further detailed at: <https://www.starwindsoftware.com/terms>.



2.5. Third Party Software and/or Third Party Hardware. In order to Operate the Product Licensee may require additional third-party software or hardware which is not licensed hereunder and not under StarWind's control and may be subject to third parties' applicable terms and fees. Notwithstanding any provision to the contrary herein, nothing in this Agreement shall be construed as to grant Licensee any rights or licenses with regard to such Third Party Software or Third Party Hardware or to entitle Licensee to use such Third Party Software or Third Party Hardware. All Third Party Software and/or Third Party Hardware licensors retain all right, title, and interest in and to such Third Party Software and/or Third Party Hardware, and all copies thereof, including all copyright and other intellectual property rights. Licensee's use of any Third Party Software and/or Third Party Hardware shall be subject to, and Licensee shall comply with, the terms and conditions of this Agreement, and the applicable restrictions and other terms and conditions set forth in any Third Party Software and/or Third Party Hardware documentation or printed materials, including without limitation all applicable end user license agreements. Licensee acknowledges that while StarWind will use its reasonable efforts to provide updates to Products in order to ensure Products' interoperability and functionality with updates to Third Party Software and/or Third Party Hardware, StarWind disclaims any and all liability and responsibility to notify Licensee about any updates and/or upgrades of Third Party Software and/or Third Party Hardware or StarWind's ability to provide timely any functional Updates to the Product required by Third Party Software and/or Third Party Hardware updates. Licensee is solely responsible for updating and/or upgrading Third Party Software and/or Third Party Hardware and shall verify interoperability of such Third Party Software and/or Third Party Hardware with the licensed version of the Product and its Updates prior to such updating and upgrading. All Third Party Hardware and Third Party Software are subject to such third parties' warranties, provided, however, that in the case of a failure of any Third Party Hardware supplied as part of StarWind Appliance during the applicable Third Party warranty period and subject to the replacement pursuant to such warranty, StarWind will replace StarWind's Software previously installed on such Third Party Hardware whether or not such replacement of the Third Party Hardware has been performed through StarWind.

### 3. Licensee's obligations.

- 3.1. StarWind Intellectual Property. Licensee agrees that all right, title, and interest in and to Product, including Updates, modifications, developments, improvements, enhancements, and all Intellectual Property Rights are, and always shall remain, the sole and exclusive property of StarWind. For additional information regarding StarWind's Intellectual Property, see: <https://www.starwindsoftware.com/legal>. Except as otherwise specifically provided in this Agreement, Licensee does not acquire any right to use, disclose, copy, reproduce, publish, or distribute StarWind Software, Products or StarWind Marks and the order of, delivery to, or payment for Products does not convey any other license, expressly or by implication, under any Intellectual Property Rights owned by StarWind, including without limitation, the right to produce, modify or enhance any Products.
- 3.2. StarWind Source Code. Licensee acknowledges that the Source Code for the Product is proprietary to StarWind and constitutes trade secrets of StarWind. No right to disclose, use, print, copy, or display Product or StarWind Software in whole or in part is granted hereby, except as expressly provided herein. StarWind retains the right to market and distribute Products worldwide through retail, distribution, and any other marketing channels. Nothing in this Agreement shall preclude StarWind from marketing, distributing, licensing, selling, leasing, maintaining, or servicing any Products worldwide through retail, distribution, and any other marketing channels, to any distributor, dealer or customer.
- 3.3. No Transfer. Except as otherwise specifically provided herein, Licensee may not transfer or assign any of the rights granted to Licensee under this Agreement or any of Licensee's obligations pursuant hereto.
- 3.4. No Sublicense. Licensee agrees that it may not sell, loan, rent, lease, loan, license, sublicense, publish, display, distribute, or otherwise transfer to a third party the Product, any copy or use thereof, in whole or in part, without StarWind's prior written consent nor rent, sublicense, lease, loan, or resell the Product or the License granted hereunder.
- 3.5. No Timesharing. Licensee may not permit third parties to benefit from the use or functionality of the Product via a timesharing, service borrowing, or other arrangements.
- 3.6. Additional Information. Licensee may be obliged to provide StarWind with additional data regarding Licensee's company and or other necessary information, including the required consents and authority, if StarWind has reasons to question the authenticity of data and other information provided during registration or in case of the unlawful use of the program.

- 3.7. Additional Obligations. Except as otherwise expressly set forth in this Agreement, Licensee, without StarWind's advance written consent, shall:
- a) not modify, decompile, disassemble, decrypt, extract, or otherwise Reverse Engineer any of the Products, or any part thereof, or to attempt to derive the Source Code or the underlying ideas, algorithms, structure, or organization from the StarWind Software; notwithstanding the foregoing, decompiling software is permitted to the extent the laws of the Licensee's jurisdiction give Licensee the explicit and non-waivable right to do so to obtain information necessary to render the StarWind Software interoperable with other software; provided, however, that Licensee must first request such information from StarWind and StarWind may, in its discretion, either provide such information to Licensee (subject to confidentiality terms) or impose reasonable conditions, including a reasonable fee, on such Use of the StarWind Software to ensure that StarWind proprietary rights in the Software are protected. Except for the modification explicitly permitted hereunder, Licensee may not modify or create derivative works based upon the Product in whole or in part;
  - b) not make any changes or modifications to any configurations of any StarWind Software supplied as part of the Product without StarWind's written approval and/or inconsistent with the configuration process set forth in Section 3.8;
  - c) with respect to StarWind's Appliances and to the extent Licensee continues to use any of StarWind software Products, make any changes or modifications to any configurations of any StarWind Appliances supplied as part of the Product without StarWind's written approval and/or inconsistent with the configuration process set forth in Section 3.8 and/or Exhibit C;
  - d) reproduce any Product except as otherwise expressly provided herein or adapt in any way, modify, insert, delete, replace, change, prepare, or create derivative works or otherwise alter any files in the Product (except as such files may be modified as an incidental effect of the normal installation process);
  - e) use any portion of the Product as a stand-alone application or with applications other than the Product;
  - f) attempt to defeat, avoid, bypass, remove, deactivate, or otherwise circumvent any software protection mechanisms in the StarWind Software, including without limitation any such mechanism used to restrict or control the functionality of the StarWind Software, without prior written approval from StarWind which can be withheld at StarWind's sole discretion;

- g) not copy the StarWind Software except for one (1) copy in the internal secured network or tangible media solely for archival or backup purposes or as otherwise provided herein, provided that each such copy must be reproduced with and incorporate all of StarWind's protective notices, including StarWind copyright notices and shall not, under any circumstances, copy to the public or distributed network; and
- h) abide by and comply with StarWind's Terms of Use and Service set forth at <https://www.starwindsoftware.com/terms>, as may be updated from time to time, and if and as Licensee has purchased or acquired PAS pursuant to the applicable PO, Licensee shall strictly comply with the terms and conditions of StarWind ProActive Terms of Service detailed here <https://www.starwindsoftware.com/proactive-support>

3.8. Configuration. The Parties acknowledge and agree to follow the following installation, configuration and acceptance process:

- a) Technical Representative. Upon execution of this Agreement, each Party shall designate and notify the other Party of the name, business address, and telephone number of its Technical Representative (the "Technical Representative") which may be changed from time to time upon notice. Technical Representatives of each Party shall be responsible for all communication and consultations between the Parties regarding the Product installation, configuration and related acceptance. Contract Representatives shall also be responsible for timely communication and coordination of all technical matters, transmission and technical information between the Parties, and for receiving all notices under this Agreement for administrative matters and technical matters.
- b) Configuration. As soon as practicable after the purchase of the Product by Licensee, StarWind's Technical Representative will contact Licensee's Technical Representative and, in coordination with Licensee's Technical Representative, remotely perform the final review, analysis and configuration of the Product to suit Licensee's business and technical requirements.
- c) System Requirements and Best Practices. The installation and configuration of the Product shall be performed strictly in accordance with and pursuant to StarWind's configuration and best practices as further detailed at (**"Configuration Standards"**): <https://www.starwindsoftware.com/system-requirements> <https://www.starwindsoftware.com/resource-library/starwind-virtual-san-best-practices>

- d) Configuration Certificate. Upon completion of the configuration pursuant to Section 3.8(c), StarWind's Technical Representative will issue and transmit to Licensee's Technical Representative a letter outlining the configuration services performed and ongoing systems configuration requirements ("Configuration Certificate"). The schematics of configuration substantially outlined in the Configuration Certificate shall be deemed completed and accepted by Licensee upon successful installation and configuration of the Product and the issuance of the Configuration Certificate provided that Licensee may comment, object or request necessary changes to such configuration within 5 business days after the receipt of the Configuration Certificate.
- e) Licensee's Strict Compliance. Licensee acknowledges and agrees that Licensee's technical or business needs and expectations may not fully align with the Configuration Standards and/or Configuration Certificate and agrees to strictly follow Configuration Standards and/or Configuration Certificate, including any guidance regarding software limitations, configurations, recommendations and system requirements, and Licensee further agrees not to request to perform or perform any configurations actions or changes that are not in strict compliance with the Configuration Standards and any such actions or changes will render any and all warranties null and void.
- f) Post-installation Changes. If and as Licensee requires any changes to configuration outside of the scope of the initial Configuration Certificate as set forth in Section 3.8(d), then Licensee Technical Representative shall contact and coordinate with the StarWind Technical Representative prior to the implementation of any such changes. Upon performance any such changes strictly in accordance with Section 3.8(c) above, for which StarWind may or may not charge additional fees per its standard practices, StarWind Technical Representative will issue a new or revised Configuration Certificate pursuant to the process outlines in Section 3.8(d) above.
- g) Notwithstanding anything to the contrary herein, the provisions of Sections 3.8 (a)-(b) and 3.8(d)-(f) shall not apply to VTL Free and VSAN Free.

## 4. Representations and Warranties.

- 4.1. Licensee Representations and Warranties. Licensee represents and warrants that:
- a) it is acting under the color of the law when Operating the Product or Licensee is otherwise approved by StarWind in writing;
  - b) it is a legal owner or in legal possession and/or control of the Licensee's Client Device(s) or other devices and the files and content contained therein, and has a legal right to Operate the Product in conjunction with the Client Device(s);
  - c) it will neither Operate the Product for the purpose of circumventing a technological measure nor will it Operate the Product in conjunction with a third party application for the purpose of circumventing a technological measure that effectively protects a right of a copyright owner in a copyrighted work or a portion thereof;
  - d) there is no pending or threatened action (or basis therefore) for the dissolution, liquidation, or insolvency of Licensee;
  - e) it agrees and warrants that in using the Product, Licensee's actions do not contravene the laws, rules, or regulations of (1) the country, state, or locality where Licensee resides, or (2) the country, state, or locality where StarWind is located or operates;
  - f) it has all requisite power and authority necessary to execute and deliver this Agreement, to perform its obligations hereunder and to Operate the Product in accordance with the Documentation;
  - g) this Agreement has been duly authorized, executed, and delivered, and constitutes a valid, legal and binding obligation of Licensee enforceable against Licensee in accordance with its terms, subject to any law affecting creditors' rights;
  - h) the execution, delivery and performance by Licensee of this Agreement do not and will not violate any law (including, without limitation, privacy, export control, obscenity and anti-spam laws), violate any charter document of Licensee, violate any agreement or order to which Licensee is a party or by which Licensee or its assets are bound, or require any consent from any Person; and

- i) it is not or will not be at any time in the future during the Term: (i) located in a country embargoed by the United States, (ii) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"); (iii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56 or any Executive Order of the President issued pursuant to such statutes; or (iv) named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons"; (v) or if undersigned is an individual or a company that is on the U.S. Treasury Department's list of Specially Designated Nationals (SDN) or (vi) on the United States Commerce Department's Table of Deny Orders.

4.2. StarWind Representations and Warranties. StarWind represents and warrants that:

- a) there is no pending or threatened action (or basis therefore) for the dissolution, liquidation, or insolvency of the StarWind Product;
- b) it has all requisite corporate power and authority necessary to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- c) the Agreement has been duly authorized, executed, and delivered, and constitutes a valid, legal, and binding obligation of StarWind enforceable against StarWind in accordance with its terms, subject to any law affecting creditors' rights;
- d) the Product is neither designed nor intended for the purpose of circumventing a technological measure that effectively protects a right of a copyright owner in a copyrighted work or a portion thereof;
- e) to the best of its knowledge, it has all the necessary rights, titles, and/or interests, in Product to grant Licensee the rights and licenses contained in this Agreement; and
- f) StarWind does not promise that Product will be free of bugs or program errors; however, Product shall operate substantially in accordance with the Documentation, *provided however*, that the foregoing warranty shall not apply to VTL Free and VSAN Free. For the avoidance of doubt, StarWind makes no representations, warranties, or promises of any kind regarding VTL Free, VSAN Free or their operation. Licensee may report a program error or bug to StarWind. StarWind will use commercially reasonable efforts to correct the reported errors. If StarWind issues a maintenance release for Product which includes a correction for an error Licensee reported, StarWind will send Licensee a copy of that maintenance release at no charge. StarWind will only do this for maintenance releases, not for new major releases or other new versions of Product.

- 4.3. Hardware damages. StarWind is not responsible for any damages which may occur with Client Device(s) as defined herein during Use or misuse of Product. StarWind is not responsible for any problems caused by original, aftermarket or hand-made connection cables.

## 5. LIMITED WARRANTY AND DISCLAIMER.

- 5.1. Limited Warranty; Exclusive Remedy. StarWind represents and warrants that the StarWind Software will operate substantially in accordance with the Documentation for a period of one (1) year from the Effective Date. Any hardware supplied with the StarWind Software as part of the Product is subject to the original manufacturer warranty set forth in Exhibit B. The exclusive remedy available to Licensee for the breach of any warranties herein shall be repair or replacement. To assert a warranty claim, Licensee must notify StarWind of the claim and allow StarWind a reasonable time to repair any defects. If StarWind is unable to repair the defects, StarWind will, at its option, replace the Product or provide a prorated refund of License Fee as to the remainder of the applicable warranty period. For the avoidance of doubt, StarWind does not make any warranties or representations in relation to VTL Free, VSAN Free or their operation
- 5.2. NO IMPLIED OR OTHER WARRANTIES. EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 4.2 and 5.1 OR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO LICENSEE IN ITS JURISDICTION, THE PRODUCT IS PROVIDED "AS-IS" WITHOUT ANY WARRANTY WHATSOEVER AND STARWIND MAKES NO PROMISES, REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESSED OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE, REGARDING OR RELATING TO THE PRODUCT OR CONTENT THEREIN OR TO ANY OTHER MATERIAL FURNISHED OR PROVIDED TO LICENSEE PURSUANT TO THIS AGREEMENT OR OTHERWISE. LICENSEE ASSUMES ALL RISKS AND RESPONSIBILITIES FOR SELECTION OF THE PRODUCT TO ACHIEVE ITS INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE PRODUCT. STARWIND MAKES NO WARRANTY THAT THE PRODUCT WILL BE ERROR FREE OR FREE FROM INTERRUPTION OR FAILURE, OR THAT IT IS COMPATIBLE WITH ANY PARTICULAR HARDWARE OR SOFTWARE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, STARWIND DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCT AND THE ACCOMPANYING WRITTEN MATERIALS OR THE USE THEREOF. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE. LICENSEE HEREBY ACKNOWLEDGES THAT THE PRODUCT MAY NOT BE OR BECOME AVAILABLE DUE TO ANY NUMBER OF FACTORS INCLUDING WITHOUT LIMITATION PERIODIC SYSTEM MAINTENANCE, SCHEDULED OR UNSCHEDULED, ACTS OF GOD, TECHNICAL FAILURE OF THE SOFTWARE, TELECOMMUNICATIONS INFRASTRUCTURE, OR DELAY OR DISRUPTION ATTRIBUTABLE TO VIRUSES, DENIAL OF SERVICE ATTACKS, INCREASED OR FLUCTUATING DEMAND, AND ACTIONS AND OMISSIONS OF THIRD PARTIES. THEREFORE, STARWIND



EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY REGARDING SYSTEM AND/OR SOFTWARE AVAILABILITY, ACCESSIBILITY, OR PERFORMANCE. STARWIND DISCLAIMS ANY AND ALL LIABILITY FOR THE LOSS OF DATA DURING ANY COMMUNICATIONS AND ANY LIABILITY ARISING FROM OR RELATED TO ANY FAILURE BY STARWIND TO TRANSMIT ACCURATE OR COMPLETE INFORMATION TO LICENSEE.

- 5.3. LIMITED LIABILITY; NO LIABILITY FOR CONSEQUENTIAL DAMAGES. LICENSEE ASSUMES THE ENTIRE COST OF ANY DAMAGE RESULTING FROM LICENSEE'S USE OF THE PRODUCT AND THE INFORMATION CONTAINED IN OR COMPILED BY THE PRODUCT, AND THE INTERACTION (OR FAILURE TO INTERACT PROPERLY) WITH ANY OTHER HARDWARE OR SOFTWARE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL STARWIND OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF GOODWILL, WORK STOPPAGE, HARDWARE OR SOFTWARE DISRUPTION IMPAIRMENT OR FAILURE, REPAIR COSTS, TIME VALUE OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCT, OR THE INCOMPATIBILITY OF THE PRODUCT WITH ANY HARDWARE, SOFTWARE OR USAGE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL STARWIND'S TOTAL LIABILITY TO LICENSEE FOR ALL DAMAGES IN ANY ONE OR MORE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE EXCEED THE AMOUNT PAID BY LICENSEE FOR THE PRODUCT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE CLAIM. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT THAT APPLICABLE LAW PROHIBITS SUCH LIMITATION. FURTHERMORE, BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE. SHOULD LICENSEE GRANT ANY ACCESS TO STARWIND TO ANY OF LICENSEE'S ASSETS OR PREMISES FOR PURPOSES OF SERVICE, CONFIGURATION OR INSTALLATION, STARWIND SHALL NOT BE LIABLE AND DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM SUCH ACCESS OTHER THAN LIABILITY FOR THE DAMAGE CAUSED BY WILLFUL MISCONDUCT OF STARWIND'S PERSONNEL WHICH BECAME THE SOLE CAUSE OF SUCH DAMAGE.
- 5.4. Notwithstanding any provision to the contrary herein, the liability of each Party to the other for any claim whatsoever related to the Products or this Agreement, including any cause of action sounding in contract, tort, or strict liability, shall not exceed the greater of (i) Two Thousand Dollars (\$2,000.00), or (ii) the total amount of payments paid or payable by Licensee to StarWind during the previous six (6) month period in connection with the licensed Products relating to such liability, provided that, such limitation of liability shall not apply in cases of fraud, willful misconduct, breach of confidentiality obligations, or infringement of Intellectual Property Rights owned by StarWind.

## 6. Personal data.

- 6.1. Personal Data Access. Licensee hereby expressly consents to StarWind's processing of Licensee's personal data (which may be collected by StarWind or its distributors) according to StarWind's current privacy policy as of the date of the effectiveness hereof which is incorporated into this Agreement by reference (see <https://www.starwindsoftware.com/privacy-policy>). By entering into this Agreement, Licensee agrees that StarWind may collect and retain information about Licensee, including Licensee's or its representatives' names, email addresses, and credit card information. StarWind employs other companies and individuals to perform certain functions on its behalf, such as fulfilling orders, delivering packages, sending postal mail and e-mail, removing repetitive information from customer lists, analyzing data, providing marketing assistance, processing credit card payments, and providing customer service. Such third parties may have access to Licensee or its customers' personal information needed to perform their functions, but may not use it for other purposes.
- 6.2. Proper Consents. Licensee will ensure that each member of Licensee's organization (including employees and contractors) about whom personal data may be provided to StarWind has given his or her express consent to StarWind's processing of such personal data. Personal data will be processed by StarWind or its affiliates or service providers and the laws of the location of such affiliates or service providers regarding processing of personal data may be less or more stringent than the laws in Licensee's jurisdiction.

## 7. Licensee's Additional Obligations.

- 7.1. Confidentiality Obligations. Licensee shall keep Confidential Information of StarWind in strict confidence and shall not make use of Confidential Information for any purpose other than in connection with this Agreement and to implement reasonable security measures to protect such Confidential Information, but without limitation to the foregoing, shall use best efforts to maintain the security of the License Registration Key provided to Licensee by StarWind and/or its authorized resellers or distributors, provided that notwithstanding the foregoing, any embedded License Registration Key information in the html source shall not be deemed a public disclosure or a violation of this Agreement.
- 7.2. Required Disclosure. Licensee shall notify StarWind if disclosure of Confidential Information is necessary to comply with the requirements of any law, government order, regulation, or legal process prior to such disclosure and Licensee, at StarWind request, shall use best efforts to seek an appropriate protective order in connection with such legal process and, if unsuccessful, to use best efforts to assure that confidential treatment will be accorded to the disclosed Confidential Information.

- 7.3. Employee Compliance. Licensee shall take all necessary steps to ensure compliance by its employees or its other representatives with Licensee's obligations under this Agreement.
- 7.4. Maintaining of Records. Licensee shall keep and maintain accurate books, records, reports, and customer data relating to Products for a period of two (2) years following expiration or termination of this Agreement.
- 7.5. Compliance with Law. Licensee shall in Operating the Product and in using any report or information derived as a result of Operating this Product, comply with all applicable international, national, state, regional and local laws and regulations, including, without limitation, privacy, trademark, patent, anti-spam, copyright and obscenity law and Licensee shall not use the Product for unethical, illegal, prohibited practices or in violation of any obligation to a third party in using, operating, accessing or using any of the Product or its functionality and shall not assist any other person or entity to so violate any obligation to a third party.
- 7.6. Export Regulations. Licensee shall in exercising its rights and performing its obligations hereunder, comply with all applicable international, national, governmental, quasi-governmental and/or local laws and regulations, including without limitation, relevant embargo and export laws and regulations, and assure that, in connection with performance of its obligations pursuant to this Agreement, or arising or relating therefrom, no Product, Documentation, Confidential Information or any portion thereof, and any information relating thereto or to this Agreement, is exported, transshipped, or re-exported, directly or indirectly any to any individual, group, organization, entity or nation in violation of any applicable law.
- 7.7. Proper Training. Licensee shall ensure that Users are properly trained and possess sufficient knowledge and qualifications in the field.

## 8. Term and Termination.

- 8.1. Term. The term of this Agreement ("Term") shall begin upon the Effective Date and shall continue, unless otherwise terminated pursuant hereto, in perpetuity or for the term specified in the License granted hereunder, provided, however, that this Agreement shall be deemed terminated if Licensee committed any willful or material breach of this Agreement.
- 8.2. Termination. This Agreement may be terminated as provided below:
- a) Licensee and StarWind may terminate this Agreement by mutual written consent at any time, provided however, StarWind may terminate this agreement as to VTL Free and VSAN Free upon a five (5) day notice;
  - b) StarWind may terminate this Agreement by giving notice to Licensee at any time if Licensee has breached any representation, warranty, obligation, or covenant contained in this Agreement and this breach has not been cured within a ten (10) day period;
  - c) StarWind may terminate this Agreement immediately by notice to Licensee at any time if Licensee has breached any Section 2.1 and/or Section 4.1 hereof;
  - d) StarWind may terminate this Agreement by offering Licensee a superseding Agreement for the Product or any replacement or modified version of the Product and conditioning Licensee's continued use of the Product or such replacement, modified or upgraded version or New Release on Licensee's acceptance of such superseding Agreement;
  - e) Licensee may terminate this Agreement by giving notice to StarWind at any time if StarWind has breached any representation, warranty, obligation, or covenant contained in this Agreement in any material respect and this breach has not been cured within a thirty (30) day period; and
  - f) either Party may terminate this Agreement if the other Party declares insolvency or bankruptcy, if a petition is filed in any court and not dismissed in ninety (90) days to declare the other Party bankrupt or for the other Party's reorganization under bankruptcy, insolvency, reorganization, moratorium, or other laws relating to or affecting the rights of creditors; or if the other Party consents to the appointment of a trustee in bankruptcy or a receiver or similar entity.

- 8.3. Licensee's Actions upon Termination. In the event of termination or expiration of this Agreement, Licensee shall:
- a) as soon as practicable, but not later than ten (10) days after the termination, destroy, uninstall, delete, or return to StarWind all of StarWind's Confidential Information in Licensee's possession or under its control and all and every part of the Products and all copies thereof, including, without limitation, any copies installed on any hard-drive or other fixed, electronic, optical, magnetic or other media and any authorized or unauthorized modifications of the Products, and any software into which the Products have been merged (except that if destruction of such software shall be precluded by written agreement, then it shall remove and destroy the software to the extent so merged with or incorporated within any such software) or as contained in any other form or media; except that one (1) copy may be retained by Licensee solely for back-up or archival purposes; and
  - b) upon termination of this Agreement Licensee will no longer be authorized to Operate or use the Product in any way.
- 8.4. Surviving Provisions. Notwithstanding any provisions to the contrary herein, the provisions of Sections 3, 4, 5, 6, 7, 8, and 9 shall survive the termination or expiration of this Agreement and such termination or expiration shall not release Licensee or StarWind of their respective obligations regarding the Confidential Information, Licensee's obligations with respect to Intellectual Property Rights or any duties, liabilities or obligations which by the terms hereof or in context are to survive termination.
- 8.5. Material Terms and Conditions. Licensee specifically agrees that each of the terms and conditions of this Section 8 are material and failure to comply with these terms and conditions shall constitute sufficient cause for StarWind to immediately terminate this Agreement and the License granted under this Agreement. The presence of this Section 8.5 shall not be relevant in determining the materiality of any other provision or breach of this Agreement by either party hereto.

## 9. Indemnification.

- 9.1. Licensee shall indemnify, defend, and hold harmless StarWind and its respective officers, directors, shareholders, employees, agents, representatives, and any of its Affiliates against all damages, claims, liabilities, losses and other expenses asserted by a third party, including without limitation reasonable attorneys' fees and costs, whether or not a lawsuit or other proceeding is filed, that arise out of:
- a) Licensee's breach or violation of any warranty, covenant, or obligation pursuant to this Agreement;
  - b) any modification, whether authorized or not, of the Product by Licensee; or
  - c) and any transaction with Licensee's customers, including without limitation the use and distribution of any of StarWind Software and/or Product, components or results of Operating of the Product by any third party.

## 10. Miscellaneous.

- 10.1. Governing Law; Jurisdiction and Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts without reference to conflicts of law rules and principles. To the extent permitted by law, the provisions of this Agreement shall supersede any provisions of the Uniform Commercial Code as adopted or made applicable to the Products in any competent jurisdiction. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly disclaimed and excluded. The federal and state courts located in Boston, Massachusetts shall have exclusive jurisdiction to adjudicate any dispute arising out of this Agreement. Licensee agrees that this Agreement is to be performed in the Commonwealth of Massachusetts and that any action, dispute, controversy, or claim that may be instituted based on this Agreement, or arising out of or related to this Agreement or any alleged breach thereof, shall be prosecuted exclusively in the federal or state courts in of the Commonwealth of Massachusetts and, upon termination of this Agreement, Licensee will no longer be authorized to Operate or Use the Product in any way, to the extent permitted by applicable law, hereby waives the right to change venue to any other state, county, district or jurisdiction; provided, however, that StarWind as claimant shall be entitled to initiate proceedings in any court of competent jurisdiction.

- 10.2. Arbitration. If Licensee is a non-US resident Licensee hereby agrees that any dispute, controversy, or claim arising or concerning this Agreement shall be determined and settled by arbitration in accordance with the International Chamber of Commerce accordance with the Rules of Arbitration of the International Chamber of Commerce (the "Rules"). The claimant party shall appoint one arbitrator and the respondent party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint the third arbitrator, in accordance with the provisions of the Rules. The place of arbitration shall be Boston, Massachusetts (USA). The language of the arbitration shall be English. Any award granted by the arbitrator(s) shall be final and binding upon the involved parties and shall constitute the sole and exclusive remedy for any dispute between the involved parties regarding the issue at dispute resolved by such arbitration.
- 10.3. No Assignment. This Agreement, including without limitation any Licenses granted hereunder, may not be assigned, in whole or in part, by either Party without the prior written consent of the other Party, provided that StarWind shall have the right to assign this Agreement to its distributors or affiliates without Licensee's prior consent
- 10.4. Remedies. If Licensee breaches, or threatens to commit a breach of, any of the covenants set forth herein, StarWind will be entitled, in addition to any other rights StarWind may enjoy, to obtain injunctive or other equitable relief by any court of competent jurisdiction to restrain any actual or threatened breach or otherwise to specifically enforce the provisions of this Agreement, it being agreed that such breach or imminent breach will cause irreparable injury to StarWind and money damages alone would not be an inadequate remedy and would fail to fully compensate StarWind for such Licensee's breach. The rights and remedies of the Parties to this Agreement are cumulative and not alternative. Licensee further agrees to waive any requirement for the securing or posting of any bond in connection with the obtaining of any such equitable relief and that this provision is without prejudice to any other rights that the Parties hereto may have for any failure to perform this Agreement.
- 10.5. Legal Costs of Prevailing Party. The substantially prevailing Party in any legal action, including arbitration, brought by one Party against the other and arising out of this Agreement shall be entitled, along with any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorney's fees. Such fees may be set by the court in the trial of such action or may be enforced in a separate action brought for that purpose. Such fees shall be in addition to any other relief that may be awarded.
- 10.6. Taxes. Each Party is responsible for complying with the collection, payment, and reporting of all taxes imposed by any governmental authority applicable to its activities in connection with this Agreement. None of the Parties is responsible for taxes that may be imposed on the other Parties. Notwithstanding anything to the contrary herein, Licensee shall be solely responsible for any sales, use, value added and similar taxes collections, payments and related registrations arising in any way out of or relating to this Agreement. If a certificate of exemption or similar document or proceeding is to be made in order to exempt the sale from sales or use tax liability, Licensee will obtain and provide StarWind with such certificate, document, or proceeding.

Licensee acknowledges and agrees that any shipments of the Products shall be accompanied by an invoice, bill of lading, customs declaration and/or any other documentation as may be required indicating the full value of the Product pursuant hereto and may be insured, at the sole discretion of StarWind, for the full value or any portion thereof.

- 10.7. **Publicity.** The Parties shall work together to issue publicity and general marketing communications concerning their relationship and other mutually agreed-upon matters. In addition, neither Party shall issue such publicity and general marketing communications concerning their relationship without the prior written consent of the other Party (not to be unreasonably withheld or delayed). Neither Party shall disclose the terms of this Agreement to any third party other than its outside counsel, auditors, and financial and technical advisors, except as required by law.
- 10.8. **Severability.** If this Agreement or any provision thereof is, or the transactions contemplated hereby are, found by a court of competent jurisdiction to be invalid, void, unenforceable for any reason or inconsistent or contrary to any valid applicable laws or official orders, rules and regulations, in whole or in part, the inconsistent or contrary provision of this Agreement shall be null and void and such laws, orders, rules and regulations shall control and, as so modified, this Agreement shall continue in full force and effect and the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by law; provided, however, that nothing herein contained shall be construed as a waiver of any right to question or contest any such law, order, rule or regulation in any forum having jurisdiction.
- 10.9. **No Waiver.** No provision of the Agreement will be considered waived unless such waiver is in writing and signed by the Party that benefits from the enforcement of such provision. No waiver of any provision in the Agreement, however, will be deemed a waiver of a subsequent breach of such provision or a waiver of a similar provision. In addition, a waiver of any breach or a failure to enforce any term or condition of the Agreement will not in any way affect, limit, or waive a Party's rights under the Agreement at any time to enforce strict compliance thereafter with every term and condition of the Agreement.
- 10.10. **Force Majeure.** Except for the obligation to make payments, nonperformance of either Party shall be excused to the extent the performance is rendered impossible by strike, fire, flood, governmental acts, or orders or restrictions.
- 10.11. **Additional Actions.** The Parties will each perform such acts, execute and deliver such documents and instruments, and do such other things as may be reasonably requested to accomplish the transactions contemplated by this Agreement and to carry out the purpose and intent hereof.



- 10.12. Notice to U.S. Government End Users. The Product and accompanying Documentation are deemed to be "Commercial Items," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," respectively, as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights, including any use, modification, reproduction, release, performance, display, or disclosure of the Product and accompanying Documentation, as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States and Canada.
- 10.13. No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties and, except as otherwise provided herein, no other Person will have any right, interest, or claim under this Agreement.
- 10.14. Notices. All claims, instructions, consents, designations, notices, waivers, and other communications in connection with the Agreement ("Notifications") will be in writing. Such Notifications shall be deemed properly made (a) when received if delivered personally, (b) if delivered by facsimile transmission when the appropriate telecopy confirmation is received; (c) upon the receipt of the electronic transmission by the server of the recipient when transmitted by electronic mail, (d) if sent within the USA, on the next business day after timely deposit with a nationally recognized overnight delivery service, or (e) if sent internationally, within five (5) days after deposit with an internationally recognized express delivery service, in each case when transmitted to a Party address or location indicated on the execution page or the invoicing terms.
- 10.15. Signatures. In addition to electronic execution or a click on the "I agree," the delivery of a copy of this Agreement or such other document bearing an original signature by facsimile transmission or a scanned image of the original signature, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.
- 10.16. Counterparts. This Agreement and any documents pursuant hereto may be separately executed by the Parties in two (2) or more counterparts and all such counterparts shall be deemed an original, but all of which together shall constitute one and the same instrument and will be binding on the Parties as if they had originally signed one copy of the Agreement.

## STARWIND® LICENSE AGREEMENT / execution page 1 of 1

<b>COMPANY:</b>	StarWind Software, Inc.
By:	
Name:	
Title:	
Date:	
Address:	
fax:	
phone:	
email:	

<b>LICENSEE:</b>	
Name:	
Title:	
Jurisdiction of Incorporation of Licensee:	
Date:	
Address:	
fax:	
phone:	
email:	

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## EXHIBIT A

### StarWind Software Products and Hardware Platforms

#### StarWind software products

StarWind Virtual SAN: <https://www.starwindsoftware.com/starwind-virtual-san>

StarWind Virtual SAN Free: <https://www.starwindsoftware.com/starwind-virtual-san-free>

StarWind VTL: <https://www.starwindsoftware.com/starwind-virtual-tape-library>

StarWind VTL Free: <https://www.starwindsoftware.com/starwind-virtual-tape-library#freemium>

StarWind V2V Converter: <https://www.starwindsoftware.com/converter>

StarWind Cloud VTL for AWS and Veeam: <https://www.starwindsoftware.com/starwind-cloud-vtl-for-veeam>

StarWind Storage Gateway for Backblaze: <https://www.starwindsoftware.com/starwind-backblaze-storage-gateway>

StarWind Deduplication Analyzer: <https://www.starwindsoftware.com/starwind-deduplication-analyzer>

StarWind Tape Redirector: <https://www.starwindsoftware.com/download-starwind-tape-redirector>

StarWind RAM Disk: <https://www.starwindsoftware.com/high-performance-ram-disk-emulator>

StarWind Manager (Preview): <https://www.starwindsoftware.com/starwind-manager>

#### StarWind hardware platforms

StarWind HyperConverged Appliance: <https://www.starwindsoftware.com/starwind-hyperconverged-appliance>

StarWind Storage Appliance: <https://www.starwindsoftware.com/starwind-storage-appliance>

StarWind VTL Appliance: <https://www.starwindsoftware.com/starwind-virtual-tape-library-appliance>

StarWind Enterprise Storage Appliance: <https://www.starwindsoftware.com/enterprise-storage-appliance>

## EXHIBIT B

### StarWind Support

**Support.** During the applicable term of the StarWind Support, as further detailed at <https://www.starwindsoftware.com/support> and pursuant to the applicable PO and, as applicable, after the termination of the Agreement for the applicable period, StarWind shall have sole responsibility for providing customer support for the Products. Notwithstanding anything to the contrary herein, StarWind shall have a right to provide or appoint any third party to provide technical support services to Licensee or any other services relating to the Products.

StarWind offers users three types of customer support services with the purchase of its Products: Standard technical support, Premium technical support, and ProActive Support. Standard technical support offers a full set of support services during standard business hours. Premium technical support is available for an additional fee (twenty percent (20%) of the MSRP price as of the date of purchase per year) and provides faster response time and additional methods for resolving issues with the Products. ProActive Support may be automatically included with StarWind's Appliances if and as provided in the applicable PO and/or invoice for the applicable term or can be purchased separately pursuant to an applicable PO. Licensees who purchased ProActive Support shall be subject to the terms and conditions of StarWind's Terms of Use set forth at <https://www.starwindsoftware.com/terms> and the StarWind ProActive Support Terms of Service as set forth at <https://www.starwindsoftware.com/proactive-support>.

VTL Free and VSAN Free are supported only on the open public community forum. Direct support for VTL Free and/or VSAN Free outside public community forums and/or provision of technical support for a charge are strictly prohibited. Nothing herein shall be deemed to obligate StarWind to provide support for VTL Free, VSAN Free or any Updates, upgrades, or fixes thereto.

A detailed explanation of StarWind's customer support options can be found at the following link: <https://www.starwindsoftware.com/support> and <https://www.starwindsoftware.com/starwind-pro-active-support>.

**Upgrades.** From time to time, StarWind may recommend upgrades to the Products and may provide assistance with their implementation. For example, Licensee may upgrade an OS/hypervisor/software license through StarWind if the original purchase was through StarWind. Upgrades are optional and at the Licensee's discretion.

**Upgrades to Support.** Licensee may upgrade the support level through StarWind by paying the support upgrade fee as set forth at the following link: <https://www.starwindsoftware.com/support>. However, Licensees who have purchased the systems with basic hardware support are not eligible for support upgrades.

**Defects.** If StarWind and/or Licensee finds a server or part defect in the Product(s), the server or part defect will be replaced in accordance with the customer support service plan and as outlined in the customer PO and/or the invoice (e.g., for Standard technical support, the next business day onsite or part(s) shipped by mail; or for Premium technical support, four (4) hour onsite replacement of the part(s) and/or server). If the Product is defective or is otherwise not in compliance with applicable warranties, then a replacement Product will be sent out with a requirement to return the defective Product as soon as the replacement was received and necessary file transfers occurred. For more information, please visit StarWind Support at <https://www.starwindsoftware.com/support>, StarWind's Refund Policy, available at <https://www.starwindsoftware.com/refund-policy> and StarWind's Terms of Use located at <https://www.starwindsoftware.com/terms>.

## EXHIBIT C

### Terms Applicable to StarWind Appliances

#### StarWind Appliances

StarWind Appliance unifies commodity servers, disks, and flash, with hypervisor of choice and associated software into a single manageable layer, as further detailed below:

- StarWind HyperConverged Appliance description and details: <https://www.starwindsoftware.com/starwind-hyperconverged-appliance>
- StarWind Storage Appliance description and details: <https://www.starwindsoftware.com/starwind-storage-appliance>
- StarWind Virtual Tape Library Appliance description and details: <https://www.starwindsoftware.com/starwind-virtual-tape-library-appliance>
- StarWind Enterprise Storage Appliance description and details: <https://www.starwindsoftware.com/enterprise-storage-appliance>

The StarWind Appliance final configuration per Section 3.8 may be scheduled once received and ready for the configuration after performing the steps as conveyed by StarWind's Technical Representative and/or otherwise specified in the StarWind documentation and StarWind Appliance Quick Start Guide: <https://www.starwindsoftware.com/resource-library/starwind-appliance-quick-start-guide>.

## Licensee's Responsibilities

Once the final configuration is completed as set forth above, Licensee is responsible for:

- a) informing StarWind Support about any issues and critical configuration changes in StarWind Appliances;
- b) carefully following the advice, guidance, and recommendations of StarWind Support;
- c) providing all necessary information to StarWind Support in the right form as soon as possible if so required to investigate the issue or get any answers, advice or recommendations;
- d) ensuring the highest possible level of redundancy for Licensee's infrastructure and providing StarWind servers as well as corresponding network equipment with uninterruptible power supplies (UPS). In case if such is not acceptable for any reason – it is highly recommended to configure write-through caching on all StarWind devices;
- e) periodically making backups of the data, including but not limited to virtual machines, file shares located on StarWind Appliances solution to make sure that the most important data is always backed up;
- f) periodically updating StarWind Software to the latest build to get the fixes and improvements;
- g) always keeping in mind StarWind Virtual SAN Best Practices while working with StarWind infrastructure or applying any hardware or software changes;

Licensee Technical Representative can independently and effectively use StarWind Appliance and carry out its current maintenance.

**Post-Installation Obligations of Licensee:**

To avoid any inoperable state and for the proper functioning of StarWind Appliance, Licensee shall **not**:

- a) change, independently or with the assistance of third parties, the overall StarWind Appliance configuration (add or remove cluster nodes, reconfigure networks dedicated to the operation of StarWind Products, including firmware and driver updates, reconfigure RAID array, iSCSI initiator settings, uninstallation of StarWind Software, etc.) if those changes have not been confirmed by StarWind Support;
- b) modify, independently or with the assistance of third parties, StarWind Appliance configuration files, if those modifications have not been confirmed by StarWind Support;
- c) modify, independently or with the assistance of third parties, StarWind virtual machine settings (for StarWind Appliance based on VMware ESXi), if those modifications have not been confirmed by StarWind Support;
- d) add, replace or remove independently or with the assistance of third parties, any hardware components of StarWind Appliance if such actions have not been confirmed by StarWind personnel; and
- e) disable or remove independently or with the assistance of third parties, the services related to StarWind Appliance if this action has not been confirmed by StarWind Support.