ProphetStor End User License Agreement

This End User License Agreement ("EULA") is a legal contract between you, either as an individual or a single entity ("you"), and ProphetStor Data Services, Inc., its subsidiaries and affiliates (collectively, "ProphetStor"), governing your use of the software, services, and associated online or electronic documentation published, distributed or otherwise made available by ProphetStor (this software, services, and documentation, and any applicable updates provided by ProphetStor, collectively referred to as the "Software"), and if applicable, your use of Software designed for application with ProphetStor hardware devices and products ("ProphetStor Devices"). If, however, ProphetStor software or services are accompanied by a separate license agreement, the terms of that separate license agreement will apply to your use of the applicable ProphetStor software or services.

BY INSTALLING, ACTIVATING, COPYING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA, WHICH ARE CONDITIONS TO PROPHETSTOR’S LICENSE GRANT TO YOU PURSUANT TO THIS EULA, AND THE PROPHETSTOR PRIVACY POLICY, AS INCORPORATED BY REFERENCE IN SECTION 5 BELOW. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA AND THE PROPHETSTOR PRIVACY POLICY, DO NOT INSTALL, ACTIVATE, COPY, OR USE THE SOFTWARE.

YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ACCEPT AND AGREE TO THIS EULA ON BEHALF OF YOURSELF OR THE ENTITY YOU REPRESENT. YOU REPRESENT THAT YOU ARE OF SUFFICIENT LEGAL AGE IN YOUR JURISDICTION OR RESIDENCE TO USE OR ACCESS THE SOFTWARE AND TO ENTER INTO THIS EULA.

1. LICENSE GRANT.

Subject to your compliance with the terms of this EULA and your payment of any applicable fees, ProphetStor grants to you a limited, personal, non-transferable, non-exclusive and revocable license (without the right to sublicense) to use the Software in the manner described in Section 3 below.
2. PROPRIETARY RIGHTS.

The Software and all worldwide copyrights, patents, trade secrets, and other intellectual property rights therein are the exclusive property of ProphetStor and/or its licensors. ProphetStor and its licensors reserve all rights in and to the Software not expressly granted to you in this EULA. The Software (and all copies thereof) is licensed to you, not sold, under this EULA. There are no implied licenses in this EULA. You agree not to take any action that interferes with or challenges, in any manner, ProphetStor or its licensors’ rights with respect to the Software. All suggestions or feedback provided by you to ProphetStor with respect to the Software shall be ProphetStor’s property. ProphetStor may use, copy, modify, publish, or redistribute the submission and its contents for any purpose and in any way without any compensation to you. You also agree that ProphetStor does not waive any rights to use similar or related ideas previously known to ProphetStor, developed by its employees, or obtained from other sources.

3. PERMITTED USES.

I. If you received the Software on a stand-alone basis, you may:

A. use the Software on any supported computer configuration, provided that the Software is installed on only one such computer and accessed by one user at a time and you have complied with the terms under this EULA;

B. copy the Software or make adaptations for archival purposes or when copying or adaptation is an essential step in the authorized use of the Software, provided that any copy or adaptations must contain all of the original Software’s proprietary notices, legends, symbols or labels; and

C. if you have purchased multiple licenses, make copies of the Software up to the number of licenses purchased in the manner specified by ProphetStor, provided that such copy must contain all of the original Software’s proprietary notices, legends, symbols or labels. The number of copies is the total number of copies that may be made for all platforms.

II. If you purchased a ProphetStor Device on which the Software was pre-installed (an “Appliance”), you may use the Software solely on the Appliance, except that you may transfer the Software to a new Appliance if the Appliance is replaced pursuant to the hardware warranty provided by ProphetStor.

No matter whether you obtained the Software under I or II above, you may not, and you shall not permit others to, except as permitted under this EULA:
A. sell, assign, transfer, distribute, transmit, rent, lease, license, sub-license, host, outsource, disclose or otherwise commercially exploit the Software, use the Software to provide services to third parties, or make the Software available to any third party;

B. alter, modify, or adapt the Software, or any portion thereof, including, but not limited to, reverse engineering, translation, decompiling, disassembling, or creating derivative works (except to the extent applicable laws specifically prohibit such restriction for interoperability purposes, in which case you agree to first contact ProphetStor and provide ProphetStor an opportunity to create such changes as are needed for interoperability purposes);

C. attempt to circumvent or disable the Software or any technology features or measures in the Software, including without limitation any access controls or copyright protection mechanisms, by any means or in any manner;

D. remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels on the Software;

E. copy or use the Software or any portion thereof in any manner other than as permitted in this Section 3;

F. release the results of any performance or functional evaluation of any of the Software to any third party without prior written approval of ProphetStor for each such release; or

G. use the Software in any manner to aid in the violation of any third-party intellectual property rights, including without limitation copyrights, trademarks, trade secrets, and patents, or the applicable laws of any applicable jurisdictions, including without limitation libel, defamation, obscenity, and privacy-related torts.

4. AUTOMATIC SOFTWARE UPDATES.

You acknowledge that ProphetStor has no obligation to provide you with any Updates (as defined below) to the Software. ProphetStor may, however, from time to time develop patches, bug fixes, updates, upgrades and other modifications to improve the performance of the Software (“Updates”). These may be automatically installed without providing any additional notice or receiving any additional consent. You consent to such automatic Updates. If you do not want such Updates, your remedy is to stop using the Software. If you do not cease using the Software, you will receive Updates automatically. You acknowledge that you may be required to install Updates to use the Software and you agree to promptly install any Updates ProphetStor provides. Your continued use of the Software is your agreement to this EULA.

5. INFORMATION AUTOMATICALLY COLLECTED BY PROPHETSTOR.
The Software may contain automatic communications features which relay certain information to ProphetStor and its third-party data analytics providers in connection with the operation of the Software. For more information about how ProphetStor and its third-party data analytics providers collect and use information provided through the Software, please review the ProphetStor Privacy Policy located at http://www.prophetstor.com, which is incorporated into this EULA by reference. By agreeing to the terms of this EULA, you agree to the terms of the ProphetStor Privacy Policy. If you do not agree to the terms of the ProphetStor Privacy Policy, you should not use the Software.

6. REGISTRATION INFORMATION.

As part of any Software or ProphetStor Device registration process, ProphetStor may request registration-related information, including without limitation your name, e-mail address, username, or password. By providing this information, you consent to its collection and use by ProphetStor to provide non-promotional communications regarding any ProphetStor Device purchased with the Software, including notices of Update availability, product recalls, or safety concerns. ProphetStor’s use of information it collects from you in connection with the registration process, or that you otherwise provide to ProphetStor in connection with the Software or ProphetStor Devices, shall be governed by the ProphetStor Privacy Policy.

You agree you will maintain the confidentiality of your username and password and assume all responsibility due to any loss, theft, or other destruction of any data as the result of any access to your account via the use of your username and password.

7. USE OF NON-PROPHETSTOR DEVICES.

In some instances, the Software may operate with devices manufactured by entities other than ProphetStor (“Non-ProphetStor Devices”). You acknowledge and agree that ProphetStor makes no representations or warranties with respect to the quality or capability of any of these Non-ProphetStor Devices. You acknowledge that ProphetStor may offer support for some Non-ProphetStor Devices and not others; ProphetStor makes no guarantees that the Software is, will be, or will remain compatible with any applicable Non-ProphetStor Device.

8. THIRD PARTY CONTENT AND SERVICE PROVIDERS.

Your use of the Software may allow you to download and use third-party software or link to third-party content accessed through the Software (this third-party software and
content collectively, “Third-Party Content”). You acknowledge that all Third-Party Content is the property of the applicable Third-Party Content owners and may be protected by applicable copyright and other intellectual property rights. You may not use any Third-Party Content in any manner that has not been authorized by the applicable service provider (“Service Provider”) or Third-Party Content owner. You acknowledge that you may be required to enter into a separate agreement with a Service Provider or Third-Party Content owner, or comply with a Service Provider’s terms or conditions of use in order to access or have the right to access and use certain Third-Party Content. It is your responsibility to ensure that accessing, reproducing, displaying or otherwise using Third-Party Content in connection with your use of the Software does not infringe any third-party intellectual property rights.

9. WARRANTY DISCLAIMER.

THE SOFTWARE IS PROVIDED TO YOU “AS IS” WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROPHETSTOR, AND ITS LICENSORS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS OR LACK OF VIRUSES, AND ANY WARRANTIES REGARDING THE SECURITY, RELIABILITY OR TIMELINESS OF THE SOFTWARE. PROPHETSTOR DOES NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR BE ERROR-FREE. PROPHETSTOR DOES NOT WARRANT THAT USE OF THE SOFTWARE WILL BE CONTINUOUS OR UNINTERRUPTED AND PROPHETSTOR SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY INTERRUPTION OR CESSION OF TRANSMISSION TO OR FROM THE SOFTWARE. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SOFTWARE REMAINS WITH YOU. YOU UNDERSTAND AND AGREE THAT ANY SOFTWARE, MATERIAL, OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SOFTWARE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER, DEVICE, SYSTEM, OR NETWORK, INCLUDING WITHOUT LIMITATION ANY LOSS OR CORRUPTION OF DATA. THE FOREGOING WARRANTY DISCLAIMER SHALL NOT MODIFY, CONSTRUE, OR AMEND THE APPLICABLE WARRANTY THAT RELATES TO YOUR USE, IF APPLICABLE, OF PROPHETSTOR DEVICES.
PROPHETSTOR DOES NOT MAKE ANY REPRESENTATIONS ABOUT AND DISCLAIMS ALL WARRANTIES WITH RESPECT TO ANY THIRD-PARTY CONTENT, ANY NON-PROPHETSTOR DEVICE, OR THE ACTIONS OR OMISSIONS OF A SERVICE PROVIDER OR THIRD-PARTY CONTENT OWNER. PROPHETSTOR IS NOT RESPONSIBLE FOR EXAMINING OR EVALUATING THE CONTENT, ACCURACY, COMPLETENESS, TIMELINESS, VALIDITY, COPYRIGHT COMPLIANCE, LEGALITY, DECENCY, QUALITY, OR ANY OTHER ASPECT OF THIRD-PARTY CONTENT. PROPHETSTOR, ITS OFFICERS, AFFILIATES, AND SUBSIDIARIES DO NOT WARRANT OR ENDORSE AND DO NOT ASSUME AND WILL NOT HAVE ANY LIABILITY OR RESPONSIBILITY TO YOU OR ANY OTHER PERSON FOR ANY THIRD-PARTY CONTENT OR WEB SITES, OR FOR ANY OTHER MATERIALS, PRODUCTS, OR SERVICES OF THIRD PARTIES ACCESSED THROUGH THE SOFTWARE. TO THE EXTENT YOU CHOOSE TO USE OR ACCESS ANY THIRD-PARTY CONTENT THROUGH THE SOFTWARE, YOU DO SO AT YOUR OWN INITIATIVE AND ARE RESPONSIBLE FOR COMPLIANCE WITH ANY APPLICABLE LAWS, INCLUDING WITHOUT LIMITATION APPLICABLE LOCAL LAWS AND PRIVACY AND DATA COLLECTION LAWS.

10. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PROPHETSTOR OR ITS LICENSORS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, COMPUTER SYSTEM FAILURE, MALFUNCTION OR OTHER PECUNIARY LOSS RELATING TO OR ARISING OUT OF THIS EULA, THE USE OF OR INABILITY TO USE THE SOFTWARE, PROPHETSTOR DEVICES, ANY THIRD-PARTY CONTENT, OR ANY NON-PROPHETSTOR DEVICE, EVEN IF PROPHETSTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IN NO EVENT SHALL PROPHETSTOR’S TOTAL LIABILITY TO YOU FOR ALL DAMAGES IN CONNECTION WITH THIS EULA OR THE SOFTWARE EXCEED US$25. THIS LIMITATION WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE
MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

PROPHETSTOR IS NOT RESPONSIBLE OR LIABLE FOR ANY INFECTIONS OF, CONTAMINATION OF, OR DAMAGE TO YOUR SYSTEM, OR DELAYS, INACCURACIES, ERRORS OR OMISSIONS ARISING OUT OF OR RELATED TO YOUR USE OF THE SOFTWARE OR PROPHETSTOR DEVICES. THE SOFTWARE IS NOT INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, COMMUNICATIONS SYSTEMS OR AIR TRAFFIC CONTROL MACHINES OR ANY OTHER MACHINES IN WHICH CASE THE FAILURE OF THE SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

11. GEOGRAPHIC AND EXPORT RESTRICTIONS.

ProphetStor makes no representation that the Software is appropriate for use in your country of use. You acknowledge that no part of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported into (or to a national or resident of) any countries or regions subject to U.S. trade embargo (currently Iran, Cuba, Syria, North Korea, Sudan, and the region of Crimea), or anyone on any of the U.S. government’s Lists of Parties of Concern including, the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Commerce Department’s Denied Persons List and Entity List. By using the Software, you are agreeing to the foregoing, and are representing and warranting that you are not located in or under the control of a national or resident of any such country or on any such list and you agree that you will not use the Software in any activities directly or indirectly related to the proliferation of weapons of mass destruction, except as authorized under applicable laws and regulations. You further acknowledge and understand that certain functionality of the Software, such as encryption or authentication, may be subject to export and import restrictions and you are responsible for complying with all applicable restrictions and regulatory requirements.

12. FOR GOVERNMENT END USERS.

The Software is a “commercial item(s)” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software with only those rights set forth therein.
13. CONFIDENTIALITY.

“Confidential Information” shall mean the Software and all other information disclosed to you that ProphetStor characterizes as confidential at the time of its disclosure either in writing or orally, except for information which you can demonstrate: (a) is previously rightfully known to you without restriction on disclosure; (b) is or becomes, from no act or failure to act on your part, generally known in the relevant industry or public domain; (c) is disclosed to you by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by you without access to the Confidential Information. You shall use your best efforts to preserve and protect the confidentiality of the Confidential Information at all times, both during the term hereof and for a period of at least three (3) years after termination of this EULA, provided, however, that any source code you receive shall be held in confidence in perpetuity. You shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of ProphetStor. You shall not use any Confidential Information other than in the course of the activities permitted hereunder. You shall notify ProphetStor in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this EULA, and will cooperate with ProphetStor in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If you are legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, you will (i) immediately notify ProphetStor prior to such disclosure to allow ProphetStor an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with ProphetStor in protecting against any such disclosure and/or obtaining a protective order to narrow the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, you shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements.

14. INDEMNITY.

You hereby agree to indemnify, defend, and hold ProphetStor and its licensors harmless from and against any and all liabilities, damages, claims, fines, and expenses arising out of any breach of this EULA by you.

15. TERMINATION.

This EULA and the license granted hereunder automatically terminate without notice from ProphetStor if you fail to comply with any provision of this EULA, or any terms
and conditions associated with the sale of the Software. Upon termination of this EULA, the license granted hereunder shall terminate, you must immediately stop all use of the Software, and you agree to destroy all copies of the Software. You may terminate this EULA at any time by destroying all copies of the Software. Sections 2, 9, 10, 13, 14, 17 and 23 of this EULA, and any other provisions of this EULA that require or contemplate performance after the termination of this EULA, shall be enforceable notwithstanding termination of this EULA.

16. OPEN SOURCE SOFTWARE.

The Software licensed under this EULA may include “Open Source” software (computer software that is distributed under a licensing arrangement, which provides that the computer code can be shared, viewed, and modified by the public). The restrictions of Sections 1, 2, 3, 15, and 18 of this EULA only apply to any applicable Open Source software when and to the extent that they do not conflict with any terms of the Open Source software’s respective license(s). ProphetStor provides no support for the Open Source software.

17. GOVERNING LAW AND EXCLUSIVE VENUE FOR LITIGATION.

This EULA shall be interpreted and governed in accordance with the laws of the State of California, without reference to the conflict of laws provisions. You agree that any action, dispute or claim arising under or relating to this EULA, the Software or ProphetStor Devices shall lie within the exclusive jurisdiction of any State or Federal court located in Santa Clara County, California, and agree to submit yourself to the personal jurisdiction of such courts.

18. ASSIGNMENT.

Neither the rights nor the obligations arising under this EULA are assignable by you, and any such attempted assignment shall be void and without effect.

19. ENTIRE AGREEMENT AND SEVERABILITY.

This EULA constitutes the complete agreement concerning the license of the Software between you and ProphetStor and supersedes all prior or contemporaneous oral or written understandings.

If any provision of this EULA is held to be void or unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the
greatest extent possible under applicable law and the remaining provisions of this EULA will continue in full force and effect.

20. UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

This EULA shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

21. NO WAIVER AND INTERPRETATION.

All waivers by ProphetStor will be effective only if in writing. Any waiver or failure by ProphetStor to enforce any provision of this EULA on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA.

22. EXCUSED PERFORMANCE.

Neither party shall be in default or be liable for any delay, failure in performance (excepting the obligation to pay), or interruption of service resulting directly or indirectly from any cause beyond its reasonable control.

23. INJUNCTIVE RELIEF.

You acknowledge that the Software contains valuable trade secrets and proprietary information of ProphetStor, that any actual or threatened breach of Sections 3 and 13 of this EULA will constitute immediate, irreparable harm to ProphetStor for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach.

24. AMENDMENT.

ProphetStor reserves the right to make changes to this EULA. ProphetStor will provide notice of modifications to this EULA by prompting you to click the “I Accept” (or “Yes”) button or the “I Do Not Accept” (or “No”) button for such changes when you attempt to access or use the Software. You should ensure that you have read and agree with ProphetStor’s most recent EULA when you are prompted to click the “I Accept” (or “Yes”) button or the “I Do Not Accept” (or “No”) button for such changes. Clicking the “I Accept” or “Yes” button or continued use of the Software following notice of
such changes shall indicate your acknowledgment of such changes and agreement to be bound by the revised EULA.

25. SUPPORT.

For questions regarding the Software, please submit an email to ProphetStor’s customer support at support@ProphetStor.com.