



**PLEASE READ BEFORE INSTALLATION OR USE OF THE HYTRUST, INC. ("HyTrust") SOFTWARE YOU HAVE OBTAINED ("SOFTWARE").** BY CLICKING "I ACCEPT" OR INSTALLING OR IN ANY WAY USING THE SOFTWARE, THE ENTITY OR COMPANY THAT YOU REPRESENT ("LICENSEE") IS UNCONDITIONALLY CONSENTING TO BE BOUND BY AND IS BECOMING A PARTY TO THIS LICENSE AGREEMENT ("AGREEMENT") WITH HYTRUST. IF LICENSEE DOES NOT UNCONDITIONALLY AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, INSTALLATION OR USE THIS SOFTWARE IS STRICTLY PROHIBITED.

## **1. LICENSE GRANT**

Licensee is hereby granted, upon acceptance of the following terms and conditions, a limited, non-exclusive, non-transferable, revocable license (the "License") to install and use the Software for Licensee's internal, end-use purposes only, in the ordinary course of Licensee's business and only in accordance with the Software's documentation. Licensee may install and use the Software on the number of computers or virtual machines specified in an order confirmation or purchase order ("Order").

## **2. TERM AND TERMINATION**

The License shall commence on the purchase date of the Software and will remain in effect until the end of the subscription term specified in the Order or until terminated by HyTrust or Licensee.

The License shall terminate automatically without notice from HyTrust if Licensee fails to comply with any terms of this Agreement. Either Licensee or HyTrust may terminate the License at any time for any reason or no reason by providing the other party advance written notice thereof. Upon termination of the License, the rights and licenses granted to Licensee under this Agreement shall immediately terminate, and Licensee shall immediately cease using and will destroy the Software, any accompanying documentation, and all other tangible items in Licensee's possession or control that are proprietary to HyTrust or contain HyTrust confidential Information.

## **3. RESTRICTIONS ON GRANT**

Except as otherwise specifically permitted in this Agreement, Licensee may not: (a) modify or create any derivative works of any part of the Software or its documentation; (b) copy the Software except as permitted in this Agreement or elsewhere in writing by HyTrust; (c) sublicense use of the Software to any other party; (d) reverse engineer, decompile, or disassemble or otherwise attempt to derive the source code or inner workings of the Software; (e) redistribute, encumber, sell, rent, lease, use in a timesharing or service bureau arrangement, or otherwise transfer rights to the Software; (f) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels of the Software; or (g) publish to any third party this Agreement or portion thereof, or any results of benchmark tests, or evaluation of the Software, or comparison of the Software with other software, or any other test results run on the Software, without prior written consent from HyTrust; or (h) exceed the number of licenses purchased.

HyTrust reserves all rights and licenses not expressly granted to Licensee pursuant to this Agreement.

## **4. SUBSCRIPTION FEES**

By accepting this Agreement, Licensee agrees to pay HyTrust subscription fees in such amount specified in the Order. Except as otherwise specified herein or in an Order, payment obligations are non-cancelable and fees paid are non-refundable. By accepting this Agreement, Licensee accepts and acknowledges that no refund shall be available for the purchase of the Software. The subscription shall



automatically renew for additional periods of one year unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term.

In addition to all other fees, Licensee shall pay all taxes, fees, duties, licenses, tariffs and levies imposed regarding the Software, except for taxes on HyTrust's income.

## **5. HELP DESK SUPPORT**

Help Desk Support will be available during normal business hours between the hours of 8:00 a.m. and 5:00 p.m. Pacific Time, Monday through Friday via e-mail at [support@hytrust.com](mailto:support@hytrust.com).

## **6. PUBLICITY**

Licensee hereby grants HyTrust the right to use Licensee's name and logo in HyTrust's customer list, on HyTrust's website, and within HyTrust's marketing materials.

## **7. WARRANTIES**

**EVALUATION VERSION WARRANTY DISCLAIMER.** HyTrust provides the Evaluation version of the Software "AS IS" and without warranty of any kind, AND hereby disclaims all express or implied warranties, including without limitation warranties of merchantability, fitness for a particular purpose, performance accuracy, reliability and non-infringement. This disclaimer of warranty constitutes an essential part of this Agreement.

**NON EVALUATION VERSION WARRANTIES AND DISCLAIMER.** HyTrust warrants that the Software will perform in substantial accordance with the Documentation for a period of thirty (30) days from delivery of the Software (the "Warranty Period"). If the Software does not perform as warranted, HyTrust shall undertake to correct the Software, or if the correction of the Software is not reasonably possible, replace such Software free of charge with conforming software. If neither of the foregoing is commercially practicable, HyTrust shall terminate this Agreement with respect to the non-conforming Software and refund the monies paid by Licensee attributable to such non-conforming Software. The foregoing are Licensee's sole and exclusive remedies for breach of warranty. The warranty set forth above is made to and for the benefit of Licensee and will be enforceable against HyTrust only if: the Software has been used at all times in accordance with the instructions for such use; and Licensee has not made or caused to be made modifications, alterations or additions to the Software that cause it to deviate from the Documentation.

**EXCEPT FOR THE FOREGOING WARRANTIES, HYTRUST DOES NOT MAKE (AND HAS NOT AUTHORIZED ANYONE TO MAKE) ANY EXPRESS OR IMPLIED WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. HYTRUST HAS NOT AUTHORIZED ANYONE TO MAKE ANY REPRESENTATION OR WARRANTY OTHER THAN AS PROVIDED ABOVE.**

## **8. CONFIDENTIALITY**

Licensee agrees that the Software constitutes confidential proprietary information of HyTrust. Only a person who possesses a rightfully obtained License key is entitled to use the Software or to view the accompanying documentation. Licensee agrees not to transfer, copy, disclose, provide or otherwise make available such confidential information in any form to any third party without the prior written consent of HyTrust. Licensee agrees to implement reasonable security measures to protect such confidential information, but without limitation to the foregoing, shall use Licensee's best efforts to maintain the security of the Software. Licensee will cooperate with and assist HyTrust in identifying and preventing any unauthorized use, copying, or disclosure of the Software, or any portion thereof.



## **9. LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, SHALL HYTRUST OR ITS SUPPLIERS OR RESELLERS BE LIABLE TO LICENSEE OR ANY OTHER PERSON FOR ANY (I) INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, OR DAMAGES RESULTING FROM LICENSEE'S USE OF THE PRODUCT; (II) COST OF PROCUREMENT OF SUBSTITUTE GOODS OR TECHNOLOGY; OR (III) ANY MATTER BEYOND ITS REASONABLE CONTROL. NOTWITHSTANDING ANYTHING TO THE CONTRARY, HYTRUST'S LIABILITY FOR DAMAGES OF ANY KIND WHATSOEVER ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY LICENSEE HEREUNDER. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF HYTRUST HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

## **10. INDEMNIFICATION**

Licensee agrees that HyTrust shall have no liability whatsoever for any use Licensee makes of the Software. Licensee shall indemnify and hold harmless HyTrust from any claims, damages, liabilities, costs and fees (including reasonable attorney fees) arising from Licensee's use of the Software as well as from Licensee's failure to comply with any term of this Agreement.

## **11. INTERNATIONAL TRADE COMPLIANCE**

The Software and any related technical data made available for download under this Agreement are subject to the customs and export control laws and regulations of the United States (the "U.S.") and may also be subject to the customs and export laws and regulations of the country in which the download is contemplated. Further, under U.S. law, the Software and any related technical data made available for download under this Agreement may not be sold, leased or otherwise transferred to restricted countries, or used by a restricted end-user (as determined on any one of the U.S. government restricted parties lists, currently found at <http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>) or an end-user engaged in activities related to weapons of mass destruction including, without limitation, activities related to designing, developing, producing or using nuclear weapons, materials, or facilities, missiles or supporting missile projects, or chemical or biological weapons. Licensee represents that Licensee is not a citizen, national, or resident of, and is not under control of the governments of, Cuba, Iran, North Korea, Sudan or Syria; is not otherwise a restricted end-user as defined by U.S. export control laws; and is not engaged in proliferation activities. Further, Licensee acknowledges that Licensee will not download or otherwise export or re-export the Software or any related technical data directly or indirectly to the above-mentioned countries or to citizens, nationals, or residents of those countries, or to any other restricted end user or for any restricted end-use.

## **12. GENERAL**

This Agreement constitutes the entire agreement between HyTrust and Licensee relating to the Software to the exclusion of any pre-printed or contrary terms of any Licensee purchase order (or similar document), and supersedes all prior agreements and representations between them; provided, however, that if there is already a mutually signed agreement between HyTrust and Licensee (not including any Licensee purchase order or similar document) covering Licensee's license to use the Software, then the express terms of that signed agreement will govern to the extent they are expressly contrary to this Agreement. HyTrust reserves the right, in its sole discretion, to amend this Agreement from time to time. If there is a conflict between this Agreement and the most current version of this Agreement, then the most current Agreement will prevail. If Licensee does not accept amendments made to this Agreement, then the License will immediately terminate. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. The



failure of HyTrust to act with respect to a breach of this Agreement by Licensee or others does not constitute a waiver and shall not limit HyTrust's rights with respect to such breach or any subsequent breaches.

Licensee may not transfer or assign this Agreement or any rights under this Agreement without HyTrust's prior express written consent, and any attempt to assign, delegate or otherwise transfer any of your rights or obligations without HyTrust's consent shall be void.

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflict of laws principles. Unless waived by HyTrust in a particular instance, the sole and exclusive jurisdiction and venue for actions arising under this Agreement shall be the State and Federal courts in California and each party hereby consents to the jurisdiction of such courts for any such dispute. The party prevailing in any dispute under this Agreement shall be entitled to its costs and legal fees.

### **13. UNITED STATES GOVERNMENT RESTRICTED RIGHTS**

The Software and any related technical data are provided with restricted rights. Use, duplication, or disclosure by the U.S. government is subject to the restrictions as set forth in subparagraph (c)(1)(iii) of DFARS 252.227-7013 (The Rights in Technical Data and Computer Product) or subparagraphs (c)(1) and (2) of 48 CFR 52.227-19 (Commercial Computer Product – Restricted Rights), as applicable.