

# SkyNox User Subscription Agreement

## SkyNox End User Software License and Services Agreement

### Preamble

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### 1. The Software Product and Services

The subject of this license is the SKYNOX™ software product in which this license is the software product, in object code format, in which the license is embedded and/or which the END USER seeks to download and includes, without limitation, any related updates provided to END USER by EXONETWORX, (collectively, the "Software Product") and all services, including, without limitation, SKYNOX's online back-up service offering, SKYNOX remote desktop service offering and/or SKYNOX's server back-up service offering offered by EXONETWORX (collectively, the "Services"). In order to make use of the Software Product and/or Services, END USER must be using a systems environment supported by SKYNOX. The Software Product does not include bug fixes, error corrections, patches, new releases, or any other component not specified within this Agreement. END USER agrees that EXONETWORX (and/or its third party suppliers or contractors) shall be entitled to use any personal information to which EXONETWORX (and/or its third party suppliers or contractors) may have access pursuant to the transactions contemplated by this Agreement (including, without limitation, access which may be provided by END USER making use of the Software Product and the Services) in accordance with the terms of EXONETWORX's privacy policy which may be accessed here <http://www.exonetworkx.com/legal>. END USER acknowledges that this privacy policy may be updated from time to time and END USER agrees to obtain any consent required from individuals whose personal information may be accessed pursuant to the transactions contemplated by this Agreement in connection with the uses contemplated by this privacy policy. An END USER is responsible for obtaining access to the Services and for any third party fees incurred in connection with obtaining such access (e.g. Internet service provider fees) and for obtaining all equipment necessary to access the Services and/or make use of the Software Product.

As part of the online registration process, EXONETWORX will collect certain registration information about END USER. All such registration information provided by or on behalf of END USER must be current, complete and accurate, and END USER is solely responsible for updating such registration information as necessary. EXONETWORX reserves the right to terminate this Agreement immediately in the event any such registration information is found to be inaccurate, incomplete or not current at any time.

## **2. Software License Grant; Consent to Automatic Installation of Updates**

Upon the following terms and conditions including payment of any applicable fees:

1. EXONETWORX hereby grants to END USER and END USER hereby accepts from EXONETWORX, a non-exclusive, non-transferable and non-assignable license, for END USER's own internal, end-use purposes only (excluding the commercialization of information technology products and/or services), to install and use the Software Product on one or more computers licensed by END USER where such computers are owned or leased by END USER; and
2. END USER hereby subscribes for and EXONETWORX agrees to use commercially reasonable efforts to provide, the Services. END USER acknowledges that the Services may include the automatic provisioning of updates to the Software from time to time, as determined in EXONETWORX's sole discretion. END USER expressly consents to any and all actions taken by EXONETWORX or their third party suppliers with respect to the provision of such updates including any actions that directly affect END USER hardware or software.

## **3. Ownership and Intellectual Property Rights**

The Software Product and Services are protected by copyright, patent and other intellectual property laws and the Software Product and the Services are proprietary and confidential of EXONETWORX (and/or its third party suppliers). All rights, title and interest in and to the Software Product and Services (including associated intellectual property rights) are and will remain vested in EXONETWORX and/or its third party suppliers. These rights are protected by national and other laws and international treaties.

END USER acknowledges that:

1. it acquires no rights in the Software Product and Services, other than those rights expressly granted in this Agreement and
2. no rights, license or interest to any EXONETWORX trade-marks or trade names are granted hereunder.

## **4. License and Use Restrictions**

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- 2 upload, post, email, transmit, share, access and/or otherwise make available any Content that END USER does not have a right to make available under any law or under contractual or fiduciary relationship;
- 3 upload, post, email, transmit or otherwise make available any Content that infringes any copyright, trade-mark, trade secret or other intellectual property or proprietary rights of any third party;
- 4 upload, post, email, transmit or otherwise make available any Content that otherwise contravenes or violates applicable law. EXONETWORX does not pre-screen Content. However, EXONETWORX reserves the right, in its discretion, to refuse or move any Content that is available via the Services. END USER consents to EXONETWORX accessing, preserving, and disclosing END USER's account information and Content if required to do so by law or in the good faith belief that such access, preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce the terms of this Agreement; (c) respond to claims that any Content violates the rights of third-parties; or (d) respond to END USER's requests for customer service.

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END USER agrees to indemnify and hold EXONETWORX, its ExoNetworkx's and third party suppliers, directors, officers and employees, harmless from all claims, liabilities, damages, losses, including reasonable legal fees and expenses, due to or arising out of END USER's use of the Software Product and/or the Services or breach of this Agreement by the END USER and in connection with a claim or demand made by any third party due to or arising

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## 5. Payment of Fees

In consideration of the Services provided to END USER by EXONETWORX and END USER's use of the Software Product and/or Services, END USER agrees to pay EXONETWORX by authorized credit card the then applicable fees ("Fees"), together with all applicable taxes. EXONETWORX's pricing plan can be viewed here: <http://www.exonetworkx.com/skynox-online-backup>. END USER has thirty (30) days from the date that any discrepancy appears in END USER's statement or any invoice to notify EXONETWORX in order to receive an adjustment or credit, after which time, all Fees will be deemed correct. END USER may cancel END USER's subscription to the Services prior to the renewal period by providing EXONETWORX with five (5) days written notice by e-mail or letter. If END USER cancels the credit card provided to EXONETWORX or the card is otherwise terminated, END USER must immediately provide EXONETWORX with a new valid credit card number. END USER authorizes EXONETWORX, from time to time, to undertake steps to determine whether the credit card number provided to EXONETWORX is a valid credit card number. In the event that END USER does not provide EXONETWORX with a current valid credit card number with sufficient credit upon request, END USER will be in violation of this Agreement and will no longer be entitled to make use of the Service and/or the Software Product.

## 6. Term of Agreement

This Agreement shall be in effect from the time END USER installs the Software Product or accesses any of the Services and accepts the terms and conditions of this Agreement, and shall remain in effect for so long as the END USER has paid all applicable Fees for the Software Product and/or subscribes to the Services unless this Agreement is otherwise terminated. This Agreement will terminate upon the conditions set forth in this Agreement or if END USER fails to comply with any term or condition of this Agreement, including failure to pay any applicable Fees. In addition, EXONETWORX may terminate this Agreement without cause by providing END USER with thirty (30) days prior notice by e-mail. In addition, EXONETWORX reserves the right, in its discretion, to disable and/or

terminate an END USER's access to the Software Product and/or Services if it is advised of an END USER violating the terms and conditions of this Agreement (including, without limitation, any allegation that any Content violates the intellectual property rights of any third party). END USER agrees upon expiration or termination of this Agreement to immediately un-install the Software Product and destroy all copies of the Software Product in its possession and/or under its control. Upon the expiry or termination of this Agreement for any reason, EXONETWORX may, at its discretion, immediately purge END USER's data from its systems, including but not limited to, account information, users, settings, and any Content that may be stored by EXONETWORX.

## **7. Notice to U.S. Government End Users**

The Software Product is a "commercial item" 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 Product with only those rights set forth therein.

## **8. Disclaimer of Warranty**

THE SOFTWARE PRODUCT AND ALL SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED. USE OF THE SOFTWARE PRODUCT AND ALL SERVICES IS AT END USER'S OWN RISK. EXONETWORX AND ITS EXONETWORXS DO NOT WARRANT THAT THE SOFTWARE PRODUCT OR SERVICES WILL MEET THE END USER'S REQUIREMENTS OR THAT OPERATION OF THE SOFTWARE PRODUCT OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR SECURE OR ACCURATE OR COMPLETE OR CURRENT. WITHOUT LIMITATION, TO THE FULLEST EXTENT ALLOWABLE BY LAW, THIS DISCLAIMER EXTENDS TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES OR CONDITIONS ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

## **9. Limitation of Liability**

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EXONETWORX'S AGGREGATE LIABILITY AND THAT OF ITS EXONETWORXS AND THIRD PARTY SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO DIRECT MONEY DAMAGES NOT TO EXCEED THE TOTAL OF PRIOR PAYMENTS MADE BY END USER FOR THE SOFTWARE PRODUCT AND SERVICES IN RESPECT OF WHICH THE CLAIM IS MADE IN THE SIX MONTHS PRIOR TO THE ACT OR OMISSION GIVING RISE TO THE LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL EXONETWORX, ITS EXONETWORXS AND/OR ITS THIRD PARTY SUPPLIERS BE LIABLE UNDER ANY THEORY OF CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY OR OTHERWISE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, EVEN IF

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## 10. Additional Provisions for Beta Services

If any of the Services is identified as a beta version of such Service ("Beta Service"), the following additional provisions apply and supersede any provisions of this Agreement which contradict the provisions contained in this Section: (a) END USER acknowledges that the Beta Service is not at the level of performance and compatibility of a final, generally released product offering and may not operate properly, may contain "bugs", and may be substantially modified by EXONETWORX prior to commercial release; (b) END USER'S license to or ability to make use of such Beta Service expires upon availability of a commercial release of that Beta Service from EXONETWORX; (c) the Beta Service may only be used for testing and evaluation purposes and may not be redistributed; and (d) END USER agrees that such Beta Service is provided "as is, where is" without warranty or condition of any kind and EXONETWORX disclaims any liability obligations to END USER or any third party of any kind with respect to such Beta Service. END USER acknowledges that EXONETWORX has not made any representations, promises or guarantees that the Beta Service will ever be announced or made available to anyone in the future. END USER will be asked to provide feedback regarding the Beta Service and END USER hereby grants to EXONETWORX a perpetual, royalty-free worldwide license to use and/or incorporate such feedback into any EXONETWORX product or service (including the Beta Service) at any time at the sole discretion of EXONETWORX. END USER ACKNOWLEDGES AND AGREES THAT END USER WILL BE OBLIGATED TO PAY FEES FOR THE SERVICES FORMING THE BETA SERVICE ONCE A COMMERCIAL RELEASE OF THE BETA SERVICE IS MADE AVAILABLE BY EXONETWORX.

## 11. General Provisions

- a. **Survival.** The limitations of liability and ownership rights of EXONETWORX and its third party suppliers contained herein and END USER's confidentiality obligations and other obligations following termination of this Agreement shall survive the termination of this Agreement for any reason.
- b. **Amendment.** Except as otherwise provided for in this Agreement, no amendments or modifications may be made to this Agreement except in writing signed by both parties.
- c. **Severability.** If one or more provisions of this Agreement are found to be invalid or unenforceable, this Agreement shall not be rendered inoperative, rather the remaining provisions shall continue in full force and effect.
- d. **Conflicting Terms.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior communications.
- e. **Language.** The parties agree that this Agreement be drafted in English. Les parties ont convenu à ce que ce Contrat soit rédigé en anglais.
- f. **Governing Law.** This Agreement shall be governed by the laws of the Province of Ontario. The parties hereby agree to the non-exclusive jurisdiction of the courts of the Province of Ontario. The parties expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods and any state Uniform Computer Information Transactions Act or similar federal, provincial or state laws or regulations.
- g. **Headings.** The section headings used herein are for convenience of reference only and do not form part of this Agreement, and no construction or inference shall be derived therefrom.



- h. Force Majeure. Neither party shall be liable for any performance failure, delay in performance, or lost data under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are caused by any causes beyond that party's reasonable control, including, without limitation, failure of suppliers, subcontractors, and carriers.
- i. License to Use End User's Name/Logo. END USER hereby grants to EXONETWORX a non-exclusive, non-transferable, royalty-free license to use END USER'S name and/or logo on EXONETWORX's website for purposes of identifying END USER as a customer of EXONETWORX. END USER may at any time, by delivery of written notice to EXONETWORX, request that EXONETWORX remove END USER'S name and/or logo from EXONETWORX's website.
- j. Benefit of the Agreement. This Agreement is binding upon and shall enure to the benefit of both parties and their respective successors, heirs, executors, administrators, personal representatives and permitted assigns.

END OF END USER SOFTWARE LICENSE AND SERVICES AGREEMENT