

REDUXIO SYSTEMS INC.

END USER LICENSE AGREEMENT

This End User License Agreement (this "**Agreement**" or these "**Terms**") is by and between Licensee and Reduxio Systems Inc., a Delaware corporation, having its principal place of business at 111 Pine Avenue, South San Francisco, CA 94080 ("**Reduxio**") and is effective as of the first date Licensee installs, uses, or loads the hardware and/or software identified in this Agreement or any associated materials ("**Effective Date**").

1. General.

(a) **Scope.** These Terms are applicable to anyone who purchases and uses any product sold by Reduxio, or downloads and/or installs Reduxio Firmware or Software whether purchased from Reduxio or an authorized Reduxio reseller or lessor (each, an "**Authorized Reseller**") (as applicable) under a commercial agreement with Reduxio or an Authorized Reseller. Unless otherwise agreed to by Reduxio in writing, Reduxio does not extend this license if the Hardware, Firmware, or Software was obtained from anyone other than Reduxio, or an Authorized Reseller, and Reduxio reserves the right to take legal action against anyone else using or selling the Firmware or Software without a license.

(b) **Definitions.** The capitalized terms in this Agreement shall have the following meaning:

(i) "**Documentation**" means the documentation which is available on Reduxio's website for download and related to the Hardware and Software.

(ii) "**End User**" means a purchaser or recipient or user of Licensee's computer products who does not resell Licensee's products in the normal course of the End User's business.

(iii) "**Firmware**" means the programming code that is inserted into the programmable read-only memory of a computer system, thus becoming a permanent part of a particular computing device.

(iv) "**Hardware**" means the Reduxio Storage Array along with any related components.

(v) "**Licensee**" means the individual accepting these terms or, if the individual is accepting these terms on behalf of a legal entity (such as a corporation, partnership, agency, etc.), "Licensee" means the legal entity.

(vi) "**Software**" means any Reduxio software sold with the Hardware or purchased separately and designed to be used with the Reduxio Hardware.

2. License Grant.

(a) **Limited License.** Subject to payment of applicable fees and the terms and conditions of this Agreement, Reduxio grants a single, revocable, limited, non-sublicensable, non-exclusive, non-transferable license to use, within the scope of the applicable license model (i) Software obtained from Reduxio or a Reduxio Authorized Reseller, in object code format only, solely for Licensee's internal use in connection with the Product in which it is embedded or for which it is provided during the applicable term and only in accordance with the Documentation; and (ii) the then-current, generally available, written user manuals and online help and guides for Software provided by Reduxio for the sole purpose of supporting Licensee's use of Software (the "**License**"). All updates, enhancements (if so ordered by Licensee), and other bug fixes and modifications to the Software provided by Reduxio will be deemed part of the Software and licensed to Customer under these Terms.

(b) **Licensing Models.** Software is licensed for use only in accordance with the commercial terms and restrictions of the relevant licensing model, which is stated in the applicable quote, purchase order or purchase agreement. For example, the licensing model may provide that Software is licensed for use solely (i) for a certain number of licensing units; (ii) on or in connection with certain hardware, or a CPU, network or other hardware environment; and/or (iii) for a specified amount of storage capacity. Microcode, firmware or operating system software required to enable the hardware with which it is shipped to perform its basic functions, is licensed for use

solely on such hardware.

(c) Capacity License. In the event you purchased a capacity license, Reduxio grants the License subject to the indicated amount of maximum capacity.

(d) Software Release. Upon use of a Software Release (as defined below), Licensee shall remove and make no further use of all prior Software Releases and protect such prior Software Releases from disclosure or use by any third party. Licensee is authorized to retain a copy of each Software Release properly obtained by Licensee for Licensee's archive purposes and use such as a temporary back-up if the current Software Release becomes inoperable. Licensee shall use and deploy Software Releases strictly in accordance with terms of the original license for Software. "**Software Release**" means any subsequent version of Software provided by Reduxio after initial delivery of Software but does not mean a new item of Software.

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(a) To the extent permissible under applicable law, you agree not to:

(i) decompile, disassemble, or reverse engineer the Firmware or Software;

(ii) alter, modify or create any derivative works based on the Firmware or Software.

(iii) use, copy, sell, sublicense, lease, rent, loan, assign, convey or otherwise transfer the Firmware or Software except as expressly authorized by the Agreement with Reduxio;

(iv) distribute, disclose or allow use of the Firmware, Software or Documentation, in any format, through any timesharing service, service bureau, network or by any other means;

(v) allow any service provider or other third party, with the exception of Reduxio authorized resellers and their designated employees who are acting solely on behalf of and for the benefit of End User ("**Authorized Providers**"), to use or execute any software commands that cause the Software to perform functions that facilitate the maintenance or repair of any product except that a service provider or other third party may execute those software commands that, as designed by Reduxio, would operate if a user is logged into a product using a customer level login and maintenance software permissions were not enabled or activated;

(vi) gain access to or the use of any Software or part thereof without authorization from Reduxio;

(vii) enable or activate, or cause, permit or allow others to enable or activate any logins reserved for use by Reduxio or Authorized Providers; or permit or encourage any third party to do so; or

(viii) in the event you have a capacity license, use more capacity than indicated in your purchase order or otherwise mutually agreed to in writing by the parties.

(b) You shall provide Authorized Providers the terms and provisions of this Agreement and shall obligate Authorized Providers to comply with such terms and provisions. End User shall be responsible for any Authorized Provider's failure to comply and shall indemnify Reduxio for any damages, loss, expenses or costs, including attorneys' fees and costs of suit, incurred by Reduxio as a result of non-compliance with this section. Notwithstanding the foregoing, if the Software is rightfully located in a member state of the European Union and End User needs information about the Software in order to achieve interoperability of an independently created software program with the Software, End User will first request such information from Reduxio. Reduxio may charge End User a reasonable fee for the provision of such information.

5. Backup Copies. End User may create a reasonable number of archival and backup copies of the Firmware, Software and the Documentation, provided all proprietary rights notices, names and logos of Reduxio and its suppliers are duplicated on each copy.

6. Warranties.

(a) **Hardware Warranty.** Reduxio grants to you the Warranty for the Hardware described in the General Terms and Conditions, subject to the limitations on the warranty set forth therein.

(b) **Software Warranty.** Reduxio Systems warrants that (a) the initially shipped version of the Software will materially conform to the Documentation; and (b) the Software media will be free from physical defects, for a period of ninety (90) days from the date of delivery or such other minimum period required under applicable law ("**Software Warranty Period**"). Reduxio Systems does not warrant that Buyer's use of the Software will be error-free or uninterrupted. In the event of any material nonconformity in the Software during the Software Warranty Period that is reproducible and verifiable, Reduxio Systems will, at its sole discretion and expense, either (a) repair or replace the Software, with any shipments to Buyer to be at Reduxio Systems' expense within 30 business days of Reduxio Systems verifying the non-conformance, or (b) refund the amounts received by Reduxio Systems for the non-conforming Software.

(c) **Limitations.** Reduxio Systems will not be liable under this warranty for claims arising from Buyer's, Buyer's subcontractor's, or any unauthorized third person's misuse, neglect, improper installation or testing, attempts to repair, or any other cause beyond the range of the intended use. The Hardware warranty will become void as provided in the General Terms and Conditions. The Software warranty under Section 6(b) will become void if the Software is modified or otherwise used in violation of the Software license terms set forth in this Agreement, except as authorized in writing by Reduxio Systems. Buyer acknowledges that the product purchased by Buyer under this Agreement may contain, be contained in, incorporated into, attached to or packaged together with products manufactured by a third party ("**Third-Party Products**"). Third-Party Products and any services provided by persons other than Reduxio Systems are not covered by the warranties in Section 6(a) or Section 6(b) of this Agreement. For the avoidance of doubt, Reduxio Systems makes no representations or warranties with respect to any Third-Party Products.

(d) **Exclusive Warranties.** EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN Section 6(a) or Section 6(b) ABOVE, REDUXIO SYSTEMS PROVIDES THE PRODUCTS, INCLUDING THE SOFTWARE, DOCUMENTATION, "AS IS" WITHOUT WARRANTIES OF ANY KIND. WITHOUT LIMITING THE FOREGOING, REDUXIO SYSTEMS MAKES NO WARRANTY WHATSOEVER WITH

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7. Compliance. Reduxio will have the right to audit End User's compliance with these Terms (e.g., to determine compliance with capacity limit), including providing reasonable access to appropriate personnel, records, network resources, and maintenance logs. You agree to give Reduxio an audit right to determine compliance with your capacity limit and to cooperate with such an audit. If an audit cannot reasonably be conducted electronically, Reduxio or its representative shall have the right every six months to make a compliance audit at your facilities, upon reasonable advance notice and during regular business hours. Any information obtained during the course of a compliance audit shall be used by Reduxio solely for enforcement of Reduxio's rights under this EULA and applicable law. Reduxio shall keep all information obtained during any such compliance audit confidential and treat it with at least the same degree of care as the Reduxio would protect its own confidential information, but in no event with less than a commercially reasonable degree of care.

8. Termination of License. If Licensee breaches these Terms or the General Terms and Conditions, Reduxio may, with immediate

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11. Protection of Confidential Software and Documentation. End User acknowledges that the Firmware, Software and Documentation are regarded as confidential information by Reduxio and its suppliers, ("**Confidential Information**"). End User agrees at all times to protect and preserve in strict confidence the Firmware, Software and Documentation and comply with the Confidentiality provisions on the General Terms and Conditions.

12. Protection of Personal Data. The use of the Firmware or Software may require the processing of personal data pertaining to you or to your personnel. You or your personnel have a right to access and correct erroneous personal data pertaining to you or your personnel and to object for legitimate reasons to the processing and transfer of these data. You can exercise this right by contacting in writing the Data Privacy Officer of the applicable Reduxio Affiliate.

13. High Risk Activities. The Firmware or Software is not fault-tolerant and is not designed, manufactured or intended for any use in any environment that requires failsafe performance in which the failure of the Firmware or Software could lead to death, personal injury or significant property damage ("**High Risk Activities**"). Such environments include, among others, control systems in a nuclear, chemical, biological or other hazardous facility, aircraft navigation and communications, air traffic control, and life support systems in a healthcare facility. End User assumes the risks for its use of the Firmware and Software in any such High Risk Activities.

14. Government End Users. The Firmware and Software are classified as "commercial computer software" and the Documentation is classified as "commercial software documentation" or "commercial items". Any use, modification, reproduction, release, performance, display or disclosure of the Software or Documentation shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

15. Acknowledgement. End User acknowledges that certain Software may contain programming that:

(i) Restricts, limits and/or disables access to certain features, functionality or capacity of such Software subject to the End User making payment for licenses to such features, functionality or capacity; or

(ii) Periodically deletes or archives data generated by

use of the Software and stored on the applicable storage device if not backed up on an alternative storage medium after a certain period of time.

16. Miscellaneous Terms.

(a) Waiver and Severability. If either Party fails to enforce at any time any of the provisions of this Agreement, or to exercise any election of options provided in this Agreement, that failure will not constitute a waiver of that provision or option, or affect the validity of this Agreement or any part of this Agreement, or the right of the waiving Party to enforce subsequently each and every provision. If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement will continue in full force and effect.

(b) Governing Law. Any claim arising under or relating to this Agreement, will be governed by the laws of the State of California, excluding its conflicts of laws provisions. This Agreement is prepared and executed and will be interpreted in the English language only, and no translation of the Agreement into another language will have any effect. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from and will not apply to this Agreement.

(c) Jurisdiction. The state and federal courts located in the County of San Francisco, State of California will have exclusive jurisdiction of all disputes and litigation arising out of or related to this Agreement including, without limitation, matters connected with its performance. Each Party irrevocably submits to the personal jurisdiction of those courts and irrevocably waives all objections to such venue.

(d) Notices. Any notices permitted or required under this Agreement shall be in writing, and shall be deemed given when delivered (i) in person, (ii) by overnight courier, upon written confirmation of receipt, (iii) five days after deposit by certified or registered mail, with proof of delivery, (iv) by facsimile transmission with confirmation of receipt, or (v) by email, with confirmation of receipt (except for routine business communications issued by Reduxio, which shall not require your confirmation) addressed to you as provided in your purchase order (unless otherwise updated in writing to Reduxio) and to Reduxio at the address listed above.

(e) No Sublicensing, Assignment or Transfer. Licensee

may not delegate, assign or transfer this Agreement, or any of the rights and obligations under this Agreement without the prior written consent of Reduxio. This Agreement will bind and inure to the benefit of the Parties and their permitted successors and assigns.

(f) Affiliates. Licensee agrees that this Agreement binds Licensee and all of its affiliates and the employees, agents, representatives and persons associated with any of them.

(g) Entire Agreement. This Agreement, the End User Agreements, along with any purchase terms and conditions, attachments, exhibits, appendix and non disclosure agreement(s) contain the complete and exclusive statement of the agreement between the parties and supersede all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

(h) Amendments. Reduxio may revise and update this Agreement from time to time in our sole discretion. All changes are effective immediately when we post them, and apply to all access to and use of the Software thereafter. Your continued use of the Software following the posting of an updated version of this Agreement means that you accept and agree to the changes. If you do not agree to a change, you must stop using the Software and terminate this Agreement. You agree that posting an updated version date at www.reduxio.com/legal/ is adequate notice to advise you of these changes.

(i) Export Control. The export restrictions described in the General Terms and Conditions are incorporated by reference into this Agreement.

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