

**REDUXIO SYSTEMS INC.**

**GENERAL TERMS AND CONDITIONS**

Reduxio, Inc., located at 111 Pine Avenue, South San Francisco, CA 94080 ("**Reduxio**" or "**Reduxio Storage**"), is willing, either directly or indirectly through an authorized reseller or lessor, to sell or lease Products and license Software to you ("**you**" or "**Customer**") under these General Terms and Conditions, including its standard End User License Agreement ("**EULA**") located on the Reduxio Website and incorporated herein by reference (the "**Terms**") and only upon the condition that you accept all of these Terms. By clicking on the "I accept" button or by installing or using the Products, Software or Support Services, you indicate that you understand and agree to all of these Terms. If you are entering into these Terms on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these Terms, in which case "Customer" shall refer to such entity. If you do not agree to these Terms, you may not install or use the Products, Software or any Support Services. A copy of these Terms is available at [www.reduxio.com/legal](http://www.reduxio.com/legal).

It is important to note that all Purchase Orders and invoices under these Terms will be subject only to these Terms. As described further below, in the event the terms of any such Purchase Order, invoice or any confirmation or similar document conflict with or are additional to these Terms, these Terms alone shall apply and shall govern regardless of execution of such document by one or both parties.

**1. DEFINITIONS.**

"**Ancillary Software**" means any software that is provided by Reduxio for use in conjunction with the Product on a standalone basis and not as pre-installed on, embedded in, or incorporated into the Hardware components of a Product and governed by the EULA.

"**Business Day**" means any day other than Saturday, Sunday, or a statutory holiday observed by Reduxio.

"**Customer Technical Personnel**" means any of the employees of Customer who are designated by Customer to serve as customer service contacts for Reduxio.

**"Documentation"** means the Product end user documentation furnished by Reduxio to users.

**"Embedded Software"** means any software that is provided by Reduxio pre-installed on, embedded in, or incorporated into the Hardware components of a Product and subject to the EULA.

**"Enhancement"** means a change or modification to a Product that adds new and distinct functionality to such Product and that is generally made available by Reduxio to end user customers for an additional fee, or as may be applicable, to end user customers contracted to receive Support Services for the time period during which the Enhancement is made generally available.

**"Error"** means a material failure of the Product to operate substantially in accordance with the Documentation that Reduxio is able to replicate in its test environment. Any condition that is described as a warranty exclusion under Section 4 will not be deemed an Error.

**"Hardware"** means the new or like new hardware incorporated into a Product.

**"Purchase Order"** means a written, faxed, or emailed purchase order issued to Reduxio for the purchase (or, to the extent applicable to Software, license) of Products and/or Support Services.

**"Product(s)"** means the Reduxio product(s) described in the Quotation hereto or other order documentation provided by Reduxio, including the Hardware and Software components thereof.

**"Quotation"** means a sales quotation issued by Reduxio or Reseller that specifies the Products and/or Support Services available for purchase (or, to the extent applicable to Software, license) by Customer.

**"Reseller"** means an entity that has entered into and maintains a valid reseller or lessor agreement with Reduxio and who is authorized to resell Products and/or Support Services to Customer subject to these Terms.

**"Software"** means the Ancillary Software and the Embedded Software, as well as any Updates thereto, which Software is governed by the EULA.

**"Support Services"** means the maintenance and support services for the Products offered by Reduxio, as described in Section 5 of these Terms.

**"Update"** means error corrections, patches, improvements, and modifications to the Software made generally available by Reduxio, at Reduxio's discretion, and at no additional fee (other than shipping charges) to its end user customers. Updates shall not include any releases, Enhancements, versions, options, or future products that Reduxio provides for an additional fee or upon the condition of customer being under contract to receive Support Services.

## **2. ORDERS; DELIVERY.**

Products and Support Services may be ordered from Reduxio through Customer's appointed Reseller. All orders (including without limitation in response to a Quotation and any Purchase Orders) shall be subject to acceptance by Reduxio. Reduxio may accept or reject orders at its discretion. Customer acknowledges and agrees that payment and delivery terms for each accepted order will be subject to terms and conditions as between Customer and Reseller. All Products will be deemed to be irrevocably and unconditionally accepted by Customer upon delivery (as may be defined in a separate purchase agreement with Reduxio) or download, as applicable, with no Customer right of return provided, however, that the foregoing shall in no way limit Reduxio's warranty obligations as set forth under Section 4 below.

**3. LICENSE RIGHTS.** Reduxio grants to Customer the rights to the Software as described in the EULA and the type of license as set forth in the Purchase Order for the Product.

## **4. WARRANTY**

**4.1. Hardware.** Reduxio warrants that the Hardware will materially conform to the technical documentation describing the features and functions of the associated Product for a period of thirty-six (36) months from the date of delivery ("**Hardware Warranty Period**") except for rack kits, connectivity kits, and cables. Reduxio warrants that the rack kits, connectivity kits, and cables will materially conform to the technical documentation describing the features and functions described in the technical documentation for a period of twelve (12) months from the date of delivery ("**Kits and Cables Warranty Period**"). In the event of any material nonconformity in the Hardware, rack kits, connectivity kits and cables, during the specified warranty period that is reproducible and verifiable, Reduxio will, at its sole discretion and expense, (a) repair or replace with new or refurbished Hardware, rack kits, connectivity kits or cables, with Reduxio to ship such parts to Customer at Reduxio's expense within 45 business days of Reduxio verifying the non-conformance, or (b)

refund the amounts received by Reduxio for the non-conforming Hardware, rack kits, connectivity kits or cables. Replacement parts will be warranted for the remainder of the Hardware Warranty Period or Kits and Cables Warranty Period, as may be applicable, in effect for the original Hardware purchased, unless otherwise mandated by applicable law. Notwithstanding any other provision of the Agreement, this Section 4.1 contains the exclusive remedy for any material nonconformity in the Hardware, rack kits, connectivity kits and cables. The remedies under this Section 4.1 are conditioned upon Customer's compliance with its obligations under Section 4.3 below.

**4.2. Software.** Reduxio grants to Customer the Warranty for the Software described in the EULA.

**4.3. Limitation.** Reduxio will not be liable under this warranty for claims arising from Customer's, Customer'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 under Section 4.1 will become void if a Hardware component is installed as an add-on to or replacement for the original Hardware, without Reduxio's prior written approval. The Software warranty will become void as described in the EULA. Customer acknowledges that the product purchased by Customer 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 are not covered by the warranties in Section 4 of this Agreement. For the avoidance of doubt, Reduxio makes no representations or warranties with respect to any Third-Party Products.

**4.4. Disclaimer.** EXCEPT AS OTHERWISE SET FORTH IN SECTION 4 ("**WARRANTIES**"), (1) REDUXIO SYSTEMS PROVIDES THE PRODUCTS, INCLUDING THE SOFTWARE, DOCUMENTATION, AND SUPPORT SERVICES, "AS IS" WITHOUT WARRANTIES OF ANY KIND, AND (2) REDUXIO SYSTEMS DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND RELATING TO PRODUCTS, SOFTWARE OR SERVICES PROVIDED HEREUNDER, WHETHER EXPRESS, IMPLIED, STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF THIRD PARTY RIGHTS. REDUXIO SYSTEMS DOES NOT WARRANT THAT THE SOFTWARE WILL IN EVERY CASE PROCESS ALL DATA CORRECTLY, OR THAT OPERATION OF THE PRODUCTS, INCLUDING SOFTWARE, WILL BE UNINTERRUPTED, FREE FROM ERROR, OR SECURE. BOTH PARTIES ACKNOWLEDGE THAT THEY HAVE NOT ENTERED INTO THESE TERMS IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION

EXCEPT AS PROVIDED IN THIS SECTION 4. THE DISCLAIMERS IN THIS SECTION 4.4 WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. WITHOUT LIMITING THE FOREGOING, TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON THE DURATION OF IMPLIED WARRANTIES, THE ABOVE LIMITATION MAY NOT APPLY. THIS LIMITED WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR FROM JURISDICTION TO JURISDICTION. THE PRODUCTS ARE NOT DESIGNED, INTENDED, OR CERTIFIED FOR USE IN COMPONENTS OF SYSTEMS INTENDED FOR THE OPERATION OF WEAPONS, WEAPONS SYSTEMS, NUCLEAR INSTALLATIONS, MEANS OF MASS TRANSPORTATION, AVIATION, MEDICAL SYSTEMS, DEVICES, IMPLANTS, OR EQUIPMENT, POLLUTION CONTROL, HAZARDOUS SUBSTANCES MANAGEMENT, OR FOR ANY OTHER DANGEROUS APPLICATION IN WHICH THE FAILURE OF THE PRODUCTS COULD CREATE A SITUATION WHERE BODILY INJURY OR DEATH MAY OCCUR. CUSTOMER UNDERSTANDS THAT USE OF THE PRODUCTS IN ANY SUCH APPLICATION IS SOLELY AT CUSTOMER'S RISK.

## **5. MAINTENANCE AND SUPPORT.**

**5.1. Fees.** Subject to Customer's payment of the applicable purchase price for the Support Services, Reduxio will provide the Support Services to Customer for the support term determined in accordance with Section 5.2. In the event that Customer fails to pay for Support Services on a timely basis, then without limiting Reduxio's other rights and remedies, Reduxio reserves the right to immediately suspend or discontinue Support Services.

**5.2. Support Term; Termination.** The term of the Support Services will commence on the Support Services effective date specified in the Quotation and will continue for a period of three (3) years or as otherwise specified in the Quotation or applicable order documentation, unless earlier terminated in accordance with the Terms. The term of the Support Services will automatically terminate upon the termination or expiration of these Terms. Upon the termination or expiration of Support Services for any reason, Reduxio will have no further obligation to provide Support Services (or other services) for the Products.

**5.3. Lapsed Support.** For a period of one (1) year after any lapse of Support Services, Customer may request to reinstate such Support Services for such Products upon the terms set forth in these Terms; provided, however, that (a) such Support Services for the applicable Product have not been discontinued by Reduxio; (b) these Terms are otherwise still in effect; (c)

Customer provides Reduxio, upon request, reasonable access to the Products for the purpose of ascertaining that the Products are in satisfactory condition; and (d) Customer pays to Reduxio (i) an amount equal to all of the fees that would have been due had the Support Services been provided under these Terms during the entire period of such lapse and the fees for the renewed term, and (ii) a reinstatement fee equal to twenty-five percent (25%) of Reduxio's then-current list price for three (3) years of Support Services. Notwithstanding the foregoing, Reduxio will have the right to deny reinstatement of Support Services, in Reduxio's sole discretion.

**5.4. Support Services.** Unless Customer orders Support Services as specified on a Quotation or applicable order documentation and pays the applicable purchase price therefor, Reduxio will have no obligation to provide any Support Services. If Customer orders first line Support Services or other special support services, those services will be provided by additional terms and conditions are provided in that order documentation. On condition that Customer has paid the applicable purchase price for the Support Services, Reduxio will provide the following Support Services to Customer pursuant to these Terms:

**(a) Helpdesk Support.** Reduxio will provide telephone and e-mail support for the users of its Products, with such level of support to be based on the Support Services purchased by the end users. Such support will be provided solely to Customer Technical Personnel, and will consist of answering questions regarding the proper operation of the Products, providing troubleshooting assistance, and rendering general information, advice, and instructions in connection with the use of the Products. Customer will be responsible for providing first-line helpdesk support for individual end- users of the Products, and Customer will be responsible for screening first-line technical inquiries and escalating to Reduxio only those issues that cannot be resolved by the Customer Technical Personnel. Reduxio will have no obligation to accept calls or messages directly from, or otherwise interact directly with, personnel other than the Customer Technical Personnel. The number of Customer Technical Personnel will not exceed the limit set forth on the Quotation or applicable order documentation and, if no number is specified therein, then the number will not exceed three (3). Reduxio will also provide a user account to Customer for online access to Reduxio's online support portal.

**(b) Errors.** Reduxio will use commercially reasonable efforts to respond to each reported Error. Such response may take the form of Updates, procedural solutions, correction of

Documentation errors, Hardware replacement, or other remedial measures as Reduxio may determine, in Reduxio's sole discretion, to be appropriate. If Reduxio determines, in its reasonable discretion, that a Hardware component contains an Error, Reduxio will respond within the timeframes specified in the Reduxio Support Services Offering Overview document depending on the level of support purchased by Customer. Reduxio will use commercially reasonable efforts to issue an RMA number and deliver a replacement for such component to Customer within the timeframe specified by the level of support purchased by the Customer. Customer is responsible for providing to Reduxio Customer's current and correct contact information, including shipping address and name and phone number of a key contact at the applicable location. The response times described in the Reduxio Support Services Offering Overview document will not be applicable if Customer has moved the Product to a different location than that specified on the Purchase Order applicable to such Product and accordingly, Reduxio, in its sole discretion, is unable to provide such response time, in which event, Reduxio will use commercially reasonable efforts to respond within a reasonable timeframe. Customer acknowledges that for timely response and attempted resolution by Reduxio, the applicable Product must have enabled access to StorSense®, as well as external network access from the Products, enabling Reduxio's support team to have WebEx/support tunnel access. Customer's inability or unwillingness to do the foregoing will materially impair Reduxio's ability to provide support services on a timely basis, if at all. Customer will be responsible for shipping any replaced component(s) to Reduxio within ten (10) Business Days after receipt of the replacement in accordance with Reduxio's then-current RMA guidelines. Customer shall pay Reduxio the cost to Reduxio of the replacement component, if (i) Customer fails to return the replaced component to Reduxio in accordance with this subsection (b), or (ii) Reduxio determines, in its reasonable discretion, after failure analysis of the replaced component that such component is an Ineligible Product (or, as applicable, an Ineligible Product component, or an "Ineligible Component"). Replacement Hardware may be refurbished and/or different models, but will be functionally equivalent to the Hardware being replaced. All returned or replaced Hardware components will become Reduxio's property. Reduxio will bear all costs of shipping related to the replacement of a component under this Section 5.4(b), except with respect to any Ineligible Component, for which Customer will bear all shipping costs for the delivery of the replacement to Customer and the delivery of the Ineligible Component to Reduxio. Customer acknowledges and agrees that the resolution of certain Errors may require Customer to upgrade to a certain Software release.

(c) **Additional Support.** If Customer desires support other than that specified under these Terms, Reduxio may choose to offer such support on a time and materials basis at Reduxio's then-current fees.

(d) **Updates.** Customer will be entitled to obtain and use all Updates that are generally released during the term of these Terms to customers. Reduxio may make such Updates available to Customer through electronic download or on optical, magnetic, or other removable media. Certain Updates may require the use of new or upgraded Hardware. Such Hardware is not included under the Support Services and must be purchased separately. Reduxio will have no obligation under these Terms to furnish any Enhancements to Customer. Any Enhancements that may be supplied to Customer by Reduxio will be subject to separate terms and conditions, including additional fees, or as provided under Customer's Support Services contract. The provision of any Update to Customer will not operate to extend the original warranty period on the Products. All Updates, Enhancements, 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.

(e) **Support Lifecycle.** In its discretion, Reduxio may provide different levels of support depending on where a Product is in its lifecycle. In some cases, the Support Services contract may indicate how the Support Services relates to Reduxio's product lifecycles. In other cases, information on Reduxio's product lifecycles and related Support Services may be set forth in a written Reduxio policy, a copy of which may be provided to Customer upon request. Reduxio reserves the right to update or amend its policies from time to time.

(f) **Independent Contractor.** Reduxio is performing Support Services as an independent contractor, and not as an employee, agent, joint venturer or partner of Customer, and neither of the parties has the authority to bind the other by contract or otherwise. Reduxio acknowledges and agrees that Reduxio personnel are not eligible for or entitled to receive any compensation, benefits or other incidents of employment that Customer makes available to its employees. Reduxio is solely responsible for all taxes, expenses, withholdings, and other similar statutory obligations arising out of the relationship between Reduxio and Reduxio personnel and the performance of Support Services by Reduxio personnel.

## 5.5. Customer Responsibilities



**(a) Responsibilities.** As a condition to all of Reduxio's obligations under this Section 5, Customer will provide the following:

(i) Customer will ensure that all of its personnel who use the Products in the course of their employment are familiar with the Products to the extent necessary for them to operate the Products as necessary to perform their duties with reasonable competence. Without limiting the generality of the foregoing, at Customer's expense, Customer will cause all Customer Technical Personnel to complete such Product-related training and instruction as Reduxio may reasonably require from time to time. Upon the appointment of any new Customer Technical Personnel, Customer will take reasonable steps to expeditiously train the new individual to appropriate standards of technical competence. Customer will cooperate with Reduxio to the extent that such cooperation would facilitate Reduxio's provision of Support Services hereunder. By way of example, but not limitation, Customer acknowledges that Support Services are not a substitute for proper training on the Products.

(ii) Without limiting the foregoing, Customer will (a) provide Reduxio, at its request, with reasonable access to appropriate personnel, records, network resources, and maintenance logs; and (b) comply with Reduxio's instructions regarding the use and operation of the Products.

(iii) Customer agrees and acknowledges that Reduxio's obligations under these Terms are limited to the Products, and that Reduxio is not responsible for the operation and general maintenance of Customer's computing environment. Without limiting the foregoing, Customer will keep a detailed operations log for the Products and will document any Errors that arise. Customer will also be responsible for activities related to data backup, and Customer will ensure that all necessary data backup functions have been performed. Reduxio will not be responsible for any losses or liabilities arising in connection with any failure of data backup processes.

(iv) Customer will comply with all export laws and regulations of the applicable law, including without limitation of the U.S. Department of Commerce, the U.S. Department of Treasury Office of Foreign Assets Control, or other U.S. or foreign agency or authority, and Customer will not export, or allow the export or re-export of any Product in violation of any such laws or regulations. By installing or using any Product, Customer agrees to the foregoing and represents and warrants that Customer is not located in, under

the control of, or a national or resident of any restricted country.

(v) **Regular Back-Ups**. As part of its obligation to mitigate any potential damages, Customer shall take reasonable data back-up measures. In particular, Customer shall back-up the relevant data before Reduxio performs any remedial, upgrade, new Software Release or other works on Customer 's production systems. If to any extent Reduxio's liability for loss of data is not excluded under this Agreement or any other Reduxio agreement, Reduxio shall in case of data losses only be liable for reasonable efforts to recover such data which would have accrued if Licensee had appropriately backed up its data.

(b) **Exclusions**. Notwithstanding anything to the contrary in these Terms, Reduxio will have no obligation to provide any Support Services to Customer to the extent that such Support Services arise from or relate to any conditions that are listed as warranty exclusions in Section 4.

**6. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL REDUXIO SYSTEMS BE LIABLE FOR (A) ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, OR INCIDENTAL DAMAGES, OR (B) ANY DAMAGES FOR LOST DATA, LOST PROFITS, LOST ANTICIPATED SAVINGS, OR THE COST OF PROCUREMENT OF SUBSTITUTE OR ALTERNATIVE HARDWARE, SOFTWARE OR SERVICES, IN EITHER EVENT ARISING FROM OR RELATING TO THESE TERMS, THE PRODUCTS, THE SOFTWARE OR THE SUPPORT SERVICES, EVEN IF REDUXIO KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. REDUXIO'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THESE TERMS, THE PRODUCTS, THE SOFTWARE OR THE SUPPORT SERVICES, WHETHER IN CONTRACT, WARRANTY, INDEMNIFICATION, TORT, STATUTE, OR OTHERWISE, SHALL NOT EXCEED THE FEES PAID BY CUSTOMER HEREUNDER FOR THE PRODUCT OR SERVICE AT ISSUE. THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM. CUSTOMER ACKNOWLEDGES THAT THE PURCHASE PRICE REPRESENTS THE ALLOCATION OF RISK SET FORTH IN THESE TERMS, AND THAT IN THE ABSENCE OF THESE LIMITATIONS ON REDUXIO'S LIABILITY, THE PURCHASE PRICE WOULD BE SUBSTANTIALLY DIFFERENT. REDUXIO DISCLAIMS ANY AND ALL LIABILITY ON BEHALF OF REDUXIO'S SUPPLIERS AND LICENSORS. REDUXIO DOES NOT LIMIT OR EXCLUDE ANY LIABILITY TO THE EXTENT THAT IT CANNOT BE LIMITED OR EXCLUDED BY APPLICABLE LAW.

**7. INDEMNIFICATION.** If any Software becomes, or in Reduxio's opinion is likely to become, the subject of an infringement claim, Reduxio may, at its option and expense, either (i) procure

for Customer the right to continue using the Software, (ii) replace or modify the Software so that it becomes non-infringing, or (iii) accept return of (1) the Product incorporating the affected Software and effect a refund to Customer the fees actually paid by Customer for the affected Products less a reasonable amount for depreciation thereof, in which case Customer's right to use such Software will be terminated, or (2) the affected Ancillary Software and terminate Customer's right to use such Ancillary Software. Notwithstanding the foregoing, Reduxio will have no obligation under this Section 7 or otherwise with respect to any infringement claim based upon (i) any use of the Software not in accordance with these Terms or the applicable Documentation or for purposes not intended by Reduxio, (ii) any use of Software in combination with other products, equipment, software, or data not supplied by Reduxio, or (iii) any modification or alteration of the Software or Product by any person other than Reduxio Storage or its authorized representatives or (iv) use of any older version of the Products when use of a newer version made available to Customer would have avoided the infringement (collectively, the "**Excluded Claims**"), and Customer will indemnify, defend, and hold Reduxio harmless from and against all claims, suits, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising from or relating to such Excluded Claims. THIS SECTION 7 STATES REDUXIO'S ENTIRE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, FOR INFRINGEMENT CLAIMS AND ACTIONS.

**8. CONFIDENTIALITY.** The Software, any benchmark or performance tests relating to the Products or Software, and certain information regarding the Products and Reduxio's business, including technical, marketing, financial, employee, planning, and other confidential or proprietary information, is considered Reduxio's "**Confidential Information**". Customer shall protect the Confidential Information from unauthorized dissemination and use with the same degree of care that Customer uses to protect its own like information and, in any event, will use no less than a reasonable degree of care in protecting such Confidential Information. Customer will use the Confidential Information only for those purposes expressly authorized in these Terms. Customer will not disclose to third parties the Confidential Information without the prior written consent of Reduxio.

## **9. OWNERSHIP**

**9.1. Intellectual Property Rights.** Customer acknowledges and agrees that Reduxio Storage and its suppliers exclusively own all right, title, and interest, including all patent, copyright, trade secret, trademark, moral rights, and other

intellectual property rights worldwide (collectively, "**Intellectual Property Rights**") in and to the Products, the Documentation, and all Confidential Information. Reduxio and its suppliers expressly reserve all rights not expressly granted to Customer in these Terms. There are no implied licenses granted hereunder. Customer shall not engage, and will not authorize or direct any third party to engage, in any act or omission that would impair any Intellectual Property Right of Reduxio or any of its suppliers.

**9.2. Feedback.** Any questions, comments, or feedback provided by Customer to Reduxio regarding the Products and any other products, services, or materials provided by Reduxio (collectively, "**Feedback**") will be deemed non-confidential and non-proprietary information for purposes of these Terms. Reduxio will have no obligation to Customer or any third party with respect to such Feedback, and be free to use and exploit such Feedback in any form or manner and for any purpose and without payment of any consideration to Customer or any third party.

**9.3. Unauthorized Products and Brand Protection.** Customer will not remove, deface, or obscure any Reduxio copyright or trademark notices and/or legends or other proprietary notices on, incorporated in, or associated with the Products and Documentation. Customer may not alter, unbundle or break the Product down to components for distribution, transfer, resale or any other purposes. Customer is strictly prohibited from separating a Product key from the associated Software and transferring the Product key to a third party for any purposes. All Product must only be obtained in the first instance from Reduxio or a Reseller. If, in Reduxio's reasonable judgment, the original acquisition of a Product from Reduxio or a Reseller occurred through unauthorized means, Reduxio has no obligations to provide customer services or any Support Services to Customer for the Product in question or to allow any associated Software licenses to continue.

**10. TERM AND TERMINATION.** Reduxio may terminate these Terms immediately upon written notice if Customer breaches these Terms, regardless of cure. In addition, these Terms will automatically terminate upon cessation of any Support Services, subject to any reinstatement after lapse under the terms of Section 5.3. The provisions concerning confidentiality, indemnity, ownership, limitations of liability, warranty, disclaimers and restrictions of warranty as well (as any other terms which, by their nature, are intended to survive termination) will survive any termination or expiration of these Terms. In addition, upon any expiration or

termination of these Terms, Reduxio may cancel or reschedule any Purchase Orders outstanding as of such termination or expiration date.

## 11. GENERAL

**11.1. Waiver and Severability.** All waivers must be in writing. Any waiver or failure to enforce any provision of these Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. If any provision of these Terms is 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 will continue in full force and effect.

**11.2. 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.

**11.3. 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. Each Party irrevocably submits to the personal jurisdiction of those courts and irrevocably waives all objections to such venue, except that Reduxio may file a claim or take action in any court having jurisdiction to protect its Intellectual Property Rights or Confidential Information.

**11.4. 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.

**11.5. No Assignment or Transfer.** Customer 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. Reduxio may freely assign its rights or delegate any of its duties under these Terms. This Agreement will bind and inure to the benefit of the Parties and their permitted successors and assigns.

**11.6. Entire Agreement.** This Agreement, the End User License Agreement, 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.

**11.7. Amendments.** Reduxio may update these Terms of Use, at our sole discretion, from time to time by notifying you of such changes by any reasonable means, including by posting a revised Terms of Use through the Reduxio Web Site [the "Last Updated" above indicates the last time these Terms of Use were updated]. Any such changes will not apply to any dispute between a Customer and Reduxio arising prior to the date on which Reduxio posted the revised Terms of Use incorporating such changes or otherwise notified you of such changes. 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 Product following the posting of an updated version of this Agreement means that you accept and agree to the changes. If Customer does not agree to a change, Customer must stop using the Product and terminate this Agreement. Customer agree that posting an updated version date at [www.reduxio.com/legal/](http://www.reduxio.com/legal/) is adequate notice to advise Customer of these changes.

**11.8. No Third Party Beneficiary.** Nothing in these Terms, express or implied, is intended or shall be construed to confer on or give to any third party (including any customer) any interest, right, benefit or remedy.

**11.9. Purchase Order Terms.** All Purchase Orders and invoices under these Terms will be subject only to these Terms and the terms of any purchase agreement entered into with Reduxio. In the event the terms of any such Purchase Order, invoice or any confirmation or similar document conflict with or are additional to these Terms, these Terms alone shall apply and shall govern regardless of execution of such document by one or both parties.

Furthermore, unless otherwise expressly agreed to in writing by Reduxio, no usage of trade, course of dealings, course of performance, understanding, or any term or condition in any Purchase Order, confirmation, or other document furnished by Customer that in any way modifies, is inconsistent with, is different from, attempts to explain and/or is in addition to these Terms shall be part of these Terms, and shall be regarded as null and void and is hereby expressly rejected. Additionally, Reduxio's failure to object to any term or condition in any oral or written communication from Customer, will not constitute an acceptance thereof or a waiver of any term or condition contained in these Terms.

**11.10. Force Majeure.** Reduxio will be excused from performance of its obligations under these Terms if such failure to perform results from compliance with any requirement of applicable law, acts of God, fire, strike, embargo, terrorist attack, war, blackout, telecommunications or network failure, insurrection or riot or any causes beyond the reasonable control of Reduxio. Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

**11.11. Export Restrictions.** Customer acknowledges that the laws and regulations of the United States may restrict the export and re-export of certain commodities and technical data of United States origin. Customer agrees that it will not export or re-export the Products in any form without the appropriate United States and/or foreign government licenses. Customer shall not, unless authorized by U.S. export license or other government authorizations, directly or indirectly export Products and Services to (or use Products and Support Services in) countries subject to U.S. embargoes or trade sanctions programs.

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