

TERMS AND CONDITIONS

ZERTO FREE TRIAL

These Terms and Conditions for Zerto Free Trial (this "**Agreement**") govern the use of a free trial license to use the Licensed Software to protect up to 5 (five) Virtual Machines ("**VMs**") for a period of 14 days and is an agreement between Zerto Inc. ("**Zerto**") and you and/or the entity you represent ("**Licensee**").

This Agreement takes effect when you accept this Agreement by clicking or checking the box "I accept" (or any other method presented), or when you use the free trial license offered by Zerto (the "**Effective Date**"), and by doing so you represent that you are lawfully able to enter into this Agreement and/or have legal authority to bind Licensee to the terms of this Agreement.

- 1. Protection and Ownership** Licensee acknowledges and agrees that the Licensed Software (as defined below) is protected by copyright, trade secret and other intellectual property laws. Zerto (and/or its affiliates) retains all right, title and interest in and to Zerto's proprietary software named "Zerto Virtual Replication" (the "**Licensed Software**") and all derivatives thereof (including any and all patents, copyrights, trade secret rights, trademarks, trade names and other proprietary rights embodied therein or associated therewith), and this Agreement in no way conveys any right or interest in the Licensed Software other than a limited license to use it in accordance herewith.
- 2. Grant of License** Subject to the terms and conditions provided in this Agreement, including the restrictions set forth in Section 3, Zerto hereby grants to Licensee a temporary, limited, non-sublicensable, non-transferable and non-exclusive license for the internal use of the Licensed Software by Licensee to protect up to 5 (five) VMs, solely for evaluation and only for a period of up to 14 (fourteen) days commencing on the Effective Date (the "**Evaluation Period**"). At the end of the Evaluation Period, Licensee will promptly and completely remove the Licensed Software from its computer systems and shall confirm such removal in writing to Zerto if requested to do so.
- 3. Restrictions** Licensee is prohibited from and hereby warrants and represent that it shall not:
 - 3.1. use or test the Licensed Software in a live operating/production environment;
 - 3.2. make any copies of the Licensed Software;
 - 3.3. challenge Zerto's rights in or otherwise attempt to assert any rights in the Licensed Software;
 - 3.4. disclose, modify, decompile, translate, disassemble, reverse engineer or create any derivative works of the Licensed Software;
 - 3.5. distribute, rent, lease, use for service bureau purposes, sublicense, assign (by operation of law or otherwise) or transfer the Licensed Software or this Agreement;
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- 4. Delivery and Installation** Licensee will download the Licensed Software electronically. Licensee will install the Licensed Software only in accordance with the installation procedures contained in the Licensed Software documentation or as otherwise specified in writing by Zerto. Licensee bears all risks related to downloading, installing and using the Licensed Software.
- 5. No Support** other than access to certain resources as made available from time to time to Licensee at Zerto's sole discretion, during the Evaluation Period Zerto will not provide Licensee any maintenance and/or support services.

6. Confidentiality

- 6.1. Any Confidential Information (as defined below) received by either party hereto shall be retained in confidence and shall be used, disclosed, and copied solely for the purposes of and in accordance with this Agreement. A receiving party shall use the same degree of care as it uses to protect its own Confidential Information of a similar nature, but no less than reasonable care, to prevent the unauthorized use, disclosure, or publication of the Confidential Information of the other party. “**Confidential Information**” means any business, financial, marketing, technical, scientific, or other information disclosed by either party to the other party. Without limiting the foregoing, Licensee hereby confirms and agrees that the Licensed Software shall be deemed Zerto’s Confidential Information. “Confidential Information” shall not include information that: (a) was lawfully known or received by a receiving party prior to disclosure, as evidenced by its business records; (b) was lawfully in the public domain prior to its disclosure, or becomes publicly available other than through a breach of this Agreement; (c) is independently developed by the receiving party without use of or reference to the Confidential Information of the other party, as evidenced by its written records.
- 6.2. In addition to the above, Licensee hereby covenants and agrees to (i) limit access to and use of the Licensed Software to its employees and consultants who require access in connection with Licensee’s use of the Licensed Software and who are bound by a duty of confidentiality no less protective than this Agreement, (ii) take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Licensed Software, and (iii) ensure that its use of the Licensed Software is in compliance with all foreign, federal, state, and local laws and regulations, including without limitation all laws and regulations relating to export and import control, privacy rights, and data protection. Licensee agrees to indemnify Zerto for all claims or alleged claims for a breach of any of the foregoing covenants.

7. **Warranty; Limitation of Liability** THE LICENSED SOFTWARE AND THE DOCUMENTATION WHICH ACCOMPANIES IT ARE PROVIDED “AS IS” WITHOUT WARRANTIES OF ANY KIND. ZERTO, ITS DISTRIBUTORS, AGENTS OR EMPLOYEES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. NOTWITHSTANDING ANY OTHER PROVISION SET FORTH HEREIN, ZERTO SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, AND/OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. THE TOTAL AGGREGATE LIABILITY OF ZERTO ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, QUASI-CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, SHALL BE LIMITED TO ONE THOUSAND US DOLLARS (US\$ 1,000).

8. Export and Compliance with Laws

- 8.1. Without derogating from the license restrictions set forth herein, Licensee may not use or otherwise export or re-export the Licensed Software except as authorized by United States law and/or the laws of the jurisdiction in which the Software was obtained. In particular, but without limitation, the Licensed Software may not be exported or re-exported (a) into any U.S. embargoed countries, including Cuba, North Korea, Sudan (i.e. North Sudan), or the Crimea territory of Ukraine, (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person’s List or Entity List, (c) Iran, Iraq, Syria or Lebanon. By using the Licensed Software, Licensee represents and warrants that it is not located in any such country or on any such list. Licensee also agrees that it will not use the Licensed Software for any conduct prohibited by United States law.
- 8.2. Licensee hereby covenants and agrees that it has and will strictly adhere to all applicable anti-corruption laws, including but not limited to the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act in connection with fulfilling its obligations under this Agreement.

9. Termination

- 9.1. Zerto shall have the right to terminate this Agreement at any time, for any reason whatsoever, by sending Licensee a written notice to that effect.
- 9.2. Upon termination of this Agreement, all licenses granted hereunder shall automatically terminate. Licensee will promptly and completely remove the Licensed Software from its computer systems and shall confirm such removal in writing to Zerto if requested to do so. Sections 1, 3, 6, 7, 8, 9, 10 and 11 hereof will survive termination of this Agreement.

10. Governing Law and Injunctive Relief This Agreement shall be exclusively governed by and construed according to the laws of the Commonwealth of Massachusetts, without regard to the conflict of laws provisions thereof. Any dispute arising under or in relation to this Agreement shall be resolved in, and the sole and exclusive jurisdiction shall be of, the federal and states courts in the Commonwealth of Massachusetts, and each of the parties hereby submits irrevocably to the jurisdiction of such courts. The United Nations Convention for the International Sale of Goods is expressly excluded. The parties hereto agree that money damages would be an inadequate remedy for Zerto in the event of a breach or threatened breach by the Licensee of the provisions set forth in Sections 1, 2 or 6, and therefore Zerto may seek an injunction from any court of law or equity prohibiting Licensee from breaching such provisions.

11. General This Agreement is the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter herein. No consent waiver, modification or amendment of this Agreement shall be valid or binding unless it is in writing and signed by the party against which it is to be enforced. No failure or delay by either party in exercising any right, power or remedy available to it hereunder shall operate as a waiver of such right, power or remedy at that time or in the future. If any of the provisions, or portions thereof, of this Agreement are invalid or unenforceable under any applicable statute or rule of law, the court shall reform the contract to include an enforceable term as close to the intent of the original term as possible; all other terms shall remain unchanged. This Agreement (and rights and obligations hereunder) may not be assigned or transferred in any manner (by operation of law or otherwise), whether in whole or in part, by Licensee. For the avoidance of doubt, Zerto may freely assign, in whole or in part, its rights and/or obligations hereunder.