

## Redgate Subscription EULA

Any use of our Subscription Software is subject to the terms of this subscription agreement ("Agreement"). Please read the full Agreement carefully.

You confirm that you accept and agree to be legally bound by all terms and conditions of this Agreement by downloading and/or installing and/or using the Subscription Software. If you do not accept these terms, do not download, install or use the Subscription Software.

### TERMS AND CONDITIONS

#### **1 SUBSCRIPTION**

- 1.1 **Evaluation.** You are entitled to a free trial of the Subscription Software for the purposes of deciding whether or not the Subscription Software meets your requirements ("Evaluation Period"). During the Evaluation Period the terms in Schedule 1 will apply.
- 1.2 **Subscription.** In consideration of you paying to us the Subscription Fee, we grant you a non-exclusive, non-transferable right to access and use the Subscription Software during the Subscription Period in accordance with this Agreement, and subject to any applicable Product Specific Terms.
- 1.3 The Subscription is personal to you. You may not rent, lease, sub-license, sell, pledge, assign the benefit or delegate the burden of this Agreement or Subscription Software or hold this Agreement on trust for any other person.
- 1.4 Except as stated in this Agreement, you have no right to use, incorporate into other products, copy, publish, display, modify or translate the Subscription Software or any modification, adaptation or copy of the Subscription Software or any part thereof. You may only decompile, reverse engineer, or disassemble the source code of the Subscription Software either in whole or in part, as expressly permitted under the Subscription or under Sections 50(A), (B) and (BA) of the Copyright, Designs and Patents Act 1988 (as amended or updated from time to time) or other applicable law.
- 1.5 You shall not use the Subscription Software to manufacture or distribute a product that is substantially similar to or competitive with our software.

#### **2 OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS**

- 2.1 You acknowledge that i) all Intellectual Property Rights in or relating to the Subscription Software are owned by or licensed to us, and ii) except as expressly granted under this Agreement, you have no rights in the Subscription Software.
- 2.2 You hereby agree to refrain from any action which would diminish our Intellectual Property Rights in or relating to the Subscription Software or which would call those rights into question.
- 2.3 You agree not to delete, remove or alter any trade marks, logos, copyright notices or similar proprietary devices of ours, including without limitation any electronic watermarks or other identifiers that may be incorporated in the Subscription Software. All representations of our name or logo must remain as originally distributed.

#### **3 PAYMENT**

- 3.1 The Subscription Fee (together with any levies, duties and/or taxes imposed on you in your jurisdiction (including, but not limited to, value added tax, sales tax, use tax and withholding tax)) shall be due and payable by you when we issue a licence key to you for the Subscription Software.
- 3.2 The Renewal Fee (together with any levies, duties and/or taxes imposed on you in your jurisdiction (including, but not limited to, value added tax, sales tax and withholding tax)) shall be due and payable by you on the payment date of the invoice.
- 3.3 You may not deduct any amounts from the Subscription Fees or the Renewal Fees, unless otherwise specified in this Agreement.
- 3.4 Where you have obtained the Subscription Software through a Reseller, the terms you have agreed with such Reseller in relation to payment and invoicing will apply instead of this clause 3.

#### **4 CONFIDENTIALITY**

- 4.1 The structure, organisation, and source code of the Subscription Software are proprietary confidential information of ours and our licensors. You agree not to provide or disclose any confidential information of ours (including relating to or derived from the Subscription Software) to any third party, including where such confidential information is derived under any applicable law as set out in clause 1.4.
- 4.2 Other than the disclosures referred to in our Privacy Policy, we agree not to provide or disclose to any third party

any information of a confidential nature in any form whatsoever which is disclosed to us by you or on behalf of you.

4.3 The provisions of clauses 4.1 and 4.2 will not apply to the extent that:

4.3.1 such information is in the receiving party's possession free from any restriction as to its use or disclosure; or

4.3.2 the receiving party can demonstrate that such information is in the public domain (other than as a result of an unauthorised disclosure); or

4.3.3 such information is required to be disclosed by law.

4.4 No information to which clause 4.3.3 applies shall be disclosed to a third party unless and until the receiving party has (unless prevented from doing so by law) (i) given the disclosing party reasonable written notice of such proposed disclosure, (ii) consulted with the disclosing party, and (iii) agreed with the disclosing party the content of the disclosure, provided that it shall not limit the disclosure in a manner which would prevent the receiving party from complying with a statutory or regulatory obligation or court order.

4.5 If you have entered into a separate confidentiality agreement with us, and there are inconsistencies between the terms of the confidentiality agreement and this clause 4, the terms of the confidentiality agreement shall prevail over this clause 4.

## **5 WARRANTY AND SUPPORT**

5.1 We warrant that:

5.1.1 we own the Intellectual Property Rights in the Subscription Software and/or have the right to grant a licence to you;

5.1.2 in creating the Subscription Software, we have not knowingly infringed the intellectual property rights of third parties; and

5.1.3 for a period of 90 days from the first installation of the Subscription Software (or, if applicable, 90 days from the end of the Evaluation Period if you continue to use the Subscription Software) the Subscription Software shall operate substantially in accordance with its description. However, you acknowledge that the Subscription Software is of such a complexity that there will be inherent defects and that therefore we can give no warranty that the Subscription Software is free from error or defect or that operation of the Subscription Software shall be uninterrupted.

5.2 Other than as provided for in clause 5.1 above, we do not offer any warranty related to the Subscription Software and/or the support provided, either express or implied, including but not limited to implied warranties of fitness for purpose or satisfactory quality. The Subscription Software has been developed as a standard product for use by a wide variety of users and so we are unable to warrant that the Subscription Software will meet any particular user needs. You shall take full responsibility for ensuring that the Subscription Software is suitable for your intended purposes and to facilitate investigation into such suitability, we offer a free Evaluation Period.

5.3 Support. In relation to and without prejudice to the generality of clause 5.2 above, we provide support to users of Subscription Software via our web site, user forums, by email and by phone. The support is provided subject to the terms of this Agreement. You accept that, although we will use reasonable endeavours to solve problems identified by you, the nature of software is such that no guarantee can be provided that any particular problem will be solved. You accept that, where a particular problem requires an update to the Subscription Software, the scheduling of any new releases and the functionality those releases contain shall be under our sole control.

## **6 LIMITATION AND EXCLUSION OF LIABILITY**

6.1 Nothing in this Agreement shall limit or exclude either party's liability for: (a) personal injury or death resulting from negligence, (b) fraud; or (c) any other matter for which liability cannot be excluded by law.

6.2 Subject to clause 6.1, neither party shall be liable to the other party for any indirect, special or consequential loss or damage whatsoever arising under or in relation to this Agreement (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise). We shall not be liable to you for any of the following types of loss or damage arising under or in relation to this Agreement: (a) any loss of profits, business, contracts, anticipated savings, goodwill, or revenue; or (b) any loss, or corruption, of software or data; or (c) any loss of use of hardware, software or data.

6.3 Subject to clauses 6.1, 6.2 and 9.2 our aggregate liability under and in connection with this Agreement howsoever caused shall be limited in all cases to the aggregate sum of the Subscription Fees paid in the 12 months prior to the event giving rise to the liability.

6.4 The provisions of this clause allocate risks under this Agreement between you and us, and the Subscription Fees reflect this allocation of risks and these limitations of liability.

## **7 SUBSCRIPTION PERIOD, TERMINATION AND RETIRED SOFTWARE**

7.1 The Subscription shall commence on the Subscription Start Date and, unless terminated earlier in accordance

with this clause 7, shall continue for the Initial Subscription Period and, thereafter, the Subscription shall be automatically renewed for successive periods of 12 months (each a "Renewal Period"), unless either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Period or any Renewal Period, in which case the Subscription shall terminate upon the expiry of the applicable Initial Subscription Period or Renewal Period.

- 7.2 If we do not receive the Subscription Fee or the relevant Renewal Fee from you, we reserve the right to terminate your Subscription 30 days after the payment due date.
- 7.3 The Subscription will terminate automatically if you uninstall and cease use of the Subscription Software, or uninstall and destroy or voluntarily return the Subscription Software to us, and notify us that you have done so.
- 7.4 Where the Subscription is terminated in accordance with clause 7.4 or clause 7.3, then the Agreement shall terminate in its entirety.
- 7.5 Upon termination of this Agreement: (a) you must cease use of the Subscription Software, and uninstall, destroy or put beyond use all copies of the Subscription Software in your possession or control; and (b) the provisions of clauses 1.5, 4, 5.2, 6, 7, 9, 10.1 to 10.7 and 11 will remain in effect.
- 7.6 The termination of this Agreement howsoever arising shall not affect the rights, duties and liabilities of either party accrued prior to termination.
- 7.7 **Retired Software.** We reserve the right to retire the Subscription Software (and therefore terminate the Subscription) on written notice by us at any time to come into effect at the end of the then current Initial Subscription Period or Renewal Period (as the case may be).

## **8 DATA COLLECTION AND PRIVACY POLICY**

- 8.1 Information on the data we collect about you and how we treat that data is set out in our Privacy Policy, which can be viewed at <https://www.red-gate.com/our-company/about/legal>.

## **9 THIRD PARTY CLAIMS**

- 1.1 You agree to indemnify us from any loss or damage whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise, if a third party claims that your use of the Subscription Software causes any such loss or damage, except in the circumstances in clause 9.2 below.
- 1.2 If any claim is brought against you alleging that your use of the intellectual property associated with the Subscription Software in accordance with this Agreement infringes the rights of any third party, you shall promptly notify us and supply full details of the claim. The two of us shall consult together on an appropriate course of action and seek to minimise the effect of any claim on the respective businesses. We shall have the right, but not the obligation, to take control of all negotiations and litigation arising out of the claim. We will pay any damages and costs awarded against you in connection with any claim subject to a maximum of the aggregate sum of Subscription Fees paid to us by you in the 12 months prior to the claim. We shall have the right, at our sole choice, to either: (i) use reasonable endeavours to negotiate terms for continued use by you of the claimed infringing software; or (ii) use reasonable endeavours to amend the Subscription Software to make it non-infringing; or (iii) terminate this Agreement with immediate effect and in such event, we shall refund to you all Subscription Fees paid.

## **10 GENERAL**

- 10.1 **Governing law and settlement of disputes.** This Agreement (and any dispute or claim relating to it, or its formation, existence, construction, performance, validity or termination) will be governed by and construed in accordance with the laws of England. The courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). Without prejudice to any other rights or remedies that we may have, you acknowledge and agree that damages alone would not be an adequate remedy for any breach of clauses 1, 2, 4 and/or Schedule 2 by you. Accordingly, we shall be entitled to seek an injunction or other equitable relief for any threatened or actual breach of those clauses.
- 10.2 **Compliance with applicable law.** You agree that, notwithstanding clause 10.1 above, you may be subject to additional laws in other jurisdictions with respect to your use of the Subscription Software in such jurisdictions. You agree to comply with the laws of any such jurisdiction including, without limitation, any applicable export laws or regulations.
- 10.3 **Severability.** If any provision or part of any provision in this Agreement is found to be illegal, invalid or unenforceable for any reason then the remaining provisions or part provisions remain unaffected and the parties shall meet promptly to discuss in good faith and agree an alternative provision or part provision that provides as closely as possible, the same commercial effect as the original.
- 10.4 **No waiver.** No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

- 10.5 **No third party rights.** We and you do not intend that any of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it and all rights by virtue of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.
- 10.6 **Entire agreement.** This Agreement contains all the terms which the parties have agreed in relation to the subject matter of this Agreement and supersedes any prior oral agreements, representations or understandings between the parties in relation to such subject matter.
- 10.7 **Revisions to terms.** We reserve the right to revise the terms of this Agreement by updating this Agreement on our website. You are advised to check the website periodically for notices concerning such revisions. Your continued use of the Subscription Software shall be deemed to constitute acceptance of any revised terms.
- 10.8 **Consumer regulations.** This clause applies to Consumers only. You shall have the right to cancel this Agreement 14 days from the date you agree to be obliged to pay for the Subscription Software under this Agreement. Should you wish to cancel this Agreement under this clause 10.8, you must notify us of your decision to cancel by either:
- 10.8.1 returning a completed Model Cancellation Form (a copy of which is available here: <https://www.red-gate.com/website/legal>) to us; or
  - 10.8.2 sending us an email clearly confirming your decision to: [orders@red-gate.com](mailto:orders@red-gate.com).
  - 10.8.3 If you have any complaints about this Agreement, including complaints about the Subscription Software, please raise these with Red Gate using the relevant contact details: <https://www.red-gate.com/our-company/contact-us>

## 11 **DEFINITIONS**

- 11.1 In this Agreement, capitalised terms shall have the meanings set out below or the relevant Schedule.
- "Initial Subscription Period"** means the initial Subscription period agreed with us, and as stated on the invoice starting on the Subscription Start Date;
- "Intellectual Property Rights"** means patents, registered designs, registered trade and service marks, registered copyright and modifications to and applications for any of the foregoing and the right to apply for protection for such registered rights anywhere in the world and inventions, discoveries, copyright, database right, unregistered trade or service marks, brand names or know-how and any similar or equivalent rights whether capable of registration or not arising, applied for or granted worldwide;
- "OSE"** means an Operating System Environment which is all or part of an operating system instance, or all or part of a virtual (or otherwise emulated) operating system instance which enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights;
- "Privacy Policy"** means the document entitled Privacy Policy on our website (<https://www.red-gate.com/our-company/about/legal>);
- "Product Specific Terms"** means the terms applicable to a specific item of Subscription Software as set out in Schedule 2;
- "Renewal Fee"** means the fees payable by you under this Agreement to us for the Subscription during the Renewal Period (excluding VAT and all other relevant taxes, where applicable), as detailed by us from time to time including through our website, as part of a written quotation or renewal;
- "Renewal Periods"** has the same meaning set out in clause 7.1;
- "Reseller"** means any third party authorised by us to sell licences to the Subscription Software;
- "Subscription"** means the right to use the Subscription Software, set out in clause 1 and/or Schedules 1 and 2 as appropriate;
- "Subscription Fee"** means the fee payable by you under this Agreement to us (excluding VAT and all other relevant taxes, where applicable), as detailed by us from time to time including through our website, as part of a written quotation or renewal;
- "Subscription Period"** means the Initial Subscription Period together with any subsequent Renewal Periods;
- "Subscription Software"** means the software, listed under "Subscription Software" on our website <https://www.red-gate.com/support/license/software-editions>, selected by you and licensed to you under this Agreement;
- "Subscription Start Date"** means the date of the invoice issued to you by us under this Agreement;
- "We", "Our", "Us"** and the non-capitalised versions means Red Gate Software Limited, a company registered in England with company number 3857576 and registered office at Newnham House, Cambridge Business Park, Cambridge CB4 0WZ, United Kingdom;
- "You", "Your"** and the non-capitalised versions means, whether the Subscription Software is obtained directly from us or through a Reseller, (a) where an individual downloads and/or installs the Subscription Software on an OSE for his own personal use, that individual (a **"Consumer"**); or (b) where an individual downloads and/or installs the Subscription Software on a OSE for business use, that individual's employer (and we will assume that such individual has the authority to purchase on behalf of their employer); or (c) where an entity or organisation

downloads and/or installs the Subscription Software on a OSE for use by its employees, that entity or organisation (and such entity shall be responsible for all use by its employees of the Subscription Software).

## **Schedule 1**

### **Evaluation Period**

- 1 We grant you the right to use the Subscription Software for the Evaluation Period. The length of the Evaluation Period is confirmed on the relevant product page for the Subscription Software on our website. The Evaluation Period may be extended by written agreement with us.
- 2 During the Evaluation Period, you hereby agree that the Subscription Software is provided AS IS with no representation, guarantee or warranty of any kind as to its functionality, quality, performance, suitability or fitness for purpose. All other terms, conditions, representations and warranties expressed or implied whether by statute or otherwise are hereby expressly excluded.
- 3 We shall not be liable for any claim, damages or other liability arising from or in connection with your use of the Subscription Software during the Evaluation Period.
- 4 For the avoidance of doubt, during the Evaluation Period: (a) clauses 5.1, 6.3 and 9.2 of this Agreement shall not apply; and (b) clause 9.1 shall apply except that the reference to clause 9.2 is deleted.
- 5 Before or upon expiry of the Evaluation Period:
  - (a) if, in your sole opinion, the Subscription Software has met your requirements, and you wish to continue to use the Subscription Software beyond the end of the Evaluation Period, you can decide whether to obtain the equivalent Subscription Fee version. Once the appropriate Subscription has been obtained, this Agreement shall continue in force (except that this Schedule 1 shall no longer apply).
  - (b) if you decide that the Subscription Software does not meet your requirements, or otherwise do not wish to enter into a paid up Subscription, then you shall destroy the Subscription Software and all copies, in any form including partial copies or modifications of the Subscription Software received from us or made in connection with this Subscription and all documentation relating thereto. Any rights of yours to use the Subscription Software shall cease.

## **Schedule 2**

### **Product Specific Terms**

#### **1 Definitions**

- 1.1 In this schedule, the following definitions shall apply:
  - "**Client Component**" means, where the Subscription Software is Per OSE Subscription Software, any component of the Per OSE Subscription Software directed to or otherwise provided for accessing the Server Component;
  - "**Per Capacity Software**" means any or all of the software listed on our website <https://www.red-gate.com/support/license/software-editions>, as licensed on a capacity basis;
  - "**Per OSE Subscription Software**" means any or all of the Subscription Software listed on our website <https://www.red-gate.com/support/license/software-editions>, as licensed on a "Per OSE" basis;
  - "**Server Component**" means, where the Subscription Software licensed to you under this Agreement is Per OSE Subscription Software, the server-based components on a single OSE;
  - "**Tier**" means a pricing tier as defined on our website, at <http://www.red-gate.com/support/license/capacity-model> for the Subscription Software; and
  - "**True Up**" means an annual evaluation of the suitability of the Tier chosen for the Per Capacity Software.

#### **2 Type of Software**

- 2.1 Where the Subscription Software is Per Capacity Software or Per OSE Subscription Software the relevant terms below shall apply to limit the Subscription granted in clause 1 of this Agreement:

##### **Per Capacity Software**

- It is your responsibility to decide, at the point of purchase, which Tier is suitable for your intended use of the Subscription Software over the Initial Subscription Period.
- You will receive an email annually requiring you to conduct a True Up. You are required to notify us of the outcome of the True Up if a different Tier is applicable to your Subscription, and:
  - if your Initial Subscription Period was for a period of 12 months, we will issue to you an invoice for the new applicable Tier which will apply from the start of the Renewal Period; or

- if you have purchased a multi-year Initial Subscription Period, we will issue you with an invoice for any increase in Subscription Fees between the Tier you have paid for and the Tier that is applicable after the True Up for the remainder of the Initial Subscription Period, based on the Subscription Fee.
- The Subscription Fee payable to us will vary depending on the Tier applicable to your Subscription.
- If you do not True Up before the expiry of the Initial Subscription Period or the expiry of any Renewal Period and you do not terminate your Subscription, your Subscription will automatically renew for the same Tier and we will issue an invoice for the relevant Renewal Period based on that Tier.

**Per OSE Subscription Software**

- The Server Component is licensed for use on a single OSE owned, leased and/or controlled by you for internal use.
- Where the Per OSE Licensed Software includes a Client Component, you may use and install such Client Component on more than one OSEs leased and/or controlled by you for internal use.