

# **Redgate Master EULAs**

## **IMPORTANT NOTICE**

The Redgate Master Perpetual EULA or the Redgate Master Subscription EULA (whichever one is applicable to You based on the licenses you have purchased) shall apply to Your use of the applicable Redgate software. Please ensure that you read carefully the applicable EULA prior to Your use of the software.

## **Redgate Master Subscription EULA**

Unless expressly agreed otherwise in writing by the parties, any use of Our Subscription Software is subject to the terms of this subscription end user license 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 placing an order and/or 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. Where an individual downloads and/or installs the Subscription Software for business use, such individual represents that they have the authority to agree to the terms of this Agreement on behalf of their employer.

## **IMPORTANT NOTICE:**

This Agreement and Your Redgate quote shall prevail over Your standard terms and conditions (if any) attached to, enclosed with, or referred to in, Your purchase order or order confirmation.

## **TERMS AND CONDITIONS**

### **1 SUBSCRIPTION**

- 1.1 **Evaluation License.** You are entitled to a free trial of any Subscription Software for the purposes of deciding whether or not the applicable Subscription Software meets Your requirements ("**Evaluation Period**"). During each Evaluation Period the terms in Schedule 1 will apply.
- 1.2 **Subscription License.** In consideration of You paying Us the applicable Subscription Fee or Renewal Fee as appropriate, We grant You a non-exclusive, non-transferable right to access and use the Subscription Software during the Subscription Period subject to the terms of this Agreement including any applicable Product Specific Terms. Use of any Preview Software may be time limited and shall only be used for evaluation.
- 1.3 The rights under this Agreement are personal to You. You may not rent, lease, sub-license, sell, pledge, assign the benefit or delegate the burden of this Agreement or any Subscription Software to anyone, or hold this Agreement on trust for any other person. You shall ensure that Your employees comply with the terms of this Agreement and You agree to be responsible for the acts and omissions of Your employees with respect to use of the Subscription Software.
- 1.4 Except as stated in this Agreement, You have no right to use, copy, publish, display, distribute in whole or in part, modify or translate the Subscription Software or any part thereof. You may only decompile, reverse engineer, or disassemble the object code of the Subscription Software either in whole or in part, as expressly permitted by any intellectual property law.
- 1.5 You shall not use the Subscription Software to develop or license a product that is

substantially similar to or competitive with Our software.

- 1.6 **Third Party Files.** The Subscription Software may contain or be provided with Third Party Files, which are subject to their own separate license terms. We shall not be liable under this Agreement for Your access and use of such Third Party Files. Your use of any Third Party Files is subject to Your compliance with the applicable license terms.

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

- 2.1 You acknowledge that: (a) the Subscription Software is licensed and not sold, and all Intellectual Property Rights in or relating to the Subscription Software are owned by or licensed to Us; (b) except as expressly granted under this Agreement, You have no rights in the Subscription Software; and (c) We shall have the right to use Your name and/or logo on customer lists on Our website and in other marketing material.
- 2.2 You hereby agree to refrain from any action which would diminish Our Intellectual Property Rights in or relating to any 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 notices or marks of Ours or Our licensors, 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 Each 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 on the applicable Subscription Start Date and paid by You on the payment due date on the Redgate invoice issued to You.
- 3.2 Each 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 paid by You on the payment due date on the Redgate invoice issued to You.
- 3.3 You may not deduct any amounts from any Subscription Fees or Renewal Fees.
- 3.4 We reserve the right to charge interest of 2% above the Bank of England base rate in force from time to time, on any late payments due under this Agreement until such amount is paid.
- 3.5 Where You have obtained any Subscription Software through a Reseller, the terms You have agreed with such Reseller solely in relation to payment and invoicing will apply instead of this clause 3, all other terms of this Agreement shall apply to You and will remain in full force and effect.

## **4 CONFIDENTIALITY AND FEEDBACK**

- 4.1 The structure, organization, and source code of the Subscription Software, and any information related thereto in any documentation are proprietary confidential information of Ours or Our licensors, together with the terms of this Agreement and any pricing information contained in Your Redgate quote. You agree not to provide or disclose any such proprietary confidential information of Ours (including relating to or derived from the Subscription Software) to any third party.
- 4.2 The provisions within clause 4.1 will not apply to the extent that:
- 4.2.1 such information is in the receiving party's possession free from any restriction as to its use or disclosure; or
- 4.2.2 the receiving party can demonstrate that such information is in the public domain (other than as a result of an unauthorized disclosure)

- 4.3 Regardless of clause 4.1, You are permitted to disclose Our proprietary confidential information which You are required to disclose by law provided that prior to such disclosure You have: (a) given Us reasonable written notice of such proposed disclosure; (b) agreed with Us the content of the disclosure, provided that it shall not limit the disclosure in a manner which would prevent You from complying with a statutory or regulatory obligation or court order; and (c) You take all steps to ensure that the recipient agrees to maintain the confidentiality of the information.
- 4.4 If You provide any ideas, suggestions or other input to Redgate relating to any Redgate products including Preview Software ("**Feedback**"), Redgate may use such Feedback at its sole discretion including in the development and licensing of its products, without any obligations or restrictions.

## **5 WARRANTY AND SUPPORT**

- 5.1 Other than as provided in clause 10.10.2(i), We warrant to You that:
- 5.1.1 We own the Intellectual Property Rights in the Subscription Software and/or have the right to grant a license 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 may 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 clauses 5.1 and 10.10.2(i), 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, save for any non-excludable rights and remedies You may have under law. 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's 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 Regardless of Clause 5.1, any Preview 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, and the provisions of clauses 5.1, 5.4 and 9.2 shall not apply to the Preview Software. Further Redgate is under no obligation to release the Preview Software as part of the Subscription Software or any other software.
- 5.4 **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 website, 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 efforts 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 and other than as provided in clause 10.10.2(ii), 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), 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 and 6.2 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 or Renewal Fees (as applicable) 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 fees reflect this allocation of risks and these limitations of liability.

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

- 7.1 Your license to each Subscription Software shall commence on the applicable Subscription Start Date and, unless terminated earlier in accordance with this clause 7, shall continue for the Initial Subscription Period. Thereafter, Your license shall be automatically renewed for either 12 or 36 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 license shall terminate upon the expiry of the applicable Initial Subscription Period or Renewal Period. If Your license is automatically renewed the term length for Your next renewal period for each Subscription Software shall be either: (a) 12 months, if Your Initial Subscription Period and/or Your last Renewal Period was less than a 36 month term; or (b) 36 months, if Your Initial Subscription Period and/or Your last Renewal Period was for a term of 36 months or more.
- 7.2 We may terminate Your license and this Agreement immediately upon written notice to You if: (a) You fail to make payments for the Subscription Software when due and You do not make payment within 10 days of being notified in writing to do so; or (b) You breach any of the provisions of this Agreement other than payment, which are either not capable of being remedied or where they are capable of being remedied You fail to remedy within 30 days of being notified to do so; or (c) You take or have taken against You (other than in relation to a solvent restructuring) any step or action which would result in You; (i) entering into bankruptcy, administration, provisional liquidation or any composition or arrangement with Your creditors; (ii) being wound up (whether voluntarily or by order of the court), (iii) being struck off the register of companies; (iv) having a receiver appointed to any of Your assets, or You entering a procedure in any jurisdiction with similar effect to the provisions in this subclause (c).
- 7.3 When all of Your licenses to Subscription Software have expired or been terminated then this Agreement shall terminate in its entirety.
- 7.4 Upon termination or expiration of Your license, 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. Upon termination of this Agreement the provisions of clauses 1.5, 1.6, 2, 3 (for any fees that remain due and owing), 4, 5.2, 5.3, 6, 7, 9, 10.1 to 10.11 and 11 will remain in effect.

- 7.5 The termination of this Agreement howsoever arising shall not affect the rights, duties and liabilities of either party accrued prior to termination.
- 7.6 **Retired Software.** We reserve the right to retire any Subscription Software on written notice by Us at any time to come into effect at the end of Your then current Initial Subscription Period or Renewal Period (as the case may be). Upon receipt of such notice, You will no longer be entitled to renew Your licenses to such Subscription Software.

## **8 DATA COLLECTION AND PRIVACY NOTICE**

- 8.1 Information collected by Us will only be used for the purposes described in this Agreement. Please see Our Privacy Notice, for further information on how We collect and use data which can be viewed at: <https://www.red-gate.com/privacy>.
- 8.2 Nothing herein shall be construed as prohibiting Us from utilizing any Usage Data, which We may collect to optimize and improve the Subscription Software, or otherwise operate Our business. Where Your Usage Data is combined with Usage Data of other Redgate customers, all Usage Data shall be de-identified and presented in an anonymous and aggregate format so that such Usage Data will not disclose Your identity as a Redgate customer or the identity of any of Your employees to any third party, other than as expressed in Our Privacy Notice.
- 8.3 You hereby authorize Us to aggregate and collect, for Our own purposes and analysis, user information, usage stats and other relevant data about Your use of the Subscription Software as part of the Usage Data.

## **9 THIRD PARTY CLAIMS**

- 9.1 You agree to indemnify Us from any loss or damage whether in contract, tort (including negligence), or otherwise, if a third party claims that Your use of the Subscription Software causes Us any loss or damage, except in the circumstances in clause 9.2 below.
- 9.2 If any claim is brought against You alleging that Your use of 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 minimize 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 the limitations of liability in clause 6. We shall have the right, at Our sole choice, to either: (a) use reasonable efforts to negotiate terms for continued use by You of the claimed infringing software; or (b) use reasonable efforts to modify the Subscription Software to make it non-infringing; or (c) terminate this Agreement with immediate effect and in such event, We shall refund to You a pro rata refund of the fees paid to Us for the period from termination to expiration of the current Subscription Period.

## **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 the

- Product Specific Terms 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 **No Assignment.** You are not permitted to assign or transfer this Agreement or any rights granted to You to any third party without Our prior written consent. If We consent to the assignment, this Agreement will be binding on Your successors and assigns.
- 10.7 **Audit.** Where the business model and payment for any Subscription Software is dependent on Your level of use (e.g. number of people or servers), You agree that We shall be entitled to inspect Your records annually to ensure that You are in compliance with the terms of this Agreement and have not exceeded the use that You have paid for. Any audit may be conducted by Us or Our third party agents during normal business hours.
- 10.8 **Entire agreement.** This Agreement including its schedules which are incorporated herein and form part of the Agreement, together with Your Redgate quote 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.
- 10.9 **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. If You do not agree with any such revision You may terminate Your agreement within 10 days of the relevant revision without liability to Us. Your continued use of the Subscription Software shall be deemed to constitute acceptance of any revised terms. No revisions will apply retrospectively.
- 10.10 **Consumer regulations.**
- 10.10.1 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 10.10, You must notify Us of Your decision to cancel by either: (a) returning a completed Model Cancellation Form (a copy of which is available here: <https://www.red-gate.com/privacy>) to Us; or (b) sending Us an email clearly confirming your decision to: [orders@red-gate.com](mailto:orders@red-gate.com). If You have any complaints about this Agreement, including complaints about the Subscription Software, please raise these with Redgate using the relevant contact details: <https://www.red-gate.com/our-company/contact-us>
- 10.10.2 Australian consumer law

(i) Despite clause 5 Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, You are entitled; (i) to cancel Your service contract with Us; and (ii) to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, You are entitled to have the failure rectified in a reasonable time. If this is not done You are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service. If You think that the Subscription Software does not operate substantially in accordance with its description within the warranty period specified in clause 5.1.3, and You wish to make a claim under the warranty in clause 5.1.3, You must contact Us using the relevant contact details; <https://www.red-gate.com/our-company/contact-us> and provide details of how You think that the Subscription Software does not meet that warranty in clause 5.1.3.

(ii) Despite clause 6 and any other provision in this Agreement, if the Competition and Consumer Act 2010 (Cth) (including the Australian Consumer Law in Schedule 2 of that Act) provides that there is a guarantee in relation to any good or service supplied by Us in connection with this Agreement, and Our liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 6.2, 6.3 and clause 3 of Schedule 1 and any other limitation of Our liability in this Agreement, do not apply to that liability and instead Our liability for such failure is limited to (at Our election: (a) in the case of a supply of goods, replacing the goods or of acquiring equivalent goods, or paying the cost of having the goods repaired; or (b) in the case of a supply of services, supplying the services again or paying the cost of having the services supplied again.

10.11 **Notices.** References to notices being "written" or "in writing" includes email.

## 11 **DEFINITIONS**

11.1 In this Agreement, capitalized terms shall have the meanings set out below or the relevant Schedule.

**"Customer Portal"** means the customer portal We may make available to You to manage Your use of the Subscription Software;

**"Initial Subscription Period"** means the initial period agreed with Us (as stated on Our invoice or on Your account page on Our Customer Portal), 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;

**"Our", "Redgate", "Us", and "We"** means Red Gate Software Limited, a company registered in England with company number 3857576 and registered office at Cavendish House, Cambridge Business Park, Cambridge CB4 0XB, England;

**"Preview Software"** means any beta version of the Subscription Software made available to You for evaluation prior to full release;

**"Privacy Notice"** means the document entitled Privacy Notice on Our website (<https://www.red-gate.com/privacy>);

**“Product Specific Terms”** means the terms applicable to a specific item of Subscription Software as set out on Our website: <https://www.red-gate.com/support/license/product-specific-terms#subscription>;

**“Renewal Fee”** means the fees payable by You under this Agreement to Us for the relevant Subscription Software 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 or Our Customer Portal, 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 authorized by Us to sell licenses to the Subscription Software;

**“Subscription Fee”** means the fee payable by You to Us for the relevant Subscription Software during the Initial Subscription Period (excluding VAT and all other relevant taxes, where applicable), as detailed by Us from time to time including through Our website or Our Customer Portal, as part of a written quotation;

**“Subscription Period”** means the Initial Subscription Period together with any subsequent Renewal Periods;

**“Subscription Software”** means the software identified as available for licensing on a subscription basis as “Subscription Software” on Our website: <https://www.red-gate.com/support/license/software-editions#subscription>, selected by You and licensed to You under this Agreement, but expressly excluding the Third Party Files;

**“Subscription Start Date”** means the earlier of (a) the date of the invoice issued to You by Us under this Agreement; or (b) the date You pay the Subscription Fee;

**“Third Party Files”** means the files identified in the installer, documentation, readme's or notice files for the applicable Subscription Software as third party files, including any open source software or third party plug-ins;

**“Usage Data”** means the statistical usage data derived from the operation of the Subscription Software, including any activity data of Yours and Your employees and the performance results for the Subscription Software. This Usage Data shall exclude Your confidential information; and

**“You”** and **“Your”** means either: (a) an individual, where such individual downloads and/or installs the Subscription Software for their own personal use (also referred to as a **“Consumer”**); or (b) an organization or legal entity whereby either: (i) an employee or individual contractor of such organization or legal entity has downloaded and/or installed the Subscription Software for use by or in such organization or legal entity, or (ii) the Subscription Software has been installed automatically or via a script for use by or in such organization or legal entity.

## **Schedule 1**

### **Evaluation Period**

- 1** We grant You the right to use any Subscription Software for the applicable Evaluation Period. The length of the Evaluation Period is confirmed on the relevant product page for the applicable Subscription Software on Our website. The Evaluation Period may be extended by written agreement with Us.
- 2** To the extent permitted by law and subject to the other non-excludable rights and remedies You may have under law in relation to the relevant Subscription Software, during any Evaluation Period, You hereby agree that any 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 Other than as provided in clause 10.10.2(ii) of this Agreement, 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 an Evaluation Period.
  - 4 For the avoidance of doubt, during any 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 any 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 license 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 license, then You shall destroy the Subscription Software and all copies, in any form including partial copies of the Subscription Software received from Us or made in connection with this evaluation and all documentation relating thereto. Any rights of Yours to use the Subscription Software shall cease.

## **Schedule 2**

### **Additional terms for use of Redgate environment**

This Schedule 2 is only applicable where expressly identified in the Product Specific Terms.

#### **1 Definitions**

- 1.1 In this schedule, the following definitions shall apply:
  - “**Customer Data**” means the data You upload to the Subscription Software as part of Your use of the Subscription Software;
  - “**Personally Identifiable Data**” means any information relating to an identified or identifiable natural person; and
  - “**UK GDPR**” means Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

#### **2 Acceptable Use**

- 2.1 You may store data and keep a history of changes using the Subscription Software. You may not upload to the Subscription Software any data that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, facilitates illegal activity, depicts sexually explicit images, promotes unlawful violence, is discriminatory based on race, gender, color, religious belief, sexual orientation, disability or is otherwise illegal or causes damage or injury to any person or property.
- 2.2 We will hold a copy of the server, database configurations and Customer Data on Your behalf and will provide You with database instances to be used for development and testing purposes. We will hold the Customer Data only for the purpose of providing the Subscription Software.
- 2.3 We acknowledge that, where applicable, all rights, title and interest in and to the

Customer Data belongs to You and You agree that You shall have sole responsibility for the legality, reliability, integrity and quality of the Customer Data.

2.4 You acknowledge that:

2.4.1 the Subscription Software may not be available to You all of the time and You are responsible for ensuring You have appropriate back-ups of the Customer Data; and

2.4.2 except to the extent the Customer Data is Personally Identifiable Data, We shall not be responsible for any loss, corruption or inaccuracy of the Customer Data We hold.

2.5 You are responsible for:

2.5.1 ensuring You encrypt the Customer Data prior to uploading it to the Subscription Software; and

2.5.2 maintaining and securing Your network connections and telecommunications links from Your systems to the Subscription Software, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Your network connections or telecommunications links or caused by the internet.

### **3 Data Collection**

3.1 You acknowledge that You determine the nature and content of the data You upload to the Subscription Software. To the extent the Customer Data contains Personally Identifiable Data which is subject to data protection legislation, We will act as a processor of the Customer Data on Your behalf, and paragraphs 3.2 – 3.5 shall apply only to such Personally Identifiable Data. The details of the processing are set out at the end of this Schedule.

3.2 As the controller of the Customer Data, You are responsible for: (i) ensuring You have a lawful basis for uploading the Customer Data to the Subscription Software, including obtaining any necessary authorizations or consents from data subjects; and (ii) complying with all applicable data protection legislation.

3.3 We will:

3.3.1 process the Customer Data only to the extent necessary for the purpose of providing the Subscription Software and in accordance with Your written instructions set out in this clause (except where We are required by law to process the Customer Data other than in accordance with Your instructions, in which case, We will inform You of the relevant legal requirement prior to such processing, unless the law prohibits the provision of such information on important grounds of public interest);

3.3.2 implement appropriate technical and organizational measures in accordance with the data protection legislation to ensure a level of security appropriate to the risks that are presented by such processing;

3.3.3 ensure that any employees or other persons authorized to process the Customer Data are subject to appropriate obligations of confidentiality;

3.3.4 notify You, as soon as reasonably practicable, about any request or complaint received from a data subject (without responding to that request, unless authorized to do so by You) and at Your cost, assist You by technical and organizational measures, insofar as possible, for the fulfilment of Your obligations in respect of such requests and complaints;

3.3.5 at Your request and cost, and taking into account the nature of the processing and the information available to Us, use reasonable efforts to, assist You with Your compliance with Your obligations under Articles 32 to 36 of the UK GDPR (where applicable);

- 3.3.6 where We transfer any Personally Identifiable Data outside of the UK, will ensure any such transfer meets the relevant requirements under Articles 44 - 50 of the UK GDPR;
- 3.3.7 at Your request and cost, make available all information necessary to demonstrate Our compliance with this paragraph 3 and on reasonable advance notice in writing otherwise permit, and contribute to, audits carried out by You (or Your authorized representative) with respect to the Customer Data, save that You shall (or shall ensure Your authorized representatives shall):
- sign a non-disclosure agreement in terms acceptable to Us prior to undertaking such audit;
  - be accompanied by a Redgate employee at all times whilst on site during the audit;
  - use Your reasonable efforts to ensure that the conduct of any such audit does not unreasonably disrupt Our normal business operations; and
  - comply with Our relevant IT and security policies whilst carrying out any such audit; and
- 3.3.8 on termination or expiry of this Agreement, destroy or return (as You direct) all Customer Data and delete all existing copies of such data unless We are required to keep or store such data by law.
- 3.4 You acknowledge and agree that Redgate affiliates may act as sub-processors. We may also engage third party processors to carry out Our processing obligations under this Agreement. Sub-processors will, at all times, be subject to data processing obligations equivalent to those set out in this clause 3.4, and We will remain liable to You for such sub-processors. Our current third party sub-processors are listed in Our Privacy Notice. We will provide You with notification of any new sub-processors We intend to use. If You object to the use of a new sub-processor, You may terminate Your license on 30 days' written notice to Us.
- 3.5 Any data protection terms used in this paragraph 3 and not defined in this Agreement shall have the meaning given in the UK GDPR.

#### Personally Identifiable Data: details of processing

**Controller:** You

**Processor:** Red Gate Software Limited

**Nature, purpose and subject matter of processing:** Redgate will process Personally Identifiable Data contained within the Customer Data as necessary to provide the features of the Subscription Software that are hosted on Redgate's cloud environment under this Agreement, and as further instructed You in when using the Subscription Software.

**Duration of processing:** the duration of the Subscription Period plus 30 days OR if the Subscription Software is used for Evaluation only, the duration of the Evaluation Period plus 30 days.

**Categories of data:** You are solely responsible for determining what Personally Identifiable Data is contained in the Customer Data uploaded to the Subscription Software. Any categories of Personally Identifiable Data could be included.

**Data subjects:** You are solely responsible for determining what Personally Identifiable Data is

contained in the Customer Data uploaded to the Subscription Software. The Personally Identifiable Data of any categories of data subjects could be included.

**LAST UPDATED: March 20 2023**