

END USER LICENSE AGREEMENT
Comodo Online Backup

THIS AGREEMENT CONTAINS A BINDING ARBITRATION CLAUSE. PLEASE READ THE AGREEMENT CAREFULLY BEFORE ACCEPTING ITS TERMS AND CONDITIONS.

IMPORTANT – PLEASE READ THESE TERMS CAREFULLY BEFORE APPLYING FOR, ACCEPTING, OR USING A COMODO ONLINE BACKUP ACCOUNT OR THE COMODO ONLINE BACKUP SERVICES. BY USING, APPLYING FOR, OR ACCEPTING THE SERVICES OR BY CLICKING ON “I ACCEPT” BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND IT, AND THAT YOU AGREE TO BE BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT APPLY FOR, ACCEPT, OR USE A COMODO ONLINE BACKUP ACCOUNT OR THE COMODO ONLINE BACKUP SERVICES.

This Subscriber Agreement ("Agreement") constitutes the final binding agreement between you and Comodo Security Solutions, Inc. ("Comodo") which has its principal place of business at 525 Washington Blvd, Suite 1400, Jersey City, New Jersey 07310.

1. License.

- 1.1. *Grant of License.* Comodo grants to you a limited, non-exclusive, and revocable license to download, install, back-up, and use Comodo's online backup software and related services ("Services"). This license includes the right to use any documentation, files, or website information accompanying the Services. Any violation of the terms of this Agreement shall automatically revoke the license granted herein.
- 1.2. *Limited License Service.* The licenses granted herein are contingent upon Comodo's receipt of the applicable license fees and taxes due for the Services. These fees shall allow you to use Services for the duration of the subscription service as selected by you during your registration of the Services ("Subscription Period"). The fees owed for the use of the Services are set forth on Comodo's website and are subject to change without notice. License fees may vary depending on the usage of the Services. These fees are owed regardless of whether or the Services is actually used. No refunds will be given for any unused Services or any early termination of the Subscription Period.
- 1.3. *Trial, Evaluation, and Beta Services.* If this Agreement pertains to a trial, beta, or evaluation license then the licenses granted under this Agreement will terminate upon the expiration or cancellation of the trial or evaluation period. You agree to use the Services and any services only for the duration of the trial or evaluation period and only for evaluation or testing purposes. All such licenses are limited to one per customer per promotion or beta test.
- 1.4. *Restrictions.* The licenses granted herein are only valid if:
 - (i) the Services are NOT modified in any manner;
 - (ii) all copyright and proprietary notices or labels in the Services are maintained in their original format;
 - (iii) the Services are only installed and used in accordance with your network security policies,
 - (iv) you possess the necessary authority and power to install the Services,

- (v) you promptly pay all license fees when due,
 - (vi) this Agreement is accepted without any modification, and
 - (vii) you have not breached the terms of this Agreement in any manner.
- 1.5. *Updates.* For purposes of this Agreement, “Services” includes all updates, enhancements, modifications, revisions, or additions made by Comodo to the included software (“Updates”). The licenses and obligations provided herein shall extent to all Updates. Any Updates are made in Comodo’s sole discretion and Comodo is not obligated to provide Updates to you under any circumstances. Some Services uses Internet-based updating services. In this case, Comodo may automatically check the version of the Services being used and may provide Updates automatically through the updating service.
- 1.6. *Registration.* The Services require registration or activation to be used properly. You agree to provide accurate and complete information on all registration forms. Failure to complete the registration or activation may limit your ability to use the Services or may disable the Services from functioning. When registering or activating Services, you may be required to select a username and password. Maintaining the confidentiality of this password and username is your responsibility, and Comodo is not responsible for any loss or damage arising from unauthorized access to your account or your failure to comply with this section. You are fully responsible for any activities that occur under your username even if unauthorized. You must notify Comodo immediately of any unauthorized use of your account.

2. Services.

- 2.1. *Limited License.* The licenses granted herein are only for a single computer for which you have paid the applicable fees and taxes for the Services and are granted solely for the purpose of allowing you to connect to and use the Services for your personal or internal business use. Multiple computers may be secured through a separate paid license for each computer. You must have a license for each computer that accesses or use the Services. You may not use the services or permit others to use the Services to encrypt or decrypt any data other than the data stored on a computer with a license. You will not use the services to perform backups for any third parties.
- 2.2. *Delivery.* Comodo shall provide you with an interface necessary to use the Services (“Interface”). You agree to access the Services only through the Interface and will not create any derivative works of the Interface or the Services. You agree not to circumvent any limitations to the Services or Interface as implemented by Comodo.
- 2.3. *Storage.* When using this Services and the related services, Comodo will save an encrypted copy of each file you designate as requiring backup. The saved files will be transferred over the Internet to a server operated by Comodo or an affiliate or partner of Comodo. Comodo disclaims all liability for the Services, including any resulting from lost or compromised data. Comodo does not make any warranty that your data will be stored safely or securely.
- 2.4. *Routine Scans.* Comodo will routinely scan your computer in order to determine if any file is new, modified, or deleted and to determine what actions need to be taken in order to complete a backup or restoration operations. These operations require Comodo to collect information related to your files, your computer configuration and specification, and your computer usage. You give Comodo permission to access, collect, and store this information. In addition, you give Comodo permission to transmit all files designated by you as requiring

backup to a remote data center operated by Comodo or an affiliate or partner of Comodo ("Backup Servers"). Files will be transmitted in an encrypted format.

- 2.5. *File Usage.* Comodo will not use any files backed up unless 1) you give Comodo permission to do so as part of a request for troubleshooting or computer restoration services, or 2) Comodo reasonably believes it needs to do so in order to comply with a law, subpoena, warrant, order, or regulation, including laws related to the use of data for illegal purposes or child pornography. The services are being provided from within the United States and other countries where litigants, law enforcement, courts, and other agencies of the government may have the right to access data stored within their jurisdictions upon terms and conditions provided by local law. As such, these entities may gain access to your data as provided under the local law of the jurisdiction.
- 2.6. *Time Delay.* Files marked for backup shall only be added to the backup server at the next periodic scan of your computer. Only after a periodic scan will a file be available as part of the backup data. Comodo does not maintain a copy of the data backed up to our servers and does not guarantee the information against loss or destruction. In the event that this Agreement is terminated, Comodo may in its sole discretion and without notice to you delete or deny access to the backed up data and such data or files will not be available to you. Comodo and its affiliates may retain (but shall have no obligation to retain) your data for a period of time after your subscription to the Services expires in order to allow you to renew the Subscription Period if desired.
- 2.7. *Deletion.* Comodo does not maintain a copy of the data backed up to our servers and does not guarantee the information against loss or destruction. In the event that the licenses granted herein are revoked, lapse, or terminate, whether by you or by Comodo, Comodo may, in its sole and absolute discretion, without notice to you, delete or deny access to the backed up data and such data or files will not be available to you. You agree that Comodo and its affiliates may retain (but shall have no obligation to retain) your data for a period after your trial or license has been terminated, expired, or otherwise lapsed, as part of Comodo's marketing to you the opportunity to purchase, renew, or extend a license.

3. Ownership

- 3.1. *No Ownership Rights.* The Services are being licensed, not sold. This Agreement does not grant any ownership rights to you and gives you only a limited license to use the Services during the term of the Agreement. The Services and all related intellectual property rights, whether under copyright, trade secret, patent, or trademark laws, are owned by Comodo and/or its licensors. Comodo may pursue all legal remedies for use of the Services in violation of this Agreement. No license is granted herein to resell, create derivative works, reverse engineer, repackage, or modify the Services. Use of the Services within your commercial enterprise for internal purposes is expressly allowed.
- 3.2. *Copyright.* The Services contains material that is protected by United States and foreign intellectual property laws, including copyright, trade secret, and patent law. All rights not granted to you herein are expressly reserved by Comodo. You may not remove any copyright or other proprietary notice of Comodo from any copy of the Services.
- 3.3. *Modification.* Comodo may modify or discontinue any of its Services or the related Services without notice. Comodo will provide notice of material changes to the Services or changes to this Agreement by posting such changes at www.comodo.com which shall be your sole

notice of such changes. You agree and acknowledge that you will periodically check the website to inform yourself of any such changes.

- 3.4. *Submissions.* Any communications set to Comodo shall be the property of Comodo or its affiliates. Unless stated otherwise herein, submissions shall not be considered confidential, and Comodo shall not be liable for any use or disclosure of a submission. Except as noted herein, Comodo shall be entitled to unrestricted use of any submissions for any purpose whatsoever without compensation to the provider of the submission.

4. Payment.

- 4.1. *Fees.* The fees for using the Services are set forth on the Comodo website which may be modified by Comodo. Continued use of the Services and the non-termination of your account with Comodo after fee changes are posted to the website constitutes your acceptance of the prices as modified. You agree to pay all fees fully and promptly.
- 4.2. *Method of Payment.* License fees for the Limited License Services must be paid in advance. The credit card provided to Comodo to pay for the Services shall be automatically charged for the Services upon renewal. In the event that Comodo is unable to bill the credit card on file or you request that Comodo not bill the credit card, you shall be solely responsible for any renewal payment required. In the event that payment is not made, the Services and services may become unavailable to you and Comodo may terminate this Agreement without notice to you.
- 4.3. *Rejected Charges.* If any charges are rejected by your credit card issuer then Comodo may deactivate your account until payment is successfully received. Comodo may deactivate any account that has a disputed charge until Comodo, in its sole discretion, determines the dispute resolved.
- 4.4. *Billing Issues.* You must provide Comodo notice of any billing problems or disputes within sixty (60) days after they first appear on the statement you receive from your bank, credit card company, or other billing company. Failure to notify Comodo of the problem within the sixty (60) day period will result in your acceptance of the charges and you waive the right to dispute such problems or discrepancies. Failure to use your account will not be deemed a basis for refusing to pay any charges. Comodo does not provide any refunds for any Services or software.

5. Restrictions and Representations.

- 5.1. *Lawful Use.* The Services is solely for lawful purposes and use. You are responsible for ensuring that all use of the Services is in accordance with this Agreement. You are solely responsible for ensuring that your use of the Services complies with all applicable laws, statutes, ordinances, regulations, rules and other government authority. The Services is provided subject to this standard commercial agreement and qualifies as commercial computer Services within the meaning of the applicable government acquisition laws.
- 5.2. *Compliance.* You agree (1) not to interfere or disrupt networks connected to Comodo's services; (2) to comply with all regulations, policies and procedures of networks connected to the services; (3) not to use the services to infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights or any third party's rights of publicity or privacy; (4) not to post, distribute, or otherwise make available or transmit any computer file that contains a virus, Trojan, adware, or other malware, (5) not to attempt to gain unauthorized access to other computer systems; and (6) not to transmit any unlawful,

harassing, libelous, defamatory, racist, indecent, abusive, violent, threatening, intimidating, harmful, vulgar, obscene, offensive or otherwise objectionable material of any kind or nature.

- 5.3. *Export.* You represent and warranty that you are not located in and will not modify, export or re-export, either directly or indirectly, the Services to any country or entity under United States restrictions or to any country or entity subject to applicable trade sanctions. The United States restricted country and persons list is subject to change without notice from Comodo, and you must comply with the list as it exists in fact. **COMODO SHALL NOT BE LIABLE FOR YOUR VIOLATION OF ANY SUCH EXPORT OR IMPORT LAWS, WHETHER UNDER UNITED STATES LAW OR FOREIGN LAW.**"

6. Disclaimer of Warranties.

- 6.1. *Technical Support.* Except as otherwise provided herein, Comodo is under no obligation to provide technical or customer support for the Services. You are solely responsible for properly installing and using the Services. You are responsible for the procurement of any hardware or services required to use the Services, including any computers, servers, or Internet access.
- 6.2. *Use of Internet.* The Services are provided over the Internet. As such, the Services are subject to the operation of the Internet and telecommunications infrastructures as well as the operation of your Internet connection services, all of which are beyond the control of Comodo. Comodo does not warrant that the services will be uninterrupted or that you will be able to access or use the Services at the location and times of your choosing.
- 6.3. *Risk.* THE SERVICES IS PROVIDED TO YOU "AS IS" AND "AS AVAILABLE". ANY USE OF THE SERVICES IS AT YOUR OWN RISK. THE SOFTWARE MAY CONTAIN BUGS, ERRORS, AND OTHER PROBLEMS THAT COULD CAUSE SYSTEM OR OTHER FAILURES AND DATA LOSS. COMODO DOES NOT WARRANT THE PERFORMANCE OF THE SERVICES, THAT THE SERVICES WILL OPERATE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICES WILL OPERATE IN ACCORDANCE WITH ANY ACCOMPANYING DOCUMENTATION. COMODO IS NOT LIABLE FOR ANY DELETED, INACCESSIBLE, OR DISCLOSED DATA.
- 6.4. *Disclaimer of Warranties.* TO THE MAXIMUM EXTENT PERMITTED BY LAW, COMODO DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, IN EQUITY OR AT LAW, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. COMODO DOES NOT WARRANT THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR NEEDS. YOU SHALL BEAR THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICES.
- 6.5. *Data.* You are solely responsible for any data backed up by Comodo and are responsible for ensuring that the data is adequately protected from compromise by a third party or a malicious application. Comodo does not guarantee or represent that the files being backed up are free from viruses, malfunctions, or other problems and shall be backed up only in the state that they exist on the subscribing device. As such, compromised files backed up by Comodo may remain compromised after restoration and may not be useable.
- 6.6. *Limitation.* Some jurisdictions do not allow or limit the exclusion of warranties. In such jurisdiction, these provisions shall apply to you to the maximum extent allowed by law.

7. Limitation of Liability.

- 7.1. *Special Cases.* Nothing herein shall exclude or limit the liability of either party for death or personal injury resulting from the negligence of that party or its directors, officers, employees, contractors or agents, or in respect of fraud or of any statements made fraudulently by either party.
- 7.2. *Responsibility.* YOU ARE ULTIMATELY RESPONSIBLE FOR ANY LOSSES OR DAMAGES INCURRED BY YOU AS A RESULT OF USING OR INSTALLING THE SERVICES. COMODO WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF YOUR USE OF OR INABILITY TO USE THE SERVICES, EVEN IF COMODO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF THE DAMAGE WAS FORESEEABLE.
- 7.3. *Limitation on Liability.* EXCEPT AS STATED IN SECTION 7.1, COMODO AND ITS AFFILIATES, OFFICERS, LICENSORS, AND/OR CONTRACTORS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT THAT A STATE DOES NOT PERMIT THE EXCLUSION OR LIMITATION OF LIABILITY AS SET FORTH HEREIN, COMODO'S LIABILITY IS LIMITED TO THE FULL EXTENT PERMITTED BY LAW IN SUCH STATE.
- 7.4. *Data Transfer.* ALL MATERIAL AND/OR DATA DOWNLOADED OR OBTAINED THROUGH THE SERVICES OR RELATED SERVICES IS AT YOUR OWN RISK. YOU ARE SOLELY RESPONSIBLE FOR THE USE OR YOUR POSSESSION OF SUCH DATA OR MATERIAL. COMODO DOES NOT ACTIVELY MONITOR ANY INFORMATION OR MATERIAL TRANSFERRED THROUGH ITS SERVICES AND CANNOT WARRANT THE CONTENT OF SUCH MATERIAL OR DATA.
- 7.5. *Limitations on Remedy.* Except for actions and claims related to a party's indemnification obligations, all actions or claims relating to this Agreement must be brought within one (1) year from the date when the cause of action occurred.

8. Termination.

- 8.1. *Term.* This Agreement is effective until terminated by you or by Comodo. Limited License Services is licensed only for the Subscription Period selected during the registration which is generally a one-year term. The Subscription Period may be renewed by paying an additional license fee as set forth on the Comodo website. This renewal fee may be charged automatically to the credit card used to initially pay for the Services.
- 8.2. *Termination by You.* For Royalty Free Services, you may terminate this Agreement at any time by removing all copies of the Services in your possession or under your control. Limited License Services may be terminated by removing all copies of the Services and notifying Comodo of your intent to terminate this Agreement. Notification of termination must be sent by email to support@comodo.com. Your termination will be effective upon Comodo's receipt and processing of the email. Processing may take up to 24 hours.
- 8.3. *Termination by Comodo.* Comodo may terminate this Agreement at any time and for any reason. Comodo may monitor its systems for excessive consumption of network resources and may take technical or other remedies deemed necessary to prevent or eliminate any excessive consumption. If Comodo deems your use to be excessive, Comodo may terminate your account or adjust the price of the Services.

8.4. *Events Upon Termination.* Upon termination, you must immediately cease using the Services and delete all copies of the Services found on your computer and any backup copies made. Upon termination, Comodo may disable further use of the Services or related Services without further notice and may delete, remove, and erase any account information and any backup data stored by Comodo. Such deletions are in Comodo's sole discretion and may occur without notice to you. No refunds shall be given for any reason.

9. Indemnity. You agree to release, indemnify, defend and hold harmless Comodo and any of its contractors, agents, employees, officers, directors, shareholders, affiliates and assigns from all liabilities, claims, damages, costs and expenses, including reasonable attorney's fees and expenses, of third parties relating to or arising out of (a) your use or misuse of the Services, (b) your breach of this Agreement, or (c) your infringement upon any intellectual property or other proprietary right of any person or entity. Comodo may, at its own expense, assume the defense and control of any matter otherwise subject to indemnification by you. Doing so shall not excuse your indemnity obligations in this Agreement. The terms of this paragraph will survive any termination or cancellation of the Agreement.

10. Privacy.

10.1. *Privacy Policy.* Comodo has built its products and services with your privacy and security in mind. To keep you informed of its privacy practices, Comodo periodically publishes a Privacy Statement that is incorporated by reference into this Agreement. You can view the Privacy Statement at <http://www.comodogroup.com/privacy.asp>. Comodo may update its Privacy Statement in its sole discretion. Any amendments to the Privacy Statement will be posted on the Comodo website. Please periodically review our website for changes to the privacy statement.

10.2. *Information Collection.* Comodo may gather information related to the use of its Services. This information may include private data. Comodo may use this information to provide the services, gather information about the spread of online threats and share this information with others, improve its products, track geographical data, or enforce the terms of this Agreement. Comodo may disclose the collected information if required or permitted by law or in response to a subpoena or other legal process. In order to promote awareness, detection and prevention of Internet security risks, Comodo may share certain information with research organizations and other security Services vendors.

10.3. *Opt-Out.* Comodo occasionally sends out informational emails about its products and services. You may 'opt-out' of receiving information not directly related to the Services you have installed or are using by emailing optout@comodo.com. If you do not opt out then your acceptance of this Agreement will constitute your affirmative consent to receiving marketing and promotional material from Comodo and its affiliates. Features of the Services that gather personal information can be disabled at any time by the user through the Services menu. Please refer to documentation accompanying the Services for assistance in doing so.

11. Governing Law. This Agreement shall be construed, interpreted and governed by the laws of the State of New Jersey without regard to conflicts of law provisions thereof. You agree that the exclusive forum for any disputes arising out of or relating to this Agreement shall be an appropriate federal or state court sitting in New Jersey, USA.

12. Severability. If a provision of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of the Agreement will not be affected, impaired or invalidated. If the absence of the provision adversely affects the substantive rights of a party, the

parties agree to replace the provision with a new provision that closely approximates the economic and proprietary results intended by the parties.

- 13. Force Majeure.** Any delays in or failure by either party in the performance of any obligation under this Agreement shall be excused to the extent that such failure or delay is caused by occurrences beyond the party's reasonable control, including acts of God, storms, hurricane, earthquakes, riots, war (whether declared or not), sabotage, interruption or failure of telecommunication or digital transmission links, Internet slow-downs or failures, and any other cause that cannot reasonably be foreseen or controlled by such party. A party will not be liable as result of failures or errors related to the use or operation of the Internet.
- 14. Entire Agreement.** The Agreement, the Privacy Policy, and the attached Schedules contain the entire and exclusive Agreement and understanding between the parties on the subject matter of the Agreement. The Agreement supersedes all prior agreements, understandings and arrangements related to the subject matter. No representation, undertaking or promise made prior to the Agreement shall be effective or valid except as may be expressly stated in the Agreement.
- 15. Waiver.** No waiver, delay or discharge by a party will be valid unless in writing and signed by an authorized representative of the party against which its enforcement is sought. Neither the failure of either party to exercise any right of termination nor the waiver of any default will constitute a waiver of the rights granted in the Agreement with respect to any subsequent or other default.
- 16. Amendments.** Comodo may amend this Agreement and the Services and related services offered under the Agreement in its sole discretion without notice, including license fees, availability, equipment and Services requirements, and limits or restrictions on the use of Services or services. Comodo may impose additional restraints on the use of the Services at any time. Any amendment made to this Agreement shall be posted on the Comodo website and is effective immediately after posting the Agreement. The website posting shall be your sole notice of any such changes. You agree to check the Comodo website periodically to obtain notice of any changes. Continued use of the Services after a change constitutes your acceptance of the change. Section headings are for convenience only and are not part of the Agreement itself.
- 17. Assignment.** You may not assign or transfer, or purport to assign or transfer, any of your rights, duties, or obligations under the Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law, or otherwise. Comodo may assign or transfer this Agreement in its sole discretion.
- 18. Notices.** All questions, notices, demands, or requests to Comodo with respect to this Agreement shall be made in writing to: Comodo Security Solutions, Inc., 525 Washington Blvd., Suite 1400, Jersey City, New Jersey 07310. All notices to you shall be made by posting the notice on the Comodo website.
- 19. Survival.** This Agreement shall be applicable for as long as you have the Services downloaded or installed. All provisions regarding confidentiality, proprietary rights, limitation of liability, indemnity, and non-disclosure shall survive this Agreement.
- 20. Arbitration.** To the extent permitted by law, before you may begin arbitration with respect to a dispute involving any aspect of this Agreement, you shall notify Comodo, and any other party to the dispute for the purpose of seeking dispute resolution. If the dispute is not resolved within sixty (60) days after the initial notice, then a party may proceed in accordance with the following:

- 20.1. Any unresolved dispute arising under the terms of this Agreement shall be decided by arbitration conducted through the services of the American Arbitration Association (hereinafter referred to as the "AAA").
- 20.2. Notice of demand for an arbitration hearing shall be in writing and properly served upon the parties to this Agreement. Arbitration hearings shall be held in the state of New Jersey at a location mutually agreeable to the parties.
- 20.3. There shall be one Arbitrator to hear the matter. The parties shall initially agree to a panel of 3 possible Arbitrators to hear the matter and each party shall have the opportunity to name one Arbitrator to be dropped from the panel until one remains. The party giving notice of the Arbitration demand shall be first to indicate its selection.
- 20.4. All costs of the Arbitration and the AAA shall be borne equally by both parties to this agreement, regardless of the final decision. The defaulting party as determined by the Arbitrator, shall pay all other costs and expenses, including reasonable attorney's fees, incurred by the party in enforcing its rights under this Agreement.

21. ACCEPTANCE.

BY CLICKING "I ACCEPT" BELOW, YOU AGREE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND THAT YOU WILL BE BOUND BY AND COMPLY WITH IT. DO NOT CLICK THE "I ACCEPT" BOTTON IF YOU DO NOT AGREE TO THIS AGREEMENT.