

Gearset EULA

IMPORTANT NOTICE: Please read the full Agreement carefully as it is a legally binding agreement.

THE PERSON REGISTERING TO USE THE SOFTWARE ACCEPTS ALL OF THE TERMS AND CONDITIONS OF THE AGREEMENT. IF THEY ARE USING THE SERVICES ON BEHALF OF ANOTHER PERSON OR LEGAL ENTITY THEN, BY REGISTERING, THEY REPRESENT AND WARRANT THAT THEY HAVE FULL LEGAL AUTHORITY TO ACCEPT ON BEHALF OF AND BIND THAT PERSON OR LEGAL ENTITY TO THE TERMS.

AGREEMENT

1 DEFINITIONS

In this Agreement, the following terms shall have the following meanings:

"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 under the laws of any country;

"Agreement" means this agreement;

"Install", "install", "installing", "installation" or "installed" in connection with the Licensed Software includes the downloading of the Licensed Software from our or any third party's remote server;

"Licence Fees" means the fees payable by you to us excluding VAT and all other relevant taxes, including Withholding Tax where applicable, as detailed by us from time to time;

"Licensed Software" means such of the Software, as is selected by you and as licensed to you under the terms of this Agreement, including any related manuals, help files or other documentation. Such Licensed Software is selected by the downloading, installation or use of such Software or the clicking of the "I accept" button;

"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;

"Software" means any or all of the software products in executable form listed in Schedule 1;

"We", "Our" and the non-capitalised versions means Red Gate Software Limited, a company registered in England with company number 3857576 and having its registered office at Newnham House, Cambridge Business Park, Cambridge CB4 0WZ, United Kingdom;

"You", "Your" and the non-capitalised versions means either (a) the person who installs the Licensed Software on a OSE for his own personal use; or (b) where the Licensed Software is installed on a OSE on behalf of an employer, another person, or entity, then such employer, other person or entity on whose behalf the Licensed Software has been installed.

2 HEADINGS

2.1 The headings to the clauses and Schedules of the Agreement are for convenience only and will not affect its construction or interpretation.

3 EVALUATION LICENCE

3.1 In return for the mutual rights and obligations set out in the Agreement we grant you the right to use the Licensed Software for a period of 30 days from when it is installed by or on behalf of you ("Evaluation Period"). During the Evaluation Period you can decide whether or not the Licensed Software meets your requirements. The Evaluation Period may be extended by written agreement with us ("written" shall include an exchange of emails between you and us).

3.2 Before or upon expiry of the Evaluation Period:

3.2.1 If, in your sole opinion, the Licensed Software meets your requirements, and you wish to continue the Agreement, you shall pay us the Licence Fees and this Agreement shall then remain in full force and effect.

3.2.2 If you decide that the Licensed Software does not meet your requirements, or otherwise do not wish to enter into a paid up licence of the Licensed Software, then you shall destroy the Licensed Software and all copies, in any form including partial copies or modifications of the Licensed Software received from us or made in connection with this Agreement and all documentation relating thereto. Any rights of yours to use the Licensed Software shall cease.

3.3 During the Evaluation Period, you hereby agree that the Licensed 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. For the avoidance of doubt, unless and until you pay the relevant Licence Fees for the Licensed Software: (a) clauses 8.1, 8.3 and 12.2 of this Agreement shall not apply; and (b) clause 12.1 shall apply except that the reference to clause 12.2 is deleted.

4 OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

4.1 You acknowledge that:

4.1.1 all Intellectual Property Rights in or relating to the Licensed Software are owned by us or (in relation to open source software included in the Licensed Software) their relevant owners;

4.1.2 except as expressly granted under this Agreement, you have no rights in the Licensed Software.

4.2 You hereby agree to refrain from any action which would diminish our Intellectual Property Rights in or relating to the Licensed Software or which would call them into question.

4.3 You agree not to remove or alter any trademarks, copyright notices or similar proprietary devices, including without limitation any electronic watermarks or other identifiers, that may be incorporated in the Licensed Software.

4.4 If you become aware of any infringement or suspected infringement of our Intellectual Property Rights in or relating to the Licensed Software by any third party, you shall notify us without delay. We and you shall consult together on an appropriate course of action but neither party shall be obliged to take any action in respect of any such infringement or suspected infringement.

5 LICENCE

5.1 In return for the mutual rights and obligations under the Agreement, and subject to the payment of the Licence Fees by you to us, we grant to you in perpetuity a limited, personal, non-exclusive, non-sub-licensable and non-transferable license:

5.1.1 subject to clauses 5.3 and 5.4, to use and copy the Licensed Software for use on a single OSE owned, leased and/or controlled by you for internal use;

5.1.2 subject to clause 5.3, to make one copy of the Licensed Software in machine readable form for normal operational security and back-up purposes. You must ensure that such copy is not installed on any OSE at any time when the original copy of the Licensed Software supplied to you is installed upon any other OSE. This Agreement will apply to such copy as it applies to the original copy of the Licensed Software installed by you. Such copy and the media on which it is stored will be our property and you shall ensure that such copy bears our proprietary notice;

5.1.1 Some Software incorporated in the Licensed Software may be offered under a separate open-source license that we will make available to you. There may be provisions in the open-source license that expressly override some of the terms in this Agreement and in such instance the open-source license terms shall prevail in relation solely to that open-source content.

5.2 Except as stated in this Agreement, you have no right to use, incorporate into other products, copy, publish, display, modify, translate the Licensed Software or any modification,

adaptation or copy of the Licensed Software or any part thereof. You may only decompile, reverse engineer, or disassemble the source code of the Licensed Software either in whole or in part, as expressly permitted under the License 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.

5.3 The Licensed Software is licensed for use by a specific user only. It may be used by the licensed user on more than one OSE.

5.4 The licence set out in this clause 5 is personal to you. Except as allowed in clause 20, you may not rent, lease, sub-license, sell, assign, or pledge the Licensed Software, on a temporary or permanent basis, without our prior written consent.

5.5 You shall not use the Licensed Software to manufacture or distribute a product that is substantially similar to or competitive with our Software.

5.6 If you breach this clause 5, the Agreement or rights granted will automatically terminate in accordance with the provisions of clause 10.

6 CONFIDENTIALITY

6.1 The structure, organisation, and source code of the Licensed Software are valuable trade secrets and proprietary confidential information of ours and our licensors. You agree not to provide or disclose any confidential information in the Licensed Software or derived from it to any third party.

6.2 The provisions of clause 7.1 will not apply to the extent that:

6.2.1 such information is in your possession free from any restriction as to its use or disclosure; or

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

6.2.3 such information is required to be disclosed by you by law.

6.3 No information to which clause 7.2.3 applies shall be disclosed to a third party unless and until you have:

6.3.1 given us, where practicable, five (5) U.K. business days written notice of such proposed disclosure;

6.3.2 consulted with us; and

6.3.3 agreed with us the content of the disclosure,

provided that we shall not limit the disclosure in a manner which would prevent you from complying with a statutory or regulatory obligation or court order.

7 WARRANTY AND SUPPORT

7.1 We hereby warrant:

7.1.1 that we own the Intellectual Property Rights in the Software and/or have the right to grant a license to you;

7.1.2 that in creating the Licensed Software, we have not knowingly infringed the intellectual property rights of third parties;

7.1.3 that the Licensed Software shall operate substantially in accordance with its description. However, you acknowledge that the Licensed Software and related materials are of such a complexity that there will be inherent defects and that therefore we can give no warranty that the Licensed Software is free from error or defect.

7.2 Other than as provided for in clause 8.1 above, we do not offer any warranty related to the Licensed Software, either express or implied, including but not limited to implied warranties of fitness for purpose or satisfactory quality. The Licensed 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 Licensed Software will meet any particular user needs. You shall take full responsibility for ensuring that the Licensed Software are suitable for your intended purposes and to facilitate your checks of such suitability, we offer free Evaluation Periods.

7.3 Support. In relation to and without prejudice to the generality of clause 8.1.3 above, we do provide limited support to users. The details of the support provided for the Licensed Software is given on our website. You accept that, although we constantly seek to make the Licensed Software as useful as possible, the nature of software is such that no guarantee can be provided that any particular problem will be solved.

8 LIMITATION AND EXCLUSION OF LIABILITY

8.1 We do not exclude our liability (if any) to you:

8.1.1 for personal injury or death resulting from our negligence;

8.1.2 for fraud; or

8.1.3 for any other matter for which liability cannot be excluded by law.

8.2 Subject to clause 9.1, we shall not be liable to you for any of the following types of loss or damage arising under or in relation to the Agreement (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise):

8.2.1 any loss of profits, business, contracts, anticipated savings, goodwill, or revenue; or

8.2.2 any loss, or corruption, of software or data; or

8.2.3 any loss of use of hardware, software or data; or

8.2.4 any indirect, special or consequential loss or damage whatsoever,

even if we have been advised in advance of the possibility of such loss or damage.

8.3 Subject to clauses 9.1 and 9.2, our aggregate liability under the Agreement (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) shall be limited in all cases to the Licence Fees paid for the Licensed Software.

8.4 You acknowledge that the provisions of clauses 8, 9 and 12.1 are reasonable and reflected in the price which would be higher without those provisions, and you accept such risk. In the event that any of the limitations or exemptions in the Agreement shall be found to be void, clauses 8, 9 and 12.1 shall be construed in accordance with clause 15.

9 TERM AND TERMINATION

9.1 This Agreement shall commence upon your acceptance of its terms by the downloading, installation or use of the Licensed Software or the clicking of the "I Accept" button, and shall continue in perpetuity unless terminated in accordance with clauses 10.2 or 10.3, or otherwise in accordance with this Agreement.

9.2 This Agreement will terminate automatically if you fail to comply with any provision of the Agreement.

9.3 We may terminate the Agreement immediately and without notice if we reasonably suspect that you are using the Licensed Software for any purpose which contravenes the laws of England.

9.4 Upon termination of this Agreement, you must uninstall the Licensed Software and destroy all copies of the Licensed Software including all components of it in your power, possession or control.

9.5 The termination of the Agreement howsoever arising shall not affect the rights, duties and liabilities of either party accrued prior to termination. Following termination, no obligations or liabilities remain with us.

9.6 On termination of the Agreement, and except as under clause 10.5 above, the provisions of clause 1 (Definitions), clause 2 (Headings), clause 4 (Ownership of Intellectual Property Rights), clause 7 (Confidentiality), clause 8 (Warranty and Support), clause 9 (Limitation and Exclusion of Liability), clause 10 (Term and Termination), clause 11 (Data Collection), clause 12 (Third Party Claims) and clauses 13 to 20 will remain in effect.

10 DATA COLLECTION

10.1 We are continually seeking to develop new products, enhance existing products and provide a better sales service to our customers. To facilitate this process it is helpful to us to collect information related to your use of the products. We recognise that our collection of such information needs to be subject to your permission and under your control and that you need to be clear that we keep your personal and business data in confidence. The remainder of this clause details how we handle these issues.

10.2 We wish to collect, maintain, process and use analytics data related to your use of the Licensed Software and visits to our websites. To do this, we will use the following cookies:

10.3 Evaluation Software. While you are evaluating the Licensed Software during an Evaluation Period (clause 3) we wish to collect and use information as described in clause 11.2 above. The Licensed Software as delivered to you will have such data collection enabled and you will not be able to disable this during the Evaluation Period.

10.4 Paid for Licence. When you have purchased a full license of the Software, either following an Evaluation Period or otherwise, then we also wish to collect and use information as set out in clause 11.2 above. You will be able to disable the data collection functionality at any time.

10.5 In addition, save as expressly set out in this clause 11, any personal information we collect about you shall be treated in accordance with our Privacy Policy available at: <http://www.red-gate.com/our-company/about/legal>.

11 THIRD PARTY CLAIMS

11.1 Except as in clause 12.2 below, if a third party claims that the Licensed Software, as a result of your use of the Licensed Software, causes loss or damage whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise, then, without prejudice to our overall liability to such third party, you shall indemnify us from any such loss or damage.

11.2 If any claim is brought against you alleging that your use of the intellectual property associated with the Licensed Software 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 shall 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 Licence Fees paid to us by you under this Agreement. We shall have the right, at our sole choice, either: (i) to negotiate terms for continued use by you of the claimed infringing Licensed Software; or (ii) to amend the Licensed Software to make it non-infringing; or (iii) to terminate this Agreement with immediate effect and in such event, we shall refund to you all Licence Fees paid.

12 GOVERNING LAW AND SETTLEMENT OF DISPUTES

12.1 The 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.

12.2 Any dispute between the parties that is not settled by negotiation shall be settled by binding arbitration under the rules of the International Chamber of Commerce before a single arbitrator. Where we bring the action, then the arbitration shall be in London, England. Where you bring the action then the arbitration shall be held in either London, England or Paris, France as agreed between the parties. All documentation and proceedings shall be in the English language. The arbitrator shall have the right to grant reasonable costs to the prevailing party.

12.3 The parties irrevocably agree that a judgment of the arbitrator referred to in this clause is conclusive and binding upon the relevant party or parties and may be enforced against them in the courts of any jurisdiction.

13 COMPLIANCE WITH APPLICABLE LAW

You acknowledge and agree that notwithstanding the fact that the Agreement is governed by the laws of England you may be subject to additional laws in other jurisdictions with respect to your use of the Software. You agree to comply with the laws of any jurisdiction that apply to the Software including without limitation any applicable export laws or regulations.

14 SEVERABILITY

If any provision or part of any provision in this Agreement shall be found by any court, body or authority of competent jurisdiction to be illegal, invalid or unenforceable for any reason then 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. If this happens then the remaining provisions or part provisions are unaffected.

15 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.

16 NO THIRD PARTY RIGHTS

We and you do not intend that any of the Agreement terms 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.

17 ENTIRE AGREEMENT

The Agreement contains all the terms which the parties have agreed in relation to the subject matter of the Agreement and supersedes any prior written or oral agreements, representations (save for any fraudulent misrepresentation, fraud or concealment) or understandings between the parties in relation to such subject matter.

18 REVISIONS TO TERMS

We reserve the right to revise the terms of the Agreement by updating the Agreement on our website, or by notifying you by email. You are advised to check the website periodically for notices concerning such revisions. Your continued use of the Licensed Software shall be deemed to constitute acceptance of any revised terms.

19 NO ASSIGNMENT

This Agreement is personal to you. You may not assign the benefit or delegate the burden of the Agreement or hold the Agreement on trust for any other person without our prior written consent.

20 ACCEPTANCE OF AGREEMENT

You will be deemed to have accepted the terms of this Agreement by downloading, installing or using the Licensed Software on any OSE.

Schedule 1

SOFTWARE