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ShadowProtect IT Edition (the "**Software**") can create, edit, or restore computer backup images of servers and desktops without the need to install the Software itself. The Software is intended to provide IT professionals with a bootable Windows environment to create and restore compressed and encrypted backup images. The Software includes an interface for network configuration and a simple interface to restore individual files or folders or update backup images. Backup images can be saved to a variety of destinations. The Software also provides complete and efficient bare metal recovery.

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- 18.7. Headings and Captions.** The headings and captions used in this Agreement are for convenience or reference only and shall not modify, expand, limit, or describe the scope or intent of this Agreement or in any other way affect the terms or conditions of this Agreement.

- 18.8. Force Majeure.** No delay, failure or default in performance of any obligation of StorageCraft hereunder shall constitute a breach of the Agreement to the extent caused by a force majeure.
- 18.9. Applicable Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Utah, U.S.A., without application of any choice-of-law or conflict-of-law principles, rules, or provision that would result in the application of the laws of any jurisdiction other than Utah. Any action for provisional relief concerning this Agreement or the Parties' relationship hereunder, including but not limited to a temporary restraining order, preliminary injunction, attachment in aid of arbitration, or order for any interim or conservatory measure, shall be brought in Salt Lake County, State of Utah, U.S.A. The Parties consent and submit to the exclusive jurisdiction of the state or federal courts in Salt Lake County, State of Utah, U.S.A., for purposes of any action for such provisional remedy or interim or conservatory measure. The United Nations Convention on Contracts for the International Sale of goods does not apply to this Agreement.
- 18.10. Dispute Resolution.** The Parties expressly waive any right to trial by jury concerning any dispute arising from or relating to this Agreement. At the election of either Party to this Agreement, any dispute, controversy, or claim arising out of, relating to, or in connection with the following shall be submitted for final resolution by arbitration administered by the American Arbitration Association (the "AAA"): Licensee's purchase or use of the Software; the Software's performance, including without limitation any alleged deficiency or defect; the existence or breach of a contractual, statutory, or common-law warranty; the terms and obligations of this Agreement; the performance, termination, rescission, or alleged breach of this Agreement; and the Agreement's validity or enforceability, including without limitation any claim that all or any part of this Agreement is void, voidable, unconscionable, or unenforceable (collectively, "Arbitratable Dispute"). Notwithstanding the foregoing, any claim for infringement or violation of copyright, trademark, or other intellectual property rights is not an Arbitratable Dispute, but shall be brought before a court of competent jurisdiction in Salt Lake County, State of Utah, U.S.A. In the event of an Arbitratable Dispute, the election to arbitrate must be made in writing by a Party on or before the last day to answer and/or respond to a summons and/or complaint brought by the other Party. If Licensee is a U.S. resident or maintains a place of business in the U.S., the arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules in effect at the time of the arbitration, excepting any rules pertaining to class arbitrations. If Licensee is not a U.S. resident or does not maintain a place of business in the U.S., the arbitration shall be conducted in accordance with the AAA International Arbitration Rules in effect at the time of the arbitration, excepting any rules pertaining to class arbitrations. (The Commercial Arbitration Rules and International Arbitration Rules are collectively referred to as the "Rules". Copies of the Rules can be obtained, free of charge, at <http://www.adr.org/>.) The Parties intend that any arbitration between them shall involve only the dispute between the Parties. No other dispute between a Party and a third party shall be included in the arbitration. Class arbitration shall not be permitted.
- If the Arbitratable Dispute involves a claim for damages of \$20,000 U.S.D. or less, the arbitration shall be conducted by a single arbitrator selected in accordance with the Rules. All other Arbitratable Disputes shall be conducted by three arbitrators selected as follows: Each Party shall select one arbitrator and deliver written notice of such selection to the other Party and to the AAA within twenty (20) calendar days after the deadline for serving a statement of defense. In the event a Party fails to select an arbitrator or deliver notice of such selection to the other Party and to the AAA within such time period, upon request of either Party, such arbitrator shall instead be appointed by the AAA (as provided in the Rules) within fifteen (15) calendar days of receiving such request. The two arbitrators so appointed shall nominate a third arbitrator, notifying the Parties and the AAA of the nomination within fifteen (15) calendar days of their appointment. If the first two appointed arbitrators fail to nominate a third arbitrator within that time period, then, upon request of either Party, the third arbitrator shall be appointed by the AAA (as provided in the Rules). The third arbitrator shall serve as chairman of the arbitral tribunal. In the event that an arbitrator is no longer able or willing to serve as arbitrator, the method of selection used to select such arbitrator shall be used to select the replacement arbitrator. Any arbitrator must be fluent in the English language and a licensed attorney with experience in software licensing transactions. In the event of an arbitration conducted under the International Arbitration Rules, the arbitrator(s) must also have experience in international software licensing transactions.
- The place of arbitration shall be Salt Lake County, State of Utah, U.S.A. and shall be conducted in the English language, unless the Parties agree otherwise in writing. Any award by the arbitrator(s) must be a reasoned award that: fully sets forth findings of fact from the evidence presented; applies the findings of fact to the law of the case; fully sets forth conclusions of law based upon the Parties' respective legal theories; explains which legal theories were followed and why; and, if damages, costs, and/or fees are awarded, specifies the calculations of the types of damages, costs, and/or fees awarded as to each Party. Any award is final and binding on the Parties and may be challenged in a court of competent jurisdiction only upon those grounds allowed under the Utah Uniform Arbitration Act, Utah Code Ann. section 78B-11-101 et seq. In the absence of challenge, judgment on the award may be entered in any court of competent jurisdiction. Without limiting the authority conferred on the arbitrator(s) by this Agreement and the Rules, the arbitrator(s) shall have the authority to exercise equitable principles and award equitable remedies. By agreeing to Arbitration, the Parties do not intend to deprive any court of competent jurisdiction in Salt Lake County, State of Utah, U.S.A., of its ability to issue any form of provisional remedy, including but not limited to a temporary restraining order, preliminary injunction, attachment in aid of arbitration, or order for any interim or conservatory measure. A request for such provisional remedy or interim or conservatory measure by a Party to a court shall not be deemed a waiver of an agreement to arbitrate.
- 18.11. Customer Contact.** If Licensee has any questions concerning this Agreement, Licensee may contact StorageCraft as follows: website - www.storagecraft.com; telephone – 801-545-4700; fax - 801-545-4705; mail – StorageCraft Technology Corporation, 11850 Election Road, Suite 120, Draper, Utah 84020, U.S.A.

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