

## LINBIT DR End User License Agreement (EULA)

IMPORTANT – PLEASE READ CAREFULLY:

THIS End User License Agreement (“EULA”) made this day of [REDACTED], 20 [REDACTED]

BETWEEN:

[REDACTED], having its main office at  
[REDACTED]

(hereinafter referred to as „USER”)

AND:

[REDACTED], having its main office at  
[REDACTED]

(hereinafter referred to as „LINBIT”)

whereas the USER wishes to acquire the DRBD Proxy SOFTWARE.

With the purchase of DRBD Proxy SOFTWARE (or as a DRBD Authorized Reseller, Certified Partner, or Certified OEM/ISV), the USER accepts the terms and conditions of this license and service agreement. The present terms together with those of the relevant order forms make up the agreement between the USER and LINBIT.

### 1 Definitions

“DOCUMENTATION” shall, if applicable, refer to online instructions and/or specifications on features provided by LINBIT. The user manual and specifications on features may be included in the STANDARD SOFTWARE in electronic format.

“EFFECTIVE DATE” shall refer to the date of signature.

“SOFTWARE” shall refer to STANDARD SOFTWARE, updates, DOCUMENTATION as well as parts thereof.

“STANDARD SOFTWARE” shall refer to the unmodified computer SOFTWARE solely in the form of its object code, listed in the order form signed by the USER and LINBIT.

“STANDARD SPECIFICATIONS” shall refer to the specifications on features as described in the DOCUMENTATION.

“UPDATES” shall refer to any improvements or – if applicable – provisional corrections of program errors in the STANDARD SOFTWARE, provided by LINBIT when available to its supported USERS. Updates do not comprise products, program features and modules, offered by LINBIT as separate items against an additional fee.

Terms not defined in this agreement shall have the meaning specified in the order form.

## 2 License

LINBIT shall hereby grant the USER a simple, non-transferable license to use the SOFTWARE in the area defined by the EULA in machine readable form, according to the present terms and conditions of the EULA as well as to the order form. Any copy of the STANDART SOFTWARE shall be limited to the use by the USER and may only be installed and used on one (1) server. If, after entry into force of this EULA, LINBIT grants the USER the right to make additional copies of the STANDART SOFTWARE or if LINBIT provides additional SOFTWARE to the USER (including, but not limited to updates), this SOFTWARE and its accompanying DOCUMENTATION shall automatically be integrated into this EULA and shall become part of the SOFTWARE. This provision shall remain in force, subject to any other explicit written agreements between the USER and LINBIT, concluded at the time when these additional rights are granted.

The USER shall have the right to use the STANDARD SOFTWARE on a local network or in any other multiple processing environment, provided the applicable fee has been paid and he has been entitled to do so in the order form and as far as the use of the SOFTWARE according to the applicable order form requires to make an adequate number of copies of the SOFTWARE and the DOCUMENTATION. Unless expressly permitted by this EULA and by the applicable law, the USER may not copy, translate, rent or lease the SOFTWARE nor grant any sub-license nor transfer the license in any other form, nor order or authorize the de-compilation or disassembly of the entire SOFTWARE or parts thereof (subject to the fact that upon written request LINBIT will provide the interface information necessary to allow compatibility of the SOFTWARE with other, independently developed computer programs against payment of an adequate fee to LINBIT).

According to this EULA, the USER shall not be entitled to any licenses or rights to any trademarks or trade names of LINBIT or a third party. LINBIT shall expressly reserve any relevant rights, not expressly granted by this EULA. The USER shall agree that the SOFTWARE and any relevant technical information, DOCUMENTATION and material shall be subject to the export restrictions according the Austrian export regulations as well as any other applicable export restrictions of the area under any agreement.

The USER shall be obliged to fully comply with all legal requirements laid down in these control regulations, to fully co-operate with LINBIT in the event of official or unofficial examinations or inspections related to these controls as well as not to export, re-export, detour, diverge or transfer any of the products or derived products directly or indirectly in a country subject to an embargo established by the government, unless the USER has obtained prior written approval from LINBIT and from the Austrian Ministry of Trade as well as the relevant government authorities in the area under any agreement.

As far as applicable, the USER shall purchase the licenses necessary to import the SOFTWARE in the area under the EULA, to clear customs at the local customs authority immediately upon arrival of the SOFTWARE in the area under the EULA as well as to pay any customs and other fees due upon import into the area under the EULA.

On any full or partial copy of the SOFTWARE made by the USER, the USER shall indicate the entire copyright and other protection information, as listed on the original. LINBIT shall be entitled to request from the USER at most once during a period of six (6) months to submit a written report on the extent of his use of the SOFTWARE in a form considered sufficient by LINBIT or to inspect his use of the SOFTWARE. The USER shall be obliged to make this report available to LINBIT at the latest fifteen (15) days after its written request or to agree to an inspection. In case the report or the inspection reveals that the extent of use defined by this EULA has been exceeded, the USER shall immediately pay the additional license fee for exceeding the terms of use to LINBIT. LINBIT shall bear the costs of the inspection, except if the inspection reveals that the extent of use has resulted in license fees that are five (5) or more percent higher than the license fees laid down in this EULA. In such event, the USER shall refund the relevant costs of the inspection to LINBIT.

### 3 Maintenance

The USER shall be entitled to use the standard maintenance services of LINBIT (“MAINTENANCE”), which shall include the following: updates of the STANDARD SOFTWARE, as soon and so far as such are available. The updates shall be made available via the download area of the LINBIT website ([www.linbit.com](http://www.linbit.com)) and it shall be at the discretion of the USER to make use of these updates. The support gives the USER the possibility to get his DRBD Proxy high-availability cluster running. The support shall include all questions related to the installation of DRBD Proxy and the relevant cluster managers. A license according to this EULA shall be automatically granted for SOFTWARE, debugging, DOCUMENTATION or any other products delivered as part of MAINTENANCE services.

If the USER fails to obtain MAINTENANCE services for the STANDARD SOFTWARE, incompatibilities might occur, in which case the USER shall not have any right to legal action, nor shall LINBIT have any responsibilities. LINBIT shall not provide any MAINTENANCE services for SOFTWARE modified by the USER, for SOFTWARE modified by LINBIT for the USER, unless otherwise agreed in writing, for problems not caused by SOFTWARE provided by LINBIT, defects of technical equipment or problems that would have been solved by an update, which the USER has failed to install.

MAINTENANCE services shall commence on the first day of the month following the date of entry into force of the order and shall last for twelve (12) consecutive calendar months. After expiry of the initial duration, the MAINTENANCE services may be extended by one (1) year periods. Every copy of the STANDARD SOFTWARE, including copies to which the USER is entitled, shall be subject to separate MAINTENANCE fees. The USER shall agree not to distribute or use any information or advantages, which he gets in the course of the MAINTENANCE of STANDARD SOFTWARE, for which the current MAINTENANCE fee has not been paid.

## 4 Services

Services provided by LINBIT ordered by the USER, including application analysis, performance optimization, programming and implementation services, training and/or data conversion, shall be subject to a separate, written and signed service agreement.

## 5 Limited Warranty for SOFTWARE, Indemnity against Liability, Exclusion of Liability

LINBIT warrants that, for a period of ninety (90) days from the date of entry into force (“WARRANTY PERIOD”), the STANDARD SOFTWARE will perform in substantial conformance with the STANDARD SPECIFICATIONS. In case of violation of this limited warranty, LINBIT shall be obliged to the repair or replacement of the faulty STANDARD SOFTWARE by providing a relevant copy of the STANDARD SOFTWARE within an adequate period of time, provided that the USER informs LINBIT about the faults within the WARRENTY PERIOD and has installed all updates provided by LINBIT.

In case LINBIT is not able to remedy the fault within an adequate period of time, so that the STANDARD SOFTWARE performs according to the STANDARD SPECIFICATIONS, or in case the elimination of the error fails in any other way, the USER shall be entitled to cancel the EULA by written notice within a period of thirty (30) days and to claim refund of the license fee paid for the faulty SOFTWARE or to pay a reduced license fee. The above listed limited warranty shall be void, if the STANDARD SOFTWARE has been modified by somebody other than LINBIT without LINBIT’s written consent, or in case of a substantial breach of the EULA by the USER.

In case the USER has purchased a test or demonstration license for the STANDARD SOFTWARE, this shall be provided “as seen” and without any warranty. In case third parties raise claims against the, stating that the SOFTWARE of LINBIT infringes their intellectual property rights, LINBIT shall hold the USER harmless.

In order to be entitled to this protective clause, the USER has to:

- immediately inform LINBIT in writing – at the latest within twenty (20) days after such claim has become known (or earlier, if this is required by the applicable law),
- transfer to LINBIT the sole control over any legal defense or any conciliation proceedings and
- provide LINBIT with the information and support required for legal defense or conciliation proceedings as well as to grant the relevant powers of attorney.

If it is noted or presumed by LINBIT that the entire SOFTWARE or part thereof represents an infringement of the copyright of third parties, LINBIT shall have the opportunity to choose to amend the SOFTWARE at the USER’s expenses, ensuring that it does no longer infringe the copyright, but offers a similar performance with regard to its features, or to obtain a license for the USER, allowing the USER to continue to use the SOFTWARE, or to ask the USER to return the infringing SOFTWARE and all related rights. In the latter case, the EULA regarding the infringing SOFTWARE shall be terminated thirty (30) days after receipt the written notice from the USER. The USER shall be entitled to a refund of the license fees paid for this part of the SOFTWARE, taking into account a five (5) year linear write off, starting on the date of the entry into force of this EULA.

LINBIT shall not hold the USER harmless, if he has used an obsolete version of the program and if the claims arising from the infringement of intellectual property could have been avoided by using the up-to-date version of the SOFTWARE; in addition LINBIT shall not hold the USER harmless, if the claims arising from the infringement of intellectual property are due to a modification of the program or to a combination or use of the programs in connection with SOFTWARE or hardware provided by third parties.

This section shall lay down the claims for exclusion of liability in countries without a SOFTWARE patent act as well as in the case of claims or damages put forward against the USER out of copyright violations.

The above provisions shall represent the entire liability and the exclusive legal remedy with regard to any claims concerning SOFTWARE violation or unlawful use of intellectual property rights.

The rates and other fees within the framework of this EULA shall refer to limited warranty, exclusion of liability and limitation on liability, as listed in this EULA; the fees would be considerably higher in case one of these

provisions could not be enacted. LINBIT shall explicitly reject any warranty or terms not laid down specifically in this EULA, no matter whether these have been made orally or in writing, expressly or tacitly, or whether they are considered business practice or result from negotiations, in particular including warranty with regard to suitability for the market, or for a particular purpose, with regard to satisfying quality, a title or non-violation.

LINBIT shall not warrant that the use of the licensed SOFTWARE shall be uninterrupted or flawless, or that the SOFTWARE shall meet all the USER's requirements. Only the legal remedies laid down in this EULA shall be available to the USER.

The USER may use SOFTWARE or devices of third parties in connection with LINBIT SOFTWARE at his own risk. LINBIT shall reject any express or tacit warranty with regard to quality, properties, operability, performance or suitability of the SOFTWARE or devices provided by third parties, including the possibility of integrating these into the LINBIT SOFTWARE. Issues related to the quality, properties, operability, performance or suitability of SOFTWARE or devices provided by third parties are to be exclusively solved by the USER and the suppliers of such SOFTWARE or devices.

The fees to be paid to LINBIT according to the EULA shall not include the takeover of any risk by LINBIT. LINBIT shall refuse any responsibility for foreseeable or non-foreseeable, direct or indirect financial loss or damages to property or persons, "exemplary or punishing damages" or lost profit, irrespective of whether damages are claimed based on the EULA, unauthorized action, violation of the EULA, warranty or on any other tangible legal reasons, or for loss or damages to the USER's data or programs.

The total liability of LINBIT for any claims within the framework of this EULA shall be limited to a maximum of one hundred (100) percent of the fees paid by the USER to LINBIT for the product or the service, which is the subject of liability. The warranty described shall only refer to the USER himself and his relevant legal successor. Any legal action against LINBIT admissible within the framework of this EULA, which is not filed within twelve (12) months of the arising of the claim, shall be considered excluded.

## 6 Breach of EULA, Termination, Persistence

If either party fails to comply with any of the material terms, conditions and restrictions set forth in this Agreement, LINBIT or the USER (as the case may be) upon its election and in addition to any other remedies that it may have, may at any time terminate this EULA by written notice, if the breaching party fails to cure the relevant breaches within thirty (30) days after receipt of a written notice from the non-breaching party specifying the same. All restrictions on the use, transfer, copying or the like pertaining to the SOFTWARE will survive termination of this Agreement.

Upon termination of this EULA, LINBIT shall have the right, as far as this is permitted under the applicable law, to immediately seize the SOFTWARE, while the USER shall no longer be allowed to exercise the rights granted to him by this EULA and shall return to LINBIT any licensed SOFTWARE still in possession or under control of the USER, including but not limited to all copies and duplicates in any form, and the USER shall confirm to LINBIT that all material to be handed over to LINBIT has been handed over to LINBIT.

The termination of this EULA shall take place without prejudice to any rights against the other party and shall not release any party from its duties that apply at the time of the termination of the EULA. Provisions with regard to the rights and duties of the parties that according to their content continue to be effective after the termination of the EULA or that are necessary to exert certain rights, shall continue to apply after termination of the EULA. Notwithstanding the validity of the above, all duties with regard to confidentiality as well as all limitations of liability shall continue to apply after termination of the EULA for the duration of LINBIT's SOFTWARE copyrights.

## 7 Fees and Price adjustment

The USER shall pay license, MAINTENANCE and service fees as defined on the relevant order forms. Unless otherwise agreed, any license fee listed shall refer to one single copy of the STANDARD SOFTWARE.

If not settled differently in the order form or payment agreement all periodically payments adapt every year based on the consumer price index. Such price increases will not apply to any orders already placed by the USER.

## 8 Effective date and Term

This EULA will become effective from the EFFECTIVE DATE (Date of signature). The term of this Agreement open-ended. Any party of the EULA can terminate the agreement by written notice. The EULA will be terminated sixty (60) days after the receipt of the written notice.

This EULA will become effective from the EFFECTIVE DATE (Date of signature). The term will be for a term of one (1) year, and it will automatically renew thereafter under the same terms and conditions for additional one (1) year terms unless either party notifies the other by written notice of its desire not to renew at least thirty (30) days prior to the end of the current term unless it is sooner terminated in accordance with the provisions hereof.

## 9 General

This EULA shall be subject to Austrian law, place of trial is Vienna, Austria. All provisions of this EULA shall be considered as far as possible enforceable according to the applicable law. If a provision of this EULA becomes ineffective according to the applicable law, this shall not affect the effectiveness of the other provisions of this EULA. The ineffective provision shall be amended in order to be applicable and enforceable or, if such an amendment is not possible, it shall be deleted from the EULA. References to acts outlined in this EULA shall also include revisions or amendments of these acts prior to or after the date of this EULA. Both parties shall have the right to apply for legal protection under equity law at the competent court. In addition, any legal disputes or claims arising from this EULA or from a violation thereof shall be settled in binding arbitration proceedings in Vienna, Austria.

An arbitrator or arbitrators familiar with the computer SOFTWARE business shall be elected to decide on the claim. The arbitrator(s) shall by no means be authorized to pronounce an arbitration award that does not comply with the provisions of this EULA.

The arbitration decision can be registered at any competent court as a judgment and can be enforced as such. The USER shall be obliged to refund to LINBIT any costs related to the collection of payment in arrears within the framework of this EULA, including, but not limited to adequate lawyer's charges. In addition, the winning party of the arbitration or court proceedings resulting from a claim or claim under equity law, shall be entitled to the reimbursement of expenses, including, but not limited to lawyer's charges and costs of questioning witnesses according to the EULA and not at the discretion of the arbitrator or judge.

If one party fails to urge the other party to the strict observation of a provision of this EULA, this shall not represent a waiver of a later enforcement of this or another provision of this EULA. If the performance of one of the parties is delayed or prevented by circumstances beyond its control, including, but not limited to labor disputes, fire, flooding, riots, civil commotion, weather conditions, government controls, unavoidable losses, force majeure or a criminal act dangerous to public safety, the performance of the relevant party shall be suspended until the end of the relevant conditions. However, this article shall not release the parties from their duties within the framework of this EULA or from the timely payment of their financial obligations.

The present EULA and the order(s) shall represent the true intention of the parties and the entire EULA existing between them with regard to the SOFTWARE, the license to use the SOFTWARE as well as to the rights and duties of the parties related to the SOFTWARE, and shall replace any earlier proposals (oral or in writing), negotiations, presentations, concessions, documents, arrangements and other forms of communication between the parties. An amendment to this EULA shall require a written form and the signature by both parties.





In case of a contradiction between the terms of this EULA and those of an order, the terms of this EULA shall be authoritative. This EULA shall be binding for the parties and their legal successors and shall be for their benefit. The parties shall oblige themselves not to cede any duties of this EULA as a whole or in part or to issue any duties as a sub-license without prior written approval of LINBIT, which has to be granted within an adequate period of time. Any unauthorized transfer or sub-license of this EULA shall be void.

## 10 Obligation of Confidentiality

The terms of this EULA (including prices) as well as any other information clearly indicated as “confidential”, provided according to this EULA, shall be considered confidential and may not be disclosed to third parties orally or in writing without prior written consent of LINBIT. LINBIT declares that the SOFTWARE contains valuable, legally protected information and is confidential. The USER obliges himself to ensure the same diligence and secrecy with the SOFTWARE as he would do with his own information which he would not want to disclose to the public, but at least to protect the SOFTWARE with adequate diligence. The USER may only provide access to the SOFTWARE or make the SOFTWARE available for use to third parties, who provide services to them for the use of the SOFTWARE or who require use of or access to the SOFTWARE in order to ensure compliance with and observance of the rights and duties laid down in the provisions of this EULA, and who have been obliged to the same secrecy as determined by the provisions of this EULA.

The parties shall not be subject to any obligation of secrecy with regard to information that is accessible or made accessible to the public without any involvement or negligence of either party, that has already been in legal possession of either party prior to disclosure and who has received it neither directly nor indirectly from the disclosing party, that has been lawfully disclosed to either party by a third party without limitation to secrecy, that has been independently developed by the party or the disclosure of which is laid down in the applicable law.

The parties shall acknowledge that a violation of the obligation of secrecy by either party may irrevocably harm the other party, and that the harmed party may be entitled to legal protection under equity law in addition to the other legal remedies available to it, without having to prove actual damage. The duties of each party laid down in this EULA shall be in addition to their express or tacit obligations to the other party in fact and in law.