

## BeyondTrust PowerBroker® Password Safe License Agreement

(formerly PowerKeeper®)

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS PRODUCT. BY DOWNLOADING, INSTALLING OR USING THIS PRODUCT, YOU INDICATE YOUR ACCEPTANCE OF AND AGREEMENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT DOWNLOAD, INSTALL OR USE THIS PRODUCT

This Software License Agreement (the "Agreement") is made between BeyondTrust Software, Inc., with its principal place of business located at 30401 Agoura Rd. Ste. 200, Agoura Hills, CA 91301 ("BeyondTrust") and you, the customer ("You").

1. **DEFINITION OF BEYONDTRUST PRODUCTS.** For purposes of this Agreement, the "BeyondTrust Products" shall mean the BeyondTrust software product(s) (the "Software") and certain hardware ("Equipment"), if applicable, identified in a signed BeyondTrust order form, quote or a valid, written purchase order issued by You and accepted by BeyondTrust (collectively a "Purchase Order") together with the related user manuals and other related documentation ("Documentation"). The Software is delivered on magnetic disk(s), compact disc(s) or Internet download(s) ("Media"), as and when determined by BeyondTrust. In the event You acquire Equipment under this Agreement, title to such Equipment shall pass to You upon shipment (unless such Equipment is rented, leased, or loaned to You).

2. **EVALUATION LICENSE.** If You have downloaded or have otherwise been provided with any BeyondTrust Product for evaluation purposes, BeyondTrust hereby grants You a limited, temporary, revocable, nonexclusive, nontransferable, non-assignable right and license to use such BeyondTrust Product solely for Your own internal evaluation purposes and not for Commercial Use (the "Evaluation License") for an evaluation period of up to thirty (30) days, beginning on the date BeyondTrust first makes the Software available for download by You or otherwise delivers the Software to You, plus any extensions granted by BeyondTrust in writing (the "Evaluation Period"). For purposes of this Agreement, "Commercial Use" means use of a BeyondTrust Product in a production environment. For the avoidance of doubt, there is no fee for Your use of the BeyondTrust Products in accordance with this Agreement during the Evaluation Period; provided, however, that if at any time during the Evaluation Period, You make Commercial Use of any BeyondTrust Products, You will be deemed to have accepted any such BeyondTrust Products and will be invoiced for the applicable license fees. You are responsible for any applicable shipping charges or taxes in connection with Your use of the BeyondTrust Product during the Evaluation Period. You will only be entitled to one Evaluation License per release of the Software. Notwithstanding anything otherwise set forth in the Agreement, You understand and agree that all BeyondTrust Products licensed to You under an Evaluation License are provided "AS IS" and BeyondTrust does not provide any warranties or Extended Software Support ("ESS") in connection with any BeyondTrust Products licensed pursuant to an Evaluation License.

3. **LIMITED USE.** If You have downloaded or have otherwise been provided with a BeyondTrust Product for Commercial Use pursuant to a Purchase Order and subject to BeyondTrust's receipt of the applicable

license fees, BeyondTrust hereby grants You a perpetual, revocable, nonexclusive, nontransferable, non-assignable right and license to install and use the Software pursuant to the following: (a) if You have obtained a Server License, You may use the Products to administer up to those authorized number of Your non-desktop managed systems located at the designated location(s) stated on the applicable Purchase Order, and make a reasonable number of additional copies of the Software to be used solely for non-productive archival or passive disaster recovery purposes, so long as neither the original copy nor two copies of the same software are used at the same time. For purposes of this Agreement, "non-desktop" managed systems means and includes all hardware and software, including servers, firewalls, databases, routers and switches, but excludes desktop computers. (b) If You have obtained a User Desktop License, You may use the Products to administer up to those authorized number of Your desktop computers and at the designated location(s) stated on the applicable purchase order. (c) If You have obtained a High Availability License, You are provided with a backup unit of the Products to be used only when and if the primary licensed Products unit has failed or is otherwise temporarily deactivated. (d) If You have obtained a Cold Spare License, You are provided with an off-line Products unit that only replaces the primary licensed Products unit if and when the primary and the High Availability License Products units fail or are otherwise temporarily deactivated. (e) Use of the Products pursuant to a High Availability or Cold Spare License shall only be used to the maximum authorized extent as originally licensed by You under a Server or Desktop License. (f) If You desire to expand the authorized use of the Products, or change the designated location, You must first obtain the written consent of BeyondTrust, and pay the then current BeyondTrust license, transfer and/or upgrade charges. The Products may only be used to process Your data and administer Your internal business operations. You agree not to copy the Programs, in whole or in part. You agree not to modify, obscure, or delete any proprietary rights notices included in or on the Programs, Equipment, Documentation, or Media, and You agree to include all such notices on all copies that are permitted by BeyondTrust. You may not modify the Products or merge the Programs into any other computer programs. You may not reverse engineer or disassemble or decompile the Programs or Equipment, in whole or in part.

4. **TITLE; CONFIDENTIALITY.** You acknowledge that, as between You and BeyondTrust, title and full ownership, trade secrets, copyright, patent rights and all other intellectual property and proprietary rights to the BeyondTrust Products furnished under this Agreement remain with BeyondTrust, whether or not any portion thereof is or may be validly copyrighted or patented. By accepting this Agreement, You are only granted limited license rights to use the BeyondTrust Products. You agree to treat the BeyondTrust Products as BeyondTrust's, or the respective manufacturer's or author's proprietary information. You will take all reasonable steps to protect the BeyondTrust Products from

disclosure to any third party. Use, duplication or disclosure by or on behalf of the United States Federal Government is subject to the restrictions set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software Clause of DFARS 227.7202-1 and in FAR Clause 52.227-19, or any superseding provisions.

5. **TERM.** This Agreement is effective from the day BeyondTrust grants the applicable license hereunder, and continues until terminated. BeyondTrust may immediately terminate this Agreement if You fail to comply with any term or condition of this Agreement. You agree upon such termination to immediately destroy the BeyondTrust Products together with all copies in any form. Those provisions of this Agreement that by their terms should survive any termination of this Agreement shall be deemed to survive and remain in full force and effect, including, but not limited to Sections 1, 4 – 8, and 11 - 19.

6. **PAYMENT.** You agree to pay to BeyondTrust or, if applicable, BeyondTrust's authorized reseller or distributor, the license fees and ESS fees set forth in the Purchase Order for the BeyondTrust Products. You shall make all payments due to BeyondTrust in full within thirty (30) days from the date of each invoice or such other period (if any) stated in the applicable Purchase Order. Any amounts payable to BeyondTrust by You that remain unpaid after the due date shall be subject to a late charge equal to the lesser of (a) 1.5% of the invoice amount per month from the date until such amount is paid or (b) the maximum rate permitted by law. For the avoidance of doubt, You are solely responsible for all taxes, fees, duties and governmental assessments (except for taxes based on BeyondTrust's net income) that are imposed or become due in connection with the subject matter of this Agreement.

7. **DISCLAIMER. THE BEYONDTRUST PRODUCTS ARE OFFERED "AS IS," AND BEYONDTRUST GRANTS YOU AND YOU RECEIVE NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED OR OTHERWISE. BEYONDTRUST SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. BEYONDTRUST DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE OR THAT IT WILL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT, SOFTWARE OR HARDWARE, OR THAT IT WILL NOT CAUSE ANY LOSS OR CORRUPTION OF DATA.**

8. **LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BEYONDTRUST WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING FOR THE INDIRECT LOSS OF PROFIT, REVENUE OR CONTENT) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED, AND UNDER WHATEVER CAUSE OF ACTION OR THEORY OF LIABILITY BROUGHT (INCLUDING UNDER ANY CONTRACT, NEGLIGENCE OR OTHER TORT THEORY OF LIABILITY) EVEN IF BEYONDTRUST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BEYONDTRUST SHALL NOT BE LIABLE TO YOU OR ANY OTHER PARTY FOR ANY DIRECT DAMAGES IN EXCESS OF THE LICENSE FEE(S) PAID BY YOU FOR THE AFFECTED BEYONDTRUST PRODUCTS GIVING RISE TO SUCH LIABILITY DURING THE TWELVE (12) MONTHS PRECEDING SUCH CLAIM.**

9. **INDEMNIFICATION.** BeyondTrust agrees to defend and hold You harmless from and against any claim or action by a third party that the BeyondTrust Products as delivered by BeyondTrust infringe any proprietary right of such third party, provided that (a) BeyondTrust is promptly notified of such matter and is permitted the sole right to defend such action, and (b) You have not used the BeyondTrust Products in contravention of this License or the Documentation. In the event that a court of competent jurisdiction determines or in the event that BeyondTrust, in its sole discretion, reasonably determines, that the BeyondTrust Products, or any portion thereof, infringes or misappropriates, or may infringe or misappropriate, any third-party intellectual property right, BeyondTrust shall, as Your sole and exclusive remedy, and at BeyondTrust's sole discretion, either: (a) obtain a license, at reasonable cost, for You to continue using such BeyondTrust Products, or portion thereof; (b) modify such BeyondTrust Products while retaining substantively equivalent functionality; (c) replace the affected BeyondTrust Products with functionally equivalent software or services; or (d) terminate this license in whole or in part. If BeyondTrust elects subsection (d), You shall immediately terminate use of such BeyondTrust Products and the provisions of Section 5 will apply.

10. **SUPPORT AND UPDATES.** BeyondTrust will provide ESS for the Software for an initial period beginning on the date BeyondTrust delivers the Software to You or otherwise makes the Software available for download by You and ending twelve (12) months thereafter (the "Initial ESS Period"), unless stated otherwise in the Purchase Order. Unless otherwise notified by BeyondTrust, ESS will consist of (a) telephone hot-line support, (b) Software error corrections, (c) workmanship defect corrections and/or replacements, and (d) any updates that BeyondTrust offers, when and if available, as part of ESS (which, for the avoidance of doubt exclude enhancements which are separately offered by BeyondTrust). Following the Initial ESS Period, ESS shall automatically renew at BeyondTrust's then-current rates and terms for subsequent one-year periods (each, a "Renewal ESS Period") unless either party provides the other party with notice of its intent not to renew at least sixty (60) days prior to the expiration of the then-current annual period. Cancellation of ESS will not terminate Your right to continue to use the BeyondTrust Product(s). ESS fees shall be due in advance of Renewal ESS Period and shall be subject to the payment requirements set forth in this Agreement. BeyondTrust's sole obligation under this section shall be to either correct or replace the affected BeyondTrust Products, or, at BeyondTrust's option, to refund the paid license fee during the initial term or the unexpired portion of the paid ESS fee during the affected renewal period, as applicable upon return of the BeyondTrust Products.

11. **MARKETING.** You agree to grant BeyondTrust a non-exclusive license to use Your company name and/or logo for the purpose of indicating the existence of a customer relationship between You and BeyondTrust. By accepting this Agreement and purchasing one or more licenses of the BeyondTrust Products, BeyondTrust may place Your company name and/or logo on its website, use Your company name and/or logo in audio and on-line presentations to other potential customers and business partners, and use Your company name in a release to the press.

12. **USAGE VERIFICATION.** At BeyondTrust's request, You shall furnish BeyondTrust with a document signed by an authorized representative verifying Your installation and usage of the BeyondTrust Products. You will permit BeyondTrust to review Your deployment and use of the BeyondTrust Products for compliance with the terms and conditions of this Agreement. Any such reviews shall be scheduled at least fifteen (15) days in advance, shall be conducted during normal

business hours, and shall not unreasonably interfere with Your business activities. If as a result of any such audit, Your use of any BeyondTrust Product is found to exceed the number of Permitted Licenses, You will be charged an additional license fee, at BeyondTrust's then-current rates, for each instance of additional use in excess of the Permitted Licenses and such fees shall be payable in accordance with this Agreement. Additionally, if the number of instances of use by You in excess of the Permitted Licenses exceeds five percent (5%) of the Permitted Licenses for the applicable BeyondTrust Product, then You shall pay BeyondTrust's reasonable costs of conducting the audit. This Section 12 shall not limit or restrict any other rights or remedies of BeyondTrust that are otherwise set forth in this Agreement or available law.

13. **GOVERNING LAW.** This Agreement is to be governed by and interpreted in accordance with the laws of the State of California, U.S.A., without giving effect to its principles of conflict of laws. Any action or proceeding arising out of or relating to this Agreement shall be brought in the state or federal courts located within Los Angeles County, California, and the parties irrevocably agree to the jurisdiction and venue of such courts for such purposes. With respect to the BeyondTrust Products, You agree to comply with all applicable United States and foreign export, re-export and import control laws and regulations such as the US Department of Commerce's Export Administration Regulations, the US Treasury Department's trade and economic sanctions regulations, and the US Department of State's International Traffic in Arms Regulations. You agree to indemnify and hold BeyondTrust harmless from any breach of any such laws and regulations stated herein, including, but not limited to, penalties, fines, and reasonable attorneys' fees and legal costs.

14. **INJUNCTIVE RELIEF:** You acknowledge and agree that in the event of a material breach of this Agreement by You, including but not limited to a breach of the "*Evaluation license*", "*Limited Use*" or "*Title; Confidentiality*" Sections of this Agreement, BeyondTrust shall be entitled to seek immediate injunctive relief, without limiting its other rights and remedies.

15. **SEVERABILITY.** If any provision of this Agreement shall be declared invalid or unenforceable, such provision shall be deemed to be deleted, and it shall not affect the validity of any other term or provision of this Agreement.

16. **NOTICES:** All notices provided hereunder shall be in writing, delivered personally, sent by facsimile or e-mail, or mailed by first class mail, postage prepaid, to the addresses set forth in the Purchase Order or such other address as may be specified in writing by either of the parties to the other party in accordance with this Section. All notices, requests, demands or communications shall be deemed effective upon personal delivery or if sent by facsimile or e-mail or four (4) days following deposits in the mail in accordance with this paragraph.

17. **WAIVER.** Performance of any obligations required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described herein. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

18. **FORCE MAJEURE:** Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or services as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failure and power failures. Nothing in the foregoing shall be deemed to relieve You of your obligation to pay any and all fees owed to BeyondTrust under this Agreement.

19. **ENTIRE AGREEMENT.** This Agreement is intended by the parties as the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement unless such agreement is signed by both parties. In the event of a conflict between the terms of this Agreement and the terms contained in any Purchase Order, the terms of this Agreement shall control unless the Purchase Order is signed by both BeyondTrust and You. Neither this Agreement, nor any Purchase Order, may be modified or amended except by a writing executed by a duly authorized representative of each party. No other act, document, usage or custom shall be deemed to amend or modify this Agreement or any Purchase Order.