

## END USER LICENSE AGREEMENT

- **IMPORTANT – PLEASE READ THIS ENTIRE END USER LICENSE AGREEMENT CAREFULLY BEFORE USING THE LICENSED SOFTWARE.**
- **BY CLICKING “ACCEPT” ON THE INSTALLATION DIALOGUE BOX, OR BY DOWNLOADING, INSTALLING, OR OTHERWISE USING THE LICENSED SOFTWARE, YOU AGREE TO BE LEGALLY BOUND BY THE TERMS OF THIS END USER LICENSE AGREEMENT AND FURTHER AGREE THAT KINGSTON’S THIRD-PARTY LICENSORS PROVIDING LICENSES FOR ALL OR ANY PORTION OF THE LICENSED SOFTWARE SHALL BE THIRD-PARTY BENEFICIARIES OF THIS END USER LICENSE AGREEMENT.**
- **IF YOU DO NOT AGREE TO THE TERMS OF THIS END USER LICENSE AGREEMENT, DO NOT CLICK “ACCEPT” AND DO NOT INSTALL, COPY, OR USE THE LICENSED SOFTWARE.**

THIS END USER LICENSE AGREEMENT (“**Agreement**”) is a legal agreement between you, the user who is downloading, installing, or using the Licensed Software (either as an individual or on behalf of a single entity) and Kingston Digital, Inc. (“**Kingston**”). This Agreement relates to the software or firmware accompanying this Agreement, which includes computer software or firmware and may include associated media, printed materials, and “online” or electronic documentation (collectively, the “**Licensed Software**”).

The Licensed Software is protected by copyright laws and international copyright treaties, as well as other applicable intellectual property laws and treaties. The Licensed Software is licensed, not sold. The Licensed Software is being provided solely for use with DataTraveler or IronKey Encrypted USB products.

### 1. License Grant.

(a) Grant of License. Subject to the terms and conditions of this Agreement, Kingston hereby grants to you a limited, personal, nonexclusive, royalty-free, worldwide, and, except as otherwise set forth below, non-transferrable, non-assignable license, without the right to sublicense a third party, to install and use the Licensed Software (in object code form only) solely with DataTraveler or IronKey Encrypted USB products.

(b) Restrictions. Except as otherwise expressly provided herein or expressly permitted by applicable law notwithstanding these restrictions, you shall not: (a) sell, lease, license, sublicense, assign, distribute, or otherwise transfer or encumber by any means (including by lien, hypothecation, or otherwise), in whole or in part, the Licensed Software; (b) provide, make available to, or permit the use of the Licensed Software in whole or in part by, any third party, including contractors, without Kingston’s prior written consent, unless such use by the third party is solely on your behalf, is strictly in compliance with the terms and conditions of this Agreement, and you are liable for any breach of this Agreement by such third party; and (c) copy, reproduce, republish, upload, post, transmit, modify, or create derivative works based upon the Licensed Software in any way. The Licensed Software is licensed solely for use with and to support DataTraveler or IronKey Encrypted USB products. Use of this Licensed Software with, or to

support, any other flash disk, flash card, resident flash array, or solid-state disk of any kind is expressly prohibited and constitutes an illegal infringement of patents, copyright, and other rights of Kingston and its third-party licensors in and to the Licensed Software.

2. Limitations on Reverse Engineering, Decompilation, and Disassembly. You may not reverse engineer, decompile, disassemble, or otherwise attempt to derive source code (or underlying ideas, algorithms, structure, compilation, or organization) from the Licensed Software, in whole or in part, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

3. Termination. Without prejudice to any other rights of Kingston, Kingston may terminate this Agreement if you fail to comply with the terms and conditions of this Agreement. In such an event, you must destroy all copies of the Licensed Software and all of its component parts.

4. Intellectual Property Rights. Title to the Licensed Software, and all rights with respect to the Licensed Software not specifically granted under this Agreement, including, without limitation, all rights of modification, disassembly, and decompilation and all copyright, patent, trademark, trade secret, and other proprietary rights and interests, are reserved to Kingston and its third-party licensors. You may not remove or alter any “read-me” file or copyright notices in the Licensed Software. The Licensed Software is protected by U.S., foreign, and international copyright laws and treaties. Unauthorized reproduction, distribution, or use of the Licensed Software may be subject to civil and criminal penalties.

5. Disclaimers and Limitation of Liability.

(a) For the purposes of this paragraph 5, “Kingston” includes its subsidiary companies and affiliated legal entities and their respective directors, officers, agents, and employees.

(b) DISCLAIMER OF WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KINGSTON, ITS SUPPLIERS, AND ITS THIRD-PARTY LICENSORS PROVIDE THE LICENSED SOFTWARE AND SUPPORT SERVICES (IF ANY) “AS IS AND WITH ALL FAULTS,” AND HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY (IF ANY) IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF LACK OF VIRUSES, OF FREE OF ERRORS OR DEFECTS, OF ACCURACY OR COMPLETENESS OF RESPONSES, OF RESULTS, AND OF LACK OF NEGLIGENCE OR LACK OF WORKMANLIKE EFFORT, ALL WITH REGARD TO THE LICENSED SOFTWARE, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION, OR NONINFRINGEMENT WITH REGARD TO THE LICENSED SOFTWARE. THE ENTIRE RISK AS TO THE QUALITY OF OR ARISING OUT OF USE OR PERFORMANCE OF THE LICENSED SOFTWARE AND SUPPORT SERVICES, IF ANY, REMAINS WITH YOU.

(c) HIGH RISK DISCLAIMER. THE LICENSED SOFTWARE IS NOT INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT OR MARINE

NAVIGATION, OR COMMUNICATION SYSTEMS, AIR OR MARINE TRAFFIC CONTROL SYSTEMS, MEDICAL DEVICES, OR OTHER EQUIPMENT IN WHICH THE FAILURE OF THE LICENSED SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

(d) EXCLUSION OF INCIDENTAL, CONSEQUENTIAL, AND CERTAIN OTHER DAMAGES. TO THE FULLEST EXTENT ALLOWED BY LAW, KINGSTON ALSO EXCLUDES FOR ITSELF, ITS SUPPLIERS, AND ITS THE THIRD-PARTY LICENSORS ANY LIABILITY, WHETHER BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS OR OPPORTUNITIES, LOSS OF INFORMATION OR DATA, OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE SALE, MAINTENANCE, USE, LICENSE, PERFORMANCE, FAILURE, OR INTERRUPTION OF THIS LICENSED SOFTWARE, EVEN IF KINGSTON, ITS SUPPLIERS, OR ITS THE THIRD-PARTY LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND LIMITS ITS LIABILITY TO REPLACEMENT, REPAIR, OR REFUND OF THE PURCHASE PRICE PAID, AT KINGSTON'S OPTION. THIS DISCLAIMER OF LIABILITY FOR DAMAGES WILL NOT BE AFFECTED EVEN IF ANY REMEDY PROVIDED HEREIN SHALL FAIL OF ITS ESSENTIAL PURPOSE.

(e) LIMITATION OF LIABILITY AND REMEDIES. In addition to the foregoing, and notwithstanding any damages that you might incur for any reason whatsoever (including, without limitation, all damages referenced above and all direct or general damages), the entire liability of Kingston, its suppliers, and its third-party licensors under any provision of this Agreement and your exclusive remedy for all of the foregoing, shall be limited to the greater of the amount actually paid by you for the Licensed Software or U.S. five dollars (\$5.00). The foregoing limitations, exclusions, and disclaimers shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

6. Indemnification. You will defend, indemnify, and hold harmless Kingston and its affiliates, suppliers, and third-party licensors, and their respective directors, officers, employees, agents, successors and assigns, from all liabilities, claims, and expenses (including attorneys' fees) that may arise from or in connection with your breach of this Agreement or your use or misuse of the Licensed Software. Kingston reserves the right to defend and may, in its sole discretion, assume the exclusive defense and control of any claim or legal proceeding brought by a third party or otherwise that is subject to indemnification by you.

7. No Update or Support Obligations. Kingston shall have no obligation to provide updates or support for the Licensed Software. If Kingston provides, and you accept, any updates, bug fixes, releases, revisions, or new versions of the Licensed Software (each an "**Update**"), the terms of this Agreement will govern such Update and your use thereof except with respect to any Update that is accompanied by a separate license agreement, in which case, the terms of that license agreement will govern to the extent inconsistent with this Agreement.

8. Transfer and Assignment.

(a) You may not, and you agree not to, or to enable others to, sell, re-distribute, rent, lease or sublicense the Licensed Software, except that if you purchased or own a DataTraveler or IronKey Encrypted USB product associated with this Licensed Software, you may transfer the Licensed Software upon a permanent transfer of the DataTraveler or IronKey Encrypted USB product using the Licensed Software; provided that: (a) you uninstall and do not retain a copy of the Licensed Software, full or partial, including copies stored on a computer or other storage device, (b) the transferee reads and agrees to be bound by the terms and conditions of this Agreement, and (c) you remain liable for any breach of this Agreement occurring prior to such transfer.

(b) You may not assign this Agreement or any rights or obligations contained in them. Kingston may, without prior notice, assign this Agreement or any rights or obligations contained herein to any third party.

9. No Waiver by Kingston. All waivers must be in writing and signed by the waiving party. Kingston's failure to or delay in exercising a legal right or remedy provided by this Agreement or by law shall not constitute a waiver of Kingston's right or remedy. If Kingston waives a breach of this Agreement by you, this shall not operate as a waiver of a subsequent breach of this Agreement by you.

10. Export and Import Compliance. The Licensed Software is subject to U.S. export laws as well as the applicable laws of the country where it is delivered or used. You agree to abide by these laws.

11. Government Restrictions. The Licensed Software is a "Commercial Item," as that term is defined at 48 C.F.R. 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," and is being licensed to U.S. Government end users (a) only as Commercial Items, and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions of this Agreement. Unpublished rights are reserved under the copyright laws of the United States.

12. Termination and Survival. The license granted to you under this Agreement shall automatically terminate if you fail to comply with any terms or conditions of this Agreement. Upon such termination, you shall cease all use of the Licensed Software. Any of your obligations under this Agreement that by their nature are intended to survive the termination of this Agreement shall continue to apply after the termination of this Agreement. The rights and remedies hereunder of Kingston and its affiliates, suppliers, and third-party licensors and their respective directors, officers, employees, agents, successors, and assigns shall survive any termination of this Agreement.

13. Choice of Law. The laws of the State of California, United States of America, exclusive of conflict-of-laws provisions, shall govern this Agreement in all respects. Your use of the Licensed Software may also be subject to other local, state, national, or international laws, rules, or regulations. In no event shall this Agreement be governed by the United Nations Convention on Contracts for the International Sale of Goods. Furthermore, neither this Agreement nor the Licensed Software will be governed by the Uniform Computer Information Transactions Act ("UCITA") or any other act derived from or related to UCITA.

14. Binding Individual Arbitration. Any claim, dispute, or controversy (whether in contract, tort or otherwise) between you and Kingston arising out of or in connection with this Agreement, or the breach, termination, or validity thereof shall be resolved exclusively and finally by binding individual arbitration. If you are in the United States, the arbitration will be administered by the American Arbitration Association (AAA) or JAMS and the arbitration shall be held in Orange County, California; if you are in Canada, arbitration will be at ADR Chambers pursuant to the general ADR Chambers Rules for Arbitration located at [www.adrchambers.com](http://www.adrchambers.com); otherwise, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (“ICC”). The arbitration shall be conducted by a single arbitrator selected by the mutual agreement of the parties or under the selection process set forth in the rules of the arbitration body. The arbitration shall be in the English language. The costs of the arbitration shall be apportioned between the parties as set forth in the rules of the relevant arbitration body. For any ICC arbitration, the place of the arbitration shall be in a city within the continental United States reasonably chosen by the arbitrator to ensure that the award resulting from the arbitration shall be of an international character and enforceable under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The arbitrator shall be empowered to grant whatever relief would be available in court, including without limitation preliminary relief, injunctive relief, and specific performance. Any award of the arbitrator shall be final and binding immediately when rendered without right of appeal, and judgment on the award may be entered in any court of competent jurisdiction. Neither you nor Kingston shall be entitled to join, consolidate, or include any claims belonging to or alleged or arising from, by, or on behalf of any third party to an arbitration brought hereunder, or arbitrate any claim as a class action, class representative, class member, or in a private attorney general capacity. Notwithstanding the foregoing, any dispute that would otherwise fall under the jurisdiction of a small claims court within the United States may, at the option of one of the parties, be brought in such small claims court prior to the appointment of the arbitrator. Notwithstanding the foregoing, nothing in this Agreement shall prohibit Kingston from enforcing its rights, and seeking remedies, in any court having jurisdiction for any direct or indirect infringement, misappropriation, or other violation by you of any patent, trademark, copyright, trade secret, or other intellectual property right in, or associated with, the Licensed Software.

15. Equitable Remedies. You agree that any violation or non-compliance with any term or condition of this Agreement by you will cause irreparable harm to Kingston and its affiliates, suppliers, and third-party licensors, for which monetary damages would be inadequate, and you consent to Kingston obtaining, from any court of competent jurisdiction, any injunctive or equitable relief that Kingston deems necessary or appropriate in such circumstances, notwithstanding any other provision herein to the contrary. These remedies are in addition to any other remedies that may be available to Kingston under contract, at law, or in equity.

16. Unenforceable Terms. If any term herein is held to be invalid or unenforceable, then such term (in so far as it is invalid or unenforceable) shall be given no effect and deemed to be excluded without invalidation of any of the remaining terms.

17. Third-Party Beneficiaries. Kingston’s affiliates, suppliers, and third-party licensors shall be third-party beneficiaries of this Agreement with the independent right to enforce this Agreement as it relates to their rights.

18. Governing Language. Any translation of this agreement from the English language is made for local requirements and in the event of a conflict between the English and any non-English version of this Agreement, the English version of this Agreement shall govern.

19. Trademark

All trademarks and registered trademarks are the property of their respective owners.

**YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ THE TERMS OF THIS AGREEMENT AND UNDERSTAND THE RIGHTS, OBLIGATIONS, TERMS, AND CONDITIONS SET FORTH HEREIN. BY CLICKING ON THE ACCEPT BUTTON AND/OR CONTINUING TO DOWNLOAD, INSTALL, OR USE THE LICENSED SOFTWARE, YOU EXPRESSLY CONSENT TO BE BOUND BY AND GRANT TO KINGSTON THE RIGHTS SET FORTH IN THIS AGREEMENT.**