

# AWS Elemental End User License Agreement

**Last Updated: October 23, 2020**

THIS AWS ELEMENTAL END USER LICENSE AGREEMENT ("EULA") IS ENTERED INTO BETWEEN YOU AND ELEMENTAL TECHNOLOGIES LLC ("AWS ELEMENTAL," "WE," "US," OR "OUR") AND GOVERNS YOUR USE OF ANY SOFTWARE (TOGETHER WITH ANY SDKs, LIBRARIES, UTILITIES, TOOLS, UPGRADES, UPDATES, PATCHES, MODULES, FEATURE ENHANCEMENTS AND ADDITIONAL VERSIONS OF THE SOFTWARE THAT REPLACE OR SUPPLEMENT THE ORIGINAL SOFTWARE, AND ANY ACCOMPANYING MANUALS, CONFIGURATION AND OR OPERATION INSTRUCTIONS AND DOCUMENTATION (AS DEFINED BELOW), THE "SOFTWARE") PROVIDED TO YOU BY US. IF YOU DOWNLOAD, INSTALL OR USE THE SOFTWARE, YOU ACCEPT AND AGREE TO BE BOUND BY THIS EULA. IF YOU ARE AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS EULA ON BEHALF OF THAT ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, YOU ARE SOLELY RESPONSIBLE FOR YOUR USE OF THE SOFTWARE. IF YOU DO NOT ACCEPT THE TERMS OF THIS EULA, THEN YOU ARE NOT PERMITTED TO INSTALL, ACCESS, DOWNLOAD OR OTHERWISE USE THE SOFTWARE.

**1. LICENSE.** Subject to your compliance with this EULA, we hereby grant you a personal, limited, non-exclusive, non-transferable, non-sublicensable, revocable, royalty-free, worldwide license to download, install, access and use the Software (in object code form only) for your internal business purposes, in the specific configuration and for the time period (which may be perpetual) ("Subscription Period") set forth in the sales quotation issued to you by us or our authorized agent ("Sales Quotation"), solely on either (a) computer hardware servers sold to you by us, or (b) third party branded-hardware that has been certified by us (as set forth in the Documentation). You may allow your contractors (each, a "Permitted Third Party") to use the Software solely for the purpose of providing services to you, provided that such use is in compliance with this EULA. You agree that you are liable for any breach of this EULA by any Permitted Third Party.

**2. LIMITATIONS.**

**2.1 Compliance.** You agree that you will comply with (a) all instructions and requirements in any Software specification sheets, user guides, security best practices and policies, and other documentation that we provide or make available to you in connection with the Software (the "Documentation"); and (b) all applicable local, state, national, and international laws and regulations (as each of these may be amended or modified from time to time ("Applicable Laws")) with respect to your use of the Software.

**2.2 Restrictions.** Except as expressly permitted by this EULA, you may not, and you will not encourage, assist or authorize any other person to: (a) incorporate any portion of the Software into your own programs or compile any portion of the Software in combination with your own programs; (b) sell, re-sell, rent, lease, lend, loan, distribute, act as a service bureau or managed service, publicly communicate, transform, or sublicense the Software or otherwise assign any rights to the Software in whole or in part to any third party; (c) modify, alter, tamper with, repair, or otherwise create derivative works of the Software; (d) reverse engineer, disassemble, or decompile the Software or apply any other process or procedure to derive the source code of any software included in the Software or to otherwise determine or attempt to determine how the Software works or operates; (e) use the Software to process, transmit or otherwise make available any content that infringes or misappropriates the intellectual property or proprietary rights of any third party, or without an appropriate license, permission or certification (including as may be required by Applicable Laws); (f) use the Software to create additional software that replicates the functionality of, or is intended to replace, the Software; (g) use any software license key ("Key") provided by AWS Elemental for the Software in connection with any product other than the product for which the Key was issued; or (h) disable or circumvent, or attempt to disable or circumvent, any Key or other technological mechanisms or measures intended to prevent, limit or control use or copying of, or access to, any Software. You will not use the Software with any software or other materials that are subject to licenses or restrictions (e.g., open source software licenses) that, when combined with the Software, would require us to disclose, license, distribute or otherwise make all or any part of such Software available to anyone, or grant others any rights to modify the Software. You will not remove, modify, or obscure any copyright, patent, trademark or other proprietary or attribution notices on or in any Software. Copies of the Software are permitted only for back-up purposes and must be marked by you as a back-up copy. You may not make copies of the Documentation unless expressly authorized by us in writing (email to suffice).

**2.3** You agree to maintain accurate records as necessary to verify our compliance with this EULA. Upon our request, no more than once every twelve months, you agree to furnish such records to us and certify your compliance with this EULA. We or our independent third party accountant may examine and audit your books and records relating to this EULA and your access, use, and deployment of the Software to the extent necessary to verify your compliance with this EULA and any order form(s).

**2.4** You will not distribute or provide access to a Key to a third party, unless that third party is Permitted Third Party or an Affiliate (each, a "Secondary Owner"). We have the sole right to withhold or terminate a Secondary Owner's access to a Key at any time if we determine that such access poses a security risk, could be fraudulent, or could subject us, our affiliates, or any third party to liability. You agree that we and our affiliates are not responsible for unauthorized distribution or sharing of your Keys.

**3. RESERVATION OF RIGHTS.** The Software is owned by us, our affiliates and our licensors. The structure, organization, and code of the Software are our valuable trade secrets and constitutes our confidential information. You acknowledge and agree that title to the Software and all copies thereof, including all industrial and intellectual property rights (including the exclusive rights of economic exploitation), copyright, trade secrets and patent rights, are owned by us, our affiliates and our licensors. The Software is protected by Applicable Laws, including without limitation copyright laws and international treaty provisions. Except for the rights explicitly granted to you in this EULA, all right, title and interest in the Software are reserved and retained by us, our affiliates, or our licensors. You do not acquire any intellectual property or other rights in the Software as a result of downloading, installing, accessing or using the Software.

**4. SUGGESTIONS.** If you elect to provide any Suggestions to us or our affiliates, we and our affiliates will be entitled to use the Suggestions without restriction. For purposes of this EULA, "Suggestions" includes all suggested improvements to the Software that you provide to us or our affiliates.

**5. THIRD PARTY SOFTWARE AND NOTICES.**

**5.1 Third Party Software.** The Software may include software developed, owned, or provided by third parties or their licensors (including open source software) (the "Third Party Software"). Use of Third Party Software is governed by separate licenses, as indicated in the license, notice, readme, or other files or notices that we distribute with an Appliance or the applicable component of the Software. Your license rights with respect to Third Party Software are defined by the applicable Third Party Software license, and nothing in this EULA will restrict, limit, or otherwise affect any rights or obligations you may have, or conditions to which you may be subject under such Third Party Software licenses. You agree to be bound by and subject to the terms and conditions of each applicable Third Party Software license. If you do not agree to be bound by and subject to the terms and conditions of each applicable Third Party Software license, you must terminate this EULA by uninstalling and destroying all copies of the Software that are in your possession or control. If our rights from a licensor of Third Party Software are limited, suspended or terminated for any reason, your rights will also be so limited, suspended or terminated. The distribution of files created by the Software may require that you obtain license rights from third parties, including owners or licensors of certain third party audio and video formats. You are solely responsible for obtaining such licenses and paying any necessary royalties or fees.

**5.2 Notices.** The Software may contain components that we licensed from Omneon, Inc. If you are using the Software to generate Omneon container formats to transfer files between multiple systems, at least one source or destination must be one of the following Omneon products: Omneon Spectrum, MediaDeck, MediaGrid or other Omneon-sold products. In the case where you transfer files using Omneon container formats between multiple third party devices and where no Omneon product is a part of the installation, you agree that you will report to us the number of any such new installations within 15 days of the end of each calendar quarter. We may invoice you a license fee of fifty thousand dollars (\$50,000) per installation that will be payable in accordance with the terms and conditions stated in our invoice to you.

**6. TERM AND TERMINATION.** The term of this EULA begins on the start of the Subscription Period (as set forth in the Sales Quotation for your order) and continues until the earlier of the expiration of the Subscription Period (if applicable) or termination in accordance with the terms of this EULA. You may terminate this EULA at any time by uninstalling and destroying all copies of the Software that are in your possession or control. We may terminate this EULA if you are in material breach of this EULA and fail to cure the breach within ten (10) days' of our written notice to you. This EULA (including any rights granted to you under this EULA) will immediately and automatically terminate without notice from us if (a) you fail to make timely payment for the Software; (b) you fail to implement any required security or other updates; or (c) you breach Sections 1-3, 5, 6, 10.2(i)-(n), or 10.2(q) of this EULA, or bring any action against us or our affiliates alleging the infringement of our intellectual property rights or other proprietary rights. Upon termination, you must cease all access to and use of the Software, remove the Software from all computers and servers on which the Software is installed, and return to us, within five (5) days from the expiration or termination date, all copies of the Software (or destroy such materials, as instructed by us).

**7. WARRANTY; DISCLAIMERS.**

**7.1 Limited Performance Warranty.** We warrant to you that the Software, when installed and operated pursuant to our instructions in the Documentation, will perform in material accordance with such Documentation for a period of 60 calendar days from your initial access. Your sole and exclusive remedy for a breach of this limited warranty is to return any allegedly defective Software to us and for us to repair or replace it (at our option and in our sole discretion). This limited warranty is not transferable and does not cover damages, defects, malfunctions or failures caused by any unauthorized modification of the Software by you or your agents; any abuse, misuse or negligent acts by you or your agents; modification by you or your agents of any interfaces or any software or hardware interfacing with the Software; or any failure by you or your agents to follow our installation, configuration, use or operation instructions, as set forth in the Documentation (including failure to install any updates required by us from time to time, for example, for security or as required by Applicable Laws). We will provide the foregoing warranty services in accordance with the Service Plan.

**7.2 Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7.1, THE SOFTWARE IS DELIVERED TO YOU "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. NOTWITHSTANDING THE FOREGOING, THE THIRD PARTY SOFTWARE, INCLUDING WITHOUT LIMITATION THE HEVC CODEC, IS PROVIDED TO YOU "AS-IS" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. WE AND OUR LICENSORS, AND EACH OF THEIR RESPECTIVE AFFILIATES AND SUPPLIERS (COLLECTIVELY, THE "RELEASED PARTIES") DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, AND NON-INFRINGEMENT, AND ANY WARRANTIES OR CONDITIONS ARISING FROM ANY ACTUAL OR ALLEGED COURSE OF DEALING, USAGE OR TRADE PRACTICE. FURTHER, WE DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR BE ERROR FREE OR THAT DEFECTS IN THE SOFTWARE ARE CORRECTABLE OR WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY A RELEASED PARTY OR AN AUTHORIZED REPRESENTATIVE OF A RELEASED PARTY WILL CREATE A WARRANTY. THE LAWS OF CERTAIN JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

**7.3 High Risk Applications.** THE SOFTWARE IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS REQUIRING FAULT TOLERANCE OR FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, MEDICAL OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK APPLICATIONS"). WE AND OUR SUPPLIERS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK APPLICATIONS.

**8. SURVIVAL.** The following sections survive termination: 2-5; 6 (last sentence); 7.2-7.3; and 10.

**9. AMENDMENT.** We may amend this EULA at any time in our sole discretion by posting the revised terms at <https://www.aws.amazon.com/legal/elemental-appliances-software-eula> or within an update or upgrade of the Software. Your continued use of the Software after the effective date of the amended EULA evidences your agreement to be bound by it. If you do not agree to a change, you must stop using the Software and terminate this EULA.

**10. MISCELLANEOUS.**

**10.1** If you are subject to the AWS Elemental Appliances and Software Terms of Service available at <https://aws.amazon.com/legal/elemental-appliances-software-agreement> or other written agreement between you and AWS Elemental governing your purchase and use of AWS Elemental Products and Services ("AWS Elemental Appliances and Software Terms of Service"), as may be updated by us from time to time, in the event of any conflict or inconsistency among the terms and conditions of this EULA and the existing AWS Elemental Appliances and Software Terms of Service, such conflict or inconsistency will be resolved by giving precedence to this EULA.

**10.2** If you are not subject to the AWS Elemental Appliances and Software Terms of Service, the following additional terms and conditions apply:

**(a) Assignment.** You will not assign or otherwise transfer this EULA, or any of your rights and obligations under this EULA, without our prior written consent. Any assignment or transfer in violation of this Section 10.2(a) will be void. Subject to the foregoing, this EULA will be binding upon, and inure to the benefit of, the parties and their respective permitted successors and assigns.

**(b) Governing law.** The laws of the State of Washington, without reference to conflict of law rules, govern this EULA and any dispute of any sort that might arise between you and us. The United Nations Convention for the International Sale of Goods and Uniform Computer Information Transactions Act do not apply to this EULA.

**(c) Disputes.** Any dispute or claim relating in any way to your purchase or use of the Software, or to any products or services sold or distributed by AWS Elemental, will be resolved by binding arbitration as provided in this Section 10.2(c), rather than in court, except that you may assert claims in small claims court if your claims qualify. The Federal Arbitration Act and federal arbitration law apply to this EULA. There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this EULA as a court would. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, WA 98501. The arbitration will be conducted by the American Arbitration Association (AAA) under its rules, which are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. Payment of filing, administration and arbitrator fees will be governed by the AAA's rules. We will reimburse those fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. We will not seek attorneys' fees and costs in arbitration unless the arbitrator determines the claims are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or at a mutually agreed location. We and you agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim proceeds in court rather than in arbitration we and you waive any right to a jury trial. Notwithstanding the foregoing we and you both agree that you or we may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

**(d) Force Majeure.** We and our affiliates will not be liable for any delay or failure to perform any obligation under this EULA where the delay or failure results from any cause beyond its reasonable control, including acts of God, labor disputes or other industrial disturbances, electrical or power outage, utilities or other telecommunications failures, earthquakes, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

**(e) Data Privacy.** We will only use Account Information in accordance with the AWS Elemental Privacy Notice, located at <https://www.elemental.com/privacy> (and any successor or related locations designated by us), as may be updated by us from time to time, and you consent to such usage. You further acknowledge and agree that personal information supplied by you, including Account Information, may be transferred to other countries or jurisdictions outside of your country or jurisdiction of residence, and that the protections afforded such information under the laws and regulations of the country or jurisdiction to which the information is transferred may not be comparable to or as protective as the protections afforded such information in your country or jurisdiction of residence. You represent and warrant that your creation, collection, receipt, access, use, storage, disposal, transfer and disclosure of your employees' personal information does and will comply with all applicable federal, national, state, municipal and local privacy and data protection laws, as well as all other applicable regulations and directives, and that you have obtained all consents required by the foregoing laws. "Account Information" means information about you that you provide to us in connection with this EULA. For example, Account Information includes names, usernames, phone numbers, email addresses and billing information associated with your AWS Elemental account.

**(f) Notices.** We may provide any notice to you under this EULA by sending a message to the email address then associated with your account. Notices we provide by email will be effective when we send the email. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email. To give us notice under this EULA, you must contact us by personal delivery, overnight courier or registered or certified mail to the mailing address listed below. Notices provided by personal delivery will be effective immediately. Notices provided by overnight courier will be effective one (1) business day after they are sent. Notices provided registered or certified mail will be effective three (3) business days after they are sent.

AWS Elemental  
1320 SW Broadway, Suite 400  
Portland, OR 97201  
Attention: Legal Department

A copy of any notice required or permitted by this EULA should be sent to Amazon.com, Inc. Attn: General Counsel P.O. Box 81226 Seattle, WA 98108-1226 Fax: (206) 266-7010 E-mail: [contracts-legal@amazon.com](mailto:contracts-legal@amazon.com).

**(g) Independent Contractors; Non-Exclusive Rights.** We and you are independent contractors, and this EULA will not be construed to create a partnership, joint venture, agency, or employment relationship. Neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other.

**(h) Language.** All communications and notices made or given pursuant to this EULA must be in the English language. If we provide a translation of the English language version of this EULA, the English language version of the EULA will control if there is any conflict.

**(i) Confidentiality and Publicity.** You may use AWS Elemental confidential information only in connection with your use of the Software as permitted under this EULA. You will not disclose AWS Elemental confidential information during the term or at any time during the five (5) year period following the end of the term. You will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of AWS Elemental confidential information, including, at a minimum, those measures you take to protect your own confidential information of a similar nature. You will not issue any press release or make any other public communication with respect to this EULA or your use of the Software.

**(j) No Third Party Beneficiaries.** Except as set forth in Sections 3, 5, and 10.2(i)-(p), this EULA does not create any third party beneficiary rights in any individual or entity that is not a party to this EULA.

**(k) Product Terms.** Product Terms apply to your use of certain Software, hardware, equipment, or other products and services provided to you. "Product Terms" means the rights and restrictions located at <http://aws.amazon.com/legal/elemental-appliances-software-product-terms> (and any successor or related locations designated by us), as may be updated by us from time to time.

**(l) Indemnification - General.** You will defend, indemnify, and hold harmless us, our affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorney's fees) arising out of or relating to any third-party claim concerning: (i) your download, installation, use, reproduction or distribution of the Software (including in combination with devices, software, or other items); (ii) unauthorized use of the Software; or (iii) breach of this EULA or violation of Applicable Laws. You will reimburse us for our reasonable attorneys' fees, as well as our employees' and contractors' time and materials spent responding to any third party subpoena or other compulsory legal order or process associated with third party claims described in this Section 10.2(l) at our then-current hourly rates.

**(m) Indemnification - Intellectual Property.**

(i) Subject to the limitations in Sections 10.2(m)-(o), we will defend you and your employees, officers, and directors against any third-party claim alleging that the Software infringes or misappropriates that third party's intellectual property rights, and will pay the amount of any adverse final judgment or settlement.

(ii) Subject to the limitations in Sections 10.2(m)-(o), you will defend us, our affiliates, and their respective employees, officers, and directors against any third-party claim alleging that any content you process, transcode or transmit using the Software ("Your Content") infringes or misappropriates that third party's intellectual property rights, and will pay the amount of any adverse final judgment or settlement.

(iii) We will not have obligations or liability under this Section 10.2(m) arising from infringement by combinations of the Software, as applicable, with any other product, service, software, data, content or method. In addition, we will have no obligations or liability arising from your or any third parties' use of the Software other than for its intended use, or after we have notified you to discontinue such use.

(iv) For any claim covered by Section 10.2(m)(i), we will, at our election, either: (A) procure the rights to use that portion of the Software alleged to be infringing; (B) replace the alleged infringing portion of the Software with a non-infringing alternative; (C) modify the alleged infringing portion of the Software to make it non-infringing; or (D) if none of (A), (B), or (C) are commercially reasonable, (X) accept the return of any infringing Software and/or terminate any license to use the infringing Software, and (Y) grant you a pro-rata credit in the amount of the remaining value of the purchase price of the infringing Software, calculated based on straight-line depreciation over three (3) years from our delivery of such Software.

(v) THIS SECTION 10.2(M) STATES YOUR SOLE AND EXCLUSIVE REMEDY AND OUR SOLE LIABILITY FOR ANY THIRD PARTY CLAIM THAT THE SOFTWARE INFRINGES A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

**(n) Indemnification - Process.** The obligations under Sections 10.2(i) - (n) will apply only if the party seeking defense or indemnity: (i) gives the other party prompt written notice of the claim; (ii) permits the other party to control the defense and settlement of the claim; and (iii) reasonably cooperates with the other party (at the other party's expense) in the defense and settlement of the claim. In no event will a party agree to any settlement of any claim that involves any commitment by the other party or performance by the other party of an affirmative act (other than the payment of money) without the prior written consent of the other party.

**(o) Liability Disclaimers.** NO RELEASED PARTY WILL BE LIABLE TO YOU UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY FOR (A) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, (B) THE VALUE OF YOUR CONTENT, (C) LOSS OF PROFITS, REVENUES, CUSTOMERS, OPPORTUNITIES, OR GOODWILL, OR (D) UNAVAILABILITY OF THE SOFTWARE, SUPPORT SERVICES OR PROFESSIONAL SERVICES, EVEN IF WE HAVE BEEN ADVISED OF, OR SHOULD HAVE KNOWN OF, THE POSSIBILITY OF SUCH DAMAGES.

**(p) Damages Cap.** EXCEPT FOR PAYMENT OBLIGATIONS UNDER SECTION 10.2(M), OUR AND OUR AFFILIATES' AGGREGATE LIABILITY UNDER THIS EULA WILL NOT EXCEED THE LESSER OF \$10,000 OR THE AMOUNT RECEIVED BY US FOR THE APPLICABLE SOFTWARE LICENSE DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE RELEVANT CLAIM AROSE.

**(q) Export, Import and Government Restrictions.** You acknowledge that the Software is subject to U.S. export jurisdiction. You are solely responsible for complying with all Applicable Laws that apply to the download, installation and use of the Software in your jurisdiction. You will not directly or indirectly export, re-export, transmit, or cause to be exported, re-exported or transmitted, the Software or any computer equipment or device containing the Software to any country, individual, corporation, organization, or entity to which such export, re-export, or transmission is restricted or prohibited, including any country, individual, corporation, organization, or entity under sanctions or embargoes administered by the United Nations, U.S. Departments of State, Treasury or Commerce, the European Union, or any other applicable government authority, including all end-user, end-use and destination restrictions issued by U.S. and other governments. You represent and warrant that you and your financial institutions(s) are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, or owned or controlled by such a party, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the U.S. Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list, and the U.S. Department of Commerce's Entity List), the European Union or its member states, and other applicable government authority. You understand that certain functionality of the Software, such as encryption or authentication, may be subject to use, import or export restrictions in the event that you transfer the Software from the country of delivery, and you are responsible for complying with any such applicable restrictions. The Software is provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Software. If you are using the Software on your behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the Software. The terms "commercial item" "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

**11. Entire Agreement and Severability.** Unless you have entered into another written agreement with respect to the Software which has been signed by you and an authorized representative of us and which conflicts with the terms of this EULA, you agree that this EULA supersedes all prior written or oral agreements, warranties or representations with respect to use of the Software. If any term (or part thereof) of this EULA is found to be invalid or unenforceable, the remaining provisions (including other valid portions within the affected term) will remain effective. You acknowledge that you have read this EULA, that you understand it, that you agree to be bound by its terms, and that this is the complete and exclusive statement of the agreement between you and us regarding the Software. Our failure to insist upon or enforce your strict compliance with this EULA will not constitute a waiver of any of our rights.

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