

End User License Agreement – Appaegis

Last updated: [____]

1 Acceptance of Terms

- 1.1 The Services and the Software are provided, operated and owned by Appaegis Inc. ("us", "we" and "our").
- 1.2 By clicking "I Agree" below and/or when you first install the Software, you agree to be bound by the provisions of this end user license agreement ("**EULA**").
- 1.3 "**You**" throughout this EULA means you as an individual user of the Software. However, if you are using the Software on behalf of an entity or organization (or in the course of your employment with such an entity), then you warrant that you are authorized by the said entity to enter into legal agreements on the entity's behalf, and then both you and the entity enter into this agreement and are liable for your strict compliance with its terms. All users signing up on behalf of or under an entity or organization must sign up using their official email id. The entity guarantees the compliance of all of its employees, officers, agents, contractors and other related persons.
- 1.4 Your use of the Software is conditional on you being at least 18 years old and having the legal capacity to entering into binding contracts.
- 1.5 This EULA may be supplemented by an offer document or the like (on our website or by email) which states the commercial terms on which this Software and related Services are being provided to you, including but not limited to: which version of the Software is offered to you, what fees is payable by you to us or any third-party, the payment terms, how many authorized users accounts you may create, etc. ("**Commercial Terms**").

2 Definitions

- 2.1 Unless the context expressly provides otherwise, in this EULA:
 - "**Commencement Date**" means Commencement Date set out in the Commercial Terms, or if unspecified, the date upon which you give your express consent to this EULA, following the issue of this EULA by us;
 - "**Commercial Terms**" means the offer document on our website which sets out the commercial terms on which the Software is offered to you. All prices set in the Commercial Terms are in USD unless otherwise stated;
 - "**Content**" means any content of whatever nature inputted by you to the Software and any content outputted by the software (including but not limited to files, designs, models, images or similar material or information);
 - "**Documentation**" means the documentation for the Software produced by us and delivered or made available by us to you;
 - "**EULA**" means this end user license agreement, including any amendments to this end user license agreement from time to time;
 - "**Fees**" means the fees payable in exchange for the Service;
 - "**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or not, registered or unregistered, including any application or right of application for such rights and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade

names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs;

"**Services**" means the cloud-based service under which the Software is downloaded for your use, under this EULA;

"**Software**" means the security software and related data media and Documentation, as titled in the Commercial Terms, that you may use in accordance with the terms of this EULA;

"**Source Code**" means the Software code in human-readable form or any part of the Software code in human-readable form, including code compiled to create the Software or decompiled from the Software, but excluding interpreted code comprised in the Software;

"**Support Services**" means the support services as set out under clause 10;

"**Term**" means the term of this EULA as explained in clause 4.1;

"**We**", "**us**" and "**our**" means Appaegis Inc. and its related entities or body corporates; and

"**You**" means you and/or any user of the Software and/or Services, and includes any entity which you are employed, affiliated or contracted with, and any other employee, officer, agent, contractor or advisor of that entity.

3 Amendment of EULA

- 3.1 We may amend this EULA from time to time by providing you with adequate notice. If you do not agree to the amendments, then we may at our sole discretion terminate the EULA (in which case you will only be liable for the Fees pro-rata) or abandon the proposed amendment.

4 Term

- 4.1 This EULA comes into force upon the Commencement Date and will operate for the Term unless terminated in accordance with clause 12. Unless terminated or specified otherwise by you, on each expiration of the Term, this EULA will renew automatically for another Term.

5 Registration

- 5.1 You will be required to register an account with us to access the Software and the Services.
- 5.2 When you register and activate your account, you will provide us with personal information such as name, email address, the name of the legal entity you are representing and other details. You must ensure that this information is accurate and current. We will collect all personal information in accordance with our Privacy Policy.
- 5.3 You will create a username and password. You are responsible for keeping the username and password secure and are responsible for all use and activity carried out under this username. You must not share your account credentials with any third party. We do not authorize anyone to use the Service on your behalf, and we will not be liable for any loss or damage arising from any kind of unauthorized activity that takes place under your account. On registration, we may also ask for any other information which we may deem reasonably necessary to enable you to enjoy the benefits of the Software and the Services.
- 5.4 If you provide any information that is untrue, inaccurate, not current, or incomplete, or we have reasonable ground to suspect that such information is untrue, inaccurate, not current, or incomplete, we have the right to suspend or terminate your account and refuse any and all current or future use of the Software. You must not impersonate some other individual, business or company. In case you try to present yourself as another individual or company, your account may be suspended, and legal action may be taken against you.

- 5.5 You agree not to create an account or use the Software if you have been previously removed or suspended by us from the use of the Services.

6 Software License

6.1 Grant of License: We hereby grant to you from the Commencement Date until the end of the Term a limited, revocable, non-exclusive, non-transferable, non-sub licensable right to install and use the Software for availing the Services as set out in the Commercial Terms (including whether the Software can be used on multiple computers). We may provide non-exclusive licenses to other authorized users to use the Software.

6.2 Restrictions: Save to the extent expressly permitted by this EULA or required by applicable law, any license granted under this clause 6 shall be subject to the following prohibitions:

- (a) you must not sub-license, sell, resell, assign, rent, lease, loan, supply, publish, distribute or redistribute the Software or otherwise make available the Software except as expressly permitted under this EULA;
- (b) you must not copy, alter, edit, create derivative works or adapt the Software or modify any portion of the Software to remove or circumvent technical limitations of the license;
- (c) you must not decompile, disassemble, decode, de-obfuscate or reverse engineer, or attempt to decompile, disassemble, decode, de-obfuscate or reverse engineer, the Software or any component thereof;
- (d) you must not remove any proprietary notices, labels, or marks on or in any copy of the Software or any product in which the Software is embedded or use the Software or the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable laws;
- (e) you must not use any 'locked' or key-restricted feature, function, service, application, operation, or capability without first purchasing the applicable license(s) and obtaining a valid key from us, even if such feature, function, service, application, operation, or capability is enabled without a key;
- (f) you must not distribute any key for the Software provided by us to any third party;
- (g) you must not use the Software in any manner that extends or is broader than the uses purchased by you from us or an authorized Appaegis reseller;
- (h) you must not disclose the results of testing or benchmarking of the Software to any third party without our prior written consent;
- (i) you must not use the Service and Software to connect to the websites, applications, URLs, or IP addresses which are not authorized to be used by you; and
- (j) you must not access the Software in order to build a similar or competitive product or service or use the Software in any manner other than as expressly provided herein.

Any attempt to do any of the above will be in violation of our rights.

6.3 Security: You are strictly responsible for the security of copies of the Software or license keys supplied to you under this EULA (or created from such copies) and must ensure that access to such copies is restricted to persons authorized to use them under this EULA. We do not authorize anyone to use the Software on your behalf, and we will not be liable for any loss or damage arising from any kind of unauthorized activity.

- 6.4 Source Code: Nothing in this EULA shall give to you or any other person any right to access or use the Source Code or constitute any license of the Source Code. You undertake not to do it and not to reverse engineer the Source Code or the Software.

7 Your Obligations

- 7.1 You are responsible for the use of the Software. You agree not to access, copy, or otherwise use the Software or the Services including our intellectual property and trademarks, except as authorized by this EULA or as otherwise authorized in writing by us.
- 7.2 You are responsible for ensuring you have all equipment, facilities and services (including internet access) required to enable you to access and use the Software and Services.
- 7.3 When using the Software and the Services, you agree that:
- (a) you will not breach any law which may be applicable to the use of Software and the Services;
 - (b) your actions will not result in you or us breaching any law, regulation, rule, code or other legal obligation;
 - (c) you will not add any Content in the Software that is or could reasonably be considered to be obscene, inappropriate, defamatory, disparaging, indecent, seditious, offensive, pornographic, threatening, abusive, liable to incite racial hatred, discriminatory, profane, in breach of confidence, in breach of privacy or harassing;
 - (d) you must arrange all consents and approvals (including, in respect of any personal information, all necessary consents from the relevant individual) that are necessary for you to collect, use, hold and process the Content; and
 - (e) you agree to keep a backup copy of all Content and acknowledge that this is not our responsibility. We can delete your Content immediately upon termination of your subscription in case of you have a free subscription, and after one week of termination in case you have a paid subscription.
- 7.4 We shall have the right to inspect your records in order to verify your compliance with the obligations and restrictions under this EULA, including inspecting the console and ensuring it is at or below the licensed user count. You shall promptly pay the difference if such verification reveals an underpayment.

8 Fees

- 8.1 Applicability: This clause applies only if the Commercial Terms state that you must pay Fees to us. In case of free subscription, this clause will not apply.
- 8.2 Payment Terms: You must pay the Fees to us in accordance with the Commercial Terms and this EULA. Unless otherwise expressly specified in an invoice, (a) payment of all invoices shall be made within 30 days from the date of invoice; (b) all fees are non-refundable and there are no refunds or credits for partially used Terms or periods.; and (c) suspension or termination of the Services shall not relieve Customer of any payment obligations accrued until the date of suspension or termination.
- 8.3 Taxes: All amounts stated in or in relation to this EULA are, unless the context requires otherwise, stated exclusive of all applicable taxes. You are required to pay any and all transaction taxes, regardless of how or who imposed on, which are taxes that arise as a result of the EULA, except for taxes imposed on our net income. These transaction taxes may include, but are not limited to, local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value added taxes, consumption taxes, goods and services taxes, GST/HST,

excise, sales, use or similar taxes and any withholding taxes (together “**Taxes**”), which will be added to the amounts payable by you to us.

- 8.4 **No Deduction:** Payment of the Fees must be made upfront, in accordance with the Commercial Terms, by way of a direct debit without reduction for Taxes. By entering into this EULA and/or using the Software, you irrevocably request and authorize us to arrange, through our own financial institution, to debit any amount we deemed payable by you from your nominated account. We will issue an invoice to you. If you are required by a governmental taxing authority to withhold an amount from any payment due hereunder and pay such amount to the governmental authority, the prices will be grossed-up so that the net payment equals the original price.
- 8.5 **Billing Disputes:** In the event you dispute any amount charged or invoiced hereunder in good faith, such dispute must be reported to us within thirty (30) days following receipt of invoice or the applicable statement, provided that in no event shall you withhold any fees not subject to a good faith dispute.
- 8.6 **Delayed Payment:** If you do not pay any amount properly due to us under this EULA, then we may charge you an interest at the rate equivalent to 1.5% per month or the highest rate permitted by law, whichever is lower, plus all bank charges and costs of collection (including attorneys’ fees). In the event that late payments are not paid in full within thirty (30) days following notice of delinquency, we may terminate or suspend your access to the Services.

9 Updates and Upgrades

- 9.1 We reserve the right, in our sole and absolute discretion, to make changes to the Software from time to time and without notice in how we offer and operate our business. You agree that upon notice, you will update or make any other changes to the Software, as indicated by us.
- 9.2 The terms of this EULA will govern any upgrades provided by us that replace and/or supplement the original Software unless such upgrade is accompanied by a separate license in which case the terms of that license will govern.
- 9.3 You acknowledge and agree that the trial features offered by us under our free subscription plan may be added, removed and/or limited at any time without advance notice. Further, features offered by us in our free plan may or may not form a part of the product subscribed by you which may impact your ongoing business operations. Therefore, you must choose your paid subscription plan carefully in accordance with your business requirements and our prevailing service offerings as per the Commercial Terms.

10 Support Services

- 10.1 For the purposes of this EULA, Support Services shall have the following meaning
- (a) if you are a free customer, access to our online tutorial material and FAQs;
 - (b) if you are a paid customer, support services provided through email upon request; or
 - (c) if you have specifically subscribed for premium support services, the premium support services forming part of your subscription package.
- 10.2 We will provide support on working date between 9 am to 5 pm California time.
- 10.3 We may suspend the provision of the Support Services if any amount due to be paid by you to us under this EULA is overdue, and we have given to you at least 7 days' written notice, following the amount becoming overdue, of our intention to suspend the Support Services on this basis.
- 10.4 The Support Service is conditional on:

- (a) all reasonable information requested by us been provided by you in relation to the support requested;
 - (b) you are not in breach of the EULA; and
 - (c) you are using the Software in accordance with this EULA.
- 10.5 Our liability for any failure to provide the Support Services in accordance with this EULA is limited to resupplying the Support Services to the extent required to remedy the failure which shall be your sole remedy as well.

11 Intellectual Property

- 11.1 **Ownership:** All Intellectual Property Rights in the Software and Services or other technology used by us in the provision of the Services and all modifications and derivative works thereof is and remains our property. You must not dispute that ownership. Nothing in this EULA shall operate to assign or transfer any Intellectual Property Rights from us to you. We retain all rights not granted expressly granted to you in this Agreement.
- 11.2 **Documents:** All Intellectual Property Rights arising in connection with the use of the Services or subject matter of this EULA (including all methodology used by us) will immediately upon creation vest in us and are, to the extent they can be, immediately assigned to us by you on their creation. You will sign all documents necessary to enable us to perfect registration in our name of any Intellectual Property Rights assigned under this agreement to us, and do all acts otherwise necessary to transfer ownership of the Intellectual Property Rights to us.
- 11.3 **Restriction:** You must not reproduce, modify or otherwise use or deal with the Intellectual Property Rights belonging to us except as expressly permitted by this EULA or with our written consent.
- 11.4 **Usage Data:** In connection with the Software and/or the Services, we may collect information about your access and use of the Software/Services, including but not limited to usage and performance information ("**Usage Data**").
- 11.5 **Aggregated Data.** We may use Usage Data that has been aggregated and anonymized (i.e., any data that identifies the customer or customer's end users has been removed) ("**Aggregated Data**") derived from the Software/Services to provide you Support Services, research and development and market research purposes, to support and improve our products and services, including in the development of new features, products, tools, and content, and for other commercial purposes. The Aggregated Data will not be shared with any third party except for legitimate business purposes.
- 11.6 **Feedback:** If you provide us with comments, ideas, or suggestions relating to improvement, modifications, or other feedback about the Software and/or the Services ("**Feedback**"), then all Intellectual Property Rights in that Feedback, and anything created as a result of that Feedback (including new material, enhancements, modification or derivative works), are owned solely by us (without restriction or further obligation to you) and we may use the Feedback for any purpose.
- 11.7 **Injunctive Relief:** You acknowledge that we will suffer real and substantial damage as a result of a breach of this clause 11 and may seek injunctive relief for any actual or perceived breach and damages alone are not an adequate remedy.

12 Termination

- 12.1 **Renewal:** You may at any time up to 30 days before the expiration of the Term notify us that you do not wish to renew the EULA for an additional Term on the expiration of the current Term. Otherwise, the EULA will automatically renew for an additional Term.

- 12.2 **Termination**: Either party may terminate this EULA immediately by giving written notice of termination to the other party if:
- (a) the other party commits a breach of this EULA (including you failing to pay any Fees or other amounts under this EULA), and the breach is irremediable or, where the breach is remediable, but the other party fails to remedy the breach within the period of 7 days following the giving of a written notice to the other party requiring the breach to be remedied; or
 - (b) the other party persistently breaches this EULA (irrespective of whether such breaches collectively constitute a material breach); or
 - (c) the other party is insolvent or suffers an insolvency or liquidity event as commonly interpreted.
- 12.3 **Termination by Appaegis**: We may terminate this EULA immediately on notice:
- (a) if required to enable us to comply with any applicable laws or regulations; or
 - (b) without assigning any reason, in case of you have a free subscription; or
 - (c) if your account remains inactive for a continuous period of 1 month, in case you have a free subscription; or
 - (d) if we suspect or believe that the Software or the Services is being used or proposed to be used for illegitimate or fraudulent purposes or in violation of the restrictions placed under clause 6.2.
- 12.4 **Suspension**: Without limiting any other right or remedy available to us, we may restrict or suspend your access to and use of the Software and/or Services if we consider that you or any of your personnel have:
- (a) undermined, or attempted to undermine, the security or integrity of the Software and/or Services;
 - (b) used, or attempted to use, the Software and/or Services:
 - (i) for improper purposes; or
 - (ii) in a manner, other than for normal operational purposes, that materially reduces the operational performance of the Software; or
 - (c) transmitted, inputted or stored any Content that breaches or may breach this EULA or any third party right (including Intellectual Property Rights and rights of privacy or publicity), or that is or may be objectionable, incorrect or misleading.
- 12.5 **Effect of Termination**. Upon termination of this EULA, (a) the rights granted to you under the EULA will immediately terminate, (b) all fees owed by you to us will become immediately due upon receipt of a final invoice, and (c) and you must immediately cease use of the Software and the Services. Further, upon termination, we have no obligation to retain or store your Content which may be deleted by us without further notice.
- 12.6 **Survival**. Upon termination of this Agreement, parties' obligations under Sections 6.2 (Restrictions); 6.4 (Source Code); 11 (Intellectual Property); 12.5 (Effects of Termination); 12.6 (Survival); 13 (Confidentiality); 14 (Limitation of Liability and Disclaimers); 15 (Release and Indemnity); 16 (General Provisions), and any other clause which by its inherent nature should survive termination, will survive.

13 Confidentiality

- 13.1 **Definition:** As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information or the circumstances of disclosure, including all software, source code, inventions, algorithms, techniques, methodologies, schematics, know-how, analyses, trade secrets, technical data, strategic planning, marketing data, databases, drawings, models, performance information and ideas and the terms and conditions of this Agreement. The obligations in this Section shall not apply to any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party and without an obligation of confidentiality; (c) was independently developed by the Receiving Party without the use of or reference to the Confidential Information of the Disclosing Party; or (d) is lawfully received from a third party without breach of any obligation owed to the Disclosing Party and without an obligation of confidentiality.
- 13.2 **Confidentiality Obligations.** Each Party agrees to protect the Confidential Information of the other Party in the same manner that it protects the confidentiality of its own proprietary and Confidential Information of like kind, but in no event using less than a reasonable standard of care. A Party shall not: (a) disclose or use any Confidential Information of the other Party for any purpose outside the scope of this Agreement, except with the disclosing Party's prior written permission; and (b) disclose or make the other Party's Confidential Information available to any party, except those of its Affiliates, employees, contractors, and agents that have signed or accepted an agreement containing disclosure and use provisions substantially similar to those set forth herein and have a "need to know" in order to carry out the purpose of this Agreement. If a Party is compelled by law to disclose Confidential Information of the other Party, it shall provide prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other Party's cost, if the other Party wishes to contest the disclosure. Due to the unique nature of the Parties' Confidential Information disclosed hereunder, there can be no adequate remedy at law for a Party's breach of its obligations hereunder, and any such breach may result in irreparable harm to the non-breaching Party. Therefore, upon any such breach or threat thereof, the Party alleging breach shall be entitled to seek injunctive and other appropriate equitable relief in addition to any other remedies available to it.

14 Limitation of Liability and Disclaimers

- 14.1 We exclude all liability and all warranties under this EULA to the maximum extent permitted by law, including but not limited to in relation to any use of the Software or any Services offered.
- 14.2 To the extent permitted by law, our liability and the liability of our employees or agents for a breach of any warranty or liability which by law cannot be excluded, restricted or modified, or under any express warranty, is limited, at our option, to:
- (a) the repair or replacement of the Software; or
 - (b) the supplying of the Services again; or
 - (c) the payment of the cost of having the Services supplied again.
- 14.3 Our (and our affiliates', licensors', or suppliers') liability arising in connection with the use of the Software or the Services is limited as follows:
- (a) we exclude all liability for consequential, special, indirect or remote loss, lost profits or revenues or damages resulting from lost or corrupted data or business interruption or any

loss or damages resulting from system failure, malfunction, shutdown, failure to accurately transfer or read information, failure to provide correct information or any other commercial damages or losses resulting from or related to the use or inability to use the Software/Services, however caused, or the content of the Software/Services, whether based on warranty, contract, tort or any other legal theory, and whether or not we have been advised of the possibility of such damages;

- (b) will be liable to you only for our gross negligence or willful misconduct and only to the extent of actual damages incurred by you, and our total maximum total liability arising in connection with this EULA is capped to the total amount of any Fees paid to us by you in the 12 months preceding the event, which shall be your exclusive remedy;
- (c) our liability is excluded to the extent that you contributed to the liability;
- (d) we exclude all liability for anything you have been aware of for longer than six months and you have not commenced a claim in a court of competent jurisdiction; and
- (e) our liability is subject to your duty to mitigate your loss.

14.4 **No Liability for Content:** You are solely responsible for all of the Content including its reliability, accuracy, quality and legality. We will not be liable for any element or issue with the Content. We will not be liable for any loss of data. You acknowledge that any Content generated by the Software is an estimate only and should not be solely relied upon.

14.5 **DISCLAIMER:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU ASSUME ALL RISKS ARISING OUT OF USE OF THE SOFTWARE/SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE/SERVICES AND SUPPORT SERVICES (IF ANY) ARE PROVIDED ON "AS-IS" AND "AS AVAILABLE" BASIS, AND WITH ALL FAULTS AND WITHOUT ANY ASSURANCE, OR WARRANTY, CONDITION OR DUTY OF OR REGARDING FUNCTIONALITY, PRIVACY, SECURITY, ACCURACY, AVAILABILITY, REPAIRS, OR LACK OF NEGLIGENCE, INTERRUPTION, VIRUSES OR OTHER HARMFUL CODE, COMPONENTS, OR TRANSMISSIONS. WE, OUR AFFILIATES, LICENSORS, AND SUPPLIERS MAKE NO WARRANTY AND HEREBY DISCLAIM ANY IMPLIED, STATUTORY OR OTHER WARRANTY, INCLUDING ANY WARRANTY OF TITLE, QUIET ENJOYMENT, NON-INFRINGEMENT, MERCHANTABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK (IN CONNECTION WITH THE SYSTEM) AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. IN ADDITION, WE DO NOT WARRANT OR GUARANTEE THAT THE SOFTWARE WILL DETECT ALL POSSIBLE ATTACKS AND/OR THREATS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY US SHALL CREATE A WARRANTY. YOU AGREE TO OBTAIN (INCLUDING, WITHOUT LIMITATION, THROUGH DOWNLOAD) ANY CONTENT OR PRODUCTS ENTIRELY AT YOUR OWN RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY RESULTING INFRINGEMENT, USER'S BREACH OF CONTRACT, CONSEQUENCE OR DAMAGE, INCLUDING (WITHOUT LIMITATION) DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS AS SPECIFIED HERE AND TO THE LEAST EXTENT AS ALLOWED BY LAW, SUCH EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

15 Release and Indemnity

15.1 **Release:** To the maximum extent permitted by law, you agree to release the Released Parties from all Loss or Claims arising out of or in any way connected with any Relevant Matter. You further waive any and all rights and benefits otherwise conferred by any statutory or non-statutory law of any jurisdiction that would purport to limit the scope of a release or waiver.

15.2 **Customer Indemnity:** To the maximum extent permitted by law, you agree to indemnify, defend and hold harmless the Released Parties from any Loss or Claims arising out of or in any way connected with any Relevant Matter.

15.3 Dictionary: In this clause:

- (a) **Claim** means a claim, action, proceeding or demand made against a person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
- (b) **Loss** means a damage, loss, cost, expense or liability incurred by the person concerned however arising, including without limitation penalties, fines, and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.
- (c) **Released Parties** means us and our officers, directors, shareholders, agents, employees, consultants, associates, affiliates, subsidiaries, related parties, related body corporates, sponsors, and other third-party partners.
- (d) **Relevant Matter** means anything in connection with:
 - (i) any use of the Software, except to the extent we are found to be negligent or in breach of this EULA;
 - (ii) any damage to person, property, personal injury or death;
 - (iii) your breach of this EULA;
 - (iv) any matter for which we have purported to disclaim liability for under this EULA;
 - (v) your misuse or abuse of the Software or the Service; and
 - (vi) your breach or failure to observe any applicable law.

15.4 IP Indemnity: We will defend at our own expense any third-party claim, suit or proceeding brought against you insofar as it is based on a claim that the Software, as provided by us and used in conjunction with the Service, constitutes an infringement of a valid United States patent or a valid United States copyright. We will pay all damages, costs and expenses finally awarded to third parties as a result of a final judgment against you or settlement of such claim negotiated by us, but shall not be responsible for any compromise made without our consent. To qualify for such defense and payment, you must: (a) give us prompt written notice of any such claim, and (b) allow us to control, and fully cooperate with us in, the defense and all related settlement negotiations. Upon notice of an alleged infringement, or if, in our opinion, such a claim is likely, we shall have the right, at our option, to obtain the right to continue the distribution of Software, substitute other products or services with similar operating capabilities and/or performance, or modify the Software so that it is no longer infringing or subject to a third party claim. In the event that none of the above options are commercially practicable in your sole discretion, we may terminate this EULA and all accompanying licenses. In the event of such termination, you may as your sole and exclusive remedy obtain a refund from us of the fees paid for Service subscriptions prorated for the remainder of any pre-paid subscription term unused by you. This Section states your entire liability for intellectual property misappropriation or infringement.

15.5 Restrictions. We will have no liability for any claim of infringement based on:

- (a) use of the Software/Services in combination with equipment, services or software not supplied by us where the Software/Services would not itself be infringing;
- (b) modifications of the Software/Services without our written consent;
- (c) your failure to timely implement any maintenance release, modification, update or replacement provided by us;
- (d) negligence, abuse, misapplication or misuse of the Software/Services by or on your behalf; and

- (e) use of the Software/Services by or on your behalf that is outside the purpose, scope or manner of use authorized by this EULA or in any manner contrary to our instructions.

16 General

- 16.1 **Notices:** All notices must be in writing and must be made by email. Notices are taken to be read on the day they are received, unless they are received after 5 PM or not on a business day in California, USA in which case they are deemed to be received on the next business day in California, USA.
- 16.2 **Assignment:** You must not assign, sublicense or otherwise deal in any other way with any of your rights under this EULA. We may assign our rights under this EULA at our sole discretion.
- 16.3 **Waiver:** No breach of any provision of this EULA shall be waived except with the express written consent of the party not in breach.
- 16.4 **Severability:** Any provision of this EULA which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this EULA enforceable, unless this would materially change the intended effect of the EULA.
- 16.5 **Variation:** This EULA may not be varied except by a written document signed by or on behalf of each of the parties.
- 16.6 **Third Party Rights:** This EULA is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this EULA are not subject to the consent of any third party.
- 16.7 **Entire Agreement:** This EULA shall constitute the entire agreement between the parties in relation to the subject matter of this EULA, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 16.8 **Governing Law and Jurisdiction:** This EULA shall be governed by and construed in accordance with the law of the State of California, USA without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of California. Subject to provisions of clause 16.10 below, the courts of Santa Clara County, California shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this EULA.
- 16.9 **Export Compliance:** The Software and other components of the Software which we may provide or make available to you may be subject to United States export control and economic sanctions laws and other foreign trade controls. You agree to comply with applicable laws in connection with its performance hereunder, including without limitation, applicable U.S. and foreign export controls, economic sanctions, and other trade controls.
- 16.10 **Disputes:** All disputes arising under or related to this EULA and any quotation incorporating this EULA shall be resolved by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association in proceedings conducted in the English language in San Francisco, California and judgment on the arbitration award may be entered in any court having jurisdiction. However either party may at any time bring an action for injunctive relief in any court having jurisdiction.