

End-User License Agreement (“EULA”)

This End-User License Agreement (“**EULA**”) is a legal agreement between Teramind Inc. and its subsidiaries and affiliates (“**Teramind**”), and You (the “**End-User**”). This EULA shall govern any Equipment, Software and services listed on an Order (capitalized terms as defined below), unless otherwise specified in a custom End-User License Agreement executed by Teramind and End-User. You must read and accept all of the terms and conditions in this End-User License Agreement (this “Agreement”, “EULA”). If You are accessing and using the Software and services on behalf of a company (such as Your employer) or other legal entity, You represent and warrant that You have the authority to bind that company or other legal entity to this Agreement. In that case, “You” and “Your” will refer to that company or other legal entity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MUST NOT USE THE SOFTWARE AND SERVICES. BY USING THE SOFTWARE AND SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS AGREEMENT AND YOU AGREE TO BE BOUND BY THESE TERMS, CONDITIONS AND NOTICES CONTAINED IN THIS AGREEMENT JUST AS IF YOU HAD SIGNED THIS AGREEMENT.

1. DEFINITIONS

1. “**Equipment**” means the hardware identified on the End User purchase Order in conjunction with which the Software is to be used (e.g., Windows Server).
2. “**Order**” means a document, signed by End-User and TERAMIND that specifies the Software and incidental related services which TERAMIND will provide to End-User and the related pricing and any other information relevant to such transaction.
3. “**SLA**” means TERAMIND’S Service Level Agreement, if any, in the form attached hereto.
4. “**Software**” means the software programs licensed by TERAMIND and identified on the Order.
5. “**Software Release(s)**” means any new version or upgrade of Software that is made generally available by TERAMIND at no separate or additional charge during the period in which the Software is covered by the applicable warranty, as more fully set forth herein. Software Releases shall not include separate modules.
6. “**Trademarks**” means all names, marks, logos, designs, trade dress and other brand designations used by TERAMIND or its Software Suppliers in connection with the Software.

2. ORDERING, PRICING AND PAYMENT All Orders shall reference this EULA. End-User undertakes to cause, and guarantee compliance with all applicable export laws and regulations.

End-User shall pay TERAMIND the price stated on an accepted Order.

Subject to payment of an annual subscription fee (the "**Subscription Fee**"), the End User shall be entitled to usage of the Software, Software Releases and to standard maintenance and support services as provided by TERAMIND as detailed in the SLA, in support of the End-User's use of the relevant Software and Software Releases under this EULA.

1. **DELIVERY AND ACCEPTANCE:** Software will be provided by electronic means. Acceptance of Software ("**Acceptance**") shall be automatic upon the successful completion of TERAMIND's standard installation procedures.
2. **Limitations and Exclusions: EXCEPT AS EXPRESSLY SET FORTH IN THIS EULA, THE SLA, ORDER OR ANY OTHER AGREEMENTS,** TERAMIND PROVIDES SOFTWARE AND SERVICES "AS IS" AND MAKES NO OTHER WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. TERAMIND SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE SOFTWARE SHALL OPERATE UNINTERRUPTED OR ERROR FREE. IF APPLICABLE LAW DOES NOT ALLOW THE EXCLUSION OF SOME OR ALL OF THE ABOVE IMPLIED WARRANTIES TO APPLY TO END USER, THE ABOVE EXCLUSIONS WILL APPLY TO END USER TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.
 1. TERAMIND represents and warrants that the Software (a) will perform substantially in accordance with the documentation, manuals and support materials accompanying the Software and (b) does not contain any virus, Trojan horse, worm, malware or other software designed to permit unauthorized access to, or to erase or otherwise harm, the End-User's software, hardware, or data.

3. SOFTWARE

1. **Licenses:** Subject to the terms of this EULA on delivery to the End User and for the consideration set out in the Order, TERAMIND grants End-User during the term of this EULA a license to use the object code version of the Software on the specified Equipment, up to the limits as permitted and measured by the scope of the applicable license for which End-User has paid the license fee(s) as set forth in the applicable Order. End-User must notify TERAMIND and pay the applicable additional license fee(s) before exceeding the permitted limits. The foregoing license shall be non-exclusive, non-transferable, and non-sub-licensable (the "**License**") and subject to the restriction that the Software be used solely on or in connection with the Equipment for which it was licensed. End-User shall not, without TERAMIND's prior written consent, copy, provide, disclose or otherwise make available Software in any form to anyone other than End-User's or End-User's affiliates' employees, consultants or independent contractors ("**Personnel**"), who shall use Software in a manner consistent with this EULA. End-User shall be fully responsible towards TERAMIND for the compliance of End-User's Personnel herewith. Software Releases provided by TERAMIND shall be governed by the terms of this EULA.

2. **Ownership:** Software is licensed only. No title to, or ownership of, the Software or any intellectual property incorporated into or embedded in the Software is transferred to End-User. End-User shall reproduce and include copyright and other proprietary notices on and in any copies, including but not limited to partial, physical or electronic copies, of the Software, and shall not delete or in any manner alter the copyright, trademark, and other proprietary rights notices of TERAMIND and its licensors, if any, appearing on the Software as delivered to End-User. Neither End-User nor its Personnel shall modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, reverse compile or otherwise reduce to human readable form the Software without TERAMIND's prior written consent.
3. **Proprietary Rights, Confidentiality:** The logo, product names, Software, copies of Software, manuals, documentation, support materials and Trademarks are patented, copyrighted, trademarked, or owned by TERAMIND as trade secrets and/or proprietary information. TERAMIND retains exclusive ownership of the Software and its copies, the intellectual property in any of the Software and its copies, and of the printed materials. All rights not expressly granted to the End-User hereunder are reserved by TERAMIND and its affiliates. The Software is confidential and proprietary to TERAMIND and its respective affiliates. End-User shall hold the Software in strict confidence. End-User shall not sell, publish, disclose, display, reverse-engineer or otherwise make available in whole or in part, the Software, or any modifications or enhancements thereof or copies thereof to others without TERAMIND's prior written consent. End-User will limit access to the Software to only those of its Personnel who need access to the Software in order to operate the Software or to use the product thereof for End-User's business. End-User will not use any information, in tangible or intangible form, which has been or may be disclosed to it or its Personnel by TERAMIND under or in connection with this EULA for the purpose of creating or duplicating or attempting to create or duplicate the Software. End-User agrees to secure and protect the Software in a reasonable manner.
4. **Trademarks:** End-User may not remove or alter any Trademarks. End-User agrees that any use of Trademarks by End-User will inure to the sole benefit of TERAMIND. End-User undertakes not to incorporate any Trademarks into End-Users' trademarks, service marks, company names, internet addresses, domain names, or any other similar designations without TERAMIND's prior written consent.
4. **INDEMNITY:** Subject to the limitations set out in this Section 4 and in Section 5 below, TERAMIND shall defend End-User against third party claim that the Software developed by TERAMIND infringes a patent or copyright or other intellectual property right, and pay the resulting costs and damages awarded against End-User by a court of competent jurisdiction, provided that TERAMIND shall have no obligation to defend or indemnify End-User to the extent it is prejudiced by End-User's failure to (i) notify TERAMIND promptly in writing of such claim, (ii) grant TERAMIND sole control over the defense and settlement thereof, or (iii) fully cooperate in response to a reasonable TERAMIND request for assistance. Should any Software become, or in TERAMIND's opinion be likely to become, the subject of such a claim, TERAMIND shall, at its option and expense, (a) procure for End-User the right to make continued use thereof, (b) replace or modify such so that it becomes non-infringing, or (c) request return and upon receipt thereof reimburse End-User for

fees paid for the remaining term of the license (or, if purchased, refund the price paid by End-User, less straight-line depreciation based on a three (3) year useful life). TERAMIND shall have no liability if the alleged infringement is based on:

(1) combination with non-TERAMIND products where infringement would not have occurred but for such combination, (2) use in breach of this EULA, (3) use of any older version of the Software when End-User has been given notice by TERAMIND that use of a newer TERAMIND revision would have avoided the infringement, or (4) any modification not made with TERAMIND's written approval. THIS SECTION STATES END-USER'S SOLE AND EXCLUSIVE REMEDY AND TERAMIND'S ENTIRE LIABILITY FOR CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS.

End-User acknowledges that it is End-User's responsibility to inform its Personnel of the purpose of the Software, including the scope of information that may be collected, stored and used through the use of the Software. End-User shall defend, indemnify and hold harmless TERAMIND against a third party claim (including by any Personnel) that the use of the Software collects, stores and uses any information, including personally identifiable information.

5. LIMITATIONS OF LIABILITY: THE OBLIGATIONS OF TERAMIND ARE EXPRESSLY LIMITED TO THE FOREGOING PROVISIONS. THESE PROVISIONS CONTAIN THE FULL AND EXCLUSIVE WARRANTIES AND REMEDIES IN FAVOR OF END-USER AND ANY THIRD PARTY, AND ARE IN LIEU OF ALL OTHER REMEDIES AND WARRANTIES – WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR USE. IN NO EVENT WILL TERAMIND BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES; NOR FOR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE OR PROFITS. IN NO EVENT WILL TERAMIND TOTAL LIABILITY FOR ANY DAMAGES IN ANY ACTION (BASED ON CONTRACT OR TORT OR OTHERWISE) ARISING FROM THE DELIVERY, INSTALLATION, USE AND PERFORMANCE OF ANY OF THE SOFTWARE MODULES EXCEED THE TOTAL AMOUNT ACTUALLY PAID OR PAYABLE TO TERAMIND PURSUANT TO THIS AGREEMENT DURING THE TWELVE MONTH TERM PRIOR TO OCCURRENCE OF SUCH DAMAGES. THE PARTIES AGREE THAT THE LIMITATIONS AND EXCLUSIONS SPECIFIED IN THIS SECTION 5 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS EULA IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO ANY LIABILITY ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF TERAMIND OR TO TERAMIND'S DEFENSE OR INDEMNIFICATION OBLIGATIONS UNDER THIS EULA.

6. TERM AND TERMINATION

1. **Term.** This EULA shall commence on the execution by both parties and shall continue until the last to expire term of an Order.
2. **Right to Terminate:** A party may terminate (including the License granted hereunder) this EULA with no liability by written notice to the other party if the breaching party fails to comply with the terms and conditions of this EULA and fails to cure such breach within thirty (30) days of receipt of notice from the other party.

3. **Effect of Termination:** Upon the written request of TERAMIND following termination of this EULA for any reason whatsoever, End-User shall destroy the Software and all copies, and, upon the written request of TERAMIND, certify in writing that they have been destroyed. Upon expiration or termination of this EULA for any reason hereof, the License granted herein shall expire. Expiration or termination under this paragraph shall not relieve End-User of its obligations regarding confidentiality or payment and Sections 3(B), 3(C), 4, 5, 6 and 7 will survive expiration or termination of this EULA, however arising.

7. DATA PROTECTION

1. End-User's Personnel Personal Data. In connection with this Agreement, TERAMIND may be called upon to provide personal data of End-User's Personnel. The data falls within the scope of the law and regulations relating to the protection of "personal data" as defined in data protection laws applicable to TERAMIND ("Applicable Data Protection Laws").
2. Categories of Personal Data and Purposes of Processing. This personal data may include names, contact information, work experience and professional qualifications, interactions between TERAMIND and End-User under this Agreement ("Personal Data"). TERAMIND processes such Personal Data for the performance of this Agreement.
3. Data Sharing. TERAMIND may share Personal Data (i) with its service providers that process Personal Data on its behalf and according to its instructions and (ii) with other affiliated companies for the purposes set forth in Section 7.B. Recipients of Personal Data according to this Section 7.C may also be established in countries outside the EU or the European Economic Area ("EEA"). Where Personal Data is transferred outside the EU or the EEA, such transfer is subject to an adequate protection, especially by the use of EU Standard Contractual Clauses.
4. Information requirements. End-User shall inform the affected Personnel about processing of their Personal Data by TERAMIND, its affiliated companies and service providers so that TERAMIND and its affiliated companies, if any, comply with their information requirements under Applicable Data Protection Laws towards Personnel. .
5. Compliance with Data Protection Laws. End-User shall at all times comply with Applicable Data Protection Laws when processing Personal Data in connection with this Agreement.
6. Retention Periods. The Personal Data related to this Agreement will be stored for as long as it is required for the purpose set forth in Section 7.B. Besides that, Personal Data will be stored to comply with the relevant statutory retention periods such as applicable national commercial or tax laws.

8. MISCELLANEOUS

1. **Export Law:** TERAMIND and End-User shall comply with and obtain all authorizations required by U.S. and local export control laws and all related regulations and may be subject to export or import regulations of other countries. Without limiting the above said, if End-User is acquiring or accompanying documentation on behalf of the U.S Government, it shall be subject to "Restricted Rights", as that term is defined in the Federal Acquisition Regulations

2. **EULA Assignment:** This EULA will bind and inure to the benefit of each party's successors and assigns, provided that neither shall not assign this EULA or any right or delegate any performance without TERAMIND's prior written consent. It is hereby agreed that TERAMIND may perform its obligations under this EULA by itself or through third parties authorized by TERAMIND for this purpose, providing such third parties comply with the terms of this EULA and TERAMIND remains liable for the acts and omissions of such third party as if it performed such act or omission directly.
3. **Dispute Resolution:** The parties will use reasonable efforts to resolve any dispute arising of this EULA through a meeting of appropriate account managers from each party. If the parties are unable to resolve the dispute, either party may escalate the dispute to its executives. If an executive level meeting fails to resolve the dispute within thirty (30) days after escalation, either party may seek any available legal relief. This provision will not affect either party's right to seek injunctive or other provisional relief at any time.
4. **Governing Law:** This EULA will be governed by, and construed in accordance with, the laws of the state of New York in United States without giving effect to principles of conflict of law. The sole venue for litigation will be the courts located in NY, United States and each party hereto irrevocably consents to the jurisdiction of courts located in NY, Unites States.
5. **Waiver:** No waiver shall be deemed a waiver of any prior or subsequent default hereunder.
6. **Severability:** The Order shall control in case of an inconsistent or conflicting term set forth in this EULA. If any part of this EULA is held unenforceable, the validity of the remaining provisions shall not be affected.
7. **Complete Agreement:** Each party acknowledges that it has read and understand this EULA and agrees to be bound by its terms. The parties further agree that this EULA, including the applicable Order, is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written, between the parties or between End-User and any third party relating to this EULA and the subject matter herein. This EULA may not be modified or altered except by written instrument duly executed by both parties.
8. **Notices:** All notices required or permitted under this EULA shall be in writing and shall be deemed delivered when delivered in person, transmitted by facsimile, or deposited in the mail service, postage prepaid, registered or certified mail, return receipt requested, addressed to TERAMIND or to End-User at their place of business as appears on the face of this EULA.
9. **Purchase Orders:** Purchase orders or similar documents relating to the Software sold by TERAMIND will have no effect on the terms of this Agreement unless specifically approved in writing by TERAMIND
10. **Force Majeure:** Neither party shall be liable for any act, omission, or failure to fulfill its obligations under this EULA if such act, omission or failure arises from any cause reasonably beyond its control. The party unable to fulfill its obligations shall immediately notify in writing of the reasons for its failure to fulfill its obligations and the effect of such failure.