paradigm4

END USER LICENSE AGREEMENT (EULA)

IMPORTANT: PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SOFTWARE PLATFORM.

This End User License Agreement ("Agreement") is a legal agreement between you ("User") and Paradigm4, Inc. ("Licensor"), governing your use of flexFS ("Software").

1. GRANT OF LICENSE
During the Term of the Agreement and subject to all terms and conditions of the Agreement, Licensor grants the User a non-exclusive, non-transferable, non-sublicensable right and revocable license to install and use the Software solely for internal research and/or business purposes.

2. RESTRICTIONS
The User shall not:

- Copy, modify, translate or create derivative works based on the Software or modify any product that competes with or could compete with the Software unless expressly permitted.
- Distribute, resell, sublicense, lease, rent, or otherwise transfer the Software to third parties.
- Reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code or underlying structure, ideas or algorithms of the Software or any software, documentation or data related to the Software, except as expressly permitted by applicable law.
- Use the Software for any infringing, defamatory, harmful, fraudulent, unlawful, deceptive, threatening, harassing, obscene or unauthorized purpose, including violation of data privacy regulations.
- Obscure, alter, or remove any printed or on-screen proprietary legal notice displayed by or contained on or in any copy of any Software.
- Use the Software to process data for which they lack proper authorization or legal rights.
- Use the Software for the purposes of monitoring its availability, performance, or functionality, benchmarking or for other competitive or non-competitive analysis of the Software, the development of a competing software product or any other purpose that is commercial disadvantage to Paradigm4.

3. DATA PRIVACY & SECURITY
The User is responsible for all content used with the Software, and the User is solely responsible for obtaining all necessary consents, authorizations, and approvals for the processing of sensitive information, such as personally identifiable information (PII) or protected health information (PHI), etc.

The User is responsible for configuring available security features, including end-to-end encryption. Licensor has no responsibility for or liability in connection with the content or User's use thereof, and User will be solely responsible and liable therefor, unless otherwise specified in a Governing Agreement.

The User agrees to comply with all applicable privacy, security, and data protection laws, such as GDPR, HIPAA, and any other relevant regulations.

User is solely responsible for backing-up or otherwise protecting all of its systems (and all software, data, content and other information contained therein) prior to any installation, use, maintenance, service, support, or removal of the Software.

User acknowledges and agrees that the Software may operate on or with services operated or provided by third party providers such as cloud services ("Third Party Services"). Licensor is not responsible for the operation of any Third Party Services nor the availability or operation of the Software to the extent such availability and operation is dependent upon Third Party Services. User is solely responsible for procuring any and all rights necessary for it to access Third Party Services, and for complying with any applicable terms or conditions

thereof. Licensor does not make any representations or warranties with respect to Third Party Services or any third party providers. Any exchange of data or other interaction between User and a third party provider is solely between User and such third party provider and is governed by such third party's terms and conditions.

Software may be delivered with or include open-source software ("In-Licensed Code") that is licensed from and owned by third parties ("In-Licensors"), the use of which may be subject to additional or different terms set forth in the applicable open-source license ("In-Licenses"). User agrees that In-Licensed Code is provided under the terms of the licenses provided by Licensor to User (if any). In any event, User unconditionally agrees that Licensor and the In-Licensors (i) make no representation or warranty to User concerning the In-Licensed Code, (ii) have no obligation or liability to User in relation to the In-Licensed Code or its use, and (iii) the In-Licensors are intended third party beneficiaries of this Agreement with regard to their own In-Licensed Code.

4. INTELLECTUAL PROPERTY

The Software is licensed, not sold. All title, ownership, and intellectual property rights in and to the Software remain with the Licensor.

All data uploaded or processed using the Software remains the property of the User (or its licensors), unless otherwise specified.

Notwithstanding anything to the contrary in this Agreement, and except as prohibited by applicable law, Licensor may collect, extract, compile, store, synthesize, modify, analyze, and use all Usage Data (as defined below) solely for the purposes of invoicing, benchmarking (including the provision of benchmark reporting to its customers), and to improve Licensor's products, services, system, and algorithms. "Usage Data" means any and all telemetry and metadata collected by Licensor in the course of User's use of the Software.

5. CONFIDENTIALITY

5.1 Definition. "Confidential Information" means information disclosed under this Agreement that is designated by the disclosing Party as proprietary or confidential or that should be reasonably understood to be proprietary or confidential due to its nature and the circumstances of its disclosure. Paradigm4's Confidential Information includes the Software, any non-public technical or performance information about the Software, any non-public documentation provided by Paradigm4 and any non-public new product information regarding the Software.

5.2 Obligations. As receiving Party, each Party will (a) hold the disclosing Party's Confidential Information in confidence and not disclose such Confidential Information to third parties except as permitted in this Agreement and (b) only use such Confidential Information to fulfill its obligations and exercise its rights in this Agreement. The receiving Party may disclose the disclosing Party's Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know, provided it remains responsible for their compliance with this Section and they are bound to confidentiality obligations no less protective than this Section.

5.3 Exclusions. These confidentiality obligations do not apply to information that the receiving Party can document (a) is or becomes public knowledge through no fault of the receiving Party, (b) it rightfully knew or possessed prior to receipt under this Agreement, (c) it rightfully received from a third party without breach of confidentiality obligations or (d) it independently developed without using the disclosing Party's Confidential Information. The receiving Party may disclose the disclosing Party's Confidential Information if required by law, subpoena or court order, provided, if permitted by law, it notifies the disclosing Party in advance.

5.4 Remedies. Unauthorized use or disclosure of Confidential Information may cause substantial harm for which damages alone are an insufficient remedy. Each Party may seek appropriate equitable relief, in addition to other available remedies, for breach or threatened breach of this Section.

6. DISCLAIMER OF WARRANTY
The Software is provided “AS IS” and “AS AVAILABLE” without warranty of any kind, whether express or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, and non-infringement.

7. LIMITATION OF LIABILITY
7.1 Consequential Damages Waiver. EXCEPT FOR EXCLUDED CLAIMS, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY (NOR ITS SUPPLIERS OR AFFILIATES) WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS OR REVENUE, LOSS OF DATA, INTERRUPTION OF BUSINESS, LOSS OF OR DAMAGE TO REPUTATION, COSTS OF DELAY, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

7.2 Liability Cap. EXCEPT FOR EXCLUDED CLAIMS, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY’S (AND ITS SUPPLIERS’ AND AFFILIATES’) AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE FEES ACTUALLY PAID OR PAYABLE BY USER TO LICENSOR FOR THE SOFTWARE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

7.3 Excluded Claims. “Excluded Claims” means (a) User’s breach of Section 1 (Grant of License) or Section 2 (Restrictions); (b) User’s infringement, misappropriation or other violation of Licensor’s intellectual property rights; (c) a Party's breach of Section 5 (Confidentiality); (d) User's obligations under Section 8 (Indemnification); and (e) a Party's gross negligence, willful misconduct or fraud.

7.4 Nature of Claims and Failure of Essential Purpose. The Parties agree that the waivers and limitations specified in this Section apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise, and will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

8. INDEMNIFICATION BY USER
8.1 Indemnity. User will defend Licensor and its affiliates, and their respective officers, directors, employees, and agents (the "Licensor Indemnitees"), against any claim, demand, suit, or proceeding brought by a third party, including any investigation or proceeding by a governmental or regulatory authority (each, a “Claim”), to the extent the Claim arises out of or relates to any of the following:

- any data, content, or other information that User or anyone acting on User's behalf submits to, stores in, or processes using the Software ("User Content"), including any allegation that User Content, or its use with the Software, infringes, misappropriates, or violates the rights of a third party;
- User's failure to obtain any consent, authorization, or approval required under Section 3 (Data Privacy & Security), including for the processing of protected health information, genomic data, or other sensitive information;
- User's violation of any applicable law or regulation, including HIPAA, GDPR, and other privacy, security, and data protection laws;
- User's breach of Section 2 (Restrictions) or Section 3 (Data Privacy & Security); or
- User's use of any Third Party Services in connection with the Software.

User will pay all damages, fines, penalties, settlement amounts, costs, and expenses (including reasonable attorneys' fees) finally awarded against, or agreed to in settlement by, any Licensor Indemnitee in connection with a Claim.

8.2 Procedure. Licensor will (a) give User prompt written notice of the Claim, although a delay in giving notice relieves User of its obligations only to the extent the delay materially prejudices User's defense; (b) give User sole control of the defense and settlement of the Claim; and (c) provide reasonable cooperation at User's expense.

Licensor may participate in the defense with counsel of its own choosing at its own expense. User may not, without Licensor's prior written consent, settle any Claim in a way that (i) imposes any obligation or liability on a Licensor Indemnitee, (ii) includes an admission of fault by a Licensor Indemnitee, or (iii) fails to fully and unconditionally release the Licensor Indemnitees.

8.3 Survival. This Section survives any expiration or termination of this Agreement.

9. TERM AND TERMINATION

9.1 Term. This Agreement begins on the date User first accepts this Agreement or installs, accesses, or uses the Software, whichever occurs first (the "Effective Date"), and is effective until terminated (the “Term”).

9.2 Termination by User. The User may terminate this Agreement at any time by uninstalling and ceasing use of the Software. Termination does not entitle User to a refund of any fees except as expressly provided in a Governing Agreement or Order Form.

9.3 Termination by Licensor. Licensor may terminate this Agreement immediately upon written notice if User breaches any of its terms or uses the Software outside the licensed scope.

9.4 Effect of Termination. Upon expiration or termination of this Agreement: (a) all licenses granted to User end immediately; (b) User will stop all use of the Software and uninstall and delete all copies in its possession or control; and (c) each party will return or destroy the other party's Confidential Information, except for copies retained under a standard backup process or as required by law, which remain subject to Section 5. User is responsible for retrieving any User Content before the end of the Term. Licensor has no obligation to retain User Content after the Term ends except as required by law or a Governing Agreement.

9.5 Survival. Sections 3, 4, 5, 6, 7, 8, 9.5, 10, and 11, together with any other provision that by its nature should survive, will survive any expiration or termination of this Agreement.

10. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflict of law provisions. The Parties consent to the exclusive jurisdiction of the state and federal courts located in Suffolk County, Massachusetts for resolution of any dispute arising out of or relating to this Agreement.

Prior to initiating any legal proceeding, the parties agree to attempt in good faith to resolve any dispute through informal negotiation. Either Party may initiate this process by delivering written notice to the other describing the dispute in reasonable detail. The Parties shall have thirty (30) days from delivery of such notice (or such longer period as mutually agreed in writing) to resolve the dispute informally before either Party may pursue formal legal remedies.

Nothing in this Section shall prevent Licensor from seeking injunctive or other equitable relief in any court of competent jurisdiction where necessary to prevent irreparable harm.

11. ENTIRE AGREEMENT; ORDER OF PRECEDENCE

11.1 Governing Agreements. If User, or the organization on whose behalf User accesses or uses the Software, has entered into an Information Technology Services Agreement, a Software License and Maintenance Services Agreement, or any other written agreement with Licensor that covers the Software and is signed by authorized representatives of both parties (each, a "Governing Agreement"), then that Governing Agreement, together with the Order Forms and Statements of Work issued under it, will govern User's access to and use of the Software. In that case, this Agreement will apply only to matters not addressed in the Governing Agreement.

11.2 Order of Precedence. If there is any conflict or inconsistency among the following documents, they will control in the following order: (a) the Governing Agreement; (b) the applicable Order Form; (c) the applicable Statement of Work; and (d) this Agreement. However, an Order Form or Statement of Work will control over the

Governing Agreement for a specific provision if the Order Form or Statement of Work (i) expressly identifies the provision of the Governing Agreement it modifies, (ii) states the intent to modify it, and (iii) is signed by authorized representatives of both parties. Any such modification applies only to that Order Form or Statement of Work.

11.3 Entire Agreement. Subject to this Section, this Agreement, together with any applicable Governing Agreement, Order Forms and Statements of Work, constitutes the entire agreement between the parties with respect to the Software. It supersedes all prior and contemporaneous agreements, proposals, representations and understandings, whether written or oral, on that subject.

11.4 No Additional Terms. Any terms or conditions in a purchase order, vendor registration form, supplier portal, invoice, or other document issued by User or its organization that add to or conflict with this Agreement or a Governing Agreement are rejected and have no effect. This applies even if Licensor accepts, signs, or performs under that document, unless the parties expressly agree otherwise in a writing that references this Section and is signed by authorized representatives of both parties. Licensor's acceptance of a purchase order is for administrative convenience only.

11.5 Amendment. This Agreement may be amended only by a writing signed by authorized representatives of both parties.

BY INSTALLING, ACCESSING, OR USING THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE TERMS OF THIS END USER LICENSE AGREEMENT.