

End-User License Agreement

This End User License Agreement (the "Agreement") is made and entered into by and between Licensor (as defined below) and you as, or on behalf of, Licensee (as defined below). This Agreement governs Licensee's access to, and use of the Image (as defined below). Each of Licensor and Licensee is a "Party" to this Agreement and together they are indicated as the "Parties".

By either (a) submitting a signed Quote to Licensor; (b) providing to Licensor a purchase order complying with a Quote, (c) checking the "I read the License Terms and I Accept them" checkbox and subsequently clicking the "Next" button during the installation and configuration process of the Image, or (d) accessing or using the Image, you as, or on behalf of, Licensee, are accepting and agreeing to be bound by the terms and conditions of this Agreement, which becomes effective as of the date you click the "Next" button (or first access or use the Image) (the "Effective Date"). If you are accepting the terms of this Agreement on behalf of Licensee, you represent and warrant that: (i) you have full legal authority to bind Licensee to this Agreement; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of Licensee, to this Agreement. If you do not have the legal authority to bind Licensee, please do not click the "Next" button (or access or use the Image).

1. License Grant. Licensor grants Licensee a limited, personal, revocable, non-exclusive, non-sublicensable, non-transferrable license to do the following during the License Term: (i) install and configure the Image on a single Licensee Instance; (ii) create, copy, use, maintain and restore Secondary Backups of Licensee Information using Licensee Instance(s) for the internal business use of Licensee; (iii) copy and use the Documentation solely for the above-mentioned purposes; and (iv) if and to the extent Licensee has been expressly authorized in writing by Seller in a Quote or otherwise, Licensee may either or both (a) install and configure the Image on additional Licensee Instances; and/or (b) create, copy, use, maintain and restore Secondary Backups of Licensee Information using Licensee Instance(s) for Managed Users of Licensee.

2. Ownership and License Restrictions.

2.1. Ownership. Licensor and its Affiliates exclusively own and reserve all right, title, and interest in and to the Technology, the Image and Documentation, which are licensed, not sold, to Licensee.

2.2. License Restrictions. Except as expressly granted and permitted in the License, neither Licensee nor any User obtains any right in and to the Technology or may copy or use the Technology in any manner, or for any other purpose. Neither Licensee nor any User may, or may attempt to (a) modify, alter, translate, tamper with, repair, or otherwise create derivative works of any Technology; (b) reverse engineer, disassemble, decompile or decrypt the Technology or otherwise apply any other process or procedure to discover, extract, reconstruct, or derive the source code, underlying ideas, algorithms, file format, programming or interoperability interfaces, components, trade secrets or other proprietary information embodied in or associated with, the Technology; (c) disable or circumvent any security or encryption mechanisms used by or in the Image, the Licensee Instance or the Secondary Backups; (d) access, copy or use the Technology or Secondary Backups in a way intended to avoid incurring fees or exceeding usage limits or quotas; (e) except as and to the extent expressly permitted under the License, rent, lease, resell, sublicense or otherwise distribute the Technology to other people or entities, or otherwise charge them for the use of the Technology or the work done on their behalf if it involves the use of Licensee's right to use the Technology; or (f) use the Technology (or any of its underlying concepts

and ideas) to create or improve (directly or indirectly) a substantially similar product or service. The License granted to Licensee in this Agreement is conditional on Licensee's continued and full compliance with the terms and conditions of this Agreement and may be terminated by Licensor if Licensee does not comply with any term or condition of this Agreement. During and after the term of this Agreement, Licensee will not assert, nor will Licensee authorize, assist, or encourage any third party to assert, against Licensor or any of its Affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding the Technology used by Licensee.

2.3. Feedback. The provision of any Feedback is voluntary. Licensor and its Affiliates will own all right, title, and interest in and to any Feedback and be entitled to use the Feedback without restriction. Licensee hereby irrevocably assign to Licensor and its Affiliates all right, title, and interest in and to the Feedback and agrees to provide Licensor and its Affiliates any reasonably required assistance to document, perfect, and maintain Licensor's and its Affiliates' rights in the Feedback.

3. Access to the Image; use of the Licensee Instance; support

3.1. Account & Email. Licensee must have a valid account with the Service Provider and an e-mail address to access the Image and exercise its License rights.

3.2. Support. During the License Term, and except with respect to a License granted free-of-charge, support will be provided to Licensee in accordance with Licensor's standard support terms then in effect. Licensee is responsible for providing support service (if any) to its Users.

3.3. New Features. Licensor may make new tools, features or functionality related to the Technology available from time to time (an "Upgrade"), the use of which may be contingent upon Licensee's agreement to additional terms. To the extent the use of an Upgrade is conditioned upon the payment of additional fees, Licensee will not be required to use the Upgrade or, at Licensor's sole discretion, will be entitled to access and use the Upgrade without the payment of such Fees.

3.4. Changes to a Service Provider License. From time to time, Licensor may make changes to the terms of this Agreement to the extent applicable to a Service Provider License. Substantial changes to existing terms of a Service Provider License will become effective 30 (thirty) days after they are posted on Licensor's or the Service Provider's website or notified in writing to Licensee, including by email. Changes that are insignificant or apply to new feature or functionality will be effective immediately upon posting or, if notified by email, as stated in the email message. If Licensee does not agree to the changed or revised terms, it must stop using Licensee Instance. By continuing to access the Image and/or use the Licensee Instance after the effective date of any change to this Agreement, Licensee agrees to be bound by the changed terms. Licensee is responsible to regularly check the websites of Licensor and the Service Provider for changes.

4. Responsibilities

4.1. Licensee Responsibilities. Licensee is solely responsible for (i) all setup, use, operation, configuration and monitoring of the Licensee Instance and the routine backing-up and, if needed, restoration of Licensee Information, occurring under its own and its Users' accounts with the Service Provider, whether performed by Licensee or any User (or any employee, contractor or agent acting on its behalf)

(ii) maintaining the confidentiality of any log-in credentials and private keys provided for Licensee's access to the Image or use of a Licensee Instance.

4.2. Disclaimer of responsibility. Licensor shall not be responsible for unauthorized access to Licensee's or any User's account with the Service Provider. Licensee will immediately inform Licensor if it believes an unauthorized third party may be accessing the Image or using the Licensee Instance on its behalf.

4.3. User Violations. Licensee is responsible for its Users acts in relation to this Agreement, including any exercise of the License by a User. Licensee will ensure that all Users comply with Licensee's obligations under this Agreement. Licensee will further ensure that the terms of Licensee's agreement with each User are consistent with this Agreement. If Licensee becomes aware of any violation by a User of Licensee's obligations under this Agreement, Licensee will immediately terminate such User's access to the Image and/or Licensee Instance.

5. Payment terms

5.1. Fees. Fees and charges applicable to the License and the technical support services (a) are described in either a Quote provided to Licensee by the Seller, or in the absence of such a Quote, on the website of the applicable Seller; (b) will be calculated and charged periodically by the Seller, to the extent based on a periodical subscription or usage, as applicable; and (c) will be paid by Licensee to the Seller, using the payment methods and under the payment terms agreed between Licensee and Seller.

5.2. Payment terms. All amounts payable under this Agreement are non-cancellable and will be made without setoff or counterclaim, and without any deduction or withholding. Unless otherwise set forth in a Quote, all fees are due and payable Net 30 days after the date of the applicable invoice. Fees and charges for the License and support may be changed upon a 30 days' advance notice. Licensee waives all claims relating to the Fees under this Agreement unless claimed within sixty days after charged. Late payment shall bear an Interest at the rate of 1.5% per month (or the highest rate permitted by law, if less). In the event of a late payment (or other breaches of the Agreement by Licensee or a User), Licensor or Seller reserve the right to suspend the access to the Image or the use of the Licensee Instance.

5.3. Taxes. All fees and charges payable by Licensee are exclusive of applicable taxes and duties, including GST. Licensee will provide to Seller any information reasonably requested to determine whether an obligation to collect GST from Licensee, including without limitation the Licensee's GST registration number. To apply any exemption from any sales, use, or similar transaction tax, Licensee may be required to provide to the Seller a legally-sufficient tax exemption certificates for each taxing jurisdiction. The tax exemption certificates will be applied to charges under Licensee's account occurring after the date the tax exemption certificates are received. Licensee must notify Seller of any deduction or withholding that is required by law and pay to Seller any additional amounts necessary to ensure that the net amount received, after any deduction and withholding, equals the amount that would have been received if no deduction or withholding had been required. Additionally, Licensee will provide to Seller any documentation evidencing the actual payment of any amounts withheld and deducted to the relevant taxing authority.

6. Confidentiality. During the term of this Agreement and for five (5) years thereafter, the Receiving Party will (a) take reasonable measures to protect the Confidential Information of the Disclosing Party

that are no less than those measures taken by the Receiving Party to protect its own Confidential Information of similar nature; (b) not disclose the Confidential Information of the Disclosing Party, except to Affiliates, employees, agents or professional advisors on a need to know basis, provided that they have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential, or except when required by law after giving reasonable notice the Disclosing Party if allowed by law; (c) ensure that all individuals and entities who have access to the Confidential Information of the Disclosing Party use the Confidential Information for the sole purpose of exercising the Receiving Party's rights and fulfilling its obligations under this Agreement, while using reasonable care.

7. Limited Warranty

7.1. Limited Warranty. Licensors warrants that for a period of ninety (90) days from the date on which the Image first become accessible to Licensee, the Licensee Instance will perform substantially as described in the then-current Documentation, provided that Licensee Instance is (a) installed by Licensee with an original and unmodified copy of the most updated version of the Image, as made available by Licensors or the Service Provider; (b) is properly configured and managed by Licensee; and (c) used by Licensee per the instructions specified in the Documentation and in compliance with this Agreement. THIS LIMITED WARRANTY DOES NOT APPLY TO BETA, PRE-RELEASE, EVALUATION, TRIAL, AND FREE-OF-CHARGE VERSION AND, WHICH ARE MADE AVAILABLE "AS IS" AND WITHOUT WARRANTY FROM LICENSOR, AND ANY USE OF SUCH IMAGE AND LICENSEE INSTANCE IS ENTIRELY AT LICENSEE'S OWN RISK.

7.2. Unwarranted situations. This limited warranty covers only problems that are reproducible and verifiable and does not cover (a) any software, item or services not provided by, or on behalf of, Licensors; or (b) problems caused by or arise from Licensee's or a User's, abuse, misuse, unauthorized use, or unauthorized installation of, or modification to, the Image or the Licensee Instance or failure to take any of the measures described as part of the responsibility of Licensee under this Agreement or the Documentation, or that are caused by events beyond Licensors's reasonable control, including, without limitations, any failures in the Provider Services (such as the Snapshots).

7.3. Exclusive Remedy. The sole and exclusive obligation of Licensors and Seller and Licensee's (including its Users') sole and exclusive remedy in case of a breach of the limited warranty stated above will be to repair or replace the Image in a manner enabling conformity to the Limited warranty above. Licensors also has the option of repaying Licensee a pro-rated amount of the applicable fees prepaid by Licensee for to the License (for the period during which the breach of warranty occurred and the remaining period of the License Term) instead of repairing or replacing the Image. Prior to repayment, Licensee must permanently stop the use of any Licensee Image and uninstall Image from any Licensee Instance. LICENSOR'S AND SELLER'S LIABILITY WITH RESPECT TO THE TECHNOLOGY, UNDER ANY WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY IS EXCLUSIVELY LIMITED TO THE REPAIR OR REPLACEMENT OF THE IMAGE OR TO THE REPAYMENT OF FEES, AS STATED ABOVE.

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PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY, CORRESPONDENCE TO DESCRIPTION, TITLE, QUIET ENJOYMENT, AND NONINFRINGEMENT, WHICH ARE ALL EXPRESSLY DISCLAIMED.

7.5. SPECIFIC WARRANTY DISCLAIMERS. LICENSEE ACKNOWLEDGES THAT, EXCEPT TO THE EXTENT EXPRESSLY STATED OTHERWISE IN THE DOCUMENTATION, THE BACKUP AND RECOVERY OPERATIONS PERFORMED USING THE LICENSEE INSTANCE ARE BASED ON THE USE OF SNAPSHOTS, AN UNDERLYING DATA COPY SERVICE PROVIDED BY THE SERVICE PROVIDER. ACCORDINGLY, LICENSOR IS NOT RESPONSIBLE OR LIABLE FOR THE SECURITY OR DELETION OF, OR FAILURE TO STORE, ANY LICENSEE INFORMATION. AS BETWEEN LICENSOR AND LICENSEE, LICENSEE IS SOLELY RESPONSIBLE FOR THE SECURITY AND BACKUP OF LICENSEE INFORMATION. FURTHER, LICENSOR DOES NOT WARRANT THAT THE OPERATION OF ANY LICENSEE INSTANCE WILL BE ERROR-FREE, UNINTERRUPTED OR COMPLETELY SECURE.

7.6 Defense by Licensor. If, and to the extent, a suit or proceeding is brought against Licensee asserting that the Image or the Technology, as used by Licensee in accordance with this Agreement, infringes any copyright or trademark in any country or misappropriates any trade secret in any country ("IP Infringement Lawsuit"), and subject to the conditions and limitations set forth in Sections 7.7, 7.8, 7.9 and 8 of this Agreement, Licensor will (a) defend Licensee in such IP Infringement Lawsuit; (b) pay all costs and damages (including reasonable attorney's fees) finally awarded by a court of competent jurisdiction in such IP Infringement Lawsuit, or pay any settlement of such IP Infringement Lawsuit as agreed to by Licensor; and (c) use reasonable commercial efforts to obtain for Licensee the right to continue to use the Image or Technology or replace or modify the Image or Technology with substantially equivalent product which Licensor believes to be (or have increased likelihood to be) non-infringing, in which event Licensee shall immediately cease use of the allegedly infringing Image or Technology. If, in case of such IP Infringement Lawsuit, obtaining a license to continue and use the Image or Technology or modifying or replacing the Image or Technology to make it non-infringing are not feasible or commercially reasonable options, Licensor may refund to Licensee the portion of the fees paid by Licensee for the allegedly infringing Image or Technology, and in such case Licensee's rights and licenses with respect such Image or Technology will terminate, without further obligation or liability by Licensor to Licensee (other than the obligations set forth in Section 7.6(a) and Section 7.6(b) above), and Licensee shall immediately cease the use of the allegedly infringing Image or Technology.

7.7 Notice and Cooperation. Licensor's obligations under Section 7.6 are expressly conditioned upon Licensee (a) promptly notifying Licensor in writing after receiving notice of the IP Infringement Lawsuit or any threats, claims and proceedings related thereto; (b) fully authorizing Licensor to have the sole control of the defense and settlement of the IP Infringement Lawsuit; (c) not making any admission of liability nor settling or otherwise compromising the IP Infringement Lawsuit without Licensor's prior written consent; (d) furnishing to Licensor, upon request, any information available to Licensee relating to the alleged infringement and/or defense of such IP Infringement Lawsuit; and (e) providing reasonable assistance to Licensor in the defense of such IP Infringement Lawsuit.

7.8 Exclusions to Defense. Licensor shall have no obligation or liability under Section 7.6 to the extent the IP Infringement Lawsuit is based on, arising from, or in connection with: (a) compliance with or implementation of Licensee's specifications, designs, or instructions if the alleged infringement would not have occurred but for such compliance or implementation; (b) the modification of the Image or Technology by anyone other than by Licensor or in accordance with Licensor's instructions; (c) the

combination by or on behalf of Licensee of the Image or Technology with other products or elements not provided by Licensor; (d) an unauthorized use or distribution of the Image or Technology, or any part thereof, or use beyond the terms of this Agreement or applicable Specifications or Documentation; or (e) any third party's intellectual property rights with respect to which Licensor has informed Licensee or has included a written statement in its Specifications or Documentation that a separate license has to be obtained and/or that no license with respect to which is granted or implied.

7.9 Exclusive Remedy. Sections 7.6 through 7.8 and 8 states Licensor's entire liability and obligations and Licensee's sole and exclusive remedy with respect to any infringement, or claim of infringement, of any IPR by the Image and Technology.

7.10 Indemnification by Licensee. Licensee shall defend, indemnify, reimburse and hold Licensor and its licensors, agents, officers and employees, harmless from and against any and all claims, suits, proceedings, assertions, damages, costs, liabilities, losses or expenses (including court costs and reasonable attorney's legal fees) reasonably incurred by Licensor as a result of any claim, action, suit or proceeding brought against Licensor which is arising from, connected with or relating to: (i) an assertion of infringement as described in Section 7.8, from which Licensor is excluded, provided that Licensee is notified promptly in writing of the suit and, at Licensee's request, Licensee is given control of and all reasonably requested assistance by Licensor to defend such claim or suit.

8. Limitation of liability

8.1. LIMITATION ON INDIRECT LIABILITY. LICENSOR, ITS AFFILIATES AND RESELLERS, WILL NOT BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUES, LOSS OF PROFITS OR SAVINGS, LOSS OR CORRUPTION OF DATA, OR LOSS OR INTERRUPTION OF BUSINESS), EVEN IF LICENSOR, ITS AFFILIATES OR THE APPLICABLE RESELLER KNEW, SHOULD HAVE KNOWN OR HAS BEEN ADVISED OF, THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY AS A REMEDY. FURTHER, LICENSOR, ITS AFFILIATES AND RESELLERS WILL NOT BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) LICENSEE'S INABILITY TO USE THE TECHNOLOGY; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY LICENSEE IN CONNECTION WITH THIS AGREEMENT OR LICENSEE'S EXERCISE OF THE LICENSE; OR (D) ANY UNAUTHORIZED ACCESS OR DAMAGE TO, OR ALTERATION, DELETION, DESTRUCTION, LOSS OR FAILURE TO STORE ANY OF, LICENSEE INFORMATION OR OTHER DATA.

8.2. LIMITATION ON AMOUNT OF LIABILITY. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF LICENSOR, ITS AFFILIATES AND RESELLERS UNDER THIS AGREEMENT, FOR ANY DAMAGE OR CLAIM ARISING FROM LICENSEE'S EXERCISE OF THE LICENSE, USE OF TECHNOLOGY OR THE ACCOMPANYING DOCUMENTATION, EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE TO SELLER DURING THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO LIABILITY.

9. Term and Termination

9.1. Term. This Agreement commences on the Effective Date and will remain in effect, unless and until the applicable License has either expired or been terminated as set forth in this Agreement.

9.2 Term of Licenses. The term of each License is specified in the applicable Quote. Except as otherwise specified in a Quote, Licenses will automatically renew for additional periods equal to the expiring License Term or one year (whichever is shorter), unless either Party gives the other written notice at least 30 days before the end of the relevant License Term. Except as otherwise specified in a Quote, renewals of promotional or one-time priced Licenses will be at Licensor's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which the License scope decreases (e.g., in terms of resource limitations, volume or length), will result in re-pricing at renewal without regard to the prior term's per-unit price.

9.2. Termination for Breach. Either Party may terminate this Agreement for breach if: (i) the other Party is in material breach of the Agreement and fails to cure that breach within 30 (thirty) days after receipt of written notice; or (ii) the other Party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 90 (ninety) days.

9.3. Termination for Convenience. Service Provider Licenses purchased on a recurring monthly subscription basis, together with this Agreement, may be terminated by either Party for convenience, at any time and for any reason, by providing a prior written notice through the Service Provider with the notice period being thirty (30) days in case of termination by Licensor and immediate in case of termination by Licensee.

9.4. Effects of Termination. Upon the expiration of the License or termination of this Agreement: (i) the License and any and all other rights granted by one Party to the other will immediately cease; (ii) all fees and charges (including taxes) owed by Licensee to Seller through the effective day of termination shall immediately become due upon receipt of the final invoice or electronic bill; (iii) Licensee must permanently stop exercising any of its License rights; and (iv) upon request, each Party will use commercially reasonable efforts to return or destroy all Confidential Information of the other Party.

10. Data Collection.

10.1. Non-Identifiable Metadata. Licensee acknowledges and agrees that Licensor and its Affiliates may collect and use the Non-Identifiable Metadata gathered in connection with Licensee's access to the Image and use of the Licensee Instance, for the purpose of improving the Technology. Licensee may revoke the above functionality during the configuration process of the Licensee Instance and at any time thereafter.

10.2. Support and Usage Data. Licensee acknowledges and agrees that Licensor and its Affiliates may collect (a) Licensee's name, address and account number(s) of with the Service Provider, during or after, the configuration process of the Licensee Instance for the purpose of improving support to Licensee ("Support Contact Information"); and (b) Usage Data in connection with Licensee's use of the Licensee Instance for the purposes of calculating the fees applicable to Licensee's use of the Licensed Instance and verifying Licensee's compliance with the License terms. For clarity, Usage Data is not collected, and submission of Support Contact Information can be avoided, for Service Provider Licenses and Standalone Licenses.

10.3. Public Reference. Licensee agrees that Licensor and its Affiliates may use its name and logo to identify Licensee as a customer of Licensor and its Affiliates, such as on the website of Licensor or its

Affiliates, subject to their compliance with any guidelines, if provided by Licensee to Licensor, with respect to the use of Licensee's name and logo.

11. Miscellaneous

11.1. Notices. All notices, communications, reports, approvals or consents, required or permitted by this Agreement, must be in writing, in English, and addressed to the other Party's primary point of contact. Notices to Licensor must be sent by email to [email address] and will be treated as given upon their receipt, as verified by written or automated receipt or by electronic log. Licensee may also mail notices to Licensor's address, as listed on the Licensor website. Notices to Licensee will be emailed by Licensor to the email address provided by Licensee during the registration with Licensor or otherwise associated with Licensee's account and will be treated as given when sent. Licensee is responsible to keep its email account with Licensor current.

11.2. Assignment. Licensee may not assign, transfer, delegate or sublicense this Agreement, any part thereof or any right thereunder, without the prior written consent of Licensor, except to an Affiliate where: (a) the Affiliate has agreed in writing to be bound by the terms of this Agreement; (b) Licensee remains liable for the obligations under the Agreement in case of a default by the Affiliate; and (c) Licensee has notified Licensor of the assignment. Any other attempt to assign is void. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns.

11.3. Force Majeure. Licensor will not be liable for failure or delay to perform any obligation under this Agreement, to the extent caused by circumstances beyond its reasonable control.

11.4. No Agency. This Agreement does not create any agency, partnership or joint venture between the Parties and neither Party has any authority to bind the other.

11.5. Government Purposes (applicable to US government customers only). The Image was developed at private expense and is provided to the U.S. Government as "commercial computer software", "commercial computer software documentation" and "technical data" with the same rights and restrictions generally applicable to the Image. If Licensee exercises the License on 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, Licensee will immediately discontinue the exercise of its License. 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.

11.6. No Waiver. Neither Party will be deemed to have waived, or restricted its right to enforce, any rights under this Agreement by failing to exercise or enforce (or delaying the exercise or enforcement of) such rights. All waivers by us must be in writing to be effective.

11.7. Severability. If any term of this Agreement (or part thereof) is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, it will be interpreted to have been limited, eliminated or severed, to the minimum extent, as necessary to keep the obligations of the Parties, and the rest of the Agreement, in full force and effect.

11.8. No Third-Party Beneficiaries. This Agreement does not confer any benefits on any third- party individual or entity that is not a Party to this Agreement, unless it expressly states that it does.

11.9. Equitable Relief. Parties acknowledge that a breach of any provisions of this Agreement pertaining to Confidential Information, or the ownership of, license to and restriction on, IPR, may cause irreparable injury to the injured Party, for which monetary damages would not be an adequate remedy, and the injured Party shall be entitled to seek injunctive or other equitable relief in any state, federal, or national court of competent jurisdiction for any actual or alleged breach of these provisions.

11.10. Applicable Law. This Agreement shall be deemed to have been made in, governed by and construed pursuant to, the laws of India.

11.11. Venue. All claims or disputes arising out of or relating to this Agreement will be litigated exclusively in the courts located in Bengaluru, India.

11.12. Amendments. Any amendment or waiver shall be effective only if made in writing, expressly stating it to be an amendment or waiver of this Agreement and signed by an authorized representative of each Party.

11.13. Survival. The following Sections will survive expiration or termination of this Agreement: 2 (Ownership and License Restrictions), 4 (Licensee Responsibilities), 5 (Fees and Taxes), 6 (Confidential Information), 7.2, 7.4 and 7.5 (Disclaimer of Warranties), 8 (Limitation of Liability), 9.4 (Effects of Termination), 11 (Miscellaneous) and 12 (Definitions).

11.14. Entire Agreement. This Agreement, including all applicable Quotes, policies, procedures and/or guidelines appearing on the Licensor website (<https://nimesa.io/>) from time to time, which are hereby incorporated by this reference into, and made part of, this Agreement, is the entire agreement between Licensor and Licensee regarding the subject matter of this Agreement. This Agreement supersedes all other agreements between the Parties relating to its subject matter. In entering into this Agreement, neither Party has relied on, and neither Party will have any right or remedy based on, any prior or contemporaneous communication, statement, understanding, representation or warranty (whether written or verbal) regarding the subject matter of this Agreement, except those expressly set out in this Agreement or a written document signed by the Parties. If there is a conflict between the documents and URLs that make up this Agreement, the documents will control in the following order: the Agreement, a Quote (except to the extent expressly stating to supersede this Agreement) and the terms located at any URL or Documentation. Licensor may provide to Licensee, in addition to, or in place of, any previously-referenced URL, new or updated URLs, which shall be incorporated into this Agreement by reference. Licensor will not be bound by, and specifically objects to, any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is submitted by Licensee in any order, receipt, acceptance, confirmation, correspondence or other document.

12. Definitions

12.1. "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with a subject entity, for as long as such control exists; for the preceding sentence, control means control of greater than fifty percent of the voting rights or equity interests of the subject entity.

12.2. “Confidential Information” means all non-public information (including information pertaining to technology, data, customers, business plans, marketing activities, finances and other business affairs of a Party or its Affiliates or Users), disclosed by one Party or its Affiliates (the “Disclosing Party”) to the other Party or its Affiliates (the “Receiving Party”) under this Agreement, including by or to their respective employees, contractors or agents, that is marked or designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, should reasonably be understood to be confidential. Confidential Information does not include any information that: (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to the Receiving Party at the time of first disclosure by the Disclosing Party; (iii) is received by the Receiving Party from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (iv) can be shown by documentation to have been independently developed by the Receiving Party without use of or reference to the Confidential Information of the Disclosing Party. The Technology is considered Confidential Information of Licensor; Licensee Information and Usage Data are considered Confidential Information of Licensee and its Users.

12.3. “Documentation” means the documentation (as may be updated from time to time) in the form generally made available by Licensor and its Affiliates to its licensees and customers for use with the Technology.

12.4. “End User” means any individual or entity that, directly or indirectly, accesses, copies or installs the Product or the Documentation, or uses the Product, under Licensee’s account. End Users may include employees, consultants, contractors of Licensee.

12.5. “Feedback” means all remarks, requests, suggestions, proposals, data, reports, ideas and improvements pertaining to the Technology or any portions thereof.

12.6. “Image” means a specific version of a virtual machine image, generated from the Technology, of the type and supported feature set described in the License and licensed under its terms.

12.7. “Intellectual Property Rights” or “IPR” means any and all, current and future, worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.

12.8. “License” means the terms of use (i) specified in Section 2.1 of this Agreement; and (ii) described in a Quote or in a document or policy (including on a website) of Seller, including, without limitation, any restrictions and limitations on the scope and time of use of the Product and Licensee Instance, and the applicable Fees.

12.9. “License Term” means a period (ending prior to the expiration or termination of this Agreement) for which Licensee has paid, or is committed to pay, the fees described in Section 5.1 of this Agreement or as otherwise defined in a Quote for the right to use the License including through an automatic renewal of the License as specified in Section 9.2 of this Agreement.

12.10. “Licensee” means the individual or legal business entity that is either (i) appear on the Quote as Licensee, or (b) represented by an authorized representative (as an employee or agent) acting on its behalf, agreeing to this Agreement.

12.11. "Licensee Information" means software, machine images, data, text, audio, video, images or other content that Licensee or a User, runs on, causes to interface with, uploads to, or otherwise transfers, transmits, displays, processes, uses or stores in connection with, the Provider Services, under Licensee's, or a User's account with the Service Provider, and any IPR related thereto, and explicitly excluding any Technology and Feedback.

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