

# Rhombus Systems, Inc.

## End User License Agreement

Updated April 30, 2025

IMPORTANT: PLEASE READ BEFORE USING OR OTHERWISE ACCESSING RHOMBUS SYSTEMS, INC.'S ("*Rhombus*") PRODUCTS, AS THESE TERMS AND CONDITIONS GOVERN AND RESTRICT THEIR USE AS FURTHER DESCRIBED BELOW. MONITORING SERVICES ARE PROVIDED SUBJECT TO THE MONITORING SERVICES AGREEMENT (available at [legal.rhombus.com/end-user-tos/monitoring-services-agreement](https://legal.rhombus.com/end-user-tos/monitoring-services-agreement)).

This End User License Agreement ("*EULA*") is entered into by and between Rhombus and the user of the Products ("*Customer*") and sets forth the terms and conditions under which the Products will be procured and used. By executing an order, quote or other Product ordering document that references this EULA with Rhombus or with a Rhombus-authorized reseller (each an "*Order*"), or navigating through a Services login page where a link to this EULA is provided, or otherwise accessing or using the Products, Customer is unconditionally consenting to be bound by and is becoming a Party to this EULA.

This EULA is effective between Rhombus and the Customer as of the earlier of the date that Customer accepts the terms of this EULA as indicated above or first accesses or uses any of the Products (the "*Effective Date*"). Rhombus reserves the right to modify or update the terms of this EULA, solely within its discretion, the Effective Date of which will be the earlier of: (a) 30 days from the date of an update or modification, and (b) Customer's continued use of the Products.

Any separate terms or conditions provided by Customer with respect to the procurement of the Products (for example, any boilerplate terms and conditions contained or referenced in any Customer purchase order), will not apply, unless accepted by Rhombus in writing expressly referencing this EULA and the terms herein that are intended to be amended.

If Customer is participating in a risk-free trial of Rhombus's Products, the terms of the Product Evaluation Agreement (available at [legal.rhombus.com/end-user-tos/product-evaluation-agreement](https://legal.rhombus.com/end-user-tos/product-evaluation-agreement)) are hereby incorporated into this EULA and shall apply and supersede any conflicting terms in this EULA.

Some Products offered by Rhombus may be subject to additional or different terms and conditions. Such terms and conditions will be provided by Rhombus to Customer at the time of purchase for Customer's review and acceptance.

### 1. DEFINITIONS

The definitions of certain capitalized terms used in this EULA are set forth below or otherwise defined in the body of the EULA or Order.

- 1.1 "*Applicable Law*" means all regional, national, and international laws, rules, regulations, and standards including those imposed by any governmental or regulatory authority which apply from time to time to the person or activity in the circumstances in question.
- 1.2 "*Customer Data*" means all data provided by Customer to Rhombus by means of the Products, including recordings, event alerts, and other data made by the Products. Customer Data does not include System Data (as defined below).
- 1.3 "*Documentation*" means the Rhombus-provided documentation and instructions regarding the Products that is accessible through Rhombus's website, included in the Product packaging, or made available to Customer through the Services.
- 1.4 "*DPA*" or "*Data Processing Addendum*" means the Data Processing Addendum available at [legal.rhombus.com/end-user-tos/dpa](https://legal.rhombus.com/end-user-tos/dpa), or other negotiated data protection agreement that is entered into between Rhombus and Customer.
- 1.5 "*Firmware*" means the software developed and maintained by Rhombus that is stored on the Hardware and enables the basic functioning of the Hardware and its communication with the Services.
- 1.6 "*Hardware*" means the Rhombus hardware products, including security cameras, access control units, environmental sensors, audio gateways and alarm devices.
- 1.7 "*License Term*" refers to that period of time that Customer has a license to use of the specific Services listed in the Order, including any renewal or extension of such license. Unless otherwise specified in the Order, the License Term commences on the Service Activation Date and ends at the end of the license period referenced in the line-item description of such Services in the Order.
- 1.8 "*Partner*" means a third-party authorized by Rhombus to resell the Products to Customer.
- 1.9 "*Products*" means, collectively, the Hardware, Firmware, and Services, and Documentation related thereto, and all modifications, updates, and upgrades thereto and derivative works thereof.
- 1.10 "*Service APIs*" means the application programming interfaces that Rhombus has made available to Customers that allow for integration with the Services Console. The Service APIs include related Documentation provided with or in relation to the Services, including Documentation (available at [apidocs.rhombussystems.com/](https://apidocs.rhombussystems.com/)). The Service APIs that are subject to this EULA are only those Service APIs that have been made available for Customer's use (as provided in the Documentation). Rhombus reserves the right, within its sole and unilateral discretion, to revoke, limit or expand the set of Service APIs that it exposes or provides to its customers and/or Customer.
- 1.11 "*Services*" means Rhombus's Software-as-a-Service system, currently known as the 'Console,' the related mobile apps and infrastructure made available to Customer to access, manage and configure the Hardware, and all related Support.
- 1.12 "*Service Activation Date*" means the earlier of (a) the date that Customer is provided credentials to access the Service, or (b) the date the Services are to commence as set forth in the applicable Order.
- 1.13 "*Service Level Agreements*" or "*SLAs*" refers the service level agreements available at <https://legal.rhombus.com/end-user-tos/sla>, or other negotiated service level agreement relating to the Services that is entered into between Rhombus and Customer.
- 1.14 "*Support*" means all Product Support Services provided pursuant to [Section 3.5](#), and the technical support services and resources available at [support.rhombussystems.com](https://support.rhombussystems.com).
- 1.15 "*System Data*" means configuration information, log and event data, Product performance data, and statistics regarding Customer's use of the Products.
- 1.16 "*End Users*" means employees of Customer, or other third parties, each of whom are authorized by Customer to use the Products on Customer's behalf.

### 2. PRODUCT LICENSES

2.1 **Licensed Products.** Customer is procuring Products listed on the Order subject to the terms of this EULA and the license grants set forth below.

- (a) **Hardware and Firmware License.** Subject to the Product License Restrictions in [Section 2.2](#), below, commencing on the date the Product is shipped by Rhombus, Rhombus hereby grants Customer a limited, perpetual, royalty-free, non-exclusive, non-transferable, right and license to use the Hardware and related Firmware only in connection with the use of the Services, and only in accordance with any Rhombus-provided Documentation.
- (b) **Service License.** Subject to the Product License Restrictions in [Section 2.2](#), for the duration of the License Term, Rhombus hereby grants Customer a limited, royalty-free, non-exclusive, non-transferable, right and license to access and use the Services, only in accordance with any Rhombus-provided Documentation.

2.2 **Product License Restrictions.** Except as expressly and unambiguously permitted by this EULA, Customer shall not, nor permit anyone else to, directly or indirectly, engage in any of the following activities (each a "*Prohibited Use*"):

- (a) Market, sell, sublicense, resell, rent, lease, loan, transfer, or otherwise commercially exploit the Products in whole or in part (including without limitation, use of the Products for timesharing or service bureau purposes, or to provide "managed service provider" or "MSP" services), or provide, disclose, divulge or make available to, or permit use of the Products in whole or in part by or for any third-party, without Rhombus's prior written consent;
- (b) Misrepresent expressly, by omission, or implication, or otherwise enable the Products to be used in a manner that circumvents, the need for users to obtain a valid license to the Products;
- (c) Reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or structure, sequence and organization of the Products (except where the foregoing is expressly prohibited by applicable local law, and then only to the extent so prohibited), or modify, create derivative works, tamper with the Hardware, or copy the Products or any of their components;
- (d) Use the Products to help develop any competitive products or services;
- (e) Attempt to circumvent the limitations Rhombus sets on Customer's use of the Services (Rhombus may set and enforce limits on Customer's use of the Services as it deemed reasonable and appropriate, in its sole discretion);

- (f) Use the Services to disrupt, interfere with, or attempt to gain unauthorized access to services, servers, devices, or networks connected to or which can be accessed via the Services;
- (g) Use the Services, or any data obtained using the Products, to (i) conduct performance testing of the Products, unless expressly permitted by Rhombus pursuant to a duly executed written agreement, or (ii) identify, exploit or publicly disclose any potential security vulnerabilities in the Products;
- (h) Use the Services in a way that could create, in Rhombus's sole discretion and judgment, an unreasonable risk to other customers from a security or privacy perspective;
- (i) Use an unreasonable amount of bandwidth (e.g., daily bandwidth usage should never exceed the amount of daily audio/video present on typical Hardware), or adversely impact the stability of the Services; or
- (j) Use of the Products without obtaining any applicable licenses and permits that are required under Applicable Laws;
- (k) Directly or indirectly exporting, re-exporting, or providing Product-related services in violation of the export laws and regulations of the United States or any other country;
- (l) Use the Products or allow any End User to use the Products to conduct any fraudulent, malicious, or illegal activities or otherwise violates Applicable Law, including, without limitation: (i) illegal activities, such as child pornography, gambling, piracy, violating copyright, trademark or other intellectual property laws; (ii) intending to exploit minors in any way; (iii) threatening, stalking, defaming, defrauding, degrading, victimizing or intimidating anyone for any reason; (iv) transmitting infringing, libelous, or otherwise unlawful or tortious material; or (v) violating applicable privacy laws and regulations.

**2.3 Changes to Prohibited Use Restrictions.** Notwithstanding any other terms of this EULA, Rhombus may, with reasonable cause, change the terms of Prohibited Use set forth in [Section 2.2](#); provided however, Rhombus shall give Customer reasonable notice of such changes. Unless otherwise agreed, changes will be effective upon the effective date provided in the notice to Customer. If Customer thereafter does not agree with the changes, Customer shall stop using the Products. Use of the Products after such effective date means Customer has accepted the updated terms of Prohibited Use and that Customer agrees that the modified, updated terms of Prohibited Use govern all of Customer's use of the Products.

**2.4 Product Evaluations.** To the extent the Product is being provided pursuant to the Product Evaluation Agreement with Rhombus, the Products will only be used for internal evaluation purposes. Customer shall maintain and not remove or obscure any proprietary notices on the Products. As between the parties, all rights, title, and interest, including ownership rights and intellectual property rights in and to the evaluation Products, and any copies or portions thereof, shall remain vested in Rhombus. In addition, all evaluation Product bench-marking results will be deemed Rhombus's Confidential Information (as defined below).

**2.5 Future or Additional Functionality.** The Products listed in the Order reflect Rhombus's current offerings and Product features, as further documented at [www.rhombus.com](http://www.rhombus.com). Customer agrees that their purchases hereunder are neither contingent on the delivery of any additional, supplemental or future functionality or features, nor dependent on any oral or written public comments made by Rhombus regarding additional, supplemental or future functionality or features. Rhombus may require Customer to agree to modified or additional terms and pricing, in a form acceptable to Rhombus, in order to access certain additional, supplemental or future functionality or features that are not currently included in the Products listed in the Order and/or released for use within or in conjunction with the Products procured hereunder.

**2.6 Licensed Customer Data.** During the Service License Term, Customer will transfer Customer Data to Rhombus while using the Products. Customer hereby grants Rhombus a limited, royalty-free, non-exclusive, non-transferable right and license to use, reproduce, modify, store, and process Customer Data in order to maintain and improve the Products, and provide them to Customer. Customer represents and warrants that it possesses the necessary rights and authority to grant Rhombus the rights set forth in this [Section 2.6](#) with respect to Customer Data.

### 3. SERVICE ADMINISTRATION

#### 3.1 Account Management.

- (a) **Authorized Customer Representative.** Customer is responsible for identifying one or more individuals within Customer's organization who will act as an Authorized Representative. The Authorized Representative is responsible for overall management of the relationship with Rhombus, each End User's compliance with this EULA, Applicable Law, and Customer's use of the Services only in accordance with Documentation. This includes providing and updating Customer's account information (e.g., address, key contact information, etc.), requesting changes to the designated Authorized Representative, and approval of assignments of current Product licenses. If an Authorized Representative is not designated, Rhombus will only be able to take direction from a formally designated Officer of the Company that is currently licensed to use the Products (unless such changes are requested pursuant to a valid court order).
- (b) **Product Administrators.** Customer is responsible for identifying one or more individuals within Customer's organization who will act as an administrator of the Service. The administrator is responsible for making all decisions regarding the day-to-day administration of the Services, including, without limitation, provisioning, monitoring and managing Service access privileges, configuration of features and functionality of the Services (including activating or deactivating features), authorizing Rhombus to access Customer Data, and ensuring that only licensed Products are connected to the Services. Administrators shall ensure that the identification and password credentials for each End User are unique, identify a named individual, and are not shared or used by more than one End User, and maintain an accounting of the credentials issued to each named End User.

**3.2 Fees; Payments.** The fees payable by Customer will be as set forth in applicable purchasing documents with the Partner, or within the Order. In the event Customer's purchase is from a Partner, Customer's payment will be as agreed to by Customer and the applicable Partner, and Customer is responsible for paying Partner directly. In the event Customer is delinquent on fees owed to the Partner, Rhombus may pursue payment directly from Customer if Partner is unable to or chooses not to pursue such fees, and Rhombus will be deemed a third-party beneficiary of that Order. In the event Product is purchased directly from Rhombus: (a) fees are payable in advance for the applicable term; (b) invoices are due and payable net thirty (30) days from the invoice date and shall be invoiced and paid in U.S. Dollars; (c) Customer is responsible for any and all applicable sales related taxes, tariff surcharges, and fees, except any tax assessed upon Rhombus's net income; and (d) price increases for any renewal License Term will be as notified by Rhombus to Customer at least ninety (90) days prior to the beginning of such renewal term; provided, however, if no such notice is provided pursuant to subsection (d), the price of all Products shall, unless waived by Rhombus, automatically increase by the greater of (i) three percent (3%) compounded annually over the License Term, or (ii) the aggregate of the U.S. City Average of the Consumer Price Index for All Urban Consumers (CPI-U) compounded over each year of the License Term.

**3.3 Compliance.** Customer represents and warrants that it will use the Products only in accordance with the Documentation and in compliance with all Applicable Laws, including procurement and maintenance of any applicable licenses and permits, and/or obtaining any requisite consent from third parties. Customer will ensure that none of the Products are directly or indirectly exported, re-exported, or used to provide services in violation of the export laws and regulations of the United States or any other country. If Customer operates in a regulated industry, Customer represents that it has obtained all necessary local and state licenses and/or permits necessary to operate its business and is in compliance (and will use its best efforts to remain in compliance) with all Applicable Laws regarding the conduct of its business. Rhombus reserves the right to suspend use of any Products operating in violation of the obligations of this EULA, following written notice to Customer.

**3.4 Service Monitoring.** Rhombus may monitor Customer's use of the Services to verify Customer's compliance with this EULA, improve the Services (including Service APIs), and assess the quality and security of the Services. Notwithstanding the foregoing, Rhombus is not authorized by the language of this [Section 3.4](#) to access Customer Data.

#### 3.5 Product Support.

- (a) **Hardware and Console Support.** Customer's Hardware and Console support will generally be provided by the Partner through whom such Products were procured. However, for those procuring from Rhombus directly, or those encountering issues that the Partner is unable to adequately resolve, Rhombus will provide Product support as set forth in the Service Level Agreements. If the issue is directly related to the Product, the fee for such support is included in the cost of the Product license. If the issue is not related directly to the Product, but rather related to the integration of the Product with products or services not provided by Rhombus, Customer may need to engage Rhombus or a third-party to provide enhanced support services. Rhombus may need access to the Services to provide support. As part of any support case, Customer may grant access, in its sole discretion, to a member of Rhombus's support team through functionality provided in the Services. Such access will only be for the length of time determined by the Customer. Hardware and Console support is deemed part of the "Service" and subject to this EULA.
- (b) **Service API Support.** Notwithstanding the Product support referenced in [Section 3.5\(a\)](#), to the extent Customer elects to use Service APIs, Customer shall be solely responsible to ensure that Customer's or any of its third-party's product or service providers properly interface their products or services with the Service APIs. Rhombus shall have no obligations under this EULA to provide any support relating to the Service APIs. Rhombus reserves the right to charge Customer for any requested support at Rhombus's then-published standard rates for such services.
- (c) **Product Maintenance.** Customer will receive, free of charge, Rhombus's standard Product maintenance, which includes fixes, patches, and upgrades that are necessary for Rhombus to meet its obligations under this EULA ("**Maintenance**"). Maintenance is deemed part of the "Service" and subject to this EULA. Subject to the SLAs, Rhombus may, with reasonable cause, with or without notice, and without liability to Customer or any other third-party: (i) modify, suspend, or terminate the operation of any feature of the Product, (ii) restrict or limit Customer's access to the Products (e.g., rate limit or "throttle" calls to Services, etc.), or (iii) suspend access to or shut down the Products, each of which would be undertaken in order to fix problems with the Products, conduct routine maintenance, or update the Products. While Rhombus is committed to continually updating and improving its Products, Rhombus may, but does not have to, develop updates or upgrades for the Products. Customer acknowledges that Rhombus may impose restrictions and requirements on Customer for use of any features or functionality of the Products released after the date of Customer's original purchase, or Products not otherwise purchased in an Order, which may include, for example, requiring additional fees or agreement to additional terms or conditions of use relating to new products or features.
- (d) **Service Level Commitments.** Rhombus undertakes commercially reasonable efforts to ensure that the Services are available in accordance with the SLAs, which sets forth Customer's remedies for any interruptions in the availability of the Services. Generally, Rhombus's objective is to make the Services available 24 hours a day, 7 days a week, except for: (a) scheduled maintenance, (b) use of the Services in a manner that is not in accordance with related Documentation, and (c) any unavailability caused by circumstances beyond Rhombus's reasonable control.

**3.6 Protection of Customer Data.** Rhombus shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Customer may access Documentation available at [www.rhombus.com/trust/](http://www.rhombus.com/trust/) to learn more about Rhombus's security program and related certifications. All processing of Customer Data will be in accordance with the DPA.

**3.7 Minimum Technical Requirements.** The minimum required hardware, software and operating system, as applicable, to operate and/or access the Services are set forth in the Documentation available at [www.rhombus.com](http://www.rhombus.com).

#### 4. OWNERSHIP

**4.1 Ownership of Proprietary Information.** Subject to the licenses granted in this EULA, all Confidential Information and all intellectual property rights therein shall remain the sole property of the Disclosing Party and no license or other right to Confidential Information is granted or implied hereunder.

**4.2 Rhombus Property.** Rhombus owns and retains all rights, title, and interests in and to the Services, Firmware, System Data, and all intellectual property embodied in the Hardware and accessories. Except for the limited licenses granted to Customer in [Section 2.1](#), Rhombus does not, by entering into this EULA or otherwise, transfer any intellectual property rights in the Products to Customer, and Customer will take no action inconsistent with Rhombus's intellectual property rights in the Products.

**4.3 Customer Property.** Customer owns and retains all rights, title, and interest in and to the Customer Data and does not, by entering into this EULA, transfer any rights in the Customer Data to Rhombus, except for the limited license set forth in [Section 2.6](#).

#### 5. CONFIDENTIALITY

**5.1 Confidential Information.** Except as explicitly excluded below, any information of a confidential or proprietary nature provided by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") constitutes the Disclosing Party's confidential and proprietary information ("**Confidential Information**"). Rhombus's Confidential Information includes, without limitation, the Products, any information conveyed to Customer in connection with Support, know-how, processes, ideas, inventions (whether patentable or not), information security practices, product schematics and other technical, business, or financial plans, product development plans, forecasts, strategies, or other such types of information. Customer's Confidential Information includes Customer Data. Confidential Information does not include information that: (a) at the time of disclosure is, or subsequently becomes, available to the public or the industry through no fault or breach on the part of the Receiving Party; (b) the Receiving Party can demonstrate to have had rightfully in its possession prior to disclosure by the Disclosing Party; (c) is independently developed by the Receiving Party without the use of any Confidential information of the Disclosing Party; or (d) the Receiving Party rightfully obtains from a third-party who has the right to transfer or disclose it without any confidentiality obligation.

**5.2 Confidentiality Obligations.** The Receiving Party will use the Confidential Information of the other Party only as necessary to perform its obligations under this EULA. The Receiving Party shall not, directly or indirectly, without the prior written approval of the Disclosing Party in each instance or unless otherwise expressly permitted herein, use for its own benefit, publish or otherwise disclose to others, or permit the use by others for their benefit, or to the detriment of the Disclosing Party, any of the Disclosing Party's Confidential Information. The Receiving Party shall carefully restrict access to the Confidential Information to only those of its officers, directors, employees, agents, contractors and suppliers (each, a "**Representative**") who clearly need such access, and who are bound by written confidentiality agreements that protect such information that are at least as restrictive as those contained herein. The Receiving Party may disclose Confidential Information if and to the extent required by a judicial or governmental request, requirement or order; provided that the Receiving Party will take reasonable steps to give the Disclosing Party sufficient prior notice of such request, requirement or order for the Disclosing Party to contest, limit and/or protect such disclosure.

#### 6. CUSTOMER RETURNS

**6.1 Unsatisfied Customer Returns.** Customer may return any Product for any reason provided it satisfies the following conditions: (a) Customer must request a Return Materials Authorization ("**RMA**") from Rhombus (or the Partner through whom it purchased the Products) within 60 days of the date the Product was originally shipped by Rhombus; (b) Once the RMA is provided by Rhombus, Customer must return the Product to Rhombus within 30 days of receiving the RMA; (c) Products must be returned in new condition, with original packaging, and not damaged in any way. Upon satisfaction of these criteria, Rhombus will either refund the Customer (if Products were purchased directly from Rhombus) or the Partner (and Customer must pursue any refund directly from the Partner) the amount originally received for all returned Hardware and corresponding Services licenses (less any paid rebates).

#### 7. LIMITED WARRANTY

**7.1 Hardware Warranty.** Rhombus warrants to the original Customer that purchased Hardware from an authorized Partner, that the Hardware, when used normally and in accordance with the Documentation, will be substantially free from defects in materials and workmanship (the "**Hardware Warranty**") for the warranty period set forth for each Product as categorized below, commencing on the original date of shipment of such Product from Rhombus (the "**Warranty Period**").

Hardware Type	Hardware Name	Warranty Period
Cameras	All	10 Years
Relays	All	5 Years
Sensors	A100 and E50	10 Years
	All Others, including Smart Buttons	2 Years
Access Control	All	10 Years
Third-Party Products	All	None (Manufacturer Warranty Only)

CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND RHOMBUS'S SOLE AND EXCLUSIVE LIABILITY FOR ANY BREACH OF THE HARDWARE WARRANTY WILL BE, IN RHOMBUS'S SOLE DISCRETION, THE REPAIR OR REPLACEMENT OF THE NON-CONFORMING HARDWARE. Replacement may be made with a new or refurbished product or component ("**Replacement Hardware**"). If the Hardware or a component needing replacement within it is no longer available, then Rhombus may replace the Hardware unit with a similar product with similar functionality. Replacement Hardware will be covered by the terms of the Hardware Warranty for the longer of: (a) 180 days from the date of the shipment of the Replacement Product, or (b) the remainder of the original Product's Warranty Period.

**7.2 Exclusions.** The Hardware Warranty is expressly voided and disclaimed, to the fullest extent allowed by Applicable Law, under the following circumstances: (a) Hardware that is obtained from sources other than a Partner; (b) Hardware that is damaged through no fault of Rhombus; (c) Any Prohibited Use of the Hardware; (d) Hardware that is modified, altered or defaced; (e) Hardware that is damaged due to operation outside the permitted or intended uses described in the Documentation (e.g., environmental exposure that was not expressly authorized in the Documentation); (f) Hardware that is not working due to consumable parts (e.g., batteries that need replacement); or (g) Hardware that is marked as "sample" or "Not for Sale," or Hardware that is sold "AS IS." At Customer's request, Rhombus can provide a list and contact information for Rhombus-certified Hardware installers and service providers. Except as otherwise stated in this EULA and related Documentation, Customer assumes all risk associated with the suitability, installation and performance of the Hardware. Customer assumes all responsibility and cost of on-site removal of Hardware and installation of Replacement Hardware or components thereof.

Typical examples of Customer concerns that are excluded from the Hardware Warranty include:

- Normal wear and tear that does not interfere with the proper function of the Hardware (e.g., scratching, staining, discoloration, or any other cosmetic issue), or any optical interference that can be resolved by cleaning.
- Damage during shipment, misuse or accident (e.g., collision, fire, or the spillage of liquid or food), neglect, abuse, alteration, unusual stress, or modification, or impact damage with a foreign object.
- Damage due to improper or unauthorized repair, installation, testing, or storage (e.g., damage during installation, installation in environments where the Hardware is not appropriately rated, installation where there exists excessively high salt concentrations in the air, or failure to take proper or sufficient waterproofing measures during installation).
- Painting of the Hardware, or adhering of any unauthorized labeling, tape, stickers, solvents, stains, or any unapproved cleaning product.
- Use of unauthorized hardware not provided by Rhombus in conjunction with the Hardware (e.g., for the purpose of mounting, installing, or otherwise affixing the Hardware to a mounting surface, or installation of unauthorized memory storage cards or incompatible network equipment).
- Breakdowns, fluctuations, or interruptions in electric power or the telecommunications network.
- Acts of God and other forces beyond Rhombus's reasonable control (e.g., internet or power outages, wars, riots, terrorism, labor disputes, earthquakes, floods, or other events of force majeure).

**7.3 Disclaimer of All Other Warranties.** EXCEPT AS EXPRESSLY STATED IN THIS [SECTION 7](#), AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, (i) RHOMBUS DISCLAIMS ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES AND CONDITIONS WITH RESPECT TO THE PRODUCTS, INCLUDING THE IMPLIED WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT; (ii) RHOMBUS LIMITS THE DURATION OF ANY APPLICABLE IMPLIED WARRANTIES OR CONDITIONS TO THE DURATION OF THE HARDWARE WARRANTY; (iii) CUSTOMER USES THE HARDWARE AT ITS OWN DISCRETION AND RISK; AND (iv) CUSTOMER WILL BE SOLELY RESPONSIBLE FOR (AND RHOMBUS DISCLAIMS) ANY AND ALL LOSS, LIABILITY, OR DAMAGES TO CUSTOMER'S PREMISES, DEVICES, OR PROPERTY (INCLUDING THE HARDWARE), RESULTING FROM CUSTOMER'S USE OF THE PRODUCTS OR INFORMATION PROVIDED IN CONNECTION THEREWITH; AND (vi) CUSTOMER ACKNOWLEDGES THAT THE PRODUCTS ARE NOT DESIGNED OR INTENDED FOR USE IN LIFE SUSTAINING, NUCLEAR, HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, OR OTHER APPLICATIONS IN WHICH FAILURE OF PRODUCTS COULD REASONABLY BE EXPECTED TO RESULT IN PERSONAL INJURY, LOSS OF LIFE OR CATASTROPHIC PHYSICAL OR PROPERTY DAMAGE ("HIGH RISK APPLICATIONS"). AND CUSTOMER UNDERSTANDS AND AGREES THAT RHOMBUS (AND ITS SUPPLIERS) MAKE NO WARRANTIES OR ASSURANCES THAT THE PRODUCTS ARE SUITABLE FOR ANY HIGH RISK APPLICATIONS. The Limited Warranty conveys specific legal rights. Customer may also have other legal rights that vary by state, province or jurisdiction. The disclaimers and exclusions under this Limited Warranty will not apply to the extent prohibited by Applicable Law.

- 7.4 Warranty Claims.** Hardware Warranty claims must be initiated during the applicable Warranty Period. To initiate a claim, Customer must contact support@rhombus.com and provide details regarding where they purchased the Hardware, the serial numbers of the Hardware units, the reason for the Hardware Warranty claim with sufficient detail regarding the alleged Hardware defects for Rhombus to make an informed initial assessment, and Customer's contact information. If approved for a return inspection, Rhombus will provide Customer with an RMA and a prepaid shipping label (at Rhombus's expense) for Customer to return the Hardware to Rhombus for inspection and assessment as to whether the Hardware Warranty is applicable. Customer must return the Hardware listed in the RMA with all included accessories within the 30 days following the day on which Rhombus issued the RMA. The RMA number must be clearly displayed on the outside of the shipping box. Customer will be responsible for all return shipping costs for Hardware that is determined by Rhombus to be ineligible for the Hardware Warranty.
- 7.5 Advance Replacements.** At Customer's request, Rhombus may, at its discretion, elect to ship Replacement Hardware prior to its receipt of Product that is returned under RMA. If Replacement Hardware is shipped to Customer prior to Rhombus's receipt of Customer's original Hardware, and Rhombus either: (a) does not receive the original Hardware from Customer within 30 days of shipping the Replacement Hardware, or (b) Rhombus determines that the original Hardware does not qualify for repair or replacement under the Hardware Warranty, Customer will be invoiced for the full price of the Replacement Product at Rhombus's standard list price, and Rhombus shall have no obligation to return the original Hardware to Customer.

## 8. INDEMNITY

- 8.1 Customer Indemnity.** Subject to Section 8.3 below, Rhombus agrees to indemnify, defend, and hold Customer and its respective owners, directors, members, officers and employees (each, a "Customer Indemnitee") harmless from and against any and all liabilities, damages, losses, expenses, fines, penalties, and/or judgments, including reasonable attorneys' fees, costs, and expenses incidental thereto ("Losses"), which may be suffered by, accrued against, charged to, or recoverable from any Customer Indemnitee, by reason of any third-party's demand, proceeding, action, regulatory action, lawsuit, and/or claim (collectively, "Claim"), that: (a) alleges Customer's use of the Products infringes or misappropriates any patent, trademark, copyright, or any other intellectual property of such third party; or (b) arises out of Rhombus's breach of the DPA; provided, however, that the indemnity provided under this 8.1(b) shall be limited: (i) to only those Losses for which Rhombus's breach was the proximate cause, and (ii) shall not exceed, in aggregate with any other damages available to Customer, one million dollars (\$1,000,000 USD). If Customer's right to use the Products hereunder is, or in Rhombus's opinion is likely to be, enjoined as the result of a Claim, then Rhombus may, at Rhombus's sole option and expense procure for Customer the right to continue using the Products under the terms of this EULA, or replace or modify the Products so as to be non-infringing and substantially equivalent in function to the claimed infringing or enjoined Products. Rhombus will have no indemnification obligations under this Section 8.1 to the extent that a Claim is based on or arises from: (1) use of the Products in a manner other than as expressly permitted in this EULA (including the Documentation); (b) any alteration or modification of the Products except as expressly authorized by Rhombus; (3) the combination of the Products with any other software, product, or services (to the extent that the alleged infringement arises from such combination); or (4) where the Claim arises out of specifications provided by Customer. This Section 8.1 sets forth Rhombus's sole and exclusive liability, and Customer's exclusive remedies, for any Claim of infringement or misappropriation of intellectual property, or Rhombus's breach of the DPA.
- 8.2 Rhombus Indemnity.** Customer agrees that Rhombus shall have no liability whatsoever for any use Customer makes of the Products, Service Data, or Customer Data. Customer agrees, to the fullest extent allowed by Applicable Laws, to indemnify, defend, and hold Rhombus and its respective directors, agents, representatives, suppliers and employees (each, a "Rhombus Indemnitee") and collectively with Customer Indemnitees, the "Indemnitees") harmless from and against any and Losses, which may be suffered by, accrued against, charged to, or recoverable from any Rhombus Indemnitee, by reason of any Claim arising out of or relating to any act, error or omission, and/or any negligent or willful misconduct, of Customer, its affiliates, directors, agents, representatives, employees, subcontractors or End Users, during the EULA Term, use of the Products, and/or, including, but not limited to Claims arising out of or relating to: (i) bodily injury (including death) or damage to personal or real property; (ii) violation of any applicable law; (iii) any Prohibited Use, or use or attempted use of the Products, Customer Data (including any person's claim regarding privacy rights), or Service Data beyond the scope set forth in the Order and in this EULA; and/or (iv) breaches of any representations, warranties or covenants made under this EULA.
- 8.3 Notifications and Settlements.** The indemnified Party shall: (i) give the Indemnifying Party prompt written notice of any Claim for which any Indemnitee is seeking indemnity; provided however, the failure to give timely notice shall not relieve the indemnifying Party of its obligations under this Section 8; (ii) grant complete control of the defense and settlement to indemnifying Party; provided, however, if indemnifying Party selects counsel that is not acceptable to the other Party, the Indemnitee(s) may participate with counsel of its (collective) choosing at the indemnifying Party's expense; and (iii) reasonably cooperate with the indemnifying Party, at the indemnifying Party's expense, in the defense and settlement of such Claim. The indemnifying Party shall not, without the prior written consent of the other Party, effect any settlement of a Claim unless such settlement either (a) includes an unconditional release of the Indemnitees from all liability on all Claims against the Indemnitees that are the subject matter of such proceeding or demand, or (b) is consented to in writing by the other Party (which consent shall not be unreasonably withheld).

## 9. LIMITATION OF LIABILITY

- 9.1 Limited Consequential Damages.** NEITHER PARTY, NOR ITS LICENSORS OR OTHER VENDORS, SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, AND/OR CONSEQUENTIAL DAMAGES, LOST PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, HOWEVER CAUSED, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS EULA; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY WITH RESPECT TO: (A) EITHER PARTY'S OBLIGATIONS OF INDEMNIFICATION UNDER SECTION 8 OF THIS EULA; (B) CUSTOMER'S BREACH OF THE LICENSES GRANTED UNDER SECTION 2.1 OR BREACH OF SECTIONS 2.2 OR 3.3; OR (C) DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT (collectively, (A) through (C) are the "EXCEPTIONS").
- 9.2 Direct Damages Cap.** EACH PARTY SHALL BE LIABLE TO THE OTHER FOR ANY DIRECT DAMAGES, UNDER ANY CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL THEORY, ARISING OUT OF OR RELATING TO ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS EULA; PROVIDED, HOWEVER, THAT EACH PARTY'S TOTAL LIABILITY FOR ALL EVENTS, ACTS, OR OMISSIONS UNDER THIS EULA SHALL NOT EXCEED ANY AMOUNT IN EXCESS, IN THE AGGREGATE, OF THE LICENSE FEES PAID BY CUSTOMER TO RHOMBUS DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE CLAIM; AND PROVIDED, FURTHER, THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO THE EXCEPTIONS.

## 10. TERM AND TERMINATION

- 10.1 Term.**
- (a) **Services Term.** The initial License Term is based on the license period set forth in the Order and the Service Activation Date. Subject to the terms and conditions of this EULA, and unless otherwise stated in the Order, the License Term shall automatically renew for additional terms of one (1) year at the end of the then-current License Term, unless either Party provides at least thirty (30) days' written notice to the other Party of its intent not to renew.
- (b) **EULA Term.** Unless terminated earlier as set forth below, the term of this EULA (the "EULA Term") shall commence on the Effective Date hereof and end upon termination of the last License Term for any Services specified in an applicable Order. Notwithstanding any terms of this EULA to the contrary, this EULA shall terminate automatically if Customer's right to use all the related Services expires or otherwise terminates.
- 10.2 Termination for Convenience by Customer.** Customer may terminate any Services for convenience at any time during the License Term, after providing written notice to Rhombus, and such termination will be effective as of the last day of the then-current License Term. Rhombus will send an email verifying cancellation to the listed billing contact maintained within Rhombus's internal systems.
- 10.3 Termination or Suspension for Cause.** Either Party may terminate this EULA or any Services licensed hereunder, or Rhombus may suspend Customer's access to the Services, for cause: (a) upon thirty (30) days written notice to the other Party of a material breach, if such breach remains uncured at the expiration of the 30-day period, or (b) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. For purposes of clarity, a material breach of this EULA includes Customer's failure to purchase and/or maintain a sufficient number of Product licenses. In addition, if any charge owed by Customer is thirty (30) days or more overdue, Rhombus may, without limiting its other rights and remedies, terminate or suspend the Services until such amounts are paid in full. Once Rhombus elects to suspend the Services and revoke Customer's access to the Services as provided herein, Rhombus may charge reasonable reactivation fees (applicable to the Services listed in the Order) to reactivate Customer's access to the Services. If Rhombus elects to suspend or terminate Services for cause (including non-payment), Rhombus shall have no obligation to reinstate Customer.
- 10.4 Effect of Termination.** Notwithstanding any other term of this EULA to the contrary, no Services shall be used by Customer or any of its End Users after the expiration or termination of the License Term for such Services. All License Terms shall terminate upon the expiration or termination of this EULA. If Customer terminates this EULA for cause, in accordance with Section 10.3, then Rhombus will refund Customer a pro-rata portion of any prepaid fees allocable to the remaining License Term. However, termination of Services shall not relieve Customer of its obligation to pay all fees that are otherwise due and payable. The following provisions will survive any expiration or termination of this EULA: Sections 2, 3.2, 3.3, 3.6, 4, 5, 7, 8, 9, 10.4, 10.5 and 11, and any other provisions that, by their nature, would reasonably be considered intended to survive.

- 10.5 Extraction and Destruction of Customer Data.** It is Customer's responsibility to extract any desired Customer Data from the Hardware or Services prior to the termination of the License Term (or access to the Services). Thereafter, Customer will generally not have access to Customer Data. Even though Customer will retain their Hardware at the end of the License Term, Customer Data on the Hardware is encrypted. Upon request, and subject to payment of a reasonable fee, Rhombus can assemble encryption keys for each Hardware device and provide them to Customer as soon as practicable after the end of the License Term (if not earlier). At the end of the License Term, Customer Data in the Services will be purged pursuant to Rhombus's standard data retention policies, during which time Rhombus will not have access to such data. Upon request, and subject to payment of a reasonable fee, Rhombus can prioritize the purging of Customer Data to accelerate the retention schedule to a date reasonably requested by Customer.

## 11. MISCELLANEOUS

- 11.1 Notices.** All notices under this EULA shall be in writing, and shall be deemed given when personally delivered, when sent by confirmed fax, or three days after being sent by prepaid certified or registered U.S. mail, or by email to, in the case of Customer to Customer's email or physical address on record in Rhombus's account information, or if to Rhombus at legal-notices@rhombus.com or 1610 R Street, Suite 350, Sacramento, CA 95811.
- 11.2 No Waiver.** The failure of either Party to enforce its rights under this EULA at any time for any period shall not be construed as a waiver of such rights.
- 11.3 Entire Agreement.** This EULA, along with the Order, SLAs, DPA and other incorporated Documentation supersedes all proposals, oral or written, all negotiations, conversations, or discussions between or among parties relating to the subject matter hereof and all past dealing or industry custom.
- 11.4 No Assignment.** Neither party may assign this EULA without the prior, written consent of the other party, which consent shall not be unreasonably withheld.
- 11.5 Amendments.** No changes or modifications or waivers are to be made to this EULA unless evidenced in writing and signed for and on behalf of both parties.
- 11.6 Severability.** In the event that any provision of this EULA shall be determined to be illegal or unenforceable, the EULA should be construed as if such provision was limited or had not been included to the minimum extent necessary so that this EULA shall otherwise remain in full force and effect and enforceable.
- 11.7 Choice of Law.** This EULA shall be governed by and construed in accordance with the laws of the State of California, and United States of America, without regard to the conflicts of law provisions thereof or the UN Convention on the International Sale of Goods.
- 11.8 Arbitration.** Except for claims for injunctive or equitable relief, which may be at any time brought before any court of competent jurisdiction, all disputes arising under this EULA shall be finally settled in accordance with the Comprehensive Arbitration Rules of the Judicial Arbitration and Mediation Service, Inc. ("JAMS") by one arbitrator appointed in accordance with such rules. The arbitration shall take place in San Francisco, California, in the English language and the arbitral decision may be enforced in any court. For all purposes of this Section 11.8, the Parties consent to exclusive jurisdiction and venue in the state and federal courts located in San Francisco, California. In any action or proceeding to enforce rights under this EULA, the prevailing Party will be entitled to recover costs and attorneys' fees.
- 11.9 Force Majeure.** Neither Party will be liable for any failure to perform caused by circumstances beyond its reasonable control which would otherwise make such performance commercially impractical including, but not limited to, acts of God, fire, flood, acts of war, pandemics, government action, accident, labor difficulties or shortage, inability to obtain materials, equipment or transportation (each, a "Force Majeure Event"). If a Force Majeure Event lasts longer than five (5) business days, the parties will meet to determine if performance under this EULA can resume as agreed. If the parties cannot agree, then Rhombus may terminate the applicable Services or this EULA.