End User License Agreement

Please read the terms and conditions of this End User License Agreement

This End User License Agreement (the “EULA”), effective on the date of its download or other form of delivery (the “Effective Date”), is entered into between Rubicon Communications, LLC d/b/a Netgate (“Netgate”) and the entity accessing and downloading the Software (“End-User”).

DOWNLOADING, INSTALLING OR USING SOFTWARE CONSTITUTES ACCEPTANCE OF THIS EULA AND ACKNOWLEDGEMENT BY THE USER THAT HE OR SHE IS AUTHORIZED TO BIND THE END-USER TO THE TERMS HEREOF. IF END-USER DOES NOT ACCEPT THIS EULA OR DID NOT PURCHASE OR ACQUIRE THIS LICENSE FOR SOFTWARE FROM AN APPROVED SOURCE, END-USER HAS NO LICENSE OR RIGHT TO USE THE SOFTWARE AND THE LIMITED WARRANTY AND INDEMNIFICATION PROVISIONS UNDER THIS EULA DO NOT APPLY.

- 1. Scope of Agreement & Definitions.
  - 1.1. Scope of Agreement. This EULA applies to Software and Support from Netgate or its authorized distributors or resellers. If you purchased a license or Support directly from Netgate, the provisions of your purchase agreement with Netgate apply. If you obtained a license for the Software and/or purchased Support through a distributor or reseller authorized by Netgate, the provisions of your purchase agreement with the distributor or reseller apply. To the extent allowed by law, Netgate may change or modify the terms and conditions of this EULA without further notice.
    - 1.2. Definitions
      - 1.2.1. “Bare Metal” refers to a computer system without a base operating system (OS) or installed applications. It is a computer’s hardware assembly, structure and components that installs with either the firmware or basic input/output system (BIOS) software utility or no software at all.
      - 1.2.2. “Bare Metal License” refers to a license to install the Software as the

OS. The license and associated license fee or royalty will be identified in the purchase documentation.

        - 1.2.3. “Netgate Offerings” refers to Software, Support and documentation therefore.
        - 1.2.4. “Hypervisor” means proprietary or open source software provided by a third party that allows one or more Virtual Machines to run concurrently on a host server.
        - 1.2.5. “Software” refers to the software, Source Code and documentation, including but not limited to patches, bug fixes and derivatives thereof (if any) provided under this EULA or by Netgate.
        - 1.2.6. “Source Code” means the literal computer code of the Software and any material beyond the literal code itself that facilitates or expedites the review and understanding of the Software.
        - 1.2.7. “Subscription” refers to a license that is limited for a specific time period as noted in your purchase documentation.
        - 1.2.8. “Support” refers the support and other services (if any) provided by Netgate to the End-User. Netgate reserves the right to revise or cancel support obligations.
        - 1.2.9. “Perpetual” refers to a license that is indefinite in duration associated with the intellectual property rights in software except as provided by this EULA.
        - 1.2.10. “Virtual Machine” means a software-based implementation that emulates the computer architecture and functions of a real world computer.
        - 1.2.11. “Virtual Machine License” refers to a license to implement a Virtual Machine(s) on a Hypervisor. A license must be purchased for each instance of the Software used to implement a Virtual Machine (each implementation hereinafter referred to as an “Instance”).

- 2. License and License Restrictions.
    - 2.1. License. Subject to the provisions of this EULA and payment of the applicable fees, Netgate grants End-User a limited, non-sublicensable, non-exclusive, non-

transferable, non-assignable license to use for End-User's own internal purposes the Software only in object code form, and subject to any applicable limitations and restrictions under End-User's agreement with the distributor or reseller. Licenses will be either a Virtual Machine License or Bare Metal License that is either a Subscription or Perpetual as indicated on your invoice and your purchase documentation. End-User may only use the Software with Hypervisors supported by Netgate and only in accordance with the Software documentation and policies provided by Netgate. The license(s) granted herein excludes licenses obtained for evaluation purposes. End-User may only use the Software in a manner for which End-User has purchased or obtained a valid license.

- 2.2. License Restrictions. All Software delivered hereunder is licensed, not sold. Except as expressly provided in this EULA, End-User may not itself, or through any parent, subsidiary, affiliate, agent, or other third party, or permit third parties to:
  - 2.2.1. Modify, translate, adapt, change, enhance or create derivative works based upon the Software;
  - 2.2.2. Copy, or otherwise reproduce the Software in whole or in part;
  - 2.2.3. Decompile, translate, reverse engineer, disassemble, attempt to discover any source code or underlying ideas or algorithms, structure, architecture or algorithms of the Software (except to the extent that applicable law or any public license prohibits reverse engineering restrictions), or otherwise reduce the Software to human-readable form;
  - 2.2.4. Remove, modify or otherwise tamper with any notice or legend on any labeling on any physical media containing the Software;
  - 2.2.5. Use, license, sell, transfer, or in any way distribute or sublicense the Software that is outside the scope of the licenses granted herein;
  - 2.2.6. Provide, lease, lend, use, disclose, divulge or make available to, or permit for time-sharing or service bureau purposes the Software; or
  - 2.2.7. Take any action that would cause the Software or any proprietary portion thereof to become part of the public domain.
- 2.3. Limitations. End-User's rights in the Software are limited to those expressly granted herein. End-User may not extract or run any component of the Software

    independently. Further, End-User may not utilize any Software or portion thereof to pass traffic in a network with an unpaid version including but not limited to evaluation or open source versions of the software. All the limitations and restrictions on the Software in this EULA also apply to documentation.

    - 2.4. Derivative Works. To the extent that the End-User creates derivative software or a derivative software product (“Derivative Software”) by a method described in Section 2.2.3 or by using any Source Code or underlying ideas or algorithms, structure, or architecture of the Software and by permissible means under both this EULA and under local, state or federal law, this EULA prevents End-User from using, distributing or licensing any Derivative Software that competes with the Software or any other Netgate product for commercial uses. All use, distribution or licenses of or for the Derivative Software, regardless if it directly or indirectly competes with the Software or other Netgate products, must comply with this EULA to the extent such compliance is permitted under applicable laws.

    - 2.5. Third Party and Open-Source Software. The Netgate Offerings may include third-party software and such third-party software may be licensed under terms different from those in this EULA. Portions of the Software are only available to End-User under public licenses (including the GNU General Public License (“GPL”), the GNU Lesser General Public License (“LGPL”), and other open source or public licenses, each a “Public License.” End-User’s rights and obligations with respect to such Software are as set forth in the applicable Public License and this EULA. Information about applicable Public Licenses may be found in the electronic media or content downloaded with the Software. Otherwise, to obtain a copy of the applicable licensing terms for the open source software used by Netgate, please refer the following website (as may be updated from time to time): https://github.com/Netgate. End-User either must agree to the terms of each applicable Public License or not exercise such licensed rights. This EULA is not intended to change or restrict the terms of any Public License, and Netgate does not seek to restrict, or receive compensation for, the copying or redistribution of publicly licensed code that is otherwise freely redistributable to third parties (and not otherwise restricted by federal copyright or other laws). Netgate disclaims all liability and warranties with respect to open source software.

- 3. Support.

  - 3.1/. Support. If the Netgate Offerings include Support and require registration or activation, the End-User is responsible for registering or activating Support for the Software via the website designated by Netgate. Netgate's obligation to provide the Support is conditioned upon such registration or activation, receipt of all amounts due and payable for the Software licenses and Support, and End-User's compliance with this EULA. If End-User reports an issue to Netgate related to the Software ("Service Request"), End-User will classify the Service Request according to the "Severity Level" descriptions located in the Support Plan Policies document located on Netgate's website. Additional charges may apply if Netgate determines that the cause of the Service Request was not related to the Software or the request is not covered by Netgate's Support obligations.

  - 3.2/. Cancellation of Support. Netgate may cancel Support at any time on thirty (30) days prior written electronic notice.

  - 3.3/. Exclusions. Support does not cover and Netgate disclaims any responsibility for Service Requests arising out of alterations of or modifications to the Software performed by parties other than Netgate, accident, negligence, improper installation, misapplication, abuse, alteration or misuse of the Software or End-User's failure to use the Software in accordance with this EULA or the documentation and instructions provided by Netgate under this EULA. If End-User modifies, alters or changes the Software, such changes will void the Support and result in additional fees.

- 4. Disclaimer of Warranties.

  EXCEPT AS EXPRESSLY SET FORTH IN THIS EULA, THE NETGATE OFFERINGS AND THIRD-PARTY PRODUCTS (IF ANY) ARE DELIVERED "AS IS" AND NEITHER NETGATE NOR ITS THIRD-PARTY SUPPLIERS TO THE EXTENT ALLOWED BY APPLICABLE LAW MAKES ANY OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE APPLICABLE WARRANTY PERIOD. IF END-USER MADE ITS PURCHASE THROUGH A THIRD PARTY, NETGATE IS NOT RESPONSIBLE FOR THE REPRESENTATIONS OR WARRANTIES MADE BY SUCH THIRD PARTY. Netgate, its authorized third party reseller(s), or its third party suppliers do not warrant that the Netgate Offerings will meet End-User's requirements, or that the Netgate Offerings will operate in the combinations which End-User may select for use, or that the operation of the Netgate Offerings will be uninterrupted or error-free. The Software may include tracking and/or disabling features. Availability of Netgate Offerings varies by location. Netgate, its authorized third party resellers or its third party suppliers are not responsible for pricing, typographical or other errors and reserves the right to cancel any orders arising from such errors. End-User acknowledges that security in Netgate Offerings does not guarantee the security of End-User's network, and that End-User is responsible for all other aspects of security, including but not limited to correct installation and setup of the security features of the Netgate Offerings and all related requirements, correctly configured security policies, selection of hardware and software (including network security tools), correct installation, configuration, and maintenance of the hardware and software, the interoperability of the various components of End-User's network, and a physically and electronically secure operating environment. Due to interoperability requirements, End-User acknowledges and agrees that the use of any third-party products, including but not limited to, third-party software, may cause errors in the operation of the Software or may cause additional resolution time which may not be covered by Support. End-User agrees to pay for any time spent by Netgate diagnosing issues that result from use of third party products which will be billed at Netgate's hourly billing rate. End-User agrees to pay such amounts without deduction or set-off net thirty (30) days from the date of invoice in United States ("U.S.") dollars.

- 5. Resale Products.

  "Resale Products" are those third party products or services that may be offered or sold with Netgate Offerings. Resale Products are not manufactured or published by Netgate, and may not be supported or serviced by Netgate. Should Netgate assist End-User in procuring Resale Products, the third party, and not Netgate, is responsible for any representations, warranties, obligations and offerings made by such third party.

- 6. Indemnification.

  - 6.1. By Netgate. Subject to the provisions of this EULA, Netgate will defend and indemnify End-User against any third-party claim that the Software (excluding Resale Products and open-source software) infringes a United States or a European Union patent, copyright, or misappropriates a valid trade secret; provided End-User shall (i) promptly notify Netgate in writing of the claim; (ii) provide Netgate sole control over the defense and settlement of such claim, at Netgate's expense and with Netgate's choice of counsel; and (iii) at Netgate's request and expense (for End-User's out of pocket expenses), provide full information and reasonable assistance to Netgate with respect to such claim.

- 6.2. Exclusions. Netgate is not obligated to defend or indemnify, and is not liable in any manner, for infringement arising out of: (a) required compliance with End-User provided technology or specifications; (b) modification of the Software (except modifications provided by Netgate) or use of such Software in a manner not contemplated or approved in writing by Netgate; (c) End-User's combination of Software with hardware, software or other materials not provided by Netgate or designed for use with the Software; (d) End-User's failure to use reasonable materials or instructions provided by Netgate that would have rendered Software non-infringing; (e) End-User's use of Software not currently supported by Netgate; or (f) End-User's use of Software in breach of this EULA.

- 6.3. Existing Claims. Netgate has no obligations under this Section if End-User was aware of any actual, pending or threatened claims that are the subject of Netgate's indemnity obligation hereunder at the time End-User purchased or secured the applicable license for the Software. Netgate's obligation to indemnify End-User applies only to final judgments entered in a lawsuit by a court of competent jurisdiction or proceeding or with respect to Netgate-approved settlements arising out of such a proceeding. End-User may join in defense of a claim with counsel of its choice at its expense and subject to Netgate's exclusive right to control the defense. Netgate is not liable to End-User under this EULA for any Software if End-User does not have an active Support contract in place for the Software at the time of the claim.

- 6.4. Netgate's Options. If at any time any Software becomes or in the opinion of Netgate may become the subject of a claim of infringement as provided in this Section, Netgate may, at its option and expense: (i) procure for End-User the right to continue using such Software; (ii) replace or modify such Software; or, in the event Netgate concludes that neither option (i) or (ii) is reasonably available or cost efficient, (iii) terminate the license granted under this EULA with respect to such Software. NETGATE WILL NOT BE LIABLE FOR ANY COSTS OR EXPENSES INCURRED WITHOUT ITS PRIOR WRITTEN AUTHORIZATION. THE FOREGOING PROVISIONS STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF NETGATE AND ITS SUPPLIERS, AND THE EXCLUSIVE REMEDY OF END-USER WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT BY THE NETGATE OFFERINGS, ANY PART THEREOF, OR THEIR OPERATION.

- 7. Proprietary Rights.

  Netgate is the sole and exclusive owner of all worldwide rights, title and interest in and to the Software, and End-User acquires no rights therein other than the limited rights of use as set forth herein. By way of example, Netgate, and each of its third party suppliers, where applicable, owns and retains for itself all right, title and interest in and to all designs, engineering details, data, materials, discoveries, inventions, copyrights, trade secrets, patents and other intellectual property rights or other proprietary interests pertaining to or reflected by the Software, Source Code, or Netgate Offerings.

- 8. Confidential Information.

  - 8.1. Confidentiality. Confidential Information means any information disclosed by Netgate to End-User, either directly or indirectly, in writing, orally or by inspection of tangible objects, proprietary information, technical data, trade secrets (other than the Source Code) or know-how (including but not limited to research, product plans, products, services, customers, markets, works of original authorship, photographs, negatives, digital images, software, computer programs, know-how, ideas, inventions (whether or not patentable), processes, formula, technology, designs, drawings, engineering, hardware configuration information, marketing or finance documents and other technical, business, financial, customer and product development plans, forecasts, strategies and information), which is designated as "Confidential," "Proprietary" or some similar designation by Netgate or which the End-User knows or has reason to known is regarded as confidential by Netgate ("Confidential Information"). Confidential Information may also include information disclosed to Netgate by third parties. End-User will at all times keep in confidence all such Confidential Information, and shall not use such Confidential Information without Netgate's written consent except in performance of End-User's duties hereunder. End-User may not disclose the Confidential Information to any person except its employees to whom it is necessary to disclose the Confidential Information for permissible internal business purposes and who have agreed to receive it under terms at least as restrictive as those specified in this EULA. End-User's obligation to protect Confidential Information is satisfied if End-User utilizes the same control over the Confidential Information as End-User employs to avoid disclosure of End-User's own confidential and valuable information (but no less than commercially reasonable control). End-User will immediately give notice to Netgate of any unauthorized use or disclosure of the Confidential Information. End-User agrees to assist Netgate in remedying such unauthorized use or disclosure of the Confidential Information. The foregoing obligations will not apply to the extent End-User can demonstrate:

    - 8.1.1. The disclosed Confidential Information was part of the public domain at the time of disclosure;
    - 8.1.2. End-User can establish by prior written evidence that the disclosed Confidential Information was in the possession of the End-User at the time of its disclosure by Netgate;
    - 8.1.3. End-User received the disclosed Confidential information from a third party without similar restrictions on disclosure and without breach of this EULA or any other agreement; or
    - 8.1.4. End-User is required to disclose the Confidential Information to a government agency to further the objectives of this EULA, such as to obtain permission to distribute the Netgate Offerings as permitted hereunder, or in the event a proper court of competent jurisdiction orders its disclosure; provided, however, that End-User will use its best efforts to minimize the disclosure of such Confidential information and will consult with and assist Netgate in obtaining a protective order prior to such disclosure.

- 8.2. Retention Rights. Netgate may use any general learning, skills, or know-how or any information retained in the unaided memory of a person who had access to the End-User’s information for any purpose. Netgate and End-User are free to develop products independently without the use of the other’s information. Netgate is not obligated to restrict the future work assignments of people who have had access to End-User’s information or to restrict Netgate product development or plans in any way due to such access. Netgate may use any technical information it derives from providing the Support relating to Service Request resolution, troubleshooting, functionality enhancements and fixes. In the event of an unauthorized use, distribution or disclosure of any Confidential Information, the parties agree that Netgate will not have an adequate remedy at law. Therefore, injunctive or other equitable relief may be appropriate to restrain such use, distribution or disclosure, whether threatened or actual. To the extent that Netgate provides End-User serial numbers, access codes, entitlement numbers or the license to access Software or Support, End-User is responsible for the security and use of such information, including that contained in the documentation therefore. If End-User believes any Netgate Confidential

Information has been lost, stolen, or misused, End-User must immediately notify Netgate and its designated Support contact.

  - 8.3. Source Code. The Source Code constitutes a trade secret and may not be disclosed under Section 8.1 or otherwise. End-User may not disclose or use the Source Code without the prior express written consent of Netgate.

- 9. Export Controls.

  End-User acknowledges that the Netgate Offerings provided under this EULA are subject to the provisions of the U.S. Export Administration Regulations and may be subject to export and import regulations in countries outside the U.S., and agrees to comply with all such applicable laws and regulations, as required. End-User acknowledges and agrees that it will not import, export, re-export, transfer or use, directly or indirectly, the Netgate Offerings in violation of the laws and regulations of any applicable jurisdiction. This restriction expressly includes, but is not limited to, the export regulations of the United States, and the import and export restrictions of any country in which End-User transacts business. End-User also agrees that it will not export, import, transfer, use or re-export the Netgate Offerings, directly or indirectly (i) to any U.S. embargoed country; (ii) to any person or entity on a denial list published by the U.S. Government; or (iii) for any end use that is prohibited by United States or other applicable law, including nuclear, missile, chemical biological weaponry or other weapons of mass destruction. End-User acknowledges that certain Software or technologies may be classified as “restricted encryption” items under section 740.17(b)(2) of the U.S. Export Administration Regulations and may require export licenses or U.S. re-export approval when being shipped from the U.S. or other countries. End-User agrees to indemnify, defend (with counsel approved in writing in advance by Netgate) and hold Netgate, its affiliates, subsidiaries, officers, directors, employees and agents, harmless against any claims for cost, damage, expense or liability arising out of or in connection with any breach of End-User’s obligations under this Section.

- 10. LIMITATION OF LIABILITY.

  IN NO EVENT WILL NETGATE BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND. IN ADDITION, IN NO EVENT WILL NETGATE BE LIABLE FOR LOSS OF PROFITS OR REVENUE, LOST BUSINESS, AND LOST OR CORRUPT DATA OR GOODWILL ARISING OUT OF OR RELATED TO THIS EULA HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY. THESE LIMITATIONS APPLY

NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. NETGATE'S ENTIRE LIABILITY ARISING OUT OF OR RELATED TO THIS EULA SHALL BE LIMITED TO THE AMOUNTS PAID OR PAYABLE TO NETGATE FOR THE SOFTWARE IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE. THE FOREGOING LIMITATIONS SHALL NOT APPLY ONLY TO THE EXTENT THAT SUCH CONTRACTUAL LIMITATIONS CANNOT, UNDER APPLICABLE LAWS, SO LIMIT NETGATE'S LIABILITY.

- 11. Term and Termination.
  - 11.1. Term and Termination. The initial term applicable for the license(s) granted hereunder and for any associated Support begins on the date End-User purchases the license for the Software and continues through the term purchased by the End-User and as stated on End-User's invoice. Netgate may immediately terminate the license(s) granted under this EULA if End-User breaches any provision of this EULA.
  - 11.2. Effect of Termination and Survival. Notwithstanding any other obligation hereunder, upon any termination or expiration of this EULA, End-User shall return to Netgate each and every copy or certify their destruction, and End-User shall not retain any copies of any Netgate Confidential Information or Software. The following Sections of this EULA survive termination or expiration of this EULA or applicable order: 1, 4, 5, 7-12.
- 12. Miscellaneous.
  - 12.1. Governing Law; Venue. The EULA and any other agreement involving End-User and Netgate are governed by the laws of the State of Texas, or federal law as applied by the State of Texas, excluding any law that would require the application of the law of a different jurisdiction. Exclusive jurisdiction and venue for any disputes, claims or causes of action arising out of or relating to this EULA, the Netgate Offerings, or relationship between the parties, shall be in Austin, Texas. With respect to any Netgate Offerings licensed or purchased by the End-User in the United States or anywhere in the world, this EULA is entered into, and all offerings shall be performed and delivered by or on behalf of Netgate in the United States. By ordering or using any Netgate Offerings, End-User agrees that the Federal Arbitration Act and the laws of the State of Texas, without regard to principles of conflict of laws, will govern this EULA, and any dispute, claim or cause of action of any sort that might arise between End-User and Netgate. Any dispute, claim or cause of action arising out of or relating to this EULA or any Netgate Offerings licensed thereunder must be brought within one (1) year after the dispute, claim or cause of action arises.
  - 12.2. Injunctive Relief. The exclusive jurisdiction and venue set forth herein does not prevent Netgate from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any other appropriate jurisdiction.

- 12.3. Disclaimer. The U.N. Convention on the International Sale of Goods shall not apply to any order of Software or Support. Each party agrees that the Uniform Computer Information Transactions Act or any version thereof adopted by any state in any form ("UCITA") does not apply to the EULA and, to the extent that UCITA is applicable, then Netgate and End-User each agree to opt out of the applicability of UCITA pursuant to the opt-out provision(s) contained in UCITA.

- 12.4. Service of Process. End-User agrees that service on End-User at End-User's address stated in any order from or communication to Netgate constitutes a valid means of service for any proceeding, either in lieu of or in addition to service on End-User via End-User's registered agent.

- 12.5. Severability. If any term or other provision of this EULA is determined by a non-appealable decision of a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this EULA shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, that term or provision shall be severed from this EULA and there shall be deemed to be substituted a similar term or provision to accomplish the intent of the parties as closely as possible to the original term or provision, as determined by any court or arbitrator having jurisdiction, to the extent permitted by applicable law; provided, however, that if any restriction or limitation set forth in any license granted hereunder is deemed invalid or unenforceable, the entire license shall terminate.

- 12.6. Force Majeure. Neither party shall be liable for the performance of its obligations under this EULA if it becomes commercially impracticable to perform due to any contingency beyond the reasonable control of that party, including as a result of a Force Majeure. In no event shall Netgate be required to purchase goods from others to enable it to provide the Netgate Offerings under this EULA. Each party, as applicable, shall give the other party notice of its inability to perform and particulars in reasonable detail of the cause of the inability. Each party must use reasonable commercial efforts to remedy the situation and remove, so far as is commercially reasonable and as soon as practicable, the cause of its inability to perform or comply. Each party shall give the other party prompt notice of the cessation of the event of Force Majeure. "Force Majeure" means a cause of any kind not reasonably within the control of a party, including but not limited to acts of God and public enemy, sabotage, boycotts, disruptions of transportation facilities, inability to obtain supplies or materials, acts of government or its agencies, strikes, labor disputes, power disruptions, lockouts or any other industrial disturbance, or judicial action.

- 12.7. Independent Contractors. The relationship between the parties established by this EULA is that of independent contractors, and nothing in this EULA shall be construed to create a relationship of agency, employment, joint venture, or partnership between the parties or to allow either party to create or assume any obligation on behalf of the other party.
- 12.8. Subcontractors. Netgate may delegate its duties to subsidiaries or engage subcontractors to perform certain of its obligations under this EULA.
- 12.9. Compliance with Statutes and Regulations. Each party will comply with all applicable Federal, state, local and foreign statutes, rules, regulations and orders, including but not limited to the Foreign Corrupt Practices Act.
- 12.10. Nuclear, Aviation or Life Support Application. Netgate specifically disclaims liability for use of the Netgate Offerings in connection with the design, construction, maintenance and/or operation of any (i) nuclear facility, (ii) aircraft, aircraft communication or aircraft ground support system, or (iii) safety or health care control system, including but not limited to life support system.
- 12.11. U.S. Government Restricted Rights. The Software and any accompanying documentation provided under this EULA incorporate commercial computer software and commercial computer software documentation developed exclusively at private expense, and is in all respects proprietary property belonging solely to Netgate or its suppliers. If End-User is acquiring the Software on behalf of any part of the United States Government, the following provisions apply. The object code and accompanying documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFAR Section 227.7202 and FAR 12.212(b), as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the object code and/or the accompanying documentation by the U.S. Government or any of its agencies shall be governed solely by the terms of this EULA and shall be prohibited except to the extent expressly permitted by the terms of this EULA. Any technical data provided that is not covered by the above provisions is deemed to be “technical data” and

"commercial items" pursuant to DFAR Section 252.227.7015(a). Any use, modification, reproduction, release, performance, display or disclosure of such technical data shall be governed by the terms of DFAR Section 252.227.7015(b).

- 12.12. Excluded Data. The Software provided under this EULA is not designed to offer functionality providing security and access management for the processing and/or storage of the following categories of data: (1) data that is classified and/or used on the U.S. Munitions list, including software and technical data; (2) articles, services and related technical data designated as defense articles and defense services; (3) ITAR (International Traffic in Arms Regulations) related data; and (4) other personally identifiable information that is subject to heightened security requirements as a result of End-User's internal policies or practices or by law or regulation ("Excluded Data"). End-User agrees that End-User is solely responsible for reviewing and ensuring that any data it provides to Netgate (or to which Netgate will have access) does not contain Excluded Data.
- 12.13. Audit & Retention of Records. Upon reasonable notice, Netgate shall have the right to audit and inspect End-User's usage of the Software and to verify End-User's compliance with the provisions of this EULA (including all payment terms, if any) during End-User's normal business hours. End-User shall promptly remedy any underpayments that are discovered, and if any underpayment exceeds five percent (5%) of the amount owed over the audited period, then End-User shall reimburse Netgate for the costs of the audit. End-User shall retain the applicable records pertaining to its performance obligations for five (5) years after the termination or completion of such obligation.
- 12.14. Notices. All notices under this EULA shall be in writing and shall be delivered by personal delivery, internationally recognized overnight carrier, or facsimile transmission, and shall be deemed given upon personal delivery, three (3) business days after delivery to the international carrier with proof of receipt, or by fax upon acknowledgment of receipt of electronic transmission. Notices to Netgate shall be sent to Netgate, Attention: Legal, 4616 West Howard Lane, Suite 900, Austin, TX 78728, Fax Number (512) 646-4034, and to End-User at its address of public record.
- 12.15. Assignment. End-User shall not, directly or indirectly, in whole or in part, whether by operation of law or otherwise, assign or transfer this EULA, without Netgate's prior written consent, and any attempted assignment, transfer or delegation without such prior written consent shall be voidable at the sole option of Netgate.

Netgate or its successors may assign this EULA, in whole or in part, and any of its rights and obligations hereunder, in its discretion. Without limiting the foregoing, this EULA will be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

- 12.16. Remedies Cumulative. All rights and remedies existing under this EULA are cumulative to, and not exclusive of, any rights or remedies otherwise available.
- 12.17. Waiver; Amendment. Failure or delay on the part of either party hereto in the exercise of any right hereunder shall not impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right. No change or amendment will be made to this EULA except by an instrument in writing signed on behalf of each of the parties to such agreement.
- 12.18. No Implied Licenses. Nothing contained in this EULA shall be construed as conferring any rights by implication, estoppel or otherwise, under any intellectual property right, other than the rights expressly granted in this EULA.
- 12.19. Translations; Order of Precedence. This EULA is in the English language only, which language shall be controlling in all respects, and any versions hereof in any other language shall be for accommodation only and shall not be binding upon the parties. All communications and notices to be made or given pursuant to this EULA, and any dispute proceeding related to or arising hereunder, shall be in the English language. In the event of any discrepancy or inconsistency between different language versions of the EULA (and all associated documents or correspondence concerning this EULA), the English language version shall prevail. If any of the provisions of this EULA and the End-User's purchase agreement for the license or Support conflict or are otherwise inconsistent, the provisions of this EULA shall apply.
- 12.20. Entire Agreement. This EULA, and any or all End-User orders attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior written and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof.

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