



READ THIS AGREEMENT BEFORE DOWNLOADING, INSTALLING, OR USING THE SOFTWARE. VERSA NETWORKS IS WILLING TO LICENSE THE SOFTWARE TO YOU OR THE ENTITY YOU REPRESENT (COLLECTIVELY "YOU") AND MAKE AVAILABLE ASSOCIATED SUPPORT & MAINTENANCE SERVICES ONLY IF YOU ACCEPT ALL OF THE TERMS OF THIS AGREEMENT.

YOU SHALL HAVE NO RIGHT TO INSTALL OR USE THE SOFTWARE OR TO RECEIVE ANY SUPPORT & MAINTENANCE SERVICES THAT YOU MAY HAVE ORDERED UNLESS YOU HAVE RECEIVED A COPY OF THE SOFTWARE FROM VERSA NETWORKS OR A VERSA NETWORKS-AUTHORIZED PARTNER OR RESELLER (COLLECTIVELY, AN "APPROVED SOURCE"), AND (II) YOU ACCEPT ALL TERMS OF THIS AGREEMENT.

IF YOU DO NOT AGREE TO ALL TERMS OF THE AGREEMENT, OR IF YOU HAVE RECEIVED OR ORDERED THE SOFTWARE FROM SOMEONE WHO IS NOT AN APPROVED SOURCE, THEN (A) DO NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE (AND, IF APPLICABLE, THE HARDWARE PRODUCT IN WHICH IT WAS PRELOADED) OR REQUEST ANY SUPPORT & MAINTENANCE SERVICES, AND (B) EITHER (I) RETURN THE HARDWARE PRODUCT, IF APPLICABLE, RETURN OR DESTROY ALL COPIES OF THE SOFTWARE AND REQUEST, IF APPLICABLE, FULL REFUND OF THE SOFTWARE LICENSE FEE FROM THE PARTY THAT FURNISHED YOU THE SOFTWARE. By installing or using any software, using the hardware product in which the software was delivered preloaded, if applicable, or by using any support & maintenance services You will be deemed to have accepted this Agreement.

IF YOU AND VERSA NETWORKS OR VERSA AUTHORIZED PARTNER HAVE SIGNED A SEPARATE WRITTEN AGREEMENT COVERING YOUR RIGHTS AND DUTIES WITH RESPECT TO THE SOFTWARE, THEN THAT WRITTEN AGREEMENT TAKES PRECEDENCE OVER ANY CONFLICTING TERMS OF THIS AGREEMENT.

Versa Networks, Inc.

Your Company:

6001 America Center, Suite 400

Santa Clara, CA 95002

Attention:

Attention:

IN WITNESS WHEREOF, the parties hereto have caused this Mutual Non-Disclosure Agreement to be executed as of the Effective Date.

Versa Networks, Inc.

By: _____
Title: _____
Date: _____

Company

By: _____
Title: _____
Date: _____

END USER LICENSE AGREEMENT (October 2018 Release)

This Versa Networks End User License Agreement ("**Agreement**") governs Your rights and duties with respect to the Software. Capitalized terms used in this Agreement are defined in Section 28 (Definitions).

1. License Grant.

- a. When You purchase or rightfully receive a license to a Software product, Versa grants You a worldwide, non-exclusive, non-transferrable right to install and use that Software for the term stated in Your Proof of Entitlement.
- b. Your use of the Software may not exceed the quantity of License Metric units that You purchased,
- c. You may install and use the Software on any device that supports it. You may make a reasonable number of back-up copies of the Software, provided each copy contains all of the original copyright, trademark and other proprietary notices.

2. Licensing Model.

Software offered by Versa for production or commercial application employs no programmatic license enforcement. It is Your responsibility to both provide Your usage level to Versa, and purchase sufficient License Metric units to meet Your Software usage. Versa reserves the right to verify Proof of Entitlement and corresponding Software usage as defined in Section 10 (Recordkeeping and Audits).

3. Term of License.

- a. Subscription License. If Your license is a Subscription License (see Section 5 below), then the term of the Subscription Licenses shall be 12 months from the date & time of activation unless Your Master Purchase Agreement with Versa ("**MPA**") states otherwise. The term of Your Subscription License is subject to the actions and status as defined in Section 5 (Subscription License). Subscription License renewals are subject to terms of Versa's then-current *EOL and EOS policies and procedures* (see [respective document from Versa](#)).
- b. Special Purpose License. If Your license is a Special Purpose License (see Section 7 below), then the term shall be time-bound and expire on a specific date & time unless Your MPA states otherwise. If You have no Proof of Entitlement or if Your Proof of Entitlement fails to state a license term, then the term of Your license shall be 45 days from the date that You first install and run the Software, whether the Software was provided via download or otherwise.

4. License Metrics:

- a. **FlexVNF** – Each FlexVNF is associated with a Feature Tier and Bandwidth for licensing and entitlement purposes and gets charged accordingly. Each FlexVNF and the Organization configured within FlexVNF has a unique identifier, respectively Appliance-ID and Org-ID, used in software to define and track License Metrics that are associated with Your license grant.
- b. **High Availability (HA)** – A pair of FlexVNFs can be uniquely designated as part of a high availability (HA) pairing as defined by the Versa License Metrics.
- c. **Director** – A FlexVNF instance is always Director capable and is automatically included as a License Metric for a given FlexVNF
- d. **Analytics** - A FlexVNF Organization instance can be uniquely designated as entitled for Analytics as defined by the License Metrics for a given FlexVNF. While the network operator has the flexibility to select Analytics option for each Organization for their in-house book keeping reasons, Versa will charge based on enablement of Analytics across **any** of the Organizations of a given FlexVNF instance identified by unique Appliance-ID.
- e. **Solution Tier** – Unique set of features that designate a Solution Tier definition for a specific FlexVNF at the granularity of an Organization. While the network operator has the flexibility to select separate feature and bandwidth tiers for each organization for their in-house book keeping reasons, Versa will charge based on the highest feature tier across all Organizations of a given FlexVNF instance identified by unique Appliance-ID.
- f. **Solution Tier Options** – Unique set of features that designate a Solution Tier option for a specific FlexVNF Organization. Solution Tier Options are only available for specific Solution Tiers that qualify for Solution Tier Options.
- g. **Bandwidth** – Bandwidth capacity designation for a FlexVNF Organization, where Bandwidth means the maximum Bandwidth measured at a given time on all inbound interfaces for a specific FlexVNF instance. While the network operator has the flexibility to select separate bandwidth capacities for

each organization for their in-house book keeping reasons, Versa will charge based on the aggregate bandwidth across all Organizations of a given FlexVNF instance identified by unique Appliance-ID.

- h. **Other Forms of License Metrics.** License Metrics are defined in Section 4 above unless Your Other Forms of License Metrics in Your MPA states otherwise. Other Forms of License Metrics may be defined based on unique entitlement metrics and corresponding usage measurements as identified and defined in Your MPA.
- 5. **Subscription License.** Subscription Licenses are used for production or commercial applications. The License Metrics described in Section 4 above apply to Your license and corresponding Proof of Entitlement. The term of the Subscription License shall be 12 months from the date & time of activation unless Your MPA states otherwise. The Term of License is regulated by the Subscription start date & time and end date & time. The start and end date & time are controlled by specific **Subscription Actions** taken by You and directly affect Your **Subscription Status**. Subscription Actions and corresponding Subscription Status are defined below:
 - a. New. Status. The Subscription License is valid, but outside the Term of License, since the Subscription Status is not Active. A Subscription License can only have a New status association if the Subscription License has never received an Action resulting in an explicit status change.
 - b. Test. Action. Specific action determines the Subscription License is Testing status state date & time.
 - c. Testing. Status. The Subscription License is valid, but outside the Term of License, since the Subscription Status is not Active. Testing status is available for 15 days total for a Subscription License that has never been Active. All functionality as defined by Your Subscription License is available in Testing status.
 - d. Activate. Action. Specific action determines the Subscription License start date & time for a Subscription License.
 - e. Active. Status. The Subscription License is valid and within the Term of License. All functionality as defined by Your Subscription License is available in Active status.
 - f. Suspend. Action. Specific action determines the Subscription License suspend date & time and suspends the Subscription License. Suspend action is only available if the Subscription License is in an Active status. The Subscription License is valid and still within the Term of License. However, functionality as defined by Your Subscription License is suspended. The Suspend action is available for a total of 30 days only for a Subscription License. After a total of 30 in Suspended status, Suspend status is no longer available for the Term of the License and a Subscription License is then considered in Active status for the Term of License.
 - g. Suspended. Status. The Subscription License is valid and within the Term of License. All functionality as defined by Your Subscription License is unavailable until Your Subscription License is in Active status.
 - h. Reactivate. Action. Specific action determines the Subscription License reactivate date & time after a Suspend action and reactivates a Subscription License. The result of a Reactive action is the Subscription License is now Active. A Reactivate action results in the time measured between a Suspend action and a Reactivate action being added to the end date & time of the Term of License, unless the Reactivate action takes place after the end date & time of the Term of License. If the Reactivate action takes place after the end date & time of the Term of License, the time measured between the Suspend date & time and Reactivate date & time will be added to the Reactive date & time and will result in a new Term of License end date and time. Reactivate actions are not available after the available Suspend status time is exhausted as defined in 5.c in this section.
 - i. Upgrade. Action. Specific action determines the Subscription License upgrade details. An Upgrade action results in termination of the previous subscription without any termination penalties and start of new subscription with the upgraded capacity. Remaining Versa dollar credits coming from the termination of the previous tier of service would be applicable to the new tier
 - j. Renew. Action. Specific action determines the Subscription License is set for renewal. Renewals are automatic for a Subscription License at the end date and time for the Term of License, unless You explicitly renew the Subscription License manually. Renewals result in the same start day and time as the original Subscription License and same Term of License.
 - k. Terminate. Action. Specific action determines a Subscription License is set for termination. Subscription License terminations are not immediate. A Terminate action results in a Subscription License expiring on the end date and time for Your Term of License. Terminate action cannot be revoked and permanently set a Subscription License for expiry. Termination prior to subscription end date, results in an Early Termination Penalty or alternatively to waiving of the usage rights for the rest of the subscription duration. See the Section on Termination for more information.

- I. Downgrade. Action. Specific action determines a Subscription License is set for termination first and subsequently a new Subscription License is started. As result of the Termination prior to the Subscription End Date, an Early Termination Penalty fee is incurred. See the Section on Termination for more information.

6. **Active-Standby and High Availability License Definitions for FlexVNF:**

- a. **Active-Standby Pair:** A designated pair of FlexVNF sites while one node is expected to be Active and the other is expected to be Standby. For nodes to be classified as Active Standby pair, they have to be selected as Active-Standby pair as part of the licensing and subscription process. Once the clearly designated pair of nodes are designated as Active-Standby, only one node is allowed to process transit data packets at any given time, regardless of which node is active or standby. Both nodes transmitting or receiving transit traffic are considered two active nodes and they are not licensed as Active-Standby pair of nodes.
 - b. **Active Node of an Active-Standby Pair:** A node is considered as active when it is transmitting or receiving transit data packets and when it is part of the Active-Standby pair. In order for a FlexVNF node to be considered active, its subscription has to be activated.
 - c. **Standby Node of an Active Standby Pair:** A node is considered as standby when it is not transmitting or receiving transit data packets. Management and control packets destined to or originated from the Standby are not considered as transit packets therefore, outside the scope of Standby node definition. In order for a FlexVNF node to be considered as standby, its subscription has to be activated and it has to be set to be part of an Active-Standby pair. Nodes that are not part of processing packets while they are not part of an Active-Standby pair are not considered a Standby node.
7. **Special Purpose License.** Special Purpose Licenses may not be used for any production or commercial application unless designated as a Custom Use License (as defined in Section 7.d) and Your MPA states that the Custom Use License can be used for a production or commercial use application. License Metric limitations do not apply to Special Purpose Licenses unless designated as a Custom Use License and Your MPA states that the Custom Use License applies specific License Metric limitations.
- a. Demonstration Use License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Versa) identifies Your license as "Demonstration Use" or with words of like meaning, AND if You are a Versa-authorized partner, distributor or reseller, then for the license term You may use the Software only to demonstrate features and performance of the Software to prospective buyers and only while You remain a Versa-authorized partner, distributor or reseller.
 - b. Lab Use License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Versa) identifies Your license as "Lab Use" or with words of like meaning, then for the license term You may install and use the Software only for internal lab or research use.
 - c. Evaluation Use License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Versa) identifies Your license as "Evaluation Use" or with words of like meaning, or if You have no Proof of Entitlement, then for the license term You may install and use the Software only for internal evaluation of the Software.
 - d. Custom Use License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Versa) identifies Your license as "Custom Use" or with words of like meaning, then for the license term You may install and use the Software only for use as explicitly defined in Your MPA.

8. **Support & Maintenance Services**

- a. General. Subject to its EOL/EOS Policies, Versa makes available the support & maintenance services (the "**Support & Maintenance Services**") described in the Versa Support Services Agreement ("**SSA**") (see respective document from Versa). All Support & Maintenance Services are subject to the terms and conditions of this EULA and the Versa SSA.
- b. Subscription License. Your Software is licensed under a Subscription. During the term of the Subscription, Versa shall provide Support & Maintenance Services at no additional charge.
- c. Special Purpose Licenses. Versa has no obligation to furnish Support & Maintenance Services of any kind for Software licensed under a Special Purpose License. Versa may provide certain Support & Maintenance Services for Special Purpose Licenses for demonstration, lab & evaluation to the extent described in the Versa SSA or explicitly defined in your MPA.
- d. Updates. Updates are available to You only as a part of Support & Maintenance Services. By downloading or taking delivery of any Update, Your rights with respect to the Update are subject to the terms the latest revision of this Agreement posted at the time of Your receipt of the Update, the then-current applicable SSA, then-current EOL/EOS Policies, Your Proof of Entitlement for the Software

and any non-standard terms and conditions specifically defined in Your MPA. Your rights to use the Update are also subject to Your ceasing all use of the replaced Software (or, as the case may be, the replaced portion of the Software if an Update is provided in form of a patch).

9. **Certain License Restrictions, Limitations and Prohibitions.** Notwithstanding any other term of this Agreement, this Section 9 applies to all varieties of licenses, whether Subscription, Special Purpose Licenses or otherwise:

- a. No Rights or Licenses Implied. Licenses or rights in the Software not expressly granted in this Agreement shall not arise by implication or otherwise.
- b. Approved Source. You shall have no right or license in the Software unless You rightfully received the Software from an Approved Source.
- c. No Sublicensing or Assignment. You may not sublicense, transfer or assign, whether voluntarily or by operation of law, any right or license in or to the Software or under any Proof of Entitlement. Any attempted sublicense, transfer or assignment shall be void. If You are a party to a transaction (or related series of transactions) involving a merger, consolidation or other corporate reorganization (collectively, a "*Restructure*") where You do not survive the transaction(s), the transaction(s) shall also be deemed a prohibited transfer.
- d. You are Sole Licensee. No rights or licenses in the Software or any Support & Maintenance Services shall arise under this Agreement in favor of anyone other than You.
- e. Separately Licensable Software. The software image that contains Software that You license from Versa or its "**Approved Sources**" might also include additional unlicensed features or functionality that You may not use unless You purchase a separate license at an additional fee. Features and functionality are not included in your license to the revision of the Software you licensed unless a feature description for that version of the Software identifies those features and functionality as being included in a specific Solution Tier or Solution Tier Option.
- f. Restrictions on charging a fee for access or use. You shall not allow any customer or other third party to grant anyone else access for a fee or other consideration to services, content or resources that are generated, managed, distributed, provisioned, billed or enabled by the Software.
- g. Other Use Restrictions and Prohibitions. You shall ***not***, directly or indirectly:

Decompile, disassemble or reverse engineer the Software or modify, unbundle, or create derivative works based on the Software, except as expressly permitted by applicable law without the possibility of contractual waiver. If the law requires Versa to provide interface information to You to adapt the Software, Versa, at its option, may either (A) provide the information to You subject to Your acceptance of non-disclosure and use limitation terms that Versa reasonably requires, or (B) perform that adaptation itself at a reasonable charge for services.

Copy the Software except for archival purposes or as necessary for You to install and make use of the Software as expressly licensed by Versa.

Detach or separate any libraries, files, modules or other components embedded within a Software product or within a particular software image you have received even if any such library, file, module or other component is separately licensable, or use any such modules, files or other components separately from the Software product or software image in which it is embedded (except to the extent that a documented feature of the Software product is implemented by doing so);

Furnish any copy of the Software or other means of access to the Software to any third party other than to Your contractor(s) solely for Your benefit in performing its contract services for You and in that case only if that contractor has agreed to adhere to the terms of this Agreement. If You do furnish Software or access to Software to Your contractor(s), You shall remain fully and primarily responsible to Versa for compliance with all provisions of this Agreement;

Remove (or, if the license includes the right to make copies of the Software, fail to include in those copies) any readme files notices, disclaimers, marks and labels included in the Software as delivered by Versa; or

Use or allow use of the Software in violation of any applicable law or regulation or to support or facilitate any illegal activity.

10. License and Maintenance Contract fees & Taxes.

- a. Fees. Unless otherwise specified in Your MPA, Your Proof of Entitlement or a separate written agreement between You and Versa or Versa Authorized Partner, all fees are due and payable in advance upon acceptance of Your purchase order.
- b. Taxes. All prices and fees payable in respect of any license to Software (including any Subscription) or any Support & Maintenance Contract entered into with Versa or Versa Authorized Partner are exclusive of tax, unless it is stated otherwise in the contract between You and the Versa Authorized Partner. You shall be responsible for paying taxes arising from the licensing or delivery of Software (including any Subscription) or purchase of Support & Maintenance Services. If applicable, valid exemption documentation for each taxing jurisdiction shall be provided to Versa prior to invoicing, and You shall promptly notify Versa or Versa Authorized Partner if Your exemption is revoked or modified. All payments that You make shall be net of any applicable withholding tax. You will provide reasonable assistance to Versa or Versa Authorized Partner in connection with such withholding taxes by promptly providing Versa with valid tax receipts and other required documentation showing Your payment of any withholding taxes; completing appropriate applications that could reduce the amount of withholding tax to be paid; applying for reduced tax rates; and notifying and assisting Versa or Versa Authorized Partner in any audit or tax proceeding related to transactions hereunder. You shall comply with all applicable tax laws and regulations, and You will promptly pay or reimburse Versa or Versa Authorized Partner for all costs and damages related to any liability incurred by Versa as a result of Your non-compliance or delay with its responsibilities herein. Neither party shall be liable for taxes or assessments on the other party's net income, gross income, capital, net worth, franchise, privilege, property, or any similar taxes or assessments. Your obligations under this Section 10.b shall survive termination or expiration of this Agreement.

11. Termination.

- a. Early Termination for Breach. If at any time You
 - i. fail to make timely payment of any applicable fees due in respect of Software licensed or Support & Maintenance Services, or
 - ii. use the Software in excess of Your purchased License Metric units but fail timely to notify Versa of such excess use and purchase and pay for additional License Metric units as required under subsection 11.b, below, or
 - iii. otherwise breach any term of this Agreement or Your MPA,then Versa or Versa Authorized Partner may, in addition to any other remedy to which it may be entitled, terminate Your license to the Software and any rights You may have to Support & Maintenance Services.
- b. Termination for Insolvency. Either party may terminate Agreement, effective immediately upon written notice, if the other party becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors, if that petition or proceeding is not dismissed with prejudice within sixty (60) days after filing.
- c. Effect of Termination or Expiration. If Your license term expires without renewal or reinstatement or otherwise terminates, then You shall promptly destroy or return to Versa all copies of the Software and related documentation in Your possession or control.
- d. Survival. The provisions of Sections 11 through 28 shall survive termination or expiration of this Agreement.
- e. Early Termination. In the event of termination prior to the subscription end date, a 10% early termination fee is applied, unless that Early Termination Fee is larger than the remaining credit value of the subscription, or otherwise as stated in your MPA. Remaining credits coming from the early termination of the service may be used for other service instances. If all services are terminated, no fees will be paid back.
- f. Downgrade of Subscription. Downgrade of an existing subscription is the equivalent of service termination, which requires an early termination fee and the start of a new subscription service.

12. Recordkeeping and Audit.

- a. Your Duty to Monitor Use. You agree to monitor Your use of all Software and generate accurate, complete and auditable records of levels of that use.
- b. Reports of Excess Use; Purchase of Additional License Metric Units. If at any time Your maximum level of use of the Software exceeds the number of License Metric units You have purchased, then on or before ten days after the last day of the calendar quarter in which Your level of use first exceeded that limit, unless your MPA states otherwise, You shall (i) notify Versa or Versa Authorized Partner of Your maximum level of use and (ii) agree to order and purchase sufficient Licenses to meet or exceed the maximum level of use of the Software during such calendar quarter. Proof of Entitlement or Your MPA with Versa or Versa Authorized Partner may require You to report on Your usage more often. Failure either to timely report such excess use or to timely purchase and pay for the required Licenses in accordance with this subsection 12.b shall be a material breach of this Agreement.
- c. Versa's Right to Audit. In order to enable Versa or Versa Authorized Partner to verify Your compliance with this Agreement, You shall, throughout the Term of License and for three years thereafter, provide to Versa or Versa Authorized Partner and its professional advisors access to such facilities, personnel, records and reports as reasonably necessary for reasonable inspection and copying to validate compliance with this Agreement, including without limitation:
 - i. all Software monitoring records generated and maintained under this Section 12, and
 - ii. all other written or electronic data and reports that You generate or receive relevant to a determination of whether You have complied with this Agreement.
- d. If any inspection under subsection 12.c discloses that You used the Software in excess of applicable License Metric units and failed timely to comply with subsection 12.b, then on notice of the inspection results, You shall immediately:
 - i. purchase and pay for sufficient additional Licenses to meet or exceed Your maximum level of use of the Software as required at any time exceeding Your use of Your purchased License Metric units;
 - ii. if applicable, purchase and pay for Support & Maintenance Contracts sufficient to cover Your new total number of Licenses;
 - iii. pay late payment fees accruing on the purchase price of such additional Licenses and on the amount of underpayment in respect of contracts purchased or required for an applicable Support & Maintenance Services at a rate of 1% per month for each calendar month since the month on which Your use first exceeded Your License Metric units; and
 - iv. pay the reasonable costs incurred by Versa in conducting the audit.

The remedy stated in this Section 12.d is in addition to any other remedy Versa may otherwise have.

13. Product Direction Statements & Confidential Information

- a. Versa may from time to time disclose information related to its development and plans for future products, features or enhancements ("**Product Direction Statements**"). Product Direction Statements are subject to change at any time, without notice. Except as may be set forth in definitive agreements for a specific potential transaction, Versa provides no assurances, and assumes no responsibility, that future products, features or enhancements will be introduced. Except as may be set forth in definitive agreements for a specific potential transaction, You should not base purchasing decisions upon reliance of timeframes or specifics outlined in Product Direction Statements, because Versa may delay or never introduce the future products, features or enhancements.
- b. "Confidential Information" includes any information disclosed by one party to the other relating to the Software or any Support & Maintenance Services (i) in tangible form if it is designated "Confidential" or "Proprietary"; (ii) orally, if also summarized in writing and delivered to the other party within 30 days of disclosure; or (iii) that by the nature of the information and the circumstances of the disclosure, the receiving party should reasonably infer to be confidential or proprietary. Without limiting the foregoing, any Product Direction Statements, and any results of any benchmarking or other testing You perform on the Software, shall be considered Versa Confidential Information. Confidential Information does not include information that: (a) is or becomes generally known through no fault of the receiving party, (b) is known to the receiving party at the time of disclosure, as evidenced by its records, (c) is hereafter furnished to the receiving party by a third party as a matter of right and without restriction on disclosure; (d) is independently developed by the receiving party without any breach of this Agreement; or (e) is disclosed in response to a valid order of a court or other governmental body or is

otherwise required by law to be disclosed, provided the responding party gives sufficient notice to the other party to enable it to take protective measures.

- c. Each party will use a reasonable degree of care to maintain all Confidential Information of the other in confidence and neither will disclose to any third party nor use Confidential Information of the other for any unauthorized purpose. Each party may only disclose Confidential Information to those of its employees and representatives that both (i) may have a need to know for purposes of internal evaluation in the case of any Product Direction Statements or otherwise for Your internal purposes in configuring, installing, using or supporting the Software and (ii) are legally bound by confidentiality obligations no less stringent than those of this Agreement. No rights or licenses to intellectual property in Confidential Information are granted by either party under this Agreement, whether express, implied or otherwise.
 - d. All Confidential Information will be returned immediately to the disclosing party after the receiving party's need for it has expired or upon request of the disclosing party or termination of this Agreement. Each party agrees that the violation of the confidentiality provisions will cause irreparable injury to the other entitling the other party to immediate injunctive or other equitable relief, in addition to, and not in lieu of, any other remedies such party may be entitled to.
 - e. Nothing in this Agreement shall prohibit or limit either party's use or disclosure of the U.S. Federal income tax treatment and U.S. Federal income tax structure of any transaction contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment or tax structure, except where confidentiality is necessary to comply with applicable federal or state securities laws.
14. **Your Data.** Unless Versa otherwise agrees in a signed writing, You shall not disclose or provide Versa or Versa Authorized Partner access to any personally-identifiable information, whether in data or any other form. You shall be solely responsible for all consequences of any such disclosure or grant of access.
15. **Ownership.** Versa and Versa's licensors, respectively, retain exclusive ownership of all right, title, and interest of all intellectual property in and to the Software. Nothing in this Agreement constitutes a sale or other transfer or conveyance of any right, title, or interest in the Software.
16. **Limited Warranty.**
- a. SOFTWARE LICENSED FOR LAB USE, EVALUATION USE OR DEMONSTRATION USE ARE FURNISHED "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. For any other license of Software under this Agreement, Versa warrants for Your sole benefit that for a period of thirty (30) days from the commencement of the license term (herein, the "*Warranty Period*"), the Software delivered, shall be confirm in all material respects to Versa's published specifications under normal authorized use consistent with the product instructions. You may not make a warranty claim after lapse of the Warranty Period. In the event of any breach of the foregoing warranty, Versa shall at Versa's option (i) replace non-conforming copy with one that conforms to specification, (ii) use commercially reasonable efforts to provide You with a remedy or procedure to circumvent the nonconformity, (iii) refund You the License fee paid for the nonconforming copy. Any nonconformity must be reported to Versa in written form and with supporting information reasonably requested by Versa to enable verification, diagnosis and to correct the nonconformity. THIS SECTION 15 STATES YOUR SOLE AND EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF VERSA FOR BREACH OF ANY WARRANTY FOR ANY BREACH OF WARRANTY BY VERSA WITH RESPECT TO VERSA SOFTWARE.
 - b. Restrictions: No warranty will apply if the Software (i) has been altered, except by Versa; (ii) has not been installed, operated, repaired, or maintained in accordance with documentation and instructions supplied by Versa; (iii) has been subjected to unreasonable physical, thermal or electrical stress, misuse, negligence, or accident or (iv) has been licensed solely for Lab Use, Evaluation Use or Demonstration Use or if the Software is beta software or otherwise not commercially released. In addition, neither the Software nor any hardware system on which it may be installed is designed or intended for (i) use in the design, construction, operation or maintenance of any nuclear facility, (ii) navigating or operating aircraft; (iii) operating life-support or life-critical medical equipment or (iv) incorporation in a dwelling or for personal, family, or household purposes or otherwise for use as a consumer product, and Versa disclaims any express or implied warranty of fitness for such uses. You are solely responsible for backing up its programs and data to protect against loss or corruption.
VERSA WARRANTY OBLIGATIONS DO NOT INCLUDE INSTALLATION, REINSTALLATION OR SUPPORT & MAINTENANCE SERVICES OF ANY KIND.
 - c. VERSA DISCLAIMS ANY WARRANTY, REPRESENTATION OR ASSURANCE THAT THE SOFTWARE, OR ANY EQUIPMENT OR NETWORK RUNNING THE SOFTWARE, WILL OPERATE

WITHOUT ERROR OR INTERRUPTION, OR WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK.

- d. Disclaimer of All Other Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 14, TO THE EXTENT PERMITTED BY LAW VERSA DISCLAIMS ALL WARRANTIES IN AND TO THE SOFTWARE (WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE), INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, THAT WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. This disclaimer and exclusion shall apply even if the express warranty fails of its essential purpose.

17. Limitation of Damages.

- a. IN NO EVENT SHALL THE CUMULATIVE LIABILITY OF VERSA, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, SUPPLIERS AND LICENSORS, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY (WHETHER UNDER CONTRACT OR STATUTE, IN TORT (INCLUDING PRODUCT LIABILITY) OR OTHERWISE), EXCEED THE PRICE PAID TO VERSA FOR LICENSED RIGHTS TO THE SOFTWARE, FOR THE SUBSCRIPTION OR FOR THE CONTRACT FOR SUPPORT & MAINTENANCE SERVICES, WHICHEVER GAVE RISE TO THE CLAIM.
- b. NEITHER VERSA NOR ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, SUPPLIERS OR LICENSORS SHALL BE LIABLE FOR ANY LOST PROFITS, LOSS OF DATA, OR COSTS OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR RELATING TO THE SOFTWARE OR SERVICES PROVIDED HEREUNDER.

- 18. Compliance with Laws; Export Requirements.** You shall comply with all applicable laws and regulations in connection with use of the Software and any Support & Maintenance Services. You acknowledge and agree that the Software as well as related technical data and assistance that may be furnished in the course of the Support & Maintenance Services may contain encryption or encryption technology and are all subject to legal and regulatory controls and restrictions on export and re-export, including those of the U.S. Department of Commerce. You warrant and represent that the Software was not furnished to You as a result of an export or re-export or import in violation of US or other applicable laws or regulations, that You are not on any Denied Persons list or other list published by the US Government of parties to whom exports or re-exports of products subject to export controls are forbidden, that no Software is located in or controlled from a site in a Group E country (Cuba, Iran, North Korea, Syria or Sudan), and that You are not using any Software or technology furnished hereunder or in connection with any Support & Maintenance Services to further activities in support of development, manufacture or use of nuclear fuel or weapons, missiles, or chemical or biological weapons. You further covenant that You will immediately notify Versa if at any time those warranties and representation become no longer accurate. Regardless of any disclosure You might make to Versa of an ultimate destination of the Software, You shall not export, either directly or indirectly, any Software without first obtaining any and all necessary approvals from the U.S. Department of Commerce or any other agency or department of the United States Government is required. You understand and agree that Versa may without liability or breach impose certain restrictions and conditions on Support & Maintenance Services in order to protect against violation of export control laws.

- 19. Commercial Computer Software.** The Software is a "commercial item" as defined at Federal Acquisition Regulation (48 C.F.R.) ("FAR") section 2.101 comprised of "commercial computer software" and "commercial computer software documentation" as those terms are used in FAR 12.212. Consequently, regardless of whether You are the US Government or a department or agency thereof, You shall acquire only those rights with respect to the Software that are set forth in this Agreement and Your Proof of Entitlement.

- 20. Third Party Software.** Any licensor of Versa whose software is embedded in the Software shall be a third party beneficiary with respect to this Agreement, and that licensor shall have the right to enforce this Agreement in its own name as if it were Versa. In addition, certain third party software may be provided with the Software and is subject to the accompanying license(s), if any, of its respective owner(s). To the extent portions of the Software are distributed under and subject to open source licenses obligating Versa to make the source code for those portions publicly available (such as the GNU General Public License ("GPL") or the GNU Lesser General Public License ("LGPL")), Versa will make those source code portions (including Versa modifications, as appropriate) available upon request for a period of up to three years from the date of distribution. You may obtain a copy of the GPL at <http://www.gnu.org/licenses/gpl.html>, and a copy of the LGPL at <http://www.gnu.org/licenses/lgpl.html>. Open source information and information on contacting Versa can be found at <http://www.versa-networks.com/support>.

21. **Governing Law.** This Agreement (including all documents incorporated herein) and the terms of any Support & Maintenance Contract with Versa, shall be governed by the laws of the State of California (without reference to its conflicts of laws principles). The provisions of the U.N. Convention for the International Sale of Goods shall not apply. The provisions of the Uniform Computer Information Transactions Act shall not apply. For any disputes arising under this Agreement or any Support & Maintenance Contract that You may have with Versa, the Parties hereby consent to the personal and exclusive jurisdiction of, and venue in the courts of the state of California (and the US District Court for the district of Northern California).
22. **Force Majeure.** Except for Your duty to make payment for Software or Services, and except for Your unauthorized installation or use of Software, neither party will be responsible for any failure or delay in its performance due to causes beyond its reasonable control, including, but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, or fuel crises ("Force Majeure"), provided that the party gives prompt written notice thereof to the other party and uses its diligent efforts to resume performance. Either party shall be entitled to terminate this Agreement if the Force Majeure event continues for a period of one month.
23. **Applicability of This Agreement.**
- a. Separate Signed Agreements. If You and an authorized representative of Versa have signed a valid separate written agreement governing Your use of any or all Software licensed from Versa, then with respect to that Software that signed agreement will take precedence over any inconsistent terms of this Agreement.
 - b. Transition Rules. If You licensed any Software from Versa under a different End User License Agreement or a separate signed agreement, then this Agreement shall apply to that Software if and when, following posting of this Agreement at <http://www.versa-networks.com/support/docs/eula.html>, You either purchase additional License Metric units for the Software, renew the license at the end of the License Term, or purchase new License Grants.
24. **Complete Agreement & Modifications.** This Agreement together with the applicable SSA, constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior agreements, commitments or representations, oral or written related to the Software and Support & Maintenance Services. The terms and conditions of this Agreement will supersede all pre-printed terms and conditions contained on any purchase order, task order or other business form submitted by either party to the other. Except as otherwise provided in subsection 24.a below, this Agreement may not be amended or modified except by a writing executed by the duly authorized representatives of both parties.
- a. Future Modifications. Versa may at any time post on its website (or that of its affiliates) modifications or restatements of this Agreement, SSA, EOL/EOS Policies or any other policy or guideline referenced in this Agreement or the SSA. Any such modification shall govern the terms of Your license for any extension or renewal term of the license (or of any Subscription or Support & Maintenance Contract, as applicable), but only if that extension or renewal term or reinstatement period starts after posting of the modification. (See also section 8.d., above, regarding application of modifications of this Agreement to Updates.)
25. **Severability.** If any portion of this Agreement is held invalid, the Parties agree that such invalidity shall not affect the validity of the remainder of this Agreement.
26. **Notification.** Except as otherwise provided elsewhere in this Agreement, any report or notice under this Agreement shall be given in writing, if to Versa then by email to _____ or by mail or courier to 6001 America Center Dr, Suite 400, Santa Clara, CA 95002 USA attn.: EULA Notices provided that the notice identifies You by name, address and email address; or, if to You, by email to Your contact email address (or by mail addressed to Your street address that is associated with Your user account for access to Versa Customer Support at <http://www.versa-networks.com/support>. If You have no such user account, then notification shall be deemed given to You by emailing or sending by mail or courier notice to any office or contact email address for the Authorized Source from which You acquired Your license.
27. **Waiver.** The failure of Versa or Versa Authorized Partner to require Your performance of any provision of this Agreement shall not affect Versa's full right to require such performance at any time thereafter; nor shall its waiver of a breach of any provision hereof be taken to be a waiver of the provision itself.
28. **Translations.** Translations of this Agreement may appear at <http://www.versa-networks.com/support/docs/eula.html>. To the extent of any inconsistency between the English version of this Agreement and any non-English version the English version shall govern.
29. **Definitions.** The following definitions apply to capitalized terms used this Agreement:
- **"Agreement"** means this End User License Agreement.
 - **"SSA"** means Versa Support Services Agreement.

- **"Approved Source"** is Versa or a partner, distributor or reseller authorized by Versa to distribute Software and Support & Maintenance Services in the territory in which You are located.
- **"Confidential Information"** is as defined in Section 12, above.
- **"Customer"** or **"You"** means the individual, other legal entity, or other business, governmental or not-for-profit organization (but excluding any parent, subsidiary or other affiliate of any of the foregoing) that (A) is the original end user purchaser of a license to the Software from an Approved Source, (B) accepts the terms of this Agreement, (C) is identified as "Customer" or "End User" in the applicable Proof of Entitlement, if any, and (D) has registered by name with Versa as end user of the Software.
- **"Preloaded Software"** means Software that is delivered pre-installed on Versa compatible hardware platforms, together with Updates for that Software.
- **"EOL/EOS Policies"** are as defined in Section 3.
- **"Versa Networks"** or **"Versa"** means Versa Networks, Inc.
- **"License Metric"** is a metric defined in Section 5 or, for some Software, Your MPA.
- **"Support & Maintenance Services"** for Software means the set of software maintenance services described in the Applicable SSA.
- **"Proof of Entitlement"** is a Versa order confirmation or other Versa-issued written or electronic confirmation of Versa's grant to You of a license. The Proof of Entitlement must identify You, the Software licensed, the license identifier, any applicable License Metric and, if applicable, the number of units of that License Metric that You purchased. The Proof of Entitlement must also indicate whether the license is a Subscription, the Term of License and, if it is a Special Purpose License, the kind of Special Purpose License. If the Special Purpose License is a Customer License, then The Proof of Entitlement must identify You, the Software licensed, the license identifier, any applicable License Metric and, if applicable, the number of units of that License Metric that You purchased or any additional entitlement information as defined in Your MPA.
- A **"Release"** is a particular object code image of a software product that is identified by a Release denomination starting with "x.y" followed by additional image identifying string. Commonly a Release denomination ends with "Rz" where "z" is a whole number. For example, Versa FlexVNF 15.1R3 is a Release of the Versa FlexVNF software product.
- **"Software"** means the software product identified in Your Proof of Entitlement, and includes 1) machine-readable instructions and data, 2) components, files, and modules, 3) any accompanying audio-visual content, and 4) accompanying activation keys, if any, and 5) associated documentation. Except where the context otherwise requires, Software includes any Update of that Software that You rightfully receive under a Subscription or contract for Support & Maintenance Services.
- **"Special Purpose License"** means any of the licenses described in Section 6 of the Agreement.
- **"MPA"** means Your Master Purchase Agreement with Versa, if applicable.
- **"Subscription"** means a license to Software for a finite, fixed term of use that includes Your right to receive throughout the term of the Subscription and at no additional charge, support and maintenance services under the terms of the Applicable SSA.
- **"Subscription Action"** means an action taken on a Subscription License that results in a change in Subscription Status. For example, an Activate action changes the status of a Subscription License to Active and starts a subscription term.
- **"Subscription Status"** is the current subscription state.
- **"Update"** means software that is an upgrade, bug fix, patch or other revision of Software licensed hereunder that Versa makes generally available free of incremental charge to customers purchasing a Support & Maintenance Contract or Subscription. An Update may be a different revision of the Software that You originally licensed and, therefore, may have a different set of features and functionality.
- **"Version"** means one or more Releases of a particular software product with a common "x.y" denomination in the first two places of the Release identifier. For example, FlexVNF 15.1R1 through FlexVNF 15.1R3 are all Releases under the same Version, whereas FlexVNF 15.1R1 and FlexVNF 16.1R1 are Releases under different Versions.