

THIS EULA IS A LEGAL AGREEMENT BETWEEN (I) END USER, EITHER AS AN INDIVIDUAL, COMPANY OR OTHER LEGAL ENTITY (IN ANY CAPACITY REFERRED TO HEREIN AS “END USER”) REFERENCED IN THE ORDER FORM AND (II) BRICATA, INC., A DELAWARE CORPORATION, (“BRICATA”).

THIS EULA GOVERNS END USER’S USE OF THE BRICATA APPLIANCES (“APPLIANCE(S)”), ANY SOFTWARE THAT IS INCLUDED IN THE APPLIANCES AND ANY STANDALONE

SOFTWARE THAT IS PROVIDED WITHOUT APPLIANCES FOR USE ON END USER’S APPLIANCES INCLUDING VIRTUAL MACHINE SOFTWARE OR OTHER SOLUTIONS (COLLECTIVELY, “SOFTWARE”), ANY SOFTWARE-AS-A-SERVICE (SaaS), SUBSCRIPTION--BASED SERVICES (“SUBSCRIPTION SERVICES”), IMPLEMENTATION AND PROFESSIONAL SERVICES, DOCUMENTATION RELATED TO THE FOREGOING, AND MAINTENANCE AND SUPPORT SERVICES (“MAINTENANCE SERVICES”) OR A COMBINATION OF THE FOREGOING, ALL OF THE FOREGOING, COLLECTIVELY REFERRED TO HEREIN AS “PRODUCT(S)”, UNLESS END USER AND BRICATA HAVE EXECUTED A SEPARATE EULA IN WRITING, SIGNED BY BOTH BRICATA AND END USER WHICH EXPRESSLY SUPERSEDES THIS EULA. THIS EULA IS SUBJECT TO THE ORDER FORM EXECUTED BY BRICATA AND END USER.

BY OPERATING, DOWNLOADING, INSTALLING, REGISTERING OR OTHERWISE USING THE PRODUCTS, END USER ARE EXPRESSLY AND EXPLICITLY ACKNOWLEDGING AND AGREEING THAT THIS IS A BINDING EULA AND END USER HEREBY AGREE TO THE TERMS OF THIS EULA.

IF END USER DO NOT ACCEPT ALL THE TERMS AND CONDITIONS SET FORTH HEREIN, END USER MAY NOT AND DO NOT OPERATE, DOWNLOAD, INSTALL, REGISTER OR OTHERWISE USE THIS PRODUCT.

## 1. LICENSE GRANT AND RESTRICTIONS.

- **1.1 Software License Grant.** Subject to the terms and conditions of this EULA and Order Form and any term on the Order Form (each a “Term(s)”), and as long as the End User’s use of the Products does not exceed the quantity of License Metric Units that End User purchased on the Order Form, Bricata grants to End User a non-- exclusive license to (i) use the Software solely as part of or used in conjunction with the Appliances with which the Software is delivered, or (ii) if ordered without Appliances, then use the Software, all in accordance with the published specifications. The Software is solely for End User’s internal business purposes unless otherwise agreed to with Bricata in a separate written agreement. All other rights in the Software are expressly reserved by Bricata. All licenses hereunder are non-exclusive, non-transferable, licenses for the Terms set forth in the Order Form. Most of the Products offered by Bricata employs no programmatic license enforcement. It is therefore End User’s responsibility to both monitor usage and compliance level, and purchase sufficient License Metric units to meet the End User’s usage.

- **1.2 Subscription Services Limited Right to Use.** Subject to the terms and conditions of this EULA and Order Form and any Term on the Order Form, and as long as the End User's use of the Products does not exceed the quantity of License Metric Units that End User purchased on the Order Form, Bricata grants to End User the limited right to use the Subscription Services solely in connection with the Appliances and/or Software and solely for End User's internal business purposes.
- **1.3 License Restrictions.** End User shall maintain the Products in strict confidence and shall not: (a) sell, resell, distribute, transfer, publish, disclose, rent, lend, lease or sublicense the Products, or make the functionality of the Products available to any other party (excluding contractors or other third party providing IT services to Customer) through any means, including, without, limitation, by uploading the Software or Subscription Services to a network or file-sharing service or through any hosting, application services provider, service bureau or other type of services; (b) modify, translate or create derivative works based on the Software or Subscription Services, in whole or in part, or permit or authorize a third party to do so; (c) disassemble, decompile, reverse compile, reverse engineer or otherwise attempt to derive the source code of the Software, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by applicable law in the jurisdiction of use, notwithstanding this prohibition; (d) disclose, publish or otherwise make publicly available any benchmark, performance or comparison tests that End User runs (or has run on its behalf by a third party) on the Products; (e) duplicate the Software except for making a reasonable number of archival or backup copies, provided that End User reproduces on or in such copies the copyright, trademark and other proprietary notices or markings that appear on the original copy of the Software (if any) as delivered to End User.
- **1.4 Affiliates.** If End User purchases the Product for use by any End User Affiliate (defined below), End User shall: (a) provide each such End User Affiliate with a copy of this EULA; (b) ensure that each such End User Affiliate complies with the terms and conditions therein; and (c) be responsible for any breach of these terms and conditions by any such End User Affiliate. For purposes of this EULA, "Affiliate" means any entity that Controls, is Controlled by, or is under common Control with End User or Bricata, as applicable, where "Control" means ownership, directly or indirectly, of 50% or more of the voting interest of End User or Bricata, as applicable.
- **1.5 License Metric Units.** The maximum rate of total bits of throughput of the Products per second, that has been purchased by End User. The maximum rate subject to the restrictions on the Product Data Sheet.

## 2. OWNERSHIP.

The Software and Subscription Services are licensed, not sold. Where the Appliances are provided subject to a Terms on the Order Form, the Appliances are not sold and title thereunder remains with Bricata. Bricata and its suppliers, as applicable, retain all right, title, interest and ownership of the Software and Subscription Services, including copyrights, patents, trade secret rights, trademarks and any other intellectual property rights therein. End User shall not delete or

in any manner alter the copyright, trademark, or other proprietary rights notices or markings that appear on the Software and Subscription Services or related documentation as delivered to End User. To the extent End User provide any suggestions or comments related to the Products to Bricata or its authorized third party agent, Bricata shall have the right to retain and use any such suggestions or comments in current or future products or services, without End User's approval or further compensation to End User.

### **3. TERM; TERMINATION.**

This EULA is effective until the end of the last Term listed on the Order Form, as may be modified as provided herein. End User's rights under this EULA will terminate immediately on written notice from Bricata if End User fails to comply with or breaches any provision of this EULA. Upon termination, End User shall destroy all copies of Software and documentation and cease to use any Subscription Services and/or Appliances. All of the Terms in the Order Form shall automatically renew for a like Term unless either party, no less than 60 days prior to the end of the applicable Term, provides written notice of its intent to not renew at the end of such term.

### **4. PAYMENT.**

End User shall pay Bricata the fees and expenses as set forth in the Order Form. Bricata shall invoice in advance of initial delivery of Products or commencement of Services. Invoices for any renewal term, as provided in Section 3 above, shall be issued upon the renewal date pursuant to the terms in the Order Form, unless modified by mutual agreement of the parties at the time of renewal. Bricata shall invoice on the renewal date. Unless otherwise specified in the Order Form, End User shall pay invoiced amounts within 30 days of the invoice date. All payments are non-refundable. End User shall also be responsible for taxes (including sales, value-added tax, turnover tax, gross receipts tax or franchise tax arising out of this Agreement, except for taxes imposed on Bricata's real or personal property, employment, revenue or income. Failure to timely pay any invoice under this Agreement shall constitute a material breach of this Agreement by End User. If End User fails to timely pay any amount due to Bricata, End User agrees to pay late charges on outstanding amounts equal to one and one-half percent (1.5%) per month, or the highest interest rate permitted by law, whichever is lower.

### **5. WARRANTY, EXCLUSIONS, AND DISCLAIMERS.**

- **5.1 Warranty.** Bricata warrants that, under normal authorized use (a) the Appliances shall be free from defects in material and workmanship for one (1) year from the date of shipment; and (b) the Software will substantially conform to Bricata's published specifications at [bricata.com/data\\_sheet/](http://bricata.com/data_sheet/) ("Product Data Sheet") for the Term. As End User's sole and exclusive remedy and Bricata's and its suppliers' sole and exclusive liability for breach of warranty, Bricata shall, at its option and expense, repair or replace the Appliances or correct the Software, as applicable. All warranty claims must be made on or before the expiration of the warranty period specified herein. Replacement Products may consist of new or remanufactured parts that are equivalent to new. All Products that

are returned to Bricata and replaced become the property of Bricata. Bricata shall not be responsible for End User's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Bricata for repair or upon termination, whether under warranty or not. End User will pay the shipping costs for return of Products to Bricata. Bricata will pay the shipping costs for shipment of repaired or replacement Products back to End User, subject to the terms and conditions of the Bricata Maintenance and Support Services addendum, located at [https://bricata.com/support\\_maintenance/](https://bricata.com/support_maintenance/), which is incorporated herein by reference and agreed to by the parties.

- **5.2 Exclusions.** The warranty set forth above shall not apply if the failure of the Product results from or is otherwise attributable to: (i) repair, maintenance or modification of the Product by persons other than Bricata- authorized third party; (ii) accident, negligence, abuse or misuse of a Product; (iii) use of the Product other than in accordance with Bricata' specifications; (iv) improper installation or site preparation or any failure by End User to comply with environmental and storage requirements for the Product specified by Bricata, including, without limitation, temperature or humidity ranges; or (v) causes external to the Product such as, but not limited to, failure of electrical systems, fire, or water damage.
- **5.3 Disclaimers.** EXCEPT FOR THE WARRANTIES EXPRESSLY STATED AND AS OTHERWISE PROHIBITED BY APPLICABLE LAW, THE PRODUCTS, APPLIANCES, SOFTWARE, SUBSCRIPTION SERVICES AND MAINTENANCE SERVICES ARE PROVIDED "AS IS". BRICATA AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. BRICATA DOES NOT WARRANT THAT (I) THE PRODUCT WILL MEET END USER'S REQUIREMENTS, (II) USE THEREOF SHALL BE UNINTERRUPTED OR ERROR--FREE, OR (III) THE HARDWARE, SOFTWARE OR SUBSCRIPTION SERVICES WILL PROTECT AGAINST ALL POSSIBLE THREATS WHETHER KNOWN OR UNKNOWN. BRICATA SPECIFICALLY DENIES ANY IMPLIED OR EXPRESS REPRESENTATION THAT THE PRODUCTS WILL OPERATE UNINTERRUPTED OR ERROR-FREE OR WILL PROVIDE AN ADEQUATE DEFENSE AGAINST MALWARE, DATA THEFT OR LOSS, VIRUS OR OTHER INTRUSIONS OR DATA THEFT OR UNAUTHORIZED DISCLOSURE.

## 6. APPLIANCES.

- **6.1 Appliances.** Bricata will provide to End User on loan, certain Appliances listed in the Order Form. End User will be fully responsible for all Appliances including without limitation all risk of loss and damage to Appliances while in its possession or control shall be the responsibility of End User, save normal wear and tear. End User shall provide Bricata with physical access to the Appliances upon request after reasonable advance notice. End User shall not, nor allow any third party to, modify, repair, relocate, sell, lease, assign, encumber, or otherwise tamper with any of the Appliances Bricata's

express written consent. Any change of the location of the Appliances may warrant that End User pay Bricata any additional installation and related charges associated with such relocation, charged by Bricata's third party vendors.

- **6.2 Delivery and Return of Property.** Bricata shall deliver Appliances to End User's location as provided in the SOW, At the end of the applicable Term, End User shall be responsible to return all Appliances, freight prepaid by BRN, to Bricata at the place from which Appliances was shipped (or as otherwise designated by Bricata) in as good condition as exists at the commencement of the term, reasonable wear and tear, and casualty, in respect thereto excepted.
- **6.3 Reservation of Title.** Appliances and all parts and components thereof shall retain its character as personal property and all right, title and interest thereto shall not pass to End User but title and ownership shall remain exclusively with Bricata. End User shall be and shall have the duties of a bailee of the Appliances. End User shall not remove, conceal or otherwise interfere with the title or ownership plate of Bricata affixed to Appliances.
- **6.4 Return.** If End User sells, assigns or attempts to sell or assign Appliances or any interest therein, or if End User defaults in any of the covenants, conditions or provisions of this Agreement, it is agreed that Bricata may immediately and with notice take possession of Appliances wheresoever found and to remove and keep or dispose of the same and any unpaid fees shall at once become due and payable. If any step is taken by legal action or otherwise by Bricata to recover possession of Appliances or otherwise enforce this Agreement or to collect moneys due hereunder End User shall pay Bricata the equivalent.

## **7. LIMITATION OF LIABILITY.**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, (A) IN NO EVENT SHALL BRICATA OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO LOSS OF USE, DATA, BUSINESS OR PROFITS, OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS, SERVICES OR OTHER GOODS), ARISING OUT OF OR RELATING TO THIS EULA, REGARDLESS OF THE THEORY OF LIABILITY AND WHETHER OR NOT BRICATA WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS; AND (B) IN NO EVENT SHALL BRICATA'S TOTAL LIABILITY ARISING OUT OF OR RELATING TO THIS EULA, FROM ALL CLAIMS OR CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE TOTAL PAYMENTS ACTUALLY MADE TO BRICATA FOR THE PRODUCTS DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY SUCH CLAIM OR CAUSE OF ACTION. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO LIABILITY ARISING FROM DEATH OR BODILY INJURY. End User agrees that the foregoing limitations of liability constitute a material inducement for Bricata to enter into this EULA and that the purchase price and fees charged to End User would be substantially higher without such limitations.

## **8. INDEMNIFICATION.**

- **8.1 Indemnification and Procedure.** Bricata will defend, at its expense, any third-party action or suit brought against End User alleging that any Product provided to End User hereunder infringes or misappropriates the third party's patent, copyright, trademark, or trade secret (a "**Claim**"), and Bricata will pay any damages awarded in final judgment against End User or agreed to in settlement by Bricata that are attributable to any such Claim; provided that End User: (i) promptly notifies Bricata in writing of the Claim; (ii) gives Bricata sole control of the defense and settlement of the Claim; and (iii) gives Bricata, at Bricata's expense, all information and assistance reasonably requested for the defense and settlement of the Claim. Bricata will not be bound by any settlement or compromise that End User enters into without Bricata's prior written consent.
- **8.2 Remedy.** If the Product becomes, or in Bricata's opinion is likely to become, the subject of a Claim, then Bricata may, at its sole option and expense: (i) procure for End User the right to continue using the Product; (ii) replace or modify the Product to avoid the Claim; or (iii) if options (i) and (ii) cannot be accomplished despite Bricata's reasonable efforts, then Bricata may accept return of the Product from End User and grant End User credit for the price of the Product as depreciated on a straight-line five (5) year basis, commencing on the date of receipt by End User of such product.
- **8.3 Exceptions.** Bricata's obligations under this section shall not apply to the extent any Claim results from or is based on (a) modifications to the Product made by a party other than Bricata or its designee; (b) the combination, operation, or use of the Product with hardware or software not supplied by Bricata, if a Claim would not have occurred but for such combination, operation or use; (c) failure to use the most recent version or release of the Product; (d) Bricata's compliance with End User's explicit or written designs, specifications or instructions; or (e) use of the Product that is not in accordance with Bricata's published specifications. THIS SECTION 8.3 STATES BRICATA'S SOLE AND EXCLUSIVE LIABILITY AND END USER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.

## 9. RECORDKEEPING AND AUDIT.

- **9.1 End User's Duty to Monitor Use; Purchase of Additional License Metric Units.** End User agree to monitor End User's use of all Products. If at any time End User's maximum level of use of the Products exceeds the number of License Metric units End User have purchased, then on or before ten days after the last day of the calendar quarter in which End User's level of use first exceeded that limit, End User shall (i) notify Bricata in writing of End User's maximum level of use and (ii) order and purchase sufficient License Metric units (in increments of the applicable minimum allowable number of License Metric units) to meet or exceed the maximum level of use of the Products during such calendar quarter. Failure either to timely report such excess use or to timely purchase and pay for the required additional License Metric units in accordance with this subsection 9.2 shall be a material breach of this Agreement.
- **9.2 Bricata's Right to Audit.** In order to enable Bricata to verify End User's compliance with this Agreement, End User shall, for a period ending for three years after the last Term hereunder, provide to Bricata and its professional advisors access to such facilities, personnel, records and reports as reasonably necessary for it to validate

compliance with this Agreement. Such right of inspection and copying includes without limitation all Products monitoring records generated and maintained under this Section 9, and all other written or electronic data and reports that End User generate or receive relevant to a determination of whether End User have complied with this Agreement.

- **9.3 Reports of Excess Use.** If any inspection under this Section 9 discloses that End User used the Products in excess of applicable License Metric units and failed timely to comply herewith, then on notice of the inspection results, End User shall immediately purchase and pay for sufficient additional License Metric units (in increments of the applicable minimum allowable License Metric units) to meet or exceed End User's maximum level of use of the Products have been required to End User's use from at any time exceeding End User's purchase License Metric units; purchase and pay for contracts for Maintenance Services sufficient to cover End User's new total number of License Metric units; pay late payment fees accruing on the purchase price of such additional License Metric units and on the amount of underpayment in respect of contracts purchased or required for Maintenance Services at a rate of 1% per month for each calendar month since the month on which End User's use first exceeded End User's License Metric units; and pay the reasonable costs incurred by Bricata in conducting the audit. The remedy stated in this Section 9.3 is in addition to any other remedy Bricata may otherwise have.

## 10. END USER DATA.

End User is hereby notified and acknowledges that the Bricata Products may interact and communicate with facilities hosted outside of the country where End User purchased or utilizes the Products. End User is further notified and acknowledges that some Subscription Services may allow End User, in its sole discretion, to send data to Bricata, where such data may contain personally--identifiable, sensitive, and/or confidential data and information (collectively, "End User Data"). End User represents and warrants that End User's use of the Subscription Services and related submission of End User Data complies with all applicable laws, including those related to data privacy, data security, international communication and the exportation of technical, personal or sensitive data. Bricata is not a data processor or data collector, and the inclusion of such personally identifying or sensitive data in End User Data is solely incidental to the provision of the Subscription Services. Submission of End User Data to Bricata shall be at End User's sole discretion and at its own risk, and Bricata assumes no responsibility or liability for receipt of such End User Data. End User Data sent to Bricata may be stored by Bricata. End User further acknowledges that Bricata may anonymize such End User Data for its business purposes and share samples of such anonymized End User Data with other third party security--related researchers, vendors and customers. Bricata privacy and security policies may be viewed from time to time at <https://bricata.com/privacy-policy/>. Bricata reserves the right to modify its privacy and security policies from time to time.

## 11. GENERAL.

- **11.1 Governing Law.** Where Bricata, is the contracting entity, this EULA is governed by and construed in accordance with the laws of the State of Maryland, excluding its

conflict of laws The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this EULA.

- **11.2 Compliance with Laws; Export Control.** End User shall be solely responsible for its compliance with, and agrees to comply with, all applicable laws in connection with its use of the Product. End User further agrees that it will not engage in any illegal activity in any relevant jurisdiction, and acknowledges that Bricata reserves the right to notify its customers or appropriate law enforcement in the event of such illegal activity. End User agrees to comply fully with the U.S. Export Administration Regulations, and any other export laws, restrictions, and regulations to ensure that the Product and any technical data related thereto is not exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by such laws and regulations.
- **11.3 Cumulative Remedies.** Except as expressly set forth in this EULA, the exercise by either party of any of its remedies will be without prejudice to any other remedies under this EULA or otherwise.
- **11.4 Notices.** All notices shall be in writing and delivered by overnight delivery service or by certified mail sent to the address published on the respective parties' websites or the address specified on the relevant order document (attention: Legal Department), and in each instance, will be deemed given upon receipt.
- **11.5 Waiver and Severability.** The failure by either party to enforce any provision of this EULA will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification or amendment of any provision of this EULA will be effective only if in writing and signed by authorized representatives of both parties. If any provision of this EULA is held to be unenforceable or invalid, that provision will be enforced to the maximum extent possible and the other provisions will remain in full force and effect.
- **11.6 Entire Agreement.** This EULA and the Order Form, and any agreements, policies and documents which a hyperlink is referenced herein, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings and communications between the parties with respect to the subject matter hereof. Any terms or conditions contained in End User's purchase order or other ordering document that are inconsistent with or in addition to the terms and conditions of this EULA are hereby rejected by Bricata and will be deemed null.
- **11.7 US. Government End Users.** This section applies to United States Government End Users only and does not apply to any other End Users. The Software and its documentation are "commercial computer software" and "commercial computer software documentation," respectively; as such terms are used in FAR 12.212 and DFARS 227.7202. If the Software and its documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202--1 through 227.7202--4, as applicable, the U.S. Government's rights in the Software and its documentation shall be as specified in this EULA.
- **11.8 Open Source Software.** The Products may contain or be provided with components subject to the terms and conditions of open source software licenses.
- **11.9 Survival.** Sections regarding license restrictions, ownership, term and termination, U.S. Government End Users, limitations of liability, and this General section shall survive termination of this EULA.



Bricata End User License Agreement. v3.0 (October 2017)