

# SAMPLE AGREEMENT ANNOTATIONS

## End User License Agreement

End User License Agreement (“EULA”) <sup>[1]</sup>	Remarks
<p>[company] including all affiliates and subsidiaries (“[company]”, “us” or “we”)<sup>[2]</sup> thanks you for choosing one of our products (the “Product”). This End-User License Agreement (this “Agreement”) is a legal document that contains the terms and conditions under which limited use of certain Software (as defined below) that operates with the Product is licensed to you.<sup>[3]</sup></p> <p>PLEASE READ THIS AGREEMENT CAREFULLY BEFORE INSTALLING OR USING THIS PRODUCT.</p> <p>BY CHECKING THE BOX OR CLICKING THE BUTTON TO CONFIRM YOUR ACCEPTANCE WHEN YOU FIRST INSTALL THE SOFTWARE, YOU ARE AGREEING TO ALL THE TERMS OF THIS AGREEMENT.<sup>[4]</sup> ALSO, BY USING, COPYING OR INSTALLING THE SOFTWARE, YOU ARE AGREEING TO ALL THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT CHECK THE BOX OR CLICK THE BUTTON AND/OR DO NOT USE, COPY OR INSTALL THE SOFTWARE, AND UNINSTALL THE SOFTWARE FROM ALL DEVICES THAT</p>	<p><b>Remarks</b></p> <p>**This annotated EULA is a redacted example of an international company that sells both hardware and software across the globe. It favors the licensor and has a large international component. This EULA covers software directly downloaded as well as software that is part of a purchased product.</p> <p>[1] As many users of software are non-lawyers, End User License Agreements are typically drafted in a more user-friendly, user-readable manner and include bold restatements of applicable law. It is written from the perspective of a licensor. If source code is provided, additional confidentiality agreements and considerations are necessary.</p> <p>[2] There is no defined term of “Company” in this agreement. Throughout, the company is referenced by name and occasionally its affiliates when appropriate. Many EULAs do have the company as a defined term.</p> <p>[3] Also notice, the licensee is only referred to as “you” in this opening recital, and should likely be altered if the licensee is a company, although this will depend on the kind of license granted (footnote [10]). You is subsequently defined (footnote [9]).</p> <p>[4] To ensure the users are legally bound by the terms, the EULA must be presented in a manner that forms a legally enforceable contract. You want to ensure that the user has notice of the EULA and affirmatively or implicitly agrees to the terms. The preferred EULA is a clickwrap license, where the EULA is presented to the user who clicks a button to indicate the user read and agrees to be bound by the terms of the agreement presented. Other methods of user acceptance of the EULA terms include active steps taken by the user, such as installation, copying, or use. Because users may not read the entire EULA, the acceptance section should be in the beginning of the agreement to provide clear notice to the user prior to any user action. Software marketplaces or websites may provide links to the EULA without affirmative acceptance. Some courts have found these licenses to be unenforceable. Because the EULA is often non-negotiable, the terms are typically highly preferential to the licensor. Licensees who are large corporate parties for enterprise use</p>

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YOU OWN OR CONTROL.<sup>[5]</sup> IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT AND YOU PURCHASED A PRODUCT CONTAINING THE SOFTWARE FROM AN AUTHORIZED RETAILER, RESELLER OR APP STORE (AS DEFINED BELOW), YOU MAY BE ELIGIBLE TO RETURN THE PRODUCT FOR A REFUND, SUBJECT TO THE TERMS AND CONDITIONS OF THE APPLICABLE RETURN POLICY.<sup>[6]</sup>

This product is Software licensed to you by [company] and, where applicable, by [company's] suppliers. "Software"<sup>[7]</sup> means any and all firmware programs and associated files provided with respect to the Product; any and all software programs, applications or "apps" and associated files provided with respect to the Product; all modified versions of and upgrades or improvements to such programs (such as those provided via web-based updates), all subsequent versions of such programs, and all copies of such programs and files. Software does not include any Open Source Software (as defined below).<sup>[8]</sup>

By "you," we mean the purchaser, recipient or other end user of the Product containing the Software or the purchaser, recipient or other end user of the Software on a standalone basis. "You" may also mean a person who has downloaded the Software from an authorized website, such as [insert webpage address] or from an authorized application market or store, such as Apple's App Store or Google Play (each such application market or store is

might need to consider more neutral terms. In this kind of agreement please note that it is important to consider provisions on law and jurisdiction (See note [37]) because there are consumer laws that provide for certain technical requirements for electronic agreements in order to be valid such as storage, identification through an account and the like. If you are drafting EULA's you might want to consider the laws at least of the main jurisdictions where users are expected to be located.

[5] An opt-out provision is included, informing the user that the user may avoid acceptance of the agreement by not installing, copying or using the software.

[6] Similar to footnote [5], but covers an opt-out provision for software that is part of a product purchased from a retailer.

[7] This is a broad definition of software. Consider revising. By having it apply to "and associated files provided" it may be leaving the definition open ended.

[8] This EULA applies also to modified versions of the software as well as updates. However, the agreement does not include open source software. It should be up for discussion to include or exclude open source in the agreement. Of note, there is usually no specified acceptance procedure for an open source license.

[9] "You" is further defined in this section, which may be altered if the licensed end user is a company which allows use by one or more persons within. Issues such as apparent authority should also be considered, for example by including a representation that the person

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<p>referred to in this Agreement as an “App Store” and collectively as “App Stores”).<sup>[9]</sup></p> <p><b>1. LICENSE GRANT.</b> [company] hereby grants you the right to use: (i) where your Product is not a “Small-Medium Business or SMB” branded Product, for your personal, non-commercial purposes; or (ii) where your Product is a “Small Medium Business or SMB Product, for your personal or commercial use; copies of the Software in object code form on devices that you own (or, in the case of firmware, one copy of the firmware in object code form solely on the Product relating to the firmware). As part of this license, you may (A) operate the Software in the manner described in the user documentation for the Software<sup>[10]</sup>; (B) where the Software is provided for download onto a personal computer or mobile device, make as many copies of the Software as you reasonably need for your own use (this does not include firmware)<sup>[11]</sup>; and (C) permanently transfer all of your rights to use the Product (including but not limited to the Software) to another person, so long as that person also agrees to be bound by this Agreement, and following such transfer you stop using the Product and the Software.<sup>[12]</sup></p> <p>You can find the user documentation for the Software on the “Support” page of the applicable [company] website.</p> <p><b>2. LICENSE RESTRICTIONS.</b><sup>[13][14]</sup> The Software is licensed, not sold, to you. You only have the non-exclusive right to use the Software in accordance with this Agreement. You may not (i) modify, adapt or otherwise create derivative works from the Software, the Product containing the Software or user documentation (except as may be permitted by an applicable open source license<sup>[15]</sup>) without receiving prior written consent from [company] to make any such modifications: (ii) lease, sublicense, resell, rent, loan,</p>	<p>accepting the agreement is authorized to do so on behalf the company.</p> <p>[10] This limits the operation of the licensed software to a manner described in the user documentation provided for the software. A hyperlink to the user documentation is provided in the next paragraph. This would allow the licensor the update the operation limitation after execution of this EULA. EULAs commonly limit the license to only those uses which are specified. The EULA will also vary by content and services. For instance, some software is installed and used, but other software may provide content that is refreshed regularly (news, e-commerce). This annotated EULA includes different rights related to the commercial use and the number of devices where it may be installed. When distribution channels are the same for all kinds of licenses it might be necessary to establish in the grant such differences. However, when the identification of the kind of license paid by the user can be technically determined it might be better to establish a different EULA for each kind of license. In any case, the grant must be adapted in order to address all the license variants applicable to the software. Of note, this paragraph may be altered by adding the common preface: “Subject to Terms and Conditions specified herein...”</p> <p>[11] Allows the licensee to make as many copies as needed for their own use.</p> <p>[12] This EULA is transferable to another party so long as the other party agrees to be bound by this agreement and the original licensee ceases to use the product and software. If the license is for both hardware and software, it may make sense to make the EULA transferable only in conjunction with the resale of the equipment.</p> <p>[13] This section explicitly states which rights are reserved by the licensor that are not granted to the user. Because users often think that they are “buying” a product, clarification of the fact that the product is licensed and not sold is very important for enforcement.</p> <p>[14] Also see <i>MACOM Technology Solutions Holdings, Inc. v. Infineon Technologies Americas</i></p>
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redistribute, or otherwise transfer (except as expressly permitted above), whether for commercial purposes or otherwise, the Software or user documentation; (iii) reverse engineer, disassemble, decrypt or decompile the Product or the Software or otherwise try to reduce the Software to a human-readable form, except where and only to the extent that such activity is permitted by applicable law or where [company] is required to permit such activity under the terms of an applicable open source license; (iv) remove or alter any copyright, trademark or other proprietary notices contained in the Software or user documentation<sup>[16]</sup>; (v) use the Product, Software or user documentation to develop a competing hardware and/or software product, or otherwise in any manner not set forth in this Agreement or the user documentation; (vi) if the Software is firmware, copy the firmware (other than one backup copy for archival purposes only), use it on a multi-user system or operate it separately from the Product onto which it is embedded; (vii) use the Software to transmit software viruses or other harmful computer code, files or programs, or to circumvent, disable or otherwise interfere with security-related features of the Software; (viii) use the Software to collect or harvest any third party's personally identifiable information, to send unauthorized commercial communications or to invade the privacy rights of any third party; or (ix) use the Software for any unlawful purpose, and/or in any manner that breaches this Agreement. All rights not expressly granted to you by [company] under this Agreement are hereby reserved by [company]. You will not acquire such rights, whether through estoppel, implication, or otherwise.

[YOU ARE EXPRESSLY PROHIBITED FROM DISCLOSING THE SOFTWARE TO ANY PERSON OR ENTITY OR PERMITTING ANY PERSON OR ENTITY

Corp., No. 17-1448 (Fed. Cir. 2018) which found that field-of-use restrictions do not create a contractual obligation on the part of the licensee not to exceed the defined scope. As result, the licensor cannot terminate the agreement for cause in response to the licensee exceeding the scope of the field-of-use restriction (although the licensee may be exposed to claims of IP infringement). Accordingly it may be desirable to include an express covenant not to exceed the defined scope.

[15] This provision is tied to the "object code" license. If source code is provided, additional considerations regarding open source software and third-party notices are relevant to distribution. Note that the drafting is careful in identifying that the rules for open source parts of the software have different rules and emphasis is added to the respect to applicable law or open source licenses.

[16] Such notices relate to the company's ownership of IP. This is expanded in section 7, but is good to have it stated in the license restrictions.

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ACCESS TO OR USE OF THE SOFTWARE OTHER THAN IN ACCORDANCE WITH THIS AGREEMENT. <sup>[17]</sup> ]

**3. APP SOFTWARE RESTRICTIONS.** If you have downloaded the Software from an App Store, you are also subject to any terms of use of that App Store. Such terms of use may prohibit you from doing some of the things you are permitted to do under this Agreement, or permit you to do some of the things you are prohibited from doing under this Agreement. In addition, application of the App Store's terms of use may result in other terms of this Agreement not being applicable to the Software or applying in a different way than this Agreement states. If your use of the Software is subject to an App Store's terms of use, then in the event of any conflict or ambiguity between the terms of this Agreement and such App Store's terms of use, the App Store's terms of use will govern, but only to the extent necessary to resolve such conflict or ambiguity, and the terms of this Agreement will otherwise remain in full force and effect.<sup>[18]</sup> Notwithstanding anything to the contrary in this Agreement, by using the Software, you acknowledge and agree that it is solely your responsibility to understand the terms of this Agreement, as well as the terms of use of any App Store that may be relevant to the Software or the Product.

**4. UPGRADES AND UPDATES.** While [company] is not required to do so, [company] may provide you with upgrades or updates to this Software. This Agreement will govern any upgrades provided by [company] that replace and/or supplement the original firmware and/or Software, unless such upgrade is accompanied by a separate end user license agreement, in which case the terms of that end user license agreement will govern. If you decide not to download and use an upgrade or update provided by [company], you understand that you could put the

[17] The extent of confidentiality language included in a software EULA depends upon the type of software and conditions of its use. Some software providers may want to allow the user to permit others access to the software, where that new user then would fall under the EULA. Note that confidentiality of highly sensitive source code can be handled through a separate signed confidentiality agreement.

[18] The user is still subject to the terms and conditions of the App Store if obtained there, and in the case of an ambiguity, the terms of the App Store will govern. App Store is defined as Google or Apple's app stores in the definition of "You". Typically app stores provide themselves content under an open source license for their iOS or Android systems and because these are inherent to two main distribution channels for devices that are also tied to such systems. The drafter knows where these ambiguities might lie and therefore provides for express provisions that will allow compliance of such licenses and avoid breach through this agreement. It is therefore advisable to include all apps that require other distribution channels and also think of including similar express provisions of governance of open source software in general (see footnote [22])

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<p>Software at risk to serious security threats or cause the Software to become unusable or unstable. Some Products include an auto-update feature, which gives us the ability to make updates automatically. You can change auto-update options by changing your settings within the Product account information. In very limited cases, updates may still be automatically applied, regardless of the auto-update setting. For example, we may provide an automatic update that fixes a security breach or vulnerability to your network. We may also provide you with updated Software data files automatically to benefit you, such as to provide you with updated device information to identify new devices in your network. These data files do not update your firmware, but consist of Software files that are cached on your Product and override older files. By agreeing to this Agreement, you agree to automatic updates.<sup>[19]</sup></p> <p><b>5. DATA AND PRIVACY.</b> We at [company] are committed to protecting your privacy. Our goal is to provide you with a positive experience when using our apps, products and services, while at the same time keeping your Personal Information, as defined in the [company] Privacy Policy (the “Privacy Policy”), secure. Our privacy practices are described in the Privacy Policy, as well as in separate notices given when an app, product or service is purchased or downloaded. By using [company] Products or providing us with your Personal Information, you are accepting and consenting to the practices, terms and conditions described in the Privacy Policy.<sup>[20]</sup> At all times your information will be treated in accordance with the [company] Privacy Policy, which is incorporated by reference into this Agreement and can be viewed at [hyperlink to company privacy policy]<sup>[21]</sup></p> <p><b>6. OPEN SOURCE SOFTWARE.</b> You hereby acknowledge that the Software may</p>	<p>[19] Most EULA's allow licensors to install automatic updates to the software because they are also typically tied to certain operative systems, which in turn are often updated from technical to aesthetic features. Therefore, typically the end user will be transferred liability for not allowing an update that might cause instability or malfunctioning. This EULA will cover any updates as also mentioned in footnote [8].</p> <p>[20] By using the company's products <i>OR</i> providing the company with personal information, the user accepts and consents to the Privacy Policy. Just like consumer law, privacy law may change from one jurisdiction to another and might be generally applicable beyond the terms of the agreement. Accordingly, having a separate Privacy Policy is a good practice that will allow managing properly privacy law provisions. Furthermore, the use of data from multiple users is often a very important part of the agreement rather than the software itself and therefore the ability to use the data and to inform the user about</p>
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<p>contain Open Source Software (as defined below). This license does not apply to Open Source Software contained in the Software.<sup>[22]</sup> Rather, the terms and conditions in the applicable Open Source Software license shall apply to the Open Source Software. Nothing in this Agreement limits your rights under, or grants you rights that supersede, any Open Source Software license. You acknowledge that the Open Source Software license is solely between you and the applicable licensor of the Open Source Software. You shall comply with the terms of all applicable Open Source Software licenses, if any. License and copyright information for the Open Source Software are disclosed in the Product documentation, within the “Support” tab on [company] websites and within the “Contact Us” section on [affiliate] websites. [company] is not obligated to provide any maintenance or support for the Open Source Software or any Product Software that has been modified by you pursuant to an Open Source Software license.<sup>[23]</sup></p> <p>“Open Source Software” means any software or software component or technology that is subject to an open source license. Open source licenses are generally licenses that make source code available for free modification and distribution, but can also apply to technology received and distributed solely in object code form. Examples of open source licenses include: (a) GNU's General Public License (GPL) or Lesser/Library GPL (LGPL); (b) the OpenSSL License; (c) the Mozilla Public License; (d) the Berkeley Software Distribution (BSD) License; and (e) the Apache License.<sup>[24]</sup></p> <p><b>7. INTELLECTUAL PROPERTY RIGHTS.</b> All title and intellectual property rights (including without limitation all</p>	<p>such use is often of the essence and require a separate document.</p> <p>[21] The EULA directs to the company's Privacy Policy which may be altered outside of this agreement.</p> <p>[22] This agreement does not apply to Open Source Software and the terms and conditions of the open source software license will apply.</p> <p>[23] This section generally limits the licensor's liability for the user's use of any Open Source Software.</p>
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<p>copyrights, patents, trade secret rights and trademark rights) in and to the Software (including but not limited to any content incorporated into the Software), the accompanying printed materials, and any copies of the Software, are owned by [company] or its suppliers. Therefore, you must treat the Software like any other material protected by laws and treaties relating to international property rights and in accordance with this Agreement.<sup>[25]</sup></p>	<p>[24] Definition of Open Source Software with examples given. With open source software, buyer beware!</p>
<p><b>8. THIRD PARTY PRODUCTS AND SERVICES.</b> The Software may contain links or other features that make it easier for you to visit or log-in to independent third-party websites (“Linked Sites”). These features are provided solely as a convenience to you. Linked Sites are not under [company’s] control, and [company] is not responsible or liable for and does not endorse the content or practices of such Linked Sites, including any information or materials contained on such Linked Sites. You will need to make your own independent judgment regarding your interaction with these Linked Sites. You hereby waive and release any legal claim you might have against [company] with respect to these sites or third-party products or services, and your use of these sites, third-party products or services.<sup>[26]</sup> We encourage you to read the terms and conditions and privacy policy of each third party website that you choose to visit.</p> <p><b>9. INDEMNITY.</b> If [company] is the subject of a claim, becomes involved in a legal</p>	<p>[25] This section protects the licensor’s intellectual property. It favors the licensor in that the IP is not defined and requires the user to treat the software as being protected by IP law. In a software environment, particularly where there is open source software involved the developments by users will likely be compromised in more than one way. Typically this kind of agreement therefore is open and leaves space to apply general IP law on authorship or inventorship and subsequently on ownership. However, because software is copyrightable in most jurisdictions, the user is obliged to treat it generally as a proprietary material regarding IP rights, as software will be subject to copyrights by simply materializing it in a support.</p> <p>[26] This section limits the liability of licensor for user visiting or using Linked Sites.</p>



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proceeding, or suffers any economic loss or damage as a result of your violation of this Agreement, to the extent permitted by law, you will be responsible for compensating [company] for the full amount of its loss, as well as any reasonable amounts [company] incurs in lawyers' fees, expenses and court costs, except to the extent that [company] contributed to the loss or damage.<sup>[27]</sup>

**10. TERM.** This Agreement is effective when you click on the “I Accept” button, or when you in any other way use, copy or install the Software, which will constitute your acceptance of, and agreement to, this Agreement. Once accepted, this Agreement remains in effect until terminated. The limited license in this Agreement will be automatically terminated if you fail to comply with any of the terms and conditions in this Agreement.<sup>[28]</sup> You agree that upon such termination, you will immediately destroy all programs and documentation that relate to the Software, including all copies made or obtained by you, and otherwise cease use of the Software. If the Software has been installed on a personal computer or mobile device, you must uninstall the Software immediately. If the Software is software or firmware embedded on a Product, you must stop using the Product. All provisions of this Agreement except for Section 1 and the limited warranty in Section 12 (the first paragraph) will survive termination.<sup>[29]</sup>

**11. IMPORTANT NOTICE REGARDING YOUR CONSUMER RIGHTS.** SOME COUNTRIES, STATES AND/OR PROVINCES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN CONDITIONS, WARRANTIES OR GUARANTEES, AND/OR DO NOT ALLOW PRODUCTS OR SERVICES TO

[27] The indemnification clause favors the licensor. The automatic nature of the download of computer programs makes it difficult to negotiate terms and conditions, but liability from licensor is typically managed through consumer law (see footnote [30]) and therefore this clause is directed only to user's actions, which risk typically is present in the breach of law or open source agreements. It should be noted that it is usually unfavorable to have a one-sided indemnity clause.

[28] Auto termination on breach. Some consumer laws might need specific technical features in order to ensure consent by the user (see footnote [4]). Nowadays there are some breaches of the agreement that might be technically detected and the software itself might uninstall or block the software from the device.

[29] There is no clause allowing licensor to terminate at any time with or without cause. This is likely because the software is installed in a device and might be “uninstalled” at will and in

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<p>BE SOLD WITH NO WARRANTIES OR GUARANTEES. ACCORDINGLY, IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE SECTIONS BELOW ENTITLED “LIMITED WARRANTY AND DISCLAIMER” AND “GENERAL EXCLUSIONS AND LIMITATION OF LIABILITY” MAY NOT APPLY TO YOU. ONLY THOSE EXCLUSIONS AND LIMITATIONS THAT ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU AND, IN SUCH INSTANCES, [company’s] LIABILITY WILL BE LIMITED ONLY TO THE MAXIMUM EXTENT PERMITTED BY LAW.<sup>[30]</sup> THE ENFORCEABILITY OF THESE LIMITED WARRANTIES MAY VARY BASED ON THE LOCAL LAWS APPLICABLE TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS DEPENDING ON WHERE YOU LIVE. FOR EXAMPLE, IN AUSTRALIA AND NEW ZEALAND, OUR SOFTWARE AND THE MEDIA ON WHICH IT IS PROVIDED COME WITH STATUTORY GUARANTEES, INCLUDING AS TO QUALITY AND FITNESS FOR PURPOSE, WHICH CANNOT BE EXCLUDED OR LIMITED UNDER THE AUSTRALIAN CONSUMER LAW OR THE CONSUMER GUARANTEES ACT 1993 (NEW ZEALAND) (AS FURTHER EXPLAINED BELOW).</p> <p>THIS AGREEMENT IS NOT INTENDED TO AND DOES NOT: (I) CHANGE OR EXCLUDE ANY STATUTORY CONSUMER RIGHTS THAT CANNOT BE LAWFULLY CHANGED OR EXCLUDED; OR (II) LIMIT OR EXCLUDE ANY RIGHT YOU HAVE AGAINST THE PERSON WHO SOLD THE PRODUCT TO YOU IF THAT PERSON HAS BREACHED ANY SALES CONTRACT WITH YOU. YOU</p>	<p>addition the nature of the license is fully paid-for.</p> <p>[30] This agreement is written for global users. Only the limitations that are lawful in your jurisdiction apply to you. Examples are then given for different countries (see footnote [4]). Typically examples must be provided at least for the countries where most users are expected to be. When the distribution platforms allow, it might also be possible to draft specifically a license with the provisions of the country where the distribution is open. One example, is that the EU has an implied condition of performance.</p>
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AGREE TO USE THE SOFTWARE IN COMPLIANCE WITH ALL APPLICABLE LAWS, INCLUDING LOCAL LAWS OF THE COUNTRY OR REGION IN WHICH YOU LIVE OR IN WHICH YOU DOWNLOAD OR USE THE SOFTWARE.

CERTAIN LEGISLATION, INCLUDING THE AUSTRALIAN CONSUMER LAW AND THE CONSUMER GUARANTEES ACT 1993 (NEW ZEALAND) ("CGA") MAY IMPLY WARRANTIES OR CONDITIONS, OR IMPOSE GUARANTEES OR OBLIGATIONS ON [company], WHICH OPERATE TO PROTECT CERTAIN AUSTRALIAN OR NEW ZEALAND PURCHASERS OF GOODS AND SERVICES IN VARIOUS CIRCUMSTANCES ("AU/NZ APPLICABLE LAWS"). NOTHING IN THIS AGREEMENT EXCLUDES, RESTRICTS OR MODIFIES ANY CONDITION, WARRANTY, GUARANTEE, RIGHT OR REMEDY IMPLIED OR IMPOSED BY ANY AU/NZ APPLICABLE LAWS WHICH CANNOT LAWFULLY BE EXCLUDED, RESTRICTED OR MODIFIED. If any condition, warranty or guarantee is implied into this Agreement or imposed on [company] under AU/NZ Applicable Laws and cannot be excluded, but [company] has a choice of a remedy, then [company's] liability for breach of the condition, warranty or guarantee is limited to one or more of the following, at [company's] option: (a) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods or refunding the payment for the goods if it would be unreasonable to expect the products to be repaired; or (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again. In addition to these remedies a

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"consumer" (within the meaning of the CGA) may claim for any reasonably foreseeable loss (other than loss or damage through reduction of value of the goods) that results from the initial problem.<sup>[31]</sup>

#### 12. LIMITED WARRANTY AND

**DISCLAIMER.** [company] warrants that any media (such as a CD or USB stick) on which the Software is provided will be free from defects in materials and workmanship under normal use for 90 days from the date of its original purchase (the "Warranty Period"). If you make an eligible software media claim under this warranty during the Warranty Period (the "Limited Warranty"), [company] will honor this warranty by replacing the Software media.<sup>[32]</sup> To make a claim under this Limited Warranty, return the defective media along with the sales receipt directly to [company] at the following address: [company address]. This Limited Warranty is void if failure of the media has resulted from accident, abuse, or misapplication. Any replacement media will be warranted for the remainder of the original Warranty Period or thirty (30) days, whichever is longer. In relation to consumers who are entitled to the benefit of the CGA, the media on which Software is provided comes with guarantees that cannot be excluded under New Zealand law, and this Limited Warranty is in addition to any statutory rights such consumers may have under New Zealand law. This Limited Warranty does not apply in Australia. Consumers in Australia have statutory rights in relation to the Software and media on which the Software is provided under the Australian Consumer Law.

EXCEPT FOR THIS LIMITED WARRANTY ON MEDIA, SUBJECT TO SECTION 11 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE AND ANY

[31] Generally, consumer rights still apply. An example of specific consumer laws pertaining to Australia and New Zealand is given. Licensor may have choice of remedy depending on the jurisdiction.

[32] Certain warranties covering defects and workmanship on Software media are provided. Note that the Warranty is limited to the hardware where the software is supported ensuring that the user will be able to install it. However, because of consumer law there are express exceptions.

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<p>RELATED PROGRAMS AND DOCUMENTATION IS PROVIDED TO YOU “AS IS,” WITH ALL FAULTS AND WITHOUT WARRANTIES OF ANY KIND. IN THOSE JURISDICTIONS WHERE IT CAN LAWFULLY DO SO, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, [company], ITS RESELLERS AND ITS SUPPLIERS HEREBY DISCLAIM AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCEPTABLE OR SATISFACTORY QUALITY, NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, LOSS OF OR DAMAGE TO DATA, LACK OF VIRUSES OR FREE FROM VIRUS OR MALWARE ATTACK, SECURITY, PERFORMANCE, LACK OF NEGLIGENCE, WORKMANLIKE EFFORT, QUIET ENJOYMENT, THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR REQUIREMENTS, OR THAT YOUR USE OF OR THE PERFORMANCE OF THE SOFTWARE AND RELATED INFORMATION, PROGRAMS AND DOCUMENTATION WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED, OR THAT YOUR USE OF THE SOFTWARE AND RELATED INFORMATION, PROGRAMS AND DOCUMENTATION WILL GENERATE ACCURATE, RELIABLE, TIMELY RESULTS, INFORMATION, MATERIAL OR DATA. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY [company], A DEALER, AGENT OR AFFILIATE SHALL CREATE A WARRANTY. To the extent warranties cannot be disclaimed or excluded, they are</p>	
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limited to the duration of the relevant Warranty Period. <sup>[33]</sup>

YOUR USE OF THE SOFTWARE, PRODUCT AND RELATED PROGRAMS AND DOCUMENTATION IS AT YOUR OWN RISK AND DISCRETION. YOU ARE SOLELY RESPONSIBLE FOR (AND [company] DISCLAIMS) ANY AND ALL LOSS, LIABILITY, OR DAMAGES, INCLUDING TO YOUR HOME, HVAC SYSTEM, ELECTRICAL SYSTEM, PLUMBING, PRODUCT, OTHER PERIPHERALS CONNECTED TO THE PRODUCT, COMPUTER, MOBILE DEVICE, AND ALL OTHER ITEMS AND PETS IN YOUR HOME, RESULTING FROM YOUR MISUSE OF THE SOFTWARE, PRODUCT AND RELATED PROGRAMS AND DOCUMENTATION. YOU ARE RESPONSIBLE FOR COMPLYING WITH ANY SAFETY WARNINGS AND PRECAUTIONS THAT ACCOMPANY THE PRODUCT. IF YOU ARE NOT COMFORTABLE WITH USING THE PRODUCT AFTER READING THE SAFETY WARNINGS, YOU MUST RETURN THE PRODUCT TO YOUR PLACE OF PURCHASE AND STOP USING THE SOFTWARE. [company] IS NOT RESPONSIBLE FOR (I) YOUR FAILURE TO FOLLOW SAFETY WARNINGS, PRECAUTIONS OR ANY OTHER INSTRUCTIONS PROVIDED WITH THE PRODUCT AND/OR SOFTWARE, (II) YOUR NEGLIGENCE IN USE OF THE PRODUCT AND/OR SOFTWARE, OR (III) YOUR INTENTIONAL MISUSE OF THE PRODUCT OR SOFTWARE.

YOU FURTHER ACKNOWLEDGE THAT THE SOFTWARE AND ANY RELATED

[33] Note that the Warranty expressly excludes all liability related to the hardware where the software is finally installed. Also consider whether under the UK Sale of Goods Act, it is desirable to expressly exclude liability for breach of implied “conditions” of satisfactory quality and fitness for purpose.

**SAMPLE AGREEMENT ANNOTATIONS**  
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PROGRAMS AND DOCUMENTATION ARE NOT CERTIFIED FOR EMERGENCY RESPONSE OR INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE FAILURE, DELAY OR ERRORS OR INACCURACIES IN THE DATA OR INFORMATION PROVIDED BY THE SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, INCLUDING WITHOUT LIMITATION IN CONNECTION WITH THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, LIFE SUPPORT OR WEAPONS SYSTEMS. YOU UNDERSTAND THAT THE PRODUCTS AND SOFTWARE ARE NOT PART OF AND DO NOT CONTAIN A THIRD-PARTY MONITORED EMERGENCY NOTIFICATION SYSTEM. [company] DOES NOT MONITOR EMERGENCY NOTIFICATIONS AND WILL NOT DISPATCH EMERGENCY AUTHORITIES TO YOUR HOME IN THE EVENT OF AN EMERGENCY. [company] CUSTOMER SUPPORT CONTACTS CANNOT BE CONSIDERED A LIFESAVING SOLUTION AND THEY ARE NOT A SUBSTITUTE FOR EMERGENCY SERVICES. ALL LIFE THREATENING AND EMERGENCY SITUATIONS SHOULD BE DIRECTED TO THE APPROPRIATE EMERGENCY RESPONSE SERVICES IN YOUR AREA.

It is your responsibility to back up your system, including without limitation, any material, information or data that you may use or possess in connection with the Product or Software, and [company] shall have no liability for your failure to back up your system or any material, information or data.

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Some [company] Products and Software may monitor energy consumption in the home. [company] does not guarantee or promise any specific level of energy savings or other monetary benefit from the use of the Products or Software or any other feature. Actual energy savings and any associated monetary benefits vary based on factors beyond [company's] control or knowledge. From time to time, [company] may use the Software to provide you with information that is unique to you and your energy usage and suggests an opportunity to save money on energy bills if you adopt suggestions or features of the Product or Software. You acknowledge that this information is not a guarantee of actual savings, and you agree not to seek monetary or other remedies from [company] if your savings differs. All information provided to you by [company] is provided "as is" and "as available". We cannot guarantee that it is correct or up to date. In cases where it is critical, accessing information through the Software is not a substitute for direct access of the information in the home.

**13. GENERAL EXCLUSIONS AND LIMITATION OF LIABILITY:** SOME JURISDICTIONS<sup>[34]</sup> DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE FOREGOING LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL [company], ITS AFFILIATES, ASSOCIATES, DEALERS, AGENTS OR SUPPLIERS OR THEIR RESPECTIVE OFFICERS,

[34] Again, this EULA is written for global users. There will be limitation of liability to the extent permissible. Other specific country examples are



## SAMPLE AGREEMENT ANNOTATIONS

### End User License Agreement

<p>DIRECTORS, EMPLOYEES, LICENSORS AND ASSIGNS BE LIABLE FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS OR REVENUE, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR LOSS OF ABILITY TO USE ANY THIRD PARTY PRODUCTS OR SERVICES, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER), REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF [company] OR SUCH OTHER ENTITIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF [company], ITS AFFILIATES, ASSOCIATES, DEALERS, AGENTS OR SUPPLIERS TO YOU FOR ALL DAMAGES EXCEED THE LESSER OF XX DOLLARS (\$X) OR THE PRICE YOU PAID FOR THE PRODUCT, THE SOFTWARE OR THE MEDIA CONTAINING THE SOFTWARE. THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF ANY WARRANTY OR REMEDY PROVIDED FAILS OF ITS ESSENTIAL PURPOSE. NOTHING IN THIS SECTION IS INTENDED TO LIMIT THE LIABILITY, UNDER APPLICABLE LAW, OF</p>	<p>given. Main jurisdictions may be taken into account.</p>
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<p>[company] IN RELATION TO DEATH OR BODILY INJURIES.</p> <p>IF YOU LIVE IN THE EUROPEAN UNION,<sup>[35]</sup> REFERENCES TO "SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES" SHALL MEAN ANY LOSSES WHICH (I) WERE NOT REASONABLY FORESEEABLE BY BOTH PARTIES; (II) WERE KNOWN TO YOU BUT NOT TO US; AND/OR (III) WERE REASONABLY FORESEEABLE BY BOTH PARTIES BUT COULD HAVE BEEN PREVENTED BY YOU SUCH AS, FOR EXAMPLE (BUT WITHOUT LIMITATION), LOSSES CAUSED BY VIRUSES, MALWARE OR OTHER MALICIOUS PROGRAMS, OR LOSS OF OR DAMAGE TO YOUR DATA.</p> <p>The warranties and remedies set out in this Agreement are exclusive, and, to the extent permitted by law, in lieu of all others oral or written, express or implied.</p> <p><b>14. EXPORT CONTROL LAWS:</b> You agree that the use of the Software is subject to U.S. and local export control laws and regulations. You represent and warrant that you are not a citizen of an embargoed or “terrorist supporting” country<sup>[36]</sup> or a prohibited or restricted end user under applicable U.S. or local export and anti-terrorism laws, regulations and lists. You agree to strictly comply with all export control laws and regulations and agree not to export, re-export, divert, transfer or disclose any portion of the Software or any related technical information or materials, directly or indirectly, in violation of any applicable export law or regulation.</p>	<p>[35] Specifically, if the user lives in the EU.</p>
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## SAMPLE AGREEMENT ANNOTATIONS

### End User License Agreement

<p><b>15. U.S. GOVERNMENT USERS:</b> The Software and user documentation qualify as “commercial items” as defined at 48 C.F.R. 2.101 and 48 C.F.R. 12.212. All U.S. Government users acquire the Software and user documentation with only those rights herein that apply to non-governmental customers.<sup>[37]</sup> Use of either the Software or user documentation or both constitutes agreement by the U.S. Government that the Software and user documentation are “commercial computer software” and “commercial computer software documentation,” and constitutes acceptance of the rights and restrictions herein.</p> <p><b>16. GENERAL TERMS.</b> If any portion of this Agreement or any of its terms is found to be void or unenforceable by law in a particular jurisdiction, such portion or terms shall be interpreted and enforced to the maximum extent allowed in such jurisdiction, and the remaining provisions or any part thereof will remain in full force and effect. This Agreement constitutes the entire agreement between [company] and you with respect to the Software and your use thereof and supersedes any conflicting or additional terms contained in any purchase order or elsewhere.<sup>[38]</sup> No provision of this Agreement may be waived, modified or superseded except by a written instrument accepted by [company] and you. However, the [company] Privacy Policy referenced herein is subject to change in the manner described in that document. [company] may provide translations of this Agreement as a convenience to users. However, in the event of a conflict or inconsistency between the English and any non-English versions, the English version of this Agreement shall govern, to the extent not prohibited by local law in your jurisdiction. Any suppliers of [company] shall be direct and intended third-party beneficiaries of this Agreement, including without limitation with respect to</p>	<p>[36] Under all classifications of the Export Administration Regulations, software may not be exported to certain countries.</p> <p>[37] Government users do not have any additional rights under this agreement. Licensor does not need to provide additional information to the government, including technical information and documentation. Government may negotiate for additional information.</p>
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## SAMPLE AGREEMENT ANNOTATIONS

### End User License Agreement

the disclaimers of warranties and limitations on liability set forth herein. Other than as set forth in the preceding sentence, a person or entity who is not a party to this Agreement shall not have any right to enforce any term of this Agreement. No failure or delay in exercising any right or remedy shall operate as a waiver of any such (or any other) right or remedy. The language of this Agreement shall not be construed strictly for or against either party, regardless of who drafted such language or was principally responsible for drafting it. The rights and obligations under this Agreement are not assignable by you, and any attempted assignment shall be void and without effect. This Agreement shall bind and inure to the benefit of the parties and their successors and permitted assigns. In the event of any legal proceeding between the parties arising out of or related to this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief awarded or granted, its costs and expenses (including reasonable attorneys' and expert witness' fees) incurred in any such proceeding.

*If you are located in the United States, Section 17 applies to you.<sup>[39]</sup>*

#### **17. ARBITRATION, WAIVER OF CLASSWIDE ARBITRATION, GOVERNING LAW & VENUE.**

**(A) GENERALLY. SUBJECT TO CLAUSE 17(D) BELOW, YOU AND [company] EACH ACKNOWLEDGE AND AGREE THAT ANY CLAIM, DISPUTE OR CONTROVERSY BETWEEN YOU AND [company] ARISING OUT OF OR RELATING TO (1) THIS AGREEMENT, INCLUDING THE VALIDITY OF THIS SECTION, AND (2) YOUR USE OF SOFTWARE AND/OR PRODUCT(S) UNDER THIS AGREEMENT (COLLECTIVELY, THE "DISPUTE") SHALL BE RESOLVED**

[38] This is the entire agreement except for the referenced Privacy Policy (footnote [21]).

[39] For arbitration provisions, governing law, and venue, Section 17 applies to users located in the US.

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### End User License Agreement

**EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION ADMINISTERED BY JAMS, A NATIONALLY RECOGNIZED ARBITRATION AUTHORITY, PURSUANT TO ITS CODE OF PROCEDURES THEN IN EFFECT FOR CONSUMER-RELATED DISPUTES. YOU UNDERSTAND THAT WITHOUT THIS PROVISION YOU WOULD HAVE HAD A RIGHT TO LITIGATE A DISPUTE THROUGH A COURT BEFORE A JURY OR JUDGE, AND THAT YOU HAVE EXPRESSLY AND KNOWINGLY WAIVED THOSE RIGHTS AND AGREE INSTEAD TO RESOLVE ANY DISPUTES THROUGH BINDING ARBITRATION IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.**

**(B) ARBITRATION PROCEDURES AND FEES.** PRIOR TO SUBMITTING A CLAIM FOR ARBITRATION, EITHER PARTY SHALL FIRST NOTIFY THE OTHER PARTY TO TRY TO RESOLVE THE DISPUTE. IF THE DISPUTE IS NOT RESOLVED WITHIN 60 DAYS OF SUCH NOTIFICATION, THEN THE CLAIM WILL BE SUBMITTED FOR ARBITRATION. THE ARBITRATION OF ANY DISPUTE OR CLAIM SHALL BE CONDUCTED IN ACCORDANCE WITH THE THEN CURRENT AND APPLICABLE RULES OF JAMS AS MODIFIED BY THIS AGREEMENT. THE ARBITRATION SHALL OCCUR BEFORE A SINGLE ARBITRATOR, WHO MUST BE A RETIRED JUDGE OR JUSTICE, IN ONE OF SIX REGIONAL VENUES CONSISTENT WITH THE VENUE PROVISION BELOW. WHETHER OR NOT YOU PREVAIL IN THE DISPUTE, SO LONG AS YOUR CLAIM IS NOT FOUND TO BE FRIVOLOUS BY THE ARBITRATOR AS MEASURED BY RULE

## SAMPLE AGREEMENT ANNOTATIONS

### End User License Agreement

<p>11(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE, YOU SHALL BE ENTITLED TO BE REIMBURSED FOR YOUR COSTS OF ARBITRATION, WITHIN THE SOLE DISCRETION OF THE ARBITRATOR. IF THE ARBITRATION AWARD IS EQUAL TO OR GREATER THAN THE AMOUNT YOU DEMANDED IN YOUR ARBITRATION CLAIM, [company] WILL PAY FOR YOUR REASONABLE AND ACTUAL ATTORNEYS' FEES YOU HAVE INCURRED TO ARBITRATE THE DISPUTE, PLUS A MINIMUM RECOVERY OF \$2,500. ANY DECISION OR AWARD BY THE ARBITRATOR RENDERED IN AN ARBITRATION PROCEEDING SHALL BE FINAL AND BINDING ON EACH PARTY, AND MAY BE ENTERED AS A JUDGMENT IN ANY COURT OF COMPETENT JURISDICTION. IF EITHER PARTY BRINGS A DISPUTE IN A COURT OR OTHER NON-ARBITRATION FORUM, THE ARBITRATOR OR JUDGE MAY AWARD THE OTHER PARTY ITS REASONABLE COSTS AND EXPENSES (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES) INCURRED IN ENFORCING COMPLIANCE WITH THIS BINDING ARBITRATION PROVISION, INCLUDING STAYING OR DISMISSING SUCH DISPUTE. ANY ARBITRATION SHALL BE CONFIDENTIAL, AND NEITHER YOU, NOR [company] NOR THE ARBITRATOR MAY DISCLOSE THE EXISTENCE, CONTENT OR RESULTS OF ANY ARBITRATION, EXCEPT AS MAY BE REQUIRED BY LAW OR FOR PURPOSES OF ENFORCEMENT OR APPEAL OF THE ARBITRATION AWARD. JUDGMENT ON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING PROPER JURISDICTION. IF ANY PORTION OF THIS ARBITRATION</p>	
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## SAMPLE AGREEMENT ANNOTATIONS

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CLAUSE IS DETERMINED BY A COURT TO BE INAPPLICABLE OR INVALID, THEN THE REMAINDER SHALL STILL BE GIVEN FULL FORCE AND EFFECT.

**(C) WAIVER OF CLASSWIDE CLAIMS; SMALL CLAIMS COURT. NEITHER YOU NOR [company] SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS IN ARBITRATION BY OR AGAINST OTHER CONSUMERS OR ARBITRATE ANY CLAIMS AS A REPRESENTATIVE OR MEMBER OF A CLASS OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. YOU UNDERSTAND THAT WITHOUT THIS PROVISION YOU MAY HAVE HAD A RIGHT TO ARBITRATE A DISPUTE ON A CLASSWIDE OR REPRESENTATIVE BASIS, AND THAT YOU HAVE EXPRESSLY AND KNOWINGLY WAIVED THOSE RIGHTS AND AGREE INSTEAD TO ARBITRATE ONLY YOUR OWN DISPUTE(S) IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. NOTWITHSTANDING THE ABOVE AGREEMENT TO ARBITRATE DISPUTES, YOU AND [company] EACH ACKNOWLEDGE AND AGREE THAT EITHER PARTY MAY, AS AN ALTERNATIVE TO ARBITRATION, BRING AN INDIVIDUAL ACTION IN SMALL CLAIMS COURT TO RESOLVE A DISPUTE, SO LONG AS SUCH SMALL CLAIMS COURT DOES NOT PROVIDE FOR OR ALLOW FOR JOINDER OR CONSOLIDATION OF CLAIMS.**

**(D) GOVERNING LAW; INJUNCTIVE RELIEF. THIS AGREEMENT IS TO BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA WITHOUT**

## SAMPLE AGREEMENT ANNOTATIONS

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GIVING EFFECT TO ANY CONFLICT OF LAW RULE THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION TO THE RIGHTS AND DUTIES OF THE PARTIES. HOWEVER, WITH RESPECT TO SOFTWARE PROVIDED, IF YOU ARE A CONSUMER AND YOU LIVE IN A COUNTRY WHERE [company] MARKETS OR PROMOTES THE SOFTWARE, LOCAL LAW MAY REQUIRE THAT CERTAIN CONSUMER PROTECTION LAWS OF YOUR COUNTRY OF RESIDENCE APPLY TO SOME SECTIONS OF THIS AGREEMENT. IN ADDITION, [company] MAY SEEK INJUNCTIVE RELIEF IN ANY COURT HAVING JURISDICTION TO PROTECT ITS INTELLECTUAL PROPERTY RIGHTS. EACH OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS AND THE UNITED NATIONS CONVENTION ON THE LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS IS HEREBY EXPRESSLY EXCLUDED AND WILL NOT APPLY TO THIS AGREEMENT.

**(E) VENUE.** EXCEPT FOR INDIVIDUAL SMALL CLAIMS ACTIONS WHICH CAN BE BROUGHT IN ANY SMALL CLAIMS COURT WHERE JURISDICTION AND VENUE ARE PROPER, ANY ARBITRATION, LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY DISPUTE SHALL BE COMMENCED IN (1) NEW YORK, NEW YORK, (2) ATLANTA, GEORGIA, (3) CHICAGO, ILLINOIS, (4) DALLAS, TEXAS, (5) SEATTLE, WASHINGTON, OR (6) LOS ANGELES, CALIFORNIA, AND YOU AND [company] EACH IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF ANY



## SAMPLE AGREEMENT ANNOTATIONS

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SUCH PROCEEDING. HOWEVER, FOR A DISPUTE OF \$10,000 OR LESS, YOU MAY CHOOSE WHETHER THE ARBITRATION IN ANY OF THE SIX REGIONAL VENUES PROCEEDS IN PERSON, BY TELEPHONE, OR BASED ONLY ON SUBMISSIONS.

*If you are located outside of the United States, or if Section 17 does not apply to you or is otherwise unenforceable as adjudicated by a court of competent jurisdiction, then Section 18 applies to you.<sup>[40]</sup>*

**18. GOVERNING LAW.** This Agreement will be governed by California law, without reference to its or any other jurisdiction's conflict of laws principles. Any action arising out of or relating to this Agreement may be brought exclusively in the appropriate state or federal court in Los Angeles, California, and [company] and you irrevocably consent to the jurisdiction of such courts and venue in Los Angeles, California. However, if you are a consumer and you live in a country where [company] markets or distributes the Software, local law may require that certain consumer protection laws of your country of residence apply to some sections of this Agreement. In addition, [company] may seek injunctive relief in any court having jurisdiction to protect its intellectual property rights. Each of the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods is hereby expressly excluded and will not apply to this Agreement.

[40] If the user is NOT located in the US, consumer protection laws of your country may apply. Emphasis to some formalities and/or technical requirements for enforcement under local law should be made. If Section 17 doesn't apply, the agreement will be governed by California law.

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