

# SAMPLE AGREEMENT ANNOTATIONS

## End User License Agreement

End User License Agreement ("EULA") [1]	Remarks
<p>This End User License Agreement ("<b><i>Agreement</i></b>") is an agreement between Company, Inc. ("<b><i>Company</i></b>," "<b><i>we</i></b>," "<b><i>us</i></b>" or "<b><i>our</i></b>") and you or the entity that you represent for the [NAME OF SOFTWARE] software (the "<b><i>Software</i></b>").</p> <p>PLEASE READ THIS AGREEMENT CAREFULLY. IT CONTAINS IMPORTANT TERMS THAT AFFECT YOU AND YOUR USE OF THE SOFTWARE. BY INSTALLING, COPYING OR USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. [3] IF YOU DO NOT AGREE TO THESE TERMS, DO NOT INSTALL, COPY, OR USE THE SOFTWARE. [4] IF YOU ARE ACCESSING OR USING THE SOFTWARE ON BEHALF OF ANY ENTITY OR OTHERWISE IN PERFORMANCE OF SERVICES FOR ANY ENTITY, YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH ENTITY'S BEHALF, THAT ACCEPTANCE OF THIS AGREEMENT AND USE OF THIS SOFTWARE WILL NOT VIOLATE ANY AGREEMENT YOU HAVE WITH SUCH ENTITY, AND THAT SUCH ENTITY AGREES TO INDEMNIFY YOU AND COMPANY FOR VIOLATIONS OF THIS AGREEMENT.</p> <p><b>1. Software License</b></p> <p>Subject to the terms and conditions of this Agreement and during the term of this Agreement, the Company hereby grants you a</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.</p> <p>[2] The specific identification of the parties should not be overlooked. From the Licensee's perspective, it is important that the actual entity which owns or controls the software is identified as the Company and the party who will be using the software is identified as "you".</p> <p>[3] 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. Some software marketplaces or websites will provide links to the EULA without affirmative acceptance, but courts have not uniformly found these licenses to be enforceable.</p> <p>[4] An opt-out provision is included, alerting the user that <u>not</u> installing, copying or using the software will not bind them to the agreement.</p> <p>[5] User rep and warranty that the user has the right to authorize acceptance of the agreement is included in this section.</p> <p>[6]-[8] Software vendors will retain the right to their software and in order to provide rights to</p>

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<p>non-exclusive [6], non-sublicensable [7], non-transferable license [8] to [install and use] [stream, access, download and use] one copy of the Software in object code form [9] only on a single [personal computing device] [network server] solely to use the services made available by Company (the “<b>Company Services</b>”) for your own personal or internal business use (the “<b>Permitted Purpose</b>”). [10] Any Software that updates, supplements or replaces the original Software is governed by this Agreement unless separate license terms accompany such update, supplement or replacement, in which case such separate terms will govern in the event of a conflict with this Agreement or as otherwise provided in such separate terms.</p> <p><b>2. License Limitations</b></p> <p>Section 1 states the entirety of your rights with respect to the Software, and we reserve all rights not expressly granted to you in this Agreement. Without limiting the foregoing, you will not do, or authorize or permit any third party to do, any of the following: (a) distribute, sub-license, sell, assign, or otherwise transfer or make available the Software; (b) use the Software for any purpose other than the Permitted Purpose; (c) reverse engineer, decompile, disassemble or otherwise attempt to discover or re-create the source code for the Software [11]; (d) modify, adapt, alter, improve or create any derivative works of the Software; (e) connect the Software with any other online services or use the Software in conjunction with other software or services not provided by or permitted by Company [in connection with the Company Services]; (f) remove, circumvent or create or use any workaround to any copy protection or security feature in or relating to the Software; or (g) remove, alter or obscure any copyright, trademark or other proprietary rights notice on or in the Software.[12]</p>	<p>other potential users, will often grant non-exclusive, non-sublicensable, non-transferable licenses to user. 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).</p> <p>[9] This is object code-focused, look to 2(c) – could be source code</p> <p>[10] The licensed rights are typically granted to identified devices. Here, the clause may be expanded to list multiple devices owned by the user, for example, in an Appendix.</p> <p>[11] This provision is tied to the “object code” license as noted above in [9].</p> <p>[12] This section explicitly states which rights are reserved by the Company that are not granted to the user.</p>
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<p><b>3. Ownership and Confidentiality</b></p> <p>The Software is licensed, not sold, to you. We or our licensors own all right, title and interest in and to the Software, including all copyright, patent and other intellectual property or other proprietary rights in the Software. No title to or ownership of the Software or any associated intellectual property or proprietary rights are transferred to you by this Agreement. [13]</p> <p>You also acknowledge that when you download, install or use the Software, we have the right to automatically collect information on your use of the Software. We may also require that you provide information regarding yourself in order to download, install or use the Software or certain features. [14] All information collected from you in connection with the Software may be used by us in compliance with our Privacy Policy [15] [PROVIDE LINK]. By your using, installing, downloading or providing information, you consent to the Privacy Policy and our use of your information in compliance thereof.</p> <p>[YOU ARE EXPRESSLY PROHIBITED FROM DISCLOSING THE SOFTWARE TO ANY PERSON OR ENTITY OR PERMITTING ANY PERSON OR ENTITY ACCESS TO OR USE OF THE SOFTWARE OTHER THAN IN ACCORDANCE WITH THIS AGREEMENT. [16] ]</p> <p><b>4. Disclaimers</b></p> <p>THE SOFTWARE IS PROVIDED TO YOU FREE OF CHARGE [17] AND IS PROVIDED ON AN “AS IS” BASIS AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. COMPANY AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED</p>	<p>[13] This section makes clear that no IP ownership is transferred to the user, and that the license does not entitle the user to do anything with the software other than what the user has been licensed.</p> <p>[14] Automatic collection of data is highlighted by the inclusion of these provisions.</p> <p>[15] Privacy policy may need to be adjusted depending on European law – “what is the information provided”. Any provision not mentioned in this agreement may be included in the Privacy Policy.</p> <p>[16] Whether a confidentiality clause is used in software 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.</p> <p>[17] This isn’t always the case.</p>
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### End User License Agreement

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. COMPANY DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE IS FREE OF BUGS, ERRORS, VIRUSES OR OTHER DEFECTS OR THAT THE SOFTWARE WILL TRANSMIT DATA IN A SECURE MANNER. COMPANY AND ITS LICENSORS SHALL HAVE NO LIABILITY OF ANY KIND FOR THE USE OF OR INABILITY TO USE THE SOFTWARE. COMPANY AND ITS LICENSORS PROVIDES ANY WARRANTY OR REPRESENTATIONS OF ANY KIND THAT THE SOFTWARE WILL OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS, ACHIEVE ANY KIND OF INTENDED PURPOSE, BE COMPATIBLE WITH ANY OTHER SOFTWARE OR SYSTEM, OR HAVE ERRORS THAT CAN BE CORRECTED[18]

Some jurisdictions do not allow the exclusion of implied warranties or limitations on how long an implied warranty may last. To the extent that those laws apply to this Agreement, the exclusions and limitations set forth above may not apply.

#### 5. Indemnification

You will defend, indemnify and hold harmless Company and its affiliates, independent contractors, service providers, suppliers, partners, resellers, distributors and consultants, and their respective directors, officers, employees and agents (collectively, the “*Company Parties*”) from and against any third party claims, suits or actions and any resulting damages, costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or related to: (a) your use of, or inability to use,

[18] When the software is not free, the warranties granted to the user may be negotiated. For example, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, and LIABILITY OF ANY KIND FOR THE USE OF OR INABILITY TO USE THE SOFTWARE may be negotiated. Infringement may be negotiated as well.

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the Software; or (b) your violation of any terms of this Agreement. [19]

#### 6. Limitation of Liability

IN NO EVENT SHALL ANY OF THE COMPANY PARTIES BE LIABLE FOR ANY DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF A COMPANY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE COMPANY PARTIES, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SOFTWARE EXCEED THE COMPENSATION YOU HAVE PAID, IF ANY, TO COMPANY FOR THE SOFTWARE. [20]

Some jurisdictions do not allow the exclusion or limitation of certain damages. To the extent that those laws apply to this Agreement, the exclusions and limitations set forth above may not apply.

#### 7. Termination

Company may terminate this Agreement at any time, with or without cause, immediately upon notice to you.[21] [Company may also discontinue the Company Services with

[19] Typical indemnification clause – this may be negotiated in the case of paid-for software.

[20] Typical limitation of liability clause – this may also be negotiated in the case of paid-for software.

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<p>which the Software is used, in which case this Agreement will terminate automatically without notice to you.] You may terminate this Agreement [by cancelling your Company Services account opened in connection with your use of the Software and] deleting all copies of the Software in your possession or control. [22] In the event of the termination of this Agreement for any reason: (a) the license granted to you in this Agreement will terminate; (b) you must immediately cease all use of the Software and destroy or erase all copies of the Software in your possession or control; and (c) Sections 3 (Ownership), 4 (Disclaimers), 5 (Indemnification), 6 (Limitation of Liability), 7 (Termination), 8 (Governing Law; Jurisdiction) and 9 (General) will survive any such termination. [23] [Further, in the event the agreement governing your use of the Company Services with which the Software is used is terminated for any reason, this Agreement will terminate automatically without notice to you.]</p> <p><b>8. Evaluation and Feedback [24]</b></p> <p>You will at your own risk and expense use reasonable efforts to provide Company with reasonable information and feedback (including, without limitation, questions, comments, suggestions, or the like) regarding the performance, features, functionality and your overall experience using the Software (“<b>Feedback</b>”) and will make yourself available to Company on a reasonable basis for this purpose. You will not provide any such Feedback to any third party without Company’s prior written consent in each instance. [25] You hereby grant to Company an exclusive, royalty-free, irrevocable, perpetual worldwide right and license to reproduce, use, disclose, exhibit, display, transform, create derivative works and distribute any such Feedback without limitation. Further, we will be free to use any ideas, concepts, know-how or techniques</p>	<p>[21] Allowing Company to terminate at any time with or without cause protects Company, if for some reason Company must remove the software.</p> <p>[22] A reciprocal right to terminate by the user terminates all licensed rights to the user.</p> <p>[23] Survival clause has been bundled into this termination clause.</p> <p>[24] This provision is used specifically for an evaluation and feedback use of the software and describes how the Company can use the feedback. Such provision may be important to Company to protect Company from being sued by the user.</p> <p>[25] This feedback clause appears to be very restrictive – obligating the user to use reasonable efforts and to avail themselves to the Company for feedback. Further, constraining the user from providing feedback to any third party also appears to be overly constraining.</p>
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contained in such Feedback for any purpose whatsoever, including, without limitation, developing, making, marketing, distributing and selling products and services incorporating such Feedback. [26] We will have no obligation to consider, use, return or preserve any Feedback you provide to us. Any Feedback you provide to us may or may not be treated confidentially by us, and we will have no obligation or liability to you for the use or disclosure of any Feedback. You should not expect any compensation of any kind from us with respect to your Feedback.

#### 9. Governing Law; Jurisdiction

Unless expressly prohibited by local law, this Agreement is governed by the laws of the State of [\_\_\_\_], without regard to any conflict of law principles to the contrary. You hereby irrevocably consent to jurisdiction of the state and federal courts located in [\_\_\_\_] County with respect to any proceeding regarding this Agreement or the Software. The 1980 UN Convention for the International Sale of Goods or any successor thereto does not apply to this Agreement. You will not prosecute any action, suit, proceeding or claim arising under or by reason of this Agreement or the Software except in such courts.

#### 10. General

(a) Legal Compliance; Export Restrictions. You represent and warrant that (i) you are not located in a country that is subject to a United States embargo, or that has been designated by the United States government as a “terrorist supporting” country; and (ii) you are not listed on any United States government list of prohibited or restricted parties. The Software and related technology are subject to applicable United States export laws and regulations. You must comply with all applicable laws and regulations, including without limitation all applicable United States

[26] The feedback clause alerts the user that any comments made to the Company is licensed to the Company. This appears to cover IP work, which the user may not know s/he is contributing to the Company, allowing the Company to use any user feedback/creations that are voluntarily submitted to the Company.

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and international export laws and regulations, with respect to the Software and related technology. Without limitation, you may not export, re-export or otherwise transfer the Software or related technology, without a United States government license: (i) to any person or entity on any United States export control list; (ii) to any country subject to a United States sanctions; or (iii) for any prohibited end use.

(b) U.S. Government License Rights. If acquired by any agency of the United States government, such agency acknowledges that (i) the Software constitutes “commercial computer software” or “commercial computer software documentation” for purposes of 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-3, as applicable, and (ii) such agency's rights are limited to those specifically granted to you pursuant to this Agreement.

(c) Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the remainder of this Agreement will remain in full force and effect, and the remaining provisions will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force.

(d) Assignment. You may not assign or otherwise transfer this Agreement, or assign, sublicense or otherwise transfer any of your rights under this Agreement without the prior written consent of Company, and any attempted assignment without such consent will be void.

(e) Attorney's Fees. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and reasonable attorney's fees.



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<p>(f) <u>Entire Agreement</u>. This Agreement, our Privacy Policy [LINK] [list any other agreements] sets forth our entire agreement with respect to the Software and supersedes all prior and contemporaneous understandings and agreements with respect to the Software whether written or oral.</p>	
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