

## END USER LICENSE AGREEMENT RETAIN 4.3

IMPORTANT: LICENSOR IS PROVIDING THIS LICENSED SOFTWARE TO LICENSEE (THE ORIGINAL PURCHASER EITHER AS AN INDIVIDUAL OR ON BEHALF OF ANOTHER LEGAL ENTITY AS ITS EMPLOYEE OR AUTHORIZED AGENT) FOR ITS USE SUBJECT TO LICENSEE'S AGREEMENT TO THE TERMS AND CONDITIONS SET FORTH BELOW. **THESE TERMS AND CONDITIONS MAY BE DIFFERENT FROM THE END USER LICENSE AGREEMENT(S) THAT ACCOMPANIED EARLIER RELEASES OF THE LICENSED SOFTWARE. PLEASE READ THEM CAREFULLY TO ENSURE FULL UNDERSTANDING BEFORE PROCEEDING, AS THEY MAY CONTAIN ADDITIONAL RESTRICTIONS ON YOUR USE OF THE SOFTWARE. PLEASE DIRECT ANY QUESTIONS TO THE MICRO FOCUS LEGAL DEPARTMENT AT LEGALDEPT@MICROFOCUS.COM.** IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT, YOU WILL NOT BE AUTHORIZED TO USE THE LICENSED SOFTWARE. BY CLICKING THE ACCEPT BUTTON OR SIMILAR ACCEPTANCE MECHANISM DURING INSTALLATION, OR BY COPYING OR USING THE LICENSED SOFTWARE, LICENSEE ACKNOWLEDGES THAT IT HAS READ THIS LICENSE AGREEMENT, UNDERSTOOD IT, AND AGREED TO BE BOUND BY ITS TERMS AND CONDITIONS. THE LICENSED SOFTWARE IS LICENSED NOT SOLD.

For this End User License Agreement ("**License Agreement**") the following terms shall have the meanings given below:

"**Documentation**" means the Licensor user documentation that is included with the Licensed Software.

"**Licensee**" means the single legal entity or person that rightfully acquires the Licensed Software from Licensor or from a distributor or reseller of Licensor.

"**License Options**" means those license options set forth in Annex 1 to this License Agreement.

"**Licensor**" means GWAVA Inc., a Micro Focus company.

"**Licensed Software**" means the object code version of the Licensor computer program(s) listed above, their Documentation, and other supplemental materials, as provided to Licensee by Licensor, including but not limited to any software security keys relating thereto. The Documentation may be delivered electronically and may only be available in the English language. The Licensed Software will be accompanied by a license key where required for activation and use of the Licensed Software. The Licensed Software shall also include, and this License Agreement shall govern the use of any update to the Licensed Software that Licensee receives pursuant to a separate support and/or maintenance purchase as described in Section 6 below, unless such update contains or comes with a different end user license agreement, in which case such end user license agreement shall supersede this License Agreement and govern the use of such software license without need for a mutually executed amendment to this License Agreement as set forth in Section 17 of this License Agreement. This License Agreement does not grant Licensee the right to any updates to the Licensed Software unless provided by Licensor under Section 6 and/or Section 7 below.

"**Product Order**" means a document that has been (i) executed by Licensee describing each Licensed Software license to be purchased, and (ii) accepted by Licensor. Licensor will accept the Product Order by either confirming Licensor's acceptance in writing or by delivering the Licensed Software to Licensee, whichever occurs first. A Product Order may also mean a written quote, or if referred to as such, a solution order, issued by Licensor describing each Licensed Software license purchased that is accepted by Licensee within the validity period of the quote either by Licensee executing and returning the quote or a solution order, to Licensor, by Licensee issuing a purchase order or other written confirmation of acceptance to Licensor in conformance with the quote, and/or by Licensee paying to Licensor all fees set forth in the quote. Each Product Order shall constitute a separate agreement and shall incorporate therein this License Agreement. In the event of any conflict between the terms and conditions of this License Agreement and the terms and conditions of any Product Order, the conflicting terms and conditions of the Product Order shall govern. In no event shall any terms and conditions contained in a purchase order or similar document issued by Licensee in connection with this License Agreement or with a Product Order apply and any such document issued shall be only for the administrative purposes of identifying the Licensed Software ordered, the number of licenses, and the price to be paid and shall have no other legal effect. Licensor for purposes of this paragraph shall mean Licensor or, if applicable, one of Licensor's authorized resellers from whom Licensee purchases the Licensed Software, provided however that any conflicting or additional terms in a Product Order accepted by an authorized reseller of Licensor shall have no effect unless such terms have been agreed by Licensor in writing.

"**Warranty Period**" means a period of ninety (90) days from delivery of the Licensed Software to Licensee.

1 **GRANT OF LICENSE; LICENSE CONDITIONS.** For payment of the applicable non-refundable license fees identified on the Product Order and subject to Licensee's compliance with the terms and conditions set forth in this License Agreement, Licensor grants solely to Licensee, as an end user, a personal, perpetual (unless a subscription/term license has been purchased by Licensee), non-transferable, non-sublicensable and non-exclusive license to use the Licensed Software **solely for its own internal use and benefit.** Licensee's use and operation of the Licensed Software and the license grant provided to the Licensed Software is subject to Licensee being in possession of a valid license key where required for the Licensed Software to run. Licensee agrees that Licensor is not liable or responsible for lost or broken license keys or media or the provision of replacement license keys or media and/or new license keys or media unless Licensee is current on support and maintenance for the applicable license and then only to the extent set forth in the applicable annual support and/or maintenance agreement and only to the extent Licensor then has sufficient rights from any applicable third party suppliers, if necessary, to provide such replacement. If not current on support and maintenance for the applicable license, replacement or new license keys or media may be available for purchase at Licensor's then current list fees for applicable new licenses.

Different License Options are available from Licensor as set forth or referred to in Annex 1. The applicable License Option and license count to be purchased by Licensee for the Licensed Software shall be identified in the Product Order or otherwise identified in writing by Licensor. Licensed Software is also subject to additional terms and conditions as set forth in the "Specific Software Terms" located in Annex 2. Any conflicting terms and conditions shall be resolved according to the following order of precedence: Annex 2, Annex 1, and the main body of the License Agreement.

- 2 **USE RESTRICTIONS.** Except as may be otherwise specifically permitted in Annex 1 or Annex 2 to this License Agreement, Licensee agrees not to:
- 2.1 Copy and/or distribute the Licensed Software, in whole or in part, for internal use without paying Licensor the applicable additional fees required by Licensor, except (i) for making a reasonable number of archival back-up copies; or (ii) as expressly authorized by Licensor in writing; or (iii) for making a reasonable number of copies of the Documentation supplied to Licensee by Licensor in electronic form. Licensee shall reproduce and affix all copyright and other proprietary rights notices appearing in or on the Licensed Software, including notices of all third party suppliers.
  - 2.2 Use the Licensed Software for timesharing, facilities management, outsourcing, hosting, service bureau use, or for providing other application service (ASP) or data processing services to third parties or for like purposes.
  - 2.3 Modify the Licensed Software or provide any person with the means to do the same.
  - 2.4 Create derivative works of the Licensed Software, or translate, disassemble, recompile or reverse engineer the Licensed Software or attempt to do so (except to the extent applicable law specifically permits such activity).
  - 2.5 Alter, destroy, or otherwise remove any proprietary notices or labels on or embedded within the Licensed Software or Documentation.
  - 2.6 Use the Licensed Software in a manner other than as specifically permitted in this License Agreement.
- 3 **AUDITS.** Licensor or an Auditor (as defined below) has the right to verify Licensee's compliance with this License Agreement (and please see Micro Focus License Compliance Charter - <http://supportline.microfocus.com/licensing/licVerification.aspx>). Licensee agrees to:
- A. Implement internal safeguards to prevent any unauthorized copying, distribution, installation, or use of, or access to, the Licensed Software and associated support and maintenance, or breach of the terms or conditions of this License Agreement;
  - B. Take all necessary steps to destroy or erase all Licensed Software codes, programs and other proprietary information before disposing of any media containing the Licensed Software;
  - C. Keep records sufficient to certify Licensee's compliance with this License Agreement including serial numbers and license keys of the Licensed Software, hypervisor logs where applicable, and the location, model (including quantity and type of processor) and serial number of all machines on which the Licensed Software is installed or from which the Licensed Software is accessed, and the names (including corporate entity) and number of users that are accessing the Licensed Software, and, upon request of Licensor, provide and certify metrics and/or reports based upon such records and account for, among other things, numbers of copies (by product and version) and network architectures as they may reasonably relate to Licensee's licensing and deployment of the Licensed Software and associated support and maintenance;
  - D. Upon Licensor's request, Licensee shall furnish Licensor or an independent auditor chosen at Licensor's sole discretion ("Auditor"), within seven (7) days of the request, with a completed questionnaire provided by Licensor or the Auditor, and with a written statement, in a format required by Licensor, signed by a director of Licensee, certifying the accuracy of any information provided;
  - E. Allow a Licensor representative or an Auditor to inspect and audit Licensee's computers and records, during Licensee's normal business hours, for compliance with the licensing terms for Licensor's software products and associated maintenance. Upon Licensor's (and Auditor's if applicable) presentation of their signed written confidentiality statement form, Licensee shall fully cooperate with such audit and provide any necessary assistance and access to records and computers; and
  - F. In the event that Licensee has or at any time has had unlicensed installation, use of, or access to the Licensed Software or has otherwise breached the license granted (a "Non-Compliance"), without prejudice to any other rights or remedies Licensor may have, including without limitation injunctive relief, Licensee shall, within thirty (30) days, purchase sufficient licenses and or subscriptions and associated support and maintenance to cure the Non-Compliance, without benefit of any otherwise applicable discount, by paying Licensor's current (as of the date of such additional purchase) list license fees and 12-month support and maintenance fees to Licensor for such additional licenses, plus Licensor's current (as of the date of such additional purchase) list term license and support and maintenance fees and interest (compounded at 1.5% monthly or the maximum rate permitted by applicable law if lower) for such additional licenses for the time period from the commencement of the Non-Compliance until payment of the aforementioned fees. The aforementioned interest shall be payable even if an invoice was not issued at the time the Non-Compliance commenced. If a material license shortfall of 5% or more is found, Licensee shall also reimburse Licensor for the reasonable cost of such audit in addition to other amounts due. The obligations in this Section 3 shall apply to both Licensee's Non-Compliance and any third party's Non-Compliance.
- 4 **DOCUMENTATION.** One (1) electronic copy of Licensor's standard Documentation, describing Licensor's recommended use and application of the Licensed Software, will be furnished or made available on Licensor's website free of additional charge to Licensee by Licensor with the Licensed Software. Printed copies of any Documentation may be available for purchase from Licensor or its authorized distributors. Additional copies of standard Documentation may be available on Licensor's website.
- 5 **TERM OF LICENSE.** This License Agreement and Licensee's license for the Licensed Software is perpetual, unless a subscription/term license has been purchased by Licensee (in which case the term of the license shall be as set forth in the Product Order, specified in Annex 1 or Annex 2, or as otherwise agreed in writing between the Licensee and Licensor), and is subject to earlier termination as provided in this Section 5. If Licensee has purchased a subscription/term license, Licensee's license to the Licensed Software shall automatically terminate upon expiry of such subscription/term. Licensor may terminate this License Agreement and Licensee's license to the Licensed Software immediately by giving Licensee written notice of termination in the event that either (i) Licensee breaches any term or condition of this License Agreement and Licensee has failed to remedy such breach within ten (10) days of the date of notice from Licensor to Licensee or (ii) Licensee is wound up, has a receiver appointed or has applied for or enters into liquidation or bankruptcy or analogous process or processes. Termination shall be without prejudice to any other rights or remedies Licensor may have. In the event of any termination Licensee will have no right to keep, access, or use the Licensed Software or any copy of the Licensed Software for any purpose and Licensee shall destroy and erase all copies of such Licensed Software in its possession or control, and forward written certification to Licensor that all such copies of Licensed Software have been destroyed or erased. Termination shall not entitle the Licensee to any refund or reimbursement of any kind of previously paid fees. The rights and obligations of the parties contained in Sections 3, 8, 9, 10, 11, 12, and 13, and other sections that by their nature are intended to survive, will survive the termination or expiration of this License Agreement.
- 6 **SUPPORT AND MAINTENANCE.** Where Licensee purchases support and/or maintenance services, Licensee's initial support and/or maintenance term will begin upon delivery to Licensee of the Licensed Software and continue for one (1) year thereafter (or the length

of the term if less than a year for any subscription/term license) unless otherwise specified in the applicable annual support and/or maintenance agreement, Product Order, or other written agreement executed between Licensor and Licensee. Where Licensee purchases support and/or maintenance for any Licensed Software, Licensee hereby agrees that it shall purchase such support and/or maintenance services for all of Licensee's licensed units of such Licensed Software product. Support and/or maintenance services provided by Licensor will be subject to Licensor's then current applicable standard annual support and/or maintenance agreement unless otherwise agreed by the parties in writing.

- 7 **LIMITED WARRANTY.** Licensor warrants for the Warranty Period (i) that if the Licensed Software is supplied via media, then the media will be free from defects in materials or workmanship under normal use and (ii) that the copy of the Licensed Software delivered to Licensee conforms in all material respects to the Documentation. As the sole and exclusive remedy for not meeting part (i) of the above warranty, Licensor's sole obligation shall be to repair or replace free of charge any defective media on which the Licensed Software is delivered if the media is returned to Licensor by Licensee during the Warranty Period. As the sole and exclusive remedy for not meeting part (ii) of the above warranty, Licensor shall repair or replace the Licensed Software free of charge so that it conforms with the warranty or, if Licensor reasonably determines that such remedy is not economically or technically feasible, Licensee shall be entitled to a full refund of the license fee and any maintenance fee paid by Licensee with respect to that particular Licensed Software. Upon such refund Licensee's license to use such Licensed Software will terminate. The warranty set forth in this Section 7 shall not apply if the defect in the Licensed Software is the result of: (a) the Licensed Software not being used in accordance with the Documentation, this License Agreement or with the platform(s) for which the Licensed Software has been designed and licensed by Licensor; or (b) the Licensed Software having been altered, modified or converted by Licensee or any third party except as may be specified in the Documentation; or (c) the malfunctioning of Licensee's equipment; or (d) accident or abuse; or (e) service by any unauthorized person; or (f) other software used by Licensee which has not been provided by Licensor or for which the Licensed Software is not designed and licensed for operation; or (g) Third Party Software (as defined herein); or (h) any other cause occurring after initial delivery of the media to Licensee unless caused directly by Licensor. The foregoing states the complete and entire remedies that Licensee has under this warranty. Licensor shall have no responsibility for any warranty claims made outside of the Warranty Period. The foregoing warranty shall not apply to any free-of-charge Licensed Software including updates, though issues with such software may be eligible for support under applicable support terms and conditions.
- 8 **DISCLAIMER OF WARRANTY.** The Licensed Software cannot be tested in every possible operating environment, therefore Licensor does not warrant that the functions contained in the Licensed Software will meet Licensee's requirements, that operation of the Licensed Software will be uninterrupted, or that the Licensed Software is error free. EXCEPT AS SET FORTH HEREIN AND TO THE EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED ON THE PART OF LICENSOR AND ITS THIRD-PARTY SUPPLIERS. Licensee acknowledges that Licensee is responsible for the selection of the Licensed Software to achieve Licensee's intended results and for the installation and/or use of, and results obtained from, the Licensed Software.
- 9 **LIMITATION OF LIABILITY.** ANY LIABILITY OF LICENSOR SHALL BE LIMITED IN THE AGGREGATE TO THE AMOUNTS PAID BY LICENSEE FOR THE LICENSED SOFTWARE GIVING RISE TO THE APPLICABLE CLAIM. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SIMILAR DAMAGES NOR FOR ANY LOSS OF PROFITS, CONTRACTS, DATA, OR PROGRAMS, OR THE COST OF RECOVERING SUCH DATA OR PROGRAMS, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. LICENSOR'S LIMITATIONS OF LIABILITY ARE NOT CUMULATIVE. LICENSEE'S REMEDIES IN THIS LICENSE AGREEMENT ARE LICENSEE'S EXCLUSIVE REMEDIES.
- NONE OF LICENSOR'S THIRD-PARTY SUPPLIERS SHALL BE LIABLE FOR ANY INJURY, LOSS OR DAMAGE, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL NOR FOR ANY LOSS OF PROFITS, CONTRACTS, DATA, OR PROGRAMS, OR THE COST OF RECOVERING SUCH DATA OR PROGRAMS, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.
- LICENSEE AGREES THAT, IN ENTERING INTO THIS LICENSE AGREEMENT, EITHER IT DID NOT RELY ON ANY REPRESENTATIONS (WHETHER WRITTEN OR ORAL) OF ANY KIND OTHER THAN THOSE EXPRESSLY SET OUT IN THIS LICENSE AGREEMENT, OR IF IT DID RELY ON ANY REPRESENTATIONS, THAT IT SHALL HAVE NO REMEDY AGAINST LICENSOR IN RESPECT OF SUCH REPRESENTATIONS.
- LICENSEE FURTHER ACKNOWLEDGES THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION ARE AN ESSENTIAL ELEMENT OF THIS LICENSE AGREEMENT AND THAT, IN THE ABSENCE OF SUCH LIMITATIONS, THE PRICING AND OTHER TERMS AND CONDITIONS SET FORTH HEREIN WOULD BE SUBSTANTIALLY DIFFERENT.
- NEITHER THIS LICENSE AGREEMENT NOR ANYTHING IN THIS SECTION 9 SHALL EXCLUDE OR RESTRICT THE LIABILITY OF LICENSOR OR ITS THIRD-PARTY SUPPLIERS TO ANY EXTENT NOT PERMITTED BY LAW.
- 10 **HIGH-RISK USES.** The Licensed Software is not fault tolerant, nor designed, manufactured or intended for use in hazardous environments requiring fail-safe performance (including, without limitation, the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems) in which failure of the Licensed Software could lead directly or indirectly to death, personal injury or severe physical or environmental damage. Licensor and its suppliers shall have no liability for any use of the Licensed Software in any high-risk situations.
- 11 **OWNERSHIP.** Licensor (or its affiliates) and where applicable Licensor's third party suppliers have and will retain all ownership rights to the Licensed Software, together with any complete or partial copies thereof. Such ownership rights include without limitation all patent rights, copyrights, trademarks, trade secrets, service marks, related goodwill, and confidential and proprietary information relating thereto. This License Agreement does not convey any proprietary interest to Licensee with respect to the Licensed Software other than the license specified herein.
- 12 **THIRD PARTY SOFTWARE AND COMPONENTS.** The Licensed Software may come with and/or require certain named third party software programs that Licensee shall license directly from the third party subject to such third party's terms and conditions (for example Adobe Acrobat or Microsoft Internet Explorer) ("Third Party Software"). Any Third Party Software is provided by the licensor of the Third Party Software solely under a direct license between such third party and Licensee under such third party's terms and conditions. Therefore the obligations, duties and rights of Licensor and Licensee under this License Agreement do not apply to such Third Party Software. Additionally, Licensor has embedded in some Licensed Software certain run time or other elements provided by third party suppliers to

Licensors ("Third Party Components"). Such Third Party Components may also be loaded on the Licensed Software media. Third Party Components are licensed to Licensee pursuant to this License Agreement. Third Party Components may also include open source software, details of which (where applicable) may be found (i) in a file accompanying the applicable Licensed Software or (ii) in the applicable Documentation. Licensee may only access Third Party Components of the Licensed Software in the course of using the Licensed Software. Licensee may not make or attempt any direct access to any such Third Party Components other than with the Licensed Software. All limitations, restrictions and obligations applicable to the Licensed Software set forth in this License Agreement shall apply to Licensee's use of the Third Party Components. The Third Party Software and Third Party Components are the property of its respective third party supplier to Licensor. Such third party suppliers own all copies of the Third Party Software and Third Party Components, however made. Licensee agrees not to contest the ownership of the Third Party Software and Third Party Components nor use any trademark or service mark belonging to such third party suppliers. Licensee agrees that such third party suppliers are intended third party beneficiaries of all terms and conditions of this License Agreement intended to protect intellectual property rights in the Licensed Software (including the Third Party Components) and limit certain uses thereof. Nothing in this License Agreement shall restrict, limit or otherwise affect any rights or obligations Licensee may have, or conditions to which Licensee may be subject, under any applicable open source licenses to any open source code contained in the Licensed Software.

- 13 **NOTICE TO U.S. GOVERNMENT END USERS.** The Licensed Software and Documentation are deemed to be "Commercial Items," as defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7207, as applicable. Consistent with such sections, the Licensed Software and Documentation are licensed to U.S. Government end users (i) only as Commercial Items, and (ii) with only those rights as are granted pursuant to this License Agreement. Manufacturer is GWAVA Inc., 100 Alexis Nihon Suite 500, Montreal, QC, H4M 2P1, Canada, as or on behalf of Licensor.
- 14 **LICENSE FEES AND PAYMENT TERMS.** Licensee agrees to pay the applicable end user license fees for the Licensed Software within thirty (30) days of the date of invoice or such other date as agreed in writing by the parties. End user license fees are non-refundable except as provided in Section 7 above, or in the Specific Software Terms below, and shall be paid without deduction, including without limitation, of any withholding tax. End user license fees are exclusive of any applicable transportation charges, value added and other applicable taxes and duties and all such amounts shall be paid or reimbursed by Licensee. Outstanding past-due amounts shall accrue interest at the rate of 1.5% per month compounded or, if lower, the maximum rate allowed by applicable law. Licensee shall be liable for any such interest and all related collection costs, whether or not an action has been filed. Licensor may decline to enter into any additional Product Orders if any such past-due balance, interest and collection costs are not paid.
- 15 **RELATED SERVICES.** Licensee shall be responsible for obtaining and installing all proper hardware and support software (including operating systems) and for proper installation and implementation of and training concerning the Licensed Software. In the event that Licensee retains Licensor to perform any services with respect to the Licensed Software (for example: installation, implementation, maintenance, consulting and/or training services), Licensee and Licensor agree that such services shall be subject to Licensor's then current standard terms, conditions and rates for such services unless otherwise agreed in writing by Licensor.
- 16 **PRIVACY.** If the Licensed Software contains features that may allow Licensee to collect data from, control and/or monitor computers running the Licensed Software deployed by Licensee without notice to or knowledge by users of the Licensed Software, then: (i) Licensee is solely responsible for, and assumes all liability with respect to, the collection of data with respect to its users of the Licensed Software including, without limitation, notifying such users and complying with all data collection, privacy and other regulations, laws, industry standards and rights of others applicable to any such activity; and (ii) Licensee shall indemnify and hold Licensor harmless from and against any damages, claims, losses, settlements, attorneys' fees, legal fees and court costs and other expenses related to any such activities or any claims in connection therewith. To the extent permitted by law, by entering into this License Agreement, Licensee hereby expressly consents to (i) Licensor sending information to Licensee from time to time advertising the various products that Licensor provides, whether or not such products are provided under this License Agreement; (ii) the use of Licensee's name in Licensor customer lists, promotional materials and/or press releases; and (iii) the collection and use by Licensor of information about the computer system on which the Licensed Software is installed (e.g. product version, serial number) for internal security and licensing purposes; Licensor does not use this information to identify individuals utilizing such software.
- 17 **MISCELLANEOUS.** Licensor may assign this License Agreement (in whole or in part) to any member of Licensor's group of companies or to a purchaser of the intellectual property rights in the Licensed Software, but otherwise neither this License Agreement nor any rights hereunder may be assigned (any change of control merger, sale or other transfer of all, or substantially all, of the assets of Licensee shall be included in the meaning of an assignment) nor duties delegated by either party, and any attempt to do so will be void.

If Licensee acquires the Licensed Software in North America, the laws of the state of Utah govern this License Agreement and the licenses granted hereunder and the parties hereto consent and agree that they shall be subject to the exclusive jurisdiction of the State and/or Federal courts sitting in the State of Utah in any action based on this License Agreement or concerning the licenses granted, or the products licensed, hereunder. Each party waives any right it may have to object to such venue, including objections based on personal jurisdiction or forum non conveniens (inconvenient forum). The parties agree that the Uniform Computer Information Transaction Act or any version thereof, adopted by any state, in any form ("UCITA"), shall not apply to this License Agreement. To the extent that UCITA is applicable, the parties hereby opt out of the applicability of UCITA pursuant to the opt-out provision(s) contained therein. If Licensee acquires the Licensed Software in France, Germany or Japan, this License Agreement is governed by the laws of the country in which Licensee acquired the Licensed Software. In the rest of the world the laws of England govern this License Agreement. The aforesaid applicable law shall apply without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. Other than for North American transactions, this License Agreement, the licenses granted hereunder, and the parties hereto, shall be subject to the exclusive jurisdiction of the courts of the country determining the applicable law as aforesaid. In the event of a dispute, the prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys' fees incurred in enforcing this License Agreement.

This License Agreement is in addition subject to any United States, United Kingdom or European Union laws, regulations and other restrictions regarding export or re-export of computer software and technology. Licensee agrees not to export or re-export any Licensed Software or derivative thereof in contradiction to any such applicable restriction. In particular but without limitation, Licensee acknowledges that Licensor's products and/or technology are subject to the U.S. Export Administration Regulations (the "EAR") and Licensee agrees to comply with the EAR. Licensee will not export or re-export Licensor's products, directly or indirectly, to: (1) any countries that are subject to US or applicable export restrictions; (2) any end user who Licensee knows or has reason to know will utilize Licensor's products in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems; or (3) any end user who has been prohibited from participating in export transactions by any applicable agency of government. By downloading or using the Licensed Software, Licensee is agreeing to the

foregoing and Licensee is representing and warranting that Licensee is not located in, under the control of, or a national or resident of any such country or on any such list.

Licensee may identify Licensee by name and/or logo as a licensee of Licensor for investor relations, analyst relations, and public relations purposes, and in online and printed sales and marketing materials. Any other use of Licensee's name or logo, or a description of Licensee's use of the Licensed Software, shall be subject to Licensee's prior consent. Within eight (8) weeks after installation of the Licensed Software, upon Licensor's written request Licensee will provide Licensor with input to a written description of Licensee's use of the Licensed Software including details of the business challenge, software solution, and results realised from the installation of the Licensed Software. The input shall be provided by a representative of Licensee (who is knowledgeable of the Licensed Software and its performance after installation) during a meeting with a representative of Licensor (at a reasonable time to be agreed by the parties). The meeting may be conducted by telephone. This input may be used internally within Licensor and in confidential sales situations. Any other use of this input shall be subject to Licensee's prior consent.

Except for the Product Order, this License Agreement is the complete and exclusive statement of agreement between the parties relating to the license for the Licensed Software and supersedes all proposals, communications, purchase orders, and prior agreements, verbal or written, including without limitation prior end user license agreements in relation to the Licensed Software between the parties and end user license agreements embedded in such Licensed Software. No employee, agent, or representative of Licensor has the authority to bind Licensor to any oral representation or warranty concerning the Licensed Software. No representation or statement not expressly contained in this License Agreement nor any supplement, modification, or amendment of this License Agreement will be binding on either party unless executed in writing by a duly authorized representative of Licensor and Licensee (excluding any distributor or reseller of Licensor) to this License Agreement. No waiver of any right under this License Agreement will be effective unless in writing, signed by a duly authorized representative of the party to be bound (excluding any distributor or reseller of Licensor). No waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future right arising under this License Agreement. If any provision in this License Agreement is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this License Agreement will remain unaffected. Each party acknowledges that in entering into this License Agreement it has not relied on any representations, agreements, warranties or other assurances (other than those repeated in this License Agreement and the Product Order) and waives all rights and remedies which but for this section 17 would be available to it. Nothing in this section 17 excludes liability for fraudulent misrepresentation.

If Licensee is situated in Italy, by placing or executing a Product Order, Licensee declares to have read and to have explicitly approved the following clauses of the License Agreement: 5. Term of License, 6. Support and Maintenance, 7. Limited Warranty, 8. Disclaimer of Warranty, 9. Limitation of Liability, 10. High-Risk Uses, 16. Privacy, 17. Miscellaneous, Annex 1, and Annex 2.

## ANNEX 1, LICENSE OPTIONS

For purposes of Annex 1 and Annex 2, the following terms shall have the meanings given below:

"Device" means a portable computing device such as a personal computer, smartphone, or tablet.

"Email Account" means electronic mail for one Entity. Alias to the Email Account are not considered an additional Email Account. Email distribution list is not considered an Email Account.

"Entity" means any of the following: one user; one shared account; or one resource.

"Modules" means those components of the Licensed Software that interact with a Server.

"Server" means one or many computers that serve as a central place to index, manage, report and store the Retain archives.

"Unified Account" means all Modules' collected records for one Entity.

"Use" means the storage, loading, installation, interaction, execution or display of the Licensed Software as granted pursuant to the terms and conditions of this License Agreement.

**Retain Server:** Licensee must have a license for each Unified Account.

**Retain Modules.** Modules are licensed depending on their type.

- Retain Email Modules are licensed per Email Account
- Retain Mobile Modules are licensed per Device
- Retain Social Modules are licensed per Record

Active Retain Modules need to have an active Retain Server License or Subscription.

### Inactive Unified Accounts

A Retain Unified Account is considered inactive when no data has been archived in the last 90 days and no module is linked to it. Inactive Unified Accounts require server licenses unless they are deleted from the Retain Server. A customer can recycle an inactive Unified Account License only if its maintenance or subscription is up to date and the Unified Account is cleared of data. Selecting which Unified Account to activate is discretionary to the Licensee. Unified Accounts are activated for a minimum of one year.

## ANNEX 2, SPECIFIC SOFTWARE TERMS

**License Grant.** It is expressly understood and agreed that the Use of the Licensed Software is limited as to the quantity of licensed units and in accordance with the restrictions as set forth in this License Agreement.

- a) Licensor hereby grants to Licensee a revocable, non-exclusive, non-transferable license to Use the Licensed Software pursuant to the terms and conditions of this License Agreement;
- b) Licensee hereby acknowledges and agrees that it will not modify the Licensed Software or disable any licensing or control features of the said Licensed Software;
- c) Licensee acknowledges and agrees that the Licensed Software may contain code(s) that enforce simultaneous use restrictions and/or disables all of its features upon the termination of any applicable evaluation period;
- d) Licensee acknowledges and agrees that Servers and Modules must be maintained with the most current version of the Licensed Software in order to interact together properly;
- e) Licensee acknowledges and understands that the efficiency and viability of the Licensed Software requires the proper and timely application of updates which are provided with maintenance coverage. The failure to maintain the Licensed Software may result in the loss of data, essential features and functionality. Maintenance is sold separately;
- f) Licensee acknowledges and understands that all warranties are void when the Licensed Software is operated without its proper updates and after expiry of its paid maintenance coverage; and
- g) Licensee acknowledges and understands that if the Licensed Software is acquired on a subscription basis, then the Licensee rights set out within this License Agreement will apply only for the time period for which the Licensee has paid the required subscription fees or for the time period authorized by Licensor.

**Monitoring.** It is agreed and understood that upon the occurrence of (a) a newly installed server (b) changes or modifications to the server license or, (3) upon first use of the server upon a version upgrade, that Licensor shall, for the purposes of monitoring the status of such server and compliance with the license terms and conditions associated therewith, log the license ID, ownership thereof, server ID and public IP address of the server in question as well as such other unique identifiers which Licensor may, from time to time, deem necessary for the aforementioned purposes.

**Evaluation Software.** If the Licensed Software is an evaluation version or is provided to Licensee for evaluation purposes, then, unless otherwise approved in writing by an authorized representative of Licensor, Licensee's license to use the Licensed Software is limited to one (1) copy of the Licensed Software solely for internal evaluation purposes in non-production use and in accordance with the terms of the evaluation offering under which Licensee received the Licensed Software and expires thirty (30) days from installation (or such other period as may be indicated within the Licensed Software). Upon expiration of the evaluation period, Licensee must discontinue use of the Licensed Software, return to an original state any actions performed by the Licensed Software, and delete the Licensed Software entirely from Licensee's system and Licensee may not download the Licensed Software again unless approved in writing by an authorized representative of Licensor. The Licensed Software may contain an automatic disabling mechanism that prevents its use after a certain period of time.

(072117)