

End-User License Agreement

Document Effective date: Jan 01, 2023

This End-User License Agreement ("EULA") states the terms and conditions agreed between you, ("Licensee") (either an individual or, an entity and its affiliates whose details are provided to Digital Rose), and Digital Rose ("Licensor"), to use the Software. This EULA applies from the date when the Licensee receives the Software from a Reseller or Digital Rose Inc. ("Purchase"). An amendment or addendum to this EULA may accompany the Software and any such amendment or addendum whose terms shall be considered part of, and shall prevail over the EULA.

By installing, copying, downloading or otherwise using in any way the Software, or by clicking a box indicating your acceptance, you agree to be bound by the terms of this EULA as Licensee. If you are entering into this agreement on behalf of an entity, you represent that you have the authority to bind such entity to the EULA and are agreeing to the EULA on its behalf.

IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MAY NOT INSTALL, COPY, DOWNLOAD OR OTHERWISE USE THE SOFTWARE.

1. Definitions

"Accessible Code" means source code that is unprotected and accessible.

"Affiliate" means another entity controlled by or under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests or of the voting directors of the subject entity.

"Authorized User" means a person who accesses and uses the Software under a User License.

"Cloud Products" means Digital Rose Inc. software hosted in the cloud.

"Data Functions" – means functions included in the Software to obtain information about usage from the servers where the Software is installed. The Licensee may freely disconnect the Data Functions at any moment.

"Embedded Software" means any third-party software that may contain Accessible Code, Protected Code or Media licensed by Licensor from a third-party and embedded in the Software.

"Fees" means all fees and expenses payable by the Licensee to the Licensor to use the Software and any Maintenance or User Licenses as applicable.

"Free License" means a license for which the Fees are waived by the Licensor.

"Maintenance" means the provision by the Licensor to the Licensee, of Software updates and/or enhancements made generally available to customers from time to time, and online technical support for the sole purpose of addressing technical issues relating to the use of the Software.

"Media" means all images, icons, text files, pdfs or other static non-code assets contained within the Software.

"OEM Distribution" means distribution of the Software either as a bundled add-on to, or embedded component of, another application with such application being made available to its users as, but not limited to, an on-premises application, a hosted application, a Software-as-a-Service offering or a subscription.

"Paid License" means a license for which Fees have not been waived by the Licensor.

"Parties" means either the Licensor or the Licensee or both.

"Products" means the Software, Maintenance, Cloud Products and other services or data, distributed by Digital Rose Inc. or any Reseller.

"Protected Code" means any source code that is protected against access by the Licensee and any third-party without the Licensor's prior written permission and is otherwise not accessible under this EULA.

“Purchase” means acquisition of the User License from a Reseller or Licensor.

“Reseller” means a third-party seller and distributor of Products under authorization from the Licensor.

“Software” means the Licensor’s “Digital Rose” branded software that accompanies this EULA, which may include computer software, Accessible Code and Protected Code, associated media, Media, printed materials, electronic or online documentation, Internet-based services and Embedded Software.

“Term” means the moment up to which one License is valid.

“User License” means a license granted under this EULA to the Licensee to permit an Authorized User to use the Software. The number of User Licenses granted to the Licensee depends on the Fees paid by the Licensee.

“Digital Rose” means Digital Rose Inc.

2. Grant of License

The Software is licensed, not sold. Upon Licensee’s acceptance of this EULA, Licensor grants the Licensee the non-exclusive and a non-transferable right to use the Software subject to the following conditions:

2.1 Paid License

2.1.1 Authorized Users

The licenses granted are subject to the condition that the Licensee must ensure the maximum number of Authorized Users accessing and using the Software concurrently is equal to the number of User Licenses for which the necessary Fees have been paid to the Reseller or Licensor. The Licensee may purchase additional User Licenses at any time on payment of the appropriate Fees to the Reseller or Licensor.

2.1.2 Backup

The Licensee is permitted to copy the Software for data protection, archiving and backup purposes only and for no other purpose. However, only the strictly necessary number of backup copies may be made.

2.2 Evaluation License

2.2.1 Installation and Use

Licensor may, at its sole discretion, provide evaluation copies of the Software, which may have limited functionality, to a Licensee to assess the Software. Such evaluation copies will be provided under an Evaluation License that limits the period during which the Licensee may download, install, use and operate the Software (“Evaluation Period”) and limits the number of temporary users. Upon the expiry of the Evaluation Period the Software will cease to function and the Licensee must remove and delete all copies of the Software in its possession.

2.3 General License Terms

2.3.1 Scope

Each License granted by the Licensor under this EULA is unless otherwise specified in this EULA or agreed by Licensor in writing, a worldwide, non-exclusive and non-transferable authorization to use the Software up to its Term.

The Licensee must: (a) ensure that only an Authorized User uses the Software and only in accordance with the terms and conditions of this EULA and (b) ensure that the Software is not used for rental, timesharing, subscription service, hosting or outsourcing.

The Licensee must not, whether through negligent act or omission, or without the prior written consent of the Licensor, which may be withheld at its sole discretion and conditions: (a) decompile; reverse engineer; disassemble; modify; adapt; create derivative works from; or otherwise attempt to derive; any part or whole of the Software; (b) directly or indirectly access or use any Embedded Software independently of the rest of the Software; (c) sell; sublicense; rent, redistribute; reproduce; transmit; circulate; disseminate; translate or reduce to or from any electronic medium or machine readable form the Software or any data/information not owned by the Licensee which is provided to the Licensee through the Software to a person who is not an Authorized User; (d) vary or amend the Software (including any Embedded Software; Protected Code or Accessible Code); (e) except as otherwise permitted in this EULA, publish; promote; broadcast; circulate or refer publicly of the Licensor’s name; trade name; trademark; service mark or logo; (f) commit any act or omission the likely result of which is that Licensor or any of its third-party suppliers reputation will be brought into disrepute or which could reasonably be

expected to have or does have a material and adverse effect on Licensor interests; (g) distribute the Software via OEM Distribution without entering into a separate OEM Distribution Agreement with Licensor; or (h) copy or embed elements of the Accessible Code contained in the Software into other software.

2.3.2 Duration

Subject to the terms of this EULA and unless terminated earlier in accordance with this EULA, the term granted hereunder shall be: (a) for a Paid Perpetual License, perpetual; (b) for a Subscription based Product, the period of time of the Paid License subscription or renewal, or (c) for an Evaluation License, the Evaluation Period.

2.3.3 Permitted Computers

Except as otherwise agreed in writing by the Licensor, the Licensee must only install the Software and make the Software available for use on hardware systems owned, leased or controlled by the Licensee.

2.3.4 Protection Mechanisms

The Software includes license protection mechanisms that are designed to manage and protect the intellectual property rights of the Licensor and its third-party suppliers. The Licensee must not modify, alter, attempt to defeat or defeat such protection mechanisms or the use rules that the protection mechanisms are designed to enforce. Any such violation by the Licensee will result in the immediate termination of the License.

2.3.5 Data Functions

The Software contains some functions created to obtain data regarding the server and usage of the Software that will be sent to the Licensor, and that data will be used only for the Licensor internal purposes to improve and develop the Software capacities and performance.

Upon the Licensee's acceptance of this EULA, the Licensee also declares to authorize the Licensor to receive and use the data obtained by Data Functions, only for the internal purposes referred above, and on the further confidential and non-disclosure terms and conditions included at the Digital Rose Privacy Policy, that the Licensee hereby declares to know.

The Licensee may freely disconnect the Data Functions at any moment without any cost or payment of any kind.

2.3.6 Responsibility for Non-Controlled Systems

If the Licensor permits the Licensee to install the Software or make the Software available for use on hardware systems not owned, leased or controlled by the Licensee ("Non-controlled Systems"), the Licensee will ensure that the users of such Non-controlled Systems comply with the terms of this EULA and the Licensee will indemnify the Licensor against all costs, damages and loss it suffers arising from such installation or use of the Software on Non-controlled Systems.

3. Fees

The Licensee must pay all Fees by their due date notified to the Licensee and in the manner directed at the time of Purchase of the User License. Failure to pay the Fees by the due date will result in the immediate termination of the Licenses granted under this EULA.

4. Maintenance and Support

4.1 Additional Software and Services

This EULA applies to updates, supplements, add-on components, or Internet-based services components of the Software ("Supplementary Software") that the Licensor may provide to the Licensee or make available to the Licensee after the date the Licensee obtains its initial copy of the Software, unless the Licensor provides other terms along with any Supplementary Software. The Licensor reserves the right to discontinue any Internet-based services provided to the Licensee or made available to the Licensee through the use of the Software.

4.2 Support Services

The Licensor may offer support services, and such services may be subject to the payment of additional fees. Any such support services will be the subject of a separate agreement available [here](#).

5. Intellectual Property

5.1 Ownership and Reservation of Rights

The Licensor retains all rights, title and interest in and to the Software (other than Embedded Software), as well as all intellectual property rights (such as copyright, patent and trademark) in and to the Software not expressly granted to the Licensee in this EULA. The Software is protected by copyright and other intellectual property laws and treaties. The Licensee does not acquire any rights of ownership in the Software hereunder.

5.2 Embedded Software

The Licensee acknowledges the Software contains Embedded Software and that in addition to the obligations of this EULA, additional obligations may apply in relation to any use of Embedded Software by the Licensee, which is not in accordance with the use of the Software as permitted under the terms of this EULA. In such circumstances, the Licensee must consult the relevant third party to acquire any necessary licenses and consents in relation to its use of any Embedded Software.

5.3 Benchmarking

While the Licensee is permitted to conduct performance and comparison "benchmarking" in relation to the Software as a whole against other software, the Licensee must not conduct any "benchmarking" in relation to the Software or any part thereof.

5.4 Licensee Shall Not Remove Markings

The Licensee may not remove any titles, trademarks or trade names, copyright notices, legends, or other proprietary markings on or in the Software. The Licensee is not granted any rights to any trademarks or service marks of the Licensor.

6. Warranty and Disclaimer

6.1 Due Authority

Each party represents and warrants that it has the legal power and authority to enter into this Agreement, and that, if you are an entity, this Agreement and each Order is entered into by an employee or agent of such party that is empowered with all necessary authority to bind such party to the terms and conditions of this Agreement.

6.2 WARRANTY DISCLAIMER

ALL PRODUCTS ARE PROVIDED "AS IS," AND DIGITAL ROSE AND ITS RESELLERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY, OR MERCHANTABILITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY WITH REGARD TO THAT PRODUCTS. YOU MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW. DIGITAL ROSE SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF DIGITAL ROSE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER DIGITAL ROSE NOR ANY OF ITS THIRD-PARTY SUPPLIERS MAKES ANY REPRESENTATION, WARRANTY OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF ANY PRODUCTS OR ANY CONTENT THEREIN OR GENERATED THEREWITH, OR THAT: (A) THE USE OF ANY PRODUCTS WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE; (B) THE PRODUCTS WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA; (C) THE PRODUCTS (OR ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE PRODUCTS) WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS; (D) ANY STORED DATA WILL BE ACCURATE OR RELIABLE OR THAT ANY STORED DATA WILL NOT BE LOST OR CORRUPTED; (E) ERRORS OR DEFECTS WILL BE CORRECTED; OR (F) THE PRODUCTS (OR ANY SERVER(S) THAT MAKE A HOSTED SERVICE AVAILABLE) ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

7. Breach by Licensee

7.1 General

If the Licensee discovers it has breached any of its obligations under this EULA and in particular but not limited to the obligations in Clause 7, the Licensee must immediately report such breach to Licensor in writing.

7.2 Breach of Additional Licenses

Where a breach involves the distribution or use of Software outside of the terms of the User License or any Additional User License (including but not limited to the use and distribution of Embedded Software), the Licensor and/or any third-party owner of Embedded Software will be entitled (without prejudice to any other right or claim that Licensor or any third party owner of Embedded Software may have against the Licensee) to charge the Licensee, in addition to any other Fees payable by Licensee under this EULA, a fee calculated based on the number of prohibited distributions or uses multiplied by the respective list prices that the Licensor and/or any third-party owner of Embedded Software charges for the Software or Embedded Software respectively.

8. Investigation of Unauthorised Use and Distribution

If the Licensor reasonably suspects that the Software has been distributed to or obtained by any person or party without the Licensor's prior written consent, that the Embedded Software is being varied or accessed or used independently of the Software or that Licensee is otherwise breaching a term of this EULA and in particular, but without limitation, its obligations under Clause 7, the Licensor reserves the right to require the Licensee to provide an unqualified certificate executed by the Licensee's auditor verifying compliance with the terms of this EULA. Such requests shall be made no more frequently than once per calendar year. If such an unqualified certificate is not received by the Licensor within ninety (90) calendar days of being required, it will be considered that a breach of this EULA has occurred allowing the Licensor to terminate the licenses granted under this EULA.

9. Termination

9.1 Without prejudice to any other rights and in addition to any other termination rights in this EULA, the Licensor (DIGITAL ROSE) may terminate with immediate effect this EULA, through a written notification sent to the Licensee, if

(a) the Licensee fails to comply with the terms and conditions of this EULA and does not amend that breach within fifteen (15) days from the date the Licensee receives from the Licensor the notification of said breach; or b) the Licensee suspends, or threatens to suspend, payment of its debts or is unable to pay (its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts; or (c) the Licensee commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of Licensee (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of Licensee with one or more other companies or the solvent reconstruction of the Licensee; or (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Licensee (being a company); or (f) the holder of a qualifying floating charge over the assets of the Licensee (being a company) has become entitled to appoint or has appointed an administrative receiver; or (g) a person becomes entitled to appoint a receiver over the assets of the Licensee or a receiver is appointed over the assets of the Licensee; or (h) a creditor or encumbrancer of the Licensee attaches or Licensee takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Licensee's assets and such attachment or process is not discharged within 14 days; or (i) the Licensee suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

9.2 Immediately upon termination of a license granted under this EULA, the Licensee must at its own cost:

(a) cease permitting access to and ensure that all Authorized Users immediately cease all use of the Software; and (b) remove all copies of the Software from its computer systems or any Uncontrolled Systems; and (c) provide the Licensor with written certification that it has destroyed all copies of the Software including but not limited to, all Accessible Code in its possession, custody or control.

9.3 Upon at least thirty (30) days' notice, the Licensor reserves the right to terminate any Internet-based services provided to the Licensee or made available to the Licensee through the use of the Software.

10. Indemnification

10.1 Indemnification by Licensor

Subject to Clause 12, the Licensor will indemnify and hold harmless the Licensee against all costs, expenses, losses and claims made against the Licensee as a result of any infringement of a third-party's intellectual property rights arising from the Licensee's or its Authorized User's use of the Software. The Licensee must notify promptly the Licensor of the charge of infringement or of the legal proceeding, give the Licensor sole control of the defence and related settlement negotiations, and Licensee must provide the Licensor, at the Licensor's expense, with reasonable assistance and information, but no cost or expense shall be incurred for the account of the Licensee without its prior written consent.

If the Software becomes, or in the opinion of the Licensor may become, the subject of a claim of infringement of any third-party's intellectual property rights, the Licensor may, at its option and at its discretion: (a) procure for the Licensee the right to use the Software free of any liability; (b) replace or modify the Software to make it non-infringing; or (c) refund any license Fees related to this Software paid by the Licensee. The foregoing states the sole liability of the Licensor and the exclusive Licensee remedy for any infringement of intellectual property rights by the Software or any other items provided by the Licensor under this EULA.

10.2 Indemnification by Licensee

The Licensee will indemnify and hold harmless the Licensor against all costs, expenses, losses and claims made against the Licensor as a result of any infringement of a third-party's intellectual property rights arising from the Licensee's or its Authorized User's unauthorized use of the Software under this EULA.

The Licensor must notify promptly the Licensee of the charge of infringement or of the legal proceeding, give the Licensee sole control of the defence and related settlement negotiations, and the Licensor must provide the Licensee, at the Licensee's expense, with reasonable assistance and information, but no cost or expense shall be incurred for the account of the Licensor without its prior written consent.

11. Limited Warranty

11.1 Cloud Products Disclaimer of Warranties

The Licensee acknowledges that the Licensor's Cloud Products are hosted by third-parties, and that the availability of those Cloud Products is subject to the third-party's Service Level Agreement.

11.2 Non-Excludable Remedies

The Licensee may have remedies against the Licensor imposed by law or statute that cannot be excluded by the Licensor and its third-party suppliers. To the extent the Licensee has such legal remedies against the Licensor or its third-party suppliers then to the fullest extent permitted by law, the Licensor and its third-party suppliers' liability are limited (a) at the Licensor's option, to: (i) in the case of the Software: 1) repairing or replacing the Software; or 2) the cost of such repair or replacement; and (ii) in the case of Maintenance: 1) resupply of the Maintenance; or 2) the cost of having the Maintenance supplied again; or (b) if the limitation is not applicable, then the Licensor's maximum liability shall be equal to two times the amount actually paid by the Licensee for the Software.

12. Limitation of Liability

12.1 The Licensor shall not be liable to the Licensee where faults arise from:

- (a) the possession, use, development, modification or maintenance of the Software (or any part thereof) by the Licensee other than in accordance with this EULA, if the infringement would have been otherwise avoided;
- (b) misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by;
- (c) any breach of the Licensee's obligations under this EULA;
- (d) any modification not authorized by Licensor resulting in a departure from this EULA; or

(e) any operator error on the part of the Licensee.

12.2 Limitation on Damages

Notwithstanding anything in this Agreement and except for liabilities arising from (i) the indemnity obligations under Clause 12 (indemnity), (ii) the gross negligence or willful misconduct of a party, or (iii) the breach of a party's obligations under Clause 5 (IP), in no event shall (a) the Licensor or its third-party suppliers be liable with respect to any subject matter of this Agreement under any contract; tort including negligence or strict liability; indemnity or other legal, contractual or equitable theory for any indirect, special, punitive, incidental or consequential damages, however caused and whether or not advised in advance of the possibility of such damages; damages for lost profits or lost data; or cost of procurement of substitute goods, technology or services; or (b) the Licensor's aggregate liability arising under, with respect to, or in connection with this Agreement exceed three times the Fees actually paid by the Licensee for the Software.

13. Data Protection

The Licensee agrees to execute the Data Processing Addendum.

14. Licensee Publicity Rights

During this EULA validity, the Licensee grants the Licensor the right to include Licensee as a customer in Software promotional material, including the Licensee's logo. The Licensee can deny Licensor this right at any time by submitting a written request via e-mail to support@digitalrose.dev requesting to be excluded from Software promotional material. Requests generally are acted upon within thirty (30) calendar days.

15. Improving Licensor's Products

The Licensor is always striving to improve its products. In order to do so, the Licensor needs to collect information about its users and to measure, analyze, and aggregate how its users interact with its products, such as usage patterns and characteristics of its user base. The Licensor collects such information and uses the information as per its Privacy Policy. The Licensee declares hereby to authorize Licensor to collect and treat that information just for the purposes referred above, and the Licensee also declares to have reviewed and agreed to the Licensor's [Privacy Policy](#).

16. Amendment

This EULA may not be amended except with the written and specified agreement of the Licensor whose consent may be withheld at its complete discretion without any requirement to provide reasons.

17. Assignment

The Licensee may assign this EULA to: (i) succeeding parties in the case of a merger, acquisition or change of control; or (ii) if the Licensee is a supplier to a government agency; provided, however, that in each case, (a) the Licensor is notified in writing within ninety (90) days of such assignment, (b) the assignee agrees to be bound by the terms and conditions contained in this EULA and (c) upon such assignment the assignee makes no further use of the Software licensed under this EULA.

Licensor may assign its rights and obligation under this EULA without the consent of the Licensee. Any permitted assignee shall be bound by the terms and conditions of this Agreement.

18. Export Restrictions

The export of the Software from the country of original Purchase may be subject to control or restriction by applicable local law. The Licensee is responsible for determining the existence and application of any such law to any proposed export and for obtaining any needed authorization. The Licensee agrees not to export the Software from any country in violation of applicable legal restrictions on such export.

19. Governing Law and Exclusions

19.1 Governing Law and Venue

This EULA and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of Portugal and any legal action or proceeding arising out of it will be brought exclusively in the Tribunal da Comarca de Lisboa and each party irrevocably submits to the jurisdiction and venue of that court.

19.2 Exception from Jurisdiction.

Notwithstanding the foregoing, the parties reserve the right to seek and obtain injunctive relief, whether in the form of a temporary restraining order, preliminary injunction, injunction to enforce an arbitration award, or other order of similar import, including obtaining full payment of all fees and costs under this Agreement from any court of competent jurisdiction (e.g. local courts at the Licensee's place of residence) prior to, during, or after commencement or prosecution of any other court or arbitration proceedings or the final decision and award of the arbitrators.

19.3 Exclusion of UN Convention

The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this EULA.

20. Entire Agreement

20.1

This EULA (and any addendum or amendment to this EULA which is included with the Software) is the entire agreement between the Licensee and the Licensor relating to the Software and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this EULA.

20.2

Each party acknowledges that, in entering into this EULA (and the documents referred to in it), neither relies on any statement, representation, assurance or warranty ("Representation") of any person (whether a party to this EULA or not) other than as expressly set out in this EULA or those documents.

20.3

Nothing in this clause shall limit or exclude any liability for fraud.

21. Notices

All notices to Licensor must be sent to:

Digital Rose E-mail: support@digitalrose.dev

All notices to the Licensee will be sent to the physical address or the email address provided by Licensee upon purchase of the software.

Notice will be deemed received and properly served twenty-four (24) hours after an electronic communication (including e-mail) is sent, or three (3) days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an electronic communication, that such e-mail was sent to the specified e-mail address of the addressee.

22. Waiver

22.1

If the Licensor fails, at any time during the term of this EULA, to insist upon the strict performance of any of the Licensee's obligations under this EULA, or if the Licensor fails to exercise any of the rights or remedies to which it is entitled under this EULA, this shall not constitute a waiver of such rights or remedies and shall not relieve the Licensee from compliance with such obligations.

22.2

A waiver by the Licensor of any default shall not constitute a waiver of any subsequent default.

22.3

No waiver by the Licensor of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to the Licensee in writing.

23. Severability

23.1

If any provision of the EULA (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

23.2

If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable and to give effect to the commercial intention of the parties.

24. No Partnership

Nothing in the EULA is intended to, or shall be deemed to, establish any agency, partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorize any party to make or enter into any commitments for or on behalf of any other party.

25. Rules of Interpretation

In this EULA, the following rules apply: (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); (b) a reference to a party includes its personal representatives, successors or permitted assigns; (c) the headings in this EULA are inserted for convenience only and shall not affect its construction; (d) a reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it; (e) a reference to one gender includes a reference to the other gender; (f) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and (g) a reference to writing or written includes faxes, e-mails, communications via websites and comparable means of communication.

26. Survival

Clauses 1, 2, 3, 4, 4.1, 5.1, 5.2, 5.4, 6, 9, 10, 11, 12, 18, 19, 20 and 24 shall survive any termination of this EULA.