

END USER LICENSE AGREEMENT

ENMOTUS INC.

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This END-USER LICENSE AGREEMENT (“**EULA**”) is a legal agreement between you (either an individual or a single entity) and **ENMOTUS INC.** (hereinafter “**COMPANY**”) for the software owned by COMPANY and being provided to you under this EULA, which includes computer software and may include associated media, program documentation, printed or computer readable materials and “on-line” or electronic documentation (“**Software Product**” or “**Software**”).

BY CLICKING ON THE “ACCEPT” BUTTON OR BY DOWNLOADING, INSTALLING, COPYING, OR USING THE SOFTWARE, YOU HEREBY CONSENT TO BE BOUND BY AND BECOME A PARTY TO THIS EULA. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS EULA, CLICK THE “DO NOT ACCEPT” BUTTON OR LEAVE THE WEBSITE. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS EULA, DO NOT DOWNLOAD, INSTALL, COPY OR USE THE SOFTWARE.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, you and COMPANY agree as follows:

1. **DEFINITIONS.** All capitalized terms shall have the meaning ascribed to them in this EULA. The terms designated below shall have the following meanings regardless of capitalization or formatting:
 - 1.1 “you” or “your” means the individual or single entity who is being licensed to use the Software in association with this EULA.
 - 1.2 The Software is “used” or in “use” when it is loaded into temporary memory (*i.e.*, RAM) or installed into permanent memory (*i.e.*, hard disk, CD-ROM, or other storage device) of the computer/controller.
 - 1.3 “computer” is an electronic device for storing and processing data, typically in binary form, according to instructions given to it in a variable program.
 - 1.4 “controller” is a chip, an expansion card, or a stand-alone device that interfaces with a peripheral device
 - 1.5 “computer/controller” means either a computer or a controller.
2. **LICENSE GRANT – PERPETUAL, BACKUP, TERM AND TRIAL LICENSES.**
 - 2.1 **General License.** Subject to the other terms and conditions set forth in this EULA, you may (a) use one copy of the Software and associated program documentation (“**Documentation**”), solely for your internal business purposes, for execution on a single computer only, and only in accordance with this EULA and the Documentation and (b) make either (i) one (1) copy of the Software solely for backup purposes only or (ii) a one-time permanent transfer of the Software, the Documentation and this EULA from the single computer in which the Software was originally installed to a single hard disk owned or leased by you provided you keep the original solely for backup or archival purposes only, you retain no copies thereof and the transferee agrees to be bound (and

thereafter is bound) by the terms of this EULA. Such transfer may not be by way of consignment or any other indirect transfer. For either (i) or (ii) of item (b) above you must reproduce and include the copyright notice on the backup and transfer copies. You may not copy any of the Documentation except as authorized herein. You are not permitted to use, copy, or install or otherwise distribute the Software in any manner not expressly authorized by this EULA.

- 2.2 Perpetual or Fixed Term.** When the Software is enabled with a License Key validly obtained from COMPANY or any of its authorized distributors (see Section 3 below), the term of the General License granted under this EULA shall either be perpetual (unless terminated under Section 10 below) or a fixed term wherein the duration of the term of the General License granted to you and your rights granted herein to use such Software are not perpetual and shall end on the applicable end date as listed on the Software license information provided to you and you shall cease use of the Software as of such applicable end date. If you wish to continue to use the Software after the expiration of the fixed term, you may be able to purchase a fixed term renewal by paying the then current applicable fees and receiving a new License Key. You agree that each and every renewed fixed term remains subject to the terms and conditions of this EULA as amended (see Section 17 below).
- 2.3 Trial Term.** If you have obtained the Software on a non-perpetual time-trial basis for evaluation purposes only a License Key is not provided to you, the limited warranty in Section 6 does not apply to you or your use of the Software and the term of the General License granted under this EULA and your rights herein granted to use such Software shall end on the applicable end date as indicated by the Software license information provided and you shall cease use of the Software as of such applicable end date.
- 3. LICENSE KEYS.** If License Keys are applicable to this Software, as detailed in Section 2 above, you may not exercise your rights to the Software unless you have purchased a valid License Key or obtained a valid License Key as part of a product bundle via an authorized COMPANY distributor. A “**License Key**” is a unique code that unlocks all or specific features of the Software depending on the functional level defined within the License Key.
- 4. RESERVATION OF RIGHTS AND OWNERSHIP.** No license, right, or interest in any trademark, trade name, or service mark of COMPANY or any third party is granted you under this EULA. All title, copyrights and other intellectual property rights in and to the Software Product (including but not limited to any images, text, and “applets” incorporated into the Software Product), the accompanying Documentation and any other printed or computer readable materials, and any copies of the Software Product are owned by COMPANY or its licensors or vendors, and are protected by United States copyright and other laws relating to the protection of intellectual property and by international treaty provisions. Therefore, among other things, you must treat the Software and Documentation like any other copyrighted material (*e.g.*, a book or musical recording). The Software Product is licensed, not sold. ALL RIGHTS NOT GRANTED IN THIS EULA ARE EXPRESSLY RESERVED BY COMPANY.
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remedies COMPANY may have, this EULA shall terminate automatically if you fail to comply with any of the terms and conditions of this EULA. In the event of any such termination, you must destroy all copies of the Software and Documentation and all of their component parts. COMPANY has the right to inspect and enforce the restrictions and covenants contained in this EULA at your sole expense, and you hereby agree to promptly notify COMPANY of any known violations of such restrictions or any other condition of this EULA.

- 6. LIMITED WARRANTY.** No maintenance or support regarding the Software are offered or will be provided under this EULA, but you may purchase maintenance and support separately from COMPANY or its appointed authorized distributor at the prices and on the terms and conditions then-offered thereby. COMPANY warrants to you (if you are the original licensee of this EULA only) for ninety (90) days from the date of delivery to you of the Software Product (such period being, subject to the last sentence of this Section 6, the “**Warranty Period**”), that the Software shall perform substantially in accordance with the Documentation provided to you, and that any furnished media will be free from defects in material and workmanship under normal use. FOR WARRANTY ASSISTANCE CONTACT YOUR DISTRIBUTOR OR COMPANY AT THE ADDRESS BELOW. Any implied warranties are limited to ninety (90) days. Except, as expressly provided in the foregoing, the entire risk arising out of use or performance of the Software Product remains with you. Notwithstanding anything else, this limited warranty shall not apply, and COMPANY shall have no liability or responsibility with respect to the Software, (i) if you or any third party alters or modifies such Software, and/or (ii) to the extent any failure of the Software to perform in accordance with the Documentation provided to you is caused by accident, abuse, or misapplication by you or any third party and/or or malfunction of any hardware or of any software or other materials not supplied by COMPANY. For the avoidance of doubt, if you have obtained the Software on a non-perpetual time-trial basis, then COMPANY makes no warranty whatsoever to you relating to the Software Product or your use thereof and thus your Warranty Period is zero (0) days.
- 7. NO OTHER WARRANTIES.** None of the employees, agents, representatives or distributors of COMPANY are authorized to make modifications to the limited warranty provided in Section 6. No additional representation or warranty (beyond the limited warranty provided in Section 6) shall be binding on COMPANY, provided again that, if you have obtained the Software on a non-perpetual time-trial basis, then COMPANY makes no representation or warranty whatsoever to you relating to the Software Product or your use thereof. Accordingly, no additional statement relating to the Software Product, including any that is included in marketing materials, advertising or presentations, whether oral or written, by COMPANY or any of its employees, agents representatives or distributors constitutes a representation or warranty by COMPANY, and no such additional statement should be relied upon as a representation or warranty by COMPANY. NOTWITHSTANDING ANYTHING ELSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SUBJECT ONLY TO THE LIMITED WARRANTY SET FORTH ABOVE IN THIS SECTION 7, THE SOFTWARE IS BEING FURNISHED TO YOU ON AN “AS IS” BASIS ONLY, AND NEITHER COMPANY NOR ANY OF ITS LICENSORS OR VENDORS MAKES ANY OTHER REPRESENTATION, CONDITION OR WARRANTY, EXPRESSED OR IMPLIED, RELATING TO THIS EULA, THE SOFTWARE PRODUCT OR ANY OTHER SOFTWARE, MATERIALS, PRODUCTS OR SERVICES. FURTHER, THE COMPANY (ON BEHALF OF ITSELF AND ITS LICENSORS AND VENDORS) HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES AND CONDITIONS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. IF SUCH DISCLAIMER IS DISALLOWED BY A COURT OF LAW WITH RESPECT TO ANY PARTICULAR IMPLIED WARRANTY OR CONDITION, THEN SUCH IMPLIED WARRANTY OR CONDITION IS LIMITED IN DURATION TO

THE WARRANTY PERIOD SPECIFIED IN SECTION 6. Some states/regions do not allow limitations on how long an implied warranty lasts, so the above limitations might not apply to you. The limited warranty in Section 6 gives you specific legal rights and you might have other rights, which vary from state/region to state/region.

8. **CUSTOMER REMEDIES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOUR SOLE AND EXCLUSIVE REMEDY AND COMPANY'S SOLE AND EXCLUSIVE LIABILITY HEREUNDER SHALL BE, UPON YOUR RETURN OF THE SOFTWARE TO COMPANY WITH THE RECEIPT WITHIN THE WARRANTY PERIOD, AT COMPANY'S SOLE OPTION, REPLACEMENT OR REPAIR OF SOFTWARE THAT DOES NOT MEET LIMITED WARRANTY IN SECTION 6 OR A REFUND OF THE PURCHASE PRICE ACTUALLY PAID BY YOU FOR THE SOFTWARE. NONE OF COMPANY'S LICENSORS OR VENDORS SHALL BE HELD LIABLE (OR ANY OF YOUR REPRESENTATIVES, SUCCESSORS OR ASSIGNS) FOR ANY DAMAGES SUFFERED OR INCURRED BY YOU.
9. **LIMITATIONS OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER COMPANY NOR ANY OF ITS LICENSORS OR VENDORS SHALL BE LIABLE WITH RESPECT TO ANY SOFTWARE, SERVICES AND/OR ANY OTHER SUBJECT MATTER OF THIS EULA UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR: (I) ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR OTHER INDIRECT DAMAGES OF ANY CHARACTER, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR PROFITS, LOST BUSINESS LOSS OF GOODWILL, OR LOSS OF DATA, EVEN IF COMPANY (OR ANY OF ITS EMPLOYEES, AGENTS OR REPRESENTATIVES) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND/OR (II) ANY AMOUNTS IN EXCESS OF, IN THE AGGREGATE, FOR ALL CLAIMS IN CONNECTION HERewith RELATING HERETO, THE LICENSE FEES PAID BY YOU HEREUNDER FOR THE SOFTWARE. ALL OF THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. YOU MAY NOT INSTITUTE ANY ACTION IN ANY FORM ARISING OUT OF THIS AGREEMENT MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ARISEN.
10. **TERMINATION.** This EULA is effective until terminated. This EULA shall terminate automatically and without notice to you if you fail to comply with any of its provisions. Upon any termination, you shall uninstall, remove, and destroy the Software and all copies or portions thereof, together with the Documentation.
11. **GOVERNING LAW.** This EULA has been made in and its validity, interpretation, construction and performance shall be governed by and be in accordance with the laws of the State of California, without regard to the principles of conflicts of laws thereof or of any other jurisdiction and without regard to the United Nations Convention on the International Sale of Goods and the International Sale of Goods Act.
12. **DISPUTE RESOLUTION AND BINDING ARBITRATION.**
 - 12.1 **Dispute Resolution.** You acknowledge that COMPANY possess valuable confidential and proprietary information, including trade-marks, trade secrets and business practices, which would be damaging to COMPANY if revealed in open court. You further acknowledge and agree that it is preferable to resolve all disputes between COMPANY and you confidentially, individually and in an expeditious and inexpensive manner. COMPANY and you accordingly acknowledge and agree that private dispute resolution is preferable to court actions. Notwithstanding any other provisions of this EULA, before

commencing any arbitration in the manner set out in this Section 12, COMPANY and you shall first attempt to resolve any dispute or differences between COMPANY and you by way of good faith negotiation. The good faith negotiation shall commence by both COMPANY and you communicating each other's respective position regarding the complaint, claim, dispute or controversy to the other Party, and how COMPANY and you propose to resolve the dispute in compliance with the terms and conditions of this EULA. COMPANY and you shall then make good faith efforts to negotiate a resolution of the claim, dispute or controversy in compliance with the terms of this EULA. Neither COMPANY nor you shall commence any arbitral proceedings as described herein unless and until the good faith negotiation fails.

- 12.2 Arbitration.** ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS CAPABLE IN LAW OF BEING SUBMITTED TO BINDING ARBITRATION) AGAINST COMPANY and COMPANY's agents, employees, officers, directors, successors, assigns or affiliates (collectively, for purposes of this paragraph, "Licensor Group") arising from or relating to this EULA, its interpretation or the breach, termination or validity thereof, the relationships between the Parties, whether pre-existing, present or future (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories to this EULA), Licensor Group's advertising or any related purchase SHALL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION ADMINISTERED BY JAMS in each instance in Orange County, California, under the JAMS procedure and any specific procedures for the resolution of small claims and/or consumer disputes then in effect (available via the Internet at "<http://www.jamsadr.com/>", or via telephone at 1-800-352-5267 or email at "support@caseanywhere.com"). The arbitration will be limited solely to the dispute or controversy between you and Licensor Group. Any award of the arbitrator(s) shall be final and binding on COMPANY and you, and may be entered as a judgment in any court of competent jurisdiction. Information may be obtained, and claims may be filed online at "<http://www.jamsadr.com/electronic-filing/>".
- 13. VENUE AND JURISDICTION.** You agree that any action brought by you (or any of your representatives, successors or assigns) relating to this EULA or the Software Product shall be brought in the United States District Court for the Central District of California or a competent California state court, in each case located in Orange County, California. You hereby irrevocably submit to the sole and exclusive jurisdiction of such courts. You agree not to commence or maintain a legal proceeding in any forum except such courts (other than to enforce a judgment obtained in any of such courts) and you agree not to contest the venue of any action in any of such courts (and not to assert in any of such courts the doctrine of forum non convenient or the like).
- 14. U.S. GOVERNMENT RESTRICTED RIGHTS.** This Software and Documentation is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the clause at DFARS 252.227-7013, Rights in Technical Data and Computer Software or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights of CFR 52.227-19, as applicable. Manufacturer is COMPANY.
- 15. EXPORT RESTRICTIONS.** As required by the laws of the United States and other countries, you represent, warrant and agree that you: (a) understand that the Software and its components may be subject to export controls under the U.S. Commerce Department's Export Administration Regulations ("EAR") and other import, export and trade laws of other countries; (b) are not

located in a prohibited destination country under the EAR or U.S. sanctions regulations (currently Cuba, Iran, Iraq, North Korea, Sudan and Syria, subject to change as posted by the United States government) or other similar lists or regulations maintained by other countries; (c) will not export, re-export, import or transfer the Software to any prohibited destination or persons or entities on the U.S. Bureau of Industry and Security Denied Parties List or Entity List, or the U.S. Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, or any similar lists maintained by other countries, without the necessary export license(s) or authorization(s); (d) will not use or transfer the Software for use in connection with any nuclear, chemical or biological weapons, missile technology, or military end-uses where prohibited by an applicable arms embargo, unless authorized by the relevant government agency by regulation or specific license; (e) understand and agree that if you are in the United States and export or transfer the Software to eligible users, you will, to the extent required by EAR Section 740.17(e), submit semi-annual reports to the Commerce Department's Bureau of Industry and Security, which include the name and address (including country) of each transferee; and (f) understand that countries including the United States may restrict the import, use, or export of encryption products (which may include the Software and the components) and agree that you shall be solely responsible for compliance with any such import, use, or export restrictions. COMPANY and you each agree to provide the other information, support documents, and assistance as may reasonably be required by the other in connection with securing authorizations or licenses. For further information, please consult the Bureau of Industry and Security (www.bis.doc.gov).

16. **THIRD PARTY SOFTWARE.** The Software may be distributed with components or software from other vendors that are subject to different terms. Your installation and use of those components or software is subject to those terms, which can be found on the media on which the software is provided or as a click to accept agreement provided with that component or software or on the vendor's website. You are solely responsible for reviewing and complying with such terms. Nothing in this EULA limits rights granted to you by such third parties, which may include rights under free software or open source software licenses. COMPANY may from time to time include information about third party products and services, including links to web sites run by others. COMPANY is not responsible for, and does not endorse or sponsor, this third-party information.
17. **AMENDMENTS AND WAIVERS.** COMPANY has the right, to change, modify or add to the terms of this EULA at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the Software upon notice by any means COMPANY determines in its sole discretion to be reasonable, including posting information concerning any such change, addition, deletion, discontinuance or conditions on any COMPANY sponsored web site, including but not limited to "www.enmotus.com". Any use of the Software by Licensee after COMPANY's publication of any such changes shall constitute your acceptance of this EULA as modified. You agree that it is your responsibility to periodically check COMPANY's website for such notices and updates. No other amendment of this EULA shall be effective unless in writing and signed by both parties. No waiver by Company of any particular provision of this EULA shall be binding on COMPANY unless memorialized in a writing signed by COMPANY. Failure by COMPANY to enforce any provision of this EULA shall not be deemed a waiver of that provision or of any other provision of this EULA. Any waiver of a provision of this EULA at a particular time or under particular circumstances shall not have the effect of waiving any other provision, or of waiving the same provision at a different time or under different circumstances.
18. **SEVERABILITY.** In the event that any of the provisions of this EULA are held to be unenforceable, such provisions will be limited or eliminated to the minimum extent necessary so that this EULA will otherwise remain in full force and effect.

19. **ENTIRE AGREEMENT.** Except as otherwise provided in this paragraph, this EULA is the complete and exclusive understanding and agreement between you and COMPANY with respect to the subject matter hereof, superseding all other prior arrangements, understandings, practices, communications and agreements between the parties relating to such subject matter. If the Software was licensed to you under a separate written agreement executed by you and COMPANY, then additional terms and conditions regarding the Software and your use thereof may apply to the extent specified in such separate written agreement.
20. **INJUNCTIVE RELIEF.** You understand and agree that, notwithstanding any other provision of this EULA (in particular Section 12 above), a breach by you of Section 2 (License Grant) or Section 5 (Restricted Use) may cause COMPANY irreparable damage for which recovery of money damages would be inadequate. In addition to any and all remedies available at law, COMPANY shall be entitled, in the event of any such breach, as a matter of right, to timely seek and obtain injunctive relief or other equitable relief (without the need for posting a bond or other security with any court or other tribunal) to prevent violation or contravention of Section 2 or Section 5 and to compel compliance with the terms thereof by you. You hereby irrevocably waive any defense based on the adequacy of any remedy at law which might otherwise be asserted by COMPANY as a bar to the remedy of specific performance in any action brought by COMPANY to enforce its rights under Section 2, Section 5 or this Section 20.
21. **COMPLIANCE WITH LAWS.** COMPANY and you shall comply with all applicable federal, state and local laws, rules and regulations.
22. **CONTACT.** Should you have any questions concerning this EULA, or if you desire to contact COMPANY for any reason, please contact COMPANY at the following:
Enmotus, Inc.
Address: 65 Enterprise, Aliso Viejo, California 92656, USA
Email: support@enmotus.com <<mailto:support@enmotus.com>>.
Web: www.enmotus.com.

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