

# VIDIZMO, LLC SOFTWARE SUBSCRIPTION LICENSING AGREEMENT

## Fully Managed Private Cloud /On-Premises Model

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- The Software,
- Updates to the Software,
- Supplements, modules, and add-ons,
- Internet-based services,
- Support services, and
- Professional Services

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VIDIZMO Software (the "Software") includes, without limitation, CDN Web Application Server, CDN Content Libraries, CDN Live Channels, CDN Library Management Module, CDN Subnet Management Module, CDN User Management Module, CDN Bandwidth Management Module, CDN Usage Statistics, CDN Remote Web App, CDN Flasher Application, CDN-LMS/TMS Integration Module, CDN-LC Integration Module, CDN-EDR Integration Module, VIDIZMO Enterprise Video Content Management, VIDIZMO EnterpriseTube, VIDIZMO Virtual Academy, VIDIZMO MediaTube, VIDIZMO MediaLMS and VIDIZMO Digital Evidence Management copyrighted under U.S. Copyright Registration No(s). TX 7-153-236; TX 7-153-232; TX 7-152-232; TX 7-152-549; TX 7-152-532;TX 7-152-553;TX 7-152-538;TX 7-153-221;TX-7-289-731 The Software will evolve and be updated over time in accordance with VIDIZMO's then current practices. The Software includes all updates, supplements, modules, add-ons, enhancements, and derivative works thereof. As between you and VIDIZMO, VIDIZMO owns all right, title, and interest in and to the Software and the intellectual property embodied therein.

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### OVERVIEW.

**VIDIZMO Software.** The Software includes

- VIDIZMO Software; and
- Software configuration
- Modules /Add-ons (ADDITIONAL SOFTWARE) that may only be used with the VIDIZMO Server Software directly, or indirectly through other additional software provided by VIDIZMO or through its authorized resellers.

**Subscription License Model.** Your rights to access and use the Software include the following as and if further described in the applicable order for the Software. Such rights may be provided on an enterprise basis or be subject to certain limitations described in the applicable order (e.g., number of servers, users, etc). If you exceed your use rights under an order, you must execute an additional order and pay then current fees for such incremental rights you require.

1. **VIDIZMO Server Software:** VIDIZMO Software (Web Application) installed inside the firewall, private or public cloud, accessible to Internal Users or Anonymous Users via LAN, WAN, VPN or Internet.
2. **Client Access License (CAL):** Users requiring authentication using login name and password or a single sign-on source to perform a function within VIDIZMO Server Software are known as Internal Users and require Client

Access License. With the User CAL, you purchase a CAL for every user who accesses the VIDIZMO Server Software to use services such as viewing live and on-demand video, generating reports, regardless of the number of devices they use for that access. A User CAL allows user to access to the corporate network using multiple devices, or from unknown devices, or simply have more devices than users in your organization.

3. **Anonymous Users:** All users who do not require to authenticate to perform a function are known as Anonymous Users and do not require Client Access License (CAL).
4. **Channel / Content Library:** A Web Portal or Content Management Library to host content, digital asset, video or other information and serve internal or anonymous users requires a Channel / Content Library subscription license.
5. **Modules/Add-Ons:** Various VIDIZMO Modules/Add-Ons (such as **Flasher Application, CDN-LMS/TMS Integration Module, CDN-LC Integration Module, CDN-EDR Integration Module**) made available to add/increase functionality of the base VIDIZMO Server software requires separate software subscription licenses and will be identified in the applicable order.

**Licensing Term:** The term of this Agreement (including your subscription and license rights) is limited to license validity period defined in this Agreement. You agree and acknowledge that you are obligated to pay all fees for the full term as agreed in the commercial agreement such as statement of work, purchase order etc., even if this Agreement is terminated early, unless VIDIZMO is in material breach of this Agreement and fails to cure such breach in a commercially reasonable period of time after notice thereof. Subject to the foregoing, you retain full discretion to end or terminate your software subscription license, if applicable, and discontinue use of the VIDIZMO SOFTWARE at any time, pursuant to the terms of this Agreement. Without prejudice to any other rights of VIDIZMO, this Agreement shall terminate upon notice by VIDIZMO if you fail to comply with its terms and conditions. Upon termination or expiration, you must destroy all copies of the VIDIZMO SOFTWARE and cease using such SOFTWARE.

#### Licensing Terminology.

- **Instance.** An "instance" of VIDIZMO Server software.
- **Run an Instance.** You "run an instance" of software by loading it into memory and executing one or more of its instructions. Once running, an instance is considered to be running (whether or not its instructions continue to execute) until it is removed from memory.
- **Operating System Environment.** An "operating system environment" is
  - All or part of an operating system instance, or all or part of a virtual (or otherwise emulated) operating system instance which enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and
  - Instances of applications, if any, configured to run on the operating system instance or parts identified above.

There are two types of operating system environments, physical and virtual. A physical operating system environment is configured to run directly on a physical hardware system. The operating system instance used to run hardware virtualization software (e.g. VMWARE, Microsoft Hyper-V or similar technologies) is considered part of the physical operating system environment. A virtual operating system environment is configured to run on a virtual (or otherwise emulated) hardware system. A physical hardware system can have either or both of the following:

- one physical operating system environment
- one or more virtual operating system environments.
- Hosted at Customer Premises or Cloud such as Azure, Amazon etc.
- **Server.** A server is a physical hardware system capable of running VIDIZMO Server Software. A hardware partition or blade is considered to be a separate physical hardware system.

#### USE RIGHTS.

**Associating Licenses to Servers.** Before you run any instance of the VIDIZMO Server Software under a software license, you must associate that license to one of your servers. That server is the licensed server for that particular license. You may assign other software licenses to the same server, but you may not associate the same license to more than one server.

**Running Instances of the VIDIZMO Server Software.** You may run, at any one time, one instance of the VIDIZMO Server Software in one physical or virtual operating system environment on the licensed server.

**Creating and Storing Instances on Your Servers or Storage Media.** You have the additional rights below for each software subscription license you order.

- You may create any number of instances of the VIDIZMO Server Software and additional software.
- You may store instances of the VIDIZMO Server Software and ADDITIONAL SOFTWARE on any of your servers or storage media.
- You may create and store instances of the VIDIZMO Server Software and additional software solely to exercise your right to run instances of the VIDIZMO Server Software under any of your software licenses as described (e.g., you may not distribute instances to third parties).

#### **ADDITIONAL LICENSING REQUIREMENTS AND/OR USE RIGHTS.**

**VIDIZMO Server Software Licenses.** You must acquire and associate, to a server, the appropriate category and type of license for the operating system environments (OSEs) used to run VIDIZMO Server Software.

**Categories of VIDIZMO Server Software Licenses.** There are four categories of VIDIZMO Server Software Licenses: Development, Testing, Staging and Production.

VIDIZMO Server Software used to develop, integrate, test, stage environment only require VIDIZMO Server Software Licenses.

VIDIZMO Server Software used for production accessible to authenticated or anonymous users requires Client Access License (CAL) for each authenticated user connected with the VIDIZMO Server Software.

#### **b. Associating VIDIZMO Server Software Licenses with OSEs.**

- If you acquire VIDIZMO Server Software Licenses, you must associate them to OSEs.
- If you acquire VIDIZMO Server Software Client Access Licenses, you must associate them to the named authenticated Users.
- Users may not exceed the number of acquired Client Access Licenses (CAL) set out in an order.

**c. Converting From Physical to Virtual.** You may desire to convert OSEs from physical to virtual. In this case, you do not need a license for any OSEs managed only for the time and purpose of being converted.

**d. No Separation of VIDIZMO Server Software.** You may not separate the VIDIZMO Server Software for use in more than one operating system environment under a single license, unless expressly permitted. This applies even if the operating system environments are on the same physical hardware system.

**e. U.S. GOVERNMENT RESTRICTED RIGHTS.** If Software is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the Government's rights in Software and accompanying documentation will be only as set forth in this Agreement; this is in accordance with 48 CFR 227.7201 through 227.7202-4 (for Department of Defense (DOD) acquisitions) and with 48 CFR 2.101 and 12.212 (for non-DOD acquisitions).

**f. DISTRIBUTION TO THE U.S. GOVERNMENT:** The Licensed Products provided under this Agreement are commercial computer software programs developed exclusively at private expense. Use, duplication, and disclosure by civilian agencies of the U.S. Government shall be in accordance with FAR 52.227-19 (c) or other agency data rights provisions, as may be applicable. Use, duplication and disclosure by DOD agencies is subject solely to the terms of standard software License Agreement as stated in DFARS 227.7202.

**g. Support & Maintenance:** You may manage and provide regular maintenance to the Operating System Environment such as applying Windows Operating System and SQL Server updates, backing-up or restoring Operating System Environments within licensing limits.

**h. Support & Maintenance:** You may engage VIDIZMO or its Partner to manage and maintain Operating System Environment according to this license agreement.

**i. Cloud Hosting:** Hosting on Cloud Environment such as Microsoft Azure requires Customer to assign VIDIZMO as authorized Partner to represent customer with Microsoft and allow VIDIZMO to receive certain rights, permissions and incentives from Microsoft to support Operating System Environments and as a result of driving Azure adoption and consumption. In case of hosting on Microsoft Azure, Customer must assign VIDIZMO as Digital Partner Of Record (DPOR).

**REMOTE SERVICES.** VIDIZMO will provide services remotely or electronically through its then current generally applicable practices and processes, including through Internet-based updates to the Software and remote monitoring, management and support.

**BENCHMARK TESTING.** You must obtain VIDIZMO's prior written approval to disclose to a third party the results of any benchmark test of the software.

**SCOPE OF LICENSE.** The Software is confidential, copyrighted and intellectual property of VIDIZMO and its licensors. The Software is licensed, not sold, under this Agreement. This Agreement only gives you limited rights to use the Software as expressly described in this Agreement and made available by VIDIZMO. VIDIZMO reserves all other rights. Unless applicable law gives you more rights despite this limitation, you may use the software only as expressly permitted in this Agreement. In doing so, you must comply with any technical limitations in the Software that only allow you to use it in certain ways. For more information, see VIDIZMO.COM. Without limiting the generality of the foregoing, You may not (and will not permit any third party to):

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- make more copies of the Software than specified in this Agreement or allowed by applicable law, despite this limitation;
- publish the Software for others to copy;
- rent, lease or lend the Software; or
- use the Software for commercial software hosting services.
- Allow unlicensed professionals to manage OSEs or perform any other services associated with the Software

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You may not assign this Agreement or sublicense, assign, or delegate any of your rights or obligations under this Agreement without the prior written consent of VIDIZMO. Any purported assignment in violation of the preceding sentence will be void. VIDIZMO may assign or otherwise transfer this Agreement or any of the rights that it grants without consent. This Agreement will be binding upon the parties' respective successors and permitted assigns.

**BACKUP COPY.** You may make one backup copy of the Software media. You may use it only to create instances of the Software.

**DOCUMENTATION.** Any person that has valid access to your computer or internal network may copy and use the documentation for your internal, reference purposes only.

**ACADEMIC EDITION SOFTWARE.** You must be a "Qualified Educational User" to use software marked as "Academic Edition" or "AE." If you do not know whether you are a Qualified Educational User, visit [www.VIDIZMOWW.com/education](http://www.VIDIZMOWW.com/education) or contact the VIDIZMO.

**UPGRADE.** Subscription license allows you to receive bug fixes, security updates and minor and major upgrades for the term of the agreement. VIDIZMO regularly releases bug fixes, software security updates, enhancements, new software feature based on customer's feedback. VIDIZMO CDN Web Application Software is eligible for upgrade to VIDIZMO EnterpriseTube. If you upgrade, new software takes the place of the earlier version, and this agreement takes the place of the agreement for that earlier version. You may use the earlier version only as permitted in the Downgrade clause below. You may not use the earlier version and upgraded software at the same time. Upgrade must be performed in compliance with licensing agreement. VIDIZMO is an affiliate of VIDIZMO.

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**COMPLIANCE.** VIDIZMO or its representative may audit the systems and records of the licensee for the purpose of ascertaining compliance. Suggested limits on the audit right include a general reasonableness requirement, a five-day notice requirement, and a maximum of two audit per calendar year. You have an obligation to pay the supplier for your actual usage if you're using more software than your license allows.

**EXPORT RESTRICTIONS.** The software is subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the software and your use thereof. These laws include restrictions on destinations, end users and end use. For additional information, see [www.vidizmo.com](http://www.vidizmo.com).

**SUPPORT SERVICES.** VIDIZMO provides support services for the software as described at [www.vidizmo.com](http://www.vidizmo.com) . Support is included in the subscription fees.

**ENTIRE AGREEMENT.** This Agreement (including the warranty below), and the terms for supplements, updates, Internet-based services and support services that you use, are the entire agreement relating to the subject matter of this Agreement.

**APPLICABLE LAW.** The Agreement will be governed by the laws of the Commonwealth of Virginia, without regard to any provision of law that would require or permit the application of the substantive law of any other jurisdiction or to the United Nations Convention on the International Sale of Goods. For purposes of all claims brought under this Agreement, each of the parties hereby irrevocably submits to the exclusive jurisdiction of the state courts located in Fairfax County, Virginia and federal court located in the Eastern District of Virginia, Alexandria Division.

**INDEMNIFICATION.** Upon a request by VIDIZMO, you agree to defend, indemnify, and hold VIDIZMO and its affiliates harmless from all liabilities, claims, losses, costs and expenses, including attorney's fees, that arise from (a) your use of, or activities in connection with the VIDIZMO SOFTWARE; (b) any violation of the Agreement by you; or (c) any allegation that any content that you make available via the VIDIZMO SOFTWARE infringes or otherwise violates the copyright, trademark, trade secret, privacy or other intellectual property or other rights of any third party. VIDIZMO reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with VIDIZMO in asserting any available defenses.

**INJUNCTION.** Because VIDIZMO would be irreparably damaged if the terms of this Agreement were not specifically enforced, you agree that VIDIZMO shall be entitled, without bond or other security or proof of damages, to take such action as may be required, including seeking an injunction and other equitable remedies, in addition to any other remedies available to it under the applicable law.

#### **LIMITATION ON AND EXCLUSION OF DAMAGES.**

**IN NO CASE SHALL ANY LIABILITY OF VIDIZMO UNDER OR RELATING TO THE SOFTWARE OR THIS AGREEMENT EXCEED THE AMOUNT PAID TO VIDIZMO OR ITS AFFILIATES AND/OR DESIGNEES FOR THE APPLICABLE SOFTWARE GIVING RISE TO ANY SUCH LIABILITY DURING THE YEAR IN WHICH SUCH CLAIM AROSE.**

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This limitation applies to

- anything related to the software, services, content (including code) on third party Internet sites, or third party programs; and
- Claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, or other tort to the extent permitted by applicable law.

It also applies even if

- repair, replacement or a refund for the software does not fully compensate you for any losses; or
- VIDIZMO knew or should have known about the possibility of the damages.

## LIMITED WARRANTY

### **A. LIMITED WARRANTY & LIMITATION OF LIABILITY.**

Subject to the other provisions of this Section, the Software will perform substantially as described in the VIDIZMO materials that you receive in or with the Software. If the Software does not comply with this limited warranty, VIDIZMO will repair or replace the Software in a commercially reasonable period of time after you notify VIDIZMO of the defect and provide VIDIZMO sufficient information to replicate the defect. This warranty does not apply: (i) to any Software which has been altered or modified by anyone other than VIDIZMO; (ii) to any Software which has been combined with software or hardware not contemplated expressly in writing by VIDIZMO; (iii) after termination or expiration of the Agreement; (iv) to abuse, improper use, negligence, accident, modification, failure to follow the operating procedures outlined in any documentation provided by VIDIZMO.

EXCEPT AS PROVIDED ABOVE, TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, YOU EXPRESSLY AGREE THAT THE USE OF THE VIDIZMO SOFTWARE IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. EXCEPT AS PROVIDED ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL MATERIALS AND VIDIZMO SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND VIDIZMO HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE VIDIZMO SOFTWARE, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

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- B. EXCLUSIONS FROM WARRANTY.** This warranty does not cover problems caused by your acts (or failures to act), the acts of others, or events beyond VIDIZMO's reasonable control.
- C. REMEDY FOR BREACH OF WARRANTY.** VIDIZMO will repair or replace the software at no charge. It will also repair or replace supplements, updates and replacement software at no charge. These are your only remedies for breach of the limited warranty.
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