

Software End User License Agreement (EULA)

This End User License Agreement (“EULA”, “Agreement”) is between Private Machines (“Private Machines Inc.”, “Virtualica”, “Licensor”) and the individual entity that will use Private Machines Products (“You”, “Licensee”).

This EULA governs Your use of: (a) the object code version of Licensor branded software that is preinstalled on Licensor hardware or otherwise provided to You pursuant to a purchase contract, quote, order form, invoice or online procurement process (each, an “Order”); (b) associated software license keys, if any (“License Keys”); (c) updates to such software (“Updates”); (d) the documentation for such software; and © all copies of the foregoing (collectively, “Software”). If You accept this EULA, or if You install or use the Software, then You agree to this EULA unless You already have a signed agreement with Licensor or one of its affiliates (“Private Machines”, “Licensor”) that includes licensing terms that govern Your use of the Software (“Pre-Existing Agreement”). If You accept this EULA or install or use the Software on behalf of a business entity, then You represent that You have authority to take those actions, and this EULA will be binding on that business entity unless the entity already has a Pre-Existing Agreement. If You do not agree to this EULA, do not install or use the Software.

If You purchase Software from a Third-Party (“Reseller”) who sublicenses the Software to You under the terms of an agreement between You and such Reseller (a “Sublicense Agreement”), then the terms of Your Sublicense Agreement with the Reseller shall govern Your use of the Software and not this EULA. Resellers may only grant rights, and must pass through conditions, consistent with this EULA. Thus, even though Your Sublicense Agreement is between you and the Reseller, by installing or using the Software, You acknowledge and agree that: (a) any license rights in the Sublicense Agreement that are greater than the license rights in this EULA shall not apply; (b) any license conditions in this EULA that are not contained in the Sublicense Agreement apply to You; (c) the limitations of liability set forth in this EULA will apply in favor of Licensor, its affiliates and suppliers despite the existence of a Sublicense Agreement; and (d) Licensor is a third-party beneficiary of the Sublicense Agreement and is entitled to exercise and enforce all of the Reseller’s rights and benefits under that Sublicense Agreement.

1. License Grant.

1.1. Right to Use. Subject to and in consideration of your full compliance with the terms and conditions of this EULA, Licensor grants to You a personal, non-exclusive license to use the Software during the period and under the limitations stated in the applicable Order or license files. This license grant allows You to use the Software in connection with the internal business operations of Your entity. In addition, You may make a reasonable number of copies of the Software solely as needed for backup or archival purposes.

1.2. Third-Party Use. If You are a business entity, You may allow Your contractors (each, a “Permitted Third-Party”) to use the Software solely for the purpose of providing services to You, provided that such use is in compliance with this EULA. You are liable for any breach of this EULA by any Permitted Third-Party.

1.3. Rights Reserved. The Software is licensed and not sold. Except for the license expressly granted in this EULA, Licensor, on behalf of itself and its affiliates and suppliers, retains all rights in and to the Software

and in all related materials (“Works”). The rights in these Works are valid and protected in all forms, media and technologies existing now or hereafter developed. Any use of Works other than as expressly set forth herein is strictly prohibited.

1.4. **Ownership.** Licensor, on behalf of itself and its affiliates, retains ownership of the Works and all related intellectual property rights. If Software is provided to You on removable media (e.g., CD, DVD or USB drive), You may own the media on which the Software is recorded.

1.5. **Additional Terms Applicable to Software under free or discounted licenses.** If offered, free, discounted, or promotional license offerings (e.g., if offered, free 12 months license for Enterprise Edition Software) only apply to New Licensees. New Licensees are Licensees that, in the past 48 months, have not used any Licensor product or received any Licensor product license. Further, said licenses do not apply to Updates which may be subject to other license terms in effect at update time. The entire risk as to the quality and performance of the Software is with Licensee. Should it prove defective, Licensee assumes the cost of all necessary servicing, repair, or correction. Licensor will collect information about the use of any Software provided under a free license (including the Community Edition, or an Enterprise Edition under a free license) for auditing purposes and to improve products and services. For more information about collection, use and disclosure of personal data, please review the Privacy Statement at <https://privatemachines.com/privacy>.

2. License Conditions.

2.1. You and Your Permitted Third Parties must do the following:

- A. Run the Software only on the hardware for which it was intended to operate, when applicable;
- B. Use License Keys (if applicable) only from Licensor or an authorized Licensor License Key provider;
- C. Treat the Software as Licensor confidential information and only permit access to Software to those of its employees, officers, advisors or authorized representatives (“Representatives”) having a need to know and who have signed confidentiality agreements at least as restrictive as those contained in the EULA NDA agreement at <https://privatemachines.com/eula-nda> which is herein included by reference. Licensee agrees to be responsible for any breach of this Agreement by its Representatives or any Permitted Third Parties.
- D. Use the Software only on as many computers or devices that You purchased, in such configurations permitted by Licensor, and/or in accordance with the applicable unit of measure, each as may be specified on Your Order.
- E. Abide by the export control and economic sanctions laws of the United States, the European Union and other applicable jurisdictions. Under these laws, the Software must not be used, sold, leased, exported, imported, re-exported or transferred except in compliance with such laws, including, without limitation, export licensing requirements, end user, end-use and end-destination restrictions, prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control’s Specially Designated Nationals and Blocked Persons List, or the U.S. Department of Commerce Denied Persons List. You represent and warrant that You are not the subject or target of, and that You are not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) that is the subject or target of economic sanctions of the United States, European Union

or other applicable jurisdictions; and

F. Comply with all Third-Party Terms (as defined in Section 5 below).

2.2. Except as otherwise permitted by this EULA or by mandatory law (meaning a law that the parties cannot change by contract), You must not, and must not allow Your Permitted Third Parties, to do the following:

A. Modify or remove any proprietary notices or markings on or in the Software;

B. Transfer License Keys to any other person or entity;

C. Download Updates from Licensor or an authorized provider unless You have a valid support agreement;

D. Install Updates on Enterprise Products (e.g., server, networking, storage, integrated solutions, and data protection appliances) that have gone end of service life unless Licensor otherwise agrees in writing;

E. Install and operate counterfeit versions of Software (i.e. software provided by anyone other than Licensor or an authorized representative of Licensor) on Licensor hardware;

F. Violate or circumvent any technological use restrictions in the Software;

G. Sell, loan, rent, lease, sublicense, distribute or encumber (e.g., by lien, security interest, etc.) the Software;

H. Use any trademarks or service marks of Licensor, its affiliates or suppliers;

I. Provide access to the Software or allow use by any Third-Party, other than Permitted Third Parties, without Licensor's prior written consent;

J. Copy, republish, upload, post or transmit the Software in any way;

K. Modify or create derivative works based upon the Software, or decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part;

L. Attack or attempt to undermine the security, integrity, authentication or intended operation of the Software;

M. Use the Software on a service bureau, rental or managed services basis;

N. Create or permit others to create Internet "links" to the Software or "frame" or "mirror" the Software on any other server, wireless or Internet-based device;

O. Use the Software to create a competitive offering;

P. Use the Software to create other software, products or technologies unless the Software contains Development Tools as described in Section 7;

Q. Share or publish the results of any benchmarking of the Software without Licensor's prior written consent;

R. Use the Software for high risk activities, including without limitation online control systems, or use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, life support, weapons systems or in any

other device or system in which function or malfunction of the Software could result in death, personal injury or physical or environmental damage;

S. Use the Software for activities related to weapons of mass destruction, including but not limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or support of missile projects, or chemical or biological weapons; and

T. Assign this EULA, or any right or obligation under this EULA, or delegate any performance, without Licensor's prior written consent, unless You are transferring the Software in accordance with the Transferability Section 3 below. Even if Licensor consents to an assignment, You remain responsible for all obligations under this EULA that You incurred prior to the effective date of the assignment.

3. Transferability. You may not transfer the Software to another person or entity without the express written permission of Licensor, unless allowed by applicable law stating that transfer may not be restricted (note that a transfer fee may be charged by Licensor).

4. Compliance Verification. You must: (a) maintain and use systems and procedures that allow You to accurately track Your use of the Software; (b) certify to Licensor in writing, at Licensor's request, that Your use of Software fully complies with this EULA, indicating the number of Software licenses deployed at that time; and (c) cooperate fully and timely with Licensor and its auditors if Licensor notifies You that it will conduct an audit to confirm Your compliance with this EULA. Any such audit will be conducted during normal business hours. If Licensor determines that You have over-deployed Software [such as in violation of Section 2D above](#), You agree to immediately purchase licenses at the then-current list price to bring Your use into compliance. If You over-deployed Software by 5% or more, then You agree to pay the total cost of the audit, in addition to any other liabilities You may have.

5. Third-Party Software. "Third-Party Software" is software, including open source software, that is contained in or provided with the Software and is licensed by a Third-Party under its own terms of use ("Third-Party Terms"). Third-Party Software is governed solely by the applicable Third-Party Terms and not by this EULA. Third-Party Terms may be provided with the Third-Party Software. For certain open source software, the applicable Third-Party Terms may entitle You to obtain the corresponding source files.

6. Free Software. "Free Software" means Software that is provided to You without additional charge (e.g., scripts that enable customer installation; code that enables You to monitor Your use of Licensor products; etc.). You may only use Free Software on or with equipment or in the operating environments for which Licensor has designed that Free Software to operate. Licensor may terminate any license to Free Software at any time in its sole discretion. You may not transfer Free Software to anyone else.

7. Development Tools. If the Software includes development tools, such as scripting tools, APIs or sample scripts (collectively "Development Tools"), and unless there is a separate agreement between You and Licensor for the Development Tools, You may use such Development Tools to create new scripts and code for the purpose of customizing Your use of the Software (within the parameters set forth in this EULA and in the Development Tools themselves) and for no other purpose.

8. Evaluation Software. This EULA does not license use of Software for evaluation purposes ("Evaluation Software") except to the extent these terms may be invoked by the separate license terms and conditions accompanying that Evaluation Software.

9. Support Services Not Included. If You purchase maintenance and support for Software, such services are identified in Your Order and will be provided under a separate services agreement.

10. Termination. For Subscription Software, this EULA automatically terminates at the end of Your subscription period unless You renew Your rights. Licensor may terminate this EULA if You or a Permitted Third-Party commits a material breach of this EULA and fails to cure such breach within thirty (30) days following Your receipt of notice of the breach from Licensor. This right to terminate applies accordingly if Licensor or the Reseller from whom You made Your purchase does not receive timely payment for the licenses to the Software or for the hardware on which the Software is loaded, if any. When this EULA terminates, all licenses granted automatically terminate and You must immediately cease use of the Software and return or destroy all copies of the Software. Except as otherwise agreed by Licensor, You will not get a refund from Licensor if this EULA is terminated. Rights and obligations under Sections of this EULA that, by their nature should survive, will survive termination, as well as obligations for payment.

11. Warranty Disclaimer. Under this EULA, Licensor provides neither any warranties for the Software nor does it provide support for the Software. Your rights under any warranties and any support entitlements for Software acquired for a fee are solely between You and the Reseller or Licensor entity from whom You procured the Software and related support, and are defined under the commercial terms agreed between You and such selling entity. Accordingly, except as otherwise offered by Licensor, the Software is provided by Licensor under this EULA "As Is" without any warranties or conditions. To the maximum extent permitted by applicable law, Licensor, on behalf of itself and its affiliates and suppliers: (a) makes no express warranties or conditions related to the Software; (b) disclaims all implied warranties and conditions related to the Software, including merchantability, fitness for a particular purpose, title, and non-infringement; and (c) disclaims any warranty or condition arising by statute, operation of law, course of dealing or performance, or usage of trade. Licensor does not warrant uninterrupted or error-free operation of the Software. This Section does not affect or modify any of the statutory warranty rights that are available to consumers.

12. Limitation of Liability.

12.1. Limitations on Damages. The limitations, exclusions and disclaimers set forth in a Pre-Existing Agreement or Licensor Terms of Sale that applies to your Order (in each case, the "Order Terms") shall apply to all disputes, claims or controversies (whether in contract, tort or otherwise) between You and Licensor related to or arising out of: (a) this EULA; (b) the breach, termination or validity of this EULA; or (c) any Orders (each, a "Dispute"). In the absence of applicable Order Terms, the terms set forth in this Section shall apply to all Disputes.

The terms of this Section are agreed allocations of risk constituting part of the consideration for Licensor's licensing of Software to You and will apply even if there is a failure of the essential purpose of any limited remedy, and regardless of whether a party has been advised of the possibility of the liabilities. If applicable law prohibits any portion of the limits on liability stated below, the parties agree that such limitation will be automatically modified, but only to the extent required to make the limitation compliant with applicable law.

A. Limitation on Direct Damages. Except for Your obligation to pay for the Software, or for Your

violation of the License Grant and License Conditions set forth herein or of Licensor's or Licensor's intellectual property rights, the total liability of You and Licensor (including Licensor's affiliates and suppliers) arising out of any Dispute is limited to the amount You paid for the Software that is the subject of the Dispute, but excluding amounts received as reimbursement of expenses or payment of taxes. Notwithstanding anything otherwise set forth above, Licensor and its affiliates have no liability for any direct damages resulting from Your use or attempted use of Third-Party Software, Free Software or Development Tools.

B. Disclaimer of Certain Other Damages. Except for Your obligation to pay for the Software, or for Your violation of the License Grant and License Conditions set forth herein or of Licensor's or Licensor's intellectual property rights, neither You nor Licensor (including Licensor's affiliates and suppliers) shall have any liability under this EULA for special, consequential, exemplary, punitive, incidental or indirect damages, or for lost profits, loss of revenue, loss or corruption of data, loss of use or procurement of substitute products or services.

12.2. Regular Backups. You are solely responsible for Your data. You must back up Your data before Licensor or a Third-Party performs any remedial, upgrade, or other work on Your production systems. You acknowledge that it is a best practice to have more than one back up copy of Your data. If applicable law prohibits exclusion of liability for lost data, then Licensor will only be liable for the cost of the typical effort to recover the lost data from Your last available back up.

12.3. Limitation Period. Except as stated in this Section, all claims must be made within the period specified by applicable law. If the law allows the parties to specify a shorter period for bringing claims, or the law does not provide a time at all, then claims must be made within 18 months after the cause of action accrues.

13. Additional Terms.

13.1. Notices. The parties will provide all notices under this EULA in writing. Unless provided otherwise in an Order, You must provide notices to the Licensor contact in Your Order, and by e-mail to contracts@privatemachines.com.

13.2. Waiver and Severability. Failure to enforce a provision of this EULA will not constitute a waiver of that or any other provision of this EULA. If a court of competent jurisdiction determines that any part of this EULA or document that incorporates this EULA by reference is unenforceable, that ruling will not affect the validity of all remaining parts.

13.3. Modifications. This EULA may only be modified in writing signed by both parties.

13.4. Governing Law and Jurisdiction. If You obtained the Software directly from Licensor, then the governing law and jurisdiction provisions set forth in Your Order Terms shall apply to this EULA. Otherwise, the following shall apply:

A. Subject to Section 13.4 D and 13.5, (1) this EULA and any Dispute is governed by the laws of the State of New York (excluding the conflicts of law rules) and the federal laws of the United States; and (2) to the extent permitted by law, the state and federal courts located in New York will have exclusive jurisdiction for any Dispute. Both parties agree to submit to the personal jurisdiction of the state and federal courts located within New York City, NY, and agree to waive any and all objections to the exercise of jurisdiction

over the parties by those courts and to venue in those courts.

B. This EULA and ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND LICENSOR, including their affiliates, contractors, and agents, and each of their respective employees, directors, and officers (a "Dispute") will be governed by the laws of the State of New York, without regard to conflicts of law.

C. In any event, neither the U.N. Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act shall apply to this Agreement or any Dispute.

13.5. Dispute Resolution.

A. Domestic Dispute Resolution. If both Parties are US-based, in the event of any controversy or claim arising out of or relating to this Agreement, or the breach thereof, the Parties agree to endeavor first to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration. The Parties further agree that any unresolved controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

B. International Dispute Resolution. If at least one of the Parties is not US-based, in the event of any controversy or claim arising out of or relating to this Agreement, or the breach thereof, the Parties agree to endeavor first to settle the dispute by mediation administered by the International Centre for Dispute Resolution under its Mediation Rules. If settlement is not reached within 60 days after service of a written demand for mediation, any unresolved controversy or claim arising out of or relating to this Agreement shall be settled by arbitration in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution. The International Expedited Procedures of the International Centre for Dispute Resolution shall apply regardless of the amount in dispute. Claims shall be heard by a single arbitrator. The language of the arbitration shall be English. The arbitration shall take place virtually or in person, in the state of New York, USA. The arbitral award shall be in writing and be final and binding on the Parties.

13.6. Third-Party Rights. Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.

13.7 Entire Agreement. You acknowledge that You have read this EULA, that You understand it, that You agree to be bound by its terms, and that this EULA, along with the Order Terms into which this EULA may be incorporated (as applicable), is the complete and exclusive statement of the agreement between You and Licensor regarding Your use of the Software. All content referenced in this EULA by hyperlink is incorporated into this EULA in its entirety and is available to You in hardcopy form upon Your request. The pre-printed terms of Your purchase order or any other document that is not issued or signed by Licensor do not apply to Software. You represent that You did not rely on any representations or statements that do not appear in this EULA when accepting this EULA.