Eastwind Communications, Inc.

Terms and Conditions of Sale and Licensing

IMPORTANT – READ CAREFULLY: These Eastwind Communications, Inc. Terms and Conditions of Sale and Licensing (this “Agreement”) constitute a legal agreement between you (on behalf of yourself or the entity which you represent – hereinafter referred to as “Customer”) and Eastwind Communications, Inc. (“Eastwind”) with respect to the sale or licensing of the Products (as defined below) identified on the Eastwind Sales Acknowledgement (the “Acknowledgement”) attached hereto or enclosed herewith. By placing an order for the Products, you agree to be bound by the terms of this Agreement. Eastwind’s agreement to the sale or licensing of any Products, is expressly conditioned upon Customer’s assent to the terms and conditions contained herein. If these terms and conditions are not acceptable to Customer, Customer must notify Eastwind at once by specific written objection. No waiver, alteration or modification of this Agreement shall be binding on Eastwind unless in writing and signed by a duly authorized officer of Eastwind.

1. **Definitions.**
	1. “Equipment” shall mean any hardware or other equipment and parts thereof, but shall not include any Software whether or not such Software is part of Firmware.
	2. “Firmware” shall mean a combination of (i) hardware and (ii) Software represented by a pattern of bits contained in such hardware.
	3. “Products” shall mean the Equipment and the Software described in the Acknowledgement.
	4. “Software” shall mean the executable object code version (but not the source code version) of the computer software (including without limitation any media or printed, electronic or “online” materials and documentation associated therewith) provided by Eastwind (including any Firmware) and any updates thereto that Eastwind may provide hereunder from time to time.
2. **Prices.** The prices for the Products shall be as listed on Customer’s Acknowledgement. Eastwind reserves the right to change its prices for Products from time to time. Any change in prices will become effective ninety (90) days after Eastwind has delivered notice of such change to Customer in writing, and all orders accepted by Eastwind at expiration of said ninety-day notice period shall be invoiced at the new price. All prices expressed and all payments made must be in U.S. dollars. The prices shown are Ex Works Eastwind’s plant. Prices are exclusive of all federal, state, local, municipal, value added tax (“VAT”) or other excise, sales, use, occupation, or similar taxes now in force or enacted in the future, all of which shall be paid by Customer. It is the sole responsibility of Customer (in the importing country) to pay all related VAT charges, import fees, duties & taxes on Products purchased or shipped to Customer. Eastwind may invoice Customer for any such taxes and remit any payments made on such invoice directly to the appropriate taxing authorities. It shall be Customer’s responsibility to provide written proof, satisfactory to Eastwind, of any applicable tax exemptions.
3. **Payment.** Unless otherwise agreed to in writing by Eastwind, payment for Products is due by wire transfer in advance of shipment or all balances shall be paid by an irrevocable International Letter of Credit upon presentation by Eastwind to the issuing bank or accepting bank of bills of lading or other mutually acceptable shipping documentation.
4. **Delivery.** Eastwind’s normal delivery schedule is sixty (60) days after issuance of an Acknowledgement. Should Customer desire to shorten or lengthen, said delivery schedule, Eastwind will use reasonable efforts to comply with Customer’s request. Eastwind will, within ten (10) days of such request, notify Customer if additional charges are required to facilitate such expedited delivery. Customer shall have three (3) business days from said notification to elect to proceed with expedited delivery at the specified additional cost or to proceed under the normal delivery schedule at the original price. Eastwind intends to meet acknowledged delivery dates, but does not represent or warrant that it will, in fact, meet all such dates, as all shipments are made subject to the availability of Products. Eastwind agrees that it shall notify Customer as soon as practicable of any delay in expected delivery schedules.
5. **Shipment, Risk of Loss and Title.** All Products shall be packaged, marked and otherwise prepared for shipment by Eastwind in suitable containers in accordance with sound commercial practices. Eastwind shall mark on such containers all necessary handling, loading and shipping instructions. An itemized packing list shall be included with each shipment. Customer agrees to assume any additional packaging costs incurred by Eastwind in complying with Customers packaging specifications.  All Products under this Agreement shall be delivered to Customer Ex Works and delivery of Products to a common carrier or a licensed trucker shall constitute delivery to Customer. Title and risk of loss for the Product shall pass to Customer upon delivery to a common carrier or licensed trucker. All Products shall be shipped freight prepaid and charges will be added to Customer’s invoice for such Products. Eastwind will not assume any liability in connection with shipment for any loss or damage caused by delay in shipping the Products nor constitute any carrier as its agent. Upon request, shipments will be insured at Customer’s expense, and Customer shall be responsible for making claims with carriers, insurers, warehousemen, and others for mis-delivery, non-delivery, loss, damage or delay. The Customer shall pay all transportation, rigging, duties, and import/export fees, taxes and similar costs and charges. Eastwind may, however, invoice Customer for any such charges and remit payments directly to the shipper.
6. **Export Controls.** Customer warrants to Eastwind that none of the Products obtained from Eastwind under this Agreement will be resold, transferred, or used in any way in violation of any laws, regulations, transaction or export controls, or economic sanctions imposed by the U.S. government with regard to any other state, government or political entity. In the event that Customer should need any additional information from Eastwind in order to re-export product, Customer shall notify Eastwind’s Export Manager in writing, and Eastwind agrees to furnish said information upon satisfactory proof of a legitimate need. Customer agrees that it shall protect all such information and hold such information so provided in accordance with the provisions of the section entitled “Proprietary Information” hereunder.
7. **Proprietary Controls.** Customer acknowledges that it may receive certain proprietary information from Eastwind from time to time. In the event Customer and Eastwind shall have entered into a separate confidentiality and non-disclosure agreement, the terms of such agreement shall apply to the extent the terms of such agreement conflict with the provisions of this Section 8.
	1. *Proprietary Information.* Eastwind and Customer agree that, in addition to the Software, certain information supplied by each to the other during the course of this Agreement may be proprietary. All such information shall be marked as proprietary, shall be held in confidence by the receiving party for a period of five (5) years following the date of disclosure and shall be used only for the purpose of this Agreement.
	2. *Documentation.* All documentation with respect to the Products, including operating or maintenance manuals and drawings, are solely for Customer’s internal use. The Customer may make copies of such documentation only to satisfy its internal requirements, provided that all such copies include copyright and proprietary information notices. No other copies or use of such documentation, or any portion thereof, shall be made without the prior written consent of Eastwind. All such documentation, and copies thereof, shall be maintained in secure premises by Customer, and Customer shall take appropriate measures to prevent the unauthorized disclosure thereof.
	3. *Return of Information.*  Upon the termination or cancellation of this Agreement, each party shall promptly cease using and shall return or destroy and certify destruction of all Proprietary Information which it receives from the other party along with all tangible copies which it may have made, and all copies stored in any computer memory or storage medium.
8. **Software Licenses.**
	1. *Licenses.* All Software provided by Eastwind to Customer shall be by way of a license and not sold. Depending upon the Product purchased, Software will either be (i) licensed to Customer directly by the manufacturer of such Software by way of a “click-through”, “shrink-wrap”, or other valid license agreement or (ii) sublicensed to Customer by Eastwind pursuant to the terms of the vendor-specific End-User License Agreement found at http://www.eastwindcom.com/contract--licensing-information.html Customer agrees that it will not copy, install or use any Software without first accepting the appropriate license therefore. Please contact Eastwind for any questions regarding the applicability of any Software license.
	2. *Open Source Software.* Certain Products may contain Open Source Software, the use of which is at Customer’s sole risk. SUCH SOFTWARE IS PROVIDED “AS-IS” AND EASTWIND MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT THERETO. For purposes of this Agreement, “Open Source Software” means any Software which is freely available without charge; any Software that refers to, or is based upon, a any form of software license from or substantially similar to any software license provided by the Free Software Foundation, including without limitation the GNU General Public License, the GNU Lesser General Public License or the GNU Free Documentation License; or any software that is “copylefted.”
	3. *Intellectual Property.* All title and copyrights in and to the Software and any copies of the Software are owned by Eastwind’s suppliers and licensors. All title and intellectual property rights in and to the content which may be accessed through use of the Software are the property of the respective owner of such content and may be protected by applicable copyright or other intellectual property laws and treaties. No ownership of or any right to use any part of such content is transferred to Customer under this Agreement.
9. **Program Updates and Changes In Product Specifications.**  Except as otherwise provided herein, Eastwind shall not be obligated to issue to Customer updates, improvements or Software revisions. Eastwind may, in its sole and absolute discretion, issue notice of such updates for informational purposes and may make any and all changes to the specifications for the Products whether such notice is or is not provided.
10. **Notices.** All notices required under this Agreement shall be in writing and personally delivered or sent by a recognized overnight carrier or by registered mail, return receipt requested:

If to Customer: At its address set forth in the Acknowledgement.

If to Eastwind: Eastwind Communications, Inc.

75 Perseverance Way

Hyannis, MA 02601

Attn: Joseph Norton

The date of personal delivery or the date of mailing, as the case may be, shall be deemed to be the date on which such notice is given.

1. **International Approval or Certification.** Customer shall contact Eastwind with any specific questions regarding certifications or approvals. Unless otherwise agreed, Eastwind reserves to itself the right to refuse to seek certifications for any of its products.
2. **U.S. Government Restricted Rights.** The Products being provided by Eastwind to Customer under this Agreement are so provided with restricted rights. If Customer is the U.S. government, it acknowledges that the use, duplication, or disclosure by the U.S. government of such products is subject to restrictions as set forth in subparagraph (c) (1) (11) of the Rights in Technical Data and Computer Software clause at 252.227-7013.
3. **Warranty; Limitation of Liability.**
	1. Eastwind is a distributor only. Products sold by Eastwind are not manufactured by Eastwind and EASTWIND MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCT EXCEPT THOSE STATED IN THIS DOCUMENT. Certain Products may be covered by the respective manufacturer’s warranty, service plan, and/or support policy, if any. With respect to Products or partial assemblies of Products furnished by Eastwind but not manufactured by Eastwind, Eastwind hereby assigns to Customer, to the extent permitted, the warranties given to Eastwind by its vendors of such items. Customer acknowledges that it shall have recourse only under any such warranties, service plans and support policies, and only as against the manufacturer of the respective Products.
	2. THE FOREGOING WARRANTIES ARE EXCLUSIVE & ARE GRANTED IN LIEU OF ALL OTHER EXPRESS & IMPLIED WARRANTIES (WHETHER WRITTEN, ORAL, STATUTORY OR OTHERWISE), INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND EASTWIND’S SOLE OBLIGATION HEREUNDER, SHALL BE TO REPAIR, REPLACE, CREDIT OR REFUND AS SET FORTH ABOVE.
	3. IN NO EVENT SHALL EASTWIND, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES, BE LIABLE FOR ANY COSTS OR DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM YOUR USE OF ANY PRODUCT INCLUDING ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, MULTIPLE, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLEGENCE), STRICT LIABILITY OR OTHER LEGAL THEORY, EVEN IF EASTWIND, OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, EASTWIND’S CUMULATIVE LIABILITY TO YOU FOR ANY AND ALL CLAIMS RELATING TO THE USE OF ANY PRODUCT SHALL NOT EXCEED THE TOTAL AMOUNT OF THE PURCHASE PRICE OR LICENSE FEES PAID TO EASTWIND FOR SUCH PRODUCT.
	4. IN NO EVENT SHALL EASTWIND, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES, BE LIABLE FOR ANY COSTS OR DAMAGES CAUSED BY REASON OF ANY OCCURRENCE OR CONTINGENCY BEYOND ITS REASONABLE CONTROL, INCLUDING BUT NOT LIMITED TO, ACTS OF GOD, EARTHQUAKE, LABOR DISPUTES AND STRIKES, RIOTS, WAR, NOVELTY OF PRODUCT MANUFACTURE AND GOVERNMENTAL REQUIREMENTS.
4. **Returned Material.**  All sales are final; however, customers experiencing an equipment fault caused by defects in Products may request a Return Material Authorization (an “RMA”) number, which Eastwind shall issue in its sole discretion. Eastwind will not accept any Product for return without an RMA number. Upon issuance of an RMA number, Eastwind will assist Customer in obtaining warranty coverage, service or support from the manufacturer of such Product. Customer is responsible for shipping any RMA Product, prepaid, to Eastwind’s facility. Original packaging must be utilized to prevent damage. Customer agrees to use only reputable carriers capable of providing proof of delivery and insurance for the entire value of the shipment. Customer agrees to bear all shipping and insurance charges and all risk of loss for the return product during shipment. Unless otherwise indicated at the time of requesting an RMA number, Customer agrees that all returned products will be 100% complete, in re-saleable condition, and will include the original packaging material, manuals, blank warranty cards, and other accessories provided by the manufacturer. If any component of the returned product is missing, Eastwind may in its sole and absolute discretion reject the entire return or choose to impose additional charges against the Customer for replacement of the missing component(s).
5. **General.**
	1. The obligations of Eastwind under this Agreement shall be subject to the procurement by, and at the expense of, Customer of any import or export licenses, documents, permits or clearances required with respect to this Agreement and are subject to the condition precedent that all necessary approvals from governmental authorities (including exchange control authorities) have been obtained. The Customer agrees to comply with all laws applicable to Customer of the United States of America and its states at all times and shall not take or refrain from taking any action which would result in the violation of such laws by Eastwind. Nothing contained in this Agreement shall be construed as creating a joint venture, partnership or employment relationship between Eastwind and Customer.
	2. If the financial condition of Customer at any time does not justify shipment on the terms of payment originally specified, Eastwind, in its sole discretion, may require full payment in advance of delivery. The Customer’s insolvency, adjudication or filing of a petition in bankruptcy under the bankruptcy laws or similar proceedings shall, at Eastwind’s election, constitute default under this Agreement, entitling Eastwind to cancel without recourse to Customer.
	3. This contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.
	4. The validity, construction and interpretation of this Agreement and the rights and duties of the parties hereto shall be governed by the laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Massachusetts or any other jurisdiction) that would cause the applica­tion of the laws of any jurisdiction other than the Commonwealth of Massachusetts.
	5. CUSTOMER specifically and irrevocably consents to the personal and subject matter jurisdiction and venue of the federal and state courts of the Commonwealth of Massachusetts and such courts shall have exclusive jurisdiction with respect to all matters concerning this AGREEMENT or the enforcement of any of the foregoing.
	6. CUSTOMER AND EASTWIND HEREBY WAIVE THEIR RIGHT TO TRIAL BY JURY TO THE FULLEST EXTENT PERMITTED BY LAW IN CONNECTION WITH ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE PRODUCTS COVERED HEREBY OR THE PERFORMANCE OF ANY PARTY HEREUNDER. THIS AGREEMENT GIVES CUSTOMER SPECIFIC LEGAL RIGHTS. CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.
	7. This Agreement and the EULA, if applicable, are the complete and exclusive statement of the Agreement between the parties and supersede all prior agreements and communications with respect to the subject matter. Eastwind makes no representations to Customer except as expressly set forth herein or therein. The terms of this Agreement shall apply and govern the parties’ dealings notwithstanding any proposed variations or additions which may be contained in any Customer purchase order or other communications submitted by Customer.
	8. This Agreement may not be modified, amended or waived in whole or in part, except by written agreement of the parties hereto. No Eastwind employee other than a duly authorized representative of Eastwind at its principal offices shall have any actual or apparent authority to modify the terms of this Agreement in any way. Any authorized modifications shall be in writing and signed by such an authorized representative of Eastwind. Any item or service furnished by Eastwind in furtherance of this Agreement, although not specifically identified herein, shall nevertheless be covered and governed by this Agreement unless specifically covered by some other written agreement executed by Customer and an authorized representative of Eastwind.
	9. Customer certifies that the Products acquired hereunder are intended for Customer’s own use in the ordinary course of business and not for the purpose of resale. Customer may not assign this Agreement, or any of its rights or obligations hereunder, without the prior written consent of Eastwind.
	10. Eastwind shall have a purchase money security interest in the Products to secure Customer’s payment obligations hereunder. Customer shall execute when appropriate and hereby authorizes Eastwind to file all documents required to maintain such security interest.
	11. Customer shall reimburse Eastwind for reasonable attorneys’ fees and other costs associated with Customer’s breach of this Agreement, including without limitation the collection of any amounts due from Customer under this Agreement.
	12. Section headings are for descriptive purposes only and shall not control or alter the meaning of this Agreement.
	13. All rights and remedies of either party shall be cumulative and may be exercised singularly or concurrently. The failure of either party, in any one or more instances, to enforce any of the terms of this Agreement shall not be construed as a waiver of future enforcement of that or any other term.
	14. If any provisions of this Agreement shall for any reason be held illegal or unenforceable, such provisions shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect or impair the validity or enforceability of the remaining provisions from this agreement.
	15. In the event either party is unable, in its reasonable judgment to perform in accordance with this Agreement, due in whole or in part to any cause beyond the party's control, including without limitation, acts of god, acts of the enemy, events of war, embargo, strike or lockout dispute with workers, accidental delay in transportation, shortage of fuel, excessive demand for products over available supply, inability to obtain material, unusually severe weather conditions, fires, floods, earthquakes, and unreasonably dangerous situations, the affected party shall promptly notify the other party in writing and the date of performance shall be extended for a period equal to the period of such delay.

**[END OF DOCUMENT]**

EXHIBIT A

EASTWIND COMMUNICATIONS, INC. END-USER LICENSE AGREEMENT

IMPORTANT – READ CAREFULLY: This Eastwind Communications, Inc. End-User License Agreement (“EULA”) is a legal agreement between you (on behalf of yourself or the entity which you represent) and Eastwind Communications, Inc. (“Eastwind”) for software sublicensed to you by Eastwind, including without limitation any updates thereto provided by Eastwind and any media or printed, electronic or “online” materials and documentation associated therewith (the “Software”). By opening this package or by installing, copying, downloading or otherwise using the Software, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, do not install or use the Software and return it to the place of purchase for a refund.

1. License Grant. You may install, access and use one copy of the Software on a single computer, workstation, terminal or other digital electronic device (“System”) or you may install a copy of the Software on a device, such as a network server, used only to run, display or otherwise provide access to the Software to other Systems over an internal network; *provided*, *however*, you must acquire and dedicate an additional license for each separate System for which such access is provided. No license for the Software may be shared or used concurrently on different Systems.
2. Other Rights and Limitations.
	1. *Reverse Engineering*. You may not reverse engineer, decompile, or disassemble the Software, except and only to the extent that Eastwind is required to permit such activity by applicable law.
	2. *Software Transfer*. You may not assign or otherwise transfer your rights under this EULA or transfer the Software.
	3. *Separability*. The Software is licensed as a single product and may not be separated for use on more than one System.
	4. *Reservation of Rights*. All rights not expressly granted hereunder are reserved by Eastwind.
	5. *Termination*. In the event that you fail to comply with the terms and conditions of this EULA, Eastwind may terminate this EULA without prejudice to any other rights of Eastwind. Upon such termination, you must destroy all copies of the Software and its component parts.
3. Intellectual Property. All title and copyrights in and to the Software and any copies of the Software are owned by Eastwind or its suppliers and licensors. All title and intellectual property rights in and to the content which may be accessed through use of the Software is the property of the respective owner of such content and may be protected by applicable copyright or other intellectual property laws and treaties. No ownership of or any right to use any part of such content is transferred to you under this EULA. If the Software contains documentation provided only in electronic form, you may print one copy of such documentation for your own use.
4. Backup Copy. You may make one copy of the original media on which the Software was provided to you by Eastwind solely for backup or archival purposes. Except as expressly provided in this EULA or as otherwise required by law, you may not otherwise make copies of the Software.
5. Export Restrictions. You agree to comply fully with all applicable laws, rules and regulations relating to the export of technical data, including, but not limited to, any regulations of the United States Office of Export Administration and other applicable governmental agencies.
6. U.S. Government Restricted Rights. The Software is a “commercial item” as that term is defined in 48 C.F.R. 2.101 (October 1995) consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 227.7202-1, 227.7202-3 and 227.7202-4 (June 1995). If you are the U.S. Government or any agency or department thereof, the Software is licensed hereunder (i) only as a commercial item, and (ii) with only those rights as are granted to all other end-users pursuant to the terms and conditions of this EULA.
7. Limited Warranty. Eastwind warrants that the media on which the Software is supplied shall be free from defects for a period of 90 days from the date of shipment. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EASTWIND AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT WITH REGARD TO THE SOFTWARE.
8. Limitation of Liability. IN NO EVENT SHALL EASTWIND OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, MULTIPLE, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING LOST PROFITS OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE SOFTWARE, EVEN IF EASTWIND OR ITS SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, EASTWIND’S CUMULATIVE LIABILITY TO YOU UNDER ANY PROVISION OF THIS EULA SHALL NOT EXCEED THE TOTAL AMOUNT OF THE LICENSE FEES PAID TO EASTWIND FOR THE SOFTWARE.
9. Indemnification of Licensee. If notified promptly in writing of any action (and all prior claims relating to such action) brought against you based on a claim that the Software (other than any Open Source Components) infringes a patent or copyright, Eastwind shall defend such action at its expense and pay any costs or damages finally awarded in such action which are attributable to such claim; provided that Eastwind shall have sole control of the defense of any such action and all negotiations for its settlement or compromise; and further provided you shall promptly cease use of the Software if so requested by Eastwind. If a final injunction is obtained against your use of the Software (other than any Open Source Components) by reason of infringement of a patent or copyright, or if in Eastwind’s opinion the Software is likely to become the subject of a successful claim of infringement of a patent or copyright, Eastwind shall, at its option and expense, either procure for you the right to continue using the Software, replace or modify the same without material loss of functionality so that it becomes non-infringing or grant you a credit for the replacement of the Software. Notwithstanding the foregoing, Eastwind shall not have any liability to you under the foregoing provision if the infringement or claim is based upon your use of the Software in combination with other equipment or software which is not furnished by Eastwind. No costs or expenses shall be incurred on behalf of Eastwind without its prior written consent. The foregoing provision states the entire liability of Eastwind with respect to infringement or patents or copyrights by the Software or any part thereof or their operation. For purposes of this EULA, “Open Source Components” shall mean any software which is freely available without charge; any software that refers to, or is based upon, a any form of software license from or substantially similar to any software license provided by the Free Software Foundation, including without limitation the GNU General Public License, the GNU Lesser General Public License or the GNU Free Documentation License; or any software that is “copylefted.”
10. Choice of Law. THIS EULA SHALL BE CONSTRUED UNDER AND GOVERNED BY THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW PROVISIONS.