

## End User License Agreement

Wolken EULA contains terms of use applicable to all Wolken software cloud-hosted products.

**Effective: June 1, 2021**

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## ***Section 1. Scope and Applicability***

- 1.1 This End User License Agreement (“EULA”) between You and Wolken Software covers Your use of the Software and Cloud Services (“Wolken Software”). This document also incorporates any Product Specific Terms that may apply to the Wolken Software Product You acquire. Definitions of capitalized terms are in Section 13 (Definitions).
- 1.2 You agree to be bound by the terms of this EULA through:
  - (a) Your download, installation, or use of the Wolken Software; or
  - (b) Your express agreement to this EULA.
- 1.3 If You do not have authority to enter into this EULA or You do not agree with its terms, You must not use the Wolken Software which shall be Your exclusive remedy if You do not wish to abide by this EULA or any change made hereafter. You may request a refund for the Software within 30 days of Your initial purchase provided You return the Software to the Approved Source and disable or uninstall it. This paragraph does not apply where You have expressly agreed to the end user license terms with Wolken as part of a transaction with an Approved Source.

## ***Section 2. Using Wolken Software Product***

- 2.1 License and Right to Use. Wolken grants You a non-exclusive, non-transferable, revoable:
  - (a) license to use the Software; and
  - (b) right to use the Cloud Services, both as acquired from an Approved Source, for Your direct benefit during the Usage Term and as set out in Your Entitlement and this EULA (collectively, the “Usage Rights”).
- 2.2 Use by Third Parties. You may permit Authorized Third Parties to exercise the Usage Rights on Your behalf, provided that You are responsible/liable for
  - (a) ensuring that such Authorized Third Parties comply with this EULA; and
  - (b) any breach of this EULA by such Authorized Third Parties.
- 2.3 Beta and Trial Use. If Wolken grants You Usage Rights in the applicable Wolken Software on a trial, evaluation, beta or other free-of-charge basis (“Evaluation Software and Services”), You may only use the Evaluation Software and Services on a temporary basis for the period limited by the license key or specified by Wolken in writing. If there is no period identified, such use is limited to 30 days after the Evaluation Software and Services are made available to You. If You fail to stop using and/or return the Evaluation Software and

Services or the equipment on which it is authorized for use by the end of the trial period, you may be invoiced for its list price and agree to pay such invoiced amount to Wolken. Wolken, in its discretion, may stop providing the Evaluation Software and Services at any time, at which point You will no longer have access to any related data, information, and files and must immediately cease using the Wolken Software. The Evaluation Software and Services may not have been subject to Wolken's usual testing and quality assurance processes and may contain bugs, errors, or other issues. Except where agreed to in writing by Wolken, you will not put Evaluation Software and Services into production use. Wolken provides Evaluation Software and Services "AS-IS" without support or any express or implied warranty or indemnity for any problems or issues, and Wolken will not have any liability relating to Your use of the Evaluation Software and Services.

- 2.4 Upgrades or Additional Copies of Software. You may only use Upgrades or additional copies of the Software beyond Your license Entitlement if You have:
- (a) acquired such rights under a support agreement covering the applicable Software; or
  - (b) You have purchased the right to use Upgrades or additional copies separately.
- 2.5 Interoperability of Software. If required by law and upon Your request, Wolken will on a best effort basis provide You with the information needed to achieve interoperability between the Software and another independently created program, provided You agree to any additional terms that may be required by Wolken. You will treat such information as Confidential Information.
- 2.6 Subscription Renewal. Usage Rights in Wolken Software acquired on a subscription basis will automatically renew for the renewal period indicated on the order You placed with Wolken ("Renewal Term") unless:
- (a) You notify Your Approved Source in writing at least 45 days before the end of Your then-current Usage Term of Your intention not to renew; or
  - (b) You elect not to auto-renew at the time of the initial order placed with Wolken. Your Approved Source will notify You reasonably in advance of any Renewal Term if there are fee changes. The new fees will apply for the upcoming Renewal Term unless You promptly notify Wolken in writing, before the renewal date, that You do not accept the fee changes. In that case, your subscription will terminate at the end of the current Usage Term.

### ***Section 3. Additional Conditions of Use***

- 3.1 Wolken Software Generally. Unless expressly agreed by Wolken. You may not
- (a) transfer, sell, sublicense, monetize or make the functionality of any Wolken Software available to any third party;
  - (b) use the Software on second hand not authorized by Wolken or use Software that is licensed for a specific device on a different device;
  - (c) remove, modify, or conceal any product identification, copyright, proprietary, intellectual property notices or other marks;
  - (d) reverse engineer, decompile, decrypt, disassemble, modify, or make derivative works of the Wolken Software; or
  - (e) use Wolken Content other than as part of Your permitted use of the Wolken Software.
- 3.2 Protecting Account Access. You will keep all account information up to date, use reasonable means to protect Your account information, passwords and other login credentials, and promptly notify Wolken of any known or suspected unauthorized use of or access to Your account.
- 3.3 Use with Third Party Products. If You use the Wolken Software together with third-party products, such use is at Your risk. You are responsible for complying with any third-party provider terms, including its privacy policy. Wolken does not provide support or guarantee ongoing integration support for products that are not a native part of the Wolken Software.

#### ***Section 4. Fees***

To the extent permitted by law, orders for the Wolken Software are non-cancellable. Any fees paid for Your use of Wolken Software are set out in Your purchase terms with Your Approved Source. If You use Wolken Software in contravention beyond Your Entitlement (“Overage”), the Approved Source may invoice You, and You agree to pay, for such Overage.

#### ***Section 5. Confidential Information and Use of Data***

- 5.1 Confidentiality. Recipient will hold in confidence and use no less than reasonable care to avoid disclosure of any Confidential Information to any third party, except for its employees, affiliates, and contractors who have a need to know (“Permitted Recipients”). Recipient:
- (a) must ensure that its Permitted Recipients are subject to written confidentiality obligations no less restrictive than the Recipient’s obligations under this EULA, and
  - (b) is liable for any breach of this Section by its Permitted Recipients.

Such nondisclosure obligations will not apply to information that:

- (a) is known by Recipient without confidentiality obligations;
- (b) is or has become public knowledge through no fault of Recipient; or
- (c) is independently developed by Recipient. Recipient may disclose Discloser's Confidential Information if required under a regulation, law or court order provided that Recipient provides prior notice to Discloser (to the extent legally permissible) and reasonably cooperates, at Discloser's expense, regarding protective actions pursued by Discloser. Upon the reasonable request of Discloser, Recipient will either return, delete or destroy all Confidential Information of Discloser and certify the same.

5.2 How We Use Your Data. Wolken will access, process and use data in connection with Your use of the Wolken Software in accordance with applicable privacy and data protection laws. For more details in this regard please read our Privacy Policy and Terms of Use [here](#)

5.3 Notice and Consent. To the extent Your use of the Wolken Software requires it, you are responsible for providing notice to, and obtaining consents from, individuals regarding the collection, processing, transfer and storage of their data through Your use of the Wolken Software.

## ***Section 6. Ownership***

Except where agreed in writing, nothing in this EULA transfers ownership in, or grants any license to, any intellectual property rights. You retain any ownership of Your content and Wolken retains ownership of the Wolken Software and Wolken Content. Wolken may use any feedback You provide in connection with Your use of the Wolken Software as part of its business operations.

## ***Section 7. Indemnification***

You shall indemnify, defend and hold harmless Wolken, and its affiliates, officers, partners, employees, consultants and representatives, from and against all losses, expenses, damages, costs, claims and demands, including reasonable attorney's fees and related costs and expenses, due to or arising out of: (a) Your failure to comply with these EULA; or (b) where any information You submit, email, or otherwise transmit to us violates third party rights or applicable laws. We reserve the right, at our own expense, to assume the exclusive defence and control of any matter otherwise subject

to indemnification by you, and in such case, you agree to fully cooperate with such defence and in asserting any available defences.

## ***Section 8. Warranties and Representations***

8.1 Performance. Wolken warrants that:

- (a) for a period of 90 days from the Delivery Date or longer as stated in Documentation, the Software shall substantially be compliant with the Documentation; and
- (b) during the Usage Term, it provides the Cloud Services with commercially reasonable skill and care in accordance with the Documentation and Product Specific Terms.

8.2 Malicious Code. Wolken shall make commercially reasonable efforts to deliver the Wolken Software free of Malicious Code.

8.3 Qualifications. Sections 8.1 and 8.2 do not apply if the Wolken Software:

- (a) has been altered, except by Wolken or its authorized representative;
- (b) has been subjected to abnormal physical conditions, accident or negligence, or installation or use inconsistent with this EULA or Wolken's instructions;
- (c) is acquired on a no charge, beta or evaluation basis;
- (d) has not been provided by an Approved Source.

8.4 Upon Your prompt written notification to the Approved Source during the warranty period of Wolken's breach of this Section 8, Your sole and exclusive remedy (unless otherwise required by applicable law) is, at Wolken's option, either

- (a) replacement of the applicable Wolken Software, or
- (b) a refund of the license fees paid, or
- (c) due for the non-conforming Software, or
- (d) the fees paid for the period in which the Cloud Service was not compliant, excluding any amounts paid under a service level agreement/objective, if applicable

8.5 Where Wolken provides a refund of license fees paid for Software, You must return or destroy all copies of the applicable Software.

8.6 You acknowledge and agree that the Wolken Software is provided/supplied by Wolken on an 'as is where is basis'. Neither Wolken nor any of its representatives has made nor will make any representation or warranty whatsoever, express, implied or statutory, including, without limitation, any implied representations or warranties of merchantability, fitness for a particular purpose, title, enforceability or non-infringement.

- 8.7 You agree and acknowledge that barring the express warranties made by Wolken in this EULA, Wolken does not make any other warranty of any kind, whether express or implied with respect to the operation of the Wolken Software.
- 8.8 Wolken does not promise that the Wolken Software will be uninterrupted, error-free, or completely secure. You acknowledge that there are risks inherent in internet connectivity that could result in the loss of privacy, customer data, Confidential Information, etc., which could adversely impact the Wolken Software, which are not in Wolken's control.
- 8.9 This EULA is effective as of the date You confirm your acceptance of the subscription through an online checkbox, "I agree" button or, any similar acceptance mode
- 8.10
- 8.11 If you are an Entity and are accepting this EULA on behalf of Users, You represent and warrant that: (i) You have full legal authority to bind the Users, to this EULA; (ii) You have read and understand this EULA; and (iii) You agree, on behalf of the Users, to this EULA. If You do not have the legal authority to bind the Users, please do not go ahead with the accepting this EULA.

## ***Section 9. Liability***

- 9.1 Neither party will be liable for indirect, incidental, exemplary, special or consequential damages; loss or corruption of data or interruption or loss of business; or loss of revenues, profits, goodwill or anticipated sales or savings. The maximum aggregate liability of each party under this EULA is limited to
- (a) claims solely arising from Software licensed on a perpetual basis, the fees received by Wolken for that Software; or
  - (b) all other claims, the fees received by Wolken for the applicable Wolken Software and attributable to the 12 month period immediately preceding the first event giving rise to such liability.
- 9.2 These limitations of liability do not apply to liability arising from
- (a) Your failure to pay all amounts due; or
  - (b) Your breach of Sections 2.1 (License and Right to Use), 3.1 (Wolken Software Generally) or 12.8 (Export). This limitation of liability applies whether the claims are in warranty, contract, tort (including negligence), infringement, or otherwise, even if either party has been advised of the possibility of such damages. Nothing in this EULA limits or excludes any liability that cannot be limited or excluded under applicable law. This limitation of liability is cumulative and not per incident.



## ***Section 10. Termination and Suspension***

- 10.1 Suspension. Wolken may immediately suspend Your Usage Rights if You breach Sections 2.1 (License and Right to Use), 3.1 (Wolken Software Generally) or 12.8 (Export).
- 10.2 Termination. If a party materially breaches this EULA and does not cure that breach within 30 days after receipt of written notice of the breach, the non-breaching party may terminate this EULA for cause. Wolken may immediately terminate this EULA if You breach Sections 2.1 (License and Right to Use), 3.1 (Wolken Software Generally) or 12.8 (Export).
- 10.3 Notwithstanding any of the other Clauses in the EULA, Wolken may terminate this EULA immediately without giving You any notice if it is directed by government and/or legal authorities, to do so.
- 10.4 You may terminate this EULA by ceasing to use the Wolken Software.
- 10.5 Upon termination of the EULA, You must stop using the Wolken Software and destroy any copies of Software and Confidential Information within Your control. If this EULA is terminated due to Wolken's material breach, Wolken will refund You or Your Approved Source, the prorated portion of fees You have prepaid for the Usage Rights beyond the date of termination. Upon Wolken's termination of this EULA for Your material breach, You shall pay Wolken or the Approved Source any unpaid fees through to the end of the then-current Usage Term. If You continue to use or access any Wolken Software after termination, Wolken or the Approved Source may invoice You, and You agree to pay, for such continued use.

## ***Section 11. Verification***

During the Usage Term and for a period of 12 months after its expiry or termination, You will take reasonable steps to maintain complete and accurate records of Your use of the Wolken Software sufficient to verify compliance with this EULA ("Verification Records"). Upon reasonable advance notice, and no more than once per 12 month period, You will, within 30 days from Wolken's notice, allow Wolken and its auditors access to the Verification Records and any applicable books, systems, and accounts during Your normal business hours. If the verification process discloses underpayment of fees: (a) You will pay such fees; and (b) You will also pay the reasonable cost of the audit if the fees owed to Wolken as a result exceed the amounts You paid for Your Usage Rights by more than 5%.



## **Section 12. General Provisions**

- 12.1 Survival. Sections 4, 5, 6, 8, 9, 10, 11 and 12 survive termination or expiration of this EULA.
- 12.2 Third Party Beneficiaries. This EULA does not grant any right or cause of action to any third party.
- 12.3 Assignment and Subcontracting. Except as set out below, neither party may assign or novate this EULA in whole or in part without the other party's express written consent. Wolken may
- (a) by written notice to You, assign or novate this EULA in whole or in part to an Affiliate of Wolken, or otherwise as part of a sale or transfer of any part of its business; or
  - (b) subcontract any performance associated with the Wolken Software to third parties, provided that such subcontract does not relieve Wolken of any of its obligations under this EULA.
- 12.4 Wolken Partner Transactions. If You purchase Wolken Software from a Wolken Partner, the terms of this EULA apply to Your use of that Wolken Software and prevail over any inconsistent provisions in Your agreement with the Wolken Partner.
- 12.5 Modifications to the EULA. Wolken may change this EULA or any of its components by updating this EULA on "Wolkensoftware.com". Changes to the EULA apply to any Entitlements acquired or renewed after the date of modification.
- 12.6 Compliance with Laws. Each party will comply with all laws and regulations applicable to their respective obligations under this EULA. Wolken may restrict the availability of the Wolken Software in any particular location or modify or discontinue features to comply with applicable laws and regulations.
- 12.7 If You use the Wolken Software in a location with local laws requiring a designated entity to be responsible for collection of data about individual end users and transfer of data outside of that jurisdiction (e.g., Europe, Russia and China), You acknowledge, understand and agree that You are the entity responsible for complying with such laws.
- 12.8 Export. Wolken's Software, products, technology and services (collectively the "Wolken Products") are subject to India and local export control and sanctions laws. You acknowledge and agree to the applicability of and Your compliance

with those laws, and You will not receive, use, transfer, export or re-export any Wolken Products in a way that would cause Wolken to violate those laws. You also agree to obtain any required licenses or authorizations.

- 12.9 Governing Law and Venue. This EULA, and any disputes arising from it, will be governed exclusively by the applicable governing law, based in India and without regard to conflicts of laws rules or the United Nations Convention on the International Sale of Goods. The courts located in Bengaluru, India will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to the EULA or its formation, interpretation or enforcement. Each party hereby consents and submits to the exclusive jurisdiction of such courts. Regardless of the below governing law, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of Wolken's intellectual property or proprietary rights.
- 12.10 Notice. Any notice delivered by Wolken to You under this EULA will be delivered via email, regular mail or postings on Wolkensoftware.com. Notices to Wolken should be sent to Wolken Software Pvt Ltd, Office of Compliance, Wolken Software Pvt Ltd, #6/2, Brigade Champak, 2nd Floor, Infantry Road, Union Street, Bangalore 560 001 unless this EULA, applicable Product Specific Terms or an order specifically allows other means of notice.
- 12.11 Force Majeure. Except for payment obligations, neither party will be responsible for failure to perform its obligations due to an event or circumstances beyond its reasonable control.
- 12.12 No Waiver. Failure by either party to enforce any right under this EULA will not waive that right.
- 12.13 Severability. If any portion of this EULA is not enforceable, it will not affect the enforceability of any other terms.
- 12.14 Entire agreement. This EULA is the complete agreement between the parties with respect to the subject matter of this EULA and supersedes all prior or contemporaneous communications, understandings or agreements (whether written or oral).
- 12.15 Translations. Wolken may provide local language translations of this EULA in some locations. You agree that those translations are provided for informational purposes only and if there is any inconsistency, the English version of this EULA will prevail.

12.16 Order of Precedence. If there is any conflict between this EULA and any Product Specific Terms expressly referenced in this EULA, the order of precedence is:

- (a) such Product Specific Terms;
- (b) this EULA (excluding the Product Specific Terms and any Wolken policies); then
- (c) any applicable Wolken policy expressly referenced in this EULA.

### ***Section 13. Definitions***

13.1 “Affiliate” means any corporation or company that directly or indirectly controls, or is controlled by, or is under common control with the relevant party, where “control” means to:

- (a) own more than 50% of the relevant party; or
- (b) be able to direct the affairs of the relevant party through any lawful means (e.g., a contract that allows control).

13.2 “Approved Source” means Wolken or a Wolken Partner.

13.3 “Authorized Third Parties” means Your Users, Your Affiliates, Your third-party service providers, and each of their respective Users permitted to access and use the Wolken Software on Your behalf as part of Your Entitlement.

13.4 “Wolken” “we” “our” or “us” means Wolken Software Pvt Ltd. or its applicable Affiliate(s).

13.5 “Wolken Content” means any

- (a) content or data provided by Wolken to You as part of Your use of the Wolken Software and
- (b) content or data that the Wolken Software generates or derives in connection with Your use. Wolken Content includes geographic and domain information, rules, signatures, threat intelligence and data feeds and Wolken’s compilation of suspicious URLs.

13.6 “Wolken Partner” means a Wolken authorized reseller, distributor or systems integrator authorized by Wolken to sell Wolken Software.

13.7 “Confidential Information” means non-public proprietary information of the disclosing party (“Discloser”) obtained by the receiving party (“Recipient”) in connection with this EULA, which is

- (a) conspicuously marked as confidential or, if verbally disclosed, is summarized in writing to the Recipient within 14 days and marked as confidential; or

- (b) is information which by its nature should reasonably be considered confidential whether disclosed in writing or verbally.
- 13.8 “Delivery Date” means the date agreed in Your Entitlement, or where no date is agreed:
  - (a) where Usage Rights in Software are granted separately:
  - (b) for Software, the earlier of the date Software is made available for download or installation, or the date that Wolken ships the tangible media containing the Software, and or
  - (c) where Usage Rights in Software, the earlier of the date Software is made available for download for Your use.
- 13.9 “Documentation” means the technical specifications and usage materials officially published by Wolken specifying the functionalities and capabilities of the applicable Wolken Software.
- 13.10 “Entitlement” means the specific metrics, duration, and quantity of Wolken Software that You commit to acquire from an Approved Source through individual acquisitions or Your participation in a Wolken buying program.
- 13.11 “Malicious Code” means code that is designed or intended to disable or impede the normal operation of, or provide unauthorized access to, networks, systems, Software other than as intended by the Wolken Software.
- 13.12 “Product Specific Terms” means additional product related terms applicable to the Wolken Software You acquire.
- 13.13 “Software” means the Wolken computer programs including Upgrades, firmware and applicable Documentation.
- 13.14 “Upgrades” means all updates, upgrades, bug fixes, error corrections, enhancements and other modifications to the Software.
- 13.15 “Usage Term” means the period commencing on the Delivery Date and continuing until expiration or termination of the Entitlement, during which period You have the right to use the applicable Wolken Software.
- 13.16 “User” means the individuals (including contractors or employees) permitted to access and use the Wolken Software on Your behalf as part of Your Entitlement.
- 13.17 “You” means the individual or legal entity purchasing the Wolken Software.

