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**1.2 “Documentation”** means that documentation that is generally provided to you by LogicHub with the Software, as revised by LogicHub from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.

**1.3 “Intellectual Property Rights”** means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

**1.4 “License”** means a license granted under Section 2.1 (General License Grant).

**1.5 “License Term”** means the duration of a License as specified in the Order.

**1.6 “License Type”** means the type of License applicable to the Software, as more fully described in the Order.

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**1.8 “Software”** means the LogicHub product listed on LogicHub’s price list to which You acquire a license under an Order, together with any software code relating to the foregoing that is provided to You pursuant to a support and subscription service contract and that is not subject to a separate license agreement.

**1.17 “LOGICHUB”** means LogicHub, Inc., a Delaware corporation.

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**2.1 General License Grant.** LogicHub grants to You a non-exclusive, non-transferable (except as set forth in Section 12.1 (Transfers; Assignment) license to use the Software and the Documentation during the term of the license, solely for Your internal business operations, and subject to the provisions of the Documentation. Unless otherwise indicated in the Order, licenses granted to You will be for the period as set forth in the Order, and will commence on either delivery of the physical media or the date You are notified of availability for electronic download.

**2.2 Third Party Agents.** Under the License granted to You in Section 2.1 (General License Grant) above, You may permit Your Third Party Agents to access, use and/or operate the Software on Your behalf for the sole purpose of delivering services to You, provided that You will be fully responsible for Your Third Party Agents’ compliance with terms and conditions of this EULA and any breach of this EULA by a Third Party Agent shall be deemed to be a breach by You.

## **3. RESTRICTIONS; OWNERSHIP.**

**3.1 License Restrictions.** Without LogicHub’s prior written consent, You must not, and must not allow any third party to: (a) use Software in an application services provider, service bureau, or similar capacity for third parties, except that You may use

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**4. ORDER.** Your Order is subject to this EULA. No Orders are binding on LogicHub until accepted by LogicHub. Orders for Software are deemed to be accepted upon LogicHub's delivery of the Software included in such Order. Orders issued to LogicHub do not have to be signed to be valid and enforceable.

**5. RECORDS AND AUDIT.** During the License Term for Software and for two (2) years after its expiration or termination, You will maintain accurate records of Your use of the Software sufficient to show compliance with the terms of this EULA. During this period, LogicHub will have the right to audit Your use of the Software to confirm compliance with the terms of this EULA. That audit is subject to reasonable notice by LogicHub and will not unreasonably interfere with Your business activities. LogicHub may conduct no more than one (1) audit in any twelve (12) month period,

and only during normal business hours. You will reasonably cooperate with LogicHub and any third party auditor and will, without prejudice to other rights of LogicHub, address any non-compliance identified by the audit by promptly paying additional fees.

## **6. WARRANTIES.**

**6.1 Software Warranty, Duration and Remedy.** LogicHub warrants to You that the Software will, for a period of ninety (90) days following notice of availability for electronic download or delivery (“Warranty Period”), substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and used at all times in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than LogicHub or its authorized representative. LogicHub will, at its own expense and as its sole obligation and Your exclusive remedy for any breach of this warranty, either replace that Software or correct any reproducible error in that Software reported to LogicHub by You in writing during the Warranty Period. If LogicHub determines that it is unable to correct the error or replace the Software, LogicHub will refund to You the amount paid by You for that Software, in which case the License for that Software will terminate.

**6.2 Software Disclaimer of Warranty.** OTHER THAN THE WARRANTY ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LOGICHUB AND ITS SUPPLIERS MAKE NO OTHER EXPRESS WARRANTIES UNDER THIS EULA, AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. LOGICHUB AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT IT WILL MEET YOUR REQUIREMENTS.

## **7. INTELLECTUAL PROPERTY INDEMNIFICATION.**

**7.1 Defense and Indemnification.** Subject to the remainder of this Section 8 (Intellectual Property Indemnification), LogicHub shall defend You against any third party claim that the Software infringes any patent, trademark or copyright of such third party, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of Your actions) under the laws of: (a) the United States and Canada; (b) the European Economic Area; (c) Australia; (d) New Zealand; (e) Japan; or (f) the People’s Republic of China, to the extent that such countries are

part of the Territory for the License (“Infringement Claim”) and indemnify You from the resulting costs and damages finally awarded against You to such third party by a court of competent jurisdiction or agreed to in settlement. The foregoing obligations are applicable only if You: (i) promptly notify LogicHub in writing of the Infringement Claim; (ii) allow LogicHub sole control over the defense for the claim and any settlement negotiations; and (iii) reasonably cooperate in response to LogicHub requests for assistance. You may not settle or compromise any Infringement Claim without the prior written consent of LogicHub.

**7.2 Remedies.** If the alleged infringing Software become, or in LogicHub’s opinion be likely to become, the subject of an Infringement Claim, LogicHub will, at LogicHub’s option and expense, do one of the following: (a) procure the rights necessary for You to make continued use of the affected Software; (b) replace or modify the affected Software to make it non-infringing; or (c) terminate the License to the affected Software and discontinue the related support services, and, upon Your certified deletion of the affected Software, refund: (i) the fees paid by You for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on the date such Software was delivered; and (ii) any pre-paid service fee attributable to related support services to be delivered after the date such service is stopped. Nothing in this Section 8.2 (Remedies) shall limit LogicHub’s obligation under Section 8.1 (Defense and Indemnification) to defend and indemnify You, provided that You replace the allegedly infringing Software upon LogicHub’s making alternate Software available to You and/or You discontinue using the allegedly infringing Software upon receiving LogicHub’s notice terminating the affected License.

**7.3 Exclusions.** Notwithstanding the foregoing, LogicHub will have no obligation under this Section 8 (Intellectual Property Indemnification) or otherwise with respect to any claim based on: (a) a combination of Software with non-LogicHub products (other than non-LogicHub products that are listed on the Order and used in an unmodified form); (b) use for a purpose or in a manner for which the Software was not designed; (c) use of any older version of the Software when use of a newer LogicHub version would have avoided the infringement; (d) any modification to the Software made without LogicHub’s express written approval; (e) any claim that relates to open source software or freeware technology or any derivatives or other adaptations thereof that is not embedded by LogicHub into Software listed on LogicHub’s commercial price list; or (f) any Software provided on a no charge, beta or evaluation basis. THIS SECTION 8 (INTELLECTUAL PROPERTY INDEMNIFICATION) STATES YOUR SOLE AND EXCLUSIVE REMEDY AND LOGICHUB’S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS OR ACTIONS.

## **8. LIMITATION OF LIABILITY.**

**8.1 Limitation of Liability.** TO THE MAXIMUM EXTENT MANDATED BY LAW, IN NO EVENT WILL LOGICHUB AND ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU. LOGICHUB'S AND ITS LICENSORS' LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE GREATER OF THE LICENSE FEES YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM OR \$5000. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER LOGICHUB OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**8.2 Further Limitations.** LogicHub's licensors shall have no liability of any kind under this EULA and LogicHub's liability with respect to any third party software embedded in the Software shall be subject to Section 9.1 (Limitation of Liability). You may not bring a claim under this EULA more than eighteen (18) months after the cause of action arises.

## **9. TERMINATION.**

**9.1 EULA Term.** The term of this EULA begins on the notice of availability for electronic download or delivery of the Software and continues until this EULA is terminated in accordance with this Section 9.

**9.2 Termination for Breach.** LogicHub may terminate this EULA effective immediately upon written notice to You if: (a) You fail to pay any portion of the fees under an applicable Order within ten (10) days after receiving written notice from LogicHub that payment is past due; or (b) You breach any other provision of this EULA and fail to cure within thirty (30) days after receipt of LogicHub's written notice thereof.

**9.3 Termination for Insolvency.** LogicHub may terminate this EULA effective immediately upon written notice to You if You: (a) terminate or suspend your business; (b) become insolvent, admit in writing Your inability to pay Your debts as they mature, make an assignment for the benefit of creditors; or become subject to control of a trustee, receiver or similar authority; or (c) become subject to any bankruptcy or insolvency proceeding.

**9.4 Effect of Termination.** Upon LogicHub's termination of this EULA: (a) all Licensed rights to all Software granted to You under this EULA will immediately cease; and (b) You must cease all use of all Software, and return or certify destruction of all Software (including copies) to LogicHub, and return, or if requested by LogicHub, destroy, any related LogicHub Confidential Information in Your possession or control and certify in writing to LogicHub that You have fully complied with these requirements. Any provision will survive any termination or expiration if by its nature and context it is intended to survive, including Sections 1 (Definitions), 2.6 (Open Source Software), 3 (Restrictions; Ownership), 5 (Records and Audit), 7.2 (Software Disclaimer of Warranty), 9 (Limitation of Liability), 10 (Termination), 11 (Confidential Information) and 12 (General).

## **11. CONFIDENTIAL INFORMATION.**

**11.1 Definition.** “**Confidential Information**” means information or materials provided by one party (“**Discloser**”) to the other party (“**Recipient**”) which are in tangible form and labelled “confidential” or the like, or, information which a reasonable person knew or should have known to be confidential. The following information shall be considered Confidential Information whether or not marked or identified as such: (a) License Keys; (b) information regarding LogicHub's pricing, product roadmaps or strategic marketing plans; and (c) non-public materials relating to the Software.

**11.2 Protection.** Recipient may use Confidential Information of Discloser; (a) to exercise its rights and perform its obligations under this EULA; or (b) in connection with the parties' ongoing business relationship. Recipient will not use any Confidential Information of Discloser for any purpose not expressly permitted by this EULA, and will disclose the Confidential Information of Discloser only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of this EULA and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature

but with no less than reasonable care.

**11.3 Exceptions.** Recipient's obligations under Section 11.2 (Protection) with respect to any Confidential Information will terminate if Recipient can show by written records that such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser's Information. In addition, Recipient will be allowed to disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

## **12. GENERAL.**

**12.1 Transfers; Assignment.** You will not assign this EULA, any Order, or any right or obligation herein or delegate any performance without LogicHub's prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by You will be void. LogicHub may use other sufficiently qualified subcontractors to provide services to You, provided that LogicHub remains responsible to You for the performance of the services.

**12.2 Notices.** Any notice delivered by LogicHub to You under this EULA will be delivered via mail, email or fax.

**12.3 Waiver.** Failure to enforce a provision of this EULA will not constitute a waiver.

**12.4 Severability.** If any part of this EULA is held unenforceable, the validity of all remaining parts will not be affected.

**12.5 Compliance with Laws; Export Control; Government Regulations.** Each party shall comply with all laws applicable to the actions contemplated by this EULA. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of,



(a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this EULA.

**12.6 Construction.** The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA. As used in this EULA, the word ‘including’ means “including but not limited to”.

**12.7 Governing Law.** This EULA is governed by the laws of the State of California, United States of America (excluding its conflict of law rules), and the federal laws of the United States. To the extent permitted by law, the state and federal courts located in Santa Clara County, California will be the exclusive jurisdiction for disputes arising out of or in connection with this EULA. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

**12.8 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.

**12.9 Order of Precedence.** In the event of conflict or inconsistency among the Product Guide, this EULA and the Order, the following order of precedence shall apply: (a) the Product Guide, (b) this EULA and (c) the Order. With respect to any inconsistency between this EULA and an Order, the terms of this EULA shall supersede and control over any conflicting or additional terms and conditions of any Order, acknowledgement or confirmation or other document issued by You.

**12.10 Entire Agreement.** This EULA, including accepted Orders and any amendments hereto, and the Documentation contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments,

understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. This EULA may be amended only in writing signed by authorized representatives of both parties.

**12.11 Contact Information.** Please direct legal notices or other correspondence to LogicHub, Inc., Kumar Saurabh, 154 E. Dana Street, Mountain View, CA 94041.