K3 End User License Agreement (EULA)

READ THIS CAREFULLY. BY PROCEEDING, YOU ARE CREATING A BINDING CONTRACT BETWEEN YOU, YOUR COMPANY(S) AND BROADPEAK PARTNERS, INC (BROADPEAK).

By proceeding with K3 Cloud ("the Product"), you acknowledge that you have read this product license agreement and agree to be bound by its terms. The Product is licensed, not sold, to you for use only under the terms of this agreement. If you do not agree to the terms of this product license agreement, **do not proceed**.

1.   Grant of License and License Limitations

BroadPeak Partners, Inc grants to you a non-exclusive, non-transferable license to use the Product on Amazon, Inc. infrastructure and conditioned on the pricing outlined therein. BroadPeak retains all ownership and property rights in the Product code and copies. Your license entitles you to use the Product according to approved configurations so long as each instance is licensed. You are expressly prohibited from transferring, distributing, re-distributing, sub-licensing operating the Product or its documentation. You are prohibited from operating the software as a service center to perform services for others. You are prohibited from altering, modifying, or adapting the Product or its documentation or portion thereof in any way.

2.   You Acknowledge BroadPeak Ownership

You acknowledge that the Product, its code, design, operation principles, aesthetics, logos, and trademarks are the property of BroadPeak. You acknowledge the Product code, source code and operation remain a confidential trade secret of BroadPeak. You agree not to modify or attempt to inspect, reverse engineer, decompile or disassemble the Product.

3.   Your License is Conditional

Your license is effective upon activation and shall continue until revoked by BroadPeak at its discretion or until you breach any term hereof.

4.   You Must Comply With Laws When Using This Product

You represent and warrant that no consent, approval, or authorization of or designation, declaration or filing with any governmental authority is required in connection with the valid execution, delivery, and performance of this Agreement. You shall comply with all laws, regulations and other legal requirements that apply and this Agreement, including copyright, privacy, and communications decency laws. Customer represents and warrants that it will: (a) not use the License in a manner that: (i) is prohibited by any law or regulation, or to facilitate the violation of any law or regulation; or (ii) will disrupt a third parties' similar use or Licensed Materials; (b) not violate or tamper with the security of any BroadPeak computer equipment or program. If BroadPeak has reasonable grounds to believe that Customer is utilizing the License for any such illegal or disruptive purpose BroadPeak may suspend the License at its discretion without notice.

End User agrees to comply with all applicable export and reexport control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the United States Department of Commerce. Specifically, each party covenants that it shall not - directly or indirectly - sell, export, reexport, transfer, divert, or otherwise dispose of any software, source code, or technology (including products derived from or based on such technology) received from the other party under this Agreement to any country (or any individual national thereof) subject to antiterrorism controls or U.S. embargo, or to any other person, entity, or destination prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations.

5.   You Have Alternate Licensing Options

The terms and conditions offered herein reflect a specific cost and scope of use for the Product. Alternate terms and conditions are available to you under an Enterprise Agreement by contacting:

info at broadpeakpartners dot com

6.   You Have the Right To Enter This Agreement

You acknowledge that you have the right to enter into this agreement. You acknowledge that the nature of the Product is strictly commercial in nature and that your purpose for use of the product is in furtherance of your employer.

7.   Our Liability is Limited

UNDER NO CIRCUMSTANCES WILL BROADPEAK OR ANYONE ELSE INVOLVED IN ADMINISTERING, DISTRIBUTING OR PROVIDING THE LICENSE, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE LICENSE, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR LOST PROFITS, OR DAMAGES THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR EMAIL, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR

TRANSMISSION, FAILURE OF PERFORMANCE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO BROADPEAK'S RECORDS, PROGRAMS OR LICENSE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT OF ANY BREACH BY BROADPEAK OF THIS AGREEMENT, BROADPEAK'S LIABILITY TO CUSTOMER WILL NOT EXCEED THE AMOUNT PAID TO BROADPEAK BY CUSTOMER DURING THE PREVIOUS THREE MONTHS.

8. Miscellaneous Provisions

8.1 General Limitations

You may not use, copy, modify, sublicense, rent, sell, assign, or transfer the rights or obligations granted to you in this Agreement, except as expressly provided in this Agreement. Any assignment in violation of this Agreement is void. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable, and such decision shall not affect the enforceability of: (i) such provision under other circumstances, or (ii) the remaining provisions hereof under all circumstances. BroadPeak's failure to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the right of any party to enforce each and every such provision thereafter. The express waiver by BroadPeak of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition, or requirement. Notwithstanding anything else in this Agreement, no default, delay or failure to perform on the part of BroadPeak shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due to causes beyond the reasonable control of BroadPeak. This Agreement represents the complete agreement concerning this license.

8.2 U.S. GOVERNMENT RIGHTS

The Product under this Agreement is commercial computer product as that term is described in 48 C.F.R. 252.227-7014(a)(1). If used by a civilian agency, the U.S. Government acquires this commercial computer product and/or commercial computer product documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Product) and 12.211 (Technical Data) of the Federal Acquisition Regulations ("FAR"). If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer product and/or commercial computer product documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 of the DOD FAR Supplement ("DFAR") and its successors.

8.3 Intellectual Property

The Product, its design, workflow, and operation are the manifestation of a considerable amount of know-how and work effort that is the exclusive intellectual property of BroadPeak. By activating the Product, you agree not to use the license to compete with BroadPeak directly or indirectly. Trademarks, and tradenames remain the property of BroadPeak and may not be used without prior written permission.

You agree that BroadPeak may use your name and logo as a customer of the product.

You are the sole owner and responsible for the content of communications transmitted using the License, and shall defend, indemnify and hold harmless BroadPeak from and against all liabilities and costs (including reasonable attorneys' fees) arising from any and all third-party claims by any person based upon the content of any such communications.

8.4 Governing Law

This agreement is governed by the laws of the State of New York. The UN Convention on Contracts for the International Sale of goods is specifically disclaimed.

8.5 Entire Agreement

You agree that this is the entire agreement between you and BroadPeak, and that it supersedes any prior agreement, whether written or oral, and all other communications between BroadPeak and you relating to the subject matter of this Agreement.

8.6 Reservation of Rights

All rights not expressly granted in this Agreement are reserved by BroadPeak.

8.7 Injunction

Because BroadPeak would be irreparably damaged if the terms of this License Agreement were not specifically enforced, you agree that BroadPeak shall be entitled, without bond, other security or proof of damages, to appropriate equitable remedies with respect to breaches of this Agreement, in addition to such other remedies as BroadPeak may otherwise have under applicable laws

8.8 Indemnity

At BroadPeak's request, you agree to defend, indemnify and hold harmless BroadPeak, its subsidiaries, affiliates, contractors, officers, directors, employees, agents, licensors, licensees, distributors, developers, content providers, and other users of the Product, from all damages, losses, liabilities, claims and expenses, including attorneys' fees, arising directly or indirectly from your acts

and omissions to act in using the Product pursuant to the terms of this License Agreement or any breach of this License Agreement by you. BroadPeak reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you hereunder, and in such event, you shall have no further obligation to provide indemnification for such matter.

8.9   Termination

Without prejudice to any other rights of BroadPeak, this License Agreement and your right to use the Product may terminate without notice from BroadPeak. Payment obligations shall terminate on the day of termination. However, in such event, you must destroy or delete all copies of this Product and all its component parts.

END EULA