

# End User License Agreement (EULA)

## MSP360 End User License Agreement (EULA)

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This software license agreement (the “**Agreement**”) is made between MSPBytes d/b/a MSP360 (“**MSP360**”), and you (“**End User**” or “**you**”). This Agreement governs your use of the Software (as defined herein). The Software is licensed, not sold, to the End User.

By installing this software, you represent that you have read and understand this Agreement, that you are eighteen (18) years of age or older, and that you accept the Agreement and agree that you, or the company that you are representing, are legally bound by its terms. If you are installing or using this Software on behalf of a company, you are representing that you have authority to download the Software, and to bind the company to these terms, and the company is the “End User” or “you”. If you do not agree to these terms, do not install or use the Software.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, you and MSP360 agree to the following:

1. Software Definition. For the purpose of this Agreement, the MSP360 proprietary licensed computer software program(s) downloaded and/or installed pursuant to this Agreement and the supporting documentation for such will be referred to as the “Software”. The term “Software” includes software being licensed on a trial basis, and software for which End User has agreed to a full license, as applicable. If you download the Software as an upgrade to an existing software product from MSP360, you agree that the terms of this Agreement will apply to such software product, as upgraded and that these shall be the only terms and conditions applicable to such upgraded Software. The Software is provided in binary code only. Nothing in this Agreement entitles End User to receive source code for the Software.

2. Grant of License. Subject to the terms of this Agreement, MSP360 grants End User a limited, non-exclusive, royalty-free, non-sublicensable, and non-transferable license to download, install, and use the Software strictly in accordance with this Agreement and the Terms of Use applicable to the Software.
3. License Restrictions.
  - A. End User may not modify the Software or any portion thereof in any manner.
  - B. End User may not reverse engineer, decompile, disassemble, modify, adapt, rent, lease, loan, or create derivative works based upon the Software or any part thereof.
  - C. Except for managed service providers, distributors, and resellers approved by MSP360 and expressly granted license rights by MSP360 pursuant to a separate agreement (an “**Authorized MSP**”), End User may not use the Software as a managed service provider, application service provider, software as a service basis, or in any commercial time share arrangement, or in any other activity intended to directly produce revenue without the prior written consent of MSP360.
  - D. End User may not resell the Software licensed hereunder nor use the Software to provide consulting or training services to third parties, except to authorized distributors and resellers with the express, written permission of MSP360.
  - E. End User shall not assign the Software to a third party for use in managing End User’s environment without the prior written consent of MSP360.
  - F. End User agrees not to install, use, or run the Software in any third party facility, or to enable others to do so.
  - G. End User represents and warrants to MSP360 that End User shall not, and shall not permit any other person to: (a) use the Software for purposes of (i) benchmarking or competitive analysis of the Software, (ii) developing, using or providing a competing software product or service; or (iii) any other purpose that is to MSP360’s detriment or commercial disadvantage; (b) copy the Software in whole or in part; and (c) use the Software in violation of any law, regulation or rule.
4. Reservation of Rights. You acknowledge and agree that the Software is provided under license, and not sold, to you. You do not acquire any ownership interest in the Software under this Agreement, or any other rights thereto other than to use the Software in accordance with the license granted, and subject to all terms, conditions, and restrictions, under this Agreement. MSP360 and its licensors and service providers reserve and shall retain the entire right, title, and interest in and to the Software, including all copyrights, trademarks, and other intellectual property rights therein or relating thereto, except as expressly granted to you.
5. Collection and Use of Information. You acknowledge that when you download, install, or use the Software, MSP360 may use automatic means (including, for example, cookies and web beacons) to collect information about your mobile

device, computer, or other electronic device, and about your use of the Software. You also may be required to provide certain information about yourself as a condition to downloading, installing, or using the Software or certain of its features or functionality, and the Software may provide you with opportunities to share information about yourself with others. All information we collect through or in connection with this Software is subject to our Privacy Policy, located at <https://www.msp360.com/company/legal/privacy-policy>. By downloading, installing, using, and providing information to or through this Software, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

6. Content and Services. The Software may provide you with access to MSP360's website located at <https://www.msp360.com> (the "**Website**") and certain products and services accessible thereon, and certain features, functionality, and content accessible on or through the Software may be hosted on the Website (collectively, "Content and Services"). Your access to and use of such Content and Services are governed by the Website's Terms of Use and Privacy Policy located through links thereon, which are incorporated herein by this reference. Your access to and use of such Content and Services may require you to acknowledge your acceptance of such Terms of Use and Privacy Policy and/or to register with the Website, and your failure to do so may restrict you from accessing or using certain of the Software's features and functionality. Any violation of such Terms of Use will also be deemed a violation of this Agreement.
7. Geographic Restrictions. The Content and Services are based in the United States but are available for access and use by persons located in and outside of the United States. Customer information is processed by MSP360's internal systems in the United States, and data may be stored in the United States or outside of the United States at the Customer's election. You acknowledge that you are responsible for following all rules and regulations that apply to storage of data, both inside and outside of the United States, based on your voluntary election. If you access the Content and Services from outside the United States, you are responsible for compliance with local laws. You further acknowledge that access to Content and Services, although offered at a global level, may not be legal by certain persons or in certain countries.
8. Export Law Assurances. The Software may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Software to, or make the Software accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Software available outside the U.S.

9. Updates. MSP360 may from time to time in its sole discretion develop and provide Software updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, “**Updates**”). Updates may also modify or delete in their entirety certain features and functionality. You agree that MSP360 has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on your computer device settings: (a) the Software will automatically download and install all available Updates; or (b) you may receive notice of or be prompted to download and install available Updates. You shall promptly download and install all Updates and acknowledge and agree that the Software or portions thereof may not properly operate should you fail to do so. You further agree that all Updates will be deemed part of the Software and be subject to all terms and conditions of this Agreement.
10. Nondisclosure. “**Confidential Information**” means the Software, source code, object code, trade secrets, know-how, and any proprietary tools, proprietary knowledge, or proprietary methodologies of MSP360 not generally available to the public, to which the End User may gain access or knowledge as a result of this Agreement. End User shall keep such Confidential Information confidential, and shall use commercially reasonable efforts and take all reasonable steps to protect the Confidential Information from any use, reproduction, publication, disclosure, or distribution, except as specifically authorized by this Agreement. The End User shall promptly notify MSP360 of any known unauthorized use or disclosure of the Confidential Information and will cooperate with MSP360 in any litigation brought by MSP360 against third parties to protect its proprietary rights.
11. Publicity Release. If End User becomes a paying customer of MSP360, End User agrees that MSP360 can disclose the fact that End User is a paying customer of MSP360, including information identifying which MSP360 Software product End User licensed.
12. Third Party Components. The Software is distributed with certain third party components licensed to MSP360 pursuant to “open source” licenses (“**Third-Party Materials and Services**”). Certain provisions of such licenses are required to be included in any distribution of such Third-Party Materials and Services. End User is agreeing to those terms set out in the text files accompanying the Software when End User uses the Software (such licenses are incorporated by reference). A copy of such terms is available from MSP360 prior to downloading the Software at the following URL: <https://www.cloudberrylab.com/eula-third-party>. Any such third party software is provided with the rights set forth in the applicable license terms, and is provided “AS IS” with no warranties. Such third party license terms do not apply to the Software as a whole, and do not apply to the proprietary portions of the Software owned by MSP360. You acknowledge and agree that MSP360 is not responsible for Third-Party Materials and Services, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality, or any other aspect thereof. MSP360 does not assume and will

not have any liability or responsibility to you or any other person or entity for any Third-Party Materials. Third-Party Materials and Services and links thereto are provided solely as a convenience to you, and you access and use them entirely at your own risk and subject to such third parties' terms and condition.

13. GOVERNMENT USERS. The Software is a "commercial item", as that term is defined at 48 C.F.R. 2.101), consisting of "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (or an equivalent provision, e.g., in supplements of various U.S. government agencies, as applicable), all U.S. Government users acquire the Software with only those rights set forth herein. Manufacturer is MSP360, Lampousas, 1, 1095, Nicosia, Cyprus.
14. Limitation of Remedies and Damages. IN NO EVENT WILL MSP360, ITS LICENSORS, ITS AFFILIATES, SUBSIDIARIES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AFFILIATES BE LIABLE TO END USER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY PUNITIVE, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION AND DATA AND THE LIKE), WHETHER FORESEEABLE OR UNFORESEEABLE, OR FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, REGARDLESS OF THE BASIS OF THE CLAIM AND EVEN IF MSP360 OR A MSP360 REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. MSP360'S CUMULATIVE LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL BE LIMITED TO NO GREATER THAN THE FEES PAID BY END USER TO MSP360 DURING THE THREE MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR THE SOFTWARE OR ANY SERVICES (EXCLUDING APPLICABLE TAXES AND PAYMENT FEES) THAT CAUSED THE DAMAGES. TO THE EXTENT THAT APPLICABLE LAW DOES NOT PERMIT THE EXCLUSION OR LIMITATION OF LIABILITY AS SET FORTH HEREIN MSP360'S LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY LAW. END USER AGREES THAT REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SOFTWARE, OR ANY SERVICES BROUGHT BY END USER MUST BE FILED WITHIN NO LATER THAN SIX (6) MONTHS AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR SUCH CLAIM WILL BE FOREVER BARRED.

15. Warranties. THE SOFTWARE IS PROVIDED TO END USER “AS IS” AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, COMAPNY, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON- INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, MSP360 PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, SOFTWARES, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES OR THE LIMITATIONS ON THE APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.
16. Termination. This Agreement, the license granted hereunder, and any obligation to provide maintenance services or Updates to the Software may be terminated (a) by mutual agreement of MSP360 and End User, (b) by End User, upon thirty (30) days prior written notice to MSP360 and return or destruction of all copies of the Software in End User’s possession and control, and (c) by MSP360, if End User breaches this Agreement and fails to cure such breach to MSP360’s reasonable satisfaction within thirty (30) days following receipt of MSP360’s notice thereof. Upon any termination of this Agreement, End User shall immediately cease all use of the applicable Software and certify in writing to MSP360 within thirty (30) days after termination that End User has destroyed or returned to MSP360 such Software and all copies thereof. Termination of this Agreement shall not limit MSP360 from pursuing any remedies available to it, including injunctive relief, or relieve End User of its obligation to pay all fees that have accrued or have become payable by End User hereunder.
17. Survival. Sections 1-6, 8, 10-15, and 18-19 shall survive termination of this Agreement for any reason whatsoever.
18. Indemnification. You agree to indemnify, defend, and hold harmless MSP360 and its officers, directors, employees, agents, affiliates, successors, and assigns from

and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, arising from or relating to your use or misuse of the Software or your breach of this Agreement, including but not limited to the content you submit or make available through this Software.

19. Injunctive Relief. End User hereby expressly agrees that a remedy at law for any breach or attempted breach of the provisions of this Agreement may be inadequate, and MSP360, in addition to any other rights or remedies, shall be entitled to seek injunctive and other equitable relief in the event of any such breach or attempted breach without (i) having to post bond or other security to prevent a breach or continuing breach of this Agreement, or (ii) having to prove actual damages.

20. Miscellaneous Provisions.

A. Jury Trial Waiver. End User hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or related to the software, the services or this agreement.

B. Governing Law. This Agreement is governed by the laws of the State of Delaware without regard to its conflicts of laws. End User irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement brought by it will be brought and determined in the federal courts for the District of Delaware, or if there is no federal jurisdiction, by the state courts of Delaware, and End User hereby irrevocably agrees to submit to the exclusive jurisdiction of the aforesaid courts, with regard to any such action or proceeding arising out of or relating to this Agreement or the Software. The U.N. Convention of Contracts for the Sale of International Goods will not apply. Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by the other party, which waiver shall be effective only with respect to the specific obligation described therein. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible, and the remaining provisions of this Agreement will remain in full force and effect. MSP360 will not be liable for any delay or failure of performance, and no delay or failure of performance will constitute a default or give rise to any liability for damages if such delay or failure is caused by causes beyond MSP360's control, including, without limitation, acts of God, war, terrorism, pandemics, and civil disturbance.

C. Assignment. End User may not assign or transfer its rights or obligations under this Agreement without prior written approval by MSP360 and any purported assignment or transfer without MSP360's written consent shall be null and void.

D. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes

all prior agreements between the parties, whether written or oral, relating to the same subject matter. Prior course of dealings, usages of the trade, and verbal agreements not reduced to writing and signed by MSP360, to the extent that they alter or supplement these terms, shall not be binding on MSP360. Any purchase order or other document issued by End User is for administrative convenience only and shall not be binding upon MSP360. Performance will not constitute acceptance by MSP360 of contrary or supplemental terms and conditions. Any amendment to this Agreement shall be binding upon MSP360 only if executed by MSP360.

- E. Severability. If any provision of this Agreement is illegal or unenforceable under applicable law, the remainder of the provision will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force and effect.
- F. Waiver. No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder. In the event of a conflict between this Agreement and any applicable purchase or other terms, the terms of this Agreement shall govern.

PLEASE READ THIS AGREEMENT CAREFULLY. YOU MUST REVIEW AND EITHER ACCEPT OR REJECT THE TERMS OF THIS AGREEMENT BEFORE INSTALLING OR USING THE SOFTWARE. BY CLICKING THE "I ACCEPT" BUTTON, INSTALLING, OR OTHERWISE USING THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, UNDERSTAND THEM, AND AGREE TO BE LEGALLY BOUND BY THEM. THIS AGREEMENT IS ENFORCEABLE AGAINST YOU AND ANY LEGAL ENTITY THAT OBTAINED THE SOFTWARE AND ON WHOSE BEHALF IT IS USED: FOR EXAMPLE, IF APPLICABLE, YOUR EMPLOYER. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE.