

# LEAPWORK – END USER LICENSE AGREEMENT

UPDATED: MAY 1, 2022

This End User License Agreement (the “**EULA**”) is made between Licensee and Leapwork (as defined below). The Agreement shall apply to the licensing of the Software and the Services to Licensee as set forth in the applicable Order Form including the Documentation and any Statement of Work, if applicable.

If a Partner/Contracting Entity, has executed the Order Form on behalf of Licensee, then that party shall take on certain obligations of Licensee as provided in Section 16.2 of this this EULA.

## 1 DEFINITIONS

For the purposes of this EULA, the following terms have the following meanings:

**Agreement:** means any written agreement executed or accepted by and between Leapwork and Licensee for the licensing of the Software and the related Services consisting of, as applicable, this End User License Agreement, an Order Form, a SOW, the Documentation, and any other terms attached, linked to, or included in any of the afore mentioned documents by written reference.

**Affiliates:** means any corporation, partnership, or other entity now existing or hereafter organized that directly or indirectly controls, is controlled by, or under common control of a party to this EULA or the Agreement. For purposes of this definition “control” means the direct possession of a majority of the outstanding voting securities of an entity.

**Agent/Robot:** executes automation cases on virtual machines or in the cloud.

**Confidential Information:** has the meaning given to it in Section 5.1 (Confidentiality and Data Privacy).

**Contracting Entity:** means the entity that is different from Licensee as identified in the applicable Order Form and that is taking on the payment obligations under the Order Form. Any reference to Licensee in the EULA included in an Order Form executed by a Contracting Entity shall be interpreted as also referring to that Contracting Entity with regard Licensee’s payment and notification obligations, if applicable.

**Controller:** is a server that stores all automation assets and orchestrates running and gathering results.

**Customer:** means Licensee as defined herein.

**Customer Data:** means any electronic data or information that is submitted, collected, processed, or managed by or for Licensee in conjunction with Licensee’s use of the Software or Services and that is not part of the Software itself.

**Documentation:** means the documentation provided by Leapwork to assist Users in the use of the Leapwork Platform, describing the operational functionality of (elements of) the Software, including user and system administrator guides and manuals, and is found at: <https://www.leapwork.com/product/documentation>.

**Deliverable:** means all documents, reports, including any code or other tangible development work provided by Leapwork as part of the Professional Services, as further described in a Order Form or a SOW, as applicable.

**Effective Date:** means the earlier of: (i) the date on which the last party executed the Agreement or (ii) the Start Date or if there is no Start Date, the date of the installation of the Software by a User.

**Initial Subscription Period:** means the initial period commencing on the Start Date and continuing until the End Date, and not including any Renewal Term.

**End Date:** means the date when the license term for the Software and/or any related Services ends either by termination under Section 10, or expiration of the Subscription Period.

**Fees:** means the Subscription Fees, the Service Fee and any other fees or prices payable under the Agreement by Licensee, or Partner/Contracting Entity on behalf of Licensee as applicable.

**Intellectual Property Rights:** means patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights including all extensions or renewals of such rights, whether or not such rights are registered or capable of registration, as well as the right to claim priority therefrom, and similar or equivalent rights or forms of protection that subsist or will subsist, now or in the future, in any part of the world including as otherwise defined or regulated under the applicable law.

**Leapwork:** means the Leapwork company applicable to this EULA as defined in Section 14.

**Licensee:** means as applicable, a company, governmental organization, or any other type of legal entity that has entered into this EULA, by: (i) the execution of a EULA/Agreement with Leapwork; or (ii) its Users accepting the EULA by installation of the Software that includes a Click-wrap EULA, or (iii) otherwise accepting the EULA shared by Leapwork, or if applicable, by Partner on Leapwork's behalf, in any legally binding manner.

**Major Release:** means an upgrade to the Software that Leapwork may provide to Licensee from time to time during the Subscription Period by publishing it on <https://www.leapwork.com/releases> and whose primary purpose is to upgrade, i.e. to add new functionality or enhance the performance of the Software, but such upgrade expressly excludes access to new software products or modules (whether or not branded as software) that Leapwork markets and prices separately. For the avoidance of doubt, Leapwork shall not rebrand existing functionality in the Software and market it separately to oblige existing customers to obtain a license for such rebranded functionality.

**Order Form:** means an ordering document provided by Leapwork and signed by Licensee (or Partner/Contracting Entity, on behalf of Licensee, if applicable), which details, without limitation, the licensed Software, the applicable Initial Subscription Period, Subscription Fee payable, any applicable Services to be provided by Leapwork, and sets out the Permitted Usage and applicable usage limitations for the Software or for any applicable Services or the Documentation. If Licensee is purchasing Professional Services as part of the Agreement such Order Form shall contain a SOW that details of the Professional Services purchased, including pricing, invoicing, technical requirements, or any Deliverables applicable.

**Partner:** means a separate legal entity which Leapwork has a valid partner contract in place with for the promotion and sublicensing of the Software and related Services or for placing and processing orders from licensees as identified in an Order Form, where partner shall take on the payment obligations on behalf of Licensee.

**Permitted Usage:** means, unless otherwise defined in an applicable Order Form, that the use of the Software is limited only to Licensee's or its Affiliates' internal business purposes for test automation or RPA as identified in the Order Form or as otherwise agreed in writing between the parties.

**Personal Data:** means any information relating to an identified or identifiable natural person that can directly or indirectly identify the natural person, as defined by Regulation (EU) 2016/679 (GDPR). A person's data will be deemed not to be identifiable only if the information is anonymous and no link can be established between the sets of anonymous information and the natural person concerned.

**Professional Services:** means any consultancy services, teaching, or instructional content, including any related documentation and Deliverables delivered by Leapwork or its Affiliates as set forth in an applicable Order Form or Statement of Work ("**SOW**"), but for the avoidance of doubt expressly excluding any Support Services that are provided in connection with the EULA).

**Service Fee:** means the Fee payable by Licensee (or Partner/Contracting Entity on behalf of Licensee, if applicable) to Leapwork for the Professional Services.

**Services:** means any services Licensee may request from Leapwork and Leapwork agrees to provide related to the Software.

**Service Release:** means updates to the Software released by Leapwork to all customers licensing the same edition of the Software and which may contain, among other things, error corrections, enhancements, improvements, changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software and expressly excludes another software edition and its functionality or any future products or software marketed separately by Leapwork.

**Software:** means the software platform provided or branded by Leapwork whether such software is provided physically at Licensee's location, through the internet, or installed on Licensee's hardware and that is licensed to Licensee under this EULA in the edition detailed in an Order Form and that includes Software Releases, and expressly excludes any Third-Party Software.

**Software Release:** means any Major Release, or Service Release of the Software including any updated Documentation, that Leapwork may provide to Licensee from time to time during the Subscription Period by publishing it on <https://www.leapwork.com/releases>.

**Source Code:** means program source code, specifications, programmers' comments and notes, and all other materials (including assembly, linkage, and other utilities) and documents reasonably necessary or desirable to enable a reasonably skilled programmer to understand, maintain, amend, and enhance the Software without reference to any other person or documentation whether in eye-readable or machine-readable form.

**SOW or Statement of Work:** means the part of the Agreement either included in the Order Form or executed separately by the parties that detail the Professional Services purchased by Customer.

**Start Date:** means for a Software license, the date included in the Order Form that is the first day of the Subscription Period and in case of Professional Services the date identified in the Order Form when such services shall initiate.

**Studio:** means the visual designer application that is used to create and maintain automation cases as well as review results.

**Subscription Fee:** means the recurring Fee payable to Leapwork by Licensee (or if applicable, the Partner/Contracting Entity on behalf of Licensee) for the licensing of the Software and included Support Services covering a period of twelve (12) calendar months, unless otherwise agreed in an executed Order Form.

**Subscription Period:** means the Term for which Leapwork offers the recurring/ongoing Software license and any included Services, as set forth in the relevant Order Form. A Subscription Period as defined under an applicable Order Form starts with the Initial Subscription Period and includes all subsequent renewal terms (where each such additional renewal term shall be referred to individually as "**Renewal Term**") if applicable.

**Support Services:** means the support and maintenance services as detailed in the applicable Order Form.

**Term:** means the period of time commencing with the Effective Date and including the Initial Subscription Period and any applicable subsequent Renewal Term and ending upon termination of this EULA.

**Third-Party Software:** means a software licensed by a third party separately to Licensee and used in connection with the Leapwork Software.

**Third-Party Terms:** means terms and conditions applicable between Licensee and a third-party relating to Third-Party Software.

**User:** means a named individual authorized to use the Software on behalf of Licensee and that is either an employee of Licensee, an independent contractor, consultant, Partner, or similar person working for, on behalf, or under instruction of Licensee.

## 1 LICENSE GRANT

**1.1** As of the Software license Start Date and subject to Licensee's compliance with this EULA, and in consideration for the payment of the applicable Subscription Fee, Leapwork hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable, time-limited for the Term only, subscription-based (as provided herein) license to install, access, execute, and use the Software only: (i) in object code; (ii) in accordance with the Documentation; (iii) for the Permitted Usage; and (iv) to be used by Users with a unique user log-in. Licensee is entitled to make copies of the Software as may be necessary for ordinary backup and archival purposes.

**1.2** Subject to the restrictions on Confidential Information, Licensee grants to Leapwork a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Software any suggestion, enhancement request, recommendation, or other feedback provided by Licensee or Licensee's Users relating to the operation, use of the Software and the related Services.

**1.3** The Software contains features designed to interoperate with Third-Party Software. If Licensee decides to use any of these features, Licensee agrees that it is Licensee's sole responsibility to source such Third-Party Software. Licensee understands and agrees that Leapwork shall have no responsibility or liability with respect to the Third Party Software and Licensee's use of Third-Party Software shall be subject to Third-Party Terms agreed between Licensee and the Third-Party Software vendors. Any amounts payable to Third-Party Software vendors under Third-Party Terms are the sole responsibility of Licensee and shall be paid directly by Licensee to such Third-Party Software vendors.

**1.4 Trial Use Software.** Notwithstanding anything to the contrary in Sections 2.1 and 7 of this EULA, if the Software is provided by Leapwork or its Affiliates for trial or evaluation purposes ("**Trial Use Software**"), then the applicable license grant is found hereafter. Subject to Licensee's compliance with this EULA, Leapwork grants, in its sole discretion, a non-exclusive, personal and non-transferable, non-sublicensable, royalty free license, time-limited for the term programmed in the Trial Use Software license key only to download, execute, install and use the Software for Licensee's internal software evaluation purposes only and expressly excluding any production use. The license for the Trial Use Software is subject to termination for convenience by Leapwork, at any time, and for any reason and is provided with no warranties whatsoever. For the avoidance of doubt, the Trial Use Software is provided "as is" and Leapwork does not warrant and limited trial license does not include any Support Services, unless expressly provided for in a written agreement signed by the parties.

## 2 USE RESTRICTIONS

**2.1** Licensee shall not, directly, or indirectly:

**2.1.1** use or copy the Software, or Documentation (in whole or in part) except for the activities and purposes set out in Section 2.1.

**2.1.2** modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software, or Documentation (or any part thereof);

2.1.3 combine the Software (or any part thereof) with, or incorporate the Software (or any part thereof) in any other programs without written approval from Leapwork;

2.1.4 reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software (or any part thereof);

2.1.5 remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the Software, or the Documentation including any copy thereof;

2.1.6 rent, lease, lend, sell, resell, license, sublicense, assign, distribute, publish, transfer, or otherwise provide any access to or use of the Software, or the Documentation or any Deliverable if applicable, or any features or functionality of the Software, for any reason, to any other person or entity, including any subcontractor, independent contractor, Affiliate, or service provider of Licensee without written approval from Leapwork;

2.1.7 use the Software in, or in association with, the design, construction, maintenance, or operation of any hazardous environments or systems;

2.1.8 use the Software in violation of any applicable federal, state, or local law, regulation, or rule; or

2.1.9 access and use the Software for purposes of competitive analysis of the Software, for the development of a competing software product or service or any other purpose that is to Leapwork's commercial disadvantage.

**2.2** Licensee's use of the Software, Services, the Documentation and any Deliverables if applicable, is subject to the usage limitations in the applicable Order Form including but not limited to the number of Studio Users, Controllers, Agents/Robots, or any other designated metric included in the Order Form, the Software version, or this EULA. If it is revealed that Licensee has surpassed its applicable usage limits, or Permitted Usage for the Software, it shall, pay additional Subscription Fees for the necessary license where the Subscription Fee increase shall be based on the then-current Subscription Fees payable by Licensee pro-rated and co-termed to the applicable invoicing schedule in the Order Form. The parties shall work in good faith to execute an updated Order Form to reflect the actual Software license usage and updated Subscription Fees.

**2.3** Licensee may give access to or designate non-employees as Users of the Software only if: (i) their access and use of the Software is for and on behalf of Licensee; (ii) the use of the Software is for or in close connection to the Permitted Usage and (iii) Licensee shall at all times be responsible for any act or omission in breach of this EULA. The foregoing shall be applicable to any other person to whom Licensee or any of its Users may provide access to or allow to use the Software, Services, and/or Documentation, whether such access or use is permitted by or in violation of this EULA or the Agreement, as applicable.

**2.4** Licensee is responsible for the accuracy, quality, and legality of any Customer Data, the means by which Licensee acquired any Customer Data and its use thereof in connection with the Software or the Services.

**2.5** Licensee shall use reasonable efforts to prevent unauthorized access to or use of the Software, Documentation, or Deliverables, if applicable, and notify Leapwork immediately of any such unauthorized access or use. Any use of the Software, Documentation, or Deliverables in breach of the foregoing by Licensee that in Leapwork's own opinion threatens the confidentiality, integrity, or availability of the Software, may result in Leapwork's immediate suspension of the Software license. Such suspension will be notified to Licensee and Licensee shall have an opportunity to remedy such violation or threat prior to any suspension by Leapwork as per Section 10.2 below.

### **3 FEES**

**3.1** Licensee, or if applicable Partner/Contracting Entity on Licensee's behalf, shall pay to Leapwork the applicable Subscription Fee and any applicable Service Fees as set forth in the applicable Order Form. For the avoidance of doubt, the parties agree that Subscription Fees are fully-earned upon the grant of the Software license key. All Subscription Fees cover an Initial Subscription Period of twelve (12) months unless otherwise agreed in writing. All Subscription Fees are, prepaid annually without any deduction, offset, setoff, counterclaim, or reduction, recoupment or other charge and are non-refundable, except as set out expressly in this EULA.

**3.2** Except as expressly provided in the applicable Order Form, Subscription Fees (and recurring Service Fee if applicable) for each Renewal Period will be equal to the corresponding Subscription Fee (and recurring Service Fee if applicable) in effect at the end of the Initial Subscription Period or immediately preceding Renewal Period, as applicable, escalated at a rate of five percent (5%) per annum for the duration of the immediately succeeding Renewal Period.

**3.3** Licensee agrees that paying the applicable Subscription Fee agreed in the Order Form is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Leapwork regarding future functionality or features.

**3.4** Unless otherwise agreed in an executed Order Form, full payment for invoices issued must be received by Leapwork no later than thirty (30) days after the date of the invoice. Unpaid amounts are subject to a late interest at the rate of 1.5% of the outstanding balance per month, or the maximum permitted by law, whichever is lower, plus all expenses (including attorneys' fees) of collection and may result in immediate termination of the license granted to Licensee hereunder.

**3.5** If any Fees owed by Licensee under this EULA is 30 days or more overdue, Leapwork may, without limiting its other rights or remedies, accelerate Licensee's Fee payment obligations under this EULA and suspend the Software license, and if applicable stop provision of any ongoing Professional Services, until such amounts are paid in full.

**3.6** All Fees and any other applicable sums payable under the Agreement are exclusive of VAT or any relevant local sales tax, value added tax, or withholding taxes. Licensee is responsible for all taxes associated with the Software and Services, if any, other than domestic taxes based on Leapwork's net income.

**3.7** Notwithstanding anything to the contrary in this Section 4, and only for as long as Licensee complies with the terms and conditions of this EULA, a Trial Use Software is provided without any applicable Subscription Fees.

#### **4 CONFIDENTIALITY AND DATA PRIVACY**

**4.1** Each party receiving confidential information (the "**Receiving Party**") of the other party (the "**Disclosing Party**") agrees that the latter has disclosed or may disclose non-public information relating to, without limitation, its business, technology, or finances (hereinafter referred to as "**Confidential Information**"). Confidential Information of Leapwork includes, without limitation, all non-public information regarding the Software's features, functionality, performance, product roadmap and especially its Source Code. Confidential Information of Licensee includes non-public data provided by Licensee to Leapwork to enable the provision of the Software. The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information as it would to protect its own Confidential Information but no less than a reasonable degree of care, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third party any such Confidential Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any Confidential Information after five (5) years following the disclosure thereof or to any Confidential Information that the Receiving Party can document: (a) is or becomes generally available to the public; or (b) was in its possession or known by it prior to receipt from the Disclosing Party; or (c) was rightfully disclosed to it without restriction by a third party; or (d) was independently developed without use of any Confidential Information of the Disclosing Party. Receiving Party may disclose Confidential

Information if it is required by applicable law and shall endeavor to notify Disclosing Party of any such requested disclosure required by law to allow Disclosing Party to defend itself or ensure the disclosure is treated confidentially.

**4.2** Licensee may share some Personal Data with Leapwork strictly for the purpose of enabling Leapwork to provide the Software or Services (i.e., names, e-mail addresses and other contact information provided by Licensee) (hereafter “**Account Information**”) Account Information is Personal Data and shall be handled in accordance with Leapwork’s Privacy Policy as found on <https://www.leapwork.com/privacy-policy> . Leapwork reserves the right to modify its Privacy Policy at its sole discretion from time to time.

**4.3** Any Customer Data, which may include Personal Data, may be used with the Software, at Licensee’s sole discretion as a data controller. All Customer Data used with the (Trial Use) Software, is solely running on servers managed by Licensee as data controller and Leapwork has no access to any Personal Data used with the Software. Unless otherwise stated in an executed Agreement, Licensee acknowledges that Leapwork does not process any Customer Data in conjunction with the Software and as such, Leapwork shall have no liability relating to Licensee’s processing of Personal Data connection with the Software.

**4.4** Except for the Account Information, and except if agreed otherwise in an executed data processing agreement, should Leapwork be sent, receive, or in any way be given access, directly or indirectly, to Licensee’s Personal Data, Leapwork’s employees shall immediately notify Licensee that such Personal Data has been shared with Leapwork and shall request Licensee to stop all such sharing. The relevant Leapwork employee shall confirm in writing that the Personal Data accidentally sent to Leapwork has been deleted or that access to Personal Data is no longer available (whichever is applicable).

**4.5** With regard to any processing of Account Information under an executed Agreement incorporating this EULA, or any incidental Personal Data under or in connection with this EULA, each party shall comply at all times with its obligations under applicable data protection laws and regulations to any Personal Data processed under or in connection with the EULA including, without limitation, the General Data Protection Regulation 2016/679 (“**GDPR**”), and all national legislation implementing or supplementing the foregoing, all as amended, re-enacted and/or replaced and in force from time-to-time. In this respect, both parties will take appropriate technical and organizational security measures, considering both the state-of-the-art technologies and the costs of implementation, against unauthorized or unlawful processing or further processing of Personal Data, and against accidental loss or destruction of, and damage to each parties’ Personal Data.

## **5 INTELLECTUAL PROPERTY RIGHTS**

**5.1** Licensee acknowledges that the Software, the Documentation, or any Deliverables, if applicable (together the “**Leapwork IPR**”), are provided under license, and not sold, to Licensee. Licensee does not acquire any ownership interest in the Leapwork IPR under this EULA, nor any other rights to the Leapwork IPR other than to use the Leapwork IPR in accordance with the license granted under this EULA, subject to all terms, conditions, and restrictions herein.

**5.2** Leapwork reserves and shall retain their entire right, title, and interest in and to the Leapwork IPR and all intellectual property rights arising out of or relating to the Leapwork IPR, subject to the license expressly granted to Licensee in this EULA.

**5.3** Licensee shall use commercially reasonable efforts to safeguard the Leapwork IPR licensed to it (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access.

## **6 REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS**

**6.1** EACH PARTY REPRESENTS THAT IT HAS VALIDLY ENTERED INTO THIS EULA AND HAS THE LEGAL POWER TO BIND SUCH PARTY TO THE TERMS AND CONDITIONS OF THIS EULA.

**6.2** IF THE SOFTWARE LICENSE GRANTED HEREIN IS PROVIDED IN CONSIDERATION OF THE PAYMENT OF A SUBSCRIPTION FEE, THEN LEAPWORK WARRANTS TO LICENSEE THAT DURING THE APPLICABLE SUBSCRIPTION PERIOD, THE SOFTWARE ON A STAND-ALONE BASIS IN ITS UNALTERED STATE AND NOT USED IN COMBINATION WITH ANY OTHER PRODUCTS, TECHNOLOGIES, OR SERVICES: (I) WILL PERFORM MATERIALLY IN ACCORDANCE WITH THE APPLICABLE DOCUMENTATION; AND (II) WILL NOT INFRINGE ANY INTELLECTUAL PROPERTY RIGHTS HELD BY THIRD PARTIES. IN THE EVENT OF A BREACH OF THE FOREGOING WARRANTY, LEAPWORK SHALL, AT ITS OWN DISCRETION, EITHER: (X) DELIVER A NEW COPY OF THE SOFTWARE WITHOUT ANY SUCH NON-CONFORMANCE, OR (Y) REMEDY OR CORRECT ANY SUCH NON-CONFORMANCE FREE OF CHARGE, PROVIDED THAT LICENSEE PROVIDES REASONABLE INFORMATION (E.G., ERROR-LOGS) FOR LEAPWORK TO ASSESS AND REMEDY THE BREACH. THE REMEDIES SET FORTH IN THIS SECTION 7.2 ARE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES AND LEAPWORK'S SOLE LIABILITY UNDER THIS EULA AND THE LIMITED WARRANTY SET FORTH IN THIS SECTION 7.2.

**6.3** WITH REGARD TO THE SOFTWARE, DOCUMENTATION AND SERVICES OR ANY OTHER OFFERING PROVIDED BY LEAPWORK UNDER THIS EULA OR THE AGREEMENT, LEAPWORK PROVIDES NO ADDITIONAL WARRANTIES OTHER THAN THE ONES EXPRESSLY SET OUT IN THIS SECTION 7. FOR CLARITY, LEAPWORK DISCLAIMS ANY AND ALL ADDITIONAL WARRANTIES REGARDLESS IF THEY ARE EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, SUCH AS BUT WITHOUT LIMITATION: (I) FITNESS FOR A PARTICULAR PURPOSE; (II) THE ACCURACY OR TIMELINESS OF THE SOFTWARE OR INFORMATION AVAILABLE FROM THE SOFTWARE; OR (III) THE INTEROPERABILITY WITH LICENSEE'S OR THIRD-PARTY SOFTWARE. THE LICENSEE UNDERSTANDS THAT THE SOFTWARE AND DOCUMENTATION ARE PROVIDED ON AN "AS IS" BASIS ONLY AND LEAPWORK DOES NOT WARRANT THAT THE LICENSEE'S USE OF THE SOFTWARE, DOCUMENTATION OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. THE LICENSEE BEARS THE ENTIRE RISK OF USING THE SOFTWARE AND THE DOCUMENTATION.

## **7 INDEMNIFICATION**

**7.1** Leapwork will indemnify, defend and hold Licensee harmless against claims brought against it by a third party alleging that Licensee's use of the Software and Documentation (but expressly excluding any Trial Use Software), as permitted hereunder, infringes the intellectual property rights, or constitutes a misappropriation of a trade secret of a third party ("**Licensee Claim**"). Leapwork shall pay any costs, liabilities, losses, and expenses (including but not limited to, reasonable attorneys' fees) finally awarded against Licensee as a result of a Licensee Claim or for amounts paid by Licensee under a settlement approved (in writing) by Leapwork provided that Licensee: (i) promptly notifies Leapwork in writing of the Licensee Claim; (ii) gives Leapwork all reasonable assistance with the Licensee Claim at Leapwork's expense; and (iii) gives Leapwork sole control over defense and settlement thereof except that Leapwork may not settle any Licensee Claim unless it unconditionally releases Licensee of all liability. Excluded from Leapwork's above indemnification obligations are claims to the extent they are arising from or related to: (i) the use of the Software and Documentation in violation of this EULA, the Agreement, or applicable law; (ii) continued use by Licensee of the Software and Documentation after Leapwork has notified Licensee in writing to cease the use of the Software and/or Documentation; (iii) any Third-Party Software or Customer Data; (iv) modifications to the Leapwork Software and Documentation made other than by Leapwork where the claim would not have arisen but for such modification; (v) the combination, operation, or use of the Leapwork Software with software or equipment which was not provided by Leapwork, to the extent that Licensee's liability for such claim would have been avoided in the absence of such combination, operation, or use; or (vi) compliance by Leapwork with Licensee's custom requirements or specifications if and to the extent such compliance with Licensee's custom requirements or specifications resulted in the infringement; (vii) where Licensee has not given prompt notice of any such claim. If Licensee's use of the Leapwork Software becomes subject of a Licensee Claim, Leapwork shall at its sole option, either: (i) procure, at no cost to Licensee, the right to continue using the Software; or (ii) modify the Software to render it non-infringing; or (iii) if, in Leapwork's reasonable opinion, neither (i) nor (ii) above are commercially feasible, immediately terminate this EULA (and Licensee's rights to

use the Software), and refund to Licensee Fees paid but unused for the Leapwork Software and Services on a pro rata basis for the remainder of the Subscription Period.

## **8 LIMITATION OF LIABILITY**

- 8.1** NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT A PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 8.2** IN NO EVENT WILL LEAPWORK (HEREAFTER ALSO INCLUDING ITS PARENT COMPANIES, SUBSIDIARIES, AFFILIATES, OR ANY OF ITS RESPECTIVE RESELLERS, DISTRIBUTORS, VENDORS, LICENSORS OR SERVICE PROVIDERS) AND ANY OF THEIR RESPECTIVE OFFICERS, REPRESENTATIVES, AGENTS, CONTRACTORS AND EMPLOYEES, BE LIABLE TO LICENSEE, OR CONTRACTING ENTITY OR ANY THIRD PARTY, UNDER OR IN CONNECTION WITH THIS EULA OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE FOR:
- 8.2.1 ANY USE, ERROR, INTERRUPTION, DELAY, INACCURACY OR CORRUPTION OR INABILITY TO USE THE SOFTWARE, THE CUSTOMER DATA, THE DOCUMENTATION, OR ANY DELIVERABLES;
- 8.2.2 ANY LOST REVENUES OR PROFITS; DELAYS, BUSINESS INTERRUPTION, OR LOSS OF SERVICES, LOSS OF BUSINESS, LOSS OF GOODWILL, ANY OTHER LOSS; UNAVAILABILITY OR CORRUPTION OF DATA;
- 8.2.3 LOSS RESULTING FROM ANY SYSTEM (WHICH INCLUDES THE SOFTWARE OR ANY OTHER SYSTEM PROVIDED BY LEAPWORK) OR SERVICE FAILURE, MALFUNCTION, SHUTDOWN OR SOFTWARE RESTORATION;
- 8.2.4 FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION;
- 8.2.5 FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; BREACHES IN SYSTEM SECURITY;
- 8.3** IN NO EVENT WILL LEAPWORK'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' OR SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS EULA OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL FEES PAYABLE BY LICENSEE (OR BY PARTNER/CONTRACTING ENTITY ON BEHALF OF LICENSEE AS APPLICABLE) TO LEAPWORK FOR THE SOFTWARE AND ANY APPLICABLE SERVICES DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM AROSE.
- 8.4** THE LIMITATIONS SET FORTH IN THIS SECTION 9 SHALL APPLY EVEN IF THE REMEDIES OFFERED UNDER THIS EULA FAIL OF THEIR ESSENTIAL PURPOSE.

## **9 TERM AND TERMINATION**

- 9.1** Unless otherwise terminated as per this Section 10, this EULA shall begin on the Effective Date and shall continue until the later of: (i) the expiry of the Term; (ii) immediately after the provision in full of the Professional Services.
- 9.2** Either party may terminate this EULA and the applicable Agreement for cause upon written notice if the other party is in material breach of this EULA and the material breach remains uncured after thirty (30) days from the date of the notice. Upon termination in accordance with this Section 10.2, Leapwork will refund the pro-rated Subscription Fees paid by Licensee for the period starting on the effective date of termination and ending at the end of the Subscription Period.

**9.3** Unless otherwise agreed in an executed Order Form, after the expiry of the Initial Subscription Period, the subscription license shall automatically renew for additional terms of one (1) year each (each “**Renewal Period**”), unless either party notifies the other party in writing at least sixty (60) days prior to the then current expiration date that it has elected not to renew such license. For the avoidance of doubt, this Section is not applicable to a no-Fees-paid, trial or evaluation license of the Software.

**9.4** Upon expiration or earlier termination of this EULA as set out herein, the license for the (Trial Use) Software granted herein shall also terminate, and: (i) Licensee shall cease using, uninstall and destroy all copies of the (Trial Use) Software and Documentation from Licensee’s systems (ii) all of Licensee’s rights hereunder will immediately terminate and Leapwork will have no further liability to Licensee in connection herewith, and (iii) Licensee shall delete or destroy all Confidential Information and embodiments thereof and certify to Leapwork that such action was taken, at Licensee’s expense, without undue delay. No expiration or termination shall affect Licensee’s obligation to pay all accrued Fees that may have become due before such expiration or termination.

**9.5** Notwithstanding anything to the contrary in Section 4.5 above, Licensee’s breach of any payment obligation hereunder constitutes a default on the date the payment is due and Leapwork shall have at its own discretion, the right to terminate any executed Agreement, and this EULA, immediately or suspend performance as per the terms of this EULA.

**9.6** In addition to the foregoing, either Licensee or Leapwork may immediately terminate any executed Agreement and this EULA by written notice to the other party if: (i) the other party ceases to do business or becomes insolvent; (ii) upon institution by the other party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debt; (iii) upon the institution of such proceedings against the other party, which are not dismissed or otherwise resolved in such party’s favor within sixty (60) days thereafter; or (iv) upon the other party making a general assignment for the benefit of creditors. In any such case, no Fees paid hereunder, shall be subject to repayment or credit in whole or in part in connection with any such termination, nor relieve Licensee of its obligations to make all payments due hereunder without deduction, offset, setoff, counterclaim or reduction, recoupment, or other charge.

**9.7** All Sections of this EULA, which by their nature should survive termination or expiration, will survive termination or expiration, including, without limitation, accrued rights to payment, confidentiality obligations, intellectual property rights, warranty, disclaimers, limitation of liability, and miscellaneous provisions.

## **10 EXPORT REGULATION, ANTI-CORRUPTION AND ANTI-TERRORISM**

**10.1** The Software and any applicable Services may be subject to export laws and regulations including U.S economic sanctions, European Commission regulations, United Nations Security Council resolutions, and other similar local regulation or regulation in other jurisdictions’ “Export Controls and Sanctions List”. Each party represents that it is not named on any Export Controls and Sanctions List. Licensee will not permit any User to access or use the Software in a country or region listed on any Export Controls and Sanctions List.

**10.2** Licensee agrees that Licensee has not received, been offered, solicited, or accepted any illegal (in accordance with applicable local law) or improper bribe, kickback, payment, gift, or item of value from any Leapwork employees or agents in connection with this EULA.

**10.3** Neither party is in violation of any U.S. Anti-Terrorism or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any anti-terrorism law.

## **11 FORCE MAJEURE**

**11.1** Neither party is liable for a breach or delay in performance that is caused by an event beyond its reasonable control, including a natural disaster, disease outbreak, war, riot, terrorist action, civil commotion,

malicious damage, government action, industrial action or dispute, fire, flood, storm, or failure of third-party telecommunications or other services. For the avoidance of doubt, this Section shall not affect Licensee's or if applicable Partner's/Contracting Entity's payment obligations under the Agreement.

## **12 MISCELLANEOUS**

**12.1** If any provision of this EULA is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this EULA will otherwise remain in full force and effect and enforceable.

**12.2** Either party may assign, delegate, or otherwise transfer all or any part of its obligations under this EULA without the other party's prior written consent if such assignment is: (i) to the benefit of that party's selected Affiliate; and (ii) the assigning party shall be responsible for any failure of the Affiliate to perform its obligations under this EULA. Any other assignment, delegation, or transfer except for a merger or similar, is subject to the other party's prior written approval, which shall not be unreasonably withheld or delayed.

**12.3** This EULA, and any executed Agreement between the parties, if applicable, including the associated Order Form, and all other documents that are incorporated by reference therein, is the entire agreement between Leapwork and Licensee regarding Licensee's use of the Software, related Services, Deliverables, and Documentation and supersedes all prior NDAs or agreements on the same subject matter as well as any proposals, or representations, communications, whether written or oral, concerning its subject matter. For the avoidance of doubt, the parties expressly exclude the applicability of any additional and subsequent terms and conditions included, for example and without limitation, in any of Licensee's purchase order terms, security questionnaire, RFI, RFP documents, any e-mail communications sent to Leapwork from time to time, etc. unless otherwise stated in an executed Order Form, in the event of conflict or inconsistency among the following documents, the order of precedence shall be: (1) the main body an executed Order Form; (2) any exhibit or attachment to the executed Order Form; (3) the Leapwork End User License Agreement referenced or included in the executed Order Form; (4) this EULA, and (5) the Documentation.

**12.4** The parties are independent contractors. This EULA does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

**12.5** Licensee hereby grants Leapwork a revocable, non-exclusive, time limited for the Term only license to list Licensee's name and display it in the "Our Customers" Section of Leapwork's website and to use Licensee's name and logo in Leapwork's customer list but at all times only to the extent that other Licensees of Leapwork are also named on such a customer list. Any additional use by Leapwork of Licensee's name, logo, or trademark requires the prior written consent of Licensee.

**12.6** This EULA is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express, or implied, is intended to or shall confer on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this EULA.

**12.7** Any waiver, modification, or amendment of any provision of the EULA or any executed Agreement, including any amendment of an Order Form, will be effective only if made in writing and signed by the parties thereto.

**12.8 NOTICES:** If Licensee would like to notify Leapwork on any matter relating to the Software license and this EULA, or for any additional information, please contact [legal@leapwork.com](mailto:legal@leapwork.com). Leapwork may notify Licensee using the contact information provided in the Order Form or any contact information shared with Leapwork from time to time. It is Licensee's responsibility to keep its contact information up to date to receive notifications from Leapwork.

**12.9 Audit.** Except for the use of a Trail Use Software during the Subscription Period, Leapwork may, no more than once every 12 months, upon seven (7) days' prior written notice to Licensee, appoint Leapwork

personnel or an independent third-party auditor (who is obliged to maintain confidentiality) to inspect Licensee records, systems, and if necessary only its facilities to verify that Licensee's installation and use of Software is in conformity with the license(s) granted by Leapwork. If the audit discloses a shortfall in licenses for the Software, Licensee will immediately acquire any necessary licenses, subscriptions, and pay applicable back support Fees. If the underpaid Fees exceed 5% of the value of the payable license Fees, then Licensee will also pay for Leapwork's reasonable cost of conducting the audit.

**12.10** Licensee hereby acknowledges and agrees that the Software contains features that provide Leapwork with limited Software usage insights such as, but not limited to, types of tests run, performance logs, Software features used to allow for continuous improvements in the Leapwork products. For the avoidance of doubt, such insights do not include any Personal Data.

**12.11 Leapwork Affiliates.** Leapwork may provide all or part of the Services via any of its Affiliates. Leapwork shall in all cases remain fully responsible for all its obligations under this EULA, including for acts or omissions of any of its Affiliates providing that the Services to the same as if those acts or omissions were those of Leapwork.

**12.12** Subject to its obligations of confidentiality, Leapwork shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how and techniques within the scope of its business that are used or developed in the course of providing its Professional Services and Deliverables to Licensee.

### **13 CONTRACTING PARTY; GOVERNING LAW; AND EXCLUSIVE JURISDICTION**

**13.1** Unless otherwise defined in an executed Order Form, "Leapwork" shall be defined to mean one of the below entities that operate in the region where Licensee has its headquarters.

**13.1.1** If Licensee has its headquarters in Canada, the United States of America, or South America, then (i) Licensee is contracting with **Leapwork LLC**, a Delaware limited liability company having its registered office at 1390 Market Street, Suite 200, San Francisco, CA94102; (ii) this EULA shall be governed by the laws of the state of California; and (iii) any dispute regarding the interpretation, the conclusion, the performance or the termination of this EULA which is not resolved amicably by the parties shall be subject to the exclusive jurisdiction of the courts in San Francisco, or if that court lacks subject matter jurisdiction, in any California State Court.

**13.1.2** If Licensee has its headquarters in Europe but not in any of the countries specified in the below subsections, then (i) Licensee is contracting with **Leapwork ApS**, a Danish corporation with offices located at Esplanaden 8C, 1263 Copenhagen, Denmark; (ii) this EULA shall be governed by the laws of Denmark; and (iii) any dispute regarding the interpretation, the conclusion, the performance or the termination of this EULA which is not resolved amicably by the Parties shall be subject to the exclusive jurisdiction of the courts of Copenhagen, Denmark.

**13.1.2.1** If Licensee has its registered office in Germany, then (i) Licensee is contracting with **Leapwork Germany GmbH**, Neue Rothofstraße 13-19, 60313 Frankfurt am Main; (ii) this EULA shall be governed by the laws of Germany; and (iii) any dispute regarding the interpretation, the conclusion, the performance or the termination of this EULA which is not resolved amicably by the Parties shall be subject to the exclusive jurisdiction of the German courts.

**13.1.2.2** If Licensee has its headquarters in United Kingdom, then (i) Licensee is contracting with **LEAPWORK UK Ltd.**, Rowan House North, Shrewsbury Business Park, Shrewsbury, Shropshire, United Kingdom, SY2 6LG; (ii) this EULA shall be governed by the laws of England and Wales; and (iii) any dispute regarding the interpretation, the conclusion, the performance or the termination of this EULA which is not resolved amicably by the Parties shall be subject to the exclusive jurisdiction of the English courts.

- 13.1.2.3 If Licensee has its headquarters in France, then (i) Licensee is contracting with **Leapwork France SAS**, France: 40 rue du Colisée, Paris, Ile-de-France 75008; (ii) this EULA shall be governed by the laws of France and (iii) any dispute regarding the interpretation, the conclusion, the performance or the termination of this EULA which is not resolved amicably by the Parties shall be subject to the exclusive jurisdiction of the French courts.
- 13.1.2.4 If Licensee has its headquarters in The Netherlands, then (i) Licensee is contracting with **Leapwork The Netherlands B.V.**, Gustav Mahlerlaan 1212, 1081LA Amsterdam; (ii) this EULA shall be governed by the laws of the Netherlands and (iii) any dispute regarding the interpretation, the conclusion, the performance or the termination of this EULA which is not resolved amicably by the Parties shall be subject to the exclusive jurisdiction of the courts of Amsterdam.

**13.2** The parties shall use their best endeavors to settle any dispute emanating from this EULA or the Agreement between the parties by way of negotiation. If such dispute cannot be settled by negotiations within three (3) weeks (or other period the parties mutually agree upon) from the request for such negotiations in writing, either party may elect to submit the dispute for resolution by arbitration or by bringing a claim against the other in a court of competent jurisdiction in accordance with the above Section 14.1 that also sets out the applicable law and venue for bringing a claim in the defined territory.

## 14 COUNTRY SPECIFIC TERMS

**14.1** The below amendments shall apply if Licensee/Customer is a US Company:

- 14.1.1 Section 2.1 (License Grant) is amended to include the following language at the bottom of the Section: *"If Licensee is a U.S. Government entity, or if an executed Agreement becomes subject to the Federal Acquisition Regulations (FAR), then, the Software, provided under the EULA are "Commercial Item(s)," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," and services related thereto, as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through §227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Federal Government Users: (i) only as Commercial Items; and (ii) with only those rights as are granted to all other Users pursuant to the terms and conditions of the EULA. Unpublished rights are reserved under the laws of the United States. Manufacturer is Leapwork ApS, having its registered office at Esplanade 8C, 1263 Copenhagen, Denmark."*
- 14.1.2 In Section 5.5 above, the applicable data protection laws shall be deemed to include specifically the California Consumer Privacy Act ("**CCPA**").
- 14.1.3 Section 5.6. is hereby added to the EULA as follows: *"5.6 The CCPA provides certain privacy rights and protections to California consumers. Details may be found at <https://oag.ca.gov/privacy/ccpa>. Leapwork does not intend to retain, use, or disclose any Personal Data that, under CCPA, constitutes "personal information" for any purpose other than for the specific purposes of this EULA, including for direct marketing, or as otherwise permitted by CCPA, including retaining, using, or disclosing the information for a commercial purpose (as defined in CCPA). Leapwork will not sell any personal information of California consumers, nor retain, use or disclose such information for any purpose other than for the specific purpose provided under an executed Agreement. Leapwork's access to the personal information of California consumers does not constitute part of any consideration exchanged between Leapwork and Licensee in entering this EULA."*

## 15 SPECIAL TERMS

**15.1** The below special terms are applicable for the sale of Professional Services (except Support Services)

- 15.1.1 Personal Data: The Parties agree that no Personal Data shall be provided under a SOW and project under the Agreement. If, during the term of the SOW, processing of Personal Data is required by the parties as part of the Professional Services, then the parties shall work together in good faith to execute a data processing agreement before any Personal Data of Licensee is to be processed by Leapwork.
- 15.1.2 Term and Termination: Notwithstanding anything to the contrary in the Order Form, a SOW shall terminate automatically upon provision of the purchased Professional Services. Additionally, the SOW can be terminated by Customer upon it giving 30 days' written notice of termination to Leapwork. Upon such SOW termination, Leapwork shall return any pro-rated portion of paid Service Fees for any Professional Services purchased but not provided by Leapwork.
- 15.1.3 License Grant: Subject to Licensee's compliance with the terms of this EULA and the SOW and full payment of any applicable Fees, Leapwork grants Licensee a non-exclusive, non-transferable, non-assignable, non-sublicensable, perpetual license to copy, use and modify the Deliverables for Licensee's internal business purposes only. Except as specifically authorized under the SOW, this EULA Licensee will not rent, lease, lend, distribute, sell, assign, license, or otherwise transfer the Deliverables or any portion thereof to any third party.
- 15.1.4 Payment: Provided that no other payment terms or schedule is agreed in an applicable Order Form or SOW, Leapwork shall invoice the Service Fees on the first day of every month for the Professional Services actually provided to Licensee in the previous month as per Licensee approved time sheets. A correctly rendered invoice shall be payable within thirty (30) calendar days from its receipt.
- 15.1.5 Leapwork warrants to Licensee that the Professional Services shall be provided in accordance with industry standards and using qualified personnel with the necessary skills, qualifications, and experience to provide the Professional Services in accordance with the SOW.
- 15.1.6 As per the license granted in Section 16.1.3 above, and except for Licensee's ownership rights in any materials provided by Licensee and incorporated by Leapwork into the Services and the Deliverables, Licensee acknowledges that the Professional Services and the related Deliverables include Leapworks' Intellectual Property Rights that are provided under license, and not sold to Licensee. Save for the licenses expressly provided in this EULA, Licensee does not acquire any ownership, title, or interest in the Professional Services or Deliverables, nor any other rights to the Professional Services or Deliverables.
- 15.2 The below special terms are applicable if a Partner/Contracting Entity is executing an Order Form**
- 15.2.1 If a Partner/Contracting Entity is entering into an Order Form on behalf of Licensee, then references in Section 4 (Fees), Section 10 (Term and Termination), and obligation to provide certain notices relating to the Agreement and use of the Software may be provided by Leapwork to Partner or Contracting Entity (as applicable), and Licensee may provide notices and communications to Leapwork through Partner/Contracting Entity. For the avoidance of doubt, any reference to "Licensee" in the sections mentioned herein shall be deemed to also refer to Partner/Contracting Entity as applicable if they have entered into the Order Form on behalf of Licensee.
- 15.2.2 For the avoidance of doubt, this EULA governs Licensee's use of the Software and applicable Services related to the Software and provided by Leapwork or Leapwork's Affiliates only. Licensee acknowledges that Leapwork or its Affiliates will not be responsible for any terms, conditions, license grant, warranties, pricing commitments or any additional obligations offered to Licensee by the Partner/Contracting Entity or its Affiliates or any third party in any contract or otherwise if Leapwork is not a party to that agreement.
- 15.2.3 All terms that contradict or exceed the terms of this EULA, or an Agreement made directly with Leapwork are not Leapworks' responsibility and Leapwork disclaims any liability with regard to such third-party terms, even if those terms reference Leapwork. Leapwork shall not be liable for any acts or

omissions of the Partner/Contracting Entity or its Affiliates, or for any third-party products or services provided to Licensee by such Partner/Contracting Entity, or its Affiliates or any other third party.

- 15.2.4 For any license to the Software provided to a Partner in relation to the partner agreement with Leapwork or any of its Affiliates (the "Partner Agreement"), and as such license is granted for the fulfilment of its obligations under the Partner Agreement, the license grant in Section 2.1 above is amended to remove any mention of applicable Subscription Fees and the "Permitted Usage" is amended to mean "for Partner's internal business purposes only for the fulfillment of Partner's obligations under the Partner Agreement".

**\*\*\***