

## END USER LICENSE AGREEMENT (“EULA”)

**IMPORTANT: READ CAREFULLY:** This End User License Agreement (“Agreement”) is a legal and binding agreement between you (either an individual or a single entity) (“You” or “Your”) and Tempered Networks, Inc. (“Tempered”) for the product You are about to install and the associated proprietary media, printed materials, any associated documentation (including any electronic documentation), and also any updates or modifications of the foregoing provided by Tempered or its licensees or agents to You (collectively, the “Product”).

**WHEN YOU INSTALL OR USE ANY PART OF THE PRODUCT, YOU ARE CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT. IF YOU DO NOT AGREE TO (OR CANNOT COMPLY WITH) ALL OF THE TERMS OF THIS AGREEMENT, DO NOT INSTALL OR USE ANY PART OF THE PRODUCT (AND, IF APPLICABLE, CLICK THE “I DO NOT ACCEPT” BUTTON), AND YOU WILL NOT BE AUTHORIZED TO USE OR HAVE ANY LICENSE TO USE ANY PART OF THE PRODUCT. WRITTEN APPROVAL IS NOT A PREREQUISITE TO THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT AND NO SOLICITATION OF ANY SUCH WRITTEN APPROVAL BY OR ON BEHALF OF TEMPERED SHALL BE CONSTRUED AS AN INFERENCE TO THE CONTRARY. IF THESE TERMS ARE CONSIDERED AN OFFER BY TEMPERED, YOUR ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS.**

### **1. License.**

Subject to Your compliance with the terms and conditions of this Agreement, Tempered hereby grants to You a limited, personal, non-sublicensable, non-transferable, non-exclusive license to use the Product only for Your internal business use and only in accordance with the accompanying end user documentation.

### **2. License Restrictions.**

You shall not (nor shall You permit anyone else to) directly or indirectly: (i) copy (except as expressly set forth above) or modify the Product or any portion thereof; (ii) reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or structure, sequence and organization of the Product or any portion thereof (except where the foregoing is permitted by applicable local law, and then only to the extent so permitted); (iii) rent, lease, or use the Product or any portion thereof for timesharing or service bureau purposes, or otherwise use or allow the use of the Product or any portion thereof for any commercial purpose or on behalf of any third party; (iv) remove or obscure any proprietary notices on the Product; (v) post or otherwise make available the Product, or any portion thereof, in any form, on the Internet or other publicly-available forum; (vi) distribute copies of the Product, or any portion thereof, to others (electronically or otherwise); (vii) use a previous version of the Product after you receive a new version and are asked to discontinue using the previous version; (viii) export or re-export the Product in violation of any laws or regulations; or (ix) except as expressly set forth above, make any single copy of the Product available for use by multiple users over any network or from any remote workstation or terminal.

### **3. Special Third Party Limitations/Requirements/Restrictions/Disclaimers/Liability Limitations with respect to the use of the Product.**

The Product may incorporate certain third party materials and technology and the use of the Product is therefore subject to the terms and conditions of any third party licenses that may accompany such materials and technology. In the event any third party component is covered by a manufacturer’s warranty, Tempered will pass along such manufacturer’s warranty to You at no additional cost.

### **4. Proprietary Rights.**

Tempered shall own and retain all right, title, and (except as expressly licensed hereunder) interest in and to the Product, all copies or portions thereof, and any derivative works thereof (by whomever created). The Product is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Notwithstanding anything else, the Product is licensed and not sold. All rights in the Product not specifically granted in this Agreement are reserved by Tempered and its licensors.

### **5. Term and Termination.**

This license granted under this Agreement is effective until terminated hereunder. You may terminate the license at any time by returning the Product (including the related documentation) together with all copies or modifications in any form to Tempered or its authorized agents. Tempered will have the right to terminate the license granted herein immediately if You fail to comply with any term or condition of this Agreement. The license granted to You herein will terminate automatically upon: (i) any breach of Section 2 or 3 hereof; or (ii) expiration or termination of any agreement with Tempered whereby You are granted access to install, use or otherwise access the Product. Upon termination of this Agreement for any reason, You shall immediately stop using the Product and shall destroy and remove from all computers, hard drives, networks, and other storage media all copies of the Product. Sections 2, 3 (except for the license grants under Section 3(g) and distribution rights under 3(i)), and 4 through 13 shall survive any termination of this Agreement.

**6. Limited Warranty.**

For a period of ninety (90) days from the date You purchase the Product (the “Warranty Period”), Tempered and its licensors warrant only that the Product will perform substantially in accordance with the specifications stated for the Product in the accompanying written end-user documentation. THIS WARRANTY SHALL NOT APPLY TO ANY PRODUCT WHICH HAS BEEN ABUSED, MISUSED, DAMAGED IN TRANSPORT, ALTERED, NEGLECTED, OR SUBJECTED TO UNAUTHORIZED REPAIR OR INSTALLATION, AS REASONABLY DETERMINED BY TEMPERED.

NOTWITHSTANDING ANYTHING ELSE HEREIN, THE ENTIRE LIABILITY OF TEMPERED, AND YOUR EXCLUSIVE REMEDY FOR A BREACH OF THE FOREGOING WARRANTY, SHALL BE, AT TEMPERED’S OPTION AND EXPENSE: (A) REPAIR OR REPLACEMENT OF THE PRODUCT WITH PRODUCT THAT MEETS THE WARRANTY OR (B) IF REPAIRING OR REPLACING THE PRODUCT IS NOT COMMERCIALY PRACTICABLE IN TEMPERED’S SOLE DISCRETION, REFUND OF THE PURCHASE PRICE PAID BY YOU, IN BOTH CASES WHERE THE PRODUCT IS RETURNED TO TEMPERED, WITHIN THE WARRANTY PERIOD.

**7. Warranty Disclaimer.**

THE LIMITED WARRANTY SET FORTH IN SECTION 6 IS THE ONLY WARRANTY PROVIDED BY TEMPERED. EXCEPT FOR THE FOREGOING, THE PRODUCT AND ANY SERVICES ARE PROVIDED “AS IS” AND TEMPERED MAKES NO WARRANTY OF ANY KIND WITH REGARD TO THE PRODUCT OR ANY SERVICES PROVIDED BY TEMPERED HEREUNDER. TEMPERED EXPRESSLY DISCLAIMS ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.

FURTHER, TEMPERED DOES NOT WARRANT RESULTS OF USE OR THAT THE PRODUCT IS BUG FREE OR THAT ITS USE WILL BE UNINTERRUPTED. TEMPERED AND ITS LICENSORS DO NOT AND CANNOT WARRANT THE RESULTS YOU MAY OBTAIN BY USING THE PRODUCT. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

**8. Limitation of Liability.**

NOTWITHSTANDING ANYTHING ELSE HEREIN, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, SHALL TEMPERED BE LIABLE TO YOU OR ANY OTHER PERSON (I) FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, OR DAMAGES RESULTING FROM YOUR USE OF THE PRODUCT OR THE SERVICES PROVIDED BY OR ON BEHALF OF TEMPERED, OR (II) FOR ANY MATTER BEYOND TEMPERED’S OR ITS LICENSORS’ REASONABLE CONTROL. TEMPERED’S AND ITS LICENSORS’ MAXIMUM LIABILITY FOR DAMAGES OF ANY KIND WHATSOEVER ARISING OUT OF THIS AGREEMENT SHALL BE

**LIMITED TO (I) THE PURCHASE PRICE PAID BY YOU FOR THE PRODUCT, EXCEPT WHERE NOT PERMITTED BY APPLICABLE LAW, IN WHICH CASE TEMPERED'S LIABILITY SHALL BE LIMITED TO THE MINIMUM AMOUNT PERMITTED BY SUCH APPLICABLE LAW. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF TEMPERED HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.**

**SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU.**

**9. Export.**

You shall comply with all export laws and restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control ("OFAC"), or other United States or foreign agency or authority, and You shall not export, or allow the export or re-export of the Product in violation of any such restrictions, laws or regulations. By using the Product, You agree to the foregoing and represent and warrant that You are not located in, under the control of, or a national or resident of any restricted country.

**10. Indemnity.**

You shall indemnify and hold harmless Tempered from any third party claims, damages, liabilities, costs and fees (including reasonable attorney fees) arising from Your use of the Product as well as from Your failure to comply with any term of this Agreement.

**11. Government Restricted Rights.**

If You are an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Product, or any related documentation of any kind, including technical data or related manuals, is restricted in accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies. This Product is commercial computer Product and the related documentation is commercial computer Product documentation. The use of the Product and related documentation is further restricted in accordance with the terms of this Agreement, or any modification hereto. Tempered Networks is located at 3101 Western Avenue, Suite 550, Seattle, WA 98121.

**12. General.**

This Agreement represents the complete agreement concerning this license between the parties and supersedes all prior agreements and representations between them. This Agreement may be amended only by a writing executed by both parties. If any provision of this Agreement is held to be illegal or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary to make it legal and enforceable and this Agreement shall otherwise remain in full force and effect and enforceable. The failure of Tempered to act with respect to a breach of this Agreement by You or others does not constitute a waiver and shall not limit Tempered's rights with respect to such breach or any subsequent breaches. This Agreement is personal to You and may not be assigned or transferred for any reason whatsoever without Tempered's prior written consent and any action or conduct in violation of the foregoing shall be void and without effect. Tempered expressly reserves the right to assign this Agreement and to delegate any of its obligations hereunder. This Agreement shall be governed by and construed under Washington law (without regard to its conflicts of laws provisions) as such law applies to agreements between Washington residents entered into and to be performed within Washington. The sole and exclusive jurisdiction and venue for actions arising under this Agreement shall be the State and Federal courts in King County, Washington; You hereby agree to service of process in accordance with the rules of such courts. The party prevailing in any dispute under this Agreement shall be entitled to its costs and legal fees.

**EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THIS AGREEMENT ARE MATERIAL BARGAINED FOR BASES OF THIS AGREEMENT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND**

REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

Questions concerning this Agreement should be sent to the address set forth below. Any notices or correspondences will only be effective if sent to such address.

Tempered Networks, Inc.  
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Suite 550  
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