

# Software End User License Agreement (EULA)

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"Authorized Users" means the employees and agents of Licensee.

"Documentation" means user manuals, technical manuals, and any other materials provided by Licensor, in printed, electronic, or other form, that describe the installation, operation, use, or technical specifications of the Software.

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"Licensee" has the meaning set forth in the preamble.

"Licensor" has the meaning set forth in the preamble.

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"Product" means the hardware product purchased by Licensee as set forth in the Order Form provided by Licensor.

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(d) combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;

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(i) use the Software or Documentation in, or in association with, the design, construction, maintenance, or operation of any hazardous environments or systems, including:

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- (ii) aircraft navigation or communication systems, air traffic control systems, or any other air transport management systems;
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- (iv) military or aerospace applications, weapons systems, or environments;
- (j) use the Software or Documentation in violation of any law, regulation, or rule; or
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6. Compliance Measures.

(a) The Software may contain technological copy protection or other security features designed to prevent unauthorized use of the Software, including features to protect against any use of the Software that is prohibited under Section 4. Licensee shall not, and shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security features.

(b) On no more than a semi-annual basis, unless indication of non-compliance is present in which case at any time, and upon Licensor's written request, Licensee shall conduct a review of its and its Authorized Users use the Software and certify to Licensor in a written instrument signed by an officer of Licensee that it is in full compliance with this Agreement or, if Licensee discovers any noncompliance:

(i) Licensee shall immediately remedy such noncompliance and provide Licensor with written notice thereof. Licensee shall provide Licensor with all access and assistance as Licensor requests to further evaluate and remedy such noncompliance.

(ii) If Licensee's use of the Software exceeds the number of copies or Authorized Users permitted under the license, Licensor shall have the remedies set forth in Section 6(d).

(c) During the Term, Licensor may, in Licensor's sole discretion, audit Licensee's use of the Software to ensure Licensee's compliance with this Agreement, provided that (i) any such audit shall be conducted on not less than ten (10) days' prior notice to Licensee, and (ii) no more than three (3) audits may be conducted in any calendar year, except for good cause shown. Licensor also may, in its sole discretion, audit Licensee's systems within two (2) months after the end of the Term to ensure Licensee has ceased use of the Software and removed all copies of the Software from such systems as required hereunder. The Licensee shall fully cooperate with Licensor's personnel conducting such audits and provide all reasonable access requested by the Licensor to records, systems, equipment, information, and personnel, including machine IDs, serial numbers, and related information. Licensor shall only examine information directly related to the Licensee's use of the Software. Licensor may conduct audits only during Licensee's normal business hours (unless otherwise requested by Licensee and agreed to by Licensor, and in a manner that does not unreasonably interfere with the Licensee's business operations.

(d) If any of the measures taken or implemented under this Section 6 determines that the Licensee's use of the Software exceeds or exceeded the use permitted by this Agreement then:

(i) Licensee shall, within ten (10) business days following the date of Licensor's written notification thereof, pay to Licensor retroactive license fees for such excess use and, including any fees or penalties assessed against Licensor by the rights holder from which Licensor derived its rights licensed under this Agreement, unless Licensor terminates this Agreement pursuant to Section 6.1(d)(ii), obtain and pay for a valid license to bring Licensee's use into compliance with this Agreement. In determining the licensee fee payable pursuant to the foregoing, (x) unless Licensee can demonstrate otherwise by documentary evidence, all excess use of the Software shall be deemed to have commenced on the commencement date of this Agreement or, if later, the completion date of any audit previously conducted by Licensor hereunder, and continued uninterrupted thereafter, and (y) the rates for such licenses shall be determined without regard to any discount to which Licensee may have been entitled had such use been properly licensed prior to its commencement (or deemed commencement); and

(ii) If the use exceeds or exceeded the use permitted by this Agreement, Licensor shall also have the right to terminate

this Agreement and the license granted hereunder, effective immediately upon written notice to Licensee.

Licensor's remedies set forth in this Section 6(d) are cumulative and are in addition to, and not in lieu of, all other remedies the Licensor may have at law or in equity, whether under this Agreement or otherwise.

7. Maintenance and Support.

(a) The license granted hereunder entitles Licensee to the basic software maintenance and support services described from time to time on Licensor's website located at [www.airgain.com/airgainconnect/support](http://www.airgain.com/airgainconnect/support)

(b) Licensor has no obligation to provide maintenance and support services, including Updates.

8. Collection and Use of Information.

(a) Licensee acknowledges that Licensor may, directly or indirectly through the services of Third Parties, collect and store information regarding use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used, through:

(i) the provision of maintenance and support services; and

(ii) security measures included in the Software as described in Section 6.

(b) Licensee agrees that the Licensor may use such information for purposes needed to ensure compliance with this Agreement or support Licensee's use of the Software, including but not limited to:

(i) improving the performance of the Software or developing Updates; and

(ii) verifying Licensee's compliance with the terms of this Agreement and enforcing the Licensor's rights, including all Intellectual Property Rights in and to the Software.

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(a) This Agreement and the license granted hereunder shall remain in effect for so long as the Product is owned unless earlier terminated as set forth herein (the "Term").

(b) Licensee may terminate this Agreement by ceasing to use and destroying all copies of the Software and Documentation.

(c) Licensor may terminate this Agreement, effective upon written notice to Licensee, if Licensee, breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured for thirty (30) days after Licensor provides written notice thereof.

(d) Licensor may terminate this Agreement, effective immediately, if Licensee files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property.

(e) Upon expiration or earlier termination of this Agreement, the license granted hereunder shall also terminate, and Licensee shall cease using and destroy all copies of the Software and Documentation

12. Warranty.

(a) Licensor provides the limited warranty for the Software as set forth on Licensor's website located at [\[insert link to warranty on Airgain website\]](#).

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(c) THE LIMITATIONS SET FORTH IN SECTION 13(a) AND SECTION 13(b) SHALL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

14. Export Regulation. The Software and Documentation may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. The Licensee shall not, directly or indirectly, export, re-export, or release the Software or Documentation to, or make the Software or Documentation accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. The Licensee 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 or Documentation available outside the US.

15. US Government Rights. The Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if the Licensee is the US Government or any contractor thereof, Licensee shall receive only those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

16. Miscellaneous.

(a) All matters arising out of or relating to this Agreement, including enforcement of any provisions or remedies relating thereto, shall be governed by and construed in accordance with the internal laws of the State of California, as those laws are applied to California citizens transacting business in California, without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in the federal courts of the United States of America or the courts of the State of California in each case located in the City and County of San Diego, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such legal suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

(b) Licensor will not be responsible or liable to Licensee, or deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, pandemics, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning, or Licensee equipment, loss and destruction of property, or any other circumstances or causes beyond Licensor's reasonable control.

(c) All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile

(with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Order Form (or to such other address as may be designated by a party from time to time in accordance with this Section 16(c)).

(d) This Agreement constitutes the sole and entire agreement between Licensee and Licensors with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(e) Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Licensors' prior written consent, which consent Licensors may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Licensee (regardless of whether Licensee is a surviving or disappearing entity), or any change in control of the company (which includes a change in ownership of more than 50% of its stock, a change in the majority of its board of directors, etc.) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which Licensors' prior written consent is required. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 16(e) is void. Licensors may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Licensee's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(f) This Agreement 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 Agreement.

(g) This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(h) If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. In any proceeding determining the presence of any offending term, such term shall be amended only to the extent needed to bring it into conformity, while to the extent possible maintaining the intent of the parties.

(i) For purposes of this Agreement, (a) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Annexes, Schedules, and Exhibits refer to the Sections of, and Annexes, Schedules, and Exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Order Form [and all Annexes, Schedules, and Exhibits] referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

(j) The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.