

## End User License Agreement

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THIS END USER LICENSE AGREEMENT ("EULA" or "AGREEMENT") IS A LEGAL AGREEMENT BETWEEN YOU, EITHER A SINGLE INDIVIDUAL, ENTITY OR GOVERNMENT ORGANIZATION ("YOU" OR "YOUR") AND CDATA SOFTWARE, INC. AND ITS AFFILIATES ("LICENSOR") FOR THE SOFTWARE YOU ARE LICENSING. CAREFULLY READ THIS AGREEMENT BEFORE YOU INSTALL OR USE THE SOFTWARE. BY INSTALLING OR USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT. ALL SOFTWARE ORDERED THROUGH A LICENSOR AUTHORIZED PARTNER IS GOVERNED BY THIS AGREEMENT. IF YOU DO NOT HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT, OR IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MUST NOT INSTALL OR USE THE SOFTWARE.

1. **EVALUATION SOFTWARE.** If you obtained a license to a trial, beta, or evaluation license of the Software ("Evaluation Version"), Licensor grants you a free-of-charge, non-transferable, non-sublicensable, non-exclusive right and license for one (1) Authorized User to Use one (1) copy of the Evaluation Version solely for non-production, non-commercial purposes to internally evaluate the Software to determine whether to purchase the Software. You may not download more than one (1) copy of the Evaluation Version of the Software unless otherwise authorized by Licensor. You may not use the Evaluation Version for any other purpose. You may only Use the Evaluation Version for thirty (30) days from the date you activate and/or register via the Product Key, unless otherwise specified by Licensor in the Order Form ("Evaluation Period"). Unless you pay the applicable fee for the Software (and Licensor issues you a Product Key in exchange), the Evaluation Version Software may become inoperable and, in any event, your right to Use the Evaluation Version Software automatically expires at the end of the Evaluation Period. Licensor may terminate your license to the Evaluation Version Software upon written notice at any time for any reason and without liability of any kind. If you subsequently license a non-evaluation version of the Software, your license to the Evaluation Version Software shall immediately terminate and you expressly agree that, unless you have a separate signed license agreement governing your use of the Software, this Agreement, and the terms and conditions herein, shall govern your use of such non-evaluation version. You may not distribute Applications that use the Evaluation Version of the Software as a runtime component.

2. **LICENSE GRANT.** During the Term, subject to the Order Form and payment of fees, where applicable and the terms, conditions, and restrictions set forth in this Agreement, your right to Use the specific version of the Software noted in the Product Key, Licensor grants you a worldwide, non-exclusive, non-transferable and non-assignable (except as otherwise expressly provided in this Agreement) right and license to install, access and Use the Software for your internal business operations in accordance with the number and type of licenses set out in Exhibit A and the Order Form.

3. **BACK-UP AND DOCUMENTATION COPY.** You may make a reasonable number of copies of the Software for Non-Production purposes provided you reproduce all copyright and other proprietary notices that are on the original copy of the Software. Further, you may make a reasonable number of copies of the Software user documentation (i.e. manuals and installation guides) for your internal use in accordance with this Agreement, provided that you reproduce all copyright and other proprietary notices that are on the original copy of Software user documentation.

4. LICENSE RESTRICTIONS. Licensor reserves all rights not expressly granted to you in this Agreement. Without limiting the generality of the foregoing, you acknowledge that the Software contains trade secrets and subject to applicable laws, you agree that you will not: (A) copy the Software, except as permitted under this Agreement; (B) modify, adapt or translate the Software, except as permitted under this Agreement; (C) de-compile, reverse engineer or disassemble the Software or otherwise reduce the Software from object code to source code; (D) use the Software to develop any works which provide substantially the same functionality as the Software or enables building other software which would compete with the Software; (E) lease, rent, loan, sell or distribute the Software to a third party (including, using the Software on a time-sharing basis, for hosting purposes, or for the provision of a fee generating service directly or indirectly to third parties) without the prior written agreement of Licensor; (F) combine the Software with any other software (including open source software), where the combined software is subject to any license that requires the combined program or the Software and its Source Code to be made freely available; (G) publicize or otherwise disclose any results of benchmark tests run on the Software; (H) the Software may not be used by your Affiliated parties unless specifically authorized in an Order Form and (I) Bundle the Software in whole or in part with any other products, applications or extensions without Licensor's prior explicit written approval.

5. CONFIDENTIAL INFORMATION. You acknowledge that the Software, including all Object Code and Source Code and all parts and aspects thereof, and any New Releases, Updates, modifications, translations, localizations, or other Derivative Works thereof, in whatever form, whether or not marked as confidential, the Product Key and benchmark results (collectively, the "Confidential Information"), are the valuable proprietary and trade secret information of Licensor and/or its licensors and suppliers. You shall (i) limit use and disclosure of the Confidential Information to its employees and its consultants who are authorized pursuant to this Agreement to use the Software and who agree to be bound by the terms of this Agreement or are otherwise bound to a confidentiality agreement containing substantially similar terms; (ii) not provide or disclose any of the Confidential Information to another party; and (iii) treat the Confidential Information with the same degree of care to avoid disclosure to any third party as is used with respect to Licensee's information of like importance which is to be kept secret, but with no less than reasonable care. The foregoing obligations shall be in addition to any obligations set forth in any separate confidentiality agreement between Licensor and you. If you provide any feedback, comments, suggestions, ideas, description of processes, or other information to Licensor about or in connection with the Software, including without limitation any ideas, concepts, know-how or techniques contained therein ("Feedback"), then you grant Licensor a worldwide, royalty-free, non-exclusive, perpetual and irrevocable license to use, copy, modify and otherwise exploit the Feedback for any purpose, without any compensation to you or any restriction or obligation on account of intellectual property rights or otherwise. For clarity, no Feedback will be deemed your Confidential Information, and nothing in this Agreement limits the Licensor's right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise. You further acknowledge that in the event of a breach or threat of breach of this Section 5 (Confidential Information), money damages will not be adequate. Therefore, in addition to any other legal or equitable remedies, Licensor shall be entitled to seek injunctive or similar equitable relief against such breach or threat of breach. Both Parties agree that obligations of confidentiality will exist for a period of five (5) years following initial disclosure of the particular Confidential Information.

6. USE BY THIRD PARTIES. Licensor acknowledges and agrees that the Software may, subject to the terms of this Agreement, be used by your third-party service providers, independent contractors, consultants and outsourcers, provided that such third parties agree to comply with the terms of this

Agreement and such third parties Use the Software only for your benefit and business purposes. If requested by Licensor, you will provide a list of any third parties that are using the Software pursuant to this Section to assist Licensor in managing the licensing of the Software. You will remain responsible and legally liable for the proper use of the Software in accordance with this Agreement by such third parties.

7. FEES. You agree to pay the applicable license fees for the Software and any applicable delivery charges, taxes, customs, duties or other governmental fees, relating to the license for the Software. License fees will either be payable immediately upon ordering the Software or may be invoiced and payable in accordance with the Order Form. All payments shall be made in the currency noted online or on the applicable Order Form within thirty (30) days of the applicable invoice. Any amounts not subject to a good faith dispute that are not paid within forty-five (45) days of the date of invoice will incur interest at the highest rate then permitted by law. Additionally, Licensor may temporarily suspend any rights you may have to support services for the Software and maintenance Updates, including New Releases of the Software, until the undisputed portion of your account is brought current. Except as expressly set forth herein, all fees are non-refundable once paid. You are responsible for paying the full amount of fees to Licensor regardless of any taxes or bank transaction fees you are required to pay. Unless timely provided with a valid certificate of exemption or other evidence that items are not taxable, Licensor will invoice you for all applicable taxes including, but not limited to, VAT, GST, sales tax, consumption tax and service tax. If any withholding tax is required by applicable law to be paid by you in relation to payments due to Licensor hereunder, you will provide Licensor with official receipts and/or certificates from the appropriate taxing authorities to establish that any applicable taxes have been paid.

8. ELECTRONIC DELIVERY. All Software and Documentation shall be delivered by electronic means unless otherwise specified on the applicable Order Form. Software shall be deemed delivered when it is made available for download by you ("Delivery Date").

9. SOFTWARE SUPPORT AND MAINTENANCE. Subscription licenses include maintenance Updates, New Releases and standard support services during the Subscription Term. Perpetual licenses include maintenance Updates and standard support services. You may purchase an Annual Premium Support Agreement and/or Annual Maintenance Agreement as further described at Licensor's website [www.cdata.com](http://www.cdata.com).

10. VERIFICATION. For the term of this Agreement and one (1) year thereafter, Licensee agrees that Licensor or its designee shall have the right, at its own expense and under reasonable conditions of time and place, to audit and copy all records of Licensee's use of the Software and payments made to Licensor hereunder. Upon Licensor's written approval, Licensor may instead require you to complete accurately a self-audit questionnaire in a form provided by Licensor. If an audit reveals unlicensed use of the Software, a breach of this Agreement or underpayment of any Fees by you or your employees or agents, Licensee must, in addition to such other rights and remedies as may be available to Licensor as the result of such breach, promptly order and pay for sufficient licenses, support and maintenance fees (at Licensor's then-current price for such licenses) to permit all usage disclosed and pay the full cost of such audit and copying. Licensor will use information obtained from such audit only to verify and enforce your compliance with the terms of this Agreement, to comply with any governmental reporting requirements and for such other purposes as required by law. The foregoing audit right will not apply to the extent not allowable under applicable law.

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13. INDEMNIFICATION. You agree to defend, indemnify and hold harmless Licensor, its suppliers and its Authorized Partners from and against liabilities, costs, damages and expenses (including settlement costs and reasonable attorney fees) arising from any claims from anybody that result from or relate to you and your third parties' use, reproduction or distribution of the Software or any permitted Applications herein.

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15. **LIMITATION OF LIABILITY.** IF YOU SHOULD BECOME ENTITLED TO CLAIM DAMAGES FROM LICENSOR FOR ANY REASON (INCLUDING BUT NOT LIMITED TO THIRD PARTY INFRINGEMENT), LICENSOR WILL BE LIABLE ONLY FOR THE AMOUNT OF YOUR ACTUAL DIRECT DAMAGES, NOT TO EXCEED (IN THE AGGREGATE FOR ALL CLAIMS) THE FEES, IF ANY, YOU PAID TO LICENSOR UNDER THIS AGREEMENT WITHIN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EARLIEST DATE ON WHICH THE ACT OR OMISSION GIVING RISE TO YOUR CLAIM OCCURRED OR SHOULD HAVE OCCURRED, AS APPLICABLE. The provisions of this Agreement allocate the risks between you and Licensor. The Fees reflect this allocation of risk and the limitations of liability herein. EACH EXCLUSION OR LIMITATION IS INTENDED TO BE A SEPARATE AND THEREFORE SEVERABLE EXCLUSION. The parties agree that the limitations specified in this Section 15 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

16. **EXCLUSION OF DAMAGES.** UNDER NO CIRCUMSTANCES WILL LICENSOR BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, MISREPRESENTATION AND OTHER CONTRACT OR TORT CLAIMS; LOST PROFITS; OR ANY DAMAGES RESULTING FROM LOSS OF DATA, SECURITY BREACH, PROPERTY DAMAGE, LOSS OF REVENUE, LOSS OF BUSINESS OR LOST SAVINGS), ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PERFORMANCE OF THE SOFTWARE OR OF ANY OTHER OBLIGATIONS RELATING TO THIS AGREEMENT, WHETHER OR NOT LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The limitations of liability set forth in Sections 15 and 16 will survive and apply notwithstanding the failure of any limited or exclusive remedy for breach of warranty set forth in this Agreement. The Parties agree that the foregoing limitations will not be read so as to limit any liability to an extent that would not be permitted under applicable law and specifically will not limit any liability for gross negligence, intentional tortious or unlawful conduct or damages for strict liability that may not be limited by law.

17. GENERAL. (A) Each Party shall comply with all laws applicable to the actions contemplated by this EULA. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. you represent that (i) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (ii) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. (B) The Software is deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software by the U.S. Government shall be governed solely by the terms and conditions of this EULA. However, the terms and conditions of this Agreement shall not apply to any agency procuring this Software on behalf of the U.S. Government solely for the U.S. Government's use. (C) The Parties to this EULA are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the Parties. Neither Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. (D) This Agreement is personal to you. You may not transfer, assign or otherwise convey, novate or encumber this Agreement or the Software, in whole or in part, to any other party, including any parent, subsidiary or affiliated entity, whether through a Change of Control which is voluntary or involuntary, by Merger, consolidation, dissolution, operation of law, or any other manner without Licensor's express written consent. For purposes of this Section 17(D), (i) a "Change of Control" shall include, but not be limited to, any merger, consolidation, amalgamation, reorganization or sale, transfer or exchange of the capital stock or equity interests of Licensee in a transaction or series of transactions which results in the holders of Licensee's capital stock or equity interests holding less than fifty percent (50%) of the outstanding capital stock or equity interests immediately following such transaction(s); and (ii) "Merger" refers to any merger in which the Licensee participates, regardless of whether it is the surviving or disappearing entity. Further, you may not delegate any performance under this Agreement without Licensor's express written consent. Any purported assignment of rights or delegation of performance in violation of this Section 17(D) is void. Licensor may assign its rights and obligations under this Agreement (in whole or in part) without your consent. (E) Any amendment of this EULA must be in writing and signed by both parties. Neither party will be deemed to have waived any of its rights under this EULA by lapse of time or by any statement or representation other than by a written waiver by a duly authorized representative. No waiver of a breach of this EULA will constitute a waiver of any prior or subsequent breach of this EULA. (F) This EULA, and all disputes arising out of or relating to this EULA, shall be governed by, and construed and interpreted in accordance with, the laws of the State of North Carolina excluding (i) its conflicts or choice of law rules; (ii) the United Nations Convention on Contracts for the International Sale of Goods; and (iii) the Uniform Computer Information Transactions Act, or any version, adopted by any state. Except for a request for injunctive or other equitable relief, any dispute arising out of this EULA will be subject to the exclusive jurisdiction of the courts located in Orange County, North Carolina. (G) If during the term of this Agreement, there occurs a Force Majeure Event (a fire, storm, flood, adverse weather conditions, explosions, acts of God, terrorism or the threat thereof, nuclear, chemical or biological contamination, compliance with any law, governmental controls, restrictions or prohibitions, general strikes, lock-outs, industrial action or employment dispute, protests, public

disorder, general interruptions in communications or power supply, failure or malfunction of computer systems or any other event or circumstance outside the reasonable control of Licensor and not caused by Licensor) which prevents Licensor from performing under this Agreement, Licensor shall have the right, exercisable by written notice to Licensee within five (5) business days of the date of the Force Majeure Event, to extend any period for Licensor's performance hereunder by a period of time equal to that time that Licensor reasonably anticipates that it will be unable to perform. (H) If any provision of this EULA is deemed contrary to applicable law or unenforceable by a court of competent jurisdiction, the provision will be severed from the EULA and all remaining provisions will continue in full force. (I) This EULA including any website links, exhibits, and Order Forms is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. No provision of any sales order, purchase order or other business form, including any electronic invoicing portals and vendor registration processes, employed by you will supersede the terms and conditions of this EULA, and any such document shall be for administrative purposes only and shall have no legal effect. Notwithstanding the foregoing, Licensor may, from time to time, update the Licensor EULA with New Releases of the Software. The version of the Licensor EULA that applies to you is the version that is contained in the Software you are currently using. (J) Any and all notices, requests, demands and other communications required or otherwise contemplated to be made under this EULA shall be in writing and in English and shall be deemed to have been duly given (i) if delivered personally, when received; (ii) if transmitted by facsimile, upon receipt of a transmittal confirmation; (iii) if sent by certified mail, return receipt requested, postage prepaid, on the date indicated on the return receipt; (iv) if by international courier service, on the delivery date as may be confirmed to the sender by such courier service; or (v) if by E-mail, when the recipient, by an E-mail sent to the E-mail address for the sender as specified on the Order Form or by a notice delivered by another method in accordance with this section, acknowledges having received that E-mail, with an automatic "read receipt" not constituting acknowledgment of an E-mail for purposes of this section. All such notices, requests, demands and other communications shall be addressed as specified on the Order Form. (K) You agree that Licensor may collect, maintain, process and use diagnostic, technical and related information, including non-personal information related to your device, computer, system, application software, or peripherals to facilitate the provision of Software Updates, product support and compliance verification, and otherwise to improve the Software and other software products and delivery of related services. (L) The Software does not contain any third-party technology. However, the Software may be used by you to connect to or integrate with technology owned or controlled by a person or entity other than Licensor and such activity may subject you to a service or license agreement with such person or entity. You agree to look solely to such third party with respect to any such service or license agreement. (M) Regardless of any language into which this Agreement may be translated, the official, controlling and governing version of this Agreement shall be exclusively the English language version. (N) You agree to be identified as a customer of Licensor, and agrees Licensor may refer to you by name, trade name and/or trademark (and such references shall in no case constitute an infringement of any such trade names or trademarks, as the case may be), whether standing alone, or as part of a list of customers of Licensor, at Licensor's choice; and further, Licensor may briefly describe your business in Licensor's marketing materials, on Licensor's web site, in public or legal documents, provided in each case, that any such description shall not include any information expressly identified by you as trade secret. Further, you agree that Licensor can use the information provided during the purchase of the Software to deliver and confirm your purchase or for other relevant purposes, as well as contact you again about other products, services, or offers. It is understood and agreed that the right and license to use your name, trade name

and/or trademark, as the case may be, is granted to Licensor solely for the purposes as set out in this Section 17.

#### EXHIBIT A - LICENSE TYPES

The Software is offered in the following license types, which may be combined, pursuant to the specific grant and restrictions set forth below and noted on the Order Form. The following license types may also be available as Site licenses if noted on the Order Form. As used herein the following capitalized terms have the following meaning: "Affiliate" means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a Party, where "control" is the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise. "Application" means any application, program or other software that Licensee develops using the Software. An Application must represent a significant functional and value enhancement to the Software such that the primary reason for a Customer to license the Application is other than the right to receive a license to the Software included in the Application. "Core" means a core of a CPU made up of an independent processor combined onto a single integrated circuit or silicon chip, in both virtualized and/or non-virtualized environments, and regardless of whether used in a production or non-production environment. "Derivative Work" means a work which is based upon one or more pre-existing copyrightable works such as a revision, modification, translation, abridgment, compilation, condensation or expansion or any other form in which such pre-existing work may be recast, transformed, or adapted, and which, if prepared without the consent of the author of the pre-existing work, would be a copyright infringement. "Desktop/Workstation" means a single physical machine, including but not limited to a personal computer, workstation, laptop computer, desktop computer or mobile device, specifically excluding a Server, on which the Software is loaded or executed, that is operated, either attended or via remote access, by one person at a time, and cannot be used by more than one person, directly or indirectly, simultaneously. "Developer" means any named identifiable individual person, not necessarily named at the time of a license grant, regardless of whether or not the individual is actively using the Software at any given time, designated by Licensee to do any of the following: (A) build, compile, assemble, test or otherwise cause to be executed any application programs that rely on the Software as a component; (B) use or execute any Software programs for development, testing, or support purposes; (C) package or otherwise prepare Software components for redistribution as part of another program or application; or (D) have possession of any Software resources or files for any purposes other than archiving. "Machine" means an attended or remotely controlled desktop, workstation or computer where the Software is loaded, that is operated by no more than one person at a time. "New Release" means new releases of the Software where the number to the left of the first "." in the product designation is changed by Licensor (e.g. "16.0.6360.0" is changed to "17.0.6360.0") if any, licensed to you by the Licensor. "Non-Commercial" means any use of the Software which (A) is not undertaken for profit; (B) is not intended to produce software, works, services, or data for commercial use; or (C) is neither conducted, nor funded, by a person or an entity engaged in the commercial use, application, development or exploitation of works similar to the Software. "Non-Production" means a non-operational environment into which the Software may be installed, which is not processing live data, which is not running any operations of the Licensee and which has not been deployed to permit any users to access live data. Non-Production environments include development and test environments. "Object Code" shall mean computer programs assembled or compiled in magnetic or electronic binary form on software media, which are readable and usable by machines, but not generally readable by humans without reverse-assembly, reverse-compiling, or reverse-engineering. "Order Form" means any of the following (A)



online purchase transaction from the Licensor's website; (B) a purchase order or other written order form from you and accepted by Licensor in e-mail confirmation or by releasing Product Keys to you; (C) a quotation issued by Licensor and signed by you; (D) any document accepted by and between a Licensor reseller or distributor pursuant to which you may order Software from Licensor; (E) an invoice issued by Licensor; or (F) any other document that references this EULA and is agreed to by Licensor in writing. All Orders are incorporated herein and governed by this Agreement. "Product Key" means a unique key-code that enables you to Use the Software. Only Licensor and or its authorized representatives are permitted to produce Product Keys for Software. "Production" means an operational environment into which the Software has been installed, which is processing live data and which has been deployed so that the intended users of the environment are able to access the live data. Production environments include quality assurance, disaster recovery, failover, and high availability environments. "Server" means a physical or virtual machine which has a server operating system and/or where more than one person can simultaneously use the computer either by direct or remote access. "Site" means the single physical location that corresponds to a single physical mailing address, where your Developers are licensed to use the Software under Exhibit A as designated in the Order Form. "Software" means the specific version of the Licensor proprietary software product for which you are granted a Product Key, in object code form only, licensed to you under this Agreement, including all documentation, Updates and all copies made by you. "Source Code" shall mean the human-readable form of the computer programming code and related system documentation including all comments and any procedural code such as job control language. "Update" collectively means all minor successor upgrades, revisions, patches, enhancements, fixes, modifications, additions or maintenance releases of the Software where any number to the right of the first "." in the product designation is changed by Licensor (e.g. "16.0.6355.0" is changed to "16.0.6360.0), if any, licensed to you by the Licensor but does not include New Releases. "Use" means to run, view, print, update, utilize, access, download, store, load, install, execute, display, or copy the Software into the memory of a computer or otherwise benefit from using the functionality of the Software in accordance with its documentation. "User" means any named identifiable individual person, not necessarily named at the time of a license grant, regardless of whether or not the individual is authorized by Licensee and actively Using the Software at any given time.

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