

GraphOn Software License Agreement

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THIS AGREEMENT IS THE ENTIRE AGREEMENT BETWEEN GRAPHON AND YOU RESPECTING THE LICENSED PRODUCTS AND SUPERSEDES ALL PRIOR ORAL OR WRITTEN PROPOSALS, AGREEMENTS OR COMMUNICATIONS RESPECTING ITS SUBJECT MATTER.

1. License Grant: Subject to the terms, covenants, conditions, limitations and terms contained in this Agreement, and provided You obtained the required license file from GraphOn or one of its authorized licensees and as long as You comply with the terms of this Agreement, GraphOn hereby grants to You a non-exclusive, personal, non-transferable, limited right and license ("License") to use the Software. GraphOn also grants to You a non-exclusive, personal, non-transferable, limited right and license, to use the Documentation in any form that GraphOn may deliver to You based on this Agreement in connection with Your use of the Licensed Products in accordance with this Agreement, all on the terms and conditions contained herein. The licenses granted by this Agreement shall begin upon the day that You click on "I Accept."

2. Software: The Software will not operate unless the license file required to activate the Software is automatically retrieved or manually installed. Software includes the following:

a. Host Software: Host Software allows multiple users to simultaneously access and run applications on UNIX, Linux and Windows computers. You may download only the machine-readable object code form of the Host Software. You may install the Host Software on one or more computers. Unless You acquire a three-server redundant license for failover support, the license file that activates the Host Software ("Host License") may only be installed on a single physical or virtual computer. Each Host License permits a specified number of concurrent users to access certain features of the Host Software, e.g., run applications, permitted applications, encryption level, and the availability of certain other features.

b. Portal Software: Portal Software provides a secure, high-availability gateway to GO-Global Hosts. You may download only the machine readable object code form of the Portal Software. You may install the Portal Software on one or more computers. Unless You acquire a three-server redundant license for failover support, the license file that activates the Portal Software ("the Portal License") may only be installed on a single physical or virtual computer. Each Portal License permits a specified number of concurrent users to access certain features of the Portal Software, e.g., select host, access files, host meetings, and certain other features. Portal Software may not be available for all versions of the Software.

c. Client Software: Client Software allows an individual computer to access or use the services provided by the Host and Portal Software. You may download only the machine-readable object code form of the Client Software. You may install the Client Software on one or more computers. While a license is not required for the Client Software to function, the Client Software will not operate in conjunction with the Host Software or the Portal Software without the use of a Host License or a Portal License, as appropriate.

d. In the event that the license file for a Host License or Portal License is replaced with a new license file as a result of a rehost or Software upgrade, You agree to destroy such replaced license file and to retain no copies of such license file after installation of the replacement license file.

3. License Fee: In consideration for the License granted under this Agreement, You shall pay to GraphOn or its resellers the respective license fee (the "License Fee") for the Licensed Products.

4. Restrictions: This License does not include use of the source code for the Licensed Products. You may only use the Licensed Products for Your own internal business operations. You agree not to assign, sell, sublicense, lease, transfer, pledge, rent or share Your rights under this Agreement. Any copies of the Licensed Products that You are permitted to make pursuant to this Agreement must contain the same copyright and other proprietary notices that appear on or in the Licensed Products. Except as permitted

under applicable law, You agree not to modify, adapt, translate, create derivative works, disassemble, decompile or otherwise reverse engineer or attempt to discover the source code of the Licensed Products. All rights not specifically granted to the Licensed Products are expressly reserved for GraphOn and its suppliers.

5. **Maintenance Services:** Maintenance and support service (“Maintenance”) must be purchased with each Host License and each Portal License. The initial term of Maintenance is one (1) year, beginning on the day of the month on which the product code was delivered to You. Maintenance is optional in subsequent years, but must be purchased annually so long as Maintenance is desired. Annual Maintenance fees are due prior to the beginning of each annual period.

a. Maintenance includes any and all updates, revisions, additions, modifications, and bug fixes for the Software, as well as any enhancements that GraphOn makes generally available without additional fee. Maintenance also includes upgrades for which GraphOn does not charge an additional fee. Maintenance continues to be available so long as the Software is being supported by GraphOn. It is GraphOn’s practice to support the current version of the Software and the immediate prior release, i.e., the latest release of the Software that has a lower major or minor version number than the current release. The major and minor version numbers are, respectively, the first and second numbers in the Product’s version number. Each new release of the GraphOn Software constitutes written notice of GraphOn’s intention to terminate support for the earliest release then being supported, unless GraphOn specifically agrees otherwise in writing with respect to a specific earlier release.

b. GraphOn’s authorized licensee or GraphOn shall have no obligation to provide Maintenance (a) if You do not elect to order or fail to renew and pay for Maintenance; (b) if You modify the Software subject to Maintenance without authorization; (c) in the event of problems due to Your negligence, or hardware or software not provided by GraphOn, or other causes not within GraphOn’s control. Reinstatement of lapsed annual Maintenance will be at GraphOn’s discretion, and will further be subject to GraphOn’s then-current reinstatement policy, including the payment of a reinstatement fee of not less than the amount of the lapsed Maintenance fees and any applicable penalty.

6. **Branding Services:** An annual branding support service (“Branding”) for the Software may be purchased directly from GraphOn. The term of Branding is one (1) year, beginning on the day of the acceptance by GraphOn of Your purchase order for Branding. Branding must be purchased annually so long as You desire Branding. Annual Branding fees are due prior to the beginning of each annual period. Reinstatement of lapsed annual Branding will be at GraphOn’s discretion, and will further be subject to GraphOn’s then-current reinstatement policy, including the payment of a reinstatement fee of not less than the amount of the lapsed Branding fees and any applicable penalty.

7. **Proprietary Rights:** You acknowledge that the Licensed Products, and any copies that you make, constitute and incorporate confidential and proprietary information and trade secrets of GraphOn and its suppliers. You agree to safeguard the confidentiality thereof, and not to use the Licensed Products, or any copies thereof, other than as permitted under this Agreement, nor to publish, disclose, or provide access to the Licensed Products to any person other than to Your authorized employees or contractors and consultants who have agreed in writing to be bound by these confidentiality obligations. You further agree to keep confidential and protect from unauthorized disclosure all other information that GraphOn may designate as confidential or proprietary. You may not remove any copyright, trade secret or other intellectual property notices on any Licensed Products, reports or copies thereof.

8. **Audit Rights:** GraphOn reserves the right to audit the compliance of Your use of the Licensed Products with the terms of this Agreement. You agree to cooperate with any audit request and provide GraphOn with all reasonable assistance and access to information.

9. **Warranty Disclaimer:** GraphOn does not warrant that the Licensed Products will meet Your requirements or that operation of the Licensed Products will be uninterrupted or that the Licensed Products will be error-free. THE LICENSED PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT ARE HEREBY EXCLUDED. THE APPLICABILITY OF THE PRINCIPLES OF THE LAW OF SOFTWARE COMPUTING TO THIS AGREEMENT IS HEREBY EXPRESSLY DISCLAIMED AND SAID PRINCIPLES FORM NO PART OF THIS AGREEMENT. IF THE DOWNLOAD OF THE SOFTWARE IS DEFECTIVE, YOU MAY DOWNLOAD THE SOFTWARE AGAIN, AS YOUR SOLE AND EXCLUSIVE REMEDY.

10. **Limitation of Liability:** You bear the entire risk as to the quality and performance of the Licensed Products. GraphOn's cumulative liability to You or any other party for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement, shall not exceed the lesser of (i) GraphOn's current list price for the Licensed Products as of the date of Your purchase, and (ii) the License Fee, except that if the Licensed Products were provided at no charge, the amount shall not exceed ten dollars (\$10.00). IN NO EVENT WILL GRAPHON OR ITS RESELLERS BE LIABLE IN CONTRACT, TORT OR OTHERWISE, FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, INCLUDING ANY LOST PROFITS, LOST DATA OR LOST SAVINGS, EVEN IF A GRAPHON REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to You.

11. **Indemnification:** You agree to hold GraphOn and its successors, assigns, officers, directors, representatives, employees and agents, harmless from and against any claim, suit, loss, liability, penalty or damage (including incidental and consequential damages), costs and expenses (including reasonable attorneys' fees and expenses), arising out of Your breach of this Agreement.

12. **Termination:** This Agreement is effective upon the day that You click on "I Accept" and shall continue until terminated. You may terminate this Agreement at any time upon written notice to GraphOn. This Agreement will terminate immediately with notice from GraphOn, if You fail to comply with any provision of this Agreement. Upon termination of this Agreement for any reason, You must cease using the Licensed Products immediately and destroy all copies of the Licensed Products and certify in writing no more than two (2) business days after termination that You have complied with the foregoing. All provisions of this Agreement which must survive in order to give effect to its meaning will survive termination of this Agreement.

13. **Export Regulations:** You shall comply with all applicable laws and regulations of the United States and/or any foreign countries with respect to the use of the Licensed Products outside of the United States, including without limitation import and export restrictions, obtaining any necessary consents and licenses and registering or filing any document. You hereby certify that You will not knowingly transfer, export, re-export, transship, or use, directly or indirectly, the Licensed Products or related information or the direct product of such data, media, or products in violation of United States laws and regulations (including without limitation, the U.S. Export Administration Regulations), unless prior written authorization is obtained from us and the appropriate United States government agency. None of the Licensed Products may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) Cuba, Iraq, Libya, Yugoslavia, North Korea, Iran, Syria or any other country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders. By downloading or using the Licensed Products, You are

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15. **Governing Law:** This Agreement shall be governed by the laws of the State of California, USA, excluding the application of its conflicts of law rules.

16. **Dispute Resolution:** The emergency judicial relief authorized by Section 18 ("Specific Performance") may be brought at any time. In the event of any other dispute between GraphOn and You arising under this agreement, GraphOn's and Your chief operating officers agree to promptly engage in bona fide negotiations with a view to achieving a commercially reasonable resolution of such dispute. If such chief operating officers are unable to resolve the dispute within ninety (90) calendar days of their first substantive discussion, the dispute may then be submitted to the jurisdiction of a competent court by either party. The party initiating any court action shall be required to file the action in the jurisdiction where the defending party is located.

17. **No Assignment:** This Agreement shall bind and inure to the benefits of the parties hereto and their respective heirs, successors and permitted assigns. You may not lease, sell, sublicense, transfer or assign this Agreement or any of the rights or obligations created hereunder, without the express prior written consent of GraphOn. Nothing in this Agreement is intended to or shall confer any rights or remedies on any person other than the parties hereto, their respective successors and assigns.

18. **Specific Performance:** Because a breach of the provisions of this Agreement (including without limitation unauthorized use of the Licensed Products or breach of the confidentiality provision) would cause irreparable harm and significant injury which would be difficult to ascertain and which would not be compensable by damages alone, You agree that GraphOn has the right to enforce those provisions by injunction (without the necessity of posting bond), specific performance or other equitable relief without prejudice to any other rights or remedies GraphOn may have.

19. Any notice, request or other communication required or permitted to be delivered hereunder shall be in writing, and shall be deemed effective (a) as of the date it is delivered to the party to be charged thereby by hand, (b) as of the date it is sent to that party by telephone fax with confirmation received followed by a copy by U.S. mail or (c) one (1) business day after it is delivered to that party by a reputable overnight courier and properly addressed to that party.

20. **Miscellaneous.** This Agreement may not be modified except by a writing, executed by GraphOn and You. If any provision is or becomes, at any time or for any reason, unenforceable or invalid, the remaining provisions shall continue with the same effect as if such unenforceable or invalid provision was not inserted herein, provided that the ability of either party to obtain substantially the bargained-for performance of the other shall not have thereby been impaired.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

I ACCEPT
OR
I DECLINE