



## End User License Agreement

NOTICE TO ALL USERS: PLEASE READ THIS CONTRACT CAREFULLY. BY INSTALLING OR USING THE SOFTWARE, YOU (A SINGLE ENTITY) AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN CONTRACT SIGNED BY YOU. IF YOU DO NOT AGREE TO ALL THE TERMS OF THIS AGREEMENT, DO NOT INSTALL OR USE THE SOFTWARE. ANY INDIVIDUAL ACKNOWLEDGING THE TERMS OF THIS AGREEMENT DOES SO ON BEHALF OF THE ENTITY HE/SHE REPRESENTS.

### 1. Definitions.

a. "Software" means (a) all of the contents of the files, disk(s), CD-ROM(s) or other media (including electronic media), which may accompany a hardware appliance provided by or on behalf of Townsend ("Hardware"), or such contents as are hosted by Townsend or its distributors, resellers, OEM/MSP partners, or other business partners on behalf of Townsend (collectively "Authorized Partner(s)"), including but not limited to (i) Townsend or third party computer information or software and (ii) related explanatory materials in printed, electronic, or online form, including without limitation the then current Maintenance Policy if applicable ("Documentation"); and (b) upgrades, modified or subsequent versions and updates of Software, if any, licensed to you by Townsend or an Authorized Partner as part of a maintenance subscription.

b. "Use" or "Using" means to access, install, download, copy or otherwise benefit from using the Software.

c. "Permitted Number" means one (1) or the number otherwise indicated under a valid license (e.g., volume license) granted by Townsend.

d. "Virtual Environment" means an operating system, hosted by a computer system, that operates as a distinct computing environment and accepts information in digital or similar form and manipulates it for a specific result based upon a sequence of instructions.

e. "Townsend" means Townsend Security, Inc., a Washington corporation, with offices located at 105 8<sup>th</sup> Avenue SE, Suite 301, Olympia, WA 98501, USA.

2. License Grant. Subject to the payment of the applicable license fees, and subject to the terms and conditions of this Agreement, Townsend hereby grants you a non-exclusive, non-transferable license to Use the Software subject to any restrictions or usage terms specified herein or in the Documentation. Some third party materials included in the Software and/or the Hardware may be subject to other terms and conditions, which are typically found in a "Read Me" file in the Software. If you issue a purchase order to Townsend or an Authorized Partner and it contains additional terms or terms that conflict with this Agreement or the Documentation, then the terms and conditions specified in this Agreement or Documentation shall control.



For the first year of this License, and thereafter so long as you remain current in your Maintenance subscription payments, you will also receive support from Townsend or its Authorized Partner according to the terms of Townsend's then current, applicable Maintenance Policy. By Using the Software, you agree to the terms, conditions and limitations described in the Maintenance Policy. The Maintenance Policy is located on Townsend's website at <http://townsendsecurity.com/downloads/misc/maintenance-policy.pdf>.

3. Term. The license granted above shall be perpetual unless and until terminated as set forth in this Agreement. The license will terminate automatically if you fail to comply with any of the limitations or other requirements described herein. Upon any termination of this Agreement, you must cease use of the Software and destroy all copies of the Software and the Documentation.

4. Updates. This license is limited to the version of the Software delivered by Townsend and does not include Updates, unless the Update is delivered as part of a current Maintenance subscription. After the Maintenance subscription period has expired, you have no further rights to receive any Updates without purchase of a new license for the Software.

5. Ownership Rights. The Software is protected by United States' and other copyright laws, international treaty provisions and other applicable laws in the country in which it is being used. Townsend and its suppliers own and retain all right, title and interest in and to the Software, including all copyrights, patents, trade secret rights, trademarks and other intellectual property rights therein. Your possession, installation, or use of the Software does not transfer to you any title to the intellectual property in the Software, and you will not acquire any rights to the Software except as expressly set forth in this Agreement. Any copy of the Software and Documentation authorized to be made hereunder must contain the same proprietary notices that appear on and in the Software and Documentation.

6. Multiple Environment Software/Multiple Language Software/Dual Media Software/Multiple Copies/Bundles/Updates. Whether or not the Software supports multiple platforms or languages, you receive the Software on multiple media, you otherwise receive multiple copies of the Software, or you receive the Software bundled with other software, the total number of your Virtual Environments on which all versions of the Software is installed may not exceed the Permitted Number. If the Software is an Update to a previous version of the Software, you must possess a valid license to such previous version in order to Use the Update. You may continue to Use the previous version of the Software on your Virtual Environment after you receive the Update solely to assist you in the transition to the Update and provided that (i) the Update and the previous version are installed on the same Virtual Environment; (ii) the previous version or copies thereof are not transferred to another Virtual Environment unless all copies of the Update are also transferred to such Virtual Environment; and (iii) you acknowledge that any obligation Townsend may have to support the previous version of the Software ends upon availability of the Update.

7. Evaluation Product Additional Terms. If the product you have received with this license has been identified as "Evaluation" Software or "Beta" Software, then the provisions of this section



apply. To the extent that any provision in this section is in conflict with any other term or condition in this Agreement, this section shall supersede such other term(s) and condition(s) with respect to the Evaluation or Beta Software (hereafter collectively referred to as “Beta Software”), but only to the extent necessary to resolve the conflict. You acknowledge that the Beta Software may contain bugs, errors and other problems that could cause system or other failures and data loss. Consequently, Beta Software is provided to you "AS-IS", and Townsend disclaims any warranty or liability or obligations to you of any kind. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, TOWNSEND’S LIABILITY AND THAT OF ITS SUPPLIERS AND AUTHORIZED PARTNERS SHALL BE LIMITED TO THE SUM OF FIFTY DOLLARS (U.S. \$50) IN TOTAL. You acknowledge that Townsend has not promised or guaranteed to you that Beta Software will be announced or made available to anyone in the future, that Townsend has no express or implied obligation to you to announce or introduce Beta Software, and that Townsend may not introduce a product similar to or compatible with any Beta Software. Accordingly, you acknowledge that any research or development that you perform regarding the Beta Software or any product associated with the Beta Software is done entirely at your own risk. During the term of this Agreement, if requested by Townsend, you will provide feedback to Townsend regarding testing and use of the Beta Software, including error or bug reports; you agree to grant Townsend a perpetual, non-exclusive, royalty-free, worldwide license to use, copy, distribute, make derivative works and incorporate the feedback into any Townsend product at Townsend’s sole discretion. If you have been provided Beta Software pursuant to a separate written agreement, your use of the Beta Software is also governed by such agreement. Upon receipt of a later unreleased version of the Beta Software or release by Townsend of a publicly released commercial version of the Beta Software, whether as a stand-alone product or as part of a larger product, you agree to return or destroy all earlier Beta Software received from Townsend and to abide by the terms of the End User License Agreement for any such later versions of the Beta Software. Your Use of the Beta Software is limited to 30 days unless otherwise agreed to in writing by Townsend.

8. Restrictions. Your use of the Software must at all times comply with applicable laws and regulations. You may not sell, lease, license, rent, loan, resell or otherwise transfer, with or without consideration, the Software. If you enter into a contract with a third party in which the third party manages your information technology resources (“Managing Party”), you may transfer all your rights to Use the Software to such Managing Party, provided that (a) the Managing Party only Uses the Software for your internal operations and not for the benefit of another third party; (b) the Managing Party agrees to comply with the terms and conditions of this Agreement, and (c) you provide Townsend with advance written notice identifying the Managing Party that will be Using the Software on your behalf. You may not permit third parties to benefit from the use or functionality of the Software via a timesharing, service bureau, software as a service, or other arrangement. You may not reverse engineer, decompile, or disassemble the Software, except to the extent the foregoing restriction is expressly prohibited by applicable law. You may not modify, or create derivative works based upon, the Software in whole or in part. You may not copy the Software or Documentation except as expressly permitted in this Agreement. You may not remove any proprietary notices or labels on the Software. All rights not expressly set forth hereunder are reserved by Townsend.



If you install or otherwise use the Software in a cloud environment, your Use of the Software is subject to, and must be done in compliance with, the applicable privacy and acceptable use policies of the applicable cloud service provider. You shall indemnify and hold Townsend harmless against any loss, cost, or liability resulting from your violation of any such policies.

## 9. Warranty and Disclaimer.

a. Limited Warranty. Townsend warrants that for sixty (60) days from the date of original purchase the media (e.g., CD ROM), if any, on which the Software is contained and provided to you will be free from defects in materials and workmanship. Townsend warrants that the Hardware shall be free from defects in material and workmanship under normal use and service and substantially conform to the written documentation accompanying the Hardware for a period of three hundred sixty-five (365) days from the date of purchase of the Hardware.

Upon discovery of any failure of the Hardware, or component thereof, to conform to the applicable warranty during the applicable warranty period, you are required to contact us within ten (10) days after such failure and seek a return material authorization (“RMA”) number. Townsend will promptly issue the requested RMA as long as we determine that you meet the conditions for warranty service. The allegedly defective Hardware, or component thereof, shall be returned to Townsend, securely and properly packaged, freight and insurance prepaid, with the RMA number prominently displayed on the exterior of the shipment packaging and with the Hardware. Townsend will have no obligation to accept any Hardware which is returned without an RMA number.

Upon completion of repair or if Townsend decides, in accordance with the warranty, to replace a defective Hardware, Townsend will return such repaired or replacement Hardware to you, freight and insurance prepaid. In the event that Townsend, in its sole discretion, determines that it is unable to replace or repair the Hardware, Townsend will refund to you the F.O.B. price paid to Townsend for the defective Hardware. Defective Hardware returned to Townsend will become the property of Townsend.

The warranties contained in this agreement will not apply to any Software or Hardware which:

- A. has been altered, supplemented, upgraded or modified in any way; or
- B. has been repaired except by Townsend or its designee; or
- C. has been used in a manner inconsistent with the terms of this Agreement or the Documentation.

Additionally, the warranties contained in this Agreement do not apply to repair or replacement caused or necessitated by: (i) events occurring after risk of loss passes to you such as loss or damage during shipment; (ii) acts of God including without limitation natural acts such as fire, flood, wind, earthquake, lightning or similar disaster; (iii) improper use, environment, installation or electrical supply, improper maintenance, or any other misuse, abuse or mishandling; (iv) governmental actions or inactions; (v) strikes or work stoppages; (vi) your failure to follow applicable use or operations instructions or manuals; (vii) your failure to



implement, or to allow Townsend or its designee to implement, any corrections or modifications made available to you by Townsend; (viii) your use of add-on tools in connection with the Software, or (ix) other events outside Townsend's reasonable control.

Townsend does not warrant that the Hardware or the Software will meet your requirements or that operation of the Hardware or the Software will be uninterrupted or error-free. Nor does Townsend warrant the performance of any Hardware or Software installed or operated in a Virtual Environment not controlled by Townsend, whether or not the Hardware or Software is intended for such operation (including, without limitation, any cloud applications). Nor does Townsend warrant the performance of any Software to which any other software has been connected.

Hardware may carry additional warranty from the manufacturer, and Townsend will exercise commercially reasonable efforts to provide you the benefit of any such warranty. Hardware warranty may also be extended as part of your paid Maintenance subscription, pursuant to Townsend's then current Maintenance Policy

b. Customer Remedies. Townsend's and its suppliers' entire liability and your exclusive remedy for any breach of the foregoing warranties shall be, at Townsend's option, either (i) return of the price Townsend received for the license, or (ii) replacement of the defective Software media or Hardware. You must return the defective Software media or Hardware to Townsend at your expense within the warranty period, with an RMA as applicable. This limited warranty is void if the defect has resulted from accident, abuse, or misapplication. Any replacement Software or Hardware will be warranted for the remainder of the original warranty period. Outside the United States, this remedy is not available to the extent Townsend is subject to restrictions under United States export control laws and regulations.

c. Warranty Disclaimer. Except for the limited warranty set forth herein, THE SOFTWARE AND HARDWARE ARE PROVIDED "AS IS" AND TOWNSEND MAKES NO WARRANTY AS TO THEIR USE OR PERFORMANCE. EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM THE EXTENT TO WHICH CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW, TOWNSEND, ITS SUPPLIERS AND AUTHORIZED PARTNERS MAKE NO WARRANTY, CONDITION, REPRESENTATION, OR TERM (EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY, SATISFACTORY QUALITY, INTEGRATION, OR FITNESS FOR A PARTICULAR PURPOSE. YOU ASSUME RESPONSIBILITY FOR SELECTING THE SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE SOFTWARE. WITHOUT LIMITING THE FOREGOING PROVISIONS, TOWNSEND MAKES NO WARRANTY THAT THE SOFTWARE WILL BE ERROR-FREE OR FREE FROM INTERRUPTIONS OR OTHER FAILURES OR THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS.

10. Limitation of Liability. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, SHALL TOWNSEND OR ITS AUTHORIZED PARTNERS OR SUPPLIERS BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR LOSS OF PROFITS, LOSS OF GOODWILL OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES



INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR FOR ANY OTHER DAMAGE OR LOSS. IN NO EVENT SHALL TOWNSEND OR ITS AUTHORIZED PARTNERS OR SUPPLIERS BE LIABLE FOR ANY DAMAGE IN EXCESS OF THE PRICE PAID FOR THE SOFTWARE, IF ANY, EVEN IF TOWNSEND OR ITS AUTHORIZED PARTNERS OR SUPPLIERS SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. This limitation shall not apply to liability for death or personal injury to the extent that applicable law prohibits such limitation. Furthermore, some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so this limitation and exclusion may not apply to you. Townsend is acting on behalf of its suppliers and Authorized Partners for the purpose of disclaiming, excluding and/or limiting obligations, warranties and liability as provided in this Agreement, but in no other respects and for no other purpose. The foregoing provisions shall be enforceable to the maximum extent permitted by applicable law.

11. Notice to United States Government End Users. The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement. Manufacturer is Townsend.

12. Export Controls. You acknowledge that the Software is subject to the export control laws and regulations of the United States of America ("US"). You shall not export or re-export the Software, directly or indirectly, to (i) any countries that are subject to US export restrictions; (ii) any end user known, or having reason to be known, to intend to utilize them in the design, development or production of nuclear, chemical or biological weapons; or (iii) any Specially Designated National or other end user who has been prohibited from participating in transactions by any federal agency of the US government. You further acknowledge that Software may include technical data subject to export and re-export restrictions imposed by US law.

13. High Risk Activities. The Software is not fault-tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage (collectively, "High Risk Activities"). TOWNSEND EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.

14. Governing Law. This Agreement will be governed by and construed in accordance with the substantive laws in force in the State of Washington. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The venue for any dispute arising under this Agreement will lie exclusively in Thurston County, Washington.





15. Free Software. This product includes or may include some software programs (“Free Software”) that are licensed (or sublicensed) to the user under the GNU General Public License (GPL) or other similar software licenses which, among other rights, may permit the user to copy, modify and redistribute certain programs, or portions thereof, and have access to the source code. The GPL requires that the source code be made available to users of any software covered under the GPL. For any such software, the source code is made available in a designated directory created by installation of the Software, or designated internet page, or at the Townsend address below. Free Software which may be included in this product includes SQLite ([www.sqlite.org](http://www.sqlite.org)), Webmin ([www.webmin.com](http://www.webmin.com)), Perl ([www.perl.org](http://www.perl.org)), OpenSSL ([www.openssl.com](http://www.openssl.com)), certain Drupal modules ([www.drupal.org](http://www.drupal.org)), “cryptography” (cryptographi.io), Libcurl (<http://curl.haxx.se/libcurl/>), Libini (<https://github.com/pccruei/libini>), and certain code from RFC4634 ([www.ietf.org](http://www.ietf.org)). The terms of any Free Software licenses are applicable only to the Free Software.

16. Audit for Volume Licenses. Townsend reserves the right to periodically audit you to ensure that you are not using any Software in violation of this Agreement. During standard business hours and upon prior written notice, Townsend may visit you and you will make available to Townsend or its representatives any records pertaining to the Software. The cost of any requested audit will be solely borne by Townsend, unless such audit discloses an underpayment or amount due to Townsend in excess of five percent (5%) of the initial license fee for the Software or you are using the Software in an unauthorized manner, in which case you shall pay for the cost of the audit in addition to any underpaid amounts due Townsend.

17. Intellectual Property Indemnification. Townsend shall defend any legal claim instituted against you alleging that Townsend software licensed to you directly infringes any U.S. patent, trade secret, trade mark or copyright existing or issued as of the Effective Date, provided that you (i) promptly notify Townsend in writing of such claim; (ii) grant Townsend sole control of the defense and settlement of such claim; and (iii) provide all assistance, information and authority required for the defense and settlement of the claim. Townsend’s obligations under this Section will not apply with respect to any Townsend software that is: (i) modified by any person other than Townsend where such alleged infringement relates to such modification; (ii) combined with other software or hardware not provided by Townsend where the alleged infringement relates to such combination (including, without limitation, the use of add-on tools); (iii) used other than in accordance with this Agreement; (iv) used in any manner incident to an infringement not resulting primarily from the Townsend product; or (v) created by Townsend in accordance with designs, plans or specifications requested by you where the requested designs, plans or specifications gave rise to the alleged infringement. In addition, Townsend's obligations hereunder will not apply to any alleged infringement occurring after you have received notice of such suit or proceeding unless Townsend has given written permission for such continuing infringement.

If the Software is held to infringe any intellectual property right and its use or sale enjoined, or if in the opinion of Townsend such Software is likely to become the subject of such a claim of infringement, Townsend may, in its sole discretion and at its own expense and as your sole and exclusive remedy, either procure a license that will protect you against such claim without cost



to you, or replace such Software with non-infringing Software, or require return of such Software and refund an equitable portion of the price paid to Townsend for such Software.

18. Privacy Protection. You will not, under any circumstances, send or provide to Townsend any Personally Identifiable Information about your customers or any other person, including without limitation address, social security number, date and place of birth, mother's maiden name, or biometric records, or any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

19. Confidentiality. Except (i) in connection with a sale of substantially all of the party's assets, merger, or similar corporate transaction, (ii) for tax purposes and to satisfy other legal or regulatory requirements, and (iii) as necessary to negotiate and implement the terms of this Agreement, to internal and external advisors and employees under obligations of confidentiality, you agree to not disclose to third parties any confidential information exchanged in connection with this Agreement, including without limitation the pricing for the Software. You acknowledge that monetary damages may not be a sufficient remedy for unauthorized disclosure of such information and that Townsend shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction. The obligations of confidentiality are meant to survive termination of this Agreement.

20. Miscellaneous. This Agreement sets forth all rights for the user of the Software and is the entire Agreement between the parties. This Agreement supersedes any other communications, representations or advertising relating to the Software, Hardware and Documentation. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of Townsend. No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by Townsend. No third party is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. This Agreement is written in English. Any translation of this Agreement is for your convenience and is not binding on Townsend. The original English version of this Agreement shall control in case of any conflict with a translated version.

21. Townsend Customer Contact. If you have any questions concerning these terms and conditions, or if you would like to contact Townsend for any other reason, please call (360) 359-4400, FAX to (360) 357-9047, or write: Townsend Security, Inc., Attention: Customer Service, 105 8<sup>th</sup> Avenue SE, Suite 301, Olympia, WA 98501. Alternatively, you may contact Townsend at [support@townsendsecurity.com](mailto:support@townsendsecurity.com) or at the local number listed on [townsendsecurity.com](http://townsendsecurity.com).





Townsend Security, Inc.

\_\_\_\_\_ Company

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Signature Date

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Signature Date

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Name

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