OMNIBYTE TECHNOLOGY, INC.

END USER LICENSE AGREEMENT

This End User License Agreement (this "Agreement" or "EULA") is a binding agreement between you ("**Customer**," "**you**," or "**your**") and OmniByte Technology, Inc., a North Dakota corporation with its principal place of business at, 1854 NDSU Research Cir N, Fargo, North Dakota ("**OmniByte**," "**we**,", "**our**" or "**us**"). This Agreement governs your access to and use of the Application Software (as defined in Section 1 below) or used as part of a managed service offered by OmniByte (the "Managed Service")

THIS AGREEMENT TAKES EFFECT ON THE DATE YOU DOWNLOAD, ACCESS OR USE THE APPLICATION SOFTWARE OR THE DATE YOU START USING THE MANAGED SERVICE (THE "**EFFECTIVE DATE**"). BY ACCESSING OR USING THE APPLICATION SOFTWARE OR THE MANAGED SERVICE, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS EULA; (B) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS EULA AND, IF ENTERING INTO THIS EULA FOR AN ORGANIZATION, THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT ORGANIZATION; AND (C) ACCEPT THIS EULA AND AGREE THAT YOU ARE LEGALLY BOUND BY THIS EULA. IF YOU DO NOT ACCEPT THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THE APPLICATION SOFTWARE OR THE MANAGED SERVICE. YOU MAY ALSO NOT ACCESS THE APPLICATION SOFTWARE OR MANAGED SERVICE IF YOU ARE A COMPETITOR OF OMNIBYTE, EXCEPT WITH OUR PRIOR WRITTEN CONSENT.

1. Definitions. Defined terms used in this EULA shall have the meanings given to them below:

   1.1 "**Aggregated Statistics**" has the meaning set forth in Section 3.5.

   1.2 "**Application Software**" means OmniByte standard, unmodified proprietary application software products, applications, "apps" and programs (but, for the avoidance of doubt, excluding any third-party software included therein or associated therewith) which Customer has licensed and/or been granted the right to access and use under an order. It is limited to machine readable code (generally referred to as executable or object code) and the user instructions included in the Software Documentation. It does not include vocabularies and other items generally referred to as source code, nor any descriptions not included in the Software Documentation.

   1.3 **"Authorized User"** means Customer and Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Application Software under the rights granted to Customer pursuant to this EULA, and (ii) for whom access to the Managed Service has been purchased hereunder in accordance with the applicable purchase order.

   1.4 **"Bug"** means "a software defect in the Application Software or the Managed Service, which consists of a nonconformity between the unmodified software and its applicable functional specifications, which for the Application Software and the Managed Service are set forth in the Software Documentation.

   1.5 "**Customer Data**" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or any other Authorized User through the Managed Service.

   1.6 "**Current Release**" means the latest Release of the Application Software offered by OmniByte for general commercial distribution and other currently supported Releases as designated by OmniByte in the then current OmniByte Support Policy.

1.7 "**Environment**" means the complete infrastructure and Application Software installation running, which makes up the technical solution for a particular purpose, as specified in the applicable order. For example, "Production" or "Test".

1.8 **"Feedback"** has the meaning set forth in Section 10.

1.9 **"Fees"** has the meaning set forth in Section 5.

1.10 **"Fix"** "means a correction to an Issue, Bug or a Security Vulnerability in the Application Software. Fixes are compatible with the applicable Current Release designated by OmniByte.

1.11 **"Initial Term"** has the meaning set forth in Section 8.

1.12 **"Issue"** means an identified Bug, Outage or other event impacting the performance of the Managed Service.

1.13 **"Losses"** has the meaning set forth in Section 11.1.

1.14 **"Managed Service"** has the meaning set forth in the preamble to this EULA.

1.15 "**OmniByte IP**" means the Managed Service and Software Application (including any software component of the Managed Service), the Software Documentation, and all intellectual property provided to Customer or any other Authorized User in connection with the foregoing. For the avoidance of doubt, OmniByte IP includes Aggregated Statistics and any information, data, or other content derived from OmniByte's monitoring of Customer's access to or use of the Managed Service or Application Software but does not include Customer Data.

1.16 **"Outage"** means the elapsed net-resolution time during which it is not possible to log-in to the Managed Service by any Authorized User, as determined by OmniByte or the Microsoft Azure Services from automated health monitoring and system logs, due to a failure in the Azure Service.

1.17 **"Privacy Policy"** has the meaning set forth in Section 3.7.

1.18 **"Releases"** means a version of the Application Software designated by OmniByte as a "Release" and made available for general commercial distribution, typically containing new functionality, a cumulative set of Fixes and Improvements, as well as potential architectural changes.

1.19 **"Renewal Term"** has the meaning set forth in Section 8.

1.20 **"Service Suspension"** has the meaning set forth in Section 3.6.

1.21 "**Site**" means the site at which the Customer utilizes the Application Software.

1.22 "**Software Documentation**" means the reference documentation produced by OmniByte describing the function of, and provided together with, the Application Software or the Managed Service in either an on-line manual or knowledge base format.

1.23 **"Support Services"** means the support and maintenance provided or made available by OmniByte and purchased by Customer for particular Application Software, which includes different support options, as specified on the Order Form. Support Services may be limited to certain software installation(s), instance(s), environment(s), language version(s), and country(ies) /site(s) as specified in the applicable Order Form.

1.24. **"Term"** has the meaning set forth in Section 8.

1.25. **"Third Party Claim"** has the meaning set forth in Section 11.1.

1.26. "**Third-Party Components**" has the meaning set forth in Section 7.

1.27 "**Upgrade**" means a promotion from one Release of the Application Software to the New Release, which may require a project assignment separately agreed in writing between the Parties, that may include implementation services, migration of Content stored on the Cloud Platform, and other related professional services.

2. Application Software. If you purchased a license to use the Application Software, the following terms apply to you:

2.1 License Grant.   OmniByte grants you a non-exclusive, non-transferable, limited license to download, install and use the Application Software for any domains, servers and devices owned or otherwise controlled by you in accordance with the Application Software documentation.

2.2 Copies. You may maintain a separate non-production backup, disaster recovery and/or testing environment or server for the Application Software. You may not have more than one active production installation of the Application Software unless you purchase additional Application Software licenses.

2.3 User Restrictions. Download and/or use of the Application Software is limited to (a) the licenses purchased as specified in your purchase order; and (b) the number of users you have licensed and paid for.

2.4 Company Restrictions. You may use the Application Software only to process your data or data of your "Affiliates." An "Affiliate" is an entity which is Controlled By you and which has its own set of accounting records. "Controlled By" means ownership of at least 50% of the voting shares. The Application Software may not be used to process the data of any other entity or to operate a service bureau.

2.5 Ownership. We retain ownership of the Application Software and accompanying documentation and all rights not specifically granted to you. You may not modify, adapt, translate, reverse engineer, decompile, disassemble or create derivative works based on the Application Software, except and only to the extent that it is expressly permitted by applicable law. Subject to the terms of this EULA, you may view, print or download a reasonable number of copies of any content at the Site for your own informational purposes; provided, that you retain all copyright and other proprietary notices contained therein. Reproducing, copying or distributing any content, materials or design elements on the Site for any other purpose is strictly prohibited without the express prior written permission of OmniByte.

2.6 Support Services.   OmniByte will provide support services to you as described at https://omnibyte.com/legal/. Standard support is provided for ONE (1) YEAR or agreed upon terms (YEARS) based on the initial date of purchase. As part of standard support, OmniByte will provide you with changes and added features to the Application Software. If additional Application Software licenses are purchased after the initial purchase date, OmniByte will prorate the remaining days until the renewal anniversary.

2.7 New Releases and Planned Maintenance.

(a) OmniByte will maintain the Current Release so that it operates in substantial conformity with its Software Documentation and will make all reasonable efforts to resolve Issues [may also be referred to as Bugs] of which OmniByte becomes aware.

(b) Customer has the right to Fixes related to Current Release(s) as made available by OmniByte.

(c)   Customer has the right to any new Release of the Application Software made available by OmniByte.

(d)   Customer's use of Fixes and any new Release made available hereunder will be subject to the software license terms applicable to the Application Software and/or, where relevant, the applicable third-party license terms.

(e)   Fixes are made solely for the purpose of the applicable Current Release and OmniByte does not warrant conformity with other Releases of the Application Software or any other software. The implementation of new Releases of the Application Software may require Customer to acquire new releases of, or additional, third-party software and hardware, and may not be compatible with, be based on, or include the same technology, architecture, or functionality as prior Releases. The Application Software Fact Sheet provides updated information about hardware compatibility and is updated with each new Release.

3. <u>Managed Service</u>. If you purchase a subscription to use the Managed Service, the following terms apply to you:

3.1   <u>Access to the Managed Service</u>. OmniByte hereby grants you a revocable, non-exclusive, non-transferable, non-sublicensable, limited right to access and use the Managed Service during the Subscription Term solely for your internal business operations by Authorized Users in accordance with the terms and conditions herein. OmniByte shall provide you the access credentials to allow you access. The Managed Service shall be comprised of:

(a)   Installation and initialization of the Managed Service;

(b)   Facilitating network connectivity into the Managed Service (excluding for the avoidance of doubt Customer's network connectivity into the Managed Service);

(c)   Management of Managed Service and agreed Environments;

(d)   Installation of Fixes in accordance with the Support Terms; and

(e)   The provision of Managed Service availability information generated through monitoring tools.

(f)   In order to assure the continuity of the Managed Services, Customer must be in compliance with the Release/Service Update requirements described in the FormsPro Support Policy.

3.2   <u>Account Use</u>. You are responsible and liable for all uses of the Managed Service resulting from access provided by you, directly or indirectly, whether such access or use is permitted by or in violation of this EULA. Without limiting the generality of the foregoing, you are responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this EULA if taken by you will be deemed a breach of this EULA by you. You shall use reasonable efforts to make all Authorized Users aware of the provisions of this EULA applicable to such Authorized User's use of the Managed Service and shall cause Authorized Users to comply with such provisions.

3.3   <u>Customer Data</u>. Customer Data is owned by you. You, not OmniByte shall have sole discretion and control as to the Customer Data entered into and used with the Managed Service. Accordingly, you have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and

the right to use all Customer Data. OmniByte shall not be responsible or liable for your deletion, destruction, damage, loss or failure to store Customer Data. Certain types of information are subject to special regulation which would give rise to specific data handling requirements under applicable laws and regulations ("Regulated Information"). OmniByte does not intend to receive Regulated Information and shall not be responsible for any requirements therefor.

3.4   Passwords and Access Credentials. You are responsible for keeping your passwords and access credentials associated with the Managed Service confidential. You will not sell or transfer them to any other person or entity. You will promptly notify us about any unauthorized access to your passwords or access credentials.

3.5   Aggregated Statistics. Notwithstanding anything to the contrary in this EULA, OmniByte may monitor Customer's use of the Managed Service and collect and compile data and information related to Customer's use of the Managed Service in an aggregated and anonymized, de-identified, or otherwise obfuscated manner, including to compile statistical and performance information related to the provision and operation of the Application Software. ("**Aggregated Statistics**"). As between OmniByte and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by OmniByte. You acknowledge that OmniByte may compile Aggregated Statistics based on Customer Data input into the Application Software. You agree that OmniByte may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information.

3.6   Suspension of the Application Software Service. Notwithstanding anything to the contrary in this Agreement, OmniByte may temporarily suspend Customer's and any other Authorized User's access to any portion or all of the Managed Service if: (i) OmniByte reasonably determines that (A) there is a threat or attack on the Managed Service; (B) Customer's or any other Authorized User's use of the Managed Service disrupts or poses a security risk to the Managed Service or to any other customer or vendor of OmniByte; (C) Customer or any other Authorized User is using the Managed Service for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) OmniByte's provision of the Managed Service to Customer or any other Authorized User is prohibited by applicable law; or (ii) any vendor of OmniByte has suspended or terminated OmniByte's access to or use of any third-party services or products required to enable Customer to access the Managed Service (any such suspension described in subclause (i) or (ii), a "**Service Suspension**"). OmniByte shall use commercially reasonable efforts to provide written notice of any Suspension to Customer and to provide updates regarding resumption of access following any Suspension. OmniByte shall use commercially reasonable efforts to resume providing access to the Managed Service as soon as reasonably possible after the event giving rise to the Suspension is cured. OmniByte will have no liability for any damage, liabilities, losses (including any loss of or profits), or any other consequences that Customer or any other Authorized User may incur as a result of a Suspension.

3.7   Privacy Policy. OmniByte complies with its privacy policy available at [https://omnibyte.com/privacy/] ("**Privacy Policy**"), in providing the Managed Service. The Privacy Policy is subject to change as described therein. By accessing, using, and providing information to or through the Managed Service, you acknowledge that you have reviewed and accepted our Privacy

Policy, and you consent to all actions taken by us with respect to your information in compliance with the then-current version of our Privacy Policy.

3.8 <u>Support</u>.

(a) OmniByte will provide Support Services subject to terms of OmniByte FormsPro Support Services and Service Level Agreement: https://omnibyte.com/legal/.

(b) The Managed Service is provided based on resources and capacity for the Environment configuration size set out in the Order Form to provide performance in accordance with industry norms for typical demand associated with the agreed use Level and other applicable restrictions. Customer understands that if Authorized Users or functionality are added that the Managed Service, capacity and related charges/fees may increase proportionally.

(c) OmniByte warrants that it uses standard virus detection technology when accessing and supplying the Managed Service and shall use all commercially reasonable efforts in the delivery of the Managed Service to keep and maintain the Environment free of viruses, worms and other malware during the Term, it being understood that Customer has the same obligation to prevent the transmission of viruses, worms and other malware into the Environment and will take all commercially reasonable steps within its control to do so e.g. the use of virus detection technology for the devices accessing the Managed Service.

3.9. <u>Customer Responsibilities</u>. Customer is responsible for day to day functional administration and usage of the Cloud Services, including but not limited to the following:

(a) Configuration and management of Customer on-site routes/firewalls used to establish VPN or other connectivity;

(b) Configuration and management of software (if any) installed on site with Customer (such as on-site print agents or off-shore environments);

(c) Installation, configuration, and maintenance of any software on end-user machines;

(d) Managing Customer Data;

(e) Internal Customer case/problem management; centralized co-ordination of Incident reporting to OmniByte in accordance with the terms of this Agreement;

(f) Creating and managing Authorized Users, profiles, settings and permissions;

(g) Configuring and managing archiving, history logging, tasks, background jobs, messages, and event actions;

(h) Report management and archiving, and print manager configuration; and

(i) Functional use of the Managed Service, including integrations.

3.10 <u>Software Service Availability</u>.

(a) Definitions. The following definitions applicable to this section only:

(1) "Availability" means such times where the Managed Service is available, i.e. not being subject to an Outage. The % availability calculation formula, measured over the relevant calendar month, is as follows (where "A" = Availability, "T" = the total Service Hours in the relevant calendar month (calculated in minutes), "O" = Sum of Outages): $A = (T - O) \times 100\% / T$.

(2) "Clock-Stop Events" means elapsed time, (a) during Scheduled Downtime, (b) waiting for necessary and requested response, input, assistance or approval from the Customer upon which the Application Software performance depends, and/or (c) during which an Excluded Incident exists.

(3) "Key User" means a person (or persons) appointed by the Customer who is trained and qualified to handle initial problem resolution and report Issues and Bugs in the Application Software.

(4) "Outage" means the elapsed net-resolution time during which it is not possible for one or more Authorized Users to log-in to the Managed Service, as determined by OmniByte or the cloud services vendor from automated health monitoring and system logs, due to a failure in the cloud services. The duration of an Outage is measured during service hours on a net-resolution time basis from which the accumulated time for all Clock-Stop Events related to the Outage will be deducted, until the Outage has been temporarily or permanently resolved.

(5) "Scheduled Downtime" means any period of scheduled maintenance used to perform any necessary changes, including any period scheduled by the Cloud Services Vendor. Scheduled Downtime comprises: (a) planned and scheduled maintenance periods as per the Planned Maintenance Policy; (b) Customer initiated downtime; (c) where necessary, scheduled additional maintenance windows, as agreed with Customer, to implement Customer-approved changes of the Managed Service; and (d) Cloud Services maintenance operations (scheduled by the cloud services vendor with notice provided approximately one week in advance).

(b) Service Level - Availability Target and Service Credits.

(1) The Availability target is 99.5% for the Managed Service. In the event the Availability target is not achieved during any calendar month, the Customer is entitled to a service credit as specified below ("Availability Service Credit"). Any cumulative Availability Service Credits will be applied quarterly as a reduction to the Customer's next invoice.

(2) The Availability Service Credit shall be:

 (i) Between 0.5% and 1% below Availability target: 5% of monthly Managed Service fees;

 (ii) Between 1% and 5% below Availability target: 15% of monthly Managed Services fees; and

 (iii) More than 5% below Availability target: 20% of monthly Managed Services fees.

Total Availability Service Credits per calendar month may not, in the aggregate, exceed the amount corresponding to one month's fees for the Managed Service hereunder.

(3) Any claim for an Availability Service Credit shall be reported as a Case by the Key User in the FormsPro case management portal, accompanied with a detailed written description of the applicable Incident to which it relates. Such a Case shall be raised within 60 days of the end of the calendar month in which the Outage to which the claim relates occurred. Customer must be in compliance with the AUP to make such a claim. OmniByte will evaluate all information reasonably available to it and make a good faith determination of whether an Availability Service Credit is owed and will use commercially reasonable efforts to process claims within thirty (30) days of receipt. If the Availability target in regards of the Production Environment is not achieved during any consecutive three (3) calendar months in any contract year and for which the Customer was entitled to a Availability Service Credit ("Availability Failure"), the Customer may terminate the Managed Service on providing at least five (5) days and no more than ninety (90) days written notice to OmniByte, provided such notice is received by OmniByte within thirty (30) days of determining such Availability Failure occurred. In the event of termination pursuant to this section: (a) Customer will be provided with a pro-rata refund of any fees paid for the Managed Service which relates to periods after the date of termination; and (b) Support Services shall continue, but on Support Terms for non- Managed Service customers, for the period Customer remains entitled to such Support Services. Termination of the Managed Service pursuant to this section 3.10 shall not impact any software license or other services (including for the avoidance of doubt Support Services) all of which will continue in full force and effect subject to the terms of the agreement in respect thereof. Customer acknowledges that the Availability target is not warranted. Any Availability Service Credits due to the Customer and the remedies for Availability Failure shall be the Customer's sole remedy with respect to any failure by OmniByte to meet the applicable Availability target.

(4) For the avoidance of doubt: (a) the Availability targets described herein are not part of or related to any other service level agreement or target as may be applicable between the parties e.g. for Support Services; (b) Availability Service Credits payable hereunder are alternative and not cumulative, which means that where a credit would be payable by OmniByte to Customer also under a different service level agreement for the same Incident, payment will only be made for the higher value one on a mutually exclusive basis e.g. where an Availability Service Credit is due as well as a credit in respect of Support Services; and (c) Availability Service Credits cannot be claimed for Outages constituting or resulting from Excluded Incidents.

4. <u>Use Restrictions.</u> You shall not, and shall not permit any Authorized Users to, use the, any Application Software component, the Managed Service or the Documentation for any purposes beyond the scope of the access granted in this EULA and the terms of any invoice provided by OmniByte. You shall not at any time, directly or indirectly, permit any Authorized Users to: (i) copy, modify, or create derivative work, in whole or in part, of the Application Software or Managed Service (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available any component of the Application Software, the Managed Service or any Documentation related thereto except as expressly permitted under this EULA; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise

attempt to derive or gain access to the source code of Application Software or Managed Service, in whole or in part; (iv) use the Application Software or Managed Service in order to build a competitive product or service; (v) copy any features, functions, graphics, trademarks or copyright of the Application Software or the Managed Service; (vi) use the Application Software or the Managed Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (vii) remove any proprietary notices from the Application Software, the Managed Service or the Documentation; or (viii) use the Application Software, Managed Service or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law, regulation, or rule. If the restriction set forth in clause (iii) above is prohibited by applicable law, you shall provide OmniByte with detailed prior written notice of any such intention to reverse engineer the Application Software or the Managed Service and shall provide OmniByte with a right of first refusal to perform such work at rates equal to those proposed by a recognized third-party software services OmniByte for such work.

5. <u>Fees and Payment.</u> Customer shall pay OmniByte the fees as described in the applicable invoice ("**Fees**") on or before the dates indicated therein. All annual subscription fees for the Managed Service shall be paid in advance of the subscription period to which such payment relates.

6. <u>Reservation of Rights</u>. OmniByte reserves all rights not expressly granted to you in this EULA. Except for the limited rights and licenses expressly granted under this EULA, nothing in this EULA grants, by implication, waiver, estoppel, or otherwise, to you or any third party any intellectual property rights or other right, title, or interest in or to the OmniByte IP.

7. <u>Third-Party Components</u>. The Application Software or Managed Service may contain or otherwise make use of software, code or related materials from third parties, including, without limitation, "open source" or "freeware" software ("**Third-Party Components**"). Third Party Components may be licensed under additional or other license terms that accompany such Third-Party Components. You acknowledge and agree that these accompanying license terms govern their use. Nothing in this EULA limits your rights under, or grants you rights that supersede, the license terms that accompany any Third-Party Components. OmniByte shall: (a) pass through to you any warranty or other rights it receives for any Third-Party Components; and (b) reasonably cooperate with you in enforcing such rights, at your expense.

8. <u>Term</u>. Unless earlier terminated in accordance with Section 9 below, the term of this EULA shall commence upon access to the Application Software or the Managed Service and continue for twelve (12) months thereafter, unless a multi-year, or other, agreement is otherwise agreed upon in a purchase order ("**Initial Term**"). This EULA shall automatically renew, at the then-current and then-applicable subscription price (each a "**Renewal Term**") upon the end of the Initial Term and each Renewal Term for the same period of time as the prior term, unless either party delivers written notice of non-renewal to the other party at least sixty (60) days prior to the end of the then-current Initial Term or Renewal Term, or as otherwise agreed. The Initial Term and any Renewal Term shall be referred to as the "**Term**".

9. <u>Termination</u>. Notwithstanding anything contained herein to the contrary, this EULA may be terminated: (a) by mutual agreement of OmniByte and you, (b) by either party if the other party is adjudicated as bankrupt, or if a petition in bankruptcy is filed against the other party and such petition is not discharged within sixty (60) days of such filing, (c) by either party if the other party materially breaches this Agreement and fails to cure such breach to such party's reasonable satisfaction within thirty (30) days following receipt of written notice thereof; or (d) by OmniByte immediately by delivery of written notice

thereof to you if you violate the use restrictions set forth in Section 8. Termination shall not limit either party from pursuing any remedies available to it, including injunctive relief, or relieve you of your obligation to pay all fees that have accrued or become payable hereunder. Any right, obligation, or required performance of the parties in this EULA which, by its express terms or nature and context is intended to survive termination of this EULA, will survive any such termination.

10. <u>Intellectual Property Ownership; Feedback</u>. As between you and us, (a) we own all right, title, and interest, including all intellectual property rights, in and to the Application Software and Managed Service, and any improvements, enhancements or modifications thereto or derivative works thereof; and (b) you own all right, title, and interest, including all intellectual property rights, in and to Customer Data. If you or any of your employees, contractors, or agents sends or transmits any communications or materials to us by mail, email, telephone, or otherwise, suggesting or recommending changes to the Application Software or Service, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), we are free to use such Feedback irrespective of any other obligation or limitation between you and us governing such Feedback. All Feedback is and will be treated as non-confidential.

11. Indemnification.

    11.1   OmniByte Indemnification.

        (a) OmniByte shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees ("**Losses**"), incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Application Software, the Managed Service, or any use of the Application Software or Managed Service in accordance with this EULA, infringes or misappropriates such third party's US patents, copyrights, or trade secrets, provided that Customer promptly notifies OmniByte in writing of the Third-Party Claim, cooperates with OmniByte, and allows OmniByte sole authority to control the defense and settlement of such Third-Party Claim.

        (b) If such a Third-Party Claim is made or OmniByte anticipates such a Third-Party Claim will be made, Customer agrees to permit OmniByte, at OmniByte's sole discretion, to (A) modify or replace the Application Software, or any component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use the Application Software, as the case may be. If OmniByte determines that neither alternative is reasonably available, OmniByte may terminate this EULA, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer and OmniByte shall refund the amounts (a) Customer prepaid for use of the Application Software or the Managed Software, or (ii) paid for the affected component or part of the Application Software or Managed Service. This Section 11.1(b) sets forth your sole remedies and our sole liability and obligation for any actual, threatened, or alleged Third-Party Claims that the Service infringe, misappropriate, or otherwise violate any intellectual property rights of any third party.

        (c) This Section 11 will not apply to the extent that any such Third-Party Claim arises from Customer Data or Third-Party Products.

11.2.   Customer Indemnification. Customer shall indemnify, hold harmless, and, at OmniByte's option, defend OmniByte and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all Losses arising from or relating to any Third-Party Claim (i) that the Customer Data, or any use of the Customer Data in accordance with this EULA, infringes or misappropriates such third party's intellectual property rights; or (ii) based on Customer's or any Authorized User's negligence or willful misconduct or use of the Application Software or the Managed Service in a manner not authorized by this EULA; provided that Customer may not settle any Third-Party Claim against OmniByte unless OmniByte consents to such settlement, and further provided that OmniByte will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

12. <u>Limitations of Liability</u>. IN NO EVENT WILL OMNIBYTE BE LIABLE UNDER OR IN CONNECTION WITH THIS EULA UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (A) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (B) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (C) LOSS OF GOODWILL OR REPUTATION; (D) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (E) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER OMNIBYTE WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL OMNIBYTE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS EULA UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO OMNIBYTE UNDER THIS EULA IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

13. <u>Modification.</u> YOU AGREE TO THIS EULA ELECTRONICALLY. YOU AUTHORIZE US TO PROVIDE YOU ANY INFORMATION AND NOTICES REGARDING THE APPLICATION SOFTWARE OR MANAGED SERVICE ("NOTICES") IN ELECTRONIC FORM. WE MAY PROVIDE NOTICES TO YOU (1) VIA E-MAIL OR (2) ON THE OMNIBYTE WEBSITE; (3) VIA THE APPLICATION SOFTWARE; OR (4) VIA THE MANAGED SERVICE. The delivery of any notice is effective when sent or posted, regardless of whether you read the notice or actually receive the delivery. It is your responsibility to check this EULA periodically for changes. Your continued use of or access to the Application Software or Managed Service following the posting of any changes to this EULA constitutes acceptance of those changes.

You acknowledge and agree that we have the right, in our sole discretion, to modify this EULA from time to time, and that modified terms become effective on posting. You will be notified of modifications in advance and are responsible for reviewing and becoming familiar with any such modifications. Additional consent to modified terms may be necessary, although your continued use of the Application Software or the Managed Service after the effective date of the modifications will be deemed acceptance of the modified terms.

14. <u>Export Regulation.</u> The Application Software and the Managed Service utilizes software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Application Software, the Managed Service, or the software or technology included in the Application Software or the Managed Service to, or make the Application Software, the Managed Service, the software or technology included in the Application Software or the Managed Service accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, regulation, or rule. You 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 Application Software, the Managed Service, or the software or technology included in the Application Software or the Managed Service available outside the US.

15. <u>Governing Law and Jurisdiction</u>. These Terms is governed by and construed in accordance with the internal laws of the State of North Dakota without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of North Dakota. Any legal suit, action, or proceeding arising out of or related to this EULA or the rights granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of North Dakota, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

16. <u>Force Majeure.</u> OmniByte is not liable for delay in the performance of its duties, obligations or responsibilities hereunder due to force majeure. A force majeure impediment is an unforeseen event which occurs after acceptance of orders, and which is beyond OmniByte's reasonable control, such as strikes, blockade, war, mobilization, pandemic, epidemic, natural disaster, refusal of license by government or other stipulations or restrictions by the authorities, Internet service failures, delays or availability issues (including downtime or service outages) or any other similar or dissimilar cause beyond the control of OmniByte. Notwithstanding the foregoing, a force majeure does not extinguish your obligations to pay the applicable Fees hereunder.

17. <u>Publicity</u>. You agree to be identified as a customer of OmniByte and agree that OmniByte may refer to you by name, trade name and trademark, if applicable, and may briefly describe your business in OmniByte's marketing materials and web site. You hereby grant OmniByte a license to use your name and any of your trade names and trademarks solely in connection with the rights granted to OmniByte pursuant to this marketing section. You grant OmniByte the right to add your name and company logo to our customer list and website.

18. <u>Miscellaneous</u>. This EULA constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. The terms of any purchase order or other document relating to the transactions contemplated by this EULA this EULA or delivered by you to OmniByte shall not apply. Any notices to us must be sent to our corporate headquarters address set forth in the preamble to this EULA this EULA and must be delivered either in person, by certified or registered mail, return receipt requested and postage prepaid, or by recognized overnight courier service, and are deemed given upon receipt by us. Notwithstanding the foregoing, you hereby consent to receiving electronic communications from us. These electronic communications may include notices about applicable fees and charges, transactional information, and other information concerning or related to the Application Software. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing. The invalidity, illegality, or unenforceability of any provision herein does not affect any other provision herein or the validity, legality, or enforceability of such provision in any other jurisdiction. Any failure to act by us with respect to a breach of this EULA by you or others does not constitute a waiver and will not limit our rights with respect to such breach or any subsequent breaches. This EULA is personal to you and may not be assigned or transferred for any reason whatsoever without our prior written consent and any action or conduct in violation of the foregoing will be void and without effect. We expressly reserve the right to assign this EULA and to delegate any of its obligations hereunder.

Last Modified: May 9, 2024