

## MORPHEUS DATA LLC END USER LICENSE AGREEMENT

THIS EULA IS A LEGALLY BINDING AGREEMENT BETWEEN LICENSEE END USER (“END USER” or “YOU”) AND MORPHEUS SETTING FORTH THE TERMS AND CONDITIONS GOVERNING THE USE AND OPERATION OF MORPHEUS PROPRIETARY COMPUTER SOFTWARE PRODUCTS (THE “SOFTWARE”) AND THE WRITTEN TECHNICAL SPECIFICATIONS FOR THE USE AND OPERATION OF THE SOFTWARE (THE “DOCUMENTATION”). WHERE THE SENSE AND CONTEXT PERMIT, REFERENCES IN THIS EULA TO THE SOFTWARE INCLUDE THE DOCUMENTATION. BY DOWNLOADING AND INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, AND/OR OTHERWISE ACCEPTING THIS EULA, END USER AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS EULA. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY OR LEGAL ENTITY TO THESE TERMS.

IF END USER DOES NOT AGREE TO OR ACCEPT THE TERMS OF THIS EULA, END USER MAY NOT DOWNLOAD, INSTALL, COPY, ACCESS OR OTHERWISE USE THE SOFTWARE.

### 1. DEFINITIONS

- 1.1 **“Documentation”** means the documentation in the form of online and printed media which describe the Morpheus feature set and operation.
- 1.2 **“Morpheus”** means Morpheus Data, LLC a Delaware Limited Liability Company with principal place of business being 7100 East Belleview Avenue, Suite G-11, Greenwood Village, CO 80111, USA
- 1.3 **“Transaction”** and **“Transaction Document”** have the following meanings: “Transaction(s)” is a License transaction pursuant to which End User: i) accepts this EULA as provided above and ii) takes actual or constructive possession of the Software. A Transaction may take place by any lawful means, electronically or in writing, and may be confirmed by a) purchase orders, credit orders, commitment letters, proof of concept specifications, license keys, amendments to this EULA or other similar materials, signed or unsigned, (each a “Transaction Document(s)”), or b) by the conduct of the affected parties. A Transaction may be initiated and implemented by any entity that is directly or indirectly a party to it, including End User, Morpheus, or authorized third party managed service providers (MSP) as well as distributors and/or resellers of the Software. A Transaction Document may contain usage, business, legal and other terms and conditions agreed to by the parties. The foregoing notwithstanding, each Transaction will require that: i) this EULA be accepted by End User and ii) End User obtains actual or constructive possession of the Software. In the event of a conflict or inconsistency between the terms and conditions of this EULA and those set forth in a Transaction Document, the terms and conditions of the Transaction Document will govern and control.
- 1.4 **“User”** means an individual who is authorized by You to use the Software in accordance with this Agreement and the applicable license type set forth herein, and who has been supplied credentials by You (or by Morpheus at Your request). A User may include but is not limited to Your employees and those of Your consultants and contractors who use the Software on Your behalf.
- 1.5 **“Workload Element”** is defined as a discovered or managed instance made up of any one of the following: (i) a Bare Metal Server, (ii) a Virtual Machine, or (iii) a container Deployment (made up of Pods or ReplicaSets). For clarity, a hypervisor or docker host is not a Workload Element. For discovered instances (e.g. in a brownfield discovery scenario), a Workload Element is representative of an individual unit of compute as reported by the cloud into which the Software is connecting and discovering. For managed instances provisioned by the Software, a Workload Element is the logical application service which could include multiple VMs or containers.
- 1.6 **“Subscription Level”** is defined as the maximum allowable number of concurrent Workload Elements in use at any time during the subscription period. Morpheus allows for bursting up to 20% beyond the Subscription Level for

the peak concurrent usage in any month not in excess of 3 months cumulatively during the subscription period.

## 2. FREE, TRIAL, AND COMMUNITY EDITION SOFTWARE

A License designated as a “Free”, “Trial”, or “Community” License in a Transaction Document or other means authorizes End User to use one (1) copy of the Software for limited term period for non-production evaluation or demonstration purposes only. Software under these designations is provided “as-is” with no warranty. Additional terms and conditions may appear on the [morpheusdata.com](http://morpheusdata.com) or [morpheushub.com](http://morpheushub.com) web pages and are incorporated into this Agreement by reference.

## 3. LICENSE GRANT

- 3.1 **Subscription or Term License.** Under the terms of a Subscription, or Term License, the Software is licensed for the period of time set forth in the Transaction Document. If the term or Subscription is not specified in the Transaction Document, then the term is twelve (12) months.
- 3.2 **Software Activation and Audit.** Morpheus’s Software may transmit license-related data at the time of installation, registration, use or update to a Morpheus license server (“Morpheus Hub”) in order to activate Your license and provide You with update notifications. We may use the connection to Morpheus Hub to verify usage is in compliance with restrictions set forth within the Transaction Documents as related to both term and quantity of supported workload elements. If connectivity is not possible then at Morpheus’s request, you will generate a monthly usage report and transmit such report to Morpheus at [usagereport@morpheusdata.com](mailto:usagereport@morpheusdata.com). The report will include the peak use for the month. If sustained usage exceeds the licensed number of Workload Elements, then Customer renewal for the following term will be updated to the higher level.
- 3.3 **Copyright and other Restrictions.** Morpheus retains all rights, implied or otherwise, which are not expressly granted to You hereunder, and retains all rights, title and interest in and to the Software. The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software is licensed, not sold and contains copyrighted material, trade secrets and other proprietary material of Morpheus. All right, title and interest in the Software remains at all times with Morpheus. In no event will End User directly or indirectly permit the Software to be decompiled, reverse engineered, or disassembled. End User will not disclose, transfer or otherwise make available the Software, or results of any tests of the Software, to any third party without the prior written consent of Morpheus. You may copy the Software solely for backup or archival purposes.
- 3.4 **Acceptable Use.** You agree that Your use of the Software will comply with all applicable laws, rules and regulations and that You will not, through use of the Software or otherwise, create any application or other program that would disable, hack or otherwise interfere with any security, digital rights management, verification or authentication mechanisms implemented in or by the Software.
- 3.5 **Export.** You may not export the Software into any country prohibited by the United States Export Administration Act and the regulations thereunder. You acknowledge that the export of any Software is subject to export or import control and You agree that any Software or the direct or indirect product thereof will not be imported or exported (or re-exported from a country of installation) directly or indirectly unless You obtain all necessary licenses from the U.S. Department of Commerce or other applicable agency or governmental body as required under applicable law. Without limiting the generality of the foregoing, You agree that the Software is prohibited for export or re-export to Cuba, North Korea, Iran, Libya, Syria and Sudan or to any person or entity on the U.S. Department of Commerce Denied Persons List or on the U.S. Department of Treasury’s lists of Specially Designated Nationals, Specially Designated Narcotics Traffickers or Specially Designated Terrorists, as such is changed from time to time.

- 3.6 **Continual Development.** You acknowledge that the Software may change and that future versions of the Software may be incompatible with prior versions of the Software. You acknowledge that Morpheus may stop (permanently or temporarily) providing the Software (or any features within the Software) in Morpheus's sole discretion, with prior notice, of at least twelve (12) months. This Agreement governs any updates, releases, revisions or enhancements to the Software which Morpheus may furnish to You.
- 3.7 **Third-Party Applications.** If You use the Software with applications developed by a third party or to access data, content or resources provided by a third party, You agree that Morpheus is not responsible for those applications, data, content, or resources. You understand that all data, content or resources which You may access through such third-party applications are the sole responsibility of the person from which they originated, and that Morpheus is not liable for any loss or damage that You may experience as a result of the use or access of any of those third-party applications, data, content, or resources. You further acknowledge that the data, content, and resources presented to You and Your Users through such a third-party application may be protected by intellectual property rights which are owned by the providers (or by other persons or companies on their behalf) and not Morpheus. Your use of those resources may require rights beyond those granted by this Agreement and You acknowledge that any use of third party applications, data, content, or resources may be subject to separate terms between You and the relevant third party.
- 3.8 **Open Source Software.** You acknowledge that certain third-party software incorporated in the Software requires that Morpheus provide copyright notices and/or additional terms and conditions to You, which copyright notices and additional terms and conditions may be accessed at <https://www.morpheusdata.com/licensing> and are incorporated by reference into this Agreement. Use, reproduction and distribution of those components of the Software that are licensed under an open source software license are governed solely by the terms of that open source software license. To the extent that Morpheus incorporates any Open Source Software into its software, Morpheus shall have the responsibility to ensure that such software is properly licensed.
- 3.9 **Data Privacy.** The terms and conditions of Morpheus's Privacy Policy are set out in full at <http://www.Morpheusdata.com/privacy-policy> and are incorporated by reference into this Agreement.

#### 4. SUPPORT SERVICES AND UPDATES

Morpheus will provide Support Services to the extent such services are provided for in the applicable Transaction Document and subject to Morpheus's Product Support Program as defined in **Exhibit A ("SSA")** and which may be modified from time to time. To the extent the Transaction Document fails to set forth such period, the Support Services Period shall be 12 months from date of Transaction Document. Other than as set forth in the SSA (to the extent it applies), or, if applicable, any separate statement of work accepted by You, Morpheus has no obligation to provide support, maintenance, upgrades, modifications, or new releases of the Software.

Updates to the Software shall be made available during the Support Service Period. Support Services are provided for the current and one previous long-term-support release of the Software and any of its derivatives and do not extend to third-party software, hardware, clouds, or other end points connected to the Software. Morpheus makes no representation or warranty that all support problems or tickets raised will be fixed unless such tickets relate to the workings of the Morpheus software itself. In addition, as part of the Support Services, Morpheus shall periodically make available bug lists, planned feature lists, and other supplemental materials.

#### 5. OWNERSHIP AND FEEDBACK

Except as expressly provided in this Agreement, Morpheus and its suppliers retain all right, title and interest, including all copyright and intellectual property rights, in and to, the Software, including without limitation all enhancements, improvements, bug fixes, updates, upgrades, modifications and derivative works thereof, as an independent work and

as an underlying work serving as a basis for any improvements, modifications, derivative works, and applications You may develop, and all copies thereof. You may make known to Morpheus suggestions, techniques, know-how, feedback or other input with respect to the Software (collectively, "Suggestions"). Unless otherwise agreed to in writing, Morpheus shall have a royalty-free, worldwide, irrevocable, perpetual license to use, disclose, reproduce, license, distribute and exploit any Suggestion without restriction or obligation of any kind. All rights not specifically granted in this Agreement, including Federal and international copyrights, are reserved by Morpheus and its suppliers.

## 6. LIMITED WARRANTY AND LIMITATION OF LIABILITY

**Except with respect to any Free, Trial, or Community Versions of the Software for which Morpheus provides no remedies or warranties, Morpheus warrants that (a) for a period of thirty (30) days following the initial delivery of the Software to You (the "Warranty Period"), the Software will perform in conformity with its Documentation; and (b) any Support Services will be provided with reasonable skill and care conforming to generally accepted software industry standards. No oral or written information or advice given by Morpheus, its Resellers, dealers, distributors, agents, representatives or employees shall create any warranty or in any way increase any warranty provided herein.**

- 6.1 Your exclusive remedy for Morpheus's breach of 6.1 is that Morpheus will, at its option and at no cost to You, provide remedial services necessary to enable the Software to conform to the warranty or refund amounts paid in respect of the defective Software or Support Services. Morpheus's warranty obligations will only extend to material errors that can be demonstrated to exist in an unmodified version of the Software except where the modifications were carried out by Morpheus or with its written approval and in respect of alleged breaches for which Morpheus has received written notice within the Warranty Period, if applicable.
- 6.2 EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY, THE SOFTWARE IS PROVIDED "AS IS" AND MORPHEUS AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON- INFRINGEMENT AND TITLE OR QUIET ENJOYMENT. MORPHEUS DOES NOT WARRANT THAT THE SOFTWARE IS FREE OF DEFECTS OR WILL OPERATE WITHOUT INTERRUPTION. THE SOFTWARE IS NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS. MORPHEUS SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.
- 6.3 IN NO EVENT WILL MORPHEUS, ITS AFFILIATES, RESELLERS, OR DISTRIBUTORS OR SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORPHEUS'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT PAID BY YOU OR RESELLER, IF ORDERED THROUGH A RESELLER, FOR THE SOFTWARE THAT CAUSED SUCH DAMAGE IN THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION AROSE.

## 7. TERM AND TERMINATION

- 7.1 The term of this Agreement shall be the Subscription Term set forth in the applicable Transaction Document, subject to earlier termination as provided herein. Except as otherwise specified in the applicable Transaction Document, all Support Services shall automatically renew for a Support Services Period equal to the expiring period, unless one party gives the other notice of non-renewal at least forty-five (45) days before the end of the then-current Support Services Period.
- 7.2 This Agreement or an individual license granted hereunder may be terminated (a) in the case of Morpheus, if You fail to pay any amount due hereunder within thirty (30) days after written demand by Morpheus for payment thereof, (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 mutual written agreement of the parties, or (d) 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.

7.3 Termination of this Agreement 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, have been paid, or have become payable hereunder. All provisions of this Agreement which by their nature are intended to survive the termination of this Agreement shall survive such termination.

## **8. U.S. GOVERNMENT RESTRICTED RIGHTS LEGEND**

Use, duplication, or disclosure of the Software to or by the U. S. Government is subject to the provisions and restrictions as set forth in FAR 52.227-14 and FAR 52.227-19, or equivalent restrictions and provisions as set forth in DFAR 252.227-7013 and DFAR 252.227-7014.

## **9. GENERAL**

- 9.1 This Agreement shall be governed by the internal laws of the State of Colorado, U.S.A., without giving effect to principles of conflict of laws. You hereby consent to the exclusive jurisdiction and venue of the state courts sitting in the State of Colorado or the federal courts in the State of Colorado to resolve any disputes arising under this Agreement. In each case this Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.
- 9.2 Except in the event of a sale or transfer by Morpheus of all or substantially all of its assets or voting securities, neither party will assign all or any portion of its rights or obligations under this EULA to any third party without the prior written consent of the other party.
- 9.3 In the event that You materially breach this Agreement or terms of the Transaction Document and have not cured such breach within ten (10) business days pursuant to proper notice, Morpheus may terminate Your license, whereupon You must destroy all copies of the Software, with all other rights and obligations of both parties and all other provisions of this Agreement surviving any such termination.
- 9.4 This Agreement, all documents referenced herein, and the Transaction Document(s) entered into by the parties contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written.
- 9.5 This Agreement may only be amended through a written agreement executed by a duly authorized representative of each party. You agree that any varying or additional terms contained in any purchase order or other written notification or document issued by You in relation to the Software licensed hereunder shall be of no effect and all such terms or conditions shall be null and void. You acknowledge and agree that Your agreement hereunder is not contingent upon the delivery of any future functionality or features not specified herein or in a Transaction Document or dependent upon any oral or written, public or private comments made by Morpheus with respect to future functionality or features for the Software. In the event of any conflict between the provisions in this Agreement and any Transaction Document, the terms of such Transaction Document shall prevail. The failure or delay of Morpheus to exercise any of its rights under this Agreement or upon any breach of this Agreement shall not be deemed a waiver of those rights or of the breach.
- 9.6 If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect.
- 9.7 A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof.

9.8 You acknowledge and agree that each member of the group of companies of which Morpheus may be the parent (or of which Morpheus may be a subsidiary) shall be third party beneficiaries to this Agreement and that such other companies shall be entitled to directly enforce, and rely upon, any provision of this Agreement that confers a benefit on (or rights in favor of) them. Other than this, no other person or company shall be third party beneficiaries to this Agreement. Neither party shall be deemed to be an employee, agent or other legal representative of the other party for any purpose whatsoever or have the right or authority to assume or otherwise create any obligation or responsibility, express or implied on behalf of the other party or to bind the other party in any manner whatsoever.

## Exhibit A: Support and Service Agreement

### 1. Support Services

- 1.1 Subject to proper payment to Morpheus either directly or via authorized resellers and in compliance with the terms and conditions of this Support and Service Agreement (“SSA”) Morpheus shall make commercially reasonable efforts to provide You with basic service packs for fixes of problems in the Software in accordance with the Support Schedule included herein. Morpheus shall have the right to modify the Support Schedule at any time with reasonable notice to You.
- 1.2 Support Services shall be provided, directly over email or by telephone, during the days and hours outlined in the Support Schedule or otherwise set forth in a separate Morpheus quote or purchase order accepted by Morpheus. Submission and process of trouble tickets and email queries shall be subject to guidelines. English shall be the language used for Morpheus support communication.
- 1.3 For the avoidance of doubt, Morpheus Support Services do not include custom integrations, enhancements or modules specific to You. Any engineering development and timelines for not generally available functionality of the software is subject to separate pricing and statements of work.
- 1.4 Morpheus shall not be liable for the performance of its obligations under this SSA if it becomes commercially impracticable to perform due to any Force Majeure. “Force Majeure” shall mean any cause not reasonably within Morpheus control, including, without limitation, acts of God and the public enemy, sabotage, boycotts, disruptions of transportation facilities, inability to obtain supplies or materials, acts of government or judicial action, labor disputes or power disruptions, and problems with the Internet.
- 1.5 Morpheus shall have no obligation to provide You with Support Services with regard to: (i) The Software, or any part, portion or module thereof which has been modified, disassembled, decompiled, reverse compiled, reverse assembled, reverse engineered or otherwise altered or modified by any party whatsoever without Morpheus prior written consent; (ii) errors caused due to malfunction of the operating environment, or causes external to the Software; (iii) the use by You of a version of the Software that is older than the latest designated long-term-support release; (iv) the correction of errors and/or corrupted or lost data as a result of Your negligence or inappropriate use of the Software or the use of the Software not in accordance with the documentation accompanies to the Software; (v) the correction of errors caused by the use of the Software in combination with any other software not originally intended to be used together.

### 2. Limitation of Liability

NEITHER MORPHEUS NOR ANY OF ITS LICENSORS, AFFILIATES, EMPLOYEES OR CONSULTANTS SHALL BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) IN CONNECTION WITH THIS SSA. IN ANY CASE AND WITHOUT DEROGATING FROM THE ABOVE, THE AGGREGATE LIABILITY OF MORPHEUS OR IT’S LICENSORS, AFFILIATES, EMPLOYEES OR CONSULTANTS UNDER THIS SSA OR ANY APPLICABLE TORT LAW SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU TO MORPHEUS FOR MORPHEUS SUPPORT SERVICES. THIS SECTION CONSTITUTES A CONTRACT FOR THE BENEFIT OF EACH OF MORPHEUS LICENSORS, AFFILIATES, EMPLOYEES OR CONSULTANTS. MORPHEUS MAKES NO WARRANTIES WITH RESPECT TO ANY MATTER AND DISCLAIMS ALL STATUTORY OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE AND ANY WARRANTIES OF NONINFRINGEMENT.

### 3. Support Schedule

Morpheus shall provide the following support in respect to the Software. Support will be provided for break/fix of generally available features as documented in the latest version of the Software long-term support build. Support covers the generally marketed features and functions of the Morpheus software and the ability of Morpheus to work with supported integrations. It does not cover the troubleshooting of 3rd party hardware and software or system optimization as related to those integrations. For all logged support requests submitted via **support.morpheusdata.com**, a priority will be set in accordance with the following table with severity level being determined by You acting reasonably. Incidents will be escalated upon reasonable request by You.

Severity	Description
S1 - Urgent	A critical business service is non-operational impacting multiple users or multiple sites; or severe functional error or degradation of service affecting production, demanding immediate attention. Business risk is high, with immediate financial, legal or reputational impact.
S2- High	A failure or performance degradation that severely impairs operation of a critical business service although a workaround may exist; or application functionality is lost; or significant number of users or major site is affected. Business risk is high.
S3 - Medium	A problem that causes moderate business impact. The impact is limited to a user or a small site with no widespread impact. Business risk is low.
S4 - Low	Standard service request (e.g. User Guidance); or updating documentation; or feature request. Low or Minor localised impact.

The Support Service shall be subject to the following service levels and definitions:

**Standard Support** is available for all currently licensed customers. Standard support contact options include e-mail and web ticketing with 24-hour response time Monday to Friday 8 am to 5pm US/UK.

**Premium Support** is a separately negotiated service level and subject to proper payment to Morpheus either directly or via authorized resellers. Unless otherwise specified in Transaction Documents, Premium Support response time shall be (i) 4-hour response time Monday to Friday 8 am to 5pm US/UK (ii) 12-hour response time Monday to Friday 5pm to 8am US/UK (iii) 24-hour response time Saturday, Sunday, and Holidays.

*Response Time* covers the time for Morpheus to acknowledge the incident report and to indicate the likely timescales for dealing with the incident.