



End User License Agreement

Customer: _____

AirWatch LLC _____

Address

1155 Perimeter Center West, Suite 100, Atlanta, GA 30338
Address

Authorized Signature Date

Authorized Signature Date

Print Name Title

Print Name Title

In consideration of the mutual covenants herein expressed, and other true and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereby enter into to this End User License Agreement (“EULA”) and agree as follows:

1 **DEFINITIONS.** The following capitalized terms shall have the meanings and applications set forth below:

1.1 **“Affiliate”** means those entities under common control with or controlled by a party, such common control or control being defined as the ownership of more than fifty percent (50%) of the voting equity of the entity or ownership of securities to which are attached voting rights capable of electing more than fifty percent (50%) of the entity's board of directors. Any Affiliate of Customer may use a Software License granted hereunder and, by doing so, agrees to be bound to the terms and conditions hereof, in which case all references to Customer shall be deemed to be references to Affiliate with respect to such Affiliate's usage. Customer and Affiliate shall be jointly and severally liable hereunder. Notwithstanding the foregoing, no AirWatch Competitor will be considered a Customer Affiliate.

1.2 **“AirWatch”** means AirWatch LLC and/or any applicable Affiliate entity performing obligations hereunder or with which Customer executes an Order.

1.3 **“AirWatch Competitor”** means any entity that licenses or provides any software, product, or service that is competitive with the Software including companies listed in the Gartner, Inc. "MDM Magic Quadrant" or similar industry publications.

1.4 **“Customer Content”** means any and all data, applications, files, information or materials accessed, transmitted, uploaded, published or displayed through the Software or Hosted Service by Customer, Users, or any third party users and/or their Devices. It does not include Relationship Data or Usage Data.

1.5 **“Customer Personal Data”** means personally identifiable information from or about an individual either provided by Customer, Customer's Users or a Device to AirWatch in connection with the Software and/or the Hosted Service. Customer Personal Data does not include Relationship Data or Usage Data.

1.6 **“Delivery Date”** means the date Customer is first granted access to the Software under the applicable Software License.

1.7 **“Device”** means Customer's mobile device(s), including but not limited to mobile phone(s), smartphone(s), tablet computer and computing device(s), personal digital assistant(s) (PDAs), enterprise digital assistant(s) (EDAs), ruggedized devices, Printers (as defined herein), and any similar or similarly functioning electronic devices, which may be monitored and managed by the Software, whether owned by Customer or by Customer's Users.

1.8 **“Documentation”** means only those written release notes, user guides, and implementation guides published by AirWatch and supplied or made available to Customer by AirWatch.

1.9 **“Effective Date”** means the date on which Customer accepts or is deemed to accept this EULA as provided herein, or if physically executed, the date of last signature.

1.10 **“Embedded Software”** means any software provided as an included part of the Software that is owned by one or more third parties and licensed to AirWatch. For the avoidance of doubt, Third Party Software does not include Embedded Software.

1.11 **“Enhancements”** mean subsequent versions, releases, or upgrades of the Software which AirWatch makes generally available as a part of Maintenance and without payment of an additional License fee.

1.12 **“Hosted Services”** mean the services provided to host, on AirWatch's servers on Customer's behalf, the necessary Software to allow communication, control functions, or share content with Devices via internet-based consoles.

1.13 **“Hosted Services Policy”** means AirWatch's hosted services policy governing the provision of Hosted Services, as amended from time to time by AirWatch and posted on the AirWatch website.

1.14 **“Maintenance”** means, for customers who are current on Maintenance fees, maintenance and support services performed in accordance with AirWatch's Maintenance Specifications, and also include access to Updates provided to other licensees of the Software, as well as any Enhancements generally distributed by AirWatch, in its sole discretion.

1.15 **“Maintenance Specifications”** mean AirWatch's Maintenance policies and specifications policy governing the provision of Maintenance, as amended from time to time by AirWatch and posted on the AirWatch website.

1.16 **“Order”** means an AirWatch “Quote,” purchase order, and/or any other form or writing that is physically or electronically executed by both Customer and AirWatch pursuant to which Customer seeks to purchase the offerings subject to this EULA. This EULA is incorporated by reference into any Order without modification. The Order sets forth, as applicable, the (i) number of licenses, (ii) type of Software, (iii) type of license, (iv) pricing, and (v) hours and cost of any Software Related Services to be provided.

1.17 **“Printer”** means a machine which prints documents, materials, or otherwise without utilizing an internally installed operating system (other than firmware).

All information contained in this document is confidential and for the use of the parties hereto.

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1.18 **“Relationship Data”** means personal information that AirWatch collects during the activation and maintenance of Customer’s account. It may include names and contact details of Customer personnel involved in maintaining or using the Software and/or Hosted Service. It does not include information collected through the publicly accessible portions of our webpages, which is subject to the privacy policy posted on those webpages.

1.19 **“Software Related Services”** mean Software-related services performed by AirWatch as reflected in an Order or in an SOW pursuant to an Order or an SOW such as installation, activation, training, software configuration, hosting environment configuration, modification, integration, reconfiguration, assessment, optimization, or other Software-related services and excludes professional services for the development of custom software or other intellectual property (which would be governed by a separate agreement).

1.20 **“Software”** means the AirWatch® proprietary software in machine-readable, object code form only that is more fully described in the Order, including any Embedded Software or any Update or Enhancement made available to Customer pursuant to any Maintenance purchased by Customer.

1.21 **“SOW”** means a statement of work executed by the parties, specifying the terms and conditions, deliverables, and compensation for delivery of Software Related Services or other items.

1.22 **“Third Party Appliance”** means an off-the shelf, third party manufactured, computer hardware appliance (a server) that is provided by AirWatch and on which a third party operating system and other third party operating software is loaded by the third party manufacturer and on which components of the Software are loaded to support up to a recommended maximum 2,000 Device deployment.

1.23 **“Third Party Software”** means any software or other product that is (i) owned by one or more third parties; (ii) licensed by AirWatch from such third parties; (iii) not included as a part of the Software; and (iv) subsequently sublicensed by AirWatch to Customer, as reflected in an Order.

1.24 **“Updates”** mean corrections to the current version of the Software provided as a part of Maintenance.

1.25 **“Usage Data”** means aggregated technical data about Customer’s and Users’ use of the Software and/or Hosted Services and User’s Devices, including but not limited to: AirWatch account identification number; Device make and model; Device operating systems; operating system versions; the total number Devices running; the number of active Devices; dates and times of AirWatch console logins; Device ownership type; application names, identifiers, versions, whether the application is public or managed; database actions taken; external calls, HTTP requests and browser load pages made by the Software/Hosted Service; errors made by the applications running in the Software/Hosted Service; and the amount of memory and CPU usage across the Software/Hosted Service.

1.26 **“User”** means Customer’s authorized individual user of a Device, the Software, or the Hosted Service.

2 **LICENSE GRANT.** All licenses granted hereunder are limited, revocable (as provided herein), nonexclusive, non-transferable, world-wide, non-sublicensable licenses to the Software (each a **“Software License”**). The Software components provided under each Software License include those necessary for the number and type of Devices indicated on each Order. Any Affiliate of Customer may use any Software License granted hereunder and, in such event, all references to Customer shall be deemed to be references to the applicable Customer or Affiliate. All Software Licenses are subject to (i) the terms, conditions and restrictions set forth in this EULA and (ii) the fees set forth in the applicable Order and the payment requirements set forth in this EULA. All Software Licenses are granted solely for the purposes set forth in this EULA. If AirWatch is to provide Hosted Services pursuant to an Order or SOW, they will be provided as described herein.

2.1 **Subscription License.** To the extent reflected in an Order, a Software License provided for the use of the Software on a subscription basis shall be hereinafter referred to as a **“Subscription License.”** The term for Subscription Licenses shall be one (1) year, unless another term is specified in the Order (the **“Subscription Period”**). The initial Subscription Period begins on the Delivery Date of the first Subscription License. In the event additional Subscription Licenses are added during a Subscription Period, such Subscription Licenses shall be coterminous with the then current Subscription Period and the fees for the same shall be prorated accordingly. Unless Customer terminates Subscription Licenses by notifying AirWatch at least sixty (60) days prior to the expiration of a Subscription Period, such Subscription Licenses shall automatically renew for an additional Subscription Period.

2.2 **Perpetual License.** To the extent reflected in an Order, a Software License provided for the use of the Software on a perpetual basis for the term of this EULA shall be hereinafter referred to as a **“Perpetual License.”**

2.3 **Trial License.** If Customer is licensing the Software for evaluation purposes (**“Trial License”**), the Software shall be used solely for the purposes of testing and evaluating the Software in a non-production environment (**“Trial”**). The Trial License shall be for a period of thirty (30) days from the Delivery Date or for such other period as agreed between the parties in writing (the **“Trial Period”**). Customer is solely responsible for taking appropriate measures to back up its systems and for taking other measures to prevent any loss of files or data during the Trial. In addition, in connection with the purchase of Subscription Licenses or Perpetual Licenses, Customer shall be entitled to receive up to fifty (50) Trial Licenses free of charge (excluding any Hosted Services or environment set up fees). The Software provided under a Trial License may contain an automatic disabling mechanism that prevents its use after a certain period of time. Under any Trial License, the Software and any related Hosted Services are provided **“AS IS”** without any additional warranty of any kind and Customer understands and agrees no other warranties stated herein shall be applicable to the Trial License.

2.4 **General License Provisions.** In connection with any Software License, Customer may make a reasonable number of copies of the Software for backup, disaster recovery, and/or archival purposes, provided Customer also reproduces on such copies any copyright, trademark, or other proprietary marking and notice contained in the Software and/or Documentation and does not remove any such marks from the original. Unless otherwise stated herein or in an Order, the Software is licensed on a per Device basis, in which case: (i) the Software may only be used or accessed by Customer on no more than the number of Devices specified on each Order; (ii) the Software License for the Software may be transferred from Device to Device (except that Software Licenses for Printers may only be transferred between Printers); and (iii) there is no limit on the number of computers from which the Devices may be monitored using the Software. Other than Embedded Software, Customer shall be responsible for activating, obtaining, and/or maintaining any third party components, hardware, or software that become necessary or desirable.

3 **LICENSE RESTRICTIONS.** With respect to Software Licenses where Customer possesses the Software, Customer shall use industry-standard physical, logical, and electronic security and confidentiality systems to protect the Software, using at least the same degree of care it utilizes for the protection of its own software and other confidential and proprietary information. The restrictions set forth in this Section, including all subsections, shall hereafter be referred to as the **“License Restrictions.”** With respect to each Software License, Customer further agrees that it:

3.1 Shall not share with or assign, copy, sublicense, transfer, lease, rent, sell, distribute, install, or otherwise provide to any non-Affiliate party (other than Users) (i) the Software License, (ii) the Software; (iii) any use or application of the Software; or (iv) Customer’s rights under this EULA, nor shall Customer pledge as security or otherwise encumber, the Software;

3.2 Shall use the Software solely (i) for Customer’s internal use with Customer’s ordinary business operations, (ii) in accordance with all applicable laws and regulations, and (iii) as provided in this EULA, the Documentation, and any supplemental limitations specified or referenced in the relevant Order, if any;

3.3 Shall not use the Documentation except for supporting its authorized use of the Software;

3.4 Shall not use the Software or any of its features to invade the privacy of any person or otherwise violate any law, including, but not limited to, by usage of GPS functionality, location/tracking services, and the like;

3.5 Other than as expressly set forth in this EULA, shall not (i) modify, adapt, translate, duplicate, disassemble, decompile, reverse assemble, reverse compile, or reverse engineer, or take similar action with respect to the Software for any purpose, or (ii) attempt to discover the underlying source code or algorithms of the Software (unless enforcement is prohibited by applicable law and then, only to the extent specifically permitted by applicable law, and then only upon providing AirWatch with reasonable advance written notice and opportunity to respond);

3.6 For the purpose of designing, modifying, or developing software or services similar in purpose, scope, or function to the Software, shall not engage in competitive analysis, benchmarking, use, evaluation or viewing of the Software or Documentation or create any derivatives based upon the Software, whether for Customer's internal use or for license or for resale;

3.7 Shall not use the Software without obtaining its own Apple Push Notification services (APNs) Certificate from Apple Inc. if Customer uses the Software to manage Devices running on Apple operating systems;

3.8 Shall not employ any AirWatch Competitor to use the Software on Customer's behalf, view the Software or Documentation, or provide management, staging, support, hosting, or similar services with regard to the Software without the prior written consent of AirWatch, and

3.9 Shall not permit any party, whether acting directly or on behalf of Customer, to breach or violate any of these License Restrictions.

4 **THIRD PARTY SOFTWARE AND THIRD PARTY APPLIANCE.** Third Party Software and/or Third Party Appliances ("**Third Party Products**") may be provided in addition to the Software as a convenience for Customer, but are not required or necessary for the use of the Software. If any Third Party Products are delivered to Customer pursuant to an Order, with respect to such Third Party Products AirWatch hereby (i) assigns, sublicenses, or passes through to Customer all assignable warranties, representations, covenants, and indemnities granted to AirWatch by any third party in connection therewith along with the remedies for breach of such. To the extent that AirWatch is not permitted to take one or more of the foregoing actions, AirWatch will, at Customer's request and expense, enforce the foregoing protections on behalf of Customer to the extent permitted to do so under the terms of the applicable third party license. Other than the foregoing, all Third Party Products listed in an Order are provided "AS IS," with no other warranties of any kind. Any Third Party Software sublicense will terminate when this EULA terminates, when the Software License terminates, or when the Software is no longer being used by Customer. Third Party Software shall be subject to the License Restrictions. IN NO EVENT WILL AIRWATCH BE LIABLE FOR THE PERFORMANCE OF ANY THIRD PARTY PRODUCT OR THE BREACH OF ANY WARRANTY RELATED THERETO. AIRWATCH SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES (INCLUDING ANY WARRANTY OF NON-INFRINGEMENT) AND DISCLAIMS ALL LIABILITY, INCLUDING ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE, INCLUDING WITHOUT LIMITATION, ANY LOST PROFITS OR SAVINGS, AND ANY LOSS OR DAMAGE, CAUSED BY ANY THIRD PARTY PRODUCT.

5 **MAINTENANCE.** Maintenance shall be provided in accordance with AirWatch's then-current Maintenance Specifications. Maintenance is offered only for the Software. AirWatch will provide Maintenance for prior releases and versions for a period of one (1) year following the initial release date of the superseding release or version.

5.1 **Subscription License.** All Subscription Licenses include Maintenance. Maintenance may not be separated from the Subscription License and may not be terminated without also terminating the Subscription License.

5.2 **Perpetual License.** With all Perpetual Licenses, Customer shall subscribe to Maintenance for twelve (12) month periods (each a "**Maintenance Period**"). Customer hereby subscribes to Maintenance at the price set forth in the Order and the initial Maintenance Period begins on the effective date of the relevant Order. Customer may not elect to exclude any of the Software Licenses from Maintenance during the Maintenance Period. At least thirty (30) days' prior to the expiration of a Maintenance Period, AirWatch shall provide written notice to Customer of the Maintenance fees for the upcoming Maintenance Period. Thereafter, with respect to all Software Licenses, Customer may elect to (i) renew Maintenance at AirWatch's then-current rates, or (ii), elect not to renew Maintenance. If no written notice of non-renewal is provided to AirWatch prior to the expiration of a Maintenance Period, there shall be an automatic renewal of Maintenance at AirWatch's then-current rates as determined in accordance with this EULA. In the event Customer adds Devices under a Perpetual License during a Maintenance Period, the Maintenance fees for such licenses shall be coterminous with the then current Maintenance Period. Devices shall be prorated from the date they are added to the end of the then-current Maintenance Period. If AirWatch is providing Hosted Services in a shared environment in connection with Devices under Perpetual Licenses and Customer elects to terminate Maintenance or is not current with Maintenance fees or Hosted Service fees, then AirWatch may suspend the Hosted Services, with no further obligation or liability, until such time as the Hosted Service fees are brought current, Maintenance is reinstated, and/or the Maintenance fees are brought current, as the case may be.

5.3 **Trial License.** With respect to any Trial License, Customer will be entitled to receive Maintenance during the Trial Period and no payment of Maintenance fees shall be required.

6 **ADDITIONAL WORK.** To the extent that AirWatch is requested to provide additional Software Related Services to Customer (such as training or installation), they shall be provided pursuant to an Order or SOW, billed at AirWatch's then-current rates for Software Related Services, and invoiced to Customer. Software Related Services provided on Customer's premises shall be subject to AirWatch's reimbursement policies.

7 **HOSTED SERVICES.** Hosted Services are provided when AirWatch will host the Software on Customer's behalf, as set forth in the Order. Hosted Services are provided in accordance with AirWatch's Hosted Services Policy.

8 **ADDITIONAL ORDERS.** In the event that Customer wishes to place additional Devices under a Software License or avail itself of any other offerings set forth herein, the parties shall execute an Order detailing the number and type of additional Software Licenses and/or other offerings to be obtained. Pricing for such Orders shall be as set forth in the original Order, subject to any pricing changes made pursuant to this EULA, or, if no pricing is provided in the original Order, AirWatch's then-current published prices shall apply.

9 **PAYMENT OBLIGATIONS; RESELLERS.**

9.1 **Payment Obligations.** All fees payable hereunder are due and payable within thirty (30) days of the date of invoice. Any amounts not subject to a good faith dispute that are not paid within forty-five (45) days of the date of invoice will incur interest at a rate equal to the lower of one percent (1.0%) per month or the highest rate then permitted by law. Additionally, AirWatch may suspend Hosted Services and/or Maintenance until the undisputed portion of Customer's account is brought current. All fees and charges referred to herein (including those shown in an Order, an SOW, or any invoice) are exclusive of taxes. Taxes imposed by government agencies, with the exception of franchise taxes and taxes based upon the net income of AirWatch, whether based upon the Software, services, their use, or this EULA (including sales and use taxes) are an additional obligation of Customer. For any future period, AirWatch may increase any or all fees payable hereunder; *provided, however,* that (i) no fee increase shall become effective until sixty (60) days after AirWatch notifies Customer in writing of such fee increase and (ii) each increase shall not exceed AirWatch's then-current published prices. In the event Customer utilizes the Software with a number of Devices in excess of the number of Software Licenses set forth in an Order, Customer shall be obligated to pay the relevant Software License fees, together with any applicable Maintenance or Hosted Services fees, prorated for the then-current term.

9.2 **Resellers.** Where separately agreed, Customer may purchase Software Licenses and other offerings hereunder from an AirWatch authorized reseller ("**Reseller**"), in which case all payments will be to Reseller under the terms agreed between Customer and Reseller. Where Customer purchases any offerings hereunder through a Reseller, any refunds set forth herein (whether as part of a warranty or otherwise) shall only apply to the extent the Customer has paid the relevant fees directly to AirWatch. Should Customer and Reseller terminate their business relationship; in the event Reseller files for bankruptcy protection, sells all or substantially all of its assets, or ceases to do business in the ordinary course; or if Customer otherwise desires to do so, Customer may purchase any offerings as set forth in this EULA directly from AirWatch. In the event that Customer purchases the Software or other AirWatch offerings through an a Reseller and such Reseller has granted Customer rights not contained in this EULA, Customer's sole course of action in the event of a dispute regarding those rights shall be against the Reseller.

10 **CONFIDENTIALITY AND PROPRIETARY RIGHTS.**

10.1 **Confidentiality.** In the course of performance of this EULA, either party ("**Discloser**") may find it necessary to disclose to the other party ("**Recipient**"), or Recipient may otherwise obtain from Discloser, certain proprietary information, which includes, but is not limited to that which relates to software, computer codes or instructions, developments, inventions, processes, designs, drawings, engineering, pricing, research, statistics, business plans, product plans, products, services, customers or prospective customers, contractors, licensors, suppliers, markets, marketing, finances, and any other materials that have not been made available to the general public and which have been the subject of reasonable efforts to be kept secret ("**Confidential Information**"). Confidential Information does not include information that: (a) was in the public domain at the time of Discloser's communication thereof to Recipient, (b) becomes part of the public domain after the time of disclosure, through no improper action of Recipient; (c) was in Recipient's possession free of any obligation of confidence at the time of Discloser's communication

thereof to Recipient; (d) can be shown by documentation to have been independently developed by the Recipient without the use of or reference to any Confidential Information; (e) is not treated as confidential by Discloser; or (f) is approved for release by Discloser in writing. Recipient shall use any Confidential Information received (or derivatives thereof) solely for the purpose of performing its obligations under this EULA. Recipient shall not disclose or permit any non-Affiliate party access to any Confidential Information, except to Recipient's officers, directors, employees, contractors, representatives, or agents on a need to know basis and where all such officers, directors, employees, contractors, representatives, or agents have confidentiality obligations at least as restrictive as those set forth in this Section. Recipient agrees to use reasonable efforts to protect the confidential or proprietary nature of such Confidential Information (and any derivatives thereof), using at least the same degree of care it utilizes for the protection of its own strictly confidential and proprietary information. The obligations under this EULA will continue for any Confidential Information (and/or derivatives thereof) that constitutes a trade secret, for so long as such information remains a trade secret under applicable law. Notwithstanding the foregoing, in the event disclosure is required by court, government order, or law (such as state open records or freedom of information acts), Recipient shall (x) promptly notify Discloser of such order or requested disclosure so that it may seek a protective order or other appropriate remedy and (y) only disclose such Confidential Information to the extent required. All Discloser Confidential Information and derivatives thereof shall remain the property of Discloser and will be returned to Discloser within ten (10) days following the termination of this EULA. Without limiting the foregoing or the License Restrictions, Customer shall not disclose or display any AirWatch Confidential Information, including the Software, to any AirWatch Competitor. The obligations set forth in this Section are hereafter referred to as the **"Confidentiality Obligations."**

10.2 Proprietary Rights. Title to and ownership of the Software, Hosted Services, and all AirWatch copyrights, names, trademarks, trade names, service marks or any other identifying characteristics are proprietary intellectual property of significant value and goodwill to AirWatch and all associated intellectual property rights relating thereto (the **"AirWatch IP"**) are retained by AirWatch. This EULA only grants Customer the limited right to use the AirWatch IP under the terms and restrictions specified in this EULA. Customer does not, and will not, acquire any other right, title or interest in any AirWatch IP, which will at all times remain the exclusive property of AirWatch or the applicable third party licensor to AirWatch. Customer will not remove, suppress, or modify in any way any proprietary marking which is on or in the AirWatch IP, or which is on any media supplied with the AirWatch IP, except where expressly allowed. Customer acknowledges and agrees that AirWatch shall be the sole owner of any Enhancements, Updates, or derivatives of the Software and the Hosted Services which are developed by AirWatch during and after the term of this EULA. Without limiting the foregoing, Customer expressly acknowledges and agrees that AirWatch shall be the sole owner of any newly-developed intellectual property including but not limited to (i) newly-developed, revised, or modified source code and (ii) inventions where such are related in any way to the Software, the Hosted Services or AirWatch's general business, regardless of the creator, whether such are developed, revised, or modified in response to Customer's requests, suggestions, or ideas, even if performed as Software Related Services paid for by Customer. During the term of this EULA and thereafter, Customer shall not assert the invalidity of the AirWatch IP, or contest AirWatch's right, title or interest therein and thereto, and Customer shall not cause, influence, or assist in any manner whatsoever, any other party to make any such assertions or contest.

11 LIMITED WARRANTIES; REMEDIES; DISCLAIMERS; LIMITATION OF LIABILITY.

11.1 Limited Software Warranty and Remedies. In connection with Subscription or Perpetual Licenses granted hereunder, AirWatch warrants that the Software, as delivered by AirWatch to Customer, will substantially perform the functions set forth in the Documentation (the **"Software Warranty"**). If deviations from the requirements set forth in the Software Warranty occur within the ninety (90) day period following the Delivery Date (the **"Software Warranty Period"**) or so long as Customer is subscribed to and current with Maintenance, upon written notice by Customer to AirWatch, AirWatch will, without additional compensation, either (1) repair, at its facilities, the Software; or (2) replace the Software, in each case to correct the nonconformity. If AirWatch provides written notice to Customer that it is unable to correct the nonconformity within a reasonable period, or if neither option (1) nor (2) is commercially feasible, either party may terminate this EULA and the relevant Subscription or Perpetual License upon written notice to the other party. Only when such nonconformity results in termination of this EULA as provided in the previous clause during the Software Warranty Period, AirWatch shall refund to Customer (i) the relevant Perpetual License fees and the unused remainder of any related prepaid fees for Software Related Services, Maintenance, or Hosted Services (**"Other Fees"**) paid by Customer and received by AirWatch, or (ii) the relevant Subscription License fees and the unused remainder of any related Other Fees paid by Customer and received by AirWatch. The Software Warranty Period is not extended in any way by any Enhancement or Update, by placing more Devices under license, by any delivery of additional Software, or by replacement or repair of the Software. For clarity, newly purchased Subscription or Perpetual Licenses receive the Software Warranty from their Delivery Date, but purchasing new Subscription or Perpetual Licenses does not extend the Software Warranty Period for previously purchased Subscription or Perpetual Licenses. The Software Warranty does not cover situations where: (a) the Software has not been used in accordance with this EULA and the Documentation; (b) the Software has been altered in any way by a party other than AirWatch that is not under the direction or control of AirWatch; (c) the Software is used in an operating environment other than as specified in the Documentation; (d) such nonconformity in the Software is due to abuse, neglect, or other improper use by Customer; or (e) reported errors or nonconformities cannot be reproduced by AirWatch, working, in good faith, with Customer's assistance. This Section sets forth Customer's sole and exclusive remedies with respect to breaches of the Software Warranty.

11.2 Infringement Claims. Subject to the remainder of this section, in connection with Subscription or Perpetual Licenses granted hereunder, AirWatch, at its sole expense, agrees to defend Customer against any third party claim that Customer's use of the Software, as delivered by AirWatch to Customer and used in accordance with this EULA and the Documentation, directly infringes a third party copyright or issued patent or directly misappropriates a trade secret (but only to the extent such misappropriation is not a result of Customer's actions) under the laws of: (a) the United States and Canada; (b) the European Economic Area; (c) Australia; (d) New Zealand; (e) Japan; or (f) the People's Republic of China (an **"Infringement Claim"**), and indemnify Customer from the resulting costs and damages finally awarded against Customer to such third party by a court of competent jurisdiction or agreed to in settlement; provided that: (i) Customer promptly notifies AirWatch in writing of the Infringement Claim; (ii) AirWatch has sole control of the defense and all related settlement negotiations; and (iii) Customer provides AirWatch with the information, assistance and authority to enable AirWatch to perform AirWatch's obligations under this Section. Customer may not settle or compromise any Infringement Claim without the prior written consent of AirWatch. In any action based on an Infringement Claim, AirWatch, at its option and its own expense, will either: (1) procure the right for Customer to continue using the Software in accordance with the provisions of this EULA; (2) make such alterations, modifications or adjustments to the Software so that the infringing Software becomes non-infringing without incurring a material diminution in performance or function; (3) replace the Software with a non-infringing substantially similar substitute; or (4) terminate the relevant Software Licenses, and upon Customer certified destruction or deletion of the Software, AirWatch shall refund to Customer the unused remainder of any Subscription License fees prepaid by Customer and received by AirWatch, or, with respect to Perpetual Licenses, refund to Customer the amortized remainder of the Perpetual License fees (based on a three (3) year straight-line depreciation period from the Delivery Date), and the unused remainder of any related prepaid Other Fees received by AirWatch. In connection with any termination pursuant to this Section, Customer shall comply with all post-termination requirements set forth in this EULA. AirWatch shall have no liability or obligations for an Infringement Claim pursuant to this Section to the extent that it results from: (a) modifications to the Software made by a party other than AirWatch or under the direct control of AirWatch; (b) the combination, operation or use of the Software with non-AirWatch products; (c) use of the Software outside the scope of this EULA or in contravention of the Documentation; (d) AirWatch's use of any designs, plans, instructions, specifications, diagrams or the like, provided by Customer, if any; (e) Customer's failure to use all available Enhancements and Updates to the Software made available to Customer by AirWatch (other than in a shared Hosted Services environment, where AirWatch will implement the same), if the claim would not have occurred but for such failure; (f) use of open source software or freeware technology or any derivatives or other adaptations thereof not embedded by AirWatch into the Software; or (g) any Software that is provided on a no charge, beta, or evaluation basis. Nothing in this provision shall be construed as a limitation on Customer's ability to retain legal counsel at its own expense to passively monitor the proceedings. This Section sets forth Customer's sole and exclusive remedies and AirWatch's entire liability with respect to Infringement Claims.

11.3 Disclaimers. EXCEPT AS EXPRESSLY SET FORTH IN THIS EULA, THE SOFTWARE, HOSTED SERVICES, THIRD PARTY APPLIANCE, THIRD PARTY SOFTWARE, MAINTENANCE, UPDATES AND ENHANCEMENTS, SOFTWARE RELATED SERVICES, OR DELIVERABLES PROVIDED AS A RESULT OF THE PERFORMANCE OF MAINTENANCE OR SOFTWARE RELATED SERVICES (COLLECTIVELY, THE **"WARRANTED MATTERS"**) ARE PROVIDED "AS IS" AND AIRWATCH AND ITS LICENSORS, DEVELOPERS, AND OTHER

SUPPLIERS (THE "AIRWATCH PARTIES") FURTHER DISCLAIM THAT THE FUNCTIONS CONTAINED IN THE WARRANTED MATTERS WILL MEET THE REQUIREMENTS OF CUSTOMER OR OPERATE ERROR FREE. EXCEPT AS EXPRESSLY SET FORTH IN THIS EULA, THERE ARE NO OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED BY STATUTE, OPERATION OF LAW, TRADE USAGE, COURSE OF PERFORMANCE OR DEALING OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, FITNESS FOR A PARTICULAR USE, NONINFRINGEMENT, TITLE, ACCURACY, OR COMPLETENESS; ALL SUCH WARRANTIES BEING SPECIFICALLY AND FULLY DISCLAIMED BY THE AIRWATCH PARTIES. OTHER WRITTEN OR ORAL REPRESENTATIONS OR AFFIRMATIONS OF FACT, INCLUDING BUT NOT LIMITED TO, STATEMENTS FROM AIRWATCH OR ANY OTHER SOURCE REGARDING THE PERFORMANCE OF THE WARRANTED MATTERS THAT ARE NOT CONTAINED IN THIS EULA, SHALL NOT BE BINDING ON THE AIRWATCH PARTIES AND ARE HEREBY EXPRESSLY DISCLAIMED. AIRWATCH FURTHER DISCLAIMS ANY LIABILITY TO CUSTOMER OR USERS FOR ANY THIRD PARTY CHARGES, INCLUDING, BUT NOT LIMITED TO, DATA, USAGE, OR TELECOM CHARGES, FOR DEVICES MANAGED BY THE SOFTWARE.

11.4 Limitation of Liability. EXCEPT FOR BREACHES OF THE LICENSE RESTRICTIONS, CONFIDENTIALITY OBLIGATIONS, OR MISUSE OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS ("IP"), OR CLAIMS UNDER THE INDEMNITY PROVISIONS OF THIS EULA: (A) NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, OR ANY LOST PROFITS, REVENUE, DATA, OR DATA USE AND (B) EITHER PARTY'S MAXIMUM AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS EULA OR ANY ORDER, WHETHER SUCH ACTION IS BROUGHT IN LAW, EQUITY, CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, SHALL BE LIMITED TO THE SOFTWARE LICENSE FEES PAID BY CUSTOMER AND RECEIVED BY AIRWATCH HEREUNDER IN THE LAST TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

12 INDEMNITY.

12.1 Indemnity for Customer Data. Customer will defend, indemnify, and hold harmless AirWatch against any claims, losses, fines, or damages arising from or relating to: (a) Customer Content; (b) any infringement or misappropriation of any intellectual property rights by Customer, Customer's Users, customers, or suppliers; (c) violation of law by Customer, including but not limited to any law or regulation relating to the privacy and/or security of Customer's Users or Devices; or (d) Customer's use of the Hosted Services (including any activities under Customer's account and any use by Customer's employees, personnel or end users) in violation of this EULA or Hosted Services Policy. AirWatch will (i) provide Customer with notice of the claim within a reasonable period of time after learning of the claim; and (ii) reasonably cooperate in response to Customer's requests for assistance. Customer may not settle or compromise any indemnified claim without AirWatch's prior written consent.

13 TERM, RENEWAL, AND TERMINATION.

13.1 Term and Renewal. This EULA will commence on the Effective Date and will continue for so long as a valid Order is in place or until Customer ceases use of all offerings hereunder, whichever is later; unless the EULA is earlier terminated as provided herein.

13.2 Customer Termination. Customer may terminate this EULA for cause: (i) in the event of a material breach by AirWatch of this EULA that is unremedied for a period of thirty (30) days after receipt of written notice by AirWatch, (ii) immediately with concurrent notice in the event of a breach by AirWatch which, by its nature, cannot be cured, or (iii) as otherwise expressly provided herein. With respect to terminations for cause, Customer shall receive a refund of any related prepaid unused fees for Subscription Licenses, Hosted Services, and/or Maintenance. Except as otherwise expressly and specifically stated in this EULA, no refunds or payments of any kind shall be due Customer.

13.3 AirWatch Termination. AirWatch may terminate the EULA and the relevant Software License, Maintenance or Hosted Services under this EULA: (i) if Customer ceases or is delinquent in making payments of any applicable fees owed for a period of thirty (30) days after notification of such delinquency; (ii) in the event of a material breach of this EULA by Customer that is unremedied for a period of thirty (30) days after receipt of written notice by Customer; (iii) as otherwise expressly provided; (iv) immediately with concurrent notice in the event of a breach by Customer which, by its nature, cannot be cured.

13.4 Customer Obligations upon Termination. Upon the termination or expiration of this EULA and the related Software Licenses, Maintenance or Hosted Services for any reason whatsoever (i) any Software License, Maintenance or Hosted Services will automatically and immediately terminate, (ii) Customer will immediately cease and desist from all use of the Software in any way, and (iii) within ten (10) days after the effective date of the termination or expiration of this EULA and any related Software License, Customer is required to uninstall and either return or destroy the applicable Software and provide a written certification executed by an officer of Customer certifying such action. Except for Customer terminations for cause, upon termination, Customer shall pay any fees then owing under this EULA as of the date of termination within thirty (30) days. Terminations are effective upon Customer's compliance with this Section.

13.5 AirWatch Obligations upon Termination. Upon termination or expiration of this EULA and the related Software License for any reason whatsoever, where Customer received Hosted Services in a dedicated environment and at Customer's request, AirWatch will provide Customer with instructions to enable Customer to use the report function of the Software to export all Device information from the Software.

13.6 Trial License. At the conclusion of the Trial Period, Customer may terminate this EULA immediately upon notice to AirWatch and shall comply with its obligations hereunder. To the extent that Customer continues to use the Software after the end of the Trial Period, then the Trial License(s) shall convert to Subscription License(s) under this EULA at AirWatch's then-current rates, terms, and conditions.

13.7 Survival. The provisions of this EULA that by their sense and context are intended to survive termination of this EULA, shall so survive termination.

14 CUSTOMER DATA.

14.1 Compliance. Customer is responsible for ensuring that Users comply with Customer's obligations under this Agreement. Customer will duly observe all of its obligations under any relevant data protection law or regulation that may apply to the relationships contemplated under this Agreement, including, specifically, any obligation for Customer to configure the Software and/or Hosted Service appropriately, provide notice, obtain consents or file registrations with applicable data protection authorities. Customer will configure the Software and/or Hosted Service in accordance with all applicable laws and regulations. Further, as required by applicable law or regulation, Customer will notify Users that any Customer Content provided as part of the Software and/or Hosted Services will be made available to a third party (i.e. AirWatch) as part of AirWatch providing the Software and/or Hosted Services.

14.2 Relationship & Usage Data. Customer agrees that AirWatch may also process Relationship Data and Usage Data to manage Customer's account, send service-related notifications, bill for purchased services, enforce compliance with this Agreement, facilitate the provisioning of Updates, improve the Software and/or Hosted Service, better understand Customer's business needs and comply with our contractual obligations and applicable law. Relationship Data and Usage Data may be transferred to AirWatch's Affiliates from time to time. To the extent that this information constitutes personal information, AirWatch shall be the controller of such personal information. To the extent it acts as a controller, each party shall comply at all times with its obligations under the local legislation applicable in the territory for the protection of individuals with regard to the processing of Personal Data. In this section, "controller" shall have the meaning given to it in the EU Directive 95/46/EC.

14.3 Data Transfer. Customer agrees that Customer Content, Relationship Data, and Usage Data collected or received by AirWatch in connection with the download, installation, configuration, maintenance, support and use of the Software or Hosted Service may be transferred, stored and processed in the United States or any other country in which AirWatch or its Affiliates or service providers maintain facilities. By downloading, installing, or using the Software/Hosted Service, or by receiving customer support assistance. Customer consents to the worldwide processing of both technical and Personnel data in compliance with applicable laws and regulations. AirWatch is enrolled in the U.S. Department of Commerce Safe Harbor Program and will remain enrolled in this program or another replacement program (or will adopt a solution which achieves compliance with the terms of Article 25 of Directive 95/46/EC or any replacement regulation) through the Term of this Agreement.

14.4 **Subprocessing.** Customer authorizes AirWatch to subcontract processing of Customer Content under this Agreement to a third party provided that: (i) AirWatch will ensure any subcontractor it appoints will protect the Customer Content to a standard which is substantially equivalent to the standard that is set forth in this Agreement; and (ii) AirWatch will be responsible for the acts, errors and omissions of any subcontractor AirWatch appoints to process the Customer Content.

14.5 **Support Data.** Customer acknowledges that correspondence, log files and other support data generated in conjunction with a request for customer support services may contain sensitive, confidential or personal information. Customer is solely responsible for taking the steps it considers necessary to protect such data, including obfuscating the logs or otherwise guarding such information prior to sending to AirWatch.

14.6 **Compliance with Data Regulations.** The parties agree to strictly abide by the Minnesota Government Data Practices Act, codified at Minnesota Statutes chapter 13. All data created, collected, received, stored, used, maintained, or disseminated by Customer under this Agreement are subject to the requirements of the Minnesota Government Data Practices Act. If any provision of this Agreement is in conflict with the Minnesota Government Data Practices Act or other Minnesota laws, state law will control. AirWatch agrees to abide by all applicable laws and regulations and will protect the privacy and confidentiality of all not public data.

15 **NOTICES.** Except as otherwise provided herein, all notices, consents, requests, instructions, approvals, and other communications made, required, or permitted under this EULA will be given to the parties at the addresses listed on the Order by: (i) personal service or recognized international or overnight courier, deemed effective on reported delivery date; or (ii) facsimile transmission or email transmission, deemed effective on delivery date confirmation. Duplicate notices are required to be provided to AirWatch LLC ATTN: Legal, 1155 Perimeter Center West, Suite 100, Atlanta, GA 30338, fax: 404.478.7530, email: notices.legal@air-watch.com.

16 **SURVEYS.** AirWatch shall be entitled to conduct periodic surveys solely for the purposes of determining (i) the number of Devices in use with the Software and (ii) compliance with the terms and conditions of this EULA. Such surveys shall be conducted remotely, at AirWatch's expense, and shall not interfere with Customer's business operations.

17 **GENERAL PROVISIONS.**

17.1 **Acceptance of an Additional Order.** Customer's acceptance of an additional Order and reaffirmation of its agreement to the terms and conditions of the EULA and the original Order shall be indicated by Customer (i) executing and returning to AirWatch a new Order or (ii) using any additional Devices with the Software.

17.2 **Governing Law.** This EULA, and all disputes arising hereunder or related hereto, may only be brought before a court of appropriate jurisdiction in the country whose law governs this EULA as set forth below:

17.2.1 Except where a provision below applies, this EULA will be governed by and construed in accordance with the laws of the State of Minnesota, USA, excluding its principles of conflicts of law and the private international law rules, and the venue and exclusive jurisdiction for any litigation will be in the state or federal courts of Ramsey County, Minnesota.

17.2.2 Where Customer is within a member-state of the European Union, a member-state of the European Free Trade Area or any other area of Europe, the Republic of South Africa, or the Middle East, or where the Customer otherwise signs the applicable Order with AirWatch UK Limited, this EULA will be governed by and construed in accordance with the laws of England and Wales, excluding principles of conflicts of law and the private international law rules, and the venue and exclusive jurisdiction for any litigation will be in the courts of London, UK.

17.2.3 Where Customer is within Australia, New Zealand, or otherwise signs the applicable Order with AirWatch (Australia) PTY LTD, this EULA will be governed by and construed in accordance with the laws of the State of Victoria, Australia, excluding its principles of conflicts of law and private international law rules, and the venue and exclusive jurisdiction for any litigation will be in the courts of Melbourne, Australia.

17.2.4 Where Customer signs the applicable Order with AirWatch PTE LTD, this EULA will be governed by and construed in accordance with the laws of Singapore, excluding its principles of conflicts of law and private international law rules, and the venue and exclusive jurisdiction for any litigation will be in the courts of Singapore, Singapore.

17.2.5 Where Customer signs the applicable Order with AirWatch Technologies India PVT LTD, this EULA will be governed by and construed in accordance with the laws of India, excluding its principles of conflicts of law and private international law rules, and the venue and exclusive jurisdiction for any litigation will be in the courts of Bangalore, India.

17.3 **Disputes.** The parties acknowledge and agree that any breaches of the License Restrictions, the Confidentiality Obligations, or either party's IP rights may give rise to irreparable harm to the non-breaching party for which the granting of monetary damages would not be an adequate remedy, accordingly, the non-breaching party may, in addition to all other available remedies, seek equitable remedies to restrain any continued breach of the License Restrictions, the Confidentiality Obligations, or a party's IP rights by the breaching party, as the case may be, without having to prove that actual damage has been sustained by the non-breaching party. No action arising out of this EULA, regardless of form, may be brought more than one (1) year after the claiming party knew or should have known of the cause of action.

17.4 **Export Laws.** The Software is subject to United States export control laws and regulations and may be subject to export or import regulations in other countries. These laws and regulations include licensing requirements and restrictions on destinations, end users, and end use. Customer shall comply with all domestic and international export and import laws and regulations that apply to the Software and acknowledges that Customer has the responsibility to obtain any and all necessary licenses to export, re-export, or import the Software and covenants that it shall not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any Software, source code, or technology (including derivative products) received from AirWatch under this EULA to any other party or destination prohibited by the laws or regulations of the United States, without obtaining prior governmental authorization as required by those laws and regulations.

17.5 **Assignment.** This EULA, including any rights, licenses or obligations under this EULA, may not be assigned or otherwise transferred (whether by operation of law, merger, reorganization, or otherwise) by Customer to any non-Affiliate party without the prior written consent of AirWatch and any attempt to do so in violation of the terms hereof shall be null and void.

17.6 **Force Majeure.** A party is not liable under this EULA for non-performance caused by any failure of performance, equipment, or payment due to causes beyond the reasonable control of such party, if the party makes reasonable efforts to perform. This Section does not operate to relieve either Party of its obligation to make payments then owing.

17.7 **Publicity.** Within forty-five (45) days of signing this EULA AirWatch may publish a press release announcing the acquisition of Customer as a customer, provided Customer has an opportunity to review and approve the press release.

17.8 **Independent Contractor.** AirWatch shall at all times be considered an independent contractor under this EULA. Nothing contained herein will be construed to create the relationship between the parties of principal and agent, employer and employee, partners or joint venturers.

17.9 **No Third Party Beneficiaries.** This EULA is for the benefit of Customer and AirWatch and does not provide any third party the right to enforce it or to bring an action for any remedy, claim, liability, reimbursement or cause of action or any other right or privilege.

17.10 **Non-Waiver.** The failure of either party to require the performance by the other party of any provision hereof will not constitute a waiver of that provision or the required performance. The waiver by either party of any breach of any provision of this EULA will only be valid if given in an executed written instrument and any such waiver will not constitute a waiver as to any subsequent breach or continuation of the same breach.

17.11 **Headings.** Headings are used in this EULA for convenience only and shall not affect any construction or interpretation of this EULA.

17.12 **Language.** In the event that AirWatch or another party has provided Customer with a translation of this EULA from the English language to another language, Customer agrees that such translation is provided for convenience only; that the American English language version of this EULA governs the relationship between AirWatch and Customer; and, if there is any conflict between the American English language version of this EULA and such translation, the American English language version shall take precedence. All disputes arising under this EULA shall be resolved in the English language.

17.13 **Entire Agreement.** This EULA constitutes the entire agreement between the parties with respect to the subject matter hereof. This EULA and any related Order supersede and replace all prior understandings, negotiations, commitments, representations, and agreements of the parties relating to the Software and the subject matter hereof. AirWatch's agreement to provide the Software to Customer is expressly conditioned upon the unequivocal application of all terms and conditions included in this EULA to such transaction and any additional or different terms or conditions proposed by Customer (whether by purchase order, counter-offer, acknowledgement, electronic data interchange, vendor enrollment, or otherwise) are hereby expressly objected to and will not be in any way binding upon AirWatch. Although any related Order or SOW is incorporated by reference herein, it is the express agreement of the parties that the terms of this EULA shall supersede any conflicting terms in any related Order or SOW, unless the conflicting terms in such related Order or SOW clearly express an intent to supersede this EULA by directly and specifically referring to the section or sections of this EULA to be superseded and such Order or SOW is executed by an officer of each party. If any term of this EULA is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of this EULA. This EULA may only be amended or modified in writing and any modification or amendment to this EULA will be effective only upon execution by an officer of each party.