

# End User License Agreement

This End User License Agreement (“Agreement”) is a binding legal contract between you (either an individual, a legal entity, or the U.S. Government) and ThingLogix, LLC (“ThingLogix”). By downloading, installing, accessing or using the accompanying software (the “Application”) you will be bound by the terms of this Agreement. If you do not agree to the terms of this Agreement, ThingLogix is not willing to grant you any right to use or access the Application to you. In such event, you may not download, install, access, use or copy the Application.

The Application is licensed to you, not sold. Except for the limited license granted in this Agreement, ThingLogix and its licensors retain all right, title and interest in the Application and all proprietary rights in the Application, including copyrights, patents, trademarks and trade secret rights.

1. Grant of License. ThingLogix grants you a revocable, nontransferable (except as provided below), personal, nonexclusive license to use the object code version of the Application for use on your mobile device. You may not install or use the Application on a device that you do not own or control.
2. Limitations On License. The license granted to you in this Agreement is restricted as follows:

-Limitations on Copying and Distribution. You may not copy or distribute the Application except to the extent that copying is necessary to use the Application for purposes set forth herein.

-Limitations on Reverse Engineering and Modification; APIs. You may not (i) access or use the application programming interfaces (“APIs”) for any purpose other than your licensed use of the Application or (ii) reverse engineer, decompile, disassemble, modify or create works derivative of the Application, except to the extent expressly permitted by applicable law.

Sublicense, Rental and Third Party Use. You may not assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the Application, or directly or indirectly permit any third party to copy and install the Application on a device not owned and controlled by you.

Proprietary Notices. You may not remove any proprietary notices (e.g., copyright and trademark notices) from the Application or its documentation.

Use in Accordance with Documentation. All use of the Application must be in accordance with its then current documentation, if any.

Confidentiality. You must hold the Application and any related documentation in strict confidence for your own use only.

Compliance with Applicable Law. You are solely responsible for ensuring your use of the Application is in compliance with all applicable foreign, federal, state and local laws, and rules and regulations.

3. **Account Set-Up.** You agree to: (a) provide true, accurate, current, and complete information when registering to use the Application and establishing your account (“Registration Information”) and (b) maintain and promptly update the Registration Information to keep it true, accurate, current, and complete. If you provide any information that is untrue, inaccurate, not current, or incomplete, or ThingLogix has reasonable grounds to suspect that such information is untrue, inaccurate, not current, or incomplete, ThingLogix may suspend or terminate your account. You are entirely responsible for maintaining the confidentiality of any passwords and any usage and activities that occur in connection with your account. You agree not to allow others to access your account or utilize your password.

4. **Online Services Associated with the Application.** The Application may be used to access certain online services. In some cases, you will not receive a separate notice when the Application connects to those services. Using the Application constitutes your consent to the transmission of standard device information (including, but not limited to, technical information about your device, system, and application software) to those services. Your use of those services may be governed by additional terms and conditions. Using the online services will constitute your acceptance of and agreement to be bound by those additional terms and conditions, if any. You may not use any online services in any way that could harm those services, disrupt their operation, or impair any other user’s use of those services or the wireless network through which they are accessed. You may not use the online services to gain unauthorized access to or use of any service, data, account, or network by any means.

5. **Feedback.** You may provide suggestions, comments or other feedback (collectively, “Feedback”) regarding our products and services, including the Application. Feedback is voluntary. We may use Feedback for any purpose without obligation of any kind. To the extent a license is required under your intellectual property rights to make use of the Feedback, you grant us an irrevocable, world-wide, non-exclusive, perpetual, fully-paid-up, royalty-free license to use the Feedback in connection with our business, including the enhancement of the Application and the provision of products and services to our customers.
6. **Termination.** This license will automatically terminate in the event you breach any of its terms. In the event of a claim of intellectual property infringement by any third party relating to the Application, ThingLogix may immediately terminate this Agreement. In addition, we may choose to discontinue support of the Application at any time, without notice. This may include remotely accessing the Application to cease its operation. In such case, the Application may cease to function and your data may become inaccessible. You are solely responsible for backing up any data stored in the Application.
7. **In-App Purchases.** You may elect to purchase additional features or functionality for the Application through in-app purchases. You agree to pay all fees associated with purchases made through the Application. All fees are non-refundable, non-cancellable.
8. **Privacy.** ThingLogix recognizes the importance of respecting your privacy. The Privacy Statement (linked below) provides a description of how ThingLogix collects, uses, shares and protects personal information on its website, as well as the choices and access rights you have in regards to such personal information. For more information on ThingLogix’s

privacy practices and to review our Privacy Statement please visit [www.thinglogix.com/privacy](http://www.thinglogix.com/privacy).

9. Location-Enabled Features. Certain location-enabled functionality made available in the Application is provided by Google Inc., Apple Inc., and/or other third party providers. Your use of that functionality may be subject to additional terms and conditions (as updated from time-to-time): [http://www.google.com/intl/en-US\\_US/help/terms\\_maps.html](http://www.google.com/intl/en-US_US/help/terms_maps.html) and <https://www.apple.com/legal/internet-services/maps/terms-en.html>. You must exercise your own judgment as to the adequacy and appropriateness of the information. All location-based information is provided entirely “as-is,” without warranties of any kind.
10. Application Support; Functionality. All questions and requests relating to Application support must be directed to ThingLogix. The Third Parties, as defined in Section 10, are not responsible for providing support for the Application and may not be contacted for support. We may change or remove functionality and other features of the Application at any time, without notice.
11. Your Warranties. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.
12. Warranty Disclaimer. THE APPLICATION IS PROVIDED ON AN “AS AVAILABLE,” “AS IS” BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THINGLOGIX AND ITS SUPPLIERS AND LICENSORS DISCLAIM ALL WARRANTIES WITH RESPECT TO THE APPLICATION, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND FITNESS FOR A PARTICULAR PURPOSE. THINGLOGIX AND ITS SUPPLIERS AND LICENSORS DO NOT WARRANT THAT THE APPLICATION WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF THE APPLICATION WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE APPLICATION WILL BE CORRECTED.
13. Modified Devices and Operating Systems. ThingLogix will have no liability for errors, unreliable operation, or other issues resulting from use of the Application on or in connection with rooted or jail broken devices or use on any mobile device that is not in conformance with the manufacturer’s original specifications, including use of modified versions of the operating system (collectively, “Modified Devices”). Use of the Application on Modified Devices will be at your sole and exclusive risk and liability.
14. No Liability for Third Parties. Your wireless carrier, the manufacturer and retailer of your mobile device, the developer of the operating system for your mobile device, the operator of any application store, marketplace, or similar service through which you obtain the Application, and their respective affiliates, suppliers, and licensors (collectively, the “Third Parties”) are not parties to this Agreement and they do not own and are not responsible for the Application. YOU AGREE (I) THE THIRD PARTIES DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, WITH RESPECT TO THE APPLICATION, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND FITNESS FOR A

PARTICULAR PURPOSE; (II) IN NO EVENT WILL THE THIRD PARTIES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) ARISING OUT OF THIS AGREEMENT OR THE APPLICATION, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES; (III) IN ANY EVENT, THE MAXIMUM LIABILITY OF ANY THIRD PARTY FOR ALL CLAIMS (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) OF EVERY KIND WILL IN NOT EXCEED FIVE DOLLARS (\$5.00); AND (IV) YOU WAIVE ANY AND ALL CLAIMS, NOW KNOWN OR LATER DISCOVERED, THAT YOU MAY HAVE AGAINST THE THIRD PARTIES ARISING OUT OF THE APPLICATION AND THIS AGREEMENT. THE THIRD PARTIES ARE INTENDED THIRD PARTY BENEFICIARIES OF THIS AGREEMENT, CAPABLE OF DIRECTLY ENFORCING ITS TERMS. NOTHING CONTAINED IN THIS AGREEMENT WILL BE CONSTRUED AS MODIFYING OR AMENDING ANY AGREEMENTS OR OTHER TERMS BETWEEN YOU AND THE THIRD PARTIES WITH REGARD TO THEIR SUBJECT MATTER. In the event of any claim that the Application or your possession and use of the Application infringes a third party's intellectual property rights, the Third Parties are not responsible for the investigation, defense, settlement, or discharge of the infringement claim.

15. Limitation Of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL THINGLOGIX OR ITS SUPPLIERS AND LICENSORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE), WHICH INCLUDE, WITHOUT LIMITATION, DAMAGES FOR PERSONAL INJURY, LOST PROFITS, LOST DATA AND BUSINESS INTERRUPTION, ARISING OUT OF THE USE OR INABILITY TO USE THE APPLICATION, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE ENTIRE LIABILITY OF THINGLOGIX AND ITS SUPPLIERS AND LICENSORS UNDER THIS AGREEMENT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) IS LIMITED TO THE AMOUNT PAID BY YOU, IF ANY, FOR THE APPLICATION.

THINGLOGIX'S SUPPLIERS AND LICENSORS ARE THIRD PARTY BENEFICIARIES OF THIS AGREEMENT, CAPABLE OF DIRECTLY ENFORCING THIS AGREEMENT AGAINST YOU AS A THIRD PARTY BENEFICIARY. YOU WAIVE ANY AND ALL CLAIMS, NOW KNOWN OR LATER DISCOVERED, THAT YOU MAY HAVE AGAINST THINGLOGIX'S SUPPLIERS AND LICENSORS ARISING OUT OF THE LICENSE OF THE APPLICATION AND ITS MARKETING, YOUR USE OF THE APPLICATION, AND THIS AGREEMENT. YOUR SOLE AND EXCLUSIVE REMEDIES ARE AGAINST THINGLOGIX AND SUBJECT TO THE PROVISIONS OF THIS AGREEMENT.

Some states do not allow the exclusion of incidental or consequential damages, or the limitation on how long an implied warranty lasts, so some of the above may not apply to you.

16. **Social Media and Other Third Party Services.** The Application may be used to access and use certain third party services (e.g., Twitter, Facebook, Dropbox, etc.). In addition to the terms of this Agreement, your use of those services will be subject to the applicable third party service's terms and conditions, including their privacy policies. You are responsible for reviewing and accepting those terms prior to transferring or posting any information to their services. You understand and agree that those services are not ThingLogix's agents and that ThingLogix has no responsibility or liability for them. All third party services are provided as-is and as-available, without warranties of any kind.
17. **Your Indemnity.** You will indemnify, defend, and hold harmless ThingLogix and its suppliers and licensors and the Third Parties from and against all damages, liabilities, costs, fines, sanctions, and expenses arising out of your breach of this Agreement.
18. **Export and Import Restrictions.** The Application may be subject to the import and export laws of various jurisdictions, including the United States. You are solely responsible for ensuring compliance with all foreign and domestic export and import laws and regulations.
19. **Government Restrictions.** Any software or other programming provided by ThingLogix in connection with this Agreement is commercial computer software as defined in DFARS 252.227-7014(a)(1) and FAR 2.101. If acquired by or on behalf of the United States Department of Defense or any component thereof, the United States Government acquires this commercial computer software and commercial computer software documentation subject to the terms of this Agreement as specified in DFARS 227.7202-3, Rights in Commercial Computer Software or Commercial Computer Software Documentation. If acquired by or on behalf of any civilian agency, the United States Government acquires this commercial computer software and commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.
20. **General.** This Agreement will be construed, interpreted, and performed exclusively according to the laws of the State of California, United States of America, without giving effect to any principles of conflicts of law. Any action at law or in equity arising out of or directly or indirectly relating to this Agreement may be instituted only in the Federal or state courts located in San Francisco, California. You and ThingLogix consent and submit to the personal jurisdiction of those courts for the purposes of any action related to this Agreement, and to extra-territorial service of process. You agree that regardless of any statute or law to the contrary, any claim or cause of action that you may have arising out of or related to this Agreement must be filed within one (1) year after the claim or cause of action arose. This Agreement constitutes the entire understanding and agreement between ThingLogix and you with respect to the transactions contemplated in this Agreement and supersedes all prior or contemporaneous oral or written communications with respect to the subject matter of this Agreement, all of which are merged in this

Agreement. This Agreement may not be modified, amended or in any way altered except by an instrument in writing signed by authorized representatives of both parties. In the event any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement will remain valid and enforceable according to its terms. Any failure by ThingLogix to strictly enforce any provision of this Agreement will not operate as a waiver of that provision or any subsequent breach of that provision. The disclaimers and limitations of liability and your indemnity will survive any termination or expiration of this Agreement. This Agreement may be accepted in electronic form (e.g., by an electronic or other means of demonstrating assent) and your acceptance will be deemed binding between you and ThingLogix. Neither you nor ThingLogix will contest the validity or enforceability of this Agreement, including under any applicable statute of frauds, because it was accepted or signed in electronic form. Electronically maintained records when produced in hard copy form shall constitute business records and shall have the same validity as any other generally recognized business records. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES WILL REMAIN IN EFFECT.

21. (a) Notwithstanding any other provision of this Agreement, when the end user is an agency or instrumentality of the U.S. Government (“Government”), the following shall apply:

(i) Applicability. This Agreement is a part of a contract between ThinkLogix and the U.S. Government, a prime contractor, or a higher-tiered subcontractor, for the acquisition of the Application (the “Contract”), which necessitates a license(including all contracts, task orders, and delivery orders under FAR Part 12).

(ii) End user. This Agreement shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

(iii) Law and disputes. This Agreement is governed by Federal law.

(A) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(iv) Continued performance. ThingLogix shall not unilaterally revoke,

terminate or suspend any rights granted to the Government except as allowed by the Contract. If ThingLogix believes the Government to be in breach of the Agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance.

(v) Arbitration; equitable or injunctive relief. In the event of a claim or dispute arising under or relating to this Agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to

Justice Act).

(vi) Updating terms.

(A) After award, ThingLogix may unilaterally revise terms if they are not material. A material change is defined as:

(1) Terms that change Government rights or

obligations;

(2) Terms that increase Government prices;

(3) Terms that decrease overall level of

service; or

(4) Terms that limit any other Government

right addressed elsewhere in the Contract.

(B) For revisions that will materially change the terms of the Contract, the revised end user license agreement must be incorporated into the Contract using a bilateral modification.

(C) Any Agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of the Contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

(vii) No automatic renewals. If any license or service tied to periodic payment is provided under this Agreement (e.g., annual software maintenance), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an

authorized Government representative.

(viii) Indemnification. Any clause of this Agreement requiring ThingLogix to defend or indemnify the Government is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

(ix) Audits. Any clause of this Agreement permitting ThingLogix to audit the Government's compliance with this Agreement is hereby amended as

follows:

(A) Discrepancies found in an audit may result in a charge by ThingLogix to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Contract.

(B) This charge, if disputed by the ordering activity, will be resolved in accordance with Paragraph 20 of this Agreement; no payment obligation shall arise on the part of the Government until the conclusion of the dispute process.

(C) Any audit requested by ThinkLogix will be performed at ThingLogix's expense, without reimbursement by the Government.

(x) Taxes or surcharges. Any taxes or surcharges which ThingLogix seeks to pass along to the Government as end user will be governed by the terms of the Contract and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Contract.

(xi) Non-assignment. This Agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under FAR Subpart 42.12.

(xii) Confidential information. If this Agreement includes a confidentiality clause, such clause is hereby amended to state that neither the Agreement nor the Contract price list, as applicable, shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this Agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this Agreement.

(xiii) Any language, provision, or clause of this Agreement requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify ThingLogix or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), does not apply.

(b) If any language, provision, or clause of this Agreement conflicts or is inconsistent with the preceding Paragraph (21)(a), the language, provisions, or clause of Paragraph (21)(a) shall prevail to the extent of such inconsistency.



