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EMMA TECHNOLOGIES S.a.r.l.-S END USER LICENSE AGREEMENT

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1. DEFINITIONS

- “Documentation” means the documentation in the form of online and printed media which describe the EMMA feature set and operation.
- associated with “EMMA” means EMMA technologies S.a.r.l.-S a Luxembourgish Company with principal place of business being 9, Rue du Laboratoire, Luxembourg, Luxembourg, 1911.
- “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, EMMA, 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

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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.

- “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 EMMA 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.
- “Workload Element” is defined as the granular unit of compute that is directly associated with a workload within the Software and includes both discovered and fully managed instances as many features within the Software work for both. Workload Elements may constitute a bare metal server, a virtual machine, or a container deployment not running as a hypervisor or docker host. (Example: a MySQL cluster running on 3 VMs would equal 3 workload elements)
- “Subscription Level” is defined as the maximum allowable number of concurrent Workload Elements in use at any time during the subscription period. EMMA 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

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3. LICENSE GRANT

- 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.
- Software Activation and Audit. EMMA’s Software may transmit license-related data at the time of installation, registration, use or update to a EMMA license server in order to activate Your license and provide You with update notifications. We may use the connection to EMMA 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 EMMA’s request, you will generate a monthly usage report and transmit such report to EMMA. 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.

- **Copyright and other Restrictions.** EMMA 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 EMMA. All right, title and interest in the Software remains at all times with EMMA. 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 EMMA. You may copy the Software solely for backup or archival purposes.
- **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.
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- **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 EMMA may stop (permanently or temporarily) providing the Software (or any features within the Software) in EMMA's sole discretion, with prior notice, of at least twelve (12) months. This

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Agreement governs any updates, releases, revisions or enhancements to the Software which EMMA may furnish to You.

- **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 EMMA is not responsible for those applications, data, content, or resources. You understand that all data, content or resources which You may access through such thirdparty applications are the sole responsibility of the person from which they originated, and that EMMA 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 EMMA. 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.

- **Open Source Software.** You acknowledge that certain third-party software incorporated in the Software requires that EMMA provide copyright notices and/or additional terms and conditions to You, which copyright notices 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 EMMA incorporates any Open Source Software into its software, EMMA shall have the responsibility to ensure that such software is properly licensed.

4. SUPPORT SERVICES AND UPDATES

EMMA will provide Support Services to the extent such services are provided for in the applicable Transaction Document and subject to EMMA'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, EMMA 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

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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. EMMA makes no representation or warranty that all support problems or tickets raised will be fixed unless such tickets relate to the workings of the EMMA software itself. In addition, as part of the Support Services, EMMA shall periodically make available bug lists, planned feature lists, and other supplemental materials.

5. OWNERSHIP; FEEDBACK

Except as expressly provided in this Agreement, EMMA 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 EMMA suggestions, techniques, know-how, feedback or other input with respect to the Software (collectively, "Suggestions"). Unless otherwise agreed to in writing, EMMA 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 EMMA and its suppliers.

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- Your exclusive remedy for EMMA's breach of 6.1 is that EMMA 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. EMMA's warranty obligations will only extend to material errors that can be demonstrated to exist in an unmodified



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- IN NO EVENT WILL EMMA, 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, EMMA'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

- 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.

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- This Agreement or an individual license granted hereunder may be terminated (a) in the case of EMMA, if You fail to pay any amount due hereunder within thirty (30) days after written demand by EMMA 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.
- 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. GENERAL

- 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.
- Except in the event of a sale or transfer by EMMA 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.
- 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, EMMA 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.
- 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

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matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written.

- 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 EMMA 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 EMMA 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.
- 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.
- 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.
- You acknowledge and agree that each member of the group of companies of which EMMA may be the parent (or of which EMMA 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

- Subject to proper payment to EMMA either directly or via authorized resellers and in compliance with the terms and conditions of this Support and Service Agreement (“SSA”) EMMA shall make

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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. EMMA shall have the right to modify the Support Schedule at any time with reasonable notice to You.

- 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 EMMA quote or purchase order accepted by EMMA. Submission and process of trouble tickets and email queries shall be subject to guidelines. English shall be the language used for EMMA support communication.
- For the avoidance of doubt, EMMA 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.
- EMMA 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 EMMA 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.
- EMMA 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 EMMA 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 EMMA NOR ANY OF ITS LICENSORS, AFFILIATES, EMPLOYEES OR CONSULTANTS SHALL BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY

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3. Support Schedule

EMMA 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 EMMA software and the ability of EMMA 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.