

End User License Agreement (EULA) for Cimetrix Software – Source Code Repository

IMPORTANT READ CAREFULLY.

This End-User License Agreement (this “**EULA**”) is a legal agreement between You and PDF Solutions, Inc. and its subsidiaries (collectively, “**PDF**” or “**Licensor**”) for access to the repository (the “**Repository**”) for Cimetrix Software licensed to you pursuant to the Cimetrix License Agreement (“**CLA**”) and made accessible to You by PDF. PDF and You are each a “**Party**” to this EULA and are collectively referred to as the “**Parties**” herein. “**You**” and “**Your**” refer either to an individual person or to a single legal entity.

BY ACCESSING THE REPOSITORY, YOU AGREE TO THE TERMS OF THIS EULA. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS.

IF YOU DO NOT AGREE TO THESE TERMS – DO NOT ACCESS THE REPOSITORY. IF YOU HAVE ALREADY ACCESSED THE REPOSITORY, YOU ARE SUBJECT TO THIS EULA FOR SUCH ACCESS AND MUST NOT ACCESS IT AGAIN.

1. Definitions

“**Program**” is defined as the following items, including the original and all whole or partial copies: (1) Licensor proprietary software (and all improvement, enhancements, and updates thereto, “**Software**”); (2) machine-readable instructions and data, (3) components, (4) audio-visual content (such as images, text, recordings, or pictures), (5) third-party programs (“**TPP**”), including open source software (“**OSS**”), (6) license use documents, files, or keys, and (7) documentation related to each of the foregoing.

2. Grant of License

2.1 Licensor grants You a limited, nonexclusive, non-transferable, non-sub-licensable, revocable, fully-paid up, worldwide license to access the Program when You are given valid authorization to use it as part of Your valid license to Cimetrix Software. The duration of this license is limited by the term of all valid Statements of Work (SOWs) with PDF relating to this access. In any event, this EULA does not grant any license to use the Program; all licenses to use, copy, and distribute Cimetrix Software are only as granted to You pursuant to the CLA.

2.3 You may access and download Programs under valid license to which You are authorized by PDF. All copies of the Program, whether authorized

or unauthorized, are subject to the terms and conditions of this EULA.

2.4 You may upload data (“**Uploads**”) consistent with Licensor’s Acceptable Use Policy located on Licensor’s website at: <https://www.pdf.com/company/trust-center/working-with-pdf-solutions/cloudsite-acceptable-use-policy/>. Licensor shall delete Your Uploads when Your access ends. You should take precautions to avoid any loss of data that might result when access to the Program has ended.

2.5 You will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this EULA.

2.6 You shall not take any action that would cause the Program to be placed in the public domain.

2.7 Licensor may terminate Your license if You fail to comply with the terms of this EULA or if you fail to comply with the terms of any agreement in place between You and Licensor relating to the Cimetrix Software.

3. No Warranty

Subject to any statutory warranties which cannot be excluded, Licensor excludes and disclaims any and

all warranties or representations regarding availability of the Repository.

4. Limitation of Liability

Regardless of the basis on which You may be entitled to claim damages from Licensor (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), Licensor shall have no liability to You, except in the event of damages for bodily injury (including death) that cannot legally be waived/limited, including UNDER ANY CIRCUMSTANCES FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

- a) LOSS OF, OR DAMAGE TO, YOUR UPLOADS; OR,
- b) SPECIAL (INCLUDING LOST PROFITS), INCIDENTAL, PUNATIVE OR INDIRECT DAMAGES, OR FOR ANY CONSEQUENTIAL ECONOMIC DAMAGES.

5. General

5.1 Nothing in this EULA affects any statutory rights of consumers that cannot be waived or limited by contract.

5.2 In the event that any provision of this EULA is held to be invalid or unenforceable, the remaining provisions of this EULA remain in full force and effect.

5.3 You acknowledge that some or all of the components of the Program licensed or made available to You related to this EULA may be subject to applicable export control or sanctions laws and regulations (collectively, the “**Export Laws**”), including the Export Administration Regulations (the “**EAR**”) administered by the U.S. Department of Commerce’s Bureau of Industry and Commerce and the financial sanctions maintained administered by the Department of the Treasury’s Office of Foreign Assets Control (“**OFAC**”). Notwithstanding anything to the contrary, availability of and any Licensor’s obligation to provide or continue availability of such components of the Program is subject to the Export Laws, and the Parties agree that in the event the Export Laws

restrict Licensor from providing such components, Licensor will be excused from such obligation without liability, penalty, or compensation. You confirm that You will comply with the applicable Export Laws, and without limiting the foregoing, that You will not export, reexport, transfer, or divert such components or the direct product thereof: (i) into activities related to nuclear, biological, or chemical weapons, or missiles, rocket systems, or unmanned aerial vehicles (UAV); (ii) to Russia, Belarus, Cuba, Iran, North Korea, Syria, the Russian-occupied regions of Ukraine, or to any country that is subject to an applicable government embargo; or (iii) to any other country, entity, individual, or end-use without a required government license or other government authorization. You confirm that the Program (specifically Licensor Software and related documentation) is not intended for a military end-use. For the avoidance of doubt about, and without limitation to, the following particular matter, to the extent that EU Regulation 833/2014 clause 12g and 765/2006 8g apply, reexport of such items to Russia or Belarus contrary to this subsection may be deemed a material breach warranting immediate termination of the EULA and Your liability to Licensor for Licensor’s resulting damages and all other remedies under applicable law. The obligations of this subsection will survive the expiration or other termination of this EULA.

5.4 You acknowledge that Licensor may store and use Your contact information, including names, phone numbers, and e-mail addresses, in jurisdictions where it conducts business. Such information will be processed and used in connection with Licensor’s business relationship with You, and may be provided to contractors, business partners, and assignees of Licensor for uses consistent with their collective business activities, including communicating with You (e.g., for order processing, promotional communications, and market research).

5.5 You will bring a legal action under this EULA more than one year after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.

5.6 Licensor is not responsible for failure to fulfill any obligations due to causes beyond its control.

5.7 This EULA is the complete agreement between You and Licensor regarding access to the Repository. It replaces any prior oral or written communications between You and Licensor in respect of the subject matter of this EULA.

5.8 This EULA will not create any right or cause of action for any third party. Third party licensors to Licensor are the owners of the intellectual property rights related to their programs included in the Program, and shall have the right to claim against You for any breaches of the terms applicable to such programs. Licensor will not be responsible for any third-party claims against You except, as permitted by the Limitation of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which Licensor is legally liable.

6. Governing Law and Jurisdiction

6.1 North America. If You are located, or accepting this EULA on behalf of a company incorporated, in the United States or Canada, this EULA shall be construed in accordance with the substantive laws of the State of Delaware (without reference to Delaware's rules regarding conflict of laws). You consent to the jurisdiction of the federal and state courts situated in the State of Delaware and agree that such courts shall have exclusive jurisdiction over any dispute arising under or relating to the EULA.

6.2. Asia. If You are located, or accepting this EULA on behalf of a company incorporated, in Asia, this EULA shall be construed in accordance with the substantive laws of Singapore (without reference to Singapore's rules regarding conflict of laws). You consent to the exclusive jurisdiction and venue of the International Centre for Dispute Resolution of the American Arbitration Association in accordance with its arbitration rules then in effect ("**ICDR Rules**"). The arbitral tribunal shall consist of one (1) arbitrator selected with mutual consent or in

accordance with the ICDR Rules if the Parties fail to agree. The seat of the arbitration shall be Singapore.

6.3 Europe. If You are located, or accepting this EULA on behalf of a company incorporated, in Europe, this EULA shall be construed in accordance with the substantive laws of England and Wales (without reference to rules regarding conflict of laws). You consent to the exclusive jurisdiction and venue of the International Centre for Dispute Resolution of the American Arbitration Association in accordance with its arbitration rules then in effect ("**ICDR Rules**"). The arbitral tribunal shall consist of one (1) arbitrator selected with mutual consent or in accordance with the ICDR Rules if the Parties fail to agree. The seat of arbitration shall be London.

For either 6.2 or 6.3, the language of the arbitration shall be English; the arbitrator shall have a nationality other than that of the Parties; the arbitral award shall be final and binding on both Parties; and judgment on any arbitration decision may be entered in any court of competent jurisdiction.

6.4 UCC. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

7. Third Party Programs

The Program may include TPP, including OSS, subject to additional or in some cases separate (controlling) license terms. You agree to comply with all applicable third-party and open source licenses, including any obligations regarding attribution, source code distribution, or modifications. Licensor makes no warranties regarding such software and assumes no responsibility for updates, security, or support. A list of TPP, along with their license terms, may be provided within the Program or accompanying documentation. This EULA does not, and shall not be interpreted to, replace or otherwise amend any of Your rights or obligations pursuant to any OSP and TPP with respect to any use, distribution, or sublicensing.