



## End User License Agreement

This End User License Agreement ("**Agreement**") is between Polyverse Corporation with an address at 10400 NE 4<sup>th</sup> St, Suite 500, Bellevue WA 98004 ("**Polyverse**"), and the Ordering Activity under GSA Schedule contracts ("**Licensee**" or "Ordering Activity"), and entered into on May 15<sup>th</sup>, 2018 ("**Effective Date**").

**1. GRANT.** During the **Subscription Period** (as set forth in the Product Schedule) and subject to the terms and conditions of this Agreement:

**a. Software License.** Polyverse hereby grants to Licensee a personal, nonexclusive, non-transferable, non-assignable and non-sublicenseable license to use the software identified in the purchase order attached to this Agreement ("**Product Schedule**"), in binary executable form only, only in accordance with the accompanying technical documentation ("**Documentation**") and only as specified in the applicable Product Schedule. Polyverse may offer updates, patches, corrections, and supplements to such Software at its sole discretion ("**Updates**"). The software, Documentation, and Updates collectively shall be deemed the "**Software**". The Software does not include any source code and no license is granted with respect to source code of any kind.

**b. Subscription Services.** Polyverse hereby grants to Licensee a nonexclusive, non-transferable, non-assignable and non-sublicenseable license to access and use the services identified in the Product Schedule (the "**Subscription Services**"). Use of the Subscription Services shall be limited to the number of nodes ("**Nodes**") specified in the Product Schedule. Licensee shall be solely responsible for procuring all required hardware and any third party software required to operate the Subscription Services.

Any unauthorized access to Subscription Services, or other abuse or impermissible activity on Polyverse's site or in connection with the Subscription Services, may result in immediate temporary suspension of the licenses granted herein. Licensee shall immediately notify Polyverse of any unauthorized use of the Subscription Services or any other known or suspected breach of security.

**c. Restrictions.** The Software and Subscription Services shall collectively be deemed the "**Products**". Except as expressly set forth in this Agreement, Licensee shall not (directly or indirectly, in whole or in part): (i) cause or permit any reverse engineering, decompilation, modification, translation or disassembly of the Software; (ii) sell, rent, sublicense, distribute, disclose, publish, assign, commercially share

(including time share), or otherwise transfer any rights in the Products without Polyverse's prior written consent; (iii) use the Products for service bureau services including, without limitation, providing third party hosting, or third party application integration or application service provider type services, or for any similar services; (iv) permit any third party application to access the collection of data indexed by the Products, or use the Products to create or populate any other collection (except with Polyverse's prior written consent); and (vi) cause or permit to be done anything which shall adversely affect Polyverse's right, title or interest in or to the Products.

Licensee shall use the Products only in compliance with all applicable laws and regulations (including all export laws and regulations) and the terms of this Agreement.

**2. OWNERSHIP.** Title and ownership of all proprietary rights, including any copyright, patent, trade secret, trademark or other intellectual property rights, in and to the Products and any copies thereof, including but not limited to all Updates, enhancements and modifications to the Software, is and will at all times remain the property of Polyverse. Polyverse retains all right, title and interest in and to the Products that are not specifically granted to Licensee hereunder. Licensee shall not remove or obliterate any copyright, trademark or proprietary rights notice of Polyverse from the Products and shall reproduce all such notices on all authorized copies of the Products.

**3. TERM AND TERMINATION.** Except as otherwise stated herein, or unless terminated earlier in accordance with this Section 3 and the Contract Disputes Act, the term of this Agreement shall commence on the Effective Date and continue until the expiration of the Subscription Period set forth in the Product Schedule. . When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Polyverse shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon termination in accordance with the Contract Disputes Act, Licensee shall immediately remove and cease to use the Products and shall return to Polyverse or destroy all copies of the Products or any part thereof (in any form or media), and certify in writing to Polyverse that Licensee has complied with the foregoing obligations. Upon termination of this Agreement, all sections of the Agreement, which by their

nature should survive termination, will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and termination terms.

**4. SUPPORT.** During the Subscription Period, Polyverse shall exercise commercially reasonable efforts to provide Licensee with technical support for the Products via email. Polyverse shall not be liable for any failures or delays arising as a result of Licensee's failure to properly notify Polyverse of any technical failures of the Products.

**5. LIMITED WARRANTY AND DISCLAIMER.** Polyverse warrants that the Products will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Products written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, POLYVERSE DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. THE PRODUCTS ARE PROVIDED "AS IS". POLYVERSE DOES NOT WARRANT THAT THE PRODUCTS OR THE FUNCTIONS CONTAINED THEREIN WILL MEET LICENSEE'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE.

**6. LIMITATION OF LIABILITY.** IN NO EVENT WILL POLYVERSE BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, AND LOSS OR INACCURACY OF INFORMATION), REGARDLESS OF THE FORM OF ACTION, EVEN IF THE CLAIM WAS REASONABLY FORESEEABLE OR IF POLYVERSE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL POLYVERSE'S AGGREGATE LIABILITY UNDER ANY AND ALL CLAIMS ARISING OUT OF THIS AGREEMENT EXCEED THE CONTRACT PRICE. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT.

**7. CONFIDENTIALITY.** Except as expressly and unambiguously permitted hereunder, each party shall hold in confidence and not use or disclose any materials or information disclosed by the other party that are confidential or proprietary, or which may be reasonably regarded as the confidential information of the other party ("**Confidential Information**"). Confidential Information will also include the Software, Documentation, and any new product information or the results of any benchmark or similar tests on the Products conducted by Licensee or divulged by Licensee to Polyverse. Each party shall treat the other party's Confidential Information with at least the same degree of care it uses to prevent unauthorized disclosure or use of its own Confidential Information, but in

no event less than reasonable care. Confidential Information will not include any materials or information that the recipient can prove (i) is now, or later becomes, through no act or failure to act on the part of the receiving party, generally known or available to the public; (ii) is known by the receiving party at the time of disclosure as evidenced by its records; (iii) is furnished to the receiving party by a third party, as a matter of right and without restriction on disclosure; (iv) is independently developed by the receiving party without any breach of this Agreement; (v) is the subject of a written permission to disclose provided by the disclosing party; or (vi) is disclosed in response to a valid order of a court or other governmental body. Polyverse recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

**8. FEES.** Licensee shall pay Polyverse the fees set forth in the Product Schedule in accordance with the GSA Pricelist within thirty (30) days from the receipt date of invoice. Polyverse shall state separately on invoices taxes excluded from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**9. INTELLECTUAL PROPERTY RIGHTS.**

Licensee agrees to promptly notify Polyverse of any known or suspected infringement or breach of Polyverse's proprietary rights. Polyverse shall have the right to institute infringement or other appropriate legal action against any alleged, prospective or actual infringement of Polyverse's intellectual and other proprietary rights in the Products, and shall retain all money received from such action. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516. If the Products or the operation of the Products becomes or, in Polyverse's opinion is likely to become, the subject of a claim that it infringes the rights of any third party, Licensee will permit Polyverse, at Polyverse's expense, to either: (i) procure the right for Licensee to continue using the Products, or (ii) replace and modify the Products so that it becomes non-infringing; provided that, if neither of the foregoing alternatives is reasonable, Licensee will return the Products to Polyverse, and Polyverse will refund the price paid by

Licensee, whereupon this Agreement shall terminate immediately. Notwithstanding the foregoing, Polyverse shall not be liable for any such claim that arises as a result of: (a) any modification of the Products by any party other than Polyverse; (b) use of the Products otherwise than in accordance with the Documentation; (c) combination of the Products with hardware or other software, if such claim would have been avoided by not so combining the Products; or (d) use of a superseded release of Software if the infringement would have been avoided by the timely implementation of an Update supplied by Polyverse. THE FOREGOING STATES LICENSEE'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO CLAIMS OF INFRINGEMENT OF THIRD PARTY PROPRIETARY RIGHTS OF ANY KIND. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from the Vendor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

**10. GOVERNMENT END USERS.** The Software, including the accompanying documentation, are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to FAR Section 12.212 under United States laws, as applicable. Any use, modification, reproduction, release, performance, display, or disclosure of the Software and accompanying documentation by the United States Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

**11. COLLECTION OF INFORMATION.** Polyverse may, directly or indirectly through third parties services, collect and store information regarding Licensee's navigation or utilization of the Products. Polyverse may use such information for any purpose, including but not limited to: (a) improving the performance of the Products or developing Updates; and (b) verifying Licensee's compliance with the terms of this Agreement and enforcing Polyverse's rights, including all intellectual property rights in and to the Products.

**12. RESERVED.**

### **13. GENERAL.**

This Agreement together with the Product Schedule, together with the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s), contains the full and complete understanding of the parties as to the subject matter hereof and may not be altered or modified, except by written amendment which expressly refers to this Agreement and which is duly executed by both Polyverse and Licensee.

The parties expressly agree that this Agreement supersedes all prior or contemporaneous proposals and all oral or written understandings, representations, conditions, and other communications between the parties relating to such subject matter. A negotiated purchase order would take precedence as the negotiated purchase order would demonstrate any changes to these terms to meet the ordering activity's minimum needs.

Licensee or Polyverse shall not transfer or assign this Agreement or any rights or obligations hereunder under operation of law, change of control, or otherwise, without the prior written consent of the other party. Any attempted assignment or transfer in violation of the foregoing will be void.

This Agreement will be governed and interpreted in accordance with the Federal laws of the United States.

All notices required under this Agreement shall be in writing and shall be deemed effective: one (1) day after deposit with a commercial overnight carrier, with written verification of actual receipt. All notices must be delivered to the CEO of the other party to the applicable address on the first page hereof or to such other address as the parties may designate in writing.

If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms.

The failure of a party to insist on the performance of an obligation hereunder shall not be deemed to be a waiver of such obligation or of any other obligation.

Excusable delays shall be governed by FAR 52.212-4(f).

The parties hereto have caused this Agreement to be executed in their respective corporate names by a duly authorized officer, as of the Effective Date.

**POLYVERSE CORPORATION**



By: \_\_\_\_\_

Name :Steven Potter\_\_\_\_\_

Title: VP Sales\_\_\_\_\_

Date: 5/15/2018\_\_\_\_\_

**LICENSEE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_