

END USER LICENSE AGREEMENT

IMPORTANT, READ THIS AGREEMENT CAREFULLY. BY INSTALLING, ACCESSING OR USING ALL OR ANY PORTION OF THE SOFTWARE, INCLUDING BY CLICKING “I ACCEPT” OR “I AGREE” OR WORDS OF SIMILAR MEANING UPON DOWNLOAD, INSTALLATION, OR ACCESS TO THE SOFTWARE, YOU ACCEPT ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT.

IF YOU USE THE SOFTWARE AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP OR SIMILAR ENTITY, THEN YOU REPRESENT THAT YOU ARE AUTHORIZED TO SIGN FOR AND BIND THE ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT.

IF YOU HAVE ENTERED INTO A SEPARATE WRITTEN LICENSE AGREEMENT WITH LIQID FOR USE OF THE SOFTWARE, THE TERMS AND CONDITIONS OF SUCH OTHER AGREEMENT SHALL PREVAIL OVER ANY CONFLICTING TERMS OR CONDITIONS IN THIS AGREEMENT.

This End User License Agreement (“**Agreement**”) is between Liquid Inc., located at 329 Interlocken Pkwy., Ste. 200, Broomfield, CO 80021, USA (“**Liquid**”) and the customer (individual or entity) that has downloaded or otherwise procured the licensed Software (as defined below) for use as an end user (“**you**”). This Agreement applies to the computer software provided with the Liquid product purchased by you (whether built into hardware circuitry as firmware, embedded in flash memory or a PCMCIA card, or stored on magnetic or other media), or provided as a stand-alone computer software product, and includes any accompanying written materials such as a user’s guide or product manual, as well as any “online” or electronic documentation (“**Software**”). The term “Software” includes any releases provided to or purchased by you under any separate support and maintenance agreement you may enter into with Liquid.

1. License.

1.1. Grant of License. Subject to all of the terms and conditions of this Agreement, and the payment of applicable fees, Liquid hereby grants you a non-transferable, non-sublicensable, non-exclusive license to use the Software in machine-readable form on any computer and operating system for which it was intended, but solely (a) for your own internal business purposes or as otherwise expressly permitted by an appropriately authorized representative of Liquid in a signed writing; (b) in accordance with the documentation, including the hardware compatibility list (located at <https://www.liquid.com/resources/all?tab=hcl-tab>), Liquid’s applicable Terms and Conditions (available at: [Legal and Product End User Info | Liquid](#)), user guides or other written materials describing the proper use, installation and/or operation of the Software; and (c) in accordance with any additional license term, including but not limited to, subscription term, user, seat, computer, accelerator (including GPU), NVMe count, switch count, or other restrictions specified upon purchase. You may also use and access the Software through the Internet, provided that all such use conforms to all of the provisions and restrictions in Section 1.

1.2. Installation and Keys. Liquid shall make available the Software and documentation available by disk, other media, or as embedded in a device, or make it available for download in electronic form. Liquid shall also provide you with electronic passwords or other enabling mechanisms (“**Keys**”) necessary to permit the licensed usage of the Software. All licenses shall commence upon the delivery date of the Software and Keys. (the “**Effective Date**”). If you obtain the Software through an authorized distributor or reseller of the Software (“**Liquid Supplier**”), the Effective Date of the licenses shall commence upon the delivery date of the Software and Keys from the Liquid Supplier. If you obtain the Software from a Liquid Supplier, the Liquid Supplier is solely responsible for delivery to you and Liquid has no liability for any failure to deliver.

1.3. Permitted Copies; Internal Use Only. You may copy and install on your network computers, for use only by your employees or as otherwise expressly permitted by an appropriately authorized representative of Liquid in a signed writing, the number of copies of the Software for which you have paid the applicable license fee(s), and only in compliance with other license parameters applicable to your license. You may transfer the Software from one network computer to another network computer only if the Software is completely removed and de-installed from the prior network computer. You may also make a reasonable number of copies of the Software for back-up and archival purposes.

1.4. License Restrictions. You shall not (and shall not allow any third party to): (a) decompile, disassemble, or otherwise reverse engineer the Software or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Software by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions); (b) distribute, sell, sublicense,

rent, lease or perform like activities; (c) remove any product identification, proprietary, copyright, or other notices contained in the Software; (d) modify any part of the Software, create a derivative work of any part of the Software, or incorporate the Software into or with other software, except to the extent expressly authorized in writing by Liquid; (e) attempt to circumvent or disable the Keys that protect the Software against unauthorized use (except and only to the extent that applicable law prohibits or restricts such restrictions); or (f) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software. If the Software has been provided to you as embedded in any hardware device, you are not licensed to separate the Software from the hardware device. If the Software has been provided to you separately from a hardware device but is intended to be loaded onto a hardware device specified by Liquid (such as a firmware update), your license is limited to loading the Software on the device specified by Liquid in the documentation, and for no other use.

1.5. **Evaluation Software.** Subject to the terms and conditions of this Agreement and during the term of this Agreement, Liquid may, in its discretion, (i) provide you with pre-release, beta or other software or (ii) a current release of the Software on an evaluation basis ("**Evaluation Software**"). You may use Evaluation Software solely for internal evaluation purposes for: (i) 60 days from receipt of the Evaluation Software; or (ii) the period of time indicated in the document confirming your use of the Evaluation Software; or (iii) the period of time agreed to by Liquid in writing (the "**Evaluation Period**"). Unless you pay the applicable license fee for the Software, the Evaluation Software may become inoperable and, in any event, your right to use the Evaluation Software automatically expires at the end of the Evaluation Period. Evaluation Software shall be subject to all restrictions on Software set forth in this Agreement. You shall treat all Evaluation Software as Confidential Information of Liquid and shall return or destroy any copies of Evaluation Software upon expiration of the applicable Evaluation Period. Any and all suggestions, reports, ideas for improvement and other feedback of any type you provide regarding the Evaluation Software are the sole property of Liquid, and Liquid may use such information in connection with any of its products or services without any obligation or restriction based on intellectual property rights or otherwise. You acknowledge that all Evaluation Software is provided "AS IS" and may not be functional on any machine or in any environment. THE WARRANTIES OF SECTION 6 DO NOT APPLY TO EVALUATION SOFTWARE. LIQID AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES RELATING TO THE EVALUATION SOFTWARE, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

2. **Ownership.** Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, Liquid and its suppliers will retain all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Software and all copies, modifications and derivative works thereof (including any changes which incorporate any of your ideas, feedback or suggestions). You acknowledge that you are obtaining only a limited license right to the Software and that irrespective of any use of the words "purchase", "sale" or like terms hereunder no ownership rights are being conveyed to you under this Agreement or otherwise.

3. **Payment.** You shall pay all fees associated with the Software licensed and any services purchased hereunder as set forth in the applicable ordering document or other agreement. All payments shall be made in U.S. dollars within thirty (30) days of your receipt of the applicable invoice, unless otherwise specified in writing by Liquid or the Liquid Supplier, as applicable. Except as expressly set forth herein, all fees are non-refundable once paid. You shall be responsible for all taxes, withholdings, duties and levies arising from the order (excluding taxes based on the net income of Liquid or the Liquid Supplier). Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.

4. **Third Party Communications Systems.** Your access to the Software may require use of a third party communications system, such as that of Internet access, or a wireless communication system (each, a "Communications Service"). LIQID HAS NO RESPONSIBILITY FOR THE AVAILABILITY, QUALITY OR PERFORMANCE OF INTERNET OR WIRELESS COMMUNICATIONS SERVICES OR EQUIPMENT FURNISHED BY THE COMMUNICATIONS SERVICE PROVIDERS. THE COMMUNICATIONS SERVICE PROVIDERS ARE EXCLUSIVELY RESPONSIBLE FOR SUCH SERVICES AND EQUIPMENT.

5. **Term of Agreement.**

5.1. **Term.** This Agreement is effective as of the Effective Date and expires at such time as all license and service subscriptions hereunder have expired in accordance with their own terms (the "**Term**"). Either party may terminate this Agreement (including all related Order Forms) if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach; (b) ceases operation without a successor; or

(c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days)). If you have entered into a separate written agreement with Liquid which governs the Software and that agreement is terminated, then this Agreement automatically terminates and you shall no longer have any right to use the Software. Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise. For clarity, even if you have entered into an agreement with a Liquid Supplier, Liquid is a third party beneficiary to that agreement and has the right to terminate this Agreement as set forth in this Section 5 (Term of Agreement).

5.2. **Termination.** Upon any expiration or termination of this Agreement, you shall cease all use of any Software and Evaluation Software and destroy all copies thereof and so certify to Liquid in writing.

5.3. **Survival.** Sections 1.4 (License Restrictions), 2 (Ownership), 3 (Payment), 5 (Term of Agreement), 6.3 (Disclaimer of Warranties), 8 (Limitation of Remedies and Damages), 9 (Confidential Information), 10 (Export Compliance) and 11 (General) and any other provisions that should rationally survive, or by their terms survive, shall survive any termination or expiration of this Agreement.

6. Limited Warranty and Disclaimer.

6.1. **Limited Warranty.** Liquid warrants to you that for a period of ninety (90) days from the Effective Date (the “**Warranty Period**”) the Software shall operate in substantial conformity with the documentation. Liquid does not warrant that your use of the Software will be uninterrupted or error-free or that any security mechanisms implemented by the Software will not have inherent limitations. Liquid’s sole liability (and your exclusive remedy) for any breach of this warranty shall be, in Liquid’s sole discretion, to use commercially reasonable efforts to provide you with an error-correction or work-around which corrects the reported non-conformity, or if Liquid determines such remedies to be impracticable within a reasonable period of time, to refund the license fee paid for the Software. A Liquid Supplier other than Liquid may fulfill Liquid’s warranty obligations hereunder on behalf of Liquid. Liquid Suppliers shall have no obligation with respect to a warranty claim unless notified of such claim within the Warranty Period.

Because the Software is inherently complex and may not be completely free of nonconformities, defects or errors, you are advised to verify your work. Liquid does not warrant that the Software will operate error free or uninterrupted, that it will meet your needs or expectations, that all nonconformities can or will be corrected, or the results obtained through use of the Software.

6.2. **Exclusions.** The above warranty shall not apply: (a) if the Software is used with hardware or software not specified in the documentation, including but not limited to the hardware compatibility list (located at <https://www.liquid.com/resources/all?tab=hcl-tab>) ; (b) if any modifications are made to the Software by you or any third party; (c) to defects in the Software due to accident, abuse or improper use by you; (d) to Evaluation Software; (e) to any Third Party Software or Third Party Hardware; or (f) to any Software obtained as freeware, whether from Liquid, a Liquid Supplier or otherwise.

6.3. **Disclaimer of Warranties.** THIS SECTION 6 IS A LIMITED WARRANTY AND, EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6, THE SOFTWARE IS PROVIDED “AS IS.” NEITHER LIQUID NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. YOU MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE LIMITED WARRANTY PERIOD. YOU ASSUME THE ENTIRE RISK AS TO RESULTS AND PERFORMANCE OF THE SOFTWARE.

7. **Support & Maintenance.** Liquid shall provide the support and maintenance services, if any, as separately purchased by you and specified in the applicable ordering document or other agreement between you and Liquid, or between you and a Liquid Supplier. All support and maintenance shall be provided pursuant to Liquid’s standard service terms which are available upon request from Liquid. Liquid Suppliers may provide additional support services under separate written agreement, but Liquid is not responsible for any such support unless it is the contracting party.

8. Limitation of Remedies and Damages.

8.1. NEITHER LIQUID NOR LIQUID’S SUPPLIERS SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION,

WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

8.2. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, LIQID AND ITS SUPPLIERS' ENTIRE LIABILITY TO YOU UNDER THIS AGREEMENT SHALL NOT EXCEED THE LESSER OF (I) THE AMOUNTS ACTUALLY PAID BY YOU FOR THE SOFTWARE IN THE TWELVE (12) MONTHS PRECEDING THE EVENTS GIVING RISE TO THE CLAIM; OR (II) THE AMOUNTS ACTUALLY PAID BY YOU FOR THE SOFTWARE.

8.3. THE SOFTWARE IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE IN LIFE SUPPORT, MEDICAL, EMERGENCY, MISSION CRITICAL OR OTHER STRICT LIABILITY OR HAZARDOUS ACTIVITIES ("HIGH RISK ACTIVITIES"). LIQID SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. YOU REPRESENT AND WARRANT THAT YOU WILL NOT USE THE SOFTWARE (OR PERMIT IT TO BE USED) FOR HIGH RISK ACTIVITIES AND AGREE THAT LIQID WILL HAVE NO LIABILITY FOR USE OF THE SOFTWARE IN HIGH RISK ACTIVITIES. YOU AGREE TO INDEMNIFY AND HOLD HARMLESS LIQID FOR ANY DAMAGES, LIABILITIES OR OTHER LOSSES RESULTING FROM SUCH USE.

8.4. The parties agree that the limitations specified in this Section 8 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

9. Confidential Information. Any Software, documentation or technical information provided by Liquid (or its agents) shall be deemed "Liquid Confidential Information" without any marking or further designation. Except as expressly authorized herein, you will hold in confidence and not use or disclose any Liquid Confidential Information. You acknowledge that disclosure of Liquid Confidential Information would cause substantial harm to Liquid that could not be remedied by the payment of damages alone and therefore that upon any such disclosure by you, Liquid shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law.

10. Export Compliance. You acknowledge that the Software may be subject to export restrictions by the United States government and import restrictions by certain foreign governments. You shall not, and shall not allow any third party to, remove or export from the United States or allow the export or re-export of any part of the Software or any direct product thereof: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (c) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. You agree to the foregoing and warrant that you are not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Software is further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government.

11. General.

11.1. Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Liquid may assign this Agreement to any affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of Liquid's assets or voting securities. You may not assign or transfer this Agreement, in whole or in part, without Liquid's written consent. Any attempt to transfer or assign this Agreement without such written consent will be null and void.

11.2. Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

11.3. Governing Law; Jurisdiction and Venue. This Agreement is governed by the laws of the State of Colorado and the United States without regard to conflicts of law provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. The exclusive jurisdiction and venue for all actions related to the subject matter hereof are the State of Colorado and United States federal courts located in Denver County, Colorado, and both parties hereby submit to the personal jurisdiction of such courts.

11.4. Attorneys' Fees and Costs. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

11.5. Notices and Reports. Any notice or report hereunder shall be in writing. If to Liquid, such notice or report shall be sent to Liquid at the address above to the attention of "Legal Department". If to you, such notice or report shall be sent to the address you provided upon placing your order. Notices and reports shall be deemed given: (a) upon receipt if by personal delivery; (b) upon receipt if sent by certified or registered U.S. mail (return receipt requested); or (c) one day after it is sent if by next day delivery by a major commercial delivery service.

11.6. Amendments; Waivers. No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived.

11.7. Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. No provision of any purchase order or in any other business form employed by you will supersede the terms and conditions of this Agreement, and any such document issued by a party hereto relating to this Agreement shall be for administrative purposes only and shall have no legal effect. The pre-printed terms and conditions on any purchase order, quote, order acknowledgement or other similar document will not supersede this Agreement, provided that if such terms identify the specific license terms and restrictions contemplated in Section 1, those license terms and restrictions will be incorporated. **Notwithstanding the foregoing, if you have entered into a separate written license agreement signed by Liquid for use of the Software, the terms and conditions of such other agreement shall prevail over any conflicting terms or conditions in this Agreement.** Thus if you enter into a separate written agreement with Liquid regarding the Software, that agreement (not this one) will control your use of the Software; and further if that agreement is terminated, you will not have the right to use the Software under the terms of this Agreement after termination.

11.8. Independent Contractors. You and Liquid are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created between you and Liquid as a result of this Agreement. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

11.9. Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events, which occur after the signing of this Agreement and which are beyond the reasonable control of the parties, such as strikes, blockade, war, terrorism, riots, natural disasters, refusal of license by the government or other governmental agencies, in so far as such an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or remove the force majeure at reasonable cost.

11.10. Government End-Users. The Software is commercial computer software. If the user or licensee of the Software is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Software was developed fully at private expense. All other use is prohibited.

11.11. Third-Party Software; Third-Party Hardware. The Software may contain or be provided with certain Third-Party Software (including software which may be made available to you in source code form). Such Third-Party Software is not licensed hereunder and is licensed pursuant to the terms and conditions ("**Third-Party License**") indicated in the documentation and/or on the Third-Party Software. Neither Liquid nor Liquid Suppliers offer any warranty in connection with any Third-Party Software and neither Liquid nor Liquid Suppliers shall be liable to you for such Third-Party Software. The Software may be installed on hardware products not manufactured by Liquid ("**Third Party Hardware**"). Third Party Hardware is not licensed or warranted by Liquid. LIQID IS NOT RESPONSIBLE FOR, AND EXPRESSLY DISCLAIMS ANY LIABILITY IN CONNECTION WITH THE THIRD PARTY SOFTWARE OR THIRD PARTY HARDWARE, OR YOUR USE THEREOF.

11.12. Bankruptcy. All rights granted to you under this Agreement are deemed to be, for purposes of Title 11, Section 365(n) of the Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101(35A) of the Bankruptcy Code. As a licensee of such rights, you may retain and exercise all of its rights and elections under

the Bankruptcy Code. In the event of a commencement of bankruptcy proceedings by or against Liquid, you will be entitled to a complete duplicate of (or complete access to, as appropriate) any such intellectual property and all embodiments of that intellectual property, and if not already your possession, the same will be promptly delivered to you (i) upon your written request, unless Liquid elects to continue to perform all of its obligations under this Agreement, or (ii) if not delivered under (i) above, upon the rejection of this Agreement by or on behalf of Liquid.

11.13. Audits. Upon ten (10) days advance written notice, you will permit Liquid or its representative to review your books, records, third party audit and examination reports, systems, facilities, controls, processes, and procedures, to ensure your compliance with your obligations to Liquid. Any such audit will be conducted during normal business hours and in a manner designed to cause minimal impact on your ordinary business activities.