

# End User License Agreement for COMLAB Software

## End User License Agreement (EULA) for COMLAB Software

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“**Gateway**” means a software procedure for adding functionality to Software.

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**“Subscription”** means a fee-bearing service subscription with a defined term, providing for certain value-added services provided for a defined period of time and related to the Subscription Software, pursuant to a Subscription Agreement as further defined below.

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**“You”** means, as applicable, the individual or the entity on whose behalf the individual is acting and **“Your”** shall be construed accordingly.

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## **5. Exclusion and Limitation of Liability, Risk Allocation**

### **5.1 Exclusion of Liability**

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL SCHAEFFER ENTERPRISES HAVE ANY LIABILITY TO YOU OR YOUR AFFILIATES, UNDER ANY LEGAL OR EQUITABLE THEORY, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), PRODUCT LIABILITY, STATUTE OR OTHERWISE, FOR OR IN CONNECTION WITH:

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(III) ANY LOSSES, COSTS, EXPENSES OR DAMAGES OTHER THAN DIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOSSES, COSTS OR EXPENSES.

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PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE WILL NOT EXCEED FIFTY UNITED STATES DOLLARS (\$50.00).

### **5.3 Allocation of Risk**

THE PROVISIONS OF SECTION 4 AND THIS SECTION 5 ALLOCATE THE RISKS UNDER THIS EULA BETWEEN SCHAEFFER ENTERPRISES AND YOU. THIS ALLOCATION IS AN INTRINSIC PART OF, AND THE BASIS OF, THE BARGAIN BETWEEN YOU AND SCHAEFFER ENTERPRISES AND WITHOUT SUCH ALLOCATION SCHAEFFER ENTERPRISES WOULD NOT HAVE ENTERED INTO THIS EULA. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS CONTAINED IN SECTIONS 4 AND 5 APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY (INCLUDING ANY LIMITED OR EXCLUSIVE REMEDY) PROVIDED FOR IN THIS AGREEMENT FAILS IN ITS ESSENTIAL PURPOSE.

### **6. Export Control**

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## **7. General**

If any provision of this EULA is held to be unenforceable, such ruling shall not affect the enforceability of the remaining provisions. The affected provision(s) will be deemed amended to the minimum extent necessary to render it valid and enforceable in conformity with applicable law and parties' intent as expressed in this EULA. This EULA shall be governed by the laws of the State of California and of the United States, without regard to any conflict of laws provisions. The rights and obligations of the parties to this EULA shall not be governed by the United Nations Convention on the International Sale of Goods. This Agreement constitutes the entire agreement between the parties with respect to the use of the Software licensed hereunder and supersedes all prior understandings regarding such subject matter. Each party acknowledges that in entering into this Agreement it has not relied on any representation, warranty or collateral contract or other assurance except those set out therein. Notwithstanding the aforesaid, to the extent You receive access to the Software within the scope of Your active Subscription under the terms of a valid Subscription Agreement, that includes license terms for Software covered by this EULA, such license terms will prevail over the terms of this EULA.