

Eyemagnet Limited

Conditions of Transfer & End- User License Agreement

Conditions of Transfer and End-User License Agreement For EYEMAGNET LIMITED Products

Effective Date: 1 January 2022

This Conditions of Transfer and End User License Agreement (**CTEULA**) constitutes a legal agreement between You and EYEMAGNET LIMITED, covering the licensing of **Eyemagnet Software** and/or the sale of **Eyemagnet Hardware** to You.

PLEASE READ THIS CTEULA CAREFULLY BECAUSE USING THE EYEMAGNET SOFTWARE AND/OR THE EYEMAGNET HARDWARE WILL BE DEEMED TO BE ACCEPTANCE THAT IT IS BEING USED ON THE FOLLOWING TERMS.

1. Defined Terms. As used in this CTEULA, the following terms have the following meanings:

Base Support means the base level of Support that Eyemagnet provides to holders of a license of Eyemagnet Software with a standard Subscription Contract.

Eyemagnet means Eyemagnet Limited.

Eyemagnet Hardware means the hardware products produced by Eyemagnet.

Eyemagnet Software means collectively Eyemagnet Display™, Eyemagnet Media™, Eyemagnet Analytics™ and other software products produced by Eyemagnet from time to time, and also includes Upgrades and Modules with respect to each of same. The “Eyemagnet Software” also includes any documentation provided or made available to You by Eyemagnet in connection with and pertaining to the Eyemagnet Software, whether in printed or electronic format, and any associated media or printed materials pertaining to the Eyemagnet Software.

Hosting Services means the hosting services provided by Eyemagnet to the customer as described in an applicable Subscription Contract;

Licensed Software Services means the hosted customer experience solutions as described in a Subscription Contract, and any modifications periodically made thereto by Eyemagnet;

Module means an add-on, option or feature, which is associated with an Eyemagnet Software product but is licensed for an additional license or subscription fee.

Products means, collectively, any Eyemagnet Hardware sold to You, any Eyemagnet Software licensed to You, and any Subscription Services purchased by You.

Professional Services means any training, consulting, software development and/or other professional services purchased by You from Eyemagnet (and/or its authorized reseller) as described in a Subscription Contract or Service Schedule.

Service Schedule means an agreement between You and Eyemagnet (and/or between You and an authorized Eyemagnet reseller) providing for additional Subscription Services purchased by You. A Service Schedule may be a part of the Subscription Contract or may be a stand-alone agreement.

Subscription Contract means the contract, quotation and/or purchase order accepted by Eyemagnet (and/or an authorized Eyemagnet reseller) designating which units of Eyemagnet Hardware (if any) are being sold to you, which units of Eyemagnet Software (if any) are being licensed to You, the term of your subscription (a Fixed Term or Periodic Term), and Base Support. The Subscription Contract may include a Service Schedule describing other Subscription Services purchased by You.

Subscription Services means the Licensed Software Services, Hosting Services, Support Services and/or Professional Services for which You subscribe;

Support Services means the Support Services that Eyemagnet provides to license holders of the Eyemagnet Software, and includes Base Support as provided under the terms of this CTEULA and any additional Support services purchased by You under the terms of a separate Service Schedule.

Third Party Hardware means units of hardware produced by others but resold by Eyemagnet to You as described in an applicable Subscription Contract;

Upgrade means a subsequent release of an Eyemagnet Software product which Eyemagnet may offer to license holders with a current paid up Subscription Contract at no additional license or subscription fee and may include bug fixes and new functionality.

You or Your means the person or entity that purchases, leases, borrows or subscribes to use of Eyemagnet Hardware, purchases Subscription Services, and/or holds a license of the Eyemagnet Software.

2. Cover: This CTEULA applies to the Products sold, leased, loaned, subscribed or licensed to You by Eyemagnet (and/or one of Eyemagnet's authorized resellers). The Subscription Contract will designate whether and which units of Eyemagnet Software (including any Modules) are being licensed to You and/or which units of Eyemagnet Hardware and/or Third Party Hardware are being sold to You. This CTEULA incorporates the terms of the Subscription Contract. Further, in some instances, Eyemagnet acts as a reseller or lessor of equipment or hardware produced by others, and such equipment and hardware is sold and/or leased without any warranty, support or other obligation on the part of Eyemagnet, excepting only for any such obligations specifically assumed by Eyemagnet in the Subscription Contract. Otherwise, your sole recourse with respect to such equipment and hardware shall be against the original manufacturer. Further, Eyemagnet Products may include, be hosted by and/or delivered via software products produced by others (including without limitation shareware, firmware, and web hosting software), and such software is provided subject to all of the license terms and other terms and conditions applicable thereto. A list of all such software is available upon request. You agree to abide by and comply with all of the terms and conditions applicable to such third-party hosting, delivery and/or software, and without limiting the generality of the foregoing, You agree that you will not conduct BCP or other security testing without the prior written consent of Eyemagnet in each instance. You further agree that you will configure your instance of Eyemagnet Software in accordance with, and otherwise comply, with Eyemagnet's security protocols.

3. License: Licenses of Eyemagnet Software may take two forms:

- i. a direct license of the executable code version of Eyemagnet Software for use on hardware owned or controlled by You, or
- ii. a license of Licensed Software Services, involving a hosted customer experience of Eyemagnet Software installed on third party servers designated by Eyemagnet.

The Subscription Contract will designate which (or both) of these license types that are being granted to You. If the Subscription Contract includes one or more direct licenses of Eyemagnet Software, Eyemagnet grants You a non-exclusive, non-transferrable license to use the then current released executable code version of the specified Eyemagnet Software Product in accordance with this CTEULA. If the Subscription Contract includes one or more licenses of Licensed Software Services, Eyemagnet grants You a non-exclusive, non-transferrable license to use the Licensed Software Services in accordance with this CTEULA. In either case, Your license shall continue for

the term described in clause 4, unless sooner terminated or revoked under the terms of this CTEULA. In addition to any other rights Eyemagnet may have, Eyemagnet may revoke the Eyemagnet Software licenses granted by notifying You in writing if You fail to pay when due, the purchase price for the Eyemagnet Hardware (and/or Third Party Hardware), or any lease payment, subscription fee, license fee or other amount owing to Eyemagnet, or shall breach any provision of the CTEULA. Upon such revocation, or upon the expiration or termination of an Eyemagnet Software license, Eyemagnet shall have the right to block Your access to and use of the licensed Eyemagnet Software or any part thereof. **"Use"** of the Eyemagnet Software, in the case of a direct license, means loading, installing, or running the Eyemagnet Software on the hardware provided by You, meeting a specification provided by Eyemagnet; provided, however, in the case of a license of Licensed Software Services, **"Use"** means access to and use of the hosted instance.

4. Software License Term: The license of Eyemagnet Software, and your access to related Subscription Services as provided in the Subscription Contract, is granted under this Agreement on a subscription basis with monthly or other periodic subscription fees payable by You to Eyemagnet. Your subscription may be either for a fixed term (**Fixed Term**) or for a periodic term (**Periodic Term**). If the Subscription Contract specifies a Fixed Term then then You agree to pay the subscription fees for the entire Fixed Term, and Your license will continue for the Fixed Term unless sooner terminated by Eyemagnet as provided in clause 3 above. If the Subscription Contract specifies a Periodic Term then your license will continue until terminated by either party upon not less than thirty (30) days' prior written notice of termination to the other party, and you agree to pay subscription fees until the termination of the Periodic Term. Unless otherwise agreed by the parties in writing, Fixed Term subscriptions will automatically convert to Periodic Term subscriptions as of the end of the Fixed Term unless terminated by either party as of the end of the Fixed Term by giving the other party not less than thirty (30) days' prior written notice of termination. Whether for a Fixed Term or a Periodic Term, the license granted under this Agreement is subject to termination under the circumstances described in clause 3 above.

5. Restrictions on Use: You agree not to:

- i. translate, adapt, reverse-engineer or modify the Eyemagnet Hardware or the Eyemagnet Software, or do anything to circumvent the operation of the Eyemagnet Hardware or the Eyemagnet Software, or combine or integrate

- the Eyemagnet Hardware or the Eyemagnet Software with any other products;
- ii. separate any component of the Eyemagnet Software or Eyemagnet Hardware for use with other than the hardware for which a license has been granted, or permit the use of the Eyemagnet Software by anyone other than an authorized user engaged in the conduct of Your business;
- iii. lend, rent, lease, transfer, assign or otherwise deal in the Products without the prior written consent of Eyemagnet.
- iv. export or extract data from the Eyemagnet Software, except through a product or service provided by Eyemagnet.
- v. use any of the Products for any use or purposes for which governmental approvals have not been obtained.

Without limiting the generality of the foregoing, you agree that the Products may not be exported or re-exported into, or be used in or by (a) any U.S.-embargoed countries or (b) anyone on the U.S. Treasury Department's Specially Designated Nationals List or the U.S. Department of Commerce Denied Persons List or Entity List. In addition, each license of Eyemagnet Software is restricted to use only on a designated number of screens at any time, and consisting of a personal computer, laptop or tablet, and You agree not to exceed this limitation.

6. Title: In the case of sale of one or more units of Eyemagnet Hardware and/or Third Party Hardware, ownership of the Eyemagnet Hardware and/or Third Party Hardware shall not pass to You, until You have paid for the Eyemagnet Hardware and/or Third Party Hardware in full and also paid all license and subscription fees owing for the Eyemagnet Software and Subscription Services. The risk of loss to the Eyemagnet Hardware and/or Third Party Hardware shall pass to You immediately upon delivery of the Eyemagnet Hardware and/or Third Party Hardware unless otherwise agreed in writing.

7. Non-Payment: Where You fail to pay when due either the purchase price for the Eyemagnet Hardware, or any subscription fee or other amount owing to Eyemagnet (and/or its authorized reseller), Eyemagnet (and/or its authorized reseller) may charge, and You shall be liable to pay, interest on any overdue account calculated on a daily basis from the due date until actual payment at an interest rate equal to the lesser of (i) 5% above the overdraft rate applied to Eyemagnet's bank accounts, as adjusted from time to time, or (ii) the highest rate of interest permitted by law. In addition, You agree to reimburse Eyemagnet (and/or its authorized reseller) for any costs and expenses, including legal fees, incurred by Eyemagnet (and/or its authorized reseller) in collecting any amounts You fail

to pay when due to Eyemagnet (and/or its authorized reseller).

8. Taxes: All payments under this CTEULA shall be made free of deduction or withholding. In the event that You become liable to deduct or withhold an amount by way of tax or otherwise from payments due under this Agreement, You shall pay such additional amount as will be necessary to ensure that the price for the Products received by Eyemagnet (and/or its authorized reseller) equals the amount that would otherwise have been received in the absence of that deduction or withholding.

9. Upgrades and Support: Eyemagnet may offer You Upgrades when they are released. In cases where new versions are offered with respect to the Eyemagnet Software, but are not accepted by You, Eyemagnet shall have no obligation to provide Support Services for older versions. The Subscription Contract may describe Upgrades and/or Support Services that Eyemagnet has agreed to provide You with respect to the Products. Except as otherwise provided in the Subscription Contract, Upgrades and Support Services will be available to You only if offered by Eyemagnet and purchased by You at Eyemagnet's applicable rates. Eyemagnet may offer You Modules from time to time, subject to Your payment of such additional license and/or subscription fees and agreement to any terms and conditions applicable to the Modules. All Upgrades and Modules will form part of the Eyemagnet Software and must only be used in accordance with this CTEULA.

10. Protection of Proprietary Rights: You acknowledge that all right, title and interest in the Eyemagnet Software and all Proprietary Rights in the Eyemagnet Hardware, the Eyemagnet Software and the Subscription Services are vested in Eyemagnet or its licensors, and You agree that You will not dispute such ownership nor claim any intellectual property rights relating to the Eyemagnet Hardware or the Eyemagnet Software or any enhancements or modifications of the Eyemagnet Hardware, the Eyemagnet Software or the Subscription Services. For the purposes of this CTEULA, "**Proprietary Rights**" means all intellectual or industrial property rights in the Eyemagnet Hardware, the Eyemagnet Software and the Subscription Services and all rights to patents, trademarks, trade names, inventions, designs, trade secrets, copyright and know-how relating to the origin, manufacture, programming, operating and/or servicing of the Eyemagnet Hardware, the Eyemagnet Software and the Subscription Services and any enhancements or modifications of the Eyemagnet Hardware, the Eyemagnet Software or the Subscription Services. You must maintain all intellectual property notices appearing on the Products and must not remove the

same. You must notify Eyemagnet immediately if You know of any circumstances that suggest that any person may have unauthorised knowledge, possession or use of the Products.

11. Warranty - Hardware: If You have purchased one or more unit(s) of the Eyemagnet Hardware, the Subscription Contract sets forth the Limited Warranty applicable to the Eyemagnet Hardware. Except as set forth in the Subscription Contract, all other representations or warranties (statutory, express or implied except any which may not lawfully be excluded) with respect to the Eyemagnet Hardware are expressly excluded. Where Eyemagnet acts as a reseller of Third Party Hardware, such Third Party Hardware is sold without any warranty or other obligation on the part of Eyemagnet, excepting only for any such obligations specifically assumed by Eyemagnet in the Subscription Contract. Your recourse with respect to such Third Party Hardware shall be against the original manufacturer under the applicable manufacturers warranty. Without prejudice to the generality of the foregoing, the implied warranties of merchantability and fitness for a particular purpose are excluded with respect to any Eyemagnet Hardware or Third Party Hardware.

12. Warranty - Software: The Eyemagnet Software is licensed to You “as is” and all representations or warranties (statutory, express or implied except any which may not lawfully be excluded) are expressly excluded. Without prejudice to the generality of the foregoing, the implied warranties of merchantability and fitness for a particular purpose are excluded. You accept the entire risk as to the use and the results of the use of the Eyemagnet Software in the terms of correctness, accuracy, reliability and performance. You also accept the entire risk as to any conflict between Eyemagnet Software and other software on the hardware on which the Eyemagnet Software is installed.

13. Data: If the Subscription Contract includes a license of Eyemagnet Software with data to be hosted by You, You will be exclusively responsible for security and integrity of data, including regular back up of data. If the Subscription Contract includes a license of Eyemagnet Software with data hosted by Eyemagnet, then upon termination of Your license Eyemagnet will take Your instance off line, but will offer You an archive of images and data in an industry standard format (such as CSV for data and jpg for images) on and industry standard media (such as DVD), provided You pay for Eyemagnet’s usual commercial charges for the cost of preparing the archive.

14. Liability: TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL EYEMAGNET BE LIABLE FOR PERSONAL INJURY OR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE PRODUCTS, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE) AND EVEN IF EYEMAGNET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. In no event shall Eyemagnet’s total liability to You for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of One Thousand Five Hundred Dollars (NZ\$1,500.00). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

15. Compliance with Law: You will not use the Products for any unlawful purpose or in furtherance of any illegal activity. You warrant that You will comply with all applicable federal, state and local laws, executive orders, and regulations. You further warrant that at all times when using the Products you will have obtained all consents and/or permissions as required by law to the transfer, hosting, processing, controlling, accessing and use for purposes authorized under the Subscription Contract of any personal information and/or other data provided, entered, transferred or received by you using the Products, and that your use of the Products will be conducted in accordance with all applicable laws. You agree and represent that you are acquiring the Products, and entering into this Agreement, for the purposes of trade, and that (i) to the maximum extent permissible by law, the Consumer Guarantees Act 1993 does not apply to the supply of the Products, and (ii) it is fair and reasonable that the parties are bound by this clause

16. Notice: Any notice to be given in terms of this CTEULA must be made by email sent to the address notified by either party to the other from time to time. Any communication by email will be deemed to be received when transmitted to the correct email address of the recipient.

17. Force Majeure: Eyemagnet will not be liable to You for any delay or failure of Eyemagnet to perform its obligations hereunder if such delay or failure arises

from cause or causes beyond the reasonable control of Eyemagnet.

18. Assignment: You may not assign or transfer this Agreement or any of the rights or obligations under this Agreement without the prior written consent of Eyemagnet.

19. Agreement: This Agreement constitutes the entire agreement between Eyemagnet and You with respect to the subject matter hereof and supersedes any and all prior negotiations and agreements between Eyemagnet and You with the exception of terms listed in the Subscription Contract and a non-disclosure agreement that may separately be in force between Eyemagnet (and/or an authorized Eyemagnet reseller) and You. The additional terms set forth in the Subscription Contract are incorporated by reference in this Agreement, and You agree to abide by all of such additional terms. In the event of any conflict between the terms of the Subscription Contract and the terms of this CTEULA, the terms of the Subscription Contract shall govern. This Agreement and/or the Subscription Contract may be revised by Eyemagnet from time to time, and your continued use of the Software or payment of license or subscription fees, following any such revisions will be deemed your acceptance of and agreement to those revisions. No variation to the terms of this Agreement or the Subscription Contract made by You will be binding on Eyemagnet unless it is in writing and signed by both parties. This Agreement is subject to the laws of New Zealand and You agree to submit to the exclusive jurisdiction of the New Zealand courts.