

GLOBAL VELOCITY PRODUCT LICENSE AGREEMENT / EULA AND WARRANTY TERMS

THESE TERMS APPLY TO THE USE OF GLOBAL VELOCITY, INC. (“GLOBAL VELOCITY”) PRODUCT BY ANY PERSON OR ENTITY PURCHASING (OR LICENSING) SUCH PRODUCT FROM GLOBAL VELOCITY OR ITS AUTHORIZED RESELLERS OR DISTRIBUTORS FOR ITS OWN INTERNAL USE (“CUSTOMER”).

Definitions

“**Documentation**” means Global Velocity’s published Product Specifications at the time of Purchase and other technical publications prepared and delivered to Customer by Global Velocity or provided to Customer on the Global Velocity website relating to use of the Product, such as reference, user, installation, systems administrator and technical guides.

“**Maintenance Release**” means a release that correct errors or bugs, or that offer minor improvements in functionality or performance that, taken as a whole, do not materially affect the overall value of the Product.

“**Major Release**” means a release with that provides significant improvements in functionality or performance and that, taken as a whole, materially affects the overall value of the Product. A Major Releases does not include a new product module which may be used in conjunction with the Product but constitutes a new product offering.

“**Product**” means the hardware and associated peripherals delivered herewith, including any Software embedded in the product and any accompanying hardware-related Documentation supplied by Global Velocity. Product includes separately purchased Software, Supplies and Service.

“**Service**” means Global Velocity technical support, maintenance or other technical consulting services described in these Terms.

“**Software**” means the software provided with the Product (including embedded code and any ancillary software) and any Maintenance Releases and Major Releases thereto, as well as any accompanying software-related Documentation supplied by Global Velocity. References herein to the Software exclude reference to any open source components of the Software, which are covered by Section 2.5 below. All references to the sale, purchase or other distribution of Software, whenever used, mean “licenses in accordance with the terms hereof”).

1. Scope of Terms

1.1 Global Velocity sells and warrants Product in accordance with these Terms. These Terms set forth a Customer’s rights and obligations with respect to Global Velocity Product and apply unless otherwise agreed in a signed writing between the Customer and Global Velocity by an authorized officer of Global Velocity.

1.2 These Terms, including any Privacy Policy posted on Global Velocity’s website, may be revised or supplemented by Global Velocity from time to time. Notwithstanding the foregoing, Global Velocity shall honor all Terms in effect at the time of purchase. Revised or supplemental Terms will be distributed by posting on Global Velocity’s website or otherwise and are incorporated by reference herein. Customer’s installation or use of the Product constitutes Customer’s acceptance of these Terms including any revised or supplemental Terms as may be from time to time in effect.

2. License, Proprietary Rights

2.1 License Grant. Global Velocity grants to Customer a nonexclusive, nonlicensable, nontransferable, perpetual license to use the Product, including Software provided when used in conjunction with the Product, for its internal use (provided, if your regular business includes managed service provider services using Global Velocity appliances for your end-customers, you may use the appliances, including associated Software, to provide those services, subject to the other restrictions herein). Customer may make a single copy of any non-embedded Software and the Documentation solely for archival, emergency back-up and disaster recovery purposes, provided that all copyright and other proprietary notices of Global Velocity and its licensors are reproduced. Global Velocity retains all rights not specifically granted to Customer herein.

2.2 Proprietary Rights. The Product is protected by US and international patent and/or copyright laws as well as other intellectual property laws. Any reference to the sale or transfer of Software or other intellectual

property rights means to license in accordance with the terms hereof. All intellectual property remains the property of Global Velocity and/or its licensors. “Intellectual property” includes all patents, copyrights, trade names, trademarks, trade secrets, know-how and any proprietary information or technology rights with respect to the Product.

2.3 Use Restrictions. Customer will not alter, deface, discard, or erase any media, documentation, licenses, copyright, trademark or proprietary rights notices of Global Velocity or any third party licensor. Except as expressly authorized herein, Customer will not copy, in whole or in part, any provided Software or Documentation. Customer will not (i) attempt to disassemble, decompile or otherwise reverse engineer the Product and/or the Software or otherwise attempt to learn the circuit, logic, or system design, source code, structure, algorithms or ideas underlying the Product and/or the Software; (ii) modify or create derivative works of the Product and/or the Software; (iii) attempt to circumvent any password embodied in the Product and/or the Software; (iv) install any other software to act on the Product; (v) publish or provide any results of benchmark tests run on the Product to any third party; or (vii) use Product to create or enhance your own product or a third party’s product; or (vii) use the Product other than in accordance with the Documentation.

2.4 Third Party Intellectual Property. Global Velocity may provide you with Product that bears a copyright notice, patent mark or other intellectual property mark of a third party. The license terms of this Agreement apply to that Product unless the Product is provided with a license agreement (including a “shrink-wrap” or “click” license) from the third party, in which case the terms of the third party’s agreement apply.

2.5 Open Source. Certain components of the Software may be open source components (as identified by Global Velocity in the Documentation) and are being distributed by Global Velocity to Customers under the terms of the Free Software Foundation’s General Public License (“GPL”) or other public licenses and are not covered by the license granted in these Terms. Each open source component has its own copyright and applicable license conditions, and you must review the licenses within the documentation to understand your rights under them. If Global Velocity does not include the source code versions of such software in its materials, Customer may request that Global Velocity provide a machine-readable copy of the source code for such components pursuant to the terms of their respective public licenses (e.g., within three (3) years of delivery of the applicable component under the GPL). Customer’s use of such open source software is subject to the GPL and the other public licenses disclosed in the Documentation. All open source components incorporated into the Software are distributed on an “as is” basis WITHOUT WARRANTY OF ANY KIND and are subject to the further disclaimers in their applicable documentation.

2.6 Hot Backup. In the event Customer purchases a hot backup for a primary Product (i.e., a second Unit for the limited purpose of replacing the primary Unit in the event of its failure to operate), Customer may only use the same in the event of failure of the primary Unit. Customer will promptly report any failure of the primary Unit to Global Velocity.

2.7 Audit Right. Global Velocity reserves the right to audit Customer’s use of any Product for license compliance with the limitations herein. Upon ten (10) days’ written notice by Global Velocity, Customer agrees to permit Global Velocity reasonable access to the Product, as well as records relating to use of the Product, so that Global Velocity may review Customer’s use for compliance with these Terms.

2.8 Reservation of Rights. Global Velocity reserves (to itself and/or its licensors) all right, title and interest in any improvements, modifications and derivative works of licensed Product.

3. Maintenance Releases and Major Releases. Global Velocity will make any Maintenance Release or Major Release that relates to any Product hereunder available to Customers if and when Global Velocity determines it commercially feasible to do so. Global Velocity may charge a fee for any Maintenance Releases or Major Releases, it being understood that Customer is free to elect not to purchase the same.

4. Limited Warranty; Exclusions

4.1 Limited Warranty – Equipment, Software and Supplies. Global Velocity warrants that Global Velocity Equipment, Software and Supplies will perform in substantial accordance with Global Velocity published Product Specifications in effect as the time the Product was purchased. This warranty is for a period of ninety days from the date the Product was shipped to Customer. If the Product does not perform as warranted, Global Velocity will, at its option, either repair or replace the Product free of charge. Global Velocity reserves the right to refund to Customer the amount paid for the Product as its exclusive remedy. This warranty is made exclusively to and for end-user purchasers of Global Velocity product who purchase such Product from Global Velocity or its authorized resellers or distributors. This warranty is subject to the exclusions and warranty claim and returns procedure set forth below. THE FOREGOING IS THE SOLE AND EXCLUSIVE WARRANTY PROVIDED FOR EQUIPMENT, SOFTWARE AND SUPPLIES AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY.

4.2 Limited Warranty – Service. Global Velocity warrants that it will provide Service in a professional manner in substantial accordance with Global Velocity published Service offering Specifications in effect at the time the Service is rendered. This warranty begins on the service date and continues for ninety days. If Service is not provided as warranted, Global Velocity will re-perform the Service. Global Velocity reserves the right to refund to Customer the amount paid for the Service as its exclusive remedy. This warranty is subject to the exclusions and warranty claim procedure set forth below. THE FOREGOING IS THE SOLE AND EXCLUSIVE WARRANTY PROVIDED FOR SERVICE AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY.

4.3 Warranty Exclusions

a) No warranty applies to any losses or damages due to misuse, accident, abuse, neglect, negligence, tampering, unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions or any variation from use specifications set forth in the Product Documentation, improper installation, repair, handling or maintenance by persons other than Global Velocity authorized personnel, malfunction of any non-Global Velocity equipment, use of third-party software, use of Product outside the scope of the license, or any other cause not the fault of Global Velocity. Proper maintenance requires proper installation of all Maintenance Releases so that the Product is in the form currently supported by Global Velocity. Warranties will not apply if the Customer has not paid amounts due to Global Velocity or has violated any terms set forth herein.

b) To the extent Customer or its agents have supplied specifications, information, representation of operating conditions or other data to Global Velocity in the selection or design of the Product and the preparation of Global Velocity's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Customer, any warranties or other provisions contained herein that are affected by such conditions shall be null and void.

c) Global Velocity may provide Product that bears the logo of another company. If you receive such Product with terms from such other company addressing warranty or support, the other company's terms apply, and unless specifically agreed otherwise, Global Velocity provides no warranty or support.

d) This warranty shall not cover any consumable components or the cost of labor by Customer's employees, agents or contractors in identifying, removing or replacing any defective part or any hardware.

e) Customer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Product.

4.4 Warranty Procedure

a) To make a warranty claim or return an item for repair (whether under warranty or otherwise), Global Velocity's Customer Service Department must be contacted first. No Product should be returned without first obtaining a Return Material Authorization ("RMA") number. Customer is responsible for packaging, shipping and insuring the Product to be returned to Global Velocity. Returned Product hardware and components become the property of Global Velocity.

b) Global Velocity provides the same warranty, as described above, for replacement Product except that the period of coverage shall be the greater of the remaining time of the original warranty period for the replaced Product, or ninety (90) days from the date of shipment, whichever is longer.

4.5 Disclaimer. GLOBAL VELOCITY AND ITS LICENSORS MAKE NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO PRODUCT INCLUDING, WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR USE OR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, OR THAT THE PRODUCT WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE, AND GLOBAL VELOCITY HEREBY DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES. GLOBAL VELOCITY MAKES NO REPRESENTATIONS ABOUT THE SUITABILITY OF THE PRODUCT OR ABOUT THE ACCURACY OF ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY THE PRODUCT.

5. Limitations on Liability. GLOBAL VELOCITY AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF REVENUE OR PROFITS, BUSINESS INTERRUPTION, LOSS OF USE OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT, TORT OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES IN ADVANCE.

GLOBAL VELOCITY'S SOLE LIABILITY WITH RESPECT TO THE PRODUCT IS ITS REPAIR AND REPLACE WARRANTY OBLIGATION. GLOBAL VELOCITY SHALL NOT BE LIABLE FOR ANY DAMAGE CAUSED BY LATE DELIVERY, PRODUCT FAILURE OR THIRD PARTY PRODUCT.

IN THE EVENT DAMAGES ARE AWARDED, GLOBAL VELOCITY'S LIABILITY WITH RESPECT TO ANY PRODUCT WILL NOT EXCEED THE AMOUNT THAT YOU PAID FOR THE PRODUCT.

6. Intellectual Property Claims

6.1 In the event of any suit, claim, or proceeding brought against Customer alleging that any use of the Product as delivered by Global Velocity infringes any valid United States patent or copyright in existence as of the date of shipment to you of any third parties, Customer shall (i) promptly notify Global Velocity in writing of any such suit, claim or proceeding; (ii) provide all requested information about the claim; (iii) allow Global Velocity to defend, settle or otherwise dispose of the same; and (iv) give Global Velocity reasonable assistance in connection therewith.

6.2 In the event of any such claim or if Global Velocity otherwise reasonably determines that any Product may infringe intellectual property rights, then Global Velocity shall have the right, at its sole option, to: (i) procure for Customer the right or license to use the Product as furnished hereunder; (ii) replace or modify the Product to make the same non-infringing; or (iii) return to Customer the purchase price applicable to the infringing Product and to accept return of such Product and related documentation without further liability of Global Velocity. THE FOREGOING STATES THE ENTIRE LIABILITY OF GLOBAL VELOCITY WITH RESPECT TO INFRINGING PRODUCT.

6.3 Global Velocity shall have no liability for any claim of intellectual property infringement to the extent the same: (i) results from any use of the Product not in accordance with these Terms or (ii) results from any modification of the Product by any person other than Global Velocity or its authorized agents or subcontractors. Customer agrees to defend Global Velocity and to indemnify and hold Global Velocity harmless from and against any suit, claim or proceeding arising from the circumstances described in the preceding sentence, provided that Global Velocity complies with the obligations set forth in Section 6.1, mutatis mutandis.

7. Term and Termination. These Terms will take effect upon the earlier of delivery of the Product or the date of payment of the invoice amount by Customer and will remain in force in perpetuity unless terminated earlier in accordance with these terms. Global Velocity may, by written notice to Customer, terminate rights granted to Customer under these Terms immediately if: (a) Customer fails to pay any amount due Global Velocity within fifteen (15) days after Global Velocity gives Customer written notice of such nonpayment; or (b) Customer is in material breach of any non-monetary provision of these Terms, which is not cured within thirty (30) days after Global Velocity gives Customer written notice thereof. Upon termination, Customer will stop using any licensed product and return it to Global Velocity. In no event shall termination of these Terms entitle Customer to a refund of any portion of the purchase price of the Product as purchased hereunder. Termination of these Terms will not affect the provisions which explicitly or by their nature would survive termination of these Terms, including but not limited to Global Velocity's rights with respect to intellectual property.

8. Dispute Resolution

THESE TERMS CONTAIN AN ARBITRATION PROVISION WHICH AFFECTS YOUR LEGAL RIGHTS. Some states (or other jurisdictions) do not allow certain arbitration provisions so some or all of the arbitration provision herein may not apply to you.

8.1 Dispute. "Dispute" means any claim or controversy between you and Global Velocity arising out of or relating to these Terms or your purchase of Global Velocity Product. It includes any claims relating to Global Velocity Product, whether based in contract, statute, tort, fraud, fraudulent inducement, misrepresentation, or other legal or equitable theory, whenever brought, between you and Global Velocity or any of Global Velocity's or your employees or agents.

8.2 Mediation. Global Velocity and you agree to use good faith efforts to resolve any Dispute promptly and fairly. If Global Velocity and you are unable to resolve a Dispute by negotiation, both parties agree to submit it to non-binding mediation conducted by a mutually selected mediator or, at the option of either party, by the American Arbitration Association ("AAA").

8.3 Arbitration. Concurrent with or following mediation, any Dispute shall be subject to binding arbitration under the then-current AAA Commercial Rules and administration of the AAA with resolution by a single arbitrator. The arbitrator's decision and award will be final and binding, and either party may enter it in any court with jurisdiction. The arbitrator will not have authority to award punitive or other non-compensatory damages to either party. The arbitration will be held in St. Louis County, Missouri or, upon your election within 20 days of notice to you of the arbitration, in the city where the AAA regional office closest to your U.S. corporate headquarters is located. Each party will bear its own attorney's fees and related costs associated with the arbitration. Global Velocity and you will pay all other costs and expenses of the arbitration as the rules of the AAA provide.

8.4 Court Proceedings. Except as permitted in this Section, neither party may bring a case in court. The federal and state courts in St. Louis County, Missouri shall have exclusive jurisdiction and venue with respect to any court case filed, and shall enforce the arbitration provision. Notwithstanding the above, Global Velocity is entitled to obtain an injunction in any court of competent jurisdiction to prevent your misuse of its intellectual property. With respect to such claims you acknowledge that breach of this Agreement may result in immediate and irreparable harm, for which there will be no adequate remedy at law and Global Velocity shall be entitled to seek such equitable relief, in addition to whatever remedies may be available at law.

8.5 Two Year Limitation. Neither you nor Global Velocity may bring a claim or action arising out of or related to these Terms, including any claim of fraud or misrepresentation, more than two years after the cause of action accrues, other than with respect to enforcement of intellectual property rights.

9. Government Contract Conditions. Software and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and are provided to the Government for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48

C.F.R. 12.212; or for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 (JUN 1995) and 227.7202-3 (JUN 1995). Any use, modification, reproduction, release, performance, display or disclosure of the Software or Documentation by the United States Government shall be governed solely by these Terms and shall be prohibited except to the extent expressly permitted by these Terms.

10. Export Compliance. Customer shall not export the Product or any technical information acquired with respect thereto directly or indirectly outside the United States without the prior written approval of Global Velocity which approval may be withheld for any reason. To the extent Global Velocity authorizes export of the Product outside the United States, Customer shall be responsible for obtaining any required licenses and shall comply with all applicable United States export control laws and regulations and other applicable laws.

11. Assignment. These Terms and rights thereunder may not be assigned or otherwise transferred by Customer. Global Velocity may assign or transfer its rights, in whole or in part, to any of its affiliates or to any successor in interest and may use subcontractors to fulfill its obligations. Subject to the foregoing, any assignee hereunder shall be subject to all of the terms, conditions and provisions of this Agreement and any assignment in violation of this provision shall be void.

12. Successors. Subject to the limitations hereinabove expressed, these Terms will inure to the benefit of and be binding upon the parties and their successors.

13. Force Majeure. Neither party is liable for failing to fulfill its obligations due to acts of God, civil or military authority, war, riots, strikes, fire, or other causes beyond its reasonable control.

14. Notices. All notices hereunder shall be deemed duly given when given in writing and delivered by hand; upon the mailing of the notice, postage paid; by overnight courier; or by any other means where receipt is acknowledged by the party entitled to such notice. Notice to Global Velocity shall be addressed to its corporate headquarters as listed on its website and labeled "Attention: Global Velocity Legal Department".

15. Entire Agreement. These Terms constitute the entire understanding between the parties respecting the subject matter hereto and supersede any and all prior understandings and agreements between the parties on the subject matter hereof. Additional or different terms set forth in any Customer supplied writing shall not modify these Terms (irrespective of performance, acknowledgement, conduct or failure to object).

16. Modification and Waiver. These Terms may not be amended, except in a writing signed by the party against whom such modification is sought to be enforced. No waiver will be implied from conduct or failure to enforce rights. No waiver will be effective unless in writing signed on behalf of the party against whom the waiver is asserted.

17. Interpretation. Should any provision of these Terms be found unenforceable, the remaining provisions shall remain in effect, and Agreement shall be interpreted to uphold the Terms and reflect the intent of the parties. Section headings are not part of these Terms.

18. Choice of Law. These Terms shall be governed by and construed in accordance with the laws of the State of Missouri, U.S.A., without regard to conflict of law provisions. The parties expressly exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.
