

## END USER LICENSE AGREEMENT

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BEFORE USING THE SOFTWARE, PLEASE READ THIS END USER LICENSE AGREEMENT ("EULA") CAREFULLY AND CLICK THE "AGREE" BUTTON IN THE END USER LICENSE AGREEMENT WINDOW DISPLAYED WHEN STARTING THE SOFTWARE. BY CLICKING THE "AGREE" BUTTON IN THE END USER LICENSE AGREEMENT WINDOW DISPLAYED WHEN STARTING THE SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MAY NOT USE THE SOFTWARE.

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The SOFTWARE is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the SOFTWARE could lead to death, personal injury, or severe physical or environmental damage ("HIGH RISK ACTIVITIES"). SONY, each of the

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TIME AND USER'S TIME, EVEN IF ANY OF THEM HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, EACH AND ALL OF THEIR AGGREGATE LIABILITY UNDER ANY PROVISION OF THIS EULA SHALL BE LIMITED TO THE GREATER OF THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE OR ONE MILLION JAPANESE YEN (\1,000,000). SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO SOME OR ALL OF THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU.

#### INDEMNITY

Except as prohibited by applicable law, you agree to indemnify and hold harmless SONY and the THIRD-PARTY SUPPLIERS and their respective subsidiaries, affiliates, officers and employees, from any loss, claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your use of the SOFTWARE and/or the DEVICE (including, without limitation, any software vulnerability caused by such use), your violation of this EULA or your failure to fulfill your responsibility under this EULA.

#### UPDATE

SONY may, but shall be under no obligation to, release upgrades, updates, bug-fixes and/or otherwise modified versions of the SOFTWARE in such manner which SONY deems to be adequate. If and when such updated SOFTWARE is released, you shall use such updated SOFTWARE in accordance with Sony's instructions provided in connection therewith.

#### FORCE MAJEURE

SONY shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

#### ENTIRE AGREEMENT, WAIVER, SEVERABILITY

This EULA, as amended and modified from time to time, together constitute the entire agreement between you and SONY with respect to the SOFTWARE. The failure of SONY to exercise or enforce any right or provision of this EULA shall not constitute a waiver of such right or provision. If any part of this EULA is held invalid, illegal, or unenforceable, that provision shall be enforced to the maximum extent permissible so as to maintain the intent of this EULA, and the other parts will remain in full force and effect. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the SOFTWARE or this EULA. Furthermore, this EULA will not be governed or interpreted in any way by referring to any law based on the Uniform Computer Information Transactions Act (UCITA) or any other act derived from or related to UCITA.

#### BINDING ARBITRATION

ANY "DISPUTE" THAT IS NOT RESOLVED THROUGH THE INFORMAL NEGOTIATION PROCESS DESCRIBED ABOVE SHALL BE RESOLVED EXCLUSIVELY THROUGH

**BINDING ARBITRATION.** "DISPUTE" is defined as any disagreement, cause of action, claim, controversy, or proceeding between you and any Sony entity related to or arising out of the SOFTWARE or this EULA. DISPUTE is to be given the broadest possible meaning that will be enforced. If a DISPUTE arises, you agree to first give notice to SONY by contacting Sony Electronics Inc. at 16530 Via Esprillo, MZ 1105, San Diego, CA 92127, Attn: Legal Department, and engaging in good faith negotiations to attempt to resolve any DISPUTE for at least 14 days, except that you or Sony (or any of its affiliates) may skip this informal negotiation procedure for DISPUTE enforcing, protecting, or concerning the validity of intellectual property rights.

#### **ARBITRATION INSTRUCTIONS**

To begin arbitration, either you or SONY must make a written demand to the other for arbitration. The arbitration will take place before a single arbitrator. It will be administered in keeping with the Expedited Procedures of the Commercial Arbitration Rules, and the Supplementary Proceedings for Consumer-Related disputes when applicable ("Rules") of the American Arbitration Association ("AAA") in effect when the claim is filed. You may get a copy of AAA's Rules by contacting AAA at (800) 778-7879 or visiting [www.adr.org](http://www.adr.org). The filing fees to begin and carry out arbitration will be shared between you and SONY, but in no event shall your fees ever exceed the amount allowable by the special rules for Consumers Disputes provided for by AAA, at which point SONY will cover all additional administrative fees and expenses. This does not prohibit the arbitrator from giving the winning party their fees and expenses of the arbitration when appropriate pursuant to the Rules. Unless you and SONY agree differently, the arbitration will take place in the county and state where you live, and applicable federal or state law shall govern the substance of any DISPUTE. The Federal Arbitration Act, 9 U.S.C. § 1, et seq., will govern the arbitration itself and not any state law on arbitration. The arbitrator's decision will be binding and final, except for a limited right of appeal under the Federal Arbitration Act. The arbitrator may award declaratory or injunctive relief only in favor of the party seeking relief, and only to the extent necessary to provide relief warranted by that party's individual claim. Any court with jurisdiction over the parties may enforce the arbitrator's decision.

#### **SMALL CLAIMS EXCEPTION**

Despite the provisions set forth above, you have the right to litigate any DISPUTE in small claims court or other similar court of limited jurisdiction, to the extent the amount at issue does not exceed \$15,000, and as long as such court has proper jurisdiction and all other requirements (including amount in controversy) are satisfied.

#### **CLASS ACTION WAIVER**

YOU UNDERSTAND AND ACKNOWLEDGE THAT BY AGREEING TO BINDING ARBITRATION, YOU ARE GIVING UP THE RIGHT TO LITIGATE (OR PARTICIPATE IN AS A PARTY OR CLASS MEMBER) ANY DISPUTES IN COURT BEFORE A JUDGE OR JURY. ANY DISPUTE RESOLUTION PROCEEDING WILL BE CONDUCTED ONLY ON

AN INDIVIDUAL BASIS, AND BOTH PARTIES AGREE NOT TO HAVE ANY DISPUTE HEARD AS A CLASS ACTION, REPRESENTATIVE ACTION, CONSOLIDATED ACTION, OR PRIVATE ATTORNEY GENERAL ACTION, UNLESS ALL PARTIES INVOLVED IN THE DISPUTE SPECIFICALLY AGREE TO DO SO IN WRITING FOLLOWING INITIATION OF THE ARBITRATION.

#### OPT-OUT INSTRUCTIONS

IF YOU DO NOT WISH TO BE BOUND BY THE BINDING ARBITRATION PROVISION AND/OR THE CLASS ACTION WAIVER ABOVE, THEN: (1) YOU MUST NOTIFY SONY IN WRITING WITHIN 30 DAYS OF THE DATE THAT YOU FIRST USE THE SOFTWARE OR AGREE TO THIS EULA, WHICHEVER OCCURS FIRST; (2) YOUR WRITTEN NOTIFICATION MUST BE MAILED TO SONY ELECTRONICS INC., 16530 VIA ESPRILLO, MZ 1105, SAN DIEGO CA 92127, ATTN: LEGAL DEPARTMENT; AND (3) YOUR WRITTEN NOTIFICATION MUST INCLUDE: (A) YOUR NAME; (B) YOUR ADDRESS; (C) THE DATE YOU FIRST USED THE SOFTWARE OR AGREED TO THIS EULA; AND (D) A CLEAR STATEMENT THAT YOU DO NOT WISH TO RESOLVE DISPUTES WITH ANY SONY ENTITY THROUGH ARBITRATION AND/OR TO BE BOUND BY THE CLASS ACTION WAIVER.

#### REJECTING CHANGES MADE TO THE DISPUTE PROCEDURES

Despite anything to the contrary in this EULA, you may reject changes made to the binding arbitration provision and class action waiver if: (1) you've already begun authorized use of the SOFTWARE at the time the change was/is made; and (2) you mail written notice to the address in the immediately preceding paragraph within 30 days after the particular change was/is made. Should such a situation arise, you will still be bound by the DISPUTE procedures you previously agreed to and existing before the change you rejected was made.

#### MISCELLANEOUS

Any DISPUTE determined not subject to arbitration and not initiated in small claims court will be litigated by either party in a court of competent jurisdiction in either the superior court for the County of San Diego or in the United States District Court for the Southern District of California.

#### EQUITABLE REMEDIES

Notwithstanding anything contained in this EULA to the contrary, you acknowledge and agree that any violation of or non-compliance with this EULA by you will cause irreparable harm to SONY, for which monetary damages would be inadequate, and you consent to SONY obtaining any injunctive or equitable relief that SONY deems necessary or appropriate in such circumstances. SONY may also take any legal and technical remedies to prevent violation of and/or to enforce this EULA, including, but not limited to, immediate termination of your use of the SOFTWARE, if SONY believes in its sole discretion that you are violating or intend to violate this EULA. These remedies are in addition to any other remedies SONY may have at law, in equity or under contract.

#### TERMINATION

Without prejudice to any of its other rights, SONY may terminate or suspend your access or use of the SOFTWARE and/or terminate this

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#### AMENDMENT

SONY RESERVES THE RIGHT TO AMEND ANY OF THE TERMS OF THIS EULA AT ITS SOLE DISCRETION BY POSTING NOTICE ON A SONY DESIGNATED WEB SITE, BY EMAIL NOTIFICATION TO AN EMAIL ADDRESS PROVIDED BY YOU, AND/OR BY PROVIDING NOTICE AS PART OF THE PROCESS IN WHICH YOU OBTAIN UPGRADES/UPDATES OR BY ANY OTHER LEGALLY RECOGNIZABLE FORM OF NOTICE. If you do not agree to the amendment, you should promptly contact SONY for instructions. Your continued use of the SOFTWARE after the effective date of any such notice shall be deemed your agreement to be bound by such amendment.

#### THIRD-PARTY BENEFICIARIES

Each THIRD-PARTY SUPPLIER is an express intended third-party beneficiary of, and shall have the right to enforce, each provision of this EULA with respect to the SOFTWARE of such party.

Should you have any questions concerning this EULA, you may contact SONY by writing to SONY at: Sony Electronics Inc., 16530 Via Esprillo, San Diego, CA 92127.

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