



End User License Agreement

This End User License Agreement (“**EULA**”) is a legal agreement between the end-user Customer of Gigamon hardware and software products (“**Customer**”) and Gigamon Inc. (“**Gigamon**”) regarding Customer’s use of the Software (as defined below). Gigamon is willing to license the Software to Customer upon the condition that it accepts and complies with the terms contained in this EULA plus any additional terms in any supplemental license accompanying Gigamon Software where Customer accepts such supplemental license at the time of download (the “**Supplemental Terms**”, together with the EULA, the “**Agreement**”). To the extent of any conflict between the terms of this EULA and any Supplemental Terms, the Supplemental Terms will apply to the applicable Software.

BY ACCEPTING THIS AGREEMENT OR USING, INSTALLING OR ACCESSING THE PRODUCTS, CUSTOMER ACKNOWLEDGES THAT IT HAS READ, UNDERSTANDS AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE AGREEMENT. IF CUSTOMER DOES NOT AGREE, IT SHOULD NOT ACCEPT THIS AGREEMENT OR ACCESS AND/OR INSTALL THE PRODUCTS AND SHOULD CONTACT THE VENDOR WHO SOLD IT THE PRODUCTS. ANY INDIVIDUAL ACCEPTING THE AGREEMENT ON BEHALF OF CUSTOMER REPRESENTS AND WARRANTS THAT HE OR SHE HAS AUTHORITY TO ACCEPT THE TERMS AND CONDITIONS OF THE AGREEMENT ON BEHALF OF CUSTOMER AND TO BIND CUSTOMER TO THE TERMS AND CONDITIONS SET FORTH IN THE AGREEMENT.

1. Definitions.

- a. “**Certified White Box Hardware**” means the third party, non-Gigamon hardware products that Gigamon has certified to run Software under Gigamon’s white box solution program.
- b. “**Documentation**” means the documentation published by Gigamon and relating to the Products.
- c. “**Gigamon Hardware**” means the Gigamon-branded hardware products, purchased from Gigamon directly or through an authorized Gigamon channel partner (“**Approved Source**”) that may include Software and expressly excludes third party non-Gigamon branded hardware products that may run Software.
- d. “**Perpetual License**” means a license granted by Gigamon for commercial release Software that is not a Term License, where Gigamon has accepted the order for such license.
- e. “**Pre-Release Software**” means Software that is designated by Gigamon as pre-commercial release Software (indicated by terms such as “alpha,” “beta,” “trial,” or “draft”).
- f. “**Products**” means, the Software, the Gigamon Hardware, and/or any combination thereof.
- g. “**Software**” means the object or binary code or firmware, any accompanying Documentation, and any upgrades or updates therefor, that are provided by Gigamon or an Approved Source on Gigamon’s behalf, and either are (i) included with or embedded in the Gigamon Hardware, or (ii) provided as a stand-alone software product. For the avoidance of doubt, Software expressly excludes Open Source Code.
- h. “**Supported Virtualization Environment**” means a virtual computing environment supported by the Software, as specifically set forth in the applicable Documentation for the Software.
- i. “**Term License**” means a license for commercial release Software that has a Gigamon SKU indicating the license is limited in duration. The duration of the Term License will be the time period set forth in the order applicable to license, where Gigamon has accepted such order. If the Software provided under this Agreement is licensed under a Term License, then the limited license granted in Section 2(a) will commence on the date the license key associated with the Software is issued and will expire on the last day of the Term License. When a license key associated with a Term License expires, the corresponding Software will no longer function unless a new Term License is purchased and a new license key is installed.

2. **License Grant.** Software is made available by Gigamon under a Pre-Release Software license or a commercial Software license (either a Term License or a Perpetual License). Subject to and conditioned upon Customer’s compliance with the restrictions and terms set forth in the Agreement and full payment of any applicable fees, unless

otherwise set forth in the applicable Supplemental Terms, the following license terms apply. Except as set forth in this Section 2, no other licenses are granted by implication, estoppel or otherwise.

- a. **Commercial Software License.** Gigamon hereby grants Customer a limited, non-exclusive, worldwide, non-sublicensable (except as expressly set forth in Section 2(b) below), non-transferable (except as specified in Section 3(d) below) worldwide Perpetual License or Term License, as applicable, to use the Software in object code format for Customer's internal business purposes only, solely with Gigamon Hardware, Certified White Box Hardware, or a Supported Virtualization Environment.
 - b. **Sublicense Rights.** Gigamon further grants Customer the right to sublicense Customer's rights under Section 2(a) to Customer's contractors and subcontractors without further sublicense rights; provided that (i) such sublicensed rights are for the sole purpose of providing services to Customer and are subject to all of the limitations set forth in the Agreement; and (ii) Customer will be liable for any actions of, or failure to act by, the contractors and subcontractors as if such actions or inactions were Customer's.
 - c. **Pre-Release Software.** If the Software provided under this Agreement is Pre-Release Software, Gigamon hereby grants Customer a limited, non-exclusive, worldwide, non-sublicensable, non-transferable, worldwide license to download and install such Pre-Release Software for its internal, non-production use and evaluation. Customer acknowledges that the Pre-Release Software is Gigamon confidential information and may not operate correctly, may be substantially modified prior to first commercial shipment, or may be withdrawn completely. Customer's use of the Pre-Release Software is at Customer's sole risk and expense, and Gigamon will have no liability in connection with the Pre-Release Software. The limited license granted in this Section 2(c) expires 30 days after download unless mutually agreed upon in writing by the parties.
3. **Restrictions.** Customer will not, nor will it allow or authorize or permit any third party to:
- a. license, copy, duplicate, disclose, distribute, modify, exploit or create derivative works of the Products;
 - b. sublicense the Software (except as expressly set forth in sub-section 2(b) above), and any attempted non-compliant sublicense will be void;
 - c. use, transfer, or distribute the Software in competition with Gigamon;
 - d. otherwise transfer the Software, unless such Software is licensed under Section 2(a) and is being transferred in connection with the sale of Gigamon Hardware or Certified White Box Hardware, as applicable, but only where the Software is incorporated in the Gigamon Hardware or Certified White Box Hardware being transferred or sold, and such transfer and sale is in compliance with Gigamon's then-applicable Hardware transfer policy.
 - e. decompile, reverse translate, disassemble, or reverse engineer the Software or cause the Software to be subject to any open source obligations or release;
 - f. remove any proprietary markings or copyright notices from any Gigamon Hardware or Software, or translate the Software into any other format or language without Gigamon's prior written consent;
 - g. publicly display, transmit or use supporting Documentation for any other purpose other than to support Customer's authorized use of the Products within its internal organization; or
 - h. create, disclose, distribute, sublicense, license or otherwise transfer any implementation of Gigamon's application programming interfaces (APIs) except to support Customer's authorized use of the Products within its internal organization.
4. **Ownership.** The license granted in this Agreement is not a transfer or sale of Gigamon's or its licensors' ownership rights in the Software (including any copies) or its intellectual property. Except for the license specifically granted in this Agreement, Gigamon and its licensors retain all right, title, and interest in and to the Software, the related source code and intellectual property, and any and all modifications or derivatives. The Software is confidential to Gigamon and protected by applicable trade secret and intellectual property laws.
5. **Open Source Software.** The Software may include or be distributed with third party software covered by an open source software license that supersedes the licensing terms of this Agreement to the extent required by that open source license ("**Open Source Code**"). All open source software is provided WITHOUT ANY WARRANTY INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. If, and to the extent required by the applicable open source license, Gigamon will make available the required source code for the open source software in response to Customer's request emailed to legal@gigamon.com.
6. **Technical Support, Limited Warranty.** For ninety (90) days from the date the Software is downloaded by the Customer or shipped to the Customer by Gigamon or an Approved Source, Customer is entitled to all Gigamon-

provided software updates (bug fixes, maintenance releases, and feature upgrades) for the purchased the Software. In addition, Gigamon offers a Limited Hardware and Software Warranty for its Products. Details and current documentation for both are found at <http://www.gigamon.com/support-and-services/overview-and-benefits>. All other Software maintenance and support is provided to Customer separately and for a fee.

7. **Customer Use of Products.** Customer has the sole obligation to manage, secure, and oversee its network and tools, and to provide notices, as necessary, to its users that their use of Customer's computers, electronic appliances, and devices (and those of users on Customer's network) may be monitored, inspected, or decrypted.

8. **Warranty Disclaimers and Exclusions**

8.1 EXCEPT AS SET FORTH HEREIN, THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. CUSTOMER ASSUMES ALL RESPONSIBILITIES FOR SELECTION OF THE PRODUCTS TO ACHIEVE ITS INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED. IN ADDITION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GIGAMON AND ITS LICENSORS DISCLAIM ALL WARRANTIES RELATING TO THE PRODUCTS AND/OR ANY ACCOMPANYING DOCUMENTATION, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, ACCURACY, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE WITH THE ENJOYMENT OF THE HARDWARE, AND FITNESS FOR A PARTICULAR PURPOSE.

8.2 NOTWITHSTANDING ANY OTHER TERM HEREIN, GIGAMON MAKES NO REPRESENTATIONS REGARDING, ARISING FROM, OR RELATED TO THE LEGALITY OF ENCRYPTION OR DECRYPTION OF DATA OR MONITORING OF NETWORKS OR INFORMATION IN A PARTICULAR JURISDICTION, AND CUSTOMER IS SOLELY RESPONSIBLE FOR DETERMINING THAT CUSTOMER'S PROPOSED OR ACTUAL USE OF THE PRODUCTS COMPLIES WITH APPLICABLE LAWS. CUSTOMER ACKNOWLEDGES AND AGREES THAT GIGAMON AND ITS LICENSORS WILL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS RESULTING FROM: (A) THE USE OF THE PRODUCTS BY CUSTOMER OR THIRD PARTIES; (B) SECURITY BREACHES; (C) EAVESDROPPING, INTERCEPTION, FAILURE OF DELIVERY OR LOSS OF DATA SENT, STORED, OR RECEIVED USING THE PRODUCTS; OR (D) ANY WHITE BOX SOLUTION HARDWARE. THESE LIMITATIONS APPLY EVEN IF GIGAMON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9. **Certified White Box Hardware.** Customer acknowledges and agrees that, if Customer obtains Certified White Box Hardware, Gigamon makes no endorsements of and provides no warranties or support with respect thereto. Customer assumes all risk related to as well as all responsibility for the selection and use of the Certified White Box Hardware and should contact the applicable third party hardware provider or such third party's agent for support and warranty related information.

10. **Term and Termination.** This Agreement is effective as of the date of Customer's first use of, access to or installation of the Software and remains in effect until Customer's failure to comply with any term of this Agreement, including any failure to pay license fees, if applicable. Customer may terminate the License Grant section of this EULA at any time upon written notice to Gigamon that it has transferred or sold to a third party the Gigamon Hardware or the Certified White Box Hardware containing the Software. Any such transfers or sales must be in compliance with Gigamon's then-current applicable relicensing/transfer policy. Any such termination will not entitle Customer to a refund. Gigamon's rights and Customer's obligations survive the termination of this Agreement. Upon termination of this Agreement and upon Gigamon's request, Customer will certify in writing to Gigamon that all instances and copies of the Software, or any portion thereof (other than firmware), have either been returned to Gigamon or otherwise destroyed or deleted from any of its devices or storage devices.

11. **Limitation of Liability.** UNDER NO CIRCUMSTANCES WILL GIGAMON OR ITS LICENSORS BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, DATA OR INFORMATION, SECURITY BREACH OR BUSINESS INTERRUPTION) ARISING OUT OF OR RELATED TO THE USE OR INABILITY TO USE THE PRODUCTS, EVEN IF GIGAMON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE

FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF AN EXCLUSIVE REMEDY. IN NO EVENT WILL GIGAMON'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER FOR THE SPECIFIC PRODUCTS AT ISSUE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL DAMAGES, THE LIMITATION SET FORTH IN THIS PARAGRAPH MAY NOT APPLY.

12. **Audit.** Customer will keep current, complete, and accurate records regarding the installation and use of the Software. Customer will provide such information to Gigamon and certify that it has paid all related fees, if applicable, within five business days of any written request, so long as Gigamon does not make more than one request during any 12-month period. Except to the extent prohibited by applicable law, Customer will, after reasonable prior notice from Gigamon, provide Gigamon with reasonable access to its premises, records, and personnel so that Gigamon or its designee may audit and confirm compliance with this Agreement. If an audit reveals any non-permitted reproduction, installation, or use of the Software, Customer will (i) promptly comply with this Agreement, (ii) pay the additional fees (at Gigamon's then-current rates) due plus interest at the rate of 1.5% per month, and (iii) promptly reimburse Gigamon for its reasonable costs of conducting the audit if the audit reveals noncompliance.
13. **Indemnification.** Customer will defend, indemnify, and hold harmless Gigamon (including its officers, employees, directors, subsidiaries, representatives, affiliates, agents, and licensors) from and against any damages (including reasonable attorney's fees and expenses), claims, and lawsuits that arise or result from Customer's breach of any provision of this Agreement.
14. **Intellectual Property.** Gigamon, its logo, and all other names, logos, or icons identifying Gigamon and its programs, products, and services are proprietary, and any use of identical or confusingly similar marks, including as domain names, without Gigamon's express written permission is strictly prohibited. If Customer provides any feedback to Gigamon concerning the functionality and performance of the Products (including identifying potential errors, enhancements and improvements) ("**Feedback**"), Customer hereby assigns to Gigamon all right, title, and interest in and to the Feedback. Gigamon may use Feedback without any payment or restriction.
15. **Compliance with Laws and Export Restrictions.** The Products are subject to U.S. export control laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations maintained by the Department of State. Customer will comply with all applicable laws and regulations regarding use of the Products, including all U.S. export control laws and regulations as well as those of any country of import and/or export. Customer covenants that it will not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any Products or technology received from Gigamon to any destination, entity, or person prohibited by the laws or regulations of the United States. In addition, Customer may not use the Products for any end-use prohibited by the laws or regulations of the United States without obtaining prior authorization from the competent government authorities as legally required. Customer will indemnify, to the fullest extent permitted by law, Gigamon from and against any fines or penalties that may arise as a result of its breach of this Section. This Section will survive indefinitely.
16. **US Government Rights.** The Software is a "commercial item" as that term is defined at FAR 2.101. If Customer is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), Gigamon provides the Software, including any related documentation, technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. If acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with Gigamon to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically

conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government's needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use of the Software and return the Software and any other software or technical data delivered as part of the Software, unused, to Gigamon. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

17. **Equitable Relief.** Customer acknowledges that (a) the Software is confidential and proprietary to Gigamon and its licensors and contains valuable trade secrets; (b) any breach, threatened or actual, of this Agreement will cause irreparable injury to Gigamon; (c) such injury would not be quantifiable in monetary damages; and (d) Gigamon would not have an adequate remedy at law in the event of such a breach or threatened breach. Customer therefore agrees that Gigamon will be entitled, in addition to other available remedies, to seek and be awarded an injunction or other appropriate equitable relief from a court of competent jurisdiction restraining any breach, threatened or actual, of Customer's obligations under any provision of this Agreement. Accordingly, Customer hereby waives any requirement that Gigamon post any bond or other security in the event any injunctive or equitable relief is sought by or awarded to Gigamon to enforce any provision of this Agreement.
18. **Arbitration.** Except for the right of Gigamon to apply to a court of competent jurisdiction for equitable relief to preserve the status quo or prevent irreparable harm, any dispute as to the interpretation, enforcement, breach, or termination of this Agreement will be settled by binding arbitration in Santa Clara County, California, U.S.A. under the Rules of the American Arbitration Association by one arbitrator appointed in accordance with the Rules. Judgment upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The prevailing party will be entitled to receive from the other party its attorneys' fees and costs incurred in connection with any arbitration.
19. **General.** This Agreement is governed by the laws of the State of California, without reference to its conflict of laws principles. Except as set forth above, any dispute regarding this Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California, U.S.A. This Agreement is the entire agreement between Customer and Gigamon and supersedes any other communications with respect to the Software. Additional or conflicting terms on any purchase order or other document issued by Customer or any Approved Source will have no force or effect. If any provision of this Agreement is held invalid or unenforceable, such provision will be deemed replaced by the provision permitted by law that most closely effectuates the parties' original intent as documented hereunder, and the remainder of this Agreement will continue in full. No waiver by either party of any rights under the Agreement will be effective unless such waiver is in a writing signed by the party against whom enforcement is sought. Any notices relating to this Agreement should be sent via receipted delivery to Gigamon Inc., Attention: Legal Department, 3300 Olcott Street, Santa Clara, CA 95054 or by email to legal@gigamon.com.