

# End User License Agreement

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IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MAY NOT USE THE PRODUCT SOFTWARE AND YOU MAY CHOOSE TO PROMPTLY RETURN THE PRODUCT FOR A REFUND OF THE PRODUCT PURCHASE PRICE BY CONTACTING PLUME AT [support@plume.com](mailto:support@plume.com), AS FURTHER DESCRIBED IN THE SALES TERMS.

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AS DESCRIBED BELOW, YOU ARE CONSENTING TO AUTOMATIC SOFTWARE UPDATE OF THE PRODUCT SOFTWARE. IF YOU DO NOT AGREE, YOU SHOULD NOT USE THE PRODUCT SOFTWARE.

AS DESCRIBED BELOW, SECTION 9 DESCRIBES IMPORTANT LIMITATIONS OF THE PRODUCT SOFTWARE AND RELATED SERVICES, ESPECIALLY IN CONNECTION WITH LIFE SAFETY AND CRITICAL USES. PLEASE READ THESE DISCLOSURES CAREFULLY, AS YOU ARE ACKNOWLEDGING THEM AND ACCEPTING THEM.

**1. LICENSE.**

Subject to the terms of this EULA, Plume grants to you a limited and nonexclusive license (without the right to sublicense) to execute one (1) copy of the Plume Product Software, in executable object code form only, solely on the Plume Product that you own or control and solely for use in conjunction with the Plume Product for your personal, non-commercial purposes.

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**3. AUTOMATIC SOFTWARE UPDATES.**

Plume may from time to time develop patches, bug fixes, updates, upgrades and other modifications to improve the performance of the Plume Product Software and related services ("Updates"). These may be automatically installed without providing any additional notice or receiving any additional consent. You consent to this automatic update. If you do not want such Updates, your remedy is to stop using the Plume Product. If you do not cease using the Plume Product, you will receive Updates automatically. You acknowledge that you may be required to install Updates to use the Plume Product and the Plume Product Software and you agree to promptly install any Updates Plume provides. Your continued use of the Plume Product is your agreement to this EULA.

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#### **8. LIMITATION OF LIABILITY.**

Nothing in this EULA and in particular within this “Limitation of Liability” clause shall attempt to exclude liability that cannot be excluded under applicable law.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN ADDITION TO THE ABOVE WARRANTY DISCLAIMERS, IN NO EVENT WILL (A) PLUME BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY DAMAGES FOR LOST DATA OR LOST PROFITS, ARISING FROM OR RELATING TO THE PRODUCTS OR PRODUCT SOFTWARE, EVEN IF PLUME KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND (B) PLUME’S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THE PRODUCTS AND PRODUCT SOFTWARE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, EXCEED THE FEES ACTUALLY PAID BY YOU TO PLUME’S OR PLUME’S AUTHORIZED RESELLER FOR THE PRODUCT AT ISSUE IN THE PRIOR 12 MONTHS (IF ANY). THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM. PLUME DISCLAIMS ALL LIABILITY OF ANY KIND OF PLUME’S LICENSORS AND SUPPLIERS.

#### **9. NO EMERGENCY USE.**

You acknowledge that the Plume Products and Plume Product Software are not certified for emergency response. The Plume Product Software provides you information (“Product Information”) regarding the Plume Products in your home and their connection with other products and services. All Product Information is provided “as is” and “as available”. We cannot guarantee that it is correct or up to date. In cases where it is critical, accessing Product Information through the Plume Product Software is not a substitute for direct access of the information in the home.

#### **10. CONFIDENTIALITY. “CONFIDENTIAL INFORMATION”.**

means the Plume Product Software and all other information disclosed to you that Plume characterizes as confidential at the time of its disclosure either in writing or orally, except for information which you can demonstrate: (a) is previously rightfully known to you without restriction on disclosure; (b) is or becomes, from no act or

failure to act on your part, generally known in the relevant industry or public domain; (c) is disclosed to you by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by you without access to the Confidential Information. You shall use your best efforts to preserve and protect the confidentiality of the Confidential Information at all times, both during the term hereof and for a period of at least 3 years after termination of this EULA, provided, however, that any source code you receive shall be held in confidence in perpetuity. You shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of Plume. You shall not use any Confidential Information other than in the course of the activities permitted hereunder. You shall notify Plume in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this EULA, and will cooperate with Plume in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If you are legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, you will (i) immediately notify Plume prior to such disclosure to allow Plume an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with Plume in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, you shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements.

#### **11. FOR U.S. GOVERNMENT END USERS.**

The Plume Product Software is a “commercial item,” as that term is defined at 48 C.F.R. 2.101 (OCT 1995), and more specifically is “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995), the Plume Product Software is provided to U.S. Government End Users only as a commercial end item and with only those rights as are granted to all other customers pursuant to the terms and conditions herein.

#### **12. EXPORT COMPLIANCE.**

The Plume Product Software and related technology are subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree to strictly comply with all such laws and regulations and acknowledge that you have the responsibility to obtain authorization to export, re-export, or import the Plume Product Software and related technology, as may be required. You will indemnify and hold Plume harmless from any and all claims, losses, liabilities, damages, fines, penalties, costs and expenses (including attorney’s fees) arising from or relating to any breach by you of your obligations under this section.

#### **13. GOVERNING LAW; VENUE.**

The courts in some countries will not apply California law to some types of disputes. If you reside in one of those countries, then where California law is excluded from applying, your country's laws will apply to such disputes related to these terms. Otherwise, you agree that this EULA, and any claim, dispute, action, cause of action, issue, or request for relief relating to this EULA, will be governed by the laws of California, without giving effect to any conflicts of laws principles that require the application of the laws of a different jurisdiction. Any action or proceeding relating to this EULA must be brought in a federal or state court located in Santa Clara County, California and each party irrevocably submits to the jurisdiction and venue of any such court in any such claim or dispute, except that Plume may seek injunctive relief in any court having jurisdiction to protect its intellectual property or Confidential Information.

**14. ASSIGNMENT.**

Neither the rights nor the obligations arising under this EULA are assignable by you, and any such attempted assignment shall be void and without effect.

**15. NOTICES.**

Any notice to you may be provided by email to the address that you registered with Plume.

**16. SEVERABILITY.**

If any provision of this EULA is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

**17. WAIVER.**

All waivers by Plume will be effective only if in writing. Any waiver or failure by Plume to enforce any provision of this EULA on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**18. GENERAL.**

The Plume Product Software is deemed irrevocably accepted upon your use of the Plume Product Software or Plume Product. Plume will have no responsibility to provide maintenance or support services with respect to the Plume Product Software. The parties are independent contractors. You acknowledge that the Plume Product Software contains valuable trade secrets and proprietary information of Plume, that any actual or threatened breach of Section 2 (Restrictions) of this EULA will constitute immediate, irreparable harm to Plume for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. The headings of Sections of this EULA are for convenience and are not to be used in interpreting this EULA. Except

as otherwise provided in this section, no amendment to this EULA will be valid unless it is in writing hand-signed by the parties. If you have questions regarding this EULA, please contact Plume.