



## END USER LICENSE AGREEMENT

This End User License Agreement ("EULA") is a binding legal agreement between CUSTOMER and Impulse Point, LLC ("IMPULSE") for SOFTWARE provided by IMPULSE, which includes all computer software, associated media and printed materials, and may include "online" or electronic documentation.

By clicking "I agree" or by downloading, installing, copying, or otherwise using all or any portion of the SOFTWARE, CUSTOMER agrees to be bound by the terms of this EULA. If CUSTOMER does not agree to the terms and conditions of this EULA, CUSTOMER is not authorized to use the SOFTWARE.

### 1.0 DEFINITIONS

In this EULA, the following definitions apply:

- 1.1 "Affiliated Agreement" means and refers to any other agreement between IMPULSE and CUSTOMER, including by way of example and without limitation, IMPULSE'S End User Services Agreement 'GENERAL TERMS AND CONDITIONS'" and any Addenda to that Agreement, and Service Level Agreement."
- 1.2 "Cluster" means one (1) Policy Manager and Enforcer(s) as indicated under a valid software license granted by IMPULSE or agreed to in writing by IMPULSE.
- 1.3 "Computer" means a device with one or more central processing unit(s) ("CPU") that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions.
- 1.4 "CUSTOMER" means either an individual or a single legal entity.
- 1.5 "IMPULSE Materials" means any Materials provided by IMPULSE to CUSTOMER under this EULA Agreement or any Associated Agreement between IMPULSE and CUSTOMER, including, without limitation, any SOFTWARE specifications and information, training or other manuals relating to the SOFTWARE, data, documents, images, photographs, graphics, audio, videos, and webcasts.
- 1.6 "Permitted Number" means the number of concurrent devices licensed by IMPULSE or agreed to in writing by IMPULSE.
- 1.7 "IMPULSE SOFTWARE" means all IMPULSE developed Software other than Third Party Software.
- 1.8 "Third-Party Software" means all non-IMPULSE developed Software that bears a copyright notice of a third party.
- 1.9 "Use", "Used" or "Using" means to access, install, download, copy or otherwise benefit from using the functionality of the SOFTWARE in accordance with the SOFTWARE documentation.
- 1.10 "User" means a user of the SOFTWARE.
- 1.11 "Virtual Machine" means an instance of an IMPULSE SOFTWARE running in a shared or dedicated hardware environment utilizing virtualization server software (for example: VMware ESX or ESXi).
- 1.12 "SaaS" means Software as a Service, the delivery model for IMPULSE SOFTWARE

## 2.0 SOFTWARE PRODUCT LICENSE

This EULA is a non-exclusive and non-transferable license and grants CUSTOMER the following rights and limitations:

- 2.1 **License** - The SOFTWARE is licensed, not sold. Impulse software is licensed under a SaaS software license agreement (without the right to assign or sublicense) to use in object code form SOFTWARE and associated written and electronic documentation solely in connection with this EULA with IMPULSE-provided hardware or CUSTOMER-provided hardware. CUSTOMER may use one (1) copy of the SOFTWARE on a server Computer, Cluster or Virtual Machine at a time in support of the Permitted Number of licensed concurrent devices. The SOFTWARE and all of its components shall remain at all times the sole and exclusive intellectual property of IMPULSE or its suppliers, as the case may be., CUSTOMER may not copy or duplicate the SOFTWARE or any part thereof, including any IMPULSE Materials.
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- 2.3 **"Reverse Engineering," etc., Prohibited** - CUSTOMER shall not reverse engineer, decompile, or disassemble the SOFTWARE, or otherwise attempt to derive source code from the SOFTWARE, and CUSTOMER shall not knowingly permit anyone to use any portion of the SOFTWARE for the purpose of deriving its source code or for any other purposes or use other than as expressly authorized or permitted by this EULA.
- 2.4 **No Separation of Components** - The SOFTWARE is licensed as a single product. Its component parts or features may not be separated for use on more than one Computer.
- 2.5 **Transfer, etc., Prohibited** - CUSTOMER may not rent, lease, sublicense or otherwise transfer all or any portion of the SOFTWARE or authorize any Use of the SOFTWARE by any other person or entity except as expressly permitted hereby.
- 2.6 **Combination of Components** - In conjunction with the prohibition set forth in Subsection 2.4, above, against separation of components of the SOFTWARE, CUSTOMER shall not create or add components to be used in combination with the SOFTWARE, if any purpose of such combination is to package, repackage, sell, resell, rent, sub-rent, lease or sublease any portion of the SOFTWARE to any third party to this EULA.
- 2.7 **Term of License** -The term of the license granted hereunder for the use of the Software shall be coterminous with the effective date, which covers the Software and the applicable peak concurrent device license tier level which may include client agents ("Policy Keys" or Mobile Device Management Apps).

### **3.0 END-USER COMPLIANCE AND PREVENTION OF UNAUTHORIZED USE**

CUSTOMER agrees to use all commercially-reasonable efforts to ensure that persons employed by CUSTOMER or under CUSTOMER's direction and control abide by the terms and conditions of this EULA. In the event that CUSTOMER becomes aware that the SOFTWARE is being used by such persons in a manner not authorized by this EULA, CUSTOMER shall immediately notify IMPULSE in writing of such facts, use all reasonable and diligent efforts to terminate and to prevent further such unauthorized use of the SOFTWARE, and to recover any copies of the SOFTWARE that were made in violation of this EULA. CUSTOMER remains at all times responsible for use of the SOFTWARE and shall indemnify IMPULSE against any damages or claims arising out of or related to, any breach of this EULA by any authorized or unauthorized User of the SOFTWARE licensed to CUSTOMER hereunder.

If CUSTOMER acquired the SOFTWARE on tangible media (e.g. CD) without an opportunity to review this license, CUSTOMER may promptly return the unused SOFTWARE to the place from which CUSTOMER obtained it within thirty (30) days with proof of payment for a full refund.

### **4.0 TERMINATION**

Without prejudice to any other rights, IMPULSE may terminate this EULA and all software licenses granted hereunder if CUSTOMER fails to comply with any of the terms and conditions of this EULA. In the event of such termination, CUSTOMER must destroy all copies of the SOFTWARE and all of its component parts and any Materials. CUSTOMERS who are utilizing the SOFTWARE as part of an annual subscription service must return all server hardware sold to IMPULSE within thirty (30) days following the date of Termination or Expiration of this Agreement for any reason.

### **5.0 SUPPORT AND RIGHTS TO DATA**

**5.1 Support** - IMPULSE will provide support services to CUSTOMER for the SOFTWARE accordance with the terms of IMPULSE's Support Level Agreement. IMPULSE's policy is to continually improve its products and services, and so may change from time to time the SOFTWARE and service as provided to CUSTOMER under this EULA.

**5.2 Rights To Data** - IMPULSE shall have the right to gather and compile user statistical data, reports and related services utilizing aggregated data from CUSTOMER and other sources as a service to enhance the development of IMPULSE products and services. In no event shall the data be distributed to third parties or allow the identification of an individual person or otherwise used except in full compliance with applicable laws. IMPULSE will not gather personally identifying data or view it for other than diagnostic and support purposes, and will not use or disclose any such data gathered for any reason except to perform such diagnostic and support purposes.

### **6.0 LIMITED WARRANTIES; LIMITATIONS OF LIABILITIES AND REMEDIES**

**6.1 Limited Warranty** - IMPULSE warrants that the SOFTWARE will perform substantially in accordance with the accompanying Materials. IMPULSE further warrants that the SOFTWARE, as delivered and including any upgrades and updates, does not, and shall not, contain any lock, clock, timer, Trojan horse, Easter egg, time bomb, counter, copy protection feature, replication devices or defect ("virus" or "worm" as such terms are commonly used in the computer industry) or other device which (i) might lock, disable, or erase the SOFTWARE; (ii) prevent CUSTOMER from fully utilizing the SOFTWARE; or (iii) require action or intervention by IMPULSE or other persons or entities to allow CUSTOMER to utilize SOFTWARE. This Limited Warranty is void if failure of the SOFTWARE has resulted from CUSTOMER'S tampering, or from accident, abuse, or misapplication. Any replacement SOFTWARE will be warranted for the remainder of the original warranty period or for thirty (30) days from the date of replacement, whichever is longer.

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**6.2 Limited of Liability and of Remedies** – IMPULSE and its suppliers' entire liability, and CUSTOMER's exclusive remedy, shall be, at IMPULSE'S sole and exclusive option either (a) return of the price paid for the SOFTWARE, or, (b), repair or replacement of the SOFTWARE that does not meet IMPULSE'S Limited Warranty.

**6.3 Claims for Infringement** - IMPULSE agrees to hold defend and hold CUSTOMER harmless, or settle, at its own expense, any claim or suit against CUSTOMER alleging that a SOFTWARE under this EULA infringes any valid United States patent, trademark, copyright or trade secret, except where the claim or suit arises out of or results from: (a) CUSTOMER'S or Users' Content in connection with the service; (b) CUSTOMER'S unapproved modifications to the SOFTWARE (c) CUSTOMER'S combination of the SOFTWARE with services or products provided by CUSTOMER or by others; (d) IMPULSE'S adherence to CUSTOMER'S written requirements; or (e) CUSTOMER'S or any authorized User's use of the SOFTWARE in violation of the IMPULSE this EULA or any Affiliated Agreement. In the event of a claim of infringement by a third-party, IMPULSE, may, at its sole option and discretion, either procure the right to continue using, or replace or modify, the alleged infringing SOFTWARE so that the SOFTWARE becomes non-infringing. Upon inability to perform either of the foregoing options, IMPULSE may terminate the affected component or components, without liability to IMPULSE, except that IMPULSE will refund to CUSTOMERS any charges not earned at the time of termination.

**6.4 No Liability for Consequential Damages** - To the maximum extent permitted by applicable law, IMPULSE shall in no event be liable for any special, incidental, indirect, or consequential damages whatsoever to CUSTOMER (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or any other pecuniary loss) IMPULSE's breach of this EULA, or arising out of CUSTOMER'S use of or inability to use the SOFTWARE, even if IMPULSE has been advised of the possibility of such damages.

## **7.0 THIRD-PARTY SOFTWARE**

**7.1 Generally; Waiver of Claims** - The SOFTWARE and its component parts are protected by Copyright and other proprietary rights of IMPULSE and one or more third-party software vendors who are intended beneficiaries of this EULA. CUSTOMER may therefore be held directly responsible by such third-party vendors for any acts or omissions of CUSTOMER that violate the terms of this EULA. To the maximum extent permitted by law, CUSTOMER waives all claims and causes of action against such third-party software vendors that arise under this EULA or in connection with CUSTOMER's use of, or inability to use the SOFTWARE or its components. No such third-party software vendors will have any liability of any kind to CUSTOMER in connection with any such claims or causes of action.

**7.2 Third-Party Software, Licensing and Trademarks** - Third Party Software is the property of its respective third-party owner. "Third-Party Software" means Software that bears a copyright notice of a third party. With respect to the SOFTWARE licensed hereunder, such third-parties and their respective software products include the following:

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GNU crypto (GNU GPL)

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## **8.0 MISCELLANEOUS**

### **8.1 Amendments And Waivers -**

8.1.1 IMPULSE reserves the right to amend this EULA from time to time. CUSTOMER shall be notified by posting such proposed amendment on IMPULSE's website at least thirty (30) days' prior to such amendment taking effect. CUSTOMER shall be bound by all amendments to this EULA so posted unless CUSTOMER notifies IMPULSE in writing of CUSTOMER'S objection to the proposed amendment, which notice of objection must be received by IMPULSE within thirty (30) days from the date of posting reflected in the on-line notice or such greater time as may be reflected in the on-line notice. If CUSTOMER objects to any proposed amendment to this EULA, IMPULSE shall treat such objection as CUSTOMER'S authorization to IMPULSE to terminate this EULA and all software licenses granted hereunder. In such event of termination, CUSTOMER shall comply with all provisions of Section 4, above, in immediately ceasing any further use of the SOFTWARE and returning, deleting or destroying all SOFTWARE and related Materials. No amendment, additional terms or modification to or of this EULA Agreement, including purported inclusion or incorporation of any terms in any CUSTOMER purchase order, invoice or other writing or communication authored by or on behalf of CUSTOMER, shall be effective or binding on IMPULSE unless such amendment, additional terms or modification, are expressly set forth and agreed to in a writing signed by an authorized representative of IMPULSE.

8.1.2 No waiver of any rights, obligations or defaults hereunder shall be effective unless in writing and signed by the party against whom the same is sought to be enforced. One or more waivers of any right, obligation or default shall be limited to the specific right, obligation or default waived and shall not be construed as a waiver or estoppel of any subsequent right, obligation or default. No delay or failure of IMPULSE in exercising any right hereunder and no partial or single exercise thereof shall be deemed of itself to constitute a waiver or estoppel of such rights.

**8.2 Assignment** - This EULA, the SOFTWARE, and any rights granted to CUSTOMER under this Agreement, shall not be transferred or assigned by CUSTOMER (including, without limitation, the granting of any security interest in the SOFTWARE or other transmission or communication of the SOFTWARE), in whole or in part, whether voluntarily, by operation of law, or otherwise, without the prior written consent of IMPULSE, which consent may be refused in the sole and unreviewable discretion of IMPULSE. Any such attempted assignment or transfer without the required prior consent shall be a material breach of this Agreement and shall be null and void regardless of whether IMPULSE may have been given or received notice of such attempted assignment.

**8.3 Export Rules** - CUSTOMER agrees that the SOFTWARE will not be shipped, transferred or exported into any country or used in any manner prohibited by applicable export laws, restrictions or regulations.

**8.4 Force Majeure** - Neither IMPULSE nor CUSTOMER shall be liable for any delay, failure in performance, loss or damage due to: fire, explosion, power blackout, earthquake, flood, the elements, strike, embargo, labor

disputes, acts of civil or military authority, war, acts of terrorism, acts of God, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or any other causes beyond such party's reasonable control, whether or not similar to the foregoing.

**8.5 Governing Law; Personal Jurisdiction; Exclusive Venue; Waiver of Jury Trial** - This EULA shall be governed exclusively by the laws of the State of Florida without regard for that State's choice of law or conflict of laws rules. Each of the parties hereto irrevocably agrees and submits to the personal jurisdiction of the State or federal courts in or for Polk County, Florida, and further agrees that exclusive venue of any and all actions or litigation which may arise out of or in connection with this EULA shall lie in such courts and without right of transfer, including transfer based on *forum non conveniens*. CUSTOMER for itself and for all persons or entities claiming or who could claim by or through CUSTOMER, hereby irrevocable waives any and all right to trial by jury.

**8.6 Notices** - All notices permitted or required hereunder, including any notices of change of address, shall be in writing, sent by United States certified mail (return receipt requested) or by nationally recognized overnight courier service (for example, and without limitation, Federal Express, UPS,) and addressed as follows:

If to IMPULSE:

Impulse Point LLC.  
5650 Breckenridge Park Drive, Suite 201  
Tampa, Florida 33610  
Attention: Contracts  
Phone: (813) 607-2770

General Inquiries may be made on-line to IMPULSE at <http://www.impulse.com> in the manner described therein.

If to CUSTOMER:

At CUSTOMER's street or post office address of record with IMPULSE. CUSTOMER shall promptly notify IMPULSE of any change of address in the manner specified in this Subsection. All Notices shall be deemed given within five (5) days of the date of mailing if by certified mail (irrespective of whether the addressee has claimed the letter) or upon delivery if by overnight courier, according to the electronic delivery or tracking records of the courier.

**8.7 Severability** - To the extent that any provision of this EULA is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed and deleted or limited so as to give effect to the intent of the parties insofar as possible and the remainder of this Agreement shall continue in full force and effect with respect to all other provisions.