



HARMONIC INC.

END USER LICENSE AGREEMENT

EdgeMS

IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT BETWEEN HARMONIC INC. (“**HARMONIC**”) AND THE COMPANY OR ORGANIZATION THAT HAS LICENSED THE SOFTWARE (“**YOU**”) CAREFULLY AS IT CONTAINS THE LEGAL TERMS AND CONDITIONS THAT YOU AGREE TO WHEN USING THE SOFTWARE.

BY DOWNLOADING, INSTALLING OR USING THE SOFTWARE, YOU (1) ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS END USER LICENSE AGREEMENT AND (2) YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS END USER LICENSE AGREEMENT, OR IF YOU DO NOT HAVE SUCH AUTHORITY, DO NOT INSTALL OR USE THE SOFTWARE. YOUR ACCESS TO AND USE OF THE SOFTWARE IS CONDITIONED UPON YOUR COMPLIANCE WITH THE TERMS OF THIS END USER LICENSE AGREEMENT.

- 1. GRANT OF LICENSE.** Subject to the terms and conditions of this Agreement and payment of an applicable license fee, Harmonic grants you a limited, non-exclusive, non-transferable, non-sub-licensable, perpetual and revocable license to use the Software (in object code form) solely with the Harmonic NSG™ product that you have purchased from Harmonic, as well as any related Documentation, for your internal business purposes. You are required to purchase a Software license for each NSG product to be used with the Software.

Any rights not expressly granted to you in this Agreement are reserved by Harmonic and, if applicable, its suppliers. Harmonic reserves the right, at any time in its sole discretion, to modify the features or functionality of the Software for any reason. The terms of this Agreement will govern any Software updates or upgrades that Harmonic may make available from time to time, unless such update or upgrade is accompanied by a separate license agreement, in which case the terms of that license agreement will govern.

- 2. RESTRICTIONS ON USE.** Except with the express written authorization of Harmonic, you shall not, and shall not permit any third party to:
 - License, sublicense, sell, resell, transfer, assign, distribute, rent, or lease the Software (in whole or in part);
 - Alter, remove, disable or suppress the display of any copyright, trademark, trade name, logo, trade dress or other notices included as part of the Software or any Documentation;
 - Modify, translate, reverse engineer, decompile or disassemble the Software (in whole or in part);
 - Modify or alter any Documentation;
 - Copy the Software, in whole or in part, on any media or on to any other computing system, other than one copy for back-up and archival purposes;
 - Create any derivative works from the Software (in whole or in part);
 - Publish any benchmarking or similar type of analysis without the prior written consent of Harmonic;
 - Take part in any action that may breach Harmonic’s or its suppliers’ intellectual property rights in or relating to the Software; or
 - Impede or interrupt the Software in any way.
- 3. USER OBLIGATIONS.** In using the Software, you agree to:
 - Install any bug fix, error correction or maintenance updates provided by Harmonic to ensure up-to-date Software;
 - Take all reasonable steps to protect the Software from unauthorized reproduction, publication, disclosure, or distribution;
 - Promptly uninstall any client applications on client PCs that are no longer in use;
 - Track the number and locations of all copies of the Software;



- Regularly back-up data;
- Comply with PC client and computing system requirements as specified in the Documentation; and
- Comply with all applicable laws, including without limitation, all applicable local, state, national and foreign laws, treaties, regulations, ordinances and directives.

4. **LIMITED WARRANTY AND DISCLAIMER.** Harmonic warrants to you that, for ninety (90) days (the “**Warranty Period**”), the Software will perform materially in accordance with Harmonic’s specifications for the Software you have purchased, provided that the Software is used in accordance with the terms of this Agreement. If, during the Warranty Period, the Software does not perform materially in accordance with its specifications, Harmonic may elect to use commercially reasonable efforts to rectify the non-conformity. Notwithstanding any of the foregoing, (a) Harmonic does not warrant or represent that the operation of the Software will be uninterrupted or error-free and (b) Harmonic reserves the right, at any time in its sole discretion, to modify the features and specifications of the Software. In addition, this warranty does not apply if the Software or any equipment upon which the Software is authorized to be used (a) has been altered, except by Harmonic or its authorized representative, (b) has not been installed, operated, updated, repaired, or maintained in accordance with instructions supplied by Harmonic, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; or (d) is licensed for beta, evaluation, testing or demonstration purposes.

THE PROVISIONS OF THIS SECTION 4 STATE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO YOU. HARMONIC DISCLAIMS ALL OTHER WARRANTIES (EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE) REGARDING OR RELATING TO THE SOFTWARE FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT. HARMONIC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5. **UPGRADES AND ADDITIONAL FEATURES.** You acknowledge that Harmonic may offer optional upgrades, features, functionality, services and support for or relating to the Software for fees that are in addition to any fees you have paid for the Software. Any such upgrades, features, functionality and services purchased by you shall be subject to the terms and conditions of this Agreement and/or a new agreement.
6. **OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS.** Harmonic or its suppliers owns all right, title and interest, including all worldwide copyrights, in the Software and any related Documentation, including all copies thereof. The Software and all related materials are copyrighted and are protected by the laws of the United States and other countries, and by international treaty provisions. Title to all copies of the Software, and all intellectual property rights therein (including but not limited to patents, pending patent applications, trademarks, copyrights, trade secrets or other intellectual property rights), shall remain with Harmonic or its suppliers. Unless expressly authorized in this Agreement, you shall have no right to (nor will allow any third party to) sell, assign, lease, transfer, encumber, or otherwise suffer to exist any lien or security interest on the Software. You acknowledge and agree that this Agreement does not convey on to you any intellectual property or other ownership interests in the Software. Nothing in this Agreement gives you a right to use any of Harmonic’s or its suppliers’ trade names, trade marks, service marks, logos, domain names and other distinctive brand features.
7. **LIMITATION OF LIABILITY.** IN NO EVENT WILL HARMONIC OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST REVENUE OR PROFIT, LOST DATA OR DATA RECOVERY COSTS, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES), HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, ARISING OUT OF OR RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF HARMONIC OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE CUMULATIVE LIABILITY OF HARMONIC, ITS SUPPLIERS OR THEIR RESPECTIVE SUPPLIERS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EXCEED THE AMOUNT(S) PAID BY YOU FOR THE SOFTWARE LICENSE(S).

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, ONLY THE LIMITATIONS WHICH ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU AND HARMONIC’S AND ITS SUPPLIERS’ LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.



8. **TERM AND TERMINATION.** This Agreement shall be effective for the Term, unless earlier terminated as stated in this Agreement. In the event you terminate this Agreement, you agree to un-install the Software and you shall not be entitled to any refund of fees you paid for the Software. In the event you are not in compliance with any of the terms or conditions of this Agreement, Harmonic shall have the right to terminate this Agreement immediately, and you shall not be entitled to any refund of fees you paid for the Software. Upon termination of this Agreement for any reason, you understand that you will no longer have any right to use the Software and will be required to return or destroy the Software, and all copies thereof.
9. **ASSIGNMENT.** No assignment by you (by operation of law or otherwise) of any of your rights or obligations under this Agreement shall be effective, without the prior written consent of Harmonic. Any assignment without the prior written consent of Harmonic will be null and void. Subject to the foregoing sentence, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.
10. **GOVERNING LAW.** Any claim arising under or related to this Agreement will be governed by California law (excluding its conflict of law principles) and controlling United States federal law. Any action under or relating to this Agreement brought by you shall be brought solely in the state and federal courts located in California with sole venue in the courts located in Santa Clara County and you hereby submit to the personal jurisdiction of such courts. The United Nations Convention on Contracts for the Sale of Goods does not apply to this Agreement.
11. **EXPORT REGULATIONS.** You may not use or otherwise export or re-export the Software except as authorized by United States law and the laws of the jurisdiction in which the Software was obtained. You agree to comply strictly with all such laws and regulations and acknowledge that the Software may not be exported or re-exported (i) into (or to a national or resident of) any United States embargoed country or (ii) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Denial Orders (each, a "**List**"). By using the Software, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such List. You shall indemnify and hold Harmonic 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. Your obligations under this section shall survive the expiration or termination of this Agreement.
12. **GOVERNMENT END USERS.** The Software and related Documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.
13. **ENGLISH LANGUAGE.** This Agreement was originally written in English. If this Agreement is translated into any other language, the translation shall be for review purposes only and have no legal effect. The English language version of this Agreement shall control and shall be binding on the parties to this Agreement.
14. **SEVERABILITY.** If any provision of this Agreement is held to be unenforceable, this Agreement will remain in effect with the provision omitted, unless omission of the provision would frustrate the intent of the parties, in which case this Agreement will immediately terminate.
15. **SURVIVAL CLAUSES.** Upon expiration or termination, each party will remain obligated under this Agreement for transactions that have already been completed and to those parts of the Agreement relating to ownership, warranties, limitation of liability, governing law, obligations upon expiration or termination, and any other applicable provisions which by their nature would survive any such expiration or termination of this Agreement.
16. **STATUTE OF LIMITATIONS.** Any cause of action arising out of or related to this Agreement must be brought by you no later than one (1) year after the cause of action has occurred.



17. **ENTIRE AGREEMENT.** This Agreement is the entire agreement relating to its subject matter. It supersedes all prior or contemporaneous oral or written communications, proposals, representations and warranties and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the parties relating to its subject matter during the term of this Agreement. No modification of this Agreement will be binding, unless in writing and signed or otherwise accepted by an authorized representative of each party.
18. **DEFINITIONS.** The following defined terms shall have the corresponding meaning when used in this Agreement:
- **“Documentation”** means written information (including but not limited to technical manuals, training materials, specifications or otherwise) pertaining to the Software and made available to you in connection with your licensing of the Software.
 - **“Software”** means Harmonic’s EdgeMS software.
 - **“Term”** means perpetual.

19. **THIRD PARTY SOFTWARE.**

The following Microsoft® products may be provided with the Software and/or may be pre-installed as part of the Software solution: Microsoft® Windows® 2000; Microsoft® Windows® Server 2000; Microsoft® Windows® Server 2003, Enterprise Edition; Microsoft® Windows® Server 2003 for Telecommunications Systems with the Server Appliance Software 3.0 (104 CPU) (ESD); Microsoft Windows® Installer Redistributables 3.0; and Microsoft® SQL Server® 2000 RUNTIME Client Access License. Each Microsoft product is subject to its respective Microsoft End-User License Agreement that is provided with the Microsoft program and media. Each Microsoft product may only be used in conjunction with the Software solution as provided to you by Harmonic and in accordance with its related documentation.