

# VUNETRIX END USER LICENSE AGREEMENT (EULA) FOR VUNETRIX NETWORK MONITOR SOFTWARE

This is a license agreement between you and Vunetrix, Inc. This agreement describes your rights and the conditions upon which you may use the Vunetrix Network Monitor software. You should review the entire agreement, including any supplemental license terms that accompany the software, because all of the terms are important and together create this agreement that applies to you.

**By accepting this agreement or using the software, you agree to all of these terms, and consent to the transmission of certain information during activation and during your use of the software as per the privacy statement described in Section 3. If you do not accept and comply with these terms, you may not use the software or its features.**

## 1. Overview.

- a. **Applicability.** This agreement applies to the Vunetrix Network Monitor software that is pre-installed on a device, or acquired from a Vunetrix Certified Solution Provider (VCSP) and installed by you, and also any Vunetrix updates, upgrades, supplements or services for the software, unless other terms come with them. If this agreement contains terms regarding a feature or service not available on your device, then those terms do not apply.
- b. **Additional terms.** Additional third party terms may apply to your use of certain features, services and apps, depending on your device's capabilities, how it is configured, and how you use it. Please be sure to read them.
  - (i) The software may include third party programs that are licensed to you under this agreement, or under their own terms.
  - (ii) Vunetrix or its VCSPs may include additional apps, which will be subject to separate license terms and privacy policies.
  - (iii) License terms, notices and acknowledgements, if any, for the third party apps and programs are provided as available.

## 2. Installation and Use Rights.

- a. **License.** The software is licensed, not sold. Under this agreement, we grant you the right to install and run one instance of the software on your device (or on the licensed pre-installed device), as long as you comply with all the terms of this agreement.

You are authorized to use the software as server software for commercial hosting, make the software available for simultaneous use by multiple

users over a network, install the software on a server and allow users to access it remotely, or install the software on a device for use only by remote users;

- b. Device.** In this agreement, “device” means a hardware system (whether physical or virtual) with an internal storage device capable of running the software. A hardware partition or blade is considered to be a device.
- c. Restrictions.** Vunetrix reserves all rights (such as rights under intellectual property laws) not expressly granted in this agreement. For example, this license does not give you any right to, and you may not:

  - (i) use or virtualize features of the software separately;
  - (ii) publish, copy (other than the permitted backup copy), rent, lease, or lend the software;
  - (iii) transfer the software (except as permitted by this agreement);
  - (iv) work around any technical restrictions or limitations in the software;
  - (v) reverse engineer, decompile, or disassemble the software, or attempt to do so, except and only to the extent that the foregoing restriction is permitted by applicable law or by licensing terms governing the use of open-source components that may be included with the software; and
  - (vi) when using Internet-based features you may not use those features in any way that could interfere with anyone else’s use of them, or to try to gain access to or use any service, data, account, or network, in an unauthorized manner.
- d. Multi Use Scenarios.**

  - (i) **Use in a virtualized environment.** This license allows you to install only one instance of the software for use on one device, whether that device is physical or virtual. If you want to use the software on more than one virtual device, you must obtain a separate license for each instance.
  - (ii) **Remote assistance.** You may use remote assistance technologies to share an active session without obtaining any additional licenses for the software. Remote assistance allows one user to connect directly to another user’s computer, usually to correct problems.
- e. Backup Copy.** You may make a single copy of the software for backup purposes, and may also use that backup copy to transfer the software if it was acquired as stand-alone software, as described in Section 4 below.

- 3. Privacy; Consent to Use of Data.** Your privacy is important to us. Some of the remote support features send or receive information when using those features. Many of these features can be switched off in the user interface, or you can choose not to use them. By accepting this agreement and using the software you agree that Vunetrix may collect, use, and disclose the information as described in the Vunetrix Privacy Statement (<http://vunetrix.com/privacy-policy>), and as may be described in the user interface associated with the software features.
- 4. Transfer.** Any transfer of the software to a third party, and the right to use it, must comply with applicable law.

  - a. Software Preinstalled on Device.** If you acquired the software preinstalled on a device (and also if you upgraded from software preinstalled on a device), you may transfer the license to use the software directly to another user, only with the licensed device. The transfer must include the software and, if provided with the device, an authentic Vunetrix Network Monitor label including the product key. Before any permitted transfer, the other party must agree that this agreement applies to the transfer and use of the software.
  - b. Stand-alone Software.** If you acquired the software as stand-alone software (and also if you upgraded from software you acquired as stand-alone software), you may transfer the software to another device that belongs to you. You may also transfer the software to a device owned by someone else if (i) you are the first licensed user of the software and (ii) the new user agrees to the terms of this agreement. You may use the backup copy we allow you to make or the media that the software came on to transfer the software. Every time you transfer the software to a new device, you must remove the software from the prior device. You may not transfer the software to share licenses between devices.
- 5. Authorized Software and Activation.** You are authorized to use this software only if you are properly licensed and the software has been properly activated with a genuine license key or by other authorized method. When you connect to the Internet while using the software, the software will automatically contact Vunetrix or its affiliate to confirm the software is genuine and the license is valid. You can also activate the software manually by email or telephone. In either case, transmission of certain information will occur, and Internet, telephone and SMS service charges may apply.

You may also receive reminders to obtain a proper license for the software. You may not bypass or circumvent activation. To help determine if your software is properly

licensed and whether you have up to date support, see the Vunetrix status page on your installed device.

Updates, support, and other services are only offered to users with a current Vunetrix Software Upgrade and Support Plan (SUSP).

- 6. Updates.** The software is periodically updated and must be current to obtain Vunetrix support. Notifications are sent once the update is available. You may obtain updates only from Vunetrix or authorized sources, and there may be need to update your system to provide you with those updates.
- 7. Downgrade Rights.** This agreement applies to your use of the earlier versions. If the earlier version includes different components, any terms for those components in the agreement that comes with the earlier version apply to your use of such components. Vunetrix and its VCSPs are not obligated to supply earlier versions to you. If you must obtain an earlier version separately, you may be charged a fee. At any time, you may replace an earlier version with the version you originally acquired.
- 8. Geographic and Export Restrictions.** If your software is restricted for use in a particular geographic region, then you may activate the software only in that region. You must also comply with all domestic and international export laws and regulations that apply to the software, which include restrictions on destinations, end users, and end use.
- 9. Support Procedures.**
  - a. For software preinstalled on a device.** For the device and software generally, contact Vunetrix or VCSP for support options. For any product originally purchased from Vunetrix, updates and supplements can be obtained directly from Vunetrix. For product purchased from any VCSP, Vunetrix will provide limited support services directly to owners of properly licensed software.
  - b. For software acquired from a VCSP.** Contact the VCSP for their support program. Vunetrix provides limited support services directly to owners of properly licensed software.
- 11. Governing Law.** The laws of the state or country where you live (or if a business where your principal place of business is located) govern all claims and disputes concerning the software, its price, or this agreement, including breach of contract claims and claims under state consumer protection laws, unfair competition laws, implied warranty laws, for unjust enrichment, and in tort, regardless of conflict of law principles, except that the FAA governs all provisions relating to arbitration.
- 12. Consumer Rights, Regional Variations.** This agreement describes certain legal rights. You may have other rights, including consumer rights, under the laws of your

state. This agreement does not change those other rights if the laws of your state do not permit it to do so.

**13. Additional Notices.**

- a. Networks, data and Internet usage.** Some features of the software and services accessed through the software may require your device to access the Internet. Your access and usage (including charges) may be subject to the terms of your cellular or internet provider agreement. Certain features of the software may help you access the Internet more efficiently, but the software's usage calculations may be different from your service provider's measurements. You are always responsible for (i) understanding and complying with the terms of your own plans and agreements, and (ii) any issues arising from using or accessing networks, including public/open networks. You may use the software to connect to networks, and to share access information about those networks, only if you have permission to do so.
- b. Malware Protection.** Vunetrix cares about protecting your device from malware. We strongly recommend that you take appropriate measures such as installing licensed, up-to-date antivirus and anti-malware software to protect the device that the Vunetrix Network Monitor is installed on, and the integrity of the data stored on the device, and that you update these protection programs regularly.
- c. Limited rights Versions.** If the software version you acquired is marked or otherwise intended for a specific or limited use, then you may only use it as specified. You may not use such versions of the software for commercial, nonprofit, or revenue-generating activities.

  - (i) **Evaluation.** For evaluation (or test or demonstration) use, you may not sell the software, use it in a live operating environment, or use it after the evaluation period. Notwithstanding anything to the contrary in this Agreement, evaluation software is provided "AS IS".
  - (ii) **Not For Resale.** You may not sell software marked as "NFR" or "Not for Resale".

- 14. Entire Agreement.** This agreement (together with other terms accompanying any software supplements, updates, and services that are provided by Vunetrix, and that you use), are the entire agreement for the software and any such supplements, updates, and services (unless Vunetrix, provides other terms with such supplements, updates, or services).

You agree that you will read the terms before using the software or services. You understand that by using the software and services, you ratify this agreement. There

are also informational links in this agreement. The links containing notices and binding terms are:

Vunetrix Network Monitor Privacy Statement  
(<http://vunetrix.com/privacy-policy>)

\*\*\*\*\*

### **LIMITED WARRANTY**

Vunetrix warrants that properly licensed software will perform substantially as described in any Vunetrix materials that accompany the software. This limited warranty does not cover problems that you cause, that arise when you fail to follow instructions, or that are caused by events beyond reasonable control of Vunetrix. The limited warranty starts on the license activation date, and lasts for thirty (30) days.

Any supplements, updates, or replacement software that you may receive from Vunetrix during that period are also covered, but only for the remainder of the thirty (30) days. Transferring the software will not extend the limited warranty.

Vunetrix gives no other express warranties, guarantees, or conditions.

**Vunetrix excludes all implied warranties and conditions, including those of merchantability, fitness for a particular purpose, and non-infringement. If your local law does not allow the exclusion of implied warranties, then any implied warranties, guarantees, or conditions last only during the term of the limited warranty and are limited as much as your local law allows. If your local law requires a longer limited warranty term, despite this agreement, then that longer term will apply, but you can recover only the remedies this agreement allows.**

If Vunetrix breaches its limited warranty, it will, at its election, either: (i) repair or replace the software at no charge, or (ii) accept return of the software (or at its election the Vunetrix branded device on which the software was preinstalled) for a refund of the amount paid, if any. **These are your only remedies for breach of warranty.** This limited warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

**Except for any repair, replacement, or refund Vunetrix may provide, you may not recover under this limited warranty, under any other part of this agreement, or under any theory, any damages or other remedy, including lost profits or direct, consequential, special, indirect, or incidental damages.** The damage exclusions and remedy limitations in this agreement apply even if repair, replacement or a refund does

not fully compensate you for any losses, if Vunetrix knew or should have known about the possibility of the damages, or if the remedy fails of its essential purpose.

Some states do not allow the exclusion or limitation of incidental, consequential, or other damages, so those limitations or exclusions may not apply to you. **If your local law allows you to recover damages from Vunetrix even though this agreement does not, you cannot recover more than you paid for the software (or up to one hundred dollars (\$100 USD) if you acquired the software for no charge).**