

HYPERGLANCE EULA

United States EULA

1 INTRODUCTION

1.1 HYPERGLANCE INC., a Delaware corporation, with an office at 2880 Zanker Road, Suite 203, San Jose, CA 95134 ("Hyperglance") provides certain software applications, including without limitation cloud management software applications (collectively, "Software").

1.2 This Customer License Agreement forms an agreement (together with the Special Conditions (as defined herein), the "Agreement") between Hyperglance and you ("Customer" or "You") and governs all access to and use of the Software by You. BY CLICKING "I ACCEPT" OR ACCESSING OR OTHERWISE USING THE SOFTWARE, YOU ARE REPRESENTING TO US THAT YOU ARE ELIGIBLE TO ACCESS AND USE THE SOFTWARE AND YOU ARE CONSENTING TO BE LEGALLY BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS OR CANNOT MAKE SUCH REPRESENTATIONS, PLEASE DO NOT USE THE SOFTWARE. IF YOU ARE USING THE SOFTWARE ON BEHALF OF AN ENTITY, ORGANIZATION, OR COMPANY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THAT ORGANIZATION THIS AGREEMENT AND YOU AGREE TO BE BOUND BY THIS AGREEMENT ON BEHALF OF THAT ORGANIZATION.

1.3 You and each user must be at least eighteen (18) years of age to use the Software. By using the Software, You confirm that You have read, accept and agrees to be bound by the terms of this Agreement, our Privacy Policy available at <https://www.hyperglance.com/legal/privacy/>, as may be amended from time to time, and all other instructions provided in relation to the Software.

1.4 Hyperglance reserves the right at any time to update, modify, improve, change, enhance, or discontinue any part or all of the Software.

1.5 Hyperglance reserves the right to amend this Agreement upon notice to Customer and continued use of the Software by Customer shall be deemed accepted of those amendments.

1.6 ARBITRATION NOTICE. Except for certain kinds of disputes described in Section 16, you agree that disputes arising under this Agreement will be resolved by binding, individual arbitration, and BY ACCEPTING THIS AGREEMENT, YOU AND HYPERGLANCE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be

determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. Please see Section 16 for more information.

2 TRIALS & BETA TESTING

2.1 The Software may be made available on a free trial basis (a "Trial") or for purposes of beta testing certain functions or features ("Beta Testing").

2.2 Unless specified otherwise by Hyperglance, the following restrictions shall apply during any Trial:

- (a) the applicable number of resources shall be limited (and Customer may not run multiple Trials);
- (b) there shall be limited delivery, download, access via specific cloud service, operating system, container or virtual machine – in each case, Customer shall remain responsible for delivery and access, in accordance with the terms of the third party provider and otherwise at the risk of Customer;
- (c) TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED DURING A TRIAL AND HYPERGLANCE SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LIABILITY OR DAMAGES OF ANY KIND ARISING FROM CUSTOMER'S USE OF THE SOFTWARE DURING A TRIAL PERIOD.
- (d) there shall be no support, maintenance and upgrades included during the Trial; and
- (e) upon completion of the Trial, access to the Software will either (1) cease, or (2) the subscription will commence as purchased Software and applicable Fees shall apply after the Trial.

2.3 Any Software made available for Beta Testing may contain errors, including errors that may cause the Software to malfunction or cause a loss of data or Content. Hyperglance is not obligated to correct errors, correct the effects of errors (e.g., fix any account or recover lost data or content), or provide any technical support related to use of the Software (including any account or data or content on it) in connection with Beta Testing. DURING BETA TESTING, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED AND HYPERGLANCE SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LIABILITY OR DAMAGES OF ANY KIND ARISING FROM CUSTOMER'S USE OF THE SOFTWARE AS PART OF BETA TESTING.

3 LICENSE

3.1 Subject to payment of all applicable fees and compliance with the terms and conditions of this Agreement, Customer is granted a worldwide, revocable, limited, non-transferable, non-assignable and non-exclusive license to access the Software for the duration of the Term, in accordance with the terms and conditions of this Agreement and the Hyperglance Order Form.

3.2 This Agreement provides for a license of the Software only and is not a sale of the original Software or any copy of it.

3.3 The Software is licensed to Customer in respect of the business of Customer, subject to the Special Conditions (if any) and such further terms or limitations as Hyperglance sees fit. Customer must implement adequate controls to ensure that it complies with the terms and conditions of this Agreement.

3.4 Customer shall not copy, modify, distribute, sublicense, disclose, market, rent, lease, or offer remote computing services, networking, batch processing or transfer of, the Software to any third party, or permit any person or entity to have access to the Software by means of a time sharing, remote computing services, networking, batch processing, service bureau or time sharing arrangement.

4 CONDITIONS OF USE

4.1 Customer agrees that it shall only use the Software for legal purposes and shall:

- (a) limit use of the Software to the approved number of concurrent individual users for the applicable Fees;
- (b) not designate more than the specified number of named users, nor model more than the specified number of resources (physical and logical);
- (c) be responsible for Customer's operating systems, including compliance with third party terms and conditions;
- (d) only display the Software in object code;
- (e) not engage in any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by Hyperglance in its discretion.
- (f) not use the Software in any manner inconsistent with this Agreement;
- (g) not act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the Software or any operating system;
- (h) not infringe our intellectual property rights or those of any third party in relation to use of the Software or any service (to the extent that such use is not licensed by this Agreement);
- (i) not transmit any material that is defamatory, offensive or otherwise objectionable in relation to use of the Software;
- (j) not use the Software in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; and
- (k) not collect or harvest any information or data from the Software or our systems or attempt to decipher any transmissions to or from the servers running any Software.

4.2 Any breach of these conditions by Customer shall entitle Hyperglance to terminate this Agreement without prejudice to its rights to collect additional fees or enforce other rights under this Agreement.

5 FEES

5.1 Fees are payable upon deployment and in advance for use of the Software as specified by Hyperglance. Hyperglance reserves the rights to require payment in advance for any specified period or retrospectively by reference to the number of concurrent individual users.

5.2 Customer agrees to pay all Fees in the manner as directed by Hyperglance, at the time they are required and as a condition of using the Software. If the Software has been purchased from an Authorized Reseller, Customer must make all payments in accordance with any specific requirements of the Authorized Reseller.

5.3 Hyperglance may change any Fees at any time at its absolute discretion. These changes will become effective when Customer next makes a payment in relation to the Software.

5.4 Hyperglance may revoke or suspend Customer's license to access the Software for unpaid Fees without liability.

5.5 All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Hyperglance's income.

5.6 Customer shall not be entitled to set off or withhold any amount payable under this Agreement against any amount payable to Customer (whether under this Agreement or otherwise).

5.7 If Customer fails to pay an amount due under this Agreement by the due date, interest may be charged on the overdue amount at 1.5% per month compounding daily from the due date for payment to the date of actual payment. In addition, Hyperglance may withhold access to the Software.

6 ACCESS & USE

6.1 Hyperglance reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter the Software.

6.2 Customer agrees and accepts that the functional elements of the Software may be hosted by Hyperglance or other third party, in which case the Software shall only be installed, accessed and maintained by Hyperglance or that third party using the internet or other connection to Hyperglance or other servers.

6.3 Subject to this Agreement, Customer may authorize users to access the Software. Hyperglance accepts no liability for access by users authorized by Customer or using login details of users authorized by Customer.

6.4 Customer is responsible for ensuring that users authorized to use the Software comply with this Agreement in full and are liable for any breach by them.

6.5 Hyperglance reserves the right to audit Customer's use of the Software during normal business hours and with reasonable notice and to include means within the Software to limit Customer's use of the Software to the licensed number of resources.

6.6 Certain features of the Software permit Customer to conduct cloud automation and remediation activities ("Automation") that may result in significant changes to Customer's systems and cloud infrastructure. Customer acknowledges and agrees that Hyperglance does not control or direct a Customer's access or use of the Automation and Customer is solely responsible for any use, decisions or instructions made by Customer with respect to Automation and the consequences thereof. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HYPERGLANCE IS NOT LIABLE FOR ANY DAMAGES OR LOSS RESULTING FROM CUSTOMER'S USE OF AUTOMATION, REGARDLESS OF WHETHER SUCH RESULTS WERE UNINTENDED OR UNEXPECTED, INCLUDING WITHOUT LIMITATION ANY IMPACT ON CUSTOMER'S CLOUD INFRASTRUCTURE OR LOSS OF DATA, SYSTEMS, OR CONTENT.

7 INTELLECTUAL PROPERTY

7.1 Customer acknowledges that Hyperglance and its licensors retain ownership of all Intellectual Property in or to the Software. The Intellectual Property subject to this Agreement shall include:

- (a) all source code, any compiler, similar computer program or other software which is necessary to convert the source code form into the object code form of the Software, and runtime software necessary to execute the source code form of the Software (including interpreters and templates) and any other documentation of the source code form of the Software;

- (b) any Intellectual Property created or developed by Hyperglance in the process of providing the Software, including all derivative works, improvements, enhancements, updates and corrections (irrespective of invention, creation or authorship), source code, usage data, and ideas related to the Software; and

- (c) all explanations, flow charts, schematics, algorithms, subroutine descriptions, class and object descriptions, memory and overlay maps, statements of principles of operations, architecture standards, data flow descriptions, class, base-class and sub-class descriptions, data structures and control logic of the Software.

7.2 The Software may use software, proprietary systems and Intellectual Property owned by Hyperglance, or for which Hyperglance has appropriate authority to use, and Customer agrees that such is protected by Intellectual Property rights, both domestically and

internationally. Customer warrants that it shall not infringe on any Intellectual Property rights through the use of the Software or otherwise, including the Hyperglance trademark, logo and design.

7.3 Customer further warrants that by using the Software Customer will not:

- (a) use any Intellectual Property of Hyperglance without express permission;
- (b) copy any part of the Software for Customer's own commercial purposes; or
- (c) directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in any documentation associated with it.

7.4 Customer may, from time to time, may submit comments, information, questions, data, ideas, description of processes, feature requests, suggestions, or other information to Hyperglance ("Feedback"). Customer hereby assigns all Intellectual Property in Feedback to Hyperglance and Hyperglance may in connection with any of its products or services freely use and otherwise exploit any Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise. To the extent that any derivative works of the Software are developed by or for Customer, Customer hereby assigns all Intellectual Property in and to such derivative works to Hyperglance. To the extent such derivative works cannot be assigned to Hyperglance, Customer hereby grants Hyperglance a perpetual and irrevocable (irrespective of the expiration or termination of this Agreement), non-exclusive, transferable, worldwide, sublicensable, and royalty-free license to reproduce, distribute, perform, and display any derivative works of the Software developed by or for Customer, and to use, make, have made, sell, offer to sell, import, export, and otherwise exploit any product based on any such derivative works.

7.5 Hyperglance is entitled to reasonable attribution of its Software, including specifying any relevant activities are 'Powered by Hyperglance'.

7.6 Nothing in this clause shall affect the ownership and responsibility of Customer for all Content relating to Customer (and not the Software itself), the networks and network devices, servers, server hardware, storage systems, computer systems, file systems, print systems, applications, software or software components, database management systems and related systems, used by the used by Customer to connect, exchange data, interface or otherwise interoperate or communicate with the Software.

7.7 Customer expressly consents to the collection and use by Hyperglance of designs, logos, images and other Content from Customer, authorizes the reproduction of such Content and grants to Hyperglance an irrevocable, royalty-free, non-exclusive, non-transferable, and worldwide license and right to use such Content, for marketing and promotional purposes and otherwise as provided by this Agreement.

8 THIRD PARTY SERVICES & SOFTWARE

8.1 The Software may use native device functionality and other data from certain third party services ("TPS"), which will be governed by the applicable TPS terms & conditions. Hyperglance is not responsible and accepts no liability whatsoever for any TPS or any interruptions to the website of Customer due to the TPS under any circumstances. Without limiting the foregoing, the Software may include open source software, and to the extent the open source license provisions conflicts with this Agreement, the open source license provisions will apply.

9 SUPPORT SERVICES

9.1 Hyperglance shall use commercially reasonable efforts to provide the following support services during normal business hours for the Software to Customer ("Support Services") and respond within 24 hours to requests from Customers for Support Services:

- (a) Ongoing updates and fixes for bugs and system instability;
- (b) Email and online advice to assist with the downloading, installation and configuration of the Software;
- (c) Assistance with troubleshooting to diagnose and fix errors in the Software; and
- (d) Access to instructions, information and other materials relating to use of the Software.

9.2 Hyperglance may agree to provide additional service level support for individual Customers subject to payment of additional Fees.

9.3 In no circumstances whatsoever will Hyperglance have any obligation to support any customization, altered or modified Software, use with unapproved hardware, Software accessed or used in breach of this Agreement (including on unlicensed resources) or inconsistent with instructions from Hyperglance.

9.4 Hyperglance may specify a designated contact, subcontract and/or prioritize the provision of Support Services in its absolute discretion. If the Software has been purchased from an Authorized Reseller, Customer must contact the Authorized Reseller to manage the provision of all Support Services.

10 NO WARRANTY

10.1 CUSTOMER AGREES THAT IT USES THE SOFTWARE ENTIRELY AT ITS OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY LAW, HYPERGLANCE DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET CUSTOMER REQUIREMENTS.

10.2 TO THE MAXIMUM EXTENT PERMITTED BY LAW, HYPERGLANCE DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. HYPERGLANCE DOES

NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UCC WILL BE CONFERRED ON YOU UNLESS EXPRESSLY GRANTED HEREIN. HYPERGLANCE SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

10.3 IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SOFTWARE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO THIRTY (30) DAYS FROM THE DATE OF DELIVERY.

10.4 NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY HYPERGLANCE, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

10.5 SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

10.6 TO THE EXTENT PERMITTED BY APPLICABLE LAW, HYPERGLANCE'S SOLE LIABILITY AND CUSTOMER'S SOLE REMEDY IN CONNECTION WITH ANY IMPLIED WARRANTY THAT CANNOT BE EXCLUDED, IS RESTRICTED AT HYPERGLANCE'S OPTION TO THE RE-SUPPLY OF SERVICES, OR PAYMENT OF THE COST OF RE-SUPPLY OF SERVICES (IF APPLICABLE).

11 LIABILITY & INDEMNITY

11.1 Customer acknowledges that Hyperglance is not responsible for the conduct or activities of any user and that Hyperglance is not liable for such under any circumstances, including:

- (a) any illegal conduct of any users of the Software (whether authorized by Customer or not);
- (b) any defect or fault in the Software resulting from customization or modifications made by or on behalf of Customer;
- (c) any use of the Software in violation of this Agreement or other breach any of the terms or conditions set out in this Agreement.

11.2 Customer agrees to indemnify, defend and hold harmless Hyperglance for any liability, loss, damage, cost (including reasonable attorney's fees) or expense that Hyperglance may suffer or incur as a result of or in connection with Customer's use of or conduct in connection with the Software, including use of the Content or Automation and any breach by Customer of this Agreement.

11.3 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER HYPERGLANCE NOR ITS SUPPLIERS SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE

SOFTWARE AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF HYPERGLANCE OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

11.4 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR ANY SPECIAL CONDITIONS, HYPERGLANCE AND ITS SUPPLIERS' ENTIRE AGGREGATE LIABILITY TO YOU WILL NOT EXCEED THE AMOUNT ACTUALLY PAID BY YOU TO HYPERGLANCE IN THE TWELVE MONTHS PRIOR TO THE DATE ON WHICH THE CLAIM AROSE.

11.5 SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

11.6 Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.

11.7 Customer acknowledges and agrees that Customer is solely responsible for the accuracy, quality and legality of all Content managed using the Software.

12 BASIS OF THE BARGAIN

12.1 The Limited Warranty and Disclaimer, Exclusive Remedies and Limited Liability set forth above are fundamental elements of the basis of the agreement between Hyperglance and You. Hyperglance would not be able to provide the Software on an economic basis without such limitations. Such Limited Warranty and Disclaimer, Exclusive Remedies and Limited Liability inure to the benefit of Hyperglance's licensors.

13 US GOVERNMENT RESTRICTED RIGHTS

13.1 U.S. Government Restricted Rights. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction release, performance, display or disclosure of the software and accompanying documentation by the U.S. Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

14 TERMINATION

14.1 This Agreement shall continue for the period specified on relevant website or as separately agreed with Hyperglance (the "Term") and shall be renewed automatically for

successive terms of the same length unless terminated in accordance with this Agreement. In the event that no term is specified, the initial Term shall be twelve (12) months.

14.2 Customer may terminate this Agreement after the Term or otherwise or as separately agreed with Hyperglance prior to the end of the Term.

14.3 Hyperglance may revoke or suspend the license to the Software, or terminate this Agreement, in the event of any breach by Customer of this Agreement.

14.4 Expiration or termination of this Agreement is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of this Agreement up to the date of expiration or termination.

14.5 All provisions of this Agreement which by their nature should survive termination shall survive termination, including intellectual property rights, limitation of liability, disclaimer of warranty and indemnification.

15 DISPUTE RESOLUTION

15.1 If any dispute arises between Customer and Hyperglance in connection with this Agreement (a "Dispute"), then either party may notify the other of the Dispute with a notice ("Dispute Notice") which:

- (a) includes or is accompanied by full and detailed particulars of the Dispute; and
- (b) is delivered within 10 Business Days of the circumstances giving rise to the Dispute first occurring.

15.2 Within 10 Business Days after a Dispute Notice is given, a representative (with the authority to resolve the dispute) of Customer and Hyperglance must meet and seek to resolve the Dispute.

15.3 Subject to clause 15.4, a party must not bring an action (whether in arbitration or in a court permitted herein) respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.

15.4 Nothing in this clause prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute related to a party's Intellectual Property.

15.5 Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this document and any related agreements.

16 ARBITRATION, WAIVER OF CLASSWIDE ARBITRATION, VENUE.

16.1 GENERALLY. SUBJECT TO CLAUSE 16.3 BELOW, YOU AND HYPERGLANCE EACH ACKNOWLEDGE AND AGREE THAT ANY CLAIM, DISPUTE OR CONTROVERSY BETWEEN YOU AND HYPERGLANCE ARISING OUT OF OR RELATING TO (1) THIS AGREEMENT, INCLUDING THE VALIDITY OF THIS SECTION, AND (2) YOUR USE OF SOFTWARE AND/OR PRODUCT(S) UNDER THIS AGREEMENT (COLLECTIVELY, THE "DISPUTE") SHALL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION ADMINISTERED BY JAMS, A NATIONALLY RECOGNIZED ARBITRATION AUTHORITY. YOU UNDERSTAND THAT WITHOUT THIS PROVISION YOU WOULD HAVE HAD A RIGHT TO LITIGATE A DISPUTE THROUGH A COURT BEFORE A JURY OR JUDGE, AND THAT YOU HAVE EXPRESSLY AND KNOWINGLY WAIVED THOSE RIGHTS AND AGREE INSTEAD TO RESOLVE ANY DISPUTES THROUGH BINDING ARBITRATION IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. NOTHING IN THIS CLAUSE PREVENTS EITHER PARTY FROM INSTITUTING COURT PROCEEDINGS TO SEEK URGENT INJUNCTIVE, INTERLOCUTORY OR DECLARATORY RELIEF IN RESPECT OF A DISPUTE RELATED TO A PARTY'S INTELLECTUAL PROPERTY.

16.2 ARBITRATION PROCEDURES AND FEES. PRIOR TO SUBMITTING A CLAIM FOR ARBITRATION, EITHER PARTY SHALL FIRST NOTIFY THE OTHER PARTY TO TRY TO RESOLVE THE DISPUTE ACCORDING TO SECTION 15 ABOVE. IF THE DISPUTE IS NOT RESOLVED PURSUANT TO SECTION 15 ABOVE, THEN THE CLAIM WILL BE SUBMITTED FOR ARBITRATION. THE ARBITRATION OF ANY DISPUTE OR CLAIM SHALL BE CONDUCTED IN ACCORDANCE WITH THE THEN CURRENT AND APPLICABLE RULES OF JAMS AS MODIFIED BY THIS AGREEMENT. THE ARBITRATION SHALL OCCUR BEFORE A SINGLE ARBITRATOR, WHO MUST BE A RETIRED JUDGE OR JUSTICE. WHETHER OR NOT YOU PREVAIL IN THE DISPUTE, SO LONG AS YOUR CLAIM IS NOT FOUND TO BE FRIVOLOUS BY THE ARBITRATOR AS MEASURED BY RULE 11(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE, YOU SHALL BE ENTITLED TO BE REIMBURSED FOR YOUR COSTS OF ARBITRATION, WITHIN THE SOLE DISCRETION OF THE ARBITRATOR. IF THE ARBITRATION AWARD IS EQUAL TO OR GREATER THAN THE AMOUNT YOU DEMANDED IN YOUR ARBITRATION CLAIM, HYPERGLANCE WILL PAY FOR YOUR REASONABLE AND ACTUAL ATTORNEYS' FEES YOU HAVE INCURRED TO ARBITRATE THE DISPUTE, PLUS A MINIMUM RECOVERY OF \$2,500. ANY DECISION OR AWARD BY THE ARBITRATOR RENDERED IN AN ARBITRATION PROCEEDING SHALL BE FINAL AND BINDING ON EACH PARTY, AND MAY BE ENTERED AS A JUDGMENT IN ANY COURT OF COMPETENT JURISDICTION. IF EITHER PARTY BRINGS A DISPUTE IN A COURT OR OTHER NON-ARBITRATION FORUM, THE ARBITRATOR OR JUDGE MAY AWARD THE OTHER PARTY ITS REASONABLE COSTS AND EXPENSES (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES) INCURRED IN ENFORCING COMPLIANCE WITH THIS BINDING ARBITRATION PROVISION, INCLUDING STAYING OR DISMISSING SUCH DISPUTE. ANY ARBITRATION SHALL BE CONFIDENTIAL, AND NEITHER YOU, NOR HYPERGLANCE NOR THE ARBITRATOR MAY DISCLOSE THE EXISTENCE, CONTENT OR RESULTS OF ANY ARBITRATION, EXCEPT AS MAY BE REQUIRED BY LAW OR FOR PURPOSES OF ENFORCEMENT OR APPEAL OF THE ARBITRATION AWARD. JUDGMENT ON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING PROPER JURISDICTION. IF ANY PORTION OF THIS ARBITRATION CLAUSE IS DETERMINED BY A COURT TO BE INAPPLICABLE OR INVALID, THEN THE REMAINDER SHALL STILL BE GIVEN FULL FORCE AND EFFECT.

16.3 WAIVER OF CLASSWIDE CLAIMS; SMALL CLAIMS COURT. NEITHER YOU NOR HYPERGLANCE SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS IN ARBITRATION BY OR AGAINST OTHER CONSUMERS OR ARBITRATE ANY CLAIMS AS A REPRESENTATIVE OR MEMBER OF A CLASS OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. YOU UNDERSTAND THAT WITHOUT THIS PROVISION YOU MAY HAVE HAD A RIGHT TO ARBITRATE A DISPUTE ON A CLASSWIDE OR REPRESENTATIVE BASIS, AND THAT YOU HAVE EXPRESSLY AND KNOWINGLY WAIVED THOSE RIGHTS AND AGREE INSTEAD TO ARBITRATE ONLY YOUR OWN DISPUTE(S) IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. NOTWITHSTANDING THE ABOVE AGREEMENT TO ARBITRATE DISPUTES, YOU AND HYPERGLANCE EACH ACKNOWLEDGE AND AGREE THAT EITHER PARTY MAY, AS AN ALTERNATIVE TO ARBITRATION, BRING AN INDIVIDUAL ACTION IN SMALL CLAIMS COURT TO RESOLVE A DISPUTE, SO LONG AS SUCH SMALL CLAIMS COURT DOES NOT PROVIDE FOR OR ALLOW FOR JOINDER OR CONSOLIDATION OF CLAIMS.

16.4 VENUE. EXCEPT FOR INDIVIDUAL SMALL CLAIMS ACTIONS WHICH CAN BE BROUGHT IN ANY SMALL CLAIMS COURT WHERE JURISDICTION AND VENUE ARE PROPER, ANY ARBITRATION, LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY DISPUTE SHALL BE COMMENCED IN SAN FRANCISCO, CALIFORNIA, AND YOU AND HYPERGLANCE EACH IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF ANY SUCH PROCEEDING. HOWEVER, FOR A DISPUTE OF \$10,000 OR LESS, YOU MAY CHOOSE WHETHER THE ARBITRATION PROCEEDS IN PERSON, BY TELEPHONE, OR BASED ONLY ON SUBMISSIONS.

17 GOVERNING LAW

17.1 This Agreement will be governed by California law, without reference to its or any other jurisdiction's conflict of laws principles. Any action arising out of or relating to this Agreement may be brought exclusively in the appropriate state or federal court in San Francisco, California and Hyperglance and you irrevocably consent to the jurisdiction of such courts and venue in San Francisco. However, if you are a consumer and you live in a country where Hyperglance markets or distributes the Software, local law may require that certain consumer protection laws of your country of residence apply to some sections of this Agreement. In addition, Hyperglance may seek injunctive relief in any court having jurisdiction to protect its intellectual property rights. Each of the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods is hereby expressly excluded and will not apply to this Agreement.

18 NOTICES

18.1 Customer can direct notices, enquiries, complaints and so forth to Hyperglance at the address as set out on the first page of this Agreement. Hyperglance will notify Customer of a change of details from time-to-time.

18.2 Hyperglance will send Customer notices and other correspondence to the details that Customer submits to Hyperglance, or that Customer notifies Hyperglance of from time-to-time. It is Customer's responsibility to update its contact details as they change.

18.3 A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.

19 ASSIGNMENT

19.1 Customer may only assign or otherwise transfer their rights under this Agreement with the written consent of Hyperglance.

19.2 Hyperglance may assign or otherwise transfer their rights under this Agreement.

20 GENERAL

20.1 Formation. This Agreement is formed when Customer acknowledges their consent to this Agreement, whether done electronically or physically.

20.2 Precedence. To the extent that the Special Conditions are inconsistent with this Agreement, the Special Conditions will prevail. If this Agreement is inconsistent with any other document or agreement between the parties, this document prevails to the extent of the inconsistency.

20.3 Disclaimer. Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.

20.4 Relationship. The relationship of the parties to this Agreement does not form a joint venture or partnership.

20.5 Waiver. No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.

20.6 Further Assurances. Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transaction facilitated by it.

20.7 Liability for Expenses. Each party must pay its own expenses incurred in negotiating or executing, this Agreement.

20.8 Third Parties. To the fullest extent permitted under applicable law, any person who is not a party to this Agreement has no rights under this Agreement nor has any benefit conferred upon them by virtue of this Agreement, including to enforce any terms of this agreement

20.9 Counterparts. This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

20.10 Time. Time is of the essence in this Agreement.

20.11 Severability. Any clause of this Agreement, which is invalid or unenforceable is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.

20.12 Interpretation. Headings are only for convenience and do not affect interpretation. The following rules apply in this Agreement unless the context requires otherwise:

- (a) The singular includes the plural and the opposite also applies.
- (a) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (b) A reference to a clause refers to clauses in this Agreement.
- (c) A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
- (d) Mentioning anything after includes, including, or similar expressions, does not limit anything else that might be included.
- (e) A reference to a party to this Agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
- (f) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (g) A reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

21.13 Definitions. The following definitions apply in this document:

- (a) "Agreement" means this Agreement and any Special Conditions.
- (b) "Business Day" means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in San Francisco, California.
- (c) "Content" means content, data and other information that is accessed or used via the Software.
- (d) "Fees" means the fees and charges for use of the Software as specified by Hyperglance from time to time on the Hyperglance website, third party website or by separate agreement with Hyperglance.
- (e) "Hyperglance Order Form" means the online or offline order form executed by Customer for the Software.
- (f) "Intellectual Property" means all rights, title and interest (present and future) in and to patents, copyrights, trademarks (and all goodwill associated therewith), trade names, trade secrets, moral rights, computer software, databases, confidential information, designs, domain names, formulas, inventions, knowhow, and other

intellectual property and any application or registration of the foregoing and the benefit of any renewal or extension thereof.

(g) "Special Conditions" means any agreement or other terms and conditions agreed between Customer and Hyperglance in writing (including in the Hyperglance Order Form).

END

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