

Humming Heads Software End User License Agreement  
(Security Platform/Evolution DLP)

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THIS AGREEMENT IS ENTERED INTO BY AND BETWEEN HUMMING HEADS AND CUSTOMER THAT HAS PURCHASED, DOWNLOADED OR OTHERWISE PROCURED THE SOFTWARE OR THE TRIAL VERSION FOR USE AS AN END USER.

I. General

A. "Software" means Humming Heads software listed in this Section I-A or in a writing separately provided to Customer by Humming Heads, along with documentation set forth in I-B:

B. The Software as defined in above Section I-A includes all documentation accompanying this Agreement whether on disk, in read only memory, on any other media or in any other form (hereinafter collectively called "Software").

C. The Software is licensed, not sold, to Customer by Humming Heads for use only under the terms of this Agreement, and Humming Heads reserves all rights not expressly granted to Customer. The terms of this Agreement will govern any software updates or upgrades provided by Humming Heads that replace and/or supplement the original Software, unless such an update or upgrade is accompanied by a separate agreement in which case the terms of that agreement will govern.

D. If the Software is an update or upgrade product, Customer agrees that this Agreement replaces the original agreement and is applied to the original Software by installing or using said updated or upgraded Software.

E. Humming Heads may add to, change, or remove any part, term, or condition of this Agreement at any time without prior notice or liability to Customer. Any such additions, changes, or removals apply as soon as they are posted on Humming Heads webpage at <https://www.hummingheads.co.jp/> (as may be relocated by Humming Heads). In addition, if Customer continues to use the Software or the Trial Version after such a change is posted on the webpages, Customer has accepted the changes.

## II. License and Use

Subject to the terms and conditions of this Agreement, Customer is granted a limited, non-exclusive, non-transferable license for the License Period, as defined below, to install and use one (1) copy of the Software on a computer with a compliant operating system, as indicated by Humming Heads (hereinafter called "License"). "License Period" shall mean a time period (perpetual license or time-limited license) specifically stated in this Agreement or in a writing which is separately provided to Customer by Humming Heads. Customer is required to obtain a License with respect to each copy of the Software installed. By way of example, without limitation, if Customer uses a single computer running multiple operating systems, Customer is required to purchase as many Licenses as the number of operating systems on which the Software is installed. Customer may make one (1) copy of the Software in machine-readable form for backup purposes only; provided that the backup copy must include all copyright or other proprietary notices contained on the original. If this Software is an update or upgrade product of the Software, only a valid Customer (licensee) of the original Software for which Customer entered into the equivalent of this Agreement in the original Software may use this Software under this Agreement.

## III. Federal Government Customers

To the extent Customer is or is acting on behalf of a United States Federal Government entity or agency, or a prime contractor or subcontractor at any tier under any Federal Government contract, grant, cooperative agreement or other agreement type (hereinafter called "Federal Government Customer"), by accepting the terms of this Agreement or by installing or using the Software, the Federal Government Customer agrees that the Software is "commercial" computer software within the meaning of the applicable Federal Acquisition Regulation (FAR) provision or clause and is subject to this commercial license Agreement. If this Agreement fails to meet the government's needs or is inconsistent in any respect with federal law or regulation, DO NOT CLICK "YES" AND DO NOT INSTALL OR USE THIS SOFTWARE. If a Federal Government Customer clicks "Yes", installs or uses the Software, the terms and conditions of this Agreement are fully applicable to the Federal Government Customer and any resulting use of the Software, and the terms of this Agreement shall supersede any conflicting terms or conditions which may be applicable under any United States federal law or contract. In the event you wish to vary the terms of this Agreement, you must contact Humming Heads and negotiate a mutually agreeable license or agreement. To the extent the United States Federal Government or a prime contractor or subcontractor at any tier under any Federal Government contract, grant, cooperative agreement or other agreement type is provided a copy(ies) of the Software without authorization hereunder, the following notice shall accompany such Software: "Notwithstanding any other agreement or license, including but not limited to FAR 52.227-19 or FAR 252.227-7013, the rights of a Federal Government Customer and its prime contractors or subcontractors at any tier are governed exclusively by the terms of the standard commercial Humming Heads Software End User License Agreement unless and until Humming Heads has entered into a separate written license agreement governing the Software and the use thereof."

#### IV. Trial Version – License and Restrictions on Use

A. Trial Version – License. Subject to the terms and conditions of this Agreement, Customer is granted, at no charge, a limited, non-exclusive, non-transferable license for the Trial Period, as defined below, to install and use one (1) copy of the Trial Version, as defined below, of the Software on a computer with a compliant operating system, as indicated by Humming Heads (hereinafter called "Trial Version License"). "The Trial Version" means a version of the Software which is used by Customer only for the trial purpose of Software and is, if provided in the form of media such as CD or DVD, marked "Not-for-Sale" and/or "Trial Version". "Trial Period" means a time period (either thirty (30) days from the date Customer first installs the Trial Version or certain period) specifically stated in this Agreement or in a writing which is separately provided to Customer by Humming Heads. Humming Heads does not grant a License, as defined by Section II (License and Use), to the Software during the Trial Period. If Customer wishes to continue the use of the Trial Version after its Trial Period expires, said Customer shall obtain the License as defined by Section II (License and Use).

B. Trial Version – Restrictions on Use. Except as expressly authorized, Customer shall not do, instruct another to do, or permit someone to do the following without the prior written consent of Humming Heads:

- i. revise, change, modify, adapt, reverse engineer, reverse compile, disassemble or back analyze, or create derivative works of the Trial Version, in whole or in part, regardless of how such action is carried out;
- ii. sublicense, distribute, rent, lend, or lease the Trial Version to any third party;
- iii. sell or assign the Trial Version or a copy thereof to any third party;
- iv. sell, rent, lend, or lease a computer on which the Trial Version is installed;
- v. provide services to any third party by using the Trial Version; and
- vi. use the Trial Version in excess of the number of Trial Version Licenses licensed to customer under this agreement.

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#### V. Restrictions on Use of Software

Except as expressly authorized, Customer shall not do, instruct another to do, or permit someone to do the following without the prior written consent of Humming Heads:

- i. revise, change, modify, adapt, reverse engineer, reverse compile, disassemble or back analyze, or create derivative works of the Software, in whole or in part, regardless of how such action is carried out;
- ii. sublicense, distribute, rent, lend, or lease the Software to any third party;
- iii. sell or assign the Software or a copy thereof to any third party;
- iv. sell, rent, lend, or lease a computer on which the Software is installed;
- v. provide services to any third party by using the Software; and
- vi. use the Software in excess of the number of Licenses licensed to Customer under this Agreement.

## VI. Compliance with Law; Export Controls

Customer shall comply with all applicable laws, regulations, and treaties in connection with the use of the Software and the Trial Version and any technical information or materials related thereto. Without limiting to the foregoing, the Software and the Trial Version and related technical information or materials may be subject to export controls under U.S. and other export laws and/or regulations. Customer shall not export, re-export, divert, ship, send electronically or disclose, directly or indirectly, the Software, the Trial Version, or related technical information or materials without complying with all applicable U.S. and other applicable export requirements, including without limitation obtaining all required approvals or licenses from the U.S. Department of Commerce. To the extent that the Software or the Trial Version is subject to export control under any U.S. and other applicable law or regulation, Customer represents that Customer is not prohibited under any such law or regulation from receiving the Software or the Trial Version and related technical information.

## VII. Intellectual Property Rights

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## VIII. Consent to Transmission of Information

Humming Heads and its subsidiaries and agents may collect, maintain, process and use diagnostic, technical, usage and related information, including (i) the Alert Panel information of the Software and the Trial Version, which is transmitted to Humming Heads through the automatic transmission function of the Software (Shinobi Defense System™ DeepWhite™ Server/Client (Japanese Name: Security Platform Server/Client Defense Option)) and the Trial Version (Shinobi Defense System™ DeepWhite™ Server/Client (Japanese Name: Security Platform Server/Client Defense Option)) and (ii) other information used for analysis or improvement of the functions of Humming Heads' products. Humming Heads does not link this information with Customer's personal information. Humming Heads uses the information it collects for the improvement of the Software and to provide security risk alerts or compile statistical data. Customer gives permission and agrees that Humming Heads may collect, maintain, process and use such information for these purposes.

## IX. Disclaimer of Warranties

CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, USE OF THE SOFTWARE, THE TRIAL VERSION AND ANY SERVICES PERFORMED BY OR ACCESSED THROUGH THE SOFTWARE AND THE TRIAL VERSION IS AT

CUSTOMER'S SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFECT IS WITH CUSTOMER.

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NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY HUMMING HEADS, SHINOBI USA, OR A HUMMING HEADS' OR SHINOBI USA'S AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE SOFTWARE OR THE TRIAL VERSION PROVE DEFECTIVE, CUSTOMER ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION.

#### X. Limitation on Liability

Customer acknowledges that the Software and the Trial Version are complicated and may have bugs or security holes. Customer acknowledges that it is Customer's responsibility, at Customer's own cost, to manage and maintain the Software and the Trial Version once installed, such as by making proper system and data backups. Humming Heads or Shinobi USA, or its suppliers, resellers, or agents, if any, will not be liable for damages to Customer or other persons arising from the failure of such management or maintenance by Customer. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL HUMMING HEADS OR SHINOBI USA, OR ITS SUPPLIERS, RESELLERS, OR AGENTS, IF ANY, BE LIABLE TO CUSTOMER FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR

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#### XI. Support Services

Humming Heads, only during the term of this Agreement, provides technical support services as stated in the "Application Form for SDS Technical Support Services" (hereinafter called, "Support Application") to Customer who purchases the Software in the form of time-limited license, provided that said Customer shall submit the Support Application and comply with the terms and conditions therein.

#### XII. Term and Termination

This Agreement is effective until expiration at the end of the License Period or the Trial Period or until terminated. Humming Heads may terminate Customer's rights under this Agreement, without notice from Humming Heads, if Customer fails to comply with any term(s) of this Agreement. Upon expiration or termination of this Agreement, Customer must immediately cease all uses of the Software and the Trial Version and immediately delete all copies, full or partial, of the Software and the Trial Version at Customer's own cost.

#### XIII. Survival

Sections I (General), IV-B (Trial Version –Restrictions on Use), V (Restrictions on Use of Software), VII (Intellectual Property Rights), IX (Disclaimer of Warranties), X (Limitation on Liability), XIII (Survival), XIV (Compliance with Applicable Law) and XV (General Clauses) of this Agreement will survive any termination or expiration of this Agreement.

#### XIV. Compliance with Applicable Law

Customer is solely responsible for compliance with all applicable laws, rules, and regulations in connection with Customer's use of the Software and the Trial Version. Customer agrees that Customer will not use the Software and the Trial Version for any purposes prohibited by U.S. and any other applicable laws, including, without limitation, the development, design, manufacture or production of missiles, or nuclear, chemical or biological weapons.

XV. General Clauses

A. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the use of the Software and the Trial Version licensed hereunder and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this Agreement will be binding unless in writing and signed by Humming Heads.

B. Headings. The headings of the clauses herein are for convenience only and do not affect in any way the scope, intent or meaning of the provision to which they refer.

C. No Assignment. Customer may not assign this Agreement or any rights hereunder, in whole or in part, whether by purchase of stock or assets, merger, change of control, operation of contract, law or otherwise, without Humming Heads' prior express written consent, which may be withheld in Humming Heads' sole and absolute discretion. Any unauthorized purported assignment by Customer will be void.

D. No Waiver. No term or provision of this Agreement will be considered waived, and no breach excused, unless such waiver is in writing signed on behalf of the party against which the waiver is asserted. A waiver (whether express or implied) of any breach or default under this Agreement shall not constitute a waiver of any other, different, or subsequent breach or default.

E. Controlling Law and Severability. Excluding conflict of laws rules, this Agreement shall be governed by and construed under (i) the laws of Japan if Customer purchased, downloaded or otherwise procured the Software or the Trial Version in any countries or regions other than the U.S. or (ii) the laws of the State of Washington, U.S. if Customer purchased, downloaded or otherwise procured the Software or the Trial Version in the U.S. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be illegal or unenforceable, such provision shall be enforced to the maximum extent permissible, and the remainder of this Agreement shall continue in full force and effect.

F. Jurisdiction. Each party agrees that any claim, action or dispute arising under or relating to this Agreement will be brought exclusively in (and the parties will be subject to the exclusive jurisdiction of) (i) Tokyo District Court in Japan when the laws of Japan apply as determined in Section XV-E and (ii) King County Superior Court in the State of Washington, U.S. when the laws of the State of Washington apply as determined in Section XV-E.

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(Last Revised: August 2018)