

# Trial Agreement and End User License Agreement

THIS TRIAL AGREEMENT AND END USER LICENSE AGREEMENT (hereinafter “Agreement”) is an agreement between you, an individual, organization or commercial entity (hereinafter “Licensee”) and Lisnr, Inc., a Delaware corporation (“LISNR”) for the Lisnr SDK software (hereinafter the “LISNR SDK”), the Lisnr API (hereinafter the “LISNR API”), any Lisnr software, and any software files encoded with Lisnr proprietary technology (hereinafter the “LISNR PRODUCT(S)”). The LISNR SDK, LISNR API, and the LISNR Products shall be collectively referred to herein as the “LISNR Technology”. The LISNR Technology may also include any electronic documentation, associated media, website services, printed documentation and other printed materials which are downloaded and/or shipped with the above-described LISNR Technology. LISNR and Licensee are each a “Party” and shall be collectively referred to as the “Parties”.

**TRIAL INSTALLATION:** In the event that Licensee accesses the LISNR Technology (i) by installing the LISNR SDK, LISNR Products, or other LISNR Technology for use on a trial basis (a “Trial Installation”) or (ii) via a demonstration of LISNR Products or other LISNR Technology, the terms of this Agreement shall apply. The duration of any Trial Installation shall begin on the date that Licensee first installs any LISNR Technology and end thirty (30) days after the date of such installation (such period, the “Trial Period”). Upon the expiration of the Trial Period, all of Licensee’s access to the LISNR Technology will be terminated. In the event that the Trial Period is extended for any reason with the consent of LISNR, the terms of this Agreement will continue to apply for the duration of any extension of the Trial Period, in addition to the Trial Period. By downloading, installing, copying, purchasing or otherwise using the LISNR Technology or any updates to the LISNR Technology you agree to the terms of this Agreement, set out below, in their entirety and if you do not agree to the terms of this Agreement in their entirety do not purchase, download, install or use the LISNR Technology, terminate the installation process immediately and completely remove the LISNR Technology including all program files, installation files, ancillary files, documentation files and any other LISNR Technology files from all your computer or other hardware systems on which they are installed.

## 1. LICENSE GRANT

LISNR grants Licensee a non-exclusive, non-transferable limited-use license to use the LISNR Technology solely pursuant to the terms of this Agreement. The license term is one (1) year at the end of which the license will automatically renew itself annually for successive one year periods until its termination as provided in this Agreement. The license granted pursuant to this Agreement describes and governs how Licensee may use the LISNR Technology.

## 2. LISNR TECHNOLOGY USE LICENSE

### 2.1. LISNR SDK

The LISNR SDK may be used by, for or on behalf of Licensee and/or its Affiliates on an unlimited number of computer or mobile hardware systems (hereinafter "Systems") and incorporate the LISNR SDK into Licensee's software applications ("Licensee's Software"). "Affiliate(s)" shall mean any employee or contractor over which Licensee has direct managerial control or any entity in which Licensee has greater than 50% voting equity.

### 2.2 LISNR PRODUCTS

The LISNR Products may be used by, for or on behalf of Licensee and/or its Affiliates; provided that, unless permitted by a separate agreement, Licensee may not lease, resell or sublicense the LISNR Products to any third parties without LISNR'S express written consent.

### 2.3 LISNR API

The LISNR API may be used by, and as described below, sometimes must be used for or on behalf of Licensee and/or its Affiliates on an unlimited number of computer or mobile hardware systems (hereinafter "Systems") in accordance with the following provisions: in every instance where the Licensee uses its own content management system in connection with the use of LISNR Products or LISNR Technology, such content management system must use the LISNR API to communicate with LISNR's proprietary content management system at [www.lisnr.com](http://www.lisnr.com). The LISNR API may not be reproduced, altered or used for any purpose not expressly provided under this Agreement.

## 3. OWNERSHIP, CONFIDENTIALITY & PRIVACY

Licensee shall be deemed to be the owner of all proprietary rights, including but not limited to copyrights in Licensee's Software, and any other work product created by Licensee as part of Licensee's Software, except that LISNR retains all ownership, title, rights and interest in and to the LISNR SDK

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Licensee acknowledges and agrees that LISNR Technology including all standard release thereof and any related patents, trademarks, copyrights, trade secrets or other proprietary information technologies methodologies or software architecture are the exclusive and commercially valuable proprietary products and intellectual property of LISNR and Licensee acknowledges and agrees that LISNR has invested substantial time and economic resources in the design and development of the LISNR Technology which required the efforts of skilled software development experts and that LISNR treats the LISNR Technology as confidential and the LISNR Technology constitute trade secrets regardless of whether the LISNR Technology is or may be copyrighted or patented. Title, full ownership and all proprietary rights to the LISNR Technology shall remain with LISNR and the Licensee shall have no right, title or interest to the LISNR Technology except Licensee has the right to use the LISNR Technology for its own business or other applications as set forth in this Agreement.

Licensee shall not and has no right to (i) make any claim or representation of Licensee's ownership or deny or challenge any claim of LISNR's ownership of the LISNR Technology; (ii) make adaptations or derivative works of the LISNR Technology except to incorporate the LISNR SDK into Licensee's Software pursuant to this Agreement; (iii) examine, disclose, copy, modify, disassemble, decompile, decode, reverse engineer, emulate, visually display or reduce the LISNR Technology; (iv) unless otherwise agreed to by the Parties under a separate agreement and only pursuant to such agreement, sell, assign, transfer, sub-license, sublease, distribute or disclose the LISNR Technology, the use of the LISNR Technology or any portion of the LISNR Technology, to any other person corporation or other entity which is not an Affiliate of Licensee; or (v) take any other act which jeopardizes LISNR's rights or interests in the LISNR Technology. Licensee hereby agrees to indemnify and defend LISNR and to hold LISNR harmless from and against any and all claims, liabilities, costs, expenses, actions arising, made, incurred or suffered directly or indirectly by any person from or in connection with Licensee's breach of this provision or any other misuse of the LISNR Technology, whether accidental or deliberate.

LISNR shall treat any information transferred via the LISNR Technology, as well as any user information collected via its user registration forms, in accordance with the terms of its then-current privacy policy available on [www.lisnr.com](http://www.lisnr.com).

#### 4. LISNR WARRANTIES AND INDEMNIFICATION

LISNR warrants that the LISNR Technology is free of viruses, trojans, and other malware (“Malicious Software”) except that LISNR does not and cannot warrant that users will not use the LISNR Technology to upload Malicious Software to LISNR’s or Licensee’s content storage servers, which content storage servers the LISNR Technology uses to store and transfer information between various computer hardware and software. Accordingly, LISNR makes no warranty that any user-uploaded content delivered via the LISNR Technology is free of Malicious Software, the risks of which Licensee expressly assumes.

LISNR further warrants that the LISNR Technology does not infringe on any third-party’s patent, trademark or copyrights, or other intellectual property rights. LISNR agrees to indemnify and hold Licensee harmless from and against any third party claims, liabilities, costs, and expenses in connection with LISNR’s breach of such warranty.

#### 5. DISCLAIMER OF WARRANTIES

WITH THE EXCEPTION OF THE WARRANTIES CONTAINED IN SECTION 4 ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LISNR TECHNOLOGY IS PROVIDED “AS IS” AND LISNR AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES, EITHERWHETHER EXPRESS OR, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND, FITNESS FOR A PARTICULAR PURPOSE AND TITLE.

MOREOVER, LISNR SHALL NOT BE HELD LIABLE FOR ANY DAMAGES OR COSTS WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL BROUGHT ABOUT BY PROPER OR IMPROPER USE OF THE LISNR TECHNOLOGY OR BY ANY DEFECTS OR BUGS IN THE LISNR TECHNOLOGY OR BY ACCIDENTAL OR DELIBERATE MISUSE OF THE LISNR TECHNOLOGY BY THE LICENSEE OR ANY OTHER PARTY, OR BY THE EXPIRATION OF THE LICENSE OR ANY DELAYS OR FAILURES IN THE PROVISION OF LISNR TECHNOLOGY LICENSE RENEWALS TO LICENSEE OR ANY LOSS OR INTERRUPTION OF THE SERVICE OR LICENSEE’S INABILITY TO USE THE LISNR TECHNOLOGY WHOLLY OR PARTIALLY FOR WHATSOEVER REASON.

## 6. LIMITATION OF REMEDIES

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LISNR OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE LISNR TECHNOLOGY, EVEN IF LISNR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

WITH THE EXCEPTION OF INDEMNIFIABLE CLAIMS CONTAINED IN SECTION 4 ABOVE, LISNR'S LIABILITY IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THE LISNR TECHNOLOGY OR LICENSEE'S USE OF THE LISNR TECHNOLOGY SHALL NOT EXCEED (I) THE TOTAL FEE PAID TO LISNR BY LICENSEE (WHETHER DIRECTLY OR THROUGH A THIRD PARTY) DURING THE 12 MONTHS PRECEDING THE CLAIM OR (II) ONE HUNDRED DOLLARS (\$100 USD), WHICHEVER IS GREATER.

## 7. TERMINATION

This Agreement may be terminated by LISNR at any time for cause, effective immediately upon LISNR's notice to Licensee. For the purposes of this Agreement, "cause" shall be defined as Licensee's breach or alleged breach of any term of this Agreement including, but not limited to, the failure to pay fees due in connection with the services. For the avoidance of doubt, if LISNR deems, in LISNR's sole discretion, that Licensee is in breach of any of Licensee's obligations under this Agreement, LISNR may immediately suspend the license granted to Licensee under this Agreement. Unless otherwise agreed to by the parties under a separate agreement, this Agreement may be terminated by LISNR at any time, without cause, upon thirty (30) days' written notice to Licensee. "Written notice," for the purposes of this clause, includes any notice conspicuously published on LISNR's website at [www.lisnr.com](http://www.lisnr.com). In the event that LISNR terminates this Agreement without cause, LISNR shall refund to Licensee any payments made prepaying Licensee's use of the LISNR Technology beyond the termination of this Agreement but, for the avoidance of doubt, Licensee shall not be refunded any payments of Licensee's use of the LISNR Technology prior to the termination of this Agreement.

## 8. AGREEMENT PREVAILS

Except as specifically agree to in writing by the Parties, by specifically referencing this provision, the terms and conditions of this Agreement shall

prevail notwithstanding any variance with the terms and conditions of any order submitted by Licensee with respect to the LISNR Technology, associated documentation or ancillary sources.

## 9. FORCE MAJEURE

Except for payment obligations, neither party to this Agreement shall be liable or deemed in default for any delay, failure in performance or interruption of service under this Agreement resulting directly or indirectly from acts of God, civil or military authority, acts of a public enemy, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, nor any element of any other cause beyond the reasonable control of such party.

## 10. MODIFICATION

THIS AGREEMENT MAY BE MODIFIED BY LISNR FROM TIME TO TIME. LISNR SHALL CONSPICUOUSLY PUBLISH NOTICE OF ANY PROPOSED MODIFICATION ON ITS WEBSITE AT [WWW.LISNR.COM](http://WWW.LISNR.COM) AT LEAST SEVEN (7) DAYS PRIOR TO SUCH MODIFICATION. IT IS LICENSEE'S RESPONSIBILITY TO CHECK LISNR'S WEBSITE FROM TIME TO TIME TO BE AWARE OF ANY PROPOSED MODIFICATION TO THIS AGREEMENT. ANY DOWNLOAD, PURCHASE AND/OR USE OF LISNR TECHNOLOGY BY LICENSEE FOLLOWING ANY MODIFICATION OF THIS AGREEMENT BY LISNR SHALL SERVE AS LICENSEE'S AGREEMENT TO SUCH MODIFICATION.

## 11. INJUNCTIVE RELIEF

The Parties acknowledge and agree that either Party's unauthorized disclosure or use of the other Party's confidential information or Licensee's violation of the terms of this Agreement would cause irreparable harm and significant injury which may be difficult to ascertain. Accordingly, each Party agrees that the other Party shall have the right to seek an immediate injunction in respect of any such breach of this Agreement without requiring such Party to post bond to obtain such relief.

In addition to the remedies contained herein or which may otherwise be available to LISNR in law or equity, in the event of Licensee's breach or alleged breach of its obligations under Section 3 not to examine, disclose, copy, modify, disassemble, decompile, decode, reverse engineer, emulate, visually display or reduce the LISNR Technology, Licensee shall pay an additional fee directly to LISNR the amount of which shall be the greater of: (i) the total fee paid to LISNR by Licensee (whether directly or through a third party) or (ii) \$50,000.

## 12. MISCELLANEOUS

This Agreement shall be governed solely by the laws of the State of Ohio, U.S.A. Licensee may not assign or delegate its obligations under this Agreement without the prior written consent of LISNR. The failure of either party hereto to insist upon the performance of any of the terms or conditions contained in this Agreement, and the failure of either party hereto, to exercise any right hereunder, may not be construed as a waiver or relinquishment of the future performance of any such term or condition or the future exercise of such rights. If any provision of this Agreement is prohibited by law or judged by a court to be unlawful void or unenforceable the provision shall to the extent required be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way effect any other circumstances of or the validity or enforcement of this Agreement.