



End User License Agreement ("EULA")

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2. RESTRICTIONS

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2. Third Party Materials: Gigamon may license third party software and documentation (Third Party Materials) for use within the Gigamon Software. Such Third Party Materials are subject to all the restrictions, limitations and other provisions of this document.
3. Records/Audit: You shall maintain complete and accurate records for a period of three (3) years.. Gigamon may inspect such records upon request at any time during the term of this EULA and for three years thereafter.
4. General: All rights not expressly granted herein are expressly reserved.

3. INTELLECTUAL PROPERTY RIGHTS

1. General: Gigamon holds and retains all right, title and interest in and to the Gigamon Software, the related source code, any and all modifications to or derivatives of the Gigamon Software, and any

and all associated patents, copyrights, and other intellectual property rights. All Gigamon Software is unpublished and confidential.

2. **Government:** If you are acquiring the Gigamon Software on behalf of the U.S. Government, the following provisions apply: (i) if the Gigamon Software is supplied to DoD or any related agency or service, the Programs are classified as "Commercial Computer Software" and the Government is acquiring only rights as set forth in this EULA; and (ii) if the Gigamon Software is supplied to any other unit or agency of the U.S. Government, the Gigamon Software is considered "restricted computer software" and the Government's rights in the Gigamon Software are set forth in the Federal Acquisition Regulations.
3. **Export Controls:** You will comply with all applicable government export and import laws and regulations including those laws and regulations that relate to products that contain, use, or perform encryption. Further, you agree that unless authorized by applicable government license or regulation, including but not limited to any U.S. authorization, you will not directly or indirectly export or re-export, at any time, any technical information, technology, software, or other commodity furnished or developed under this, or any other, agreement between the parties to any prohibited country (or nationals of any prohibited country, wherever they may be located), as specified in applicable export, embargo, and sanctions regulations including without limitation U.S. Export Administration Regulations.
4. **Open Programs:** This EULA does not apply to any software tools, drivers or other components identified as subject to an open source license in the relevant notice, license and/or copyright files included with the programs (collectively the "Open Programs"). Open Programs may be supplied in the same electronic file transmission as the Gigamon Software, but are separate and distinct programs. Open Programs information, licensing terms and access to a copy of source code is located at Gigamon's customer portal.
5. **Injunctive Relief:** You hereby acknowledge and agree that the Gigamon Software and related source code are proprietary and confidential to Gigamon and that the Gigamon Software and related source code contain valuable Gigamon trade secrets, the disclosure of which would cause Gigamon irreparable harm for which monetary compensation would be inadequate. You therefore further agree that if You breach Your obligations under this EULA, Gigamon shall be entitled to injunctive relief from a court of competent jurisdiction without the need to post any bond or demonstrate actual damages.

4. TECHNICAL SUPPORT AND Warranty

1. Gigamon Technical Support is provided in a separate Software Support and Maintenance Agreement.
2. Gigamon's Limited Warranty is provided in a separate warranty. No other warranties are provided express or implied.

5. TERM AND TERMINATION

1. This EULA shall become effective on the date of Your first use of the Gigamon Software and shall remain in full force and effect until terminated.
2. The rights granted under the License Grant section of this EULA shall automatically terminate if You breach any of the provisions contained herein, including any failure to pay license fees, if applicable. You may terminate the License Grant section of this EULA at any time upon notice to Gigamon. Such termination will not entitle You to any refund of any fees. All other provisions of this EULA shall survive any such termination.

6. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law and notwithstanding the failure of any remedy to fulfill its essential purpose: In no event shall Gigamon, Gigamon's officers, directors, employees, agents, or distributors be liable to You or

any other party for any loss or damages arising from or related to the use of the Gigamon Software, howsoever arising, or any damages related to this EULA in excess of the amount of fees paid hereunder in the twelve (12) months preceding the event giving rise to the claim; and, in no event shall Gigamon, Gigamon's officers, directors, employees, agents, or distributors be liable for any indirect, special, punitive, or consequential damages, including without limitation, loss of profits, howsoever arising, even if informed of the possibility of such damages. The foregoing allocation of risk is reflected in the fees charged under this EULA, if applicable.

7. DISPUTE RESOLUTION

In the event of a dispute between You and Gigamon arising in connection with this EULA, such dispute shall be resolved, at Gigamon' sole option, by binding arbitration under the rules and auspices of the American Arbitration Association. Arbitration shall take place in Santa Clara County, California. The foregoing shall not prevent Gigamon from seeking applicable injunctive relief in a court of competent jurisdiction.

8. CHOICE OF LAW AND FORUM

This EULA shall be governed for all purposes by the laws of California, excluding choice of law provisions. You consent to the jurisdiction in California and waive any objection to venue laid therein. Process in any action or arbitration may be served by mail. You expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this EULA.

9. GENERAL

This EULA contains the entire agreement and understanding between You and Gigamon related to the subject matter of a software license. Additional or conflicting terms on any purchase order or other document issued by You will have no force or effect against Gigamon. This EULA may not be modified or appended except by an agreement in writing signed by the party against whom enforcement is sought. If any provision of this EULA is held to be invalid or unenforceable under any circumstances, its application in any other circumstances and the remaining provisions of this EULA shall not be affected. This EULA may not be assigned by You without the prior written consent of Gigamon. No waiver by either party of any rights under this EULA will be effective unless such waiver is in a writing signed by the party against whom enforcement is sought. Any notices relating to this EULA should be sent via receipted delivery to Gigamon LLC, 598 Gibraltar Drive, Milpitas, CA 95035.