

End User License Agreement For FRINX ODL Distribution Software ("EULA")

VERSION 1.01 MAY 2016

IMPORTANT: PLEASE READ THE EULA SET OUT BELOW CAREFULLY PRIOR TO DOWNLOAD, INSTALLATION, COPY OR USE. THROUGH DOWNLOADING, INSTALLING, COPYING OR USING THE SOFTWARE YOU ARE EXPRESSING YOUR CONSENT TO THIS EULA.

The following terms of service and end user license agreement ("EULA" or the "Agreement") constitute an agreement between you ("You" or the "End User"), and Frinx s.r.o. ("Company" or "Provider"), whose registered address is Šulekova 19, Bratislava - mestská časť Staré Mesto 811 03, Slovakia. This EULA governs your use of Software and related services (as specified below).

THIS IS AN AGREEMENT ON END-USER RIGHTS AND NOT AN AGREEMENT FOR SALE. The Provider continues to own the copy of the Software and any other copies that the End User is authorized to make pursuant to this Agreement.

YOUR USE OF THE SOFTWARE (AS SPECIFIED BELOW) IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS EULA. BY CLICKING ON THE "I ACCEPT" OPTION WHILE INSTALLING, DOWNLOADING, COPYING OR USING THE SOFTWARE, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, IMMEDIATELY CLICK ON THE "I DO NOT ACCEPT" OPTION, CANCEL THE INSTALLATION OR DOWNLOAD, OR DESTROY OR RETURN THE SOFTWARE, INSTALLATION MEDIA, ACCOMPANYING DOCUMENTATION AND SALES RECEIPT TO COMPANY OR THE OUTLET FROM WHICH YOU ACQUIRED THE SOFTWARE.

YOU AGREE THAT YOUR USE OF THE SOFTWARE ACKNOWLEDGES THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

1. Software

For purposes of this EULA "Software" means:

- (i) One or more separate modules created by Company that do not include any code that is subject to an open-source license such as the Eclipse Public License and which are included in the package of software modules referred to by the Company on its website as the "FRINX ODL Distribution Software";
- (ii) the object code form of such separate modules whether downloaded via the Internet, supplied on a data carrier, or supplied via electronic mail, or embodied on or in any other media or transmission;
- (iii) any related explanatory written materials and any other possible documentation authored by the Company and related to the FRINX ODL Distribution Software, such as any description of the Software, its specifications, any description of the Software properties or operation, any description of the operating environment in which the Software is used, instructions for use or installation of the Software

or any description of how to use the Software as part of the FRINX ODL Distribution Software (hereinafter referred to as “Documentation”);

(iv) copies of the Software, patches for possible errors in such Software, additions to the Software, extensions to the Software, modified versions of the Software and updates of Software components, if any, licensed to You by the Provider pursuant to Article 3 of this Agreement. The Software shall be provided exclusively in the form of executable object code.

NOTE: THE FRINX ODL DISTRIBUTION SOFTWARE INCLUDES OTHER MODULES THAT ARE BASED ON SOFTWARE MODULES THAT ARE BASED ON OPEN SOURCE SOFTWARE AND WHICH MAY CONTAIN “CONTRIBUTIONS” MADE BY THE COMPANY (THE “ECLIPSE SOFTWARE MODULES”). THE ECLIPSE SOFTWARE MODULES ARE NOT PART OF THE “SOFTWARE” COVERED BY THIS LICENSE; YOUR LICENSE TO USE THOSE MODULES IS NOT THIS LICENSE BUT RATHER THE ECLIPSE PUBLIC LICENSE V1.0 ([HTTP://OPENSOURCE.ORG/LICE3NSE/ECLIPSE1.0.PHP](http://opensource.org/licenses/eclipse1.0.php)). THE MODULES INCLUDED WITHIN THE FRINX ODL DISTRIBUTION SOFTWARE THAT ARE **NOT** SUBJECT TO THE ECLIPSE PUBLIC LICENSE BECAUSE THEY DO NOT CONTAIN ANY CODE SUBJECT TO THE ECLIPSE PUBLIC LICENSE ARE IDENTIFIED ON THE COMPANY’S WEBSITE AT <[HTTP:// FRINX.IO](http://FRINX.IO)>. PLEASE STUDY THE TERMS AND CONDITIONS OF THE ECLIPSE PUBLIC LICENSE CAREFULLY AS THEY CONSTITUTE AN AGREEMENT BETWEEN YOU AND THE APPLICABLE LICENSOR.

IN PARTICULAR, PLEASE NOTE THAT PURSUANT TO SECTION 3 OF THE ECLIPSE LICENSE COMPANY AND THE APPLICABLE LICENSORS HEREBY:

(I) DISCLAIM ALL WARRANTIES AND CONDITIONS, EXPRESS AND IMPLIED, INCLUDING WARRANTIES OR CONDITIONS OF TITLE AND NON-INFRINGEMENT, AND IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ON BEHALF OF ITSELF AND ALL PRIOR CONTRIBUTORS OF CODE TO THE PRODUCT, AS FURTHER SET FORTH IN SECTION 5 OF THE ECLIPSE PUBLIC LICENSE;

(II) EXCLUDE ALL LIABILITY FOR DAMAGES, INCLUDING DIRECT, INDIRECT, SPECIAL, INCIDENTAL AND CONSEQUENTIAL DAMAGES SUCH AS LOST PROFITS, ON BEHALF OF ITSELF AND ALL PRIOR CONTRIBUTORS OF CODE TO THE PRODUCT, AS FURTHER SET FORTH IN SECTION 6 OF THE ECLIPSE PUBLIC LICENSE;

(III) STATE THAT ANY DEVIATIONS FROM THE ECLIPSE PUBLIC LICENSE V 1.0 ARE BY AND THE RESPONSIBILITY OF COMPANY AND ARE NOT ANY OTHER PARTY, AND

(IV) STATE THAT THE SOURCE CODE FOR THE ECLIPSE LICENSE MODULES THAT ARE PART OF THE FRINX ODL DISTRIBUTION SOFTWARE WILL BE MADE AVAILABLE BY THE COMPANY TO ANY PURCHASER OF A RUNNING LICENSE TO THE FRINX ODL DISTRIBUTION SOFTWARE UPON REQUEST SENT BY EMAIL TO ECLIPSELICENSEREQUESTS@FRINX.IO.

EXCEPT AS OTHERWISE STATED ABOVE AND IN THE ECLIPSE PUBLIC LICENSE, YOUR LICENSE AND USE OF ECLIPSE SOFTWARE MODULES INCLUDED AS PART OF THE FRINX ODL DISTRIBUTION SOFTWARE IS SUBJECT TO THE TERMS AND CONDITIONS OF THIS EULA.

2. Installation

The FRINX ODL Distribution Software requires installation whether it is downloaded from the Provider's servers, downloaded from the Internet, supplied on a data carrier, sent via electronic mail, or obtained from other sources. You must install the Software on a correctly configured computer, complying at least with requirements set out in the Documentation. The installation methodology is described in the Documentation. No computer programs or hardware which could have an adverse effect on the Software may be installed on the computer on which You install the Software.

3. License

Subject to the condition that You have agreed to the terms of this Agreement, and You comply with all the terms and conditions stipulated herein, the Provider shall grant You the following rights ("the License"):

a) **Installation and use.** During the first 30 days after you download the Software (the "Trial Period"), You shall have the non-exclusive, non-transferable, non-sublicensable right to install the Software on the hard disk of a single computer or other permanent medium for data storage, installation and storage of software and to implement, store, display and use the Software without cost to you (the "Trial License"). At the end of the Trial Period, the Trial License will terminate and your access to the Software will terminate automatically.

If you wish to continue to use the Software for commercial purposes after the Trial Period, you must pay the License Fee in the amount and in the manner provided in the Getting Started -- Paying License Fee page at the Company's website (<https://frinx.io>) or as set forth in the Company's acceptance to any Purchase Order You provide to the Company.

When you have paid the License Fee, you shall have the non-exclusive, non-transferable, non-sublicensable right to install the Software on the hard disk of a single computer or other permanent medium for data storage, installation and storage of software and to execute, implement, store, display and use the Software without further cost to you (the "Running License").

Your payment of the License Fee shall be considered your acceptance of the terms of this Agreement.

If you wish to use the Software for solely for academic (educational or teaching) purposes, you should apply for an "Academic License" using the form on the Company's website. Under an Academic License You shall have the non-exclusive, non-transferable, non-sublicensable right to install the Software on the hard disk of a single computer or other permanent medium for data storage, installation and storage of software and to implement, store, display and use the Software to manage servers used for educational or teaching purposes only. The Company shall have the right in its sole discretion to determine whether Your proposed use of the Software would qualify for an Academic License, and the Company shall have the further right to monitor Your use of an Academic License, to require You to certify periodically that Your use remains limited strictly to educational or teaching purposes, and to terminate an Academic License at any time if the Company determines that Your use is not strictly limited to educational or teaching purposes.

b) Stipulation of the number of licenses. The use the Software on a single computer by You as set forth herein shall be considered to be use by a single End User. One End User shall be taken to refer to the installation of the Software on one computer system.

c) **Software.** Software shall be limited to the computer You obtained it with. It cannot be transferred to a different computer.

d) **TRIAL Software.** During the Trial Period, the Software must only be used for demonstration or testing the Software's features.

e) **Termination of the License.** The Trial License shall terminate automatically at the end of the Trial Period. If You fail to comply with any of the provisions of this Agreement, the Provider shall be entitled to terminate the Trial License or the Running License, as the case may be, and to withdraw from the Agreement, without prejudice to any entitlement or legal remedy open to the Provider in such eventualities. In the event of cancellation of the License, You must immediately delete, destroy or return at your own cost, the Software and all backup copies to Company.

The term of your Trial License under this EULA shall commence on the date that you accept this EULA and install or otherwise use the Software and ends at the end of the Trial Period; if You decide to enter a Running License or an Academic License, the Running License will end at the earlier of your disposal of the Software or Company's termination of this EULA. Your license terminates immediately if you attempt to circumvent any technical protection measures used in connection with the Software or you otherwise use the Software in breach of the terms of this EULA. In addition, the Company reserves the right to regulate Academic Licenses provided in Section 3(a) above, including the right to make unilateral changes to an Academic License.

f) **OWNERSHIP; NO OTHER LICENSES.** Company retains all right, title and interest in and to the Software, including, but not limited to, all copyrights, trademarks, trade secrets, trade names, proprietary rights, patents, titles, computer codes, audiovisual effects, themes, characters, character names, stories, dialog, settings, artwork, sound effects, musical works, and moral rights whether registered or not and all applications thereof. The Software is protected by applicable laws and treaties throughout the world. Unless expressly authorized by mandatory legislation, the Software may not be copied, reproduced or distributed in any manner or medium, in whole or in part, without prior written consent from Company. All rights not expressly granted to you herein are reserved by Company.

4. Exercising End User rights

You must exercise End User rights in person or via your employees. You are only entitled to use the Software as follows:

- a) Usage for academic purposes is free.
- b) 30 days trial is granted for usage for **commercial** purposes after the registration for free
- c) Usage for **commercial** purposes is granted only upon payment of license fee.

5. Restrictions to rights

You may not copy, distribute, extract components or make derivative works of the Software. When using the Software You are required to comply with the following restrictions:

- a) You may make one copy of the Software on a permanent storage medium as an archival back-up copy, provided your archival back-up copy is not installed or used on any computer. Any other copies

You make of the Software shall constitute breach of this Agreement. You may not distribute, manufacture, adapt or create derivative works of or otherwise modify the Software

b) You may not use, modify, translate or reproduce the Software or transfer rights to use the Software or copies of the Software in any manner other than as provided for in this Agreement.

c) You may not encumber, sell, sub-license, lease, rent, lend, timeshare, convey or otherwise transfer or assign the Software, any copies thereof or use the Software for the provision of commercial services, without the express prior written consent of Company or as set forth in this EULA.

d) You may not reverse engineer, reverse compile or disassemble the Software or otherwise attempt to discover the source code of the Software, except to the extent that this restriction is expressly prohibited by law.

e) You agree that You will only use the Software in a manner that complies with all applicable laws in the jurisdiction in which You use the Software, including, but not limited to, applicable restrictions concerning copyright and other intellectual property rights.

f) You agree not to make the Company Software and related services publicly available or available on a network for use or download by multiple users;

g) You agree not to remove, obscure or modify any copyright, trademark or other proprietary rights notices, marks or labels contained on or within the Company Software and related services, falsify or delete any author attributions, legal notices or other labels of the origin or source of the material.

6. Copyright

The Software and all rights, without limitation including **proprietary rights** and intellectual property rights thereto are owned by Company and/or its licensors. They are protected by international treaty provisions and by all other applicable national laws of the country in which the Software is being used. The structure, organization and code of the Software are the valuable trade secrets and confidential information of Company and/or its licensors. You must not copy the Software, except as set forth in Article 5(a). Any copies which You are permitted to make pursuant to this Agreement must contain the same copyright and other proprietary notices that appear on the Software. If You reverse engineer, reverse compile, disassemble or otherwise attempt to discover the source code of the Software, in breach of the provisions of this Agreement, You hereby agree that any information thereby obtained shall automatically and irrevocably be deemed to be transferred to and owned by the Provider in full, from the moment such information comes into being, in addition to and notwithstanding the Provider's rights in relation to breach of this Agreement.

7. Reservation of rights

The Provider hereby reserves all rights to the Software, with the exception of rights expressly granted under the terms of this Agreement to You as the End User of the Software.

8. Multiple language versions, dual media software, multiple copies

In the event that the Software supports multiple platforms or languages, or if You receive multiple copies of the Software, You may only use the Software for the number of computer systems and for the

versions for which You obtained a License. You may not sell, rent, lease, sub-license, lend or transfer versions or copies of the Software, except as provided in Article 12 below.

9. Termination

This EULA will terminate automatically if You fail to comply with its terms and conditions. In such event, You must destroy all copies of the Software and all of its component parts, delete and permanently purge the Software from any client server or computer on which it has been installed, and cease and desist from accessing the Software and any Company services. Irrespective of the manner of termination of this Agreement, the provisions of Articles 6 (Copyright), 7 (Reservation of rights), 11 (End User Declarations), 13 (Limitations of liability), 20 (Export and re-export control) and 22 (Applicable law) shall continue to apply for an unlimited time.

10. No Warranties

AS THE END USER YOU ACKNOWLEDGE THAT THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. NEITHER THE PROVIDER, ITS LICENSORS OR AFFILIATES NOR THE COPYRIGHT HOLDERS MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THAT THE SOFTWARE WILL NOT INFRINGE ANY THIRD PARTY PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER RIGHTS. THERE IS NO WARRANTY BY THE PROVIDER OR BY ANY OTHER PARTY THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. YOU ASSUME ALL RESPONSIBILITY AND RISK FOR THE SELECTION OF THE SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS AND FOR THE INSTALLATION, USE AND RESULTS OBTAINED FROM IT.

11. Limitation of liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE PROVIDER, ITS EMPLOYEES OR LICENSORS BE LIABLE FOR ANY LOST PROFITS, REVENUE, SALES, DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, PROPERTY DAMAGE, PERSONAL INJURY, INTERRUPTION OF BUSINESS, LOSS OF BUSINESS INFORMATION OR FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL, ECONOMIC, COVER, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, TORT, NEGLIGENCE OR OTHER THEORY OF LIABILITY, ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF THE PROVIDER OR ITS LICENSORS OR AFFILIATES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES/COUNTRIES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF LIABILITY, BUT MAY ALLOW LIABILITY TO BE LIMITED, IN SUCH CASES, THE LIABILITY OF THE PROVIDER, ITS EMPLOYEES OR LICENSORS OR AFFILIATES SHALL BE LIMITED **TO THE SUM THAT YOU PAID FOR THE LICENSE.**

12. Transfer of the License

The Software can be transferred from one computer system to another owned by the End User, unless contrary to the terms of the Agreement. If not contrary to the terms of the Agreement, the End User shall only be entitled to permanently transfer the License and all rights ensuing from this Agreement to another End User in connection with a sale of substantially all of the assets of the End User, subject to the condition that (i) the original End User does not retain any copies (including archival or backup copies) of the Software, accompanying documentation, or any portion or component of the Software accompanying documentation,; (ii) the transfer of rights must be direct, i.e. from the original End User to the new End User; (iii) the new End User must assume all the rights and obligations incumbent on the original End User under the terms of this Agreement.

13. Data regarding the End User and protection of rights

As the End User, You hereby authorize the Provider to transfer, process and store data enabling the Provider to identify You. You hereby agree to the Provider using its own means to check whether You are using the Software in accordance with the provisions of this Agreement. You hereby issue your agreement to data being transferred, during communication between the Software and the Provider's computer systems or those of its business partners, the purpose of which is to ensure functionality of and authorization to use the Software and protection of the Provider's rights. Following conclusion of this Agreement, the Provider or any of its business partners shall be entitled to transfer, process and store essential data identifying You, for billing purposes and performance of this Agreement.

By installing, accessing or using the Company Software and related services, you consent to these information collection and usage terms, including (where applicable) the transfer of data into a country outside of the European Union and/or the European Economic Area or the United States of America.

14. Support and Maintenance

This Agreement does not cover Support and Maintenance of the Software by the Company. If You desire Support and Maintenance services by the Company, and the Company is willing to supply them, You and the Company shall enter into a separate Support and Maintenance Agreement.

15. Export and re-export control

The Software, the Documentation or components thereof, including information about the Software and components thereof, may be subject to import and export controls under legal regulations which may be issued by governments responsible for issue thereof under applicable law, including US law. Export Administration Regulations and end-user, end-use and destination restrictions issued by the US Government and other governments. You agree to comply strictly with all applicable import and export regulations and acknowledge that You have the responsibility to obtain all licenses required to export, re-export, transfer or import the Software.

16. Other terms and conditions

EQUITABLE REMEDIES: You hereby agree that if the terms of this EULA are not specifically observed, Company will be irreparably damaged, and therefore you agree that Company shall be entitled, without

bond, other security or proof of damages, to appropriate equitable remedies with respect to your breach of any of the terms of this EULA, in addition to any other available remedies.

AFFILIATE: For purposes of this EULA, an “affiliate” of Company means any legal entity that is directly or indirectly controlled by Company for so long as such control lasts. Control shall exist through direct or indirect ownership of more than 50 % of the nominal value of the issued equity share capital or more than 50 % of the shares entitling the holders to vote for the election of the members of the board of directors or persons performing similar functions.

INDEMNITY: You agree to indemnify, defend and hold Company, its partners, affiliates, contractors, officers, directors, employees and agents harmless from and against any and all damages, losses and expenses arising directly or indirectly from: (i) Your acts and omissions to act in using the Software and related services pursuant to the terms of the EULA; or (ii) Your breach of this EULA.

MISCELLANEOUS: This EULA represents the complete agreement concerning this license between the parties and supersedes all prior agreements and representations between them. Company reserves the right, at its discretion, to change, modify, add or remove portions of this EULA by posting the updated EULA on Company’s website. You will be deemed to have accepted such changes by continuing to use the Software and related services. If any provision of this EULA is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable and the remaining provisions of this EULA shall not be affected.

No other obligations. This Agreement creates no obligations on the part of the Provider and its licensors other than as specifically set forth herein.

Notices. All notices and return of the Software and Documentation must be delivered to the Company’s address set forth at the beginning of the Agreement.

Company may manage, regulate, control, modify or eliminate virtual goods including the Software at any time, with or without notice. Company shall have no liability to You or any third party in the event that Company exercises any such rights.

Please note that any payment for licenses for the Software and other virtual goods is always FINAL AND NON-REFUNDABLE.

SUBJECT TO MANDATORY LEGISLATION, YOU ACKNOWLEDGE THAT COMPANY IS NOT REQUIRED TO PROVIDE A REFUND FOR THE SOFTWARE OR OTHER VIRTUAL GOODS FOR ANY REASON, AND THAT YOU WILL NOT RECEIVE MONEY OR OTHER COMPENSATION FOR UNUSED SOFTWARE OR OTHER VIRTUAL GOODS, WHETHER YOUR LOSS OF LICENSE UNDER THIS EULA WAS VOLUNTARY OR INVOLUNTARY.

GOVERNING LAW AND DISPUTE RESOLUTION. This EULA will be governed by and construed in accordance with the laws of the State of New York, USA without reference to its choice of law rules. The United Nations Convention for the International Sale of Goods shall not apply.

You expressly agree that any disputes or claims ensuing from this Agreement with respect to the Provider or any disputes or claims relating to use of the Software shall be settled by a court of competent jurisdiction in New York, NY and You expressly agree to the said court exercising jurisdiction.

IF YOU HAVE ANY QUESTIONS CONCERNING THIS AGREEMENT, YOU MAY CONTACT the Company address set forth above or through its website at Frinx.io.

General provisions. Should any of the provisions of this Agreement be invalid or unenforceable, this shall not affect the validity of the other provisions of the Agreement, which shall remain valid and enforceable in accordance with the conditions stipulated therein. This Agreement may only be modified in written form, signed by an authorized representative of the Provider or a person expressly authorized to act in this capacity under the terms of a power of attorney.

BY PAYING THE LICENSE FEE, YOU AGREE TO BE BOUND BY THIS EULA.