



END-USER LICENSE AGREEMENT (EULA)

Customer Legal
Business Name
("Customer")

This End-User License Agreement (the "**Agreement**"), effective as of _____ (the "**Effective Date**"), is entered into by and between Sendio, Inc., a corporation duly organized under the laws of California ("**Sendio**"), headquartered in Newport Beach, CA, and Customer, a _____ (business type, e.g. "Delaware Corporation"), headquartered in _____ (city, state, country, zip/postal code).

This Agreement relates to the purchase of certain Hardware and the licensing of certain Software (as defined below), and authorizes Customer to use the resulting Sendio Products (defined below), subject to the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement through their authorized representatives:

Customer

Signed: _____

Printed Name: _____

Title: _____

Date: _____

This Agreement relates to the purchase of certain Hardware and the licensing of certain Software (as defined below), and authorizes Customer to use the resulting Sendio Products (defined below), subject to the terms and conditions set forth herein.

1. DEFINITIONS

"**Documentation**" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) specifically pertaining to the Software and made available by Sendio with the Software in any manner (including on CD-ROM, or on-line).

"**Hardware**" means the Sendio hardware device, including, without limitation, integrated Ethernet and USB ports and related connections, and firmware.

"**Products**" means the combination of Hardware and Software (including, as applicable, Third Party Software).

"**Purchase Order Set**" means the Purchase Order issued by Customer to a Sendio, and/or a Sendio Authorized Reseller Partner, and the corresponding Purchase Order issued to Sendio by the reseller, for Products.

"**Reseller**" means a third party representative of Sendio that may perform certain of the services in this Agreement on Sendio's behalf.

"**Software**" means the Sendio software licensed to Customer and included with the Hardware, and all related documentation and materials, as they are made available by Sendio.

"**Third Party Software**" means the object code version and source code version of the software licensed or otherwise legally obtained by Sendio from third parties, for use by Customer in conjunction with the Software and Hardware. Third Party Software is identified on Sendio's website, at www.sendio.com/opensource/.

2. USE OF HARDWARE

Customer represents and warrants that the Hardware and Software will be used for commercial or business purposes only. Customer shall assume all obligation and liability with respect to the possession of the Hardware, and for its use, operation, condition, and storage during the term of this Agreement. Customer shall, at Customer's own expense, maintain the Hardware in good condition and order, allowing for reasonable wear and tear. Failure to comply with the terms of this section voids the hardware warranty.

3. SUBSCRIPTION TO SOFTWARE

- (a) **License.** Conditioned upon compliance with the terms and conditions of this Agreement, Sendio grants to Customer a nonexclusive and nontransferable license to use, for the term set forth in the Purchase Order Set, for Customer's internal business purposes, the Software and the Documentation for which Customer has paid the required license fees. Customer's license to use the Software shall be limited to, and Customer shall not use the Software in excess of, the Hardware with which the Software is delivered, and that number of agent(s), concurrent users, sessions, IP addresses, port(s), seat(s), server(s) or site(s), as set forth in the applicable Purchase Order Set for which Customer has paid the required license fee.

Third Party Software not licensed to Customer under the grant set forth above shall be provided to Customer under the terms of those separate license agreements with third parties identified in the Documentation.

(b) **Restrictions.** Customer shall not use, duplicate or modify any Software, or make any Software available to unauthorized third parties. Customer agrees not to cause or permit the modification, adaptation, translation, reverse engineering, disassembly, recompilation or otherwise attempted discovery of the Software or Hardware. Customer shall not (i) sell, rent, lease, timeshare, encumber, license, sublicense, transfer or assign the Software, except as expressly permitted by this Agreement; (ii) take any action in derogation of Sendio's or its licensors' intellectual property rights; (iii) copy the Software, except, as expressly permitted by this Agreement; or (iv) create or develop any derivative works based on the Software. Customer agrees to maintain and reproduce all copyright and other proprietary notices on all copies, in any form, of the Software in the same form and manner that such copyright and other proprietary notices are included on the Software and any removal or alteration of such notices shall void all warranties relating to the Product.

(c) **Services Updates and Maintenance Releases.** Sendio provides three types of periodic "updates" to the Software:

- Data File Updates, such as anti-virus signature definitions
- Software Maintenance Releases, which may fix "bugs" or provide minor functional enhancements
- Services Updates, that add new services or features

Data File Updates occur frequently and are downloaded and installed automatically onto the Hardware. Software Maintenance Releases occur as needed, while Services Updates tend to be released every four to six months.

Upon the installation of a Software update onto the Hardware, the additional or modified Software becomes covered under the terms of this End User License Agreement.

Customers with a valid software license receive all software updates at no additional charge.

(d) **Network Connectivity Requirements.** To provide service, the Hardware and Software require permanent Internet connectivity and unrestricted appliance originated communication via standard HTTP (port 80) & HTTPS (port 443) channels. Additional connectivity may be required and is detailed in the Documentation.

4. INTELLECTUAL PROPERTY RIGHTS

(a) **Software.** Title, ownership rights and intellectual property rights in the Software shall remain in Sendio. Customer acknowledges such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner with Sendio's ownership of or rights with respect to the Software. The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. All title and copyrights in and to the Software, the accompanying printed materials and any copies of the Software are owned by Sendio. All title and intellectual property rights in and to the content which may be accessed through use of the Software are the property of Sendio and may be protected by all applicable copyright or other intellectual property laws and treaties. This Agreement grants Customer no rights to use such content. Customer must not remove or alter any copyright notices on the Software. If the Software contains documentation that is provided only in electronic form, Customer may print one copy or such electronic documentation. Customer may not copy the printed materials accompanying the Software. This Agreement does not grant Customer any rights in connection with any trademarks, service marks or trade names of Sendio.

(b) **Hardware.** If Sendio ships Products directly to Customer, title to all Hardware, and all risk of loss of or damage to all Products purchased from Sendio, will pass to Customer upon delivery to the carrier. Customer will be responsible for any claims against the carrier arising from or relating to shipment.

5. SUPPORT SERVICES

Sendio and/or Sendio's Authorized Reseller Partners will provide maintenance and support services related to the Hardware and Software (the "**Support Services**") to Customer per the terms set forth in the Purchase Order Set. To the extent provided by Sendio, such Support Services will be provided in accordance with Sendio's maintenance and support policies, available at www.sendio.com/support. For the purpose of providing active support Sendio requires access all appliances via SSH (Secure Shell). This access should be limited to connections originating from Sendio's corporate subnet (64.58.146.32/27) via port 22.

6. CONFIDENTIALITY AND NONDISCLOSURE

"**Confidential Information**" means all technical, financial, commercial, legal or other proprietary information, in whatever form or media which is designated "Confidential" in writing by the Party disclosing such information ("**Disclosing Party**") whether or not it is patented, registered or otherwise publicly protected.

A Party receiving the Confidential Information of another Party (the "**Receiving Party**") shall maintain in confidence all Confidential Information communicated, discussed, delivered or made available to by the Disclosing Party, and except as required to fulfill the purposes of this Agreement, shall not use or disclose this information to any third party or corporation, including any agent, affiliate, subsidiary, consultant or contractor of the parties without the prior written consent of the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may disclose the Confidential Information to its employees and contractors with a need to know such information, provided each employee and contractor shall be obligated in writing to keep such information confidential. The obligations in this section shall not apply if and to the extent that the Receiving Party establishes that the Confidential Information:

- (a) was lawfully known to the Receiving Party prior to its first receipt of the same from the Disclosing Party; as shown by the Receiving Party's records in existence at the time the Receiving Party received it, and at a time when the Receiving Party was under no obligation to the Disclosing Party to keep such information confidential; or
- (b) is in the public domain on the Effective Date or is subsequently placed in the public domain by the Disclosing Party or other party with the legal right to do so; or
- (c) was received by the Receiving Party in good faith from a third party lawfully in possession thereof and without an obligation of confidentiality to the Disclosing Party and without breach of this Agreement; or
- (d) was developed independently by the Receiving Party's employees or contractors who have not had either direct or indirect access to any of the Disclosing Party's Confidential Information; or
- (e) is required by law to be disclosed, provided that notice of the requirement to disclose is delivered to the Disclosing Party so that it may contest this potential disclosure; or
- (f) is approved for release by the Disclosing Party.

The Receiving Party shall have the burden of proving the applicability of any of the above exceptions that the Receiving Party claims may apply.

7. TERM AND TERMINATION

This Agreement shall become effective as of the Effective Date and shall remain valid until the earlier of the expiration of the license term as set forth in the Purchase Order Set, or until terminated by Sendio upon thirty (30) days prior written notice for any material breach by Customer of any of the terms or conditions or Customer's obligations hereunder and such material breach is not cured within thirty (30) days, or by Customer by returning all copies of the Software. Upon any termination or expiration of this Agreement, Customer shall destroy all copies of Software and Documentation in its

possession or control. All confidentiality obligations of Customer and all limitations of liability and disclaimers and restrictions of warranty shall survive termination of this Agreement. If this Agreement is terminated for any reason, neither party shall be liable to the other because of the termination for damages for the loss of prospective profits, anticipated sales, goodwill or for expenditures, investments or commitments made in connection with this Agreement. The termination of this Agreement shall not relieve either party from its obligation or liability to pay any fees that have accrued to the other party as of the date of the termination.

8. LIMITATION ON LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SENDIO BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL, RELIANCE OR COVER DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, REVENUE, EQUIPMENT, LOSS OF DATA OR USE OR BUSINESS INTERRUPTION INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN ANY ACTION IN CONTRACT OR TORT OR EQUITY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CASE WILL SENDIO'S LIABILITY EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THIS LICENSE WITHIN THE PREVIOUS 180 DAYS.

9. LIMITED WARRANTY

- (a) **Hardware.** Commencing on the date of delivery to Customer, Sendio warrants that the Hardware, under normal use, shall be free of defects in materials and workmanship, shall function in accordance with the Documentation, and shall continue in this manner for the period of **one (1) year** (the "**Warranty Period**"). If a hardware defect arises and a valid claim is received within the Warranty Period, Sendio will, at its sole option, either (1) repair the hardware defect at no charge, using new or refurbished replacement parts, or (2) exchange the product with a product that is new or which has been manufactured from new or serviceable used parts and is at least functionally equivalent to the original product. A replacement product or part, including a user-installable part that has been installed in accordance with instructions provided by Sendio, assumes the remaining warranty of the original product or ninety (90) days from the date of replacement or repair, whichever provides longer coverage. For additional information, please refer to the Sendio website (<http://www.sendio.com/support>).

Customer can purchase extended warranties for the Hardware, in additional one (1) year increments for a maximum of 2 additional years (3 years total), from Sendio and/or Sendio Authorized Reseller Partners.

Sendio does not warrant that the operation of the Product will be uninterrupted or error-free. Sendio is not responsible for damage arising from failure to follow instructions relating to the Product's use or environmental conditions.

This warranty does not apply: (a) to damage caused by use with non-Sendio products; (b) to damage caused by accident, abuse, misuse, electrical surges, flood, fire, earthquake or other external causes; (c) to damage caused by operating the product outside the permitted or intended uses described by Sendio or failure to maintain the Product in accordance with instructions provided by Sendio; (d) to damage caused by service (including upgrades and expansions) performed by anyone who is not a representative of Sendio or a Sendio reseller; (e) to any damage for data recovery; or (f) to any labor or other costs associated with installing or configuring the Hardware.

- (b) **Software.** Sendio warrants that from the Effective Date of this Agreement, and continuing for a period of ninety (90) days: (a) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (b) the Software shall substantially conform to its published specifications. Except for the foregoing, the Software is provided AS IS. This limited warranty extends only to the Customer who is the original licensee. Customer's sole and exclusive remedy and the entire liability of Sendio and its suppliers and licensors under this limited warranty will be, at Sendio's option, repair, replacement, or refund of the Software if reported (or, upon request, returned) to Sendio or the party supplying the Software to Customer. In no event does Sendio warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Sendio does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.
- (c) **Disclaimer.** TO THE EXTENT PERMITTED BY LAW, THIS WARRANTY AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL OR WRITTEN, STATUTORY, EXPRESS OR IMPLIED. AS PERMITTED BY APPLICABLE LAW, SENDIO SPECIFICALLY DISCLAIMS ANY AND ALL STATUTORY OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS. IF SENDIO CANNOT LAWFULLY DISCLAIM STATUTORY OR IMPLIED WARRANTIES THEN TO THE EXTENT PERMITTED BY LAW, ALL SUCH WARRANTIES SHALL BE LIMITED IN DURATION TO THE DURATION OF THIS EXPRESS WARRANTY AND TO REPAIR OR REPLACEMENT SERVICE AS DETERMINED BY SENDIO IN ITS SOLE DISCRETION. No Sendio reseller, agent, or employee is authorized to make any modification, extension, or addition to this warranty.

10. CUSTOMER RECORDS

Sendio, at its discretion, during Customer's regular business hours and with five (5) days' prior notice to Customer, shall have the right to enter the premises where the Hardware is located or used for the purpose of inspection. If any Hardware covered by this Agreement is not being properly used or maintained in the sole opinion of Sendio, Sendio shall have the right, but not the obligation, to have it repaired or maintained at a service facility at the expense of Customer.

11. COLLECTION OF CUSTOMER DATA

Customer agrees to allow Sendio to collect data ("Data") from their Sendio products in order to fight spam, virus, and other threats as well as optimize, monitor and report on the health and status of the product. Information will be collected electronically and automatically. "Data" includes, but is not limited to, the number of messages processed, the number of messages that are categorized as spam, the number of virus and types, IP addresses, the number of emails authenticated, email headers, and other statistics. Customer data will be kept confidential and will only be reported in aggregate by Sendio.

12. EQUITABLE RELIEF

Customer acknowledges that any breach of Customer's obligations with respect to Sendio's proprietary rights may cause Sendio irreparable injury for which there is no adequate remedy in law and that Sendio shall be entitled to equitable relief in addition to all other remedies available to them.

13. UNITED STATES GOVERNMENT END USERS

The Software and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this End-User License Agreement may be incorporated, Customer may provide to Government end user or, if this Agreement is direct, Government end user will acquire, the Software and Documentation with only those rights set forth in this End User License Agreement. Use of either the Software or Documentation or both constitutes agreement by the Government that the Software and Documentation are "commercial computer software" and "commercial computer software documentation," and constitutes acceptance of the rights and restrictions herein.

14. EXPORT CONTROLS

Software and Documentation, including technical data, may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Software and Documentation.

15. SPECIAL ADMONITIONS FOR INTERNATIONAL USE

Recognizing the global nature of the Internet, customer agrees to comply with all local rules regarding online conduct and acceptable Content. Specifically, you agree to comply with all applicable laws regarding the transmission of technical data exported from the United States or the country in which you reside. You acknowledge that your personal information, such as registration data and key data, will be stored on a computer system under the jurisdiction of United States laws and regulations.

16. INDEMNITY

You agree to indemnify and hold Sendio, and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees thereof, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of use of the Software, Hardware, or Services provided.

17. MISCELLANEOUS

- (a) **Assignment.** Customer may not assign or otherwise transfer, whether voluntarily or by operation of law, any rights or obligations under this Agreement without the prior written approval of Sendio.
- (b) **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the state of California without regard to the conflicts of laws provisions thereof. The United Nations Convention on the International Sale of Goods shall not apply.
- (c) **Entire Agreement and Amendment.** This Agreement sets forth the entire Agreement between the parties regarding the subject matter hereof and supersedes any prior proposals, agreements and representations between the parties, whether written or oral, regarding the subject matter contained herein. This Agreement may be amended at anytime by Sendio. The most current version of this agreement will always be posted on the Sendio website (<http://www.sendio.com/support/eula/eula.pdf>).
- (d) **Waiver and Severability.** The waiver by either party of a breach or right under this Agreement will not constitute a waiver of any other or subsequent breach or right of the parties. If any provisions of this Agreement are found to be invalid or unenforceable by a court of competent jurisdiction, the provision shall be severed from the remainder of this Agreement, and the Agreement shall remain in full force and effect.
- (e) **Arbitration.** Any dispute or claim arising out of or in relation to this Agreement, or the interpretation, making, performance, breach or termination thereof, shall be finally settled by binding arbitration under the Rules of JAMS. Judgment on the award rendered may be entered in any court having jurisdiction thereof. The place of arbitration shall be Irvine, California, U.S.A. The parties may apply to any court of competent jurisdiction for temporary or permanent injunctive relief, without breach of this section and without any abridgement of the powers of the arbitrator.