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- 3. Account Registration** - You will need both a LeanIX account and an Atlassian account in order to place orders or access or receive the Software. You are responsible for all actions taken through your accounts.
- 4. Data Responsibility**
 - a.** “**Your Data**” is any data, content, code, video, images or other materials of any type that you upload, submit or otherwise transmit to or through the Software. You will retain all right, title and interest in and to Your Data in the form provided to LeanIX. Subject to the terms of this EULA, you hereby grant to LeanIX a non-exclusive, worldwide, royalty-free right to (i) collect, use, copy, store, transmit, modify and create derivative works of Your Data, in each case solely to the extent necessary to provide the applicable Software to You.
 - b.** You must ensure that your use of all Your Data is at all times compliant with all applicable local, state, federal and international laws and regulations (“**Applicable Laws**”). You represent and



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- c. You will defend, indemnify and hold harmless LeanIX from and against any loss, cost, liability or damage, including attorneys' fees, for which LeanIX becomes liable arising from or relating to any claim relating to Your Data, including but not limited to any claim brought by a third party alleging that Your Data, infringes or misappropriates the intellectual property rights of a third party or violates Applicable Laws. This indemnification obligation is subject to your receiving (i) prompt written notice of such claim (but in any event notice in sufficient time for you to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (iii) all reasonable necessary cooperation of LeanIX at your expense.
- d. LeanIX has no obligation to monitor any content uploaded to the Software. Nonetheless, if we deem such action necessary, we may (i) remove Your Data or (ii) suspend your access to the Software. Generally, LeanIX will alert You when we take such action and give You a reasonable opportunity to cure your breach, but if we determine that your actions endanger the operation of the Software or other users, we may suspend your access immediately without notice. We have no liability to You for removing or deleting Your Data from or suspending your access.
- e. Subject to the terms of this EULA, we may remove or delete Your Data within a reasonable period of time after the termination or expiration of this EULA or of your term.

5. Taxes and Payment

- a. Your payment(s) under this EULA excludes any taxes or duties payable in respect of the Software. To the extent that any such taxes or duties are payable by LeanIX, You must pay to LeanIX the amount of such taxes or duties in addition to any fees owed under this EULA. Notwithstanding the foregoing, You may have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed. In that case, You have the right to provide to LeanIX any such exemption information, and LeanIX will use reasonable efforts to provide such invoicing documents as may enable You to obtain a refund or credit for the amount so paid from any relevant revenue authority, if such a refund or credit is available.
- b. LeanIX may offer certain Software to You at no charge, including free accounts, trial use, and access to beta versions ("No-Charge Products"). Your use of No-Charge Products is subject to any additional terms that LeanIX may specify and is only permitted for the period designated by LeanIX. LeanIX may terminate your right to use No-Charge Products at any time and for any reason in our sole discretion, without liability to You. You understand that any pre-release and beta products we make available are still under development, may be inoperable or incomplete and are likely to contain more errors and bugs than generally available LeanIX Software. LeanIX makes no promises that any beta versions will ever be made generally available. In some circumstances, LeanIX may charge a fee in order to allow you to access beta versions. To the maximum extent permitted by Applicable Law, LeanIX



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6. Confidentiality - Except as otherwise set forth in this EULA, each party agrees that all code, inventions, know-how, business, technical and financial information disclosed to such party ("**Receiving Party**") by the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure. Any LeanIX technology and any performance information relating to the Software is deemed Confidential Information of LeanIX without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may also disclose Confidential Information if so required pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law. For the avoidance of doubt, this Section shall not operate as a separate warranty with respect to the operation of any Software.

7. Support Services and Security

- a. Use of support services, if any, is governed by LeanIX's policies and programs described in any user manual, in online documentation, and/or other LeanIX-provided materials. Any supplemental Software code provided to you as a part of support services will be considered part of the Software and subject to the terms of this EULA. With respect to technical information You provide to LeanIX as part of the support services, LeanIX may use such information for its business purposes, including for software support and development. LeanIX will not utilize such technical information in a form that personally identifies You except to the extent necessary to provide You with support.
- b. LeanIX implements security procedures to help protect Your Data from bad actors. However, you understand that use of the Software necessarily involves transmission of Your Data over networks that are not owned, operated or controlled by LeanIX, and that LeanIX is not responsible for any of Your Data lost, altered, intercepted or stored across such networks. LeanIX cannot guarantee its security procedures will be error-free, that transmissions of Your Data will always be secure or that unauthorized third parties will never be able to defeat our security measures or those of our third-party service providers.

8. Replacement, Modification and/or Upgrades - LeanIX may, from time to time replace, modify or upgrade the Software. When accepted by You, any such replacement or modified Software code or upgrade to the Software will be considered part of the Software and subject to the terms of this EULA (unless this EULA is superseded by a further EULA accompanying such replacement or modified version of or upgrade to the Software).

- 9. Termination** - You may terminate this EULA at any time by destroying all your copies of the Software. Your license to the Software automatically terminates if you fail to fully comply with the terms and conditions of this EULA. Upon termination, You must remove the Software from your devices and destroy any copies of the Software and source code in your possession.
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- 12. Limitation of Liability**
- a. NEITHER LEANIX (NOR ITS SUPPLIERS) WILL BE LIABLE FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.
 - b. LEANIX'S AGGREGATE LIABILITY TO LICENSEE OR ANY THIRD PARTY SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE TO LEANIX FOR SOFTWARE AND SUPPORT AND MAINTENANCE IN THE 12 MONTHS IMMEDIATELY PRECEDING THE CLAIM, OR FIVE-HUNDRED DOLLARS (USD \$500), WHICHEVER AMOUNT IS LESS. NOTWITHSTANDING ANYTHING ELSE IN THIS EULA, LEANIX'S AGGREGATE LIABILITY TO LICENSEE IN RESPECT OF THE SOFTWARE SHALL BE FIVE-HUNDRED DOLLARS (USD \$500). THIS SECTION SHALL NOT APPLY TO (i) AMOUNTS

OWED BY LICENSEE UNDER ANY ORDERS, (ii) LICENSEE'S INDEMNIFICATION OBLIGATIONS IN THIS EULA, OR (iii) LICENSEE'S BREACH OF SECTION 2 (USE RESTRICTIONS). NOTHING IN THIS EULA WILL LIMIT THE LIABILITY OF EITHER PARTY FOR ANY LIABILITY WHICH CANNOT BE EXCLUDED BY LAW.

- c. The foregoing liability limitations shall apply to the maximum extent allowed by Applicable Law. To the extent the foregoing liability limitations or the warranty disclaimers of Section 11 are not allowed by Applicable Law, then the liability of LeanIX, and the your remedy, shall be limited to:
 - (i) the re-supply of any defective Software; or
 - (ii) the refund of any license fees paid by You for such defective Software.
- d. The parties agree that the limitations specified in this Section 12 will survive and apply even if any limited remedy specified in this EULA is found to have failed of its essential purpose.

13. General

- a. Construction. As used herein, "including" (and its variants) means "including without limitation" (and its variants).
- b. Choice of Law and Forum. The laws of the State of New York, without regard to the rules governing conflict of laws, govern all matters arising under or relating in any way to this EULA, including all tort claims. Any dispute arising under or relating in any way to this EULA, including all tort claims, will be litigated or arbitrated in the federal courts in Boston, Massachusetts or state courts in the city of New York, New York. Both Parties consent to the personal jurisdiction of the courts of New York.
- c. Feedback. You agree that any ideas, suggestions, enhancement requests or other feedback You provide to LeanIX regarding LeanIX or any suggested improvements to the Software (together, the "**Feedback**") will be LeanIX's property. You hereby assigns to LeanIX on Your behalf, and on behalf of its users, employees, contractors and/or agents, all right, title, and interest in, and LeanIX is free to use, without any obligation to any party, any ideas, concepts, techniques, or other intellectual property rights contained in the Feedback for any purpose whatsoever. LeanIX is not required to use any Feedback.
- d. Changes to the EULA. LeanIX may update or modify this EULA from time to time, including any referenced policies and other documents. Accepting the updated EULA is required for you to continue using the Software. You may be required to click through the updated EULA to confirm your acceptance. If you do not agree to the updated EULA after it becomes effective, you will no longer have a right to use the Software.
- e. Relationship. The Parties are independent contractors. This EULA does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. Neither Party will have the right, power or authority to make any representation or warranty (whether express or implied), or to assume or create any obligations on behalf of the other Party, or to bind the other Party in any manner whatsoever.
- f. Assignment. You may not assign this EULA without our prior written consent. LeanIX may assign its rights and obligation under this EULA without your consent. Any permitted assignee shall be bound by the terms and conditions of this EULA.
- g. No Third Party Beneficiaries. Nothing in this EULA, express or implied, is intended to or will confer upon any third party individual or entity any right, benefit or remedy of any nature whatsoever under or by reason of this EULA.



- h. Severability. If any provision of this EULA is held to be illegal or invalid by a court of competent jurisdiction, such provision will be deemed to be severed and deleted; and neither such provision, nor its severance and deletion, will affect the validity of the remaining provisions.
- i. Waiver. The failure of a Party to insist upon strict adherence to any term of this EULA on any occasion will not be considered a waiver of such Party's rights or deprive such Party of the right thereafter to insist upon strict adherence to that term or any other term of this EULA. A waiver must be signed by the waiving Party. A waiver on one occasion will not be a waiver of any right or remedy on any future occasion.
- j. Notice. Any notice under this EULA must be given in writing. LeanIX may provide notice to You via email or through your account. LeanIX's notices to You will be deemed given upon the first business day after the notice is sent. You may provide notice to us by email to legal@leanix.net. Your notices to us will be deemed given upon LeanIX's receipt.
- k. Entire Agreement. This EULA constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter.
- l. Delay. Neither party shall be liable to the other for any delay or failure to perform any obligation under this EULA (except for a failure to pay fees or expenses) if the delay or failure is due to unforeseen events which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.
- m. Survival. Any provisions that, by its terms, is intended to survive the expiration or termination of this EULA, the Parties agree that those sections will survive the expiration or termination of this EULA.
- n. Export Restrictions. The Software may be subject to export restrictions by the US government and import restrictions by certain foreign governments, and You agree to comply with all applicable export and import laws and regulations in your use of the Software. You shall not (and shall not allow any third-party to) remove or export from the US or allow the export or reexport of any part of the Software or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country; (ii) to anyone on the US Commerce Department's Table of Denial Orders or US Treasury Department's list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the US government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of any US or foreign agency or authority. You represent and warrant that (y) you are not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list and (z) that none of Your Data is controlled under the US International Traffic in Arms Regulations.
- o. Exclusion of UN Convention and UCITA. The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this EULA. The Uniform Computer Information Transactions Act (UCITA) shall not apply to this EULA regardless of when or where adopted.