



End User License Agreement - Version 4.1

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8. Termination. This Agreement shall continue until terminated as set forth in this section. You may terminate this Agreement at any time. Your rights under this Agreement will terminate automatically and irrevocably without notice from Gliffy if You fail to comply with any term(s) of this Agreement, including any attempt to transfer a copy of the Software or Software license key (if any) to another party except as provided in this Agreement. Upon termination for any reason, the Agreement granted hereunder shall terminate and You shall immediately discontinue all use of the Software and destroy and remove from all computers, hard drives, networks and other storage media all copies of the Software, but the terms of this Agreement will otherwise remain in effect.

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10. Miscellaneous. No agency, partnership, joint venture, or employment is created as a result of this Agreement and You do not have any authority of any kind to bind Gliffy in any respect whatsoever. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder. If any provision of this Agreement is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by You except with Gliffy's prior written consent. Gliffy may transfer, assign or delegate this Agreement and its rights and obligations without consent. You grant Gliffy the right to include Your name, trademark, logo or similar identifying material ("Your Marks") in a listing of customers on Gliffy's website and in other promotional material in relation to the Software. Within thirty (30) days of Your written request, Gliffy will remove Your Marks from its website customer list and will make no further use of Your marks in any future material promoting the Software. This Agreement shall be governed by and construed in accordance with the laws of the state of California, as if made within California between two residents thereof, and the parties submit to the exclusive jurisdiction of the state and federal courts located in San Francisco, California. Notwithstanding the foregoing sentence, (but without limiting Gliffy's right to seek injunctive or other equitable relief in any court of competent jurisdiction), any disputes arising with respect to this Agreement shall be referred to an arbitrator affiliated with the Judicial Arbitration and Mediation Services, Inc. ("JAMS"). The arbitrator shall be selected by joint agreement of the parties. In the event the parties cannot agree on an arbitrator within thirty (30) days of the initiating party providing the other party with written notice that it plans to seek arbitration, the parties shall each select an arbitrator affiliated with JAMS, which arbitrators shall jointly select a third such arbitrator to resolve the dispute. The written decision of the arbitrator shall be final and binding on the parties. The arbitration proceeding shall be carried on and heard in San Francisco, California using the English language and pursuant to the rules of (and administered by) JAMS. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. Both parties agree that this Agreement is the complete and exclusive statement of the mutual

understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement and, except as otherwise provided herein, that all modifications must be in writing.