
September 2024

Ativion End User License Agreement

www.Ativion.com

The logo for Ativion, featuring the word "ATIVION" in a bold, white, sans-serif font. The letter "A" is stylized with a diagonal slash through it. The background of the logo area is a large, light blue triangle pointing upwards, set against a darker blue background.

ATIVION

Ativion End User License Agreement



This End User License Agreement (“EULA”) governs your and any of your Users’ use of the Software. Your use of the Software constitutes your acceptance of this EULA, and you are responsible for your Users’ use of the Software. Your use of the Software may otherwise be specified in an order document detailing the fees and support or other terms associated with the Software (an “Order”). Collectively the Order, the AtivionServices Agreement, or another set of terms and conditions as agreed, and this Ativion End User License Agreement govern your use of the Software (together, the “Agreement”). All capitalized terms used but not defined in this EULA shall have the meanings set forth in the Ativion Services Agreement. This EULA is between the Ativion affiliate entity identified on the applicable Order (if no entity is identified then Impero Solutions Ltd./a Ativion, or Impero Solutions Inc. dba Ativion if you are based in the United States of America) (“Ativion”), and the customer identified on the Order or the individuals under such customer’s control (“you” or “User”) and governs your use, access, and distribution of the Software provided to you by Ativion, including any documentation or related written materials associated with the same (collectively the “Software”) as well as any other services or activities described in the Order.

BY CLICKING TO “ACCEPT” OR “AGREE” TO THIS EULA WHEN THIS OPTION IS MADE AVAILABLE TO YOU OR BY DOWNLOADING, INSTALLING OR USING THE SOFTWARE, WHICHEVER IS FIRST TO OCCUR, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT THAT YOU ARE 18 YEARS OF AGE OR OLDER; AND (C) ACCEPT THIS EULA AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT USE OR DOWNLOAD THE SOFTWARE AND DELETE IT FROM YOUR DEVICE.

1. Subscription

Subject to the terms of this EULA, an Order, and any other governing documents (including but not limited to the Ativion Services Agreement) and your payment of all fees, Ativion hereby grants you, during the term specified in the applicable Order, a limited, non-exclusive right of access to use the Software, in executable form only, for your internal operations and benefit of your Users (the “Subscription”). Upon termination of

his right of access, you shall promptly remove and uninstall all instances of the Software. Subject to this EULA, and provided you are the customer identified in the applicable Order, you may sublicense any end-user or per-device software or agents provided by Ativion (“Device Agents”) to your Users to enable them to access the Software. You may upload data directly or allow for Ativion to process on your behalf (“Customer Data”), and the processing of Customer Data is governed by our Data Processing Addendum, and Ativion Privacy Policy, available at www.ativion.com/legal,

updated from time to time.

You acknowledge and agree that the Software is provided under subscription for right of access and is not sold to you. You do not acquire any ownership interest in the Software under this EULA, or any other rights thereto other than to use the Software in accordance with the subscription-based right of access granted, and subject to all terms, conditions, and restrictions, under this Agreement. Ativion and its licensors and service providers reserve and shall retain their entire right, title, and interest in and to the Software, including all copyrights, trademarks, and other intellectual property rights therein or relating thereto, except as expressly granted to you in this EULA.

2. Collection and Use of Information

You acknowledge that when you download, install, or use the Software, Ativion may use automatic means (including, for example, cookies and web beacons) to collect information about your device and about your use of the Software (including, without limitation, to check for software updates, to validate your PIN, to send automated error diagnostic reports, and to send anonymous software usage information). You also may be required to provide certain information about yourself as a condition to downloading, installing, or using the Software or certain of its features or functionality, and the Software may provide you with opportunities to share information about yourself with others. All information we collect through or in connection with this Software is subject to our Privacy Policy. By downloading, installing, using, and providing information to or through this Software, you consent to all actions taken by us with respect to your information in compliance with the Ativion Privacy Policy.

Ativion EULA September 2024



3. Resale

You may not resell the Software unless your organization has an executed “Reseller Agreement” in place which specifically allows the resale of Ativion Software. If you are permitted to resell the Software, you must ensure that anyone to whom you provide the Software also agrees to this EULA. If you have purchased the Software other than from Ativion, your fees, described in Section 8, shall be due to the reseller of the Software in accordance with the terms of your agreement with such third party.

Software other than from Ativion, your fees, described in Section 8, shall be due to the reseller of the Software in accordance with the terms of your agreement with such third party.

4. User Obligations

1. You are responsible for compliance with any and all laws applicable to your use of the Software and the suitability of the Software for your implementation and use. You agree that you will only use the Software in compliance with the laws applicable to your use of the Software and acknowledge that Ativion makes no representation or warranty whatsoever regarding the compatibility of the Software with any given legal or regulatory requirement or law.

2. You must cooperate with Ativion’s reasonable investigation of outages, security problems, and any suspected breach of the Agreement. You are responsible for keeping your account information and permissions current. You agree that your

use of the Software will comply with the Acceptable Use Policy (the “AUP”). You are solely responsible for the suitability of the Software.



3. You may only use the Software in accordance with any and all documentation or other written materials provided to you by Ativion describing the use of the Software (the “Documentation”). You agree, except as otherwise permitted herein, to keep the Software and Documentation confidential, and you shall not attempt to reverse engineer, decompile, copy or modify, or permit your Users or a third party to do the same. Evidence of attempts to tamper with our Software and Documentation will result in a material breach of the Order.

4. You will not remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property rights notices from the Software or Documentation, including any copy thereof.

5. You will not use the Software in any manner that could disable, overburden, damage, or impair the Software or interfere with any other party’s use of the Software.

6. You will not remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management, or security features in or protecting the Software.

5. Support

Ativion will provide general assistance, troubleshooting, and related support services to you during the term of this EULA, subject to any additional specifications in your Order unless otherwise stated (“Support”). Support is available via channels notified to you during the timeframe specified in your Order. Ativion may

from time to time release patches, updates, bug fixes, and other enhancements to the Software (“Releases”). Releases may also modify or delete in their entirety certain features and functionality. This EULA shall govern all releases and they shall be considered Software for purposes of the EULA. You agree that Ativion has no obligation to provide any Releases or to continue to provide or enable any particular features or functionality. Ativion will provide Support only to Users named in the Order. To receive Support, you must be on the most recent Release or one prior release of the Software and have an active Subscription in place. Ativion may require you to update to the most recent release of the Software. You agree that you will promptly update and install any versions which Ativion identifies as important to the security of the Software, designated as a “security release”. If your Order specifies a separate fee for Support, then you are entitled to Support only during the term described in the Order.

6. Security

Ativion undertakes no responsibility for the security of any User Device. Customer must use reasonable security precautions in connection with its use of the Software. Ativion will not use or disclose Customer Data except as materially required to perform the Services or as required by law. Ativion makes no representation or warranty whatsoever regarding open source software or with regard to any third-party products or Services which we may recommend for your consideration.

7. Disclaimers

THE SOFTWARE IS PROVIDED TO USER "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ATIVION, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, ATIVION PROVIDES NO WARRANTY OR UNDERTAKING AND MAKES NO REPRESENTATION OF ANY KIND THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS, OR BE ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES OR THE LIMITATIONS ON THE APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

8. Fees

The Customer shall be responsible for the payment of all fees in relation to sales, use, and similar taxes relating to your use of the

Ativion EULA September 2024



Software. Your use of the Software may be terminated if the Customer does not comply with their payment obligations contained in the Order.

9. Term And Termination

This EULA shall continue in force until the termination of the Order. This EULA cannot be terminated while the Order is still in place. Ativion may terminate this EULA for cause on written notice if the other party materially breaches the EULA (including a failure by the Customer to pay fees when due) and does not remedy the breach within 30 days of the non-breaching party's written notice describing the breach.

10. Data Protection

We process personal data on behalf of the Customer, in accordance with our Ativion Privacy Policy, and the Ativion Services Agreement and DPA. You remain the exclusive owner of your Customer Data. If you require any further information on this, please contact the purchasing representative of your organization or refer to our policies at <https://www.ativion.com/legal/>.

11. Intellectual Property

1. **Created by Ativion.** Excluding any Customer IP, Ativion shall retain exclusive ownership of all patents, copyrights, trademarks, trade secrets, and any other proprietary intellectual property rights ("Intellectual Property") created, authored, or invented by it prior to the commencement of the Services or created as part of providing the Services or contained in the Software.

Ativion grants to you, during the term of the Agreement and subject to your rightful use, a limited, non-exclusive, nontransferable, right of access (without the right to sublicense) to use any products, and any Intellectual Property (including Device Agents, but excluding any Third Party Software), provided to you by Ativion as part of the Services for your internal use as necessary for you to enjoy the benefit of the Services. You agree that any usage data, usage metrics, and other general information about your use or operation of the Services may be used and disclosed by Ativion for Software improvement and market analysis purposes.

2. **Third Party Software.** Ativion may provide third-party software for your use as part of the Services or to assist in our delivery of the Services (“Third-Party Software”). Unless otherwise permitted by the terms of the applicable Subscription you may not: (i) assign, grant or transfer any interest in the Third Party Software to another individual or entity; (ii) reverse engineer, decompile, copy or modify the Third Party Software; (iii) modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Third Party Software; or (iv) exercise any of the reserved Intellectual Property rights provided under the laws governing this Agreement. Your use of any Third-Party Software may be subject to additional restrictions identified in the Order or an end-user license agreement or similar terms. Upon termination of the Order, you will remove any Ativion provided software and Device Agents and any Third-Party Software which has been installed on your (or your users’) devices. Ativion makes no representation or warranty regarding Third Party Software except that Ativion has the right to use or provide the Third-Party Software and that we are in material compliance with the applicable Subscription. You acknowledge and



agree that Ativion is not responsible for Third-Party Software, including its accuracy, quality, legality, or any other aspect thereof. Ativion does not assume and will not have any liability or responsibility to you or any other person or entity for any Third-Party Software. Third-Party Software and links thereto are provided solely as a convenience to you, and you access and use them entirely at your own risk and subject to such third parties’ terms and conditions.

3. If the delivery of the Services infringes the intellectual property rights of a third party and Ativion determines that it is not reasonably or commercially practicable to obtain the right to use the infringing element, or modify the Services or Software such that they do not infringe, then Ativion may terminate the Order on written notice and will not have any liability on account of such termination except to refund amounts paid for unused Services (prorated as to portions of Software or Services deemed infringing).

12. Confidential Information

Each party agrees not to use the other’s Confidential Information except in connection with the performance or use of or provision of the Software, the exercise of its legal rights under this Agreement, or as required by law, and will use reasonable care to protect Confidential Information from unauthorized disclosure. “Confidential Information” means non-public information disclosed by one party to the other in any form that: (i) is designated as “Confidential”; (ii) a reasonable person knows or reasonably should understand to be

confidential; or (iii) includes either party's products, pricing, customers, marketing and promotions, knowhow, or the negotiated terms of the Agreement; and which is not independently developed by the other party without reference to the other's Confidential Information or otherwise known to the other party on a non-confidential basis prior to disclosure. Each party agrees not to disclose the other's Confidential Information to any third party except: (a) to its Representatives, provided that such Representatives agree to confidentiality measures that are at least as stringent as those stated in this Agreement; (b) as required by law; or (c) in response to a subpoena or court order or other compulsory legal process, provided that the party subject to such process shall give the other written notice of at least seven days prior to disclosing Confidential Information unless the law forbids such notice.

13. Publicity, Use Of Marks

Customer agrees that Ativion may publicly disclose that it is providing Services to Customer and may use Customer's name and logo to identify Customer in promotional materials, including press releases. Customer may not issue any press release or publicity regarding the Agreement or use the Ativion name or logo or other identifying indicia without Ativion's prior written consent.

14. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL ATIVION OR ITS AFFILIATES OR REPRESENTATIVES BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY KIND. IN NO EVENT SHALL ATIVION BE LIABLE TO ANY PUNITIVE DAMAGES OR FOR ANY LOSS OF PROFITS, DATA, REVENUE, BUSINESS OPPORTUNITIES, CUSTOMERS, CONTRACTS,



GOODWILL, OR REPUTATION. IN NO EVENT WILL ATIVION'S ACTUAL LIABILITY EXCEED THE AMOUNT OF FEES RECEIVED AS PART OF THE ORDER. THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR ATIVION WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY, SO SOME OR ALL OF THE ABOVE LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

15. Indemnification

YOU HEREBY INDEMNIFY AND HOLD HARMLESS ATIVION AND ITS REPRESENTATIVES FROM AND AGAINST ANY AND ALL ALLEGATIONS, CLAIMS, DEMANDS, COSTS, EXPENSES (INCLUDING ATTORNEYS' FEES AND DISBURSEMENTS), LOSSES, LIABILITIES, PENALTIES, FINES, SETTLEMENTS OR DAMAGES ARISING OUT OF: (I) YOUR ACTUAL OR ALLEGED BREACH OF YOUR OBLIGATIONS CONTAINED WITHIN THIS EULA, (II) YOUR BREACH OF YOUR AGREEMENTS WITH, OR LEGAL OBLIGATIONS TO, ANY OF YOUR USERS OR ANY PARTY TO WHOM YOU RESELL OR OTHERWISE PROVIDE THE SOFTWARE, OR (III) YOUR BREACH OF ANY APPLICABLE LAW. YOUR OBLIGATIONS UNDER THIS SECTION INCLUDE CLAIMS ARISING OUT OF THE ACTS OR OMISSIONS OF YOUR USERS, REPRESENTATIVES AND

AFFILIATES, EVEN YOU DID NOT AUTHORIZE SUCH ACTS OR OMISSIONS. ATIVION WILL CHOOSE LEGAL COUNSEL TO DEFEND THE CLAIM, PROVIDED THAT THE CHOICE IS REASONABLE AND IS COMMUNICATED TO YOU. YOU MUST COMPLY WITH ATIVION'S REASONABLE REQUESTS FOR ASSISTANCE AND COOPERATION IN THE DEFENSE OF THE CLAIM. ATIVION MAY NOT SETTLE THE CLAIM WITHOUT YOUR CONSENT, WHICH MAY NOT BE UNREASONABLY WITHHELD, DELAYED OR CONDITIONED. YOU MUST PAY COSTS AND EXPENSES DUE UNDER THIS SECTION AS ATIVION INCURS THEM.



re-export, or release is prohibited by law, rule, or regulation. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Software available outside the US.

16. Governing Law

1. If the Customer is contracting with Impero Solutions, Inc. dba Ativion or Netop Tech Inc., then this EULA is governed by the laws of the State of Texas, USA, exclusive of any choice of law principle that would require the application of the law of a different jurisdiction. Exclusive venue for all disputes arising out of the Agreement shall be in the state or federal courts in Travis County, Texas, and we each agree not to bring any action in any other venue. You waive all objections to this venue and agree not to dispute personal jurisdiction or venue in these courts.

2. If the Customer is contracting with any other of the Ativion Companies, then this EULA is governed by the law of England and Wales and each of us expressly and unconditionally submits to the exclusive jurisdiction of the courts of England and Wales.

3. The Software may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Software to, or make the Software accessible from, any jurisdiction or country to which export,

4. The Software is a commercial product, consisting of commercial computer software and commercial computer software documentation, as such terms are defined in 48 C.F.R. § 2.101. Accordingly, if you are an agency of the US Government or any contractor therefor, you receive only those rights with respect to the Software as are granted to all other users under Subscription, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government licensees and their contractors.

17. Miscellaneous

1. Entire Agreement. The EULA constitutes the complete and exclusive understanding between the parties regarding its subject matter and supersedes and replaces any prior or contemporaneous representation(s), agreement(s) or understanding(s), written or oral. This EULA may only be varied by a written agreement by both parties that expressly refers to this EULA. The following provisions shall survive expiration or termination of this EULA: Intellectual Property,

Confidentiality, Limitation of Liability, Indemnification, Governing Law, Miscellaneous, all terms of the EULA requiring you to pay any fees, and any other provisions that by their nature are intended to survive expiration or termination of the EULA.

2. You agree to promptly provide written notice by certified mail return receipt requested to Ativion at: Ativion, Seventh Floor, East West, Tollhouse Hill, Nottingham, NG1 5FS, of any suspected breach by Ativion of this EULA, including the specifics of any claim of breach or for damages and to provide Ativion with a reasonable opportunity to investigate and cure any curable matter. In order to bring an action against Ativion for damages, you must give notice to Ativion of any claim for damages within 6 months of the date the claim arises. No claim of breach of this EULA shall be made by Customer unless and until all uncontested amounts owed by Customer have been paid.

3. Assignment. Neither party may assign the Agreement or any Orders without the prior written consent of the other party except to an affiliate or successor as part of a corporate reorganization or a sale of some or all of its business, provided the assigning party notifies the other party of such change of control.

4. If any part of the EULA is found unenforceable, the rest of the EULA will continue in effect, and the unenforceable part shall be reformed to the extent possible to make it enforceable and give business efficacy to the EULA. Other than Representatives, there are no third-party beneficiaries to the EULA.

5. Ativion reserves the right to change this EULA and the Software and Services contemplated herein at its sole discretion. Your continued use of



the Software after Ativion posts any changes to the Software shall confirm your acceptance of such changes.