

# End-User License Agreement for ComTech Software

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**9. EXPORT RESTRICTIONS.** You acknowledge that the Software is subject to Canadian export jurisdiction. You agree to comply with all applicable international and national laws that apply to the Software, including the Canadian Export Regulations, as well as end-user, end-use, and destination restrictions issued by Canadian and other governments.

**10. TERMINATION.** Without prejudice to any other rights, ComTech may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such event, you must destroy all copies of the Software and all of its component parts.

**11. LIMITED WARRANTY FOR SOFTWARE ACQUIRED IN CANADA AND THE US.**

ComTech warrants that the Software will perform substantially in accordance with the accompanying materials for a period of ninety (90) days from the date of receipt.

**If an implied warranty or condition is created by your state/jurisdiction and federal or state/provincial law prohibits disclaimer of it, you also have an implied warranty or condition, BUT ONLY AS TO DEFECTS DISCOVERED DURING THE PERIOD OF THIS LIMITED WARRANTY (NINETY DAYS). AS TO ANY DEFECTS DISCOVERED AFTER THE NINETY-DAY PERIOD, THERE IS NO WARRANTY OR CONDITION OF ANY KIND.** Some states/jurisdictions do not allow limitations on how long an implied warranty or condition lasts, so the above limitation may not apply to you.

Any supplements or updates to the Software, including without limitation, any (if any) service packs or hot fixes provided to you after the expiration of the ninety day Limited Warranty period are not covered by any warranty or condition, express, implied or statutory.

**LIMITATION ON REMEDIES; NO CONSEQUENTIAL OR OTHER DAMAGES.** Your exclusive remedy for any breach of this Limited Warranty is as set forth below. **Except for any refund elected by ComTech, YOU ARE NOT ENTITLED TO ANY DAMAGES, INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL DAMAGES, if the Software does not meet ComTech's Limited Warranty, and, to the maximum extent allowed by applicable law, even if any remedy fails of its essential purpose.** The terms of Section 13 ("Exclusion of Incidental, Consequential and Certain Other Damages") are also incorporated into this Limited Warranty. Some states/jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. This Limited Warranty gives you specific legal rights. You may have other rights which vary from state/jurisdiction to state/jurisdiction. **YOUR EXCLUSIVE REMEDY.** ComTech's and its suppliers' entire liability and your exclusive remedy for any breach of this Limited Warranty or for any other breach

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**13. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL COMTECH OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE SOFTWARE OR OTHERWISE ARISING OUT OF THE USE OF THE SOFTWARE, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS EULA, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF COMTECH OR ANY SUPPLIER, AND EVEN IF COMTECH OR ANY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**14. LIMITATION OF LIABILITY AND REMEDIES.** Notwithstanding any damages that you might incur for any reason whatsoever (including, without limitation, all damages referenced herein and all direct or general damages in contract or anything else), the entire liability of ComTech and any of its suppliers under any provision of this EULA and your exclusive remedy hereunder (except for any remedy of repair or replacement elected by ComTech with respect to any breach of the Limited

**Warranty) shall be limited to the greater of the actual damages you incur in reasonable reliance on the Software up to the amount actually paid by you for the Software or US\$5.00. The foregoing limitations, exclusions and disclaimers (including Sections 11, 12 and 13) shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.**

**15. U.S. GOVERNMENT LICENSE RIGHTS.** All Software provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial license rights and restrictions described elsewhere herein. All Software provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with "Restricted Rights" as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable.

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**17. ENTIRE AGREEMENT; SEVERABILITY.** This EULA (including any addendum or amendment to this EULA which is included with the Software) is the entire agreement between you and ComTech relating to the Software and the support services (if any) and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this EULA. To the extent the terms of any ComTech policies or programs for support services conflict with the terms of this EULA, the terms of this EULA shall control. If any provision of this EULA is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

**Si vous avez acquis votre produit ComTech au CANADA, la garantie limitée suivante vous concerne :**

### **GARANTIE LIMITÉE**

ComTech garantit que le Logiciel fonctionnera conformément aux documents inclus pendant une période de 90 jours suivant la date de réception.

**Si une garantie ou condition implicite est créée par votre État ou votre territoire et qu'une loi fédérale ou provinciale ou État en interdit le déni, vous jouissez également d'une garantie ou condition implicite, MAIS UNIQUEMENT POUR LES DÉFAUTS DÉCOUVERTS DURANT LA PÉRIODE DE LA PRÉSENTE GARANTIE LIMITÉE (QUATRE-VINGT-DIX JOURS). IL N'Y A AUCUNE GARANTIE OU CONDITION DE QUELQUE NATURE QUE CE SOIT QUANT AUX DÉFAUTS DÉCOUVERTS APRÈS CETTE PÉRIODE DE QUATRE-VINGT-DIX JOURS.** Certains États ou territoires ne permettent pas de limiter la durée d'une garantie ou condition implicite de sorte que la limitation ci-dessus peut ne pas s'appliquer à vous.

Tous les suppléments ou toutes les mises à jour relatifs au Logiciel, notamment, les ensembles de services ou les réparations à chaud (le cas échéant) qui vous sont fournis après l'expiration de la période de quatre-vingt-dix jours de la garantie limitée ne sont pas couverts par quelque garantie ou condition que ce soit, expresse ou implicite.

**LIMITATION DES RECOURS; ABSENCE DE DOMMAGES INDIRECTS OU AUTRES.** Votre recours exclusif pour toute violation de la présente garantie limitée est décrit ci-après. **Sauf pour tout remboursement au choix de ComTech, si le Logiciel ne respecte pas la garantie limitée de ComTech et, dans la mesure maximale permise par les lois applicables, même si tout recours n'atteint pas son but essentiel, VOUS N'AVEZ DROIT À AUCUNS DOMMAGES, NOTAMMENT DES DOMMAGES INDIRECTS.** Les modalités de la clause Exclusion des dommages accessoires, indirects et de certains

autres dommages sont également intégrées à la présente garantie limitée. Certains États ou territoires ne permettent pas l'exclusion ou la limitation des dommages indirects ou accessoires de sorte que la limitation ou l'exclusion ci-dessus peut ne pas s'appliquer à vous. La présente garantie limitée vous donne des droits légaux spécifiques. Vous pouvez avoir d'autres droits qui peuvent varier d'un territoire ou d'un État à un autre. **VOTRE RECOURS EXCLUSIF.** L'obligation intégrale de ComTech et de ses fournisseurs et votre recours exclusif seront, selon le choix de ComTech de temps à autre sous réserve de toute loi applicable, a) le remboursement du prix payé, le cas échéant, pour le Logiciel ou b) la réparation ou le remplacement du Logiciel qui ne respecte pas la présente garantie limitée et qui est retourné à ComTech avec une copie de votre reçu. Vous recevrez la compensation choisie par ComTech, sans frais, sauf que vous êtes responsable des dépenses que vous pourriez engager (p. ex., les frais d'envoi du Logiciel à ComTech). La présente garantie limitée est nulle si la défectuosité du Logiciel est causée par un accident, un usage abusif, une mauvaise application, un usage anormal ou un virus. Tout Logiciel de remplacement sera garanti pour le reste de la période de garantie initiale ou pendant trente (30) jours, selon la plus longue entre ces deux périodes. À l'extérieur des États-Unis ou du Canada, ces recours ou l'un quelconque des services de soutien technique offerts par ComTech ne sont pas disponibles sans preuve d'achat d'une source internationale autorisée. Pour exercer votre recours, vous devez communiquer avec ComTech et vous adresser au ComTech Sales Information Center/One ComTech Way/Redmond, WA 98052-6399, ou à la filiale de ComTech de votre pays.

**DÉNI DE GARANTIES.** La garantie limitée mentionnée ci-dessus constitue la seule garantie expresse qui vous est donnée et remplace toutes autres garanties expresses (s'il en est) mentionnées dans un document ou sur un emballage. **Sauf en ce qui a trait à la garantie limitée et dans la mesure maximale permise par les lois applicables, le Logiciel et les services de soutien technique (le cas échéant) sont fournis TELS QUELS ET AVEC TOUS LES DÉFAUTS** par ComTech et ses fournisseurs, **lesquels par les présentes dénie toutes autres garanties et conditions expresses, implicites ou en vertu de la loi, notamment (le cas échéant) les garanties, devoirs ou conditions implicites de qualité marchande, d'adaptation à un usage particulier, d'exactitude ou d'exhaustivité des réponses, des résultats, des efforts déployés selon les règles de l'art, d'absence de virus et de négligence, le tout à l'égard du Logiciel et de la prestation des services de soutien technique ou de l'omission d'une telle prestation. PAR AILLEURS, IL N'Y A AUCUNE GARANTIE OU CONDITION QUANT AU TITRE DE PROPRIÉTÉ, À LA JOUISSANCE OU LA POSSESSION PAISIBLE, À LA CONCORDANCE À UNE DESCRIPTION NI QUANT À UNE ABSENCE DE CONTREFAÇON CONCERNANT LE LOGICIEL. EXCLUSION DES DOMMAGES ACCESSOIRES, INDIRECTS ET DE CERTAINS AUTRES DOMMAGES. DANS LA MESURE MAXIMALE PERMISE PAR LES LOIS APPLICABLES, EN AUCUN CAS COMTECH OU SES FOURNISSEURS NE SERONT RESPONSABLES DES DOMMAGES SPÉCIAUX, CONSÉCUTIFS, ACCESSOIRES OU INDIRECTS DE QUELQUE NATURE QUE CE SOIT (NOTAMMENT, LES DOMMAGES À L'ÉGARD DU MANQUE À GAGNER OU DE LA DIVULGATION DE RENSEIGNEMENTS CONFIDENTIELS OU AUTRES, DE LA PERTE D'EXPLOITATION, DE BLESSURES CORPORELLES, DE LA VIOLATION DE LA VIE PRIVÉE, DE L'OMISSION DE REMPLIR TOUT DEVOIR, Y COMPRIS D'AGIR DE BONNE FOI OU D'EXERCER UN SOIN RAISONNABLE, DE LA NÉGLIGENCE ET DE TOUTE AUTRE PERTE PÉCUNIAIRE OU AUTRE PERTE DE QUELQUE NATURE QUE CE SOIT) SE RAPPORTANT DE QUELQUE MANIÈRE QUE CE SOIT À L'UTILISATION DU LOGICIEL OU À L'INCAPACITÉ DE S'EN SERVIR, À LA PRESTATION OU À L'OMISSION D'UNE TELLE PRESTATION DE SERVICES DE SOUTIEN TECHNIQUE OU AUTREMENT AUX TERMES DE TOUTE DISPOSITION DU PRÉSENT EULA OU RELATIVEMENT À UNE TELLE DISPOSITION, MÊME EN CAS DE FAUTE, DE DÉLIT CIVIL (Y COMPRIS LA NÉGLIGENCE), DE RESPONSABILITÉ STRICTE, DE VIOLATION DE CONTRAT OU DE VIOLATION DE GARANTIE DE COMTECH OU DE TOUT FOURNISSEUR ET MÊME SI COMTECH OU TOUT FOURNISSEUR A ÉTÉ AVISÉ DE LA POSSIBILITÉ DE TELS DOMMAGES.**

LIMITATION DE RESPONSABILITÉ ET RECOURS. Malgré les dommages que vous puissiez subir pour quelque motif que ce soit (notamment, tous les dommages susmentionnés et tous les dommages directs ou généraux), l'obligation intégrale de ComTech et de l'un ou l'autre de ses fournisseurs aux termes de toute disposition du présent EULA et votre recours exclusif à l'égard de tout ce qui précède (sauf en ce qui concerne tout recours de réparation ou de remplacement choisi par ComTech à l'égard de tout manquement à la garantie limitée) se limite au plus élevé entre les montants suivants : le montant que vous avez réellement payé pour le Logiciel ou 5,00 \$US. Les limites, exclusions et dénis qui précèdent (y compris les clauses ci-dessus), s'appliquent dans la mesure maximale permise par les lois applicables, même si tout recours n'atteint pas son but essentiel.

La présente Convention est régie par les lois de la province d'Ontario, Canada. Chacune des parties à la présente reconnaît irrévocablement la compétence des tribunaux de la province d'Ontario et consent à instituer tout litige qui pourrait découler de la présente auprès des tribunaux situés dans le district judiciaire de York, province d'Ontario.

Au cas où vous auriez des questions concernant cette licence ou que vous désiriez vous mettre en rapport avec ComTech pour quelque raison que ce soit, veuillez contacter la succursale ComTech desservant votre pays, dont l'adresse est fournie dans ce produit, ou écrivez à : ComTech Sales Information Center, One ComTech Way, Redmond, Washington 98052-6399.

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Should you have any questions concerning this EULA, or if you desire to contact ComTech for any reason, please use the address information enclosed in this Software to contact the ComTech subsidiary serving your country or visit ComTech on the World Wide Web at <http://www.ComTech.ws>.