Opale Systems/J3tel
End User License Agreement (“EULA”)

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING OR USING THIS SOFTWARE, YOU AGREE TO THE TERMS OF THIS END USER LICENSE AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS: (i) DO NOT DOWNLOAD, INSTALL, COPY, ACCESS OR USE THIS SOFTWARE, AND (ii) PROMPTLY RETURN THIS SOFTWARE AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED THEM

1) Definitions.
   a) “Affiliate” means any entity that controls, is controlled by, or is under common control with a Party to this Agreement.
   b) “Authorized Partner” means any of J3TEL’s distributors, resellers or other business partners that are authorized by J3TEL in writing to sell Maintenance or the Software license rights granted under this Agreement.
   c) “Documentation” means installation guides, reference guides, operation manuals, and release notes provided with the Product in printed, electronic, or online form.
   d) “J3TEL” means J3TEL SAS., with offices located at Parc Victoria Le Vancouver 15 avenue du Hoggar, 91940 Les Ulis, France.
   e) “Maintenance” or “Support”. means maintenance and technical support services for the Products generally available on the Price List, excluding all Services other than Maintenance.
   f) “Software” means J3TEL proprietary programs in object code, as well as any firmware residing on Hardware, generally available on J3TEL's price list.
   g) “Updates” means any and all improvements in the Software that are made generally available to J3TEL’s customer base as part of purchased Support and which are not separately priced or marketed by J3TEL.

2) License Grant; Proprietary Rights.
   a) J3TEL grants You a limited, non-exclusive and non-transferable license to use the Software (in executable form only), solely for your internal operations and in accordance with the Documentation. This license is subject to payment of the applicable license fees and your acceptance of and compliance with the EULA. Your license is also limited to the quantity, term, territory and any other terms specified at the time of order in a product description. The Software may contain open source software subject to its own terms. J3TEL licenses You the right to use only the Software You acquired directly from J3TEL or from an Authorized Reseller. Unless contrary to applicable law, You are not licensed to Use the Software or equipment not purchased through an Authorized Reseller. If J3TEL requires You to register as an end user then Your license is only valid if the registration is complete and accurate.
   b) J3TEL or its licensors retain ownership of all intellectual property rights in and to the Software. This ownership extends to all copies and portions of, and all improvements, enhancements, modifications and derivative works to, the Software. Your rights to Use the Software are limited to those expressly granted by the EULA. No other rights with respect to the Software or any related intellectual property rights are granted or implied.

3) Copy and Use Terms.
   a) Product Entitlement/Activation: each Software license is tied to a license key required to activate the relevant Software. For the avoidance of doubt, a single key can activate either a single node, several nodes or a floating license of a number of usable simultaneous nodes. The license key will specify the relevant entitlements.
   b) Term: the licenses shall be perpetual unless specified otherwise.
   c) Copies: You may copy the Software as reasonably necessary for back-up, archival or disaster recovery purposes.
   d) Affiliate, Third Party: You may permit use of the Software in accordance with the terms of this Agreement by an Affiliate only for so long as such entity remains your Affiliate. You may also permit a third party to use the Software licensed to You under this EULA if such Use is (i) solely on Your behalf, (ii) for Your internal operations, and (iii) in compliance
with this EULA. You are liable for any breach of this EULA by such Affiliate or third party.
e) General Restrictions: J3Tel retains all right, title, and interest in and to the original and any copies of the Software, which includes all corrections, modifications, enhancements, updates, and Documentation, and all patents, copyrights, trade secrets, trademarks, and other intellectual property rights therein. Without limiting the generality of the foregoing, You will not and will not authorize or permit any third Party to: (a) modify, port, translate, localize, or create derivative works of the Software or any Confidential Information (defined below) of J3Tel; (b) decompile, disassemble, reverse engineer, or attempt to reconstruct, identify, or discover source code of the Software; (c) except as expressly permitted by this Agreement, sell, lease, license, sublicense, copy, market, or distribute the Products; or (d) without the prior written consent of J3Tel, remove, erase, obscure, or tamper with any copyright or any other product identification or proprietary rights notices, seal, or instructional label printed or stamped on, affixed to, or encoded or recorded in or on any Software or Documentation; or fail to preserve all copyright and other proprietary notices in all copies of the Software and Documentation made by You, combine or merge any part of the Software or Documentation with or into any other software or documentation; or refer to or otherwise use the Software as part of any effort to develop software (including, without limitation, any routine, script, code, or program) having any functional attributes, visual expressions, or other features similar to those of the Software or to compete with J3Tel; (e) except with J3Tel’s prior written permission, publish any performance or benchmark tests or analysis relating to the Software; or (f) attempt to do any of the foregoing. You should not run or operate the Software in a public cloud, Internet-based computing, or similar on-demand computing environment unless specifically authorized to do so by J3Tel.

4) Partner Support Agreement (“PSA”). The PSA applies if you have purchased Support. The PSA terms and conditions are incorporated by reference and can be found at [add weblink]. After the support or service subscription period has expired, you have no further rights to receive any Maintenance service.

5) Limited Warranty and Disclaimer.
a) Warranty. J3Tel warrants that the Software for thirty (30) days and Hardware for ninety (90) days, in either case from its original date of shipment, will substantially conform to the Documentation.
b) Remedy. J3Tel’s exclusive obligation with respect to a material breach of the warranties set forth in this section will be for J3Tel to use commercially reasonable efforts to repair or replace such Software or Hardware so as to make such Software or Hardware substantially conforming to the applicable Documentation. If J3Tel cannot repair or replace the non-conforming Software or Hardware under this warranty in a commercially feasible way and the non-conformance has been reported in writing during the applicable warranty period, J3Tel may refund fees paid for such non-conforming Software or Hardware upon return of same to J3Tel. J3Tel will have no obligation with respect to any failure of the Software or Hardware to perform as warranted under this section if such failure results from (a) improper use, (b) unauthorized changes, repairs, or modifications to the Software or Hardware, or (c) force majeure events. The Hardware warranty does not cover functional updates such as processors, memory, or printed circuit boards.
c) Disclaimer: EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION AND IN THE DOCUMENTS REFERENCED IN THIS AGREEMENT, THE SOFTWARE IS PROVIDED “AS IS” AND J3TEL MAKES NO REPRESENTATIONS OR WARRANTIES, AND J3TEL DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR SYSTEMS INTEGRATION. WITHOUT LIMITING THE FOREGOING, J3TEL MAKES NO WARRANTY, REPRESENTATION, OR GUARANTEE AS TO THE SOFTWARE’S USE OR PERFORMANCE AND DOES NOT WARRANT, REPRESENT, OR GUARANTEE THAT THE OPERATION OF THE SOFTWARE WILL BE FAILSAFE, UNINTERRUPTED, OR FREE FROM ERRORS.

6) Limitation of Remedies and Damages.
REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, TORT AND/OR ANY OTHER LEGAL THEORY, IN NO EVENT SHALL EITHER PARTY’S AGGREGATE LIABILITY TO THE OTHER PARTY FOR DIRECT DAMAGES UNDER THIS AGREEMENT OR IN CONNECTION WITH ITS SUBJECT MATTER EXCEED THE AMOUNT OF TOTAL FEES PAID OR PAYABLE BY YOU TO J3TEL FOR THE RELEVANT PRODUCT OR SERVICE GIVING RISE TO SUCH CLAIM DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL J3TEL BE LIABLE FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUES, LOSS OF PROFITS, LOSS OF GOODWILL OR REPUTATION, LOSS OF DATA, OR FOR COSTS OF BUSINESS INTERRUPTION OR SUBSTITUTE PRODUCTS OR SERVICES, WHETHER OR NOT FORESEEABLE, EVEN IF THE EXCLUSIVE REMEDIES PROVIDED BY THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES.

UPON TERMINATION OR EXPIRATION OF THIS AGREEMENT, YOU WILL NOT BE ENTITLED TO COMPENSATION FOR GOODWILL CREATED FOR J3TEL OR ITS PRODUCTS OR SERVICES OR FOR LOSS OR DAMAGE FROM INVESTMENTS MADE THAT CANNOT BE EARNED BACK.

7) Intellectual Property Indemnity.
   a) Indemnity: J3TEL will indemnify, and, at its election, defend, you against claims asserted against you in any suit or proceeding for direct patent or copyright infringement, or for J3TEL’s trade secret misappropriation, asserted against the Software, alone and not in combination with anything.
   b) Exclusions: Notwithstanding anything else in this Agreement, J3TEL has no obligation to indemnify or defend the following claims:
      i) those asserted against elements or features in, or operation of, the Software attributable in whole or in part to J3TEL’s inclusion of technology given by you to J3TEL, or in compliance with your designs, specifications or instructions, including inclusion of software supplied by you or included at your request;
      ii) those asserted against the Software attributable in whole or in part to the modification of the Software by anyone other than J3TEL, or against the use of the Software, where that use is contrary to its specification or instructions for use;
      iii) those asserted against the combination of the Software with anything;
      iv) those based on an allegation that the Software implements or complies with, in whole or in part, as shipped or when used, a Standard;
      v) those including an allegation that J3TEL, you, or the Software indirectly infringes, including by inducing or contributing to another’s infringement;
      vi) any claim (such as a counterclaim) that was made in response to a suit or proceeding first filed by you alleging patent infringement;
      vii) those including an allegation that the Software complies, in whole or in part, as shipped or when used, with any media decoding, encoding, or transcoding technology (such as, for example, through use of an audio or video codec); and
      viii) those asserting that you willfully infringed.
   c) Conditions: J3TEL’s obligations under this Section 7 are conditioned on your prompt written notice to J3TEL of a claim and on your giving to J3TEL the right to solely control and conduct the defense and any settlement of the claim. You must fully and timely cooperate with J3TEL and provide J3TEL with all reasonably requested authority, information and assistance. J3TEL will not be responsible for any costs, expenses or compromise incurred or made by you without J3TEL’s prior written consent.
   d) Defense, Settlement and Remedies: At its option, J3TEL will solely control and conduct the defense and any settlement of indemnified claims. J3TEL may, in its sole discretion and at its own expense: (i) procure for you the right to continue using the Software; (ii) replace the Software with a non-infringing Software; (iii) modify the Software so that it becomes non-infringing; or (iv) upon your return of the Software to J3TEL, refund the residual value of the purchase price paid by you for the infringing Software, depreciated using a straight-line method of depreciation over a three (3) year period from the date of delivery of the Software to you.
   e) Personal Indemnity: The foregoing indemnity is personal to you. You may not assign, transfer or pass through this indemnity to any third party. You will
notify all third parties that they must look solely to you for any indemnity for claims of infringement asserted against Software purchased from you.
f) Exclusive Remedy: The foregoing states J3TEL’s entire obligation and your exclusive remedy for claims of patent or copyright infringement, or trade secret misappropriation, by the Software.

8) Termination. Without prejudice to your payment obligations, you may terminate your license at any time by uninstalling the Software. J3TEL may terminate your license in the event that you materially breach the terms of this Agreement and you fail to cure such breach within thirty (30) days of receiving notice of such breach. Upon such termination, you shall promptly return or destroy all copies of the Software and Documentation.

9) Additional Terms.
a) Evaluation Software: If You license the Software or receive a hardware for evaluation purposes or other limited, temporary use as authorized by J3TEL (“Evaluation Product”), Your use of the Evaluation Product is only permitted for the period limited by the license key or otherwise stated by J3TEL in writing. If no evaluation period is identified by the license key or in writing, then the evaluation license is valid for thirty (30) days from shipment or upon Your activation of the Evaluation Product, as applicable. J3TEL will invoice You for the list price of the Evaluation Product if You fail to return it by the end of the evaluation period. The Evaluation Product including any evaluation license is provided “AS-IS” without support or warranty of any kind, expressed or implied. J3TEL does not assume any liability arising from any use of the Evaluation Product. You may not publish any results of benchmark tests run on the Evaluation Product. You authorize J3TEL to use any feedback or ideas You wish to provide J3TEL in connection with your Use of the Evaluation Product.
b) “Free” or “Open-Source” Software: The Software may include components (including, without limitation, programs, applications, tools, utilities, libraries, and other programming code) that are made available from third parties under a free or open source software licensing model (“FOSS Code”). FOSS Code components included with the Software are redistributed by J3TEL under the terms of the applicable FOSS Code license for such component; your receipt of FOSS Code components from J3TEL under this Agreement neither enlarges nor curtails your rights or obligations defined by the FOSS Code license applicable to the FOSS Code component. Copies of the FOSS Code licenses for FOSS Code components included with Software are included with or referenced in the Software’s Documentation.

10) Audit. You will allow J3TEL and its auditors the right to examine applicable books, records, systems, and accounts during Your normal business hours to verify compliance with this EULA. If the audit discloses underpayment of license fees, You will pay such license fees plus the reasonable cost of the audit within thirty (30) days of receipt of written notice.

11) Export Controls. You acknowledge and agrees that neither the Products, nor any related technical information, data, documents and materials, nor the direct product thereof, will be exported, re-exported, diverted, transferred, or disclosed, directly or indirectly, to any country or to any national or resident thereof, except as permitted by the laws and regulations of European Union regulation and France. You will cooperate fully with J3Tel in executing any documents or licenses necessary to comply with these laws and regulations, and with any related audit or inspection. You are responsible, at your own expense, for any local government permits, licenses or approvals required for importing and/or exporting the Software. If J3TEL receives notice that you are or you become identified as a sanctioned or restricted party under applicable law, then J3TEL will not be obligated to perform any of its obligations under this license if such performance would result in violation of the sanctions or restrictions.

12) Governing Law. All disputes arising out of or relating to this Agreement or its subject matter will be governed by the substantive laws of France. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer
Information Transactions Act as enacted shall not apply. The Paris Commercial Court shall each have exclusive jurisdiction over all disputes arising out of or relating to this Agreement or its subject matter.

13) **Miscellaneous.**

a) Any terms of this Agreement which by their nature should survive the termination of this Agreement shall survive such termination.

b) This Agreement, including all documents incorporated by reference, represents the entire agreement between the parties and expressly supersedes and cancels any other communication, representation or advertising whether oral or written, on the subjects herein. If you issue an order to an Authorized Partner or to J3TEL and the terms and conditions of the order conflict with the terms and conditions of (i) this Agreement, then the terms and conditions specified in this Agreement shall control. If any provision of this Agreement is held invalid, unenforceable, invalid, or prohibited under law, then such provision will be deemed restated to reflect the original intention of the parties as nearly as possible in accordance with applicable law and the remainder of this Agreement shall continue in full force and effect.