



End User License Agreement
End User Agreement

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7. INDEMNIFICATION

7.1 You agree to indemnify, defend, and hold harmless DDN and its directors, shareholders, officers, employees, licensors, affiliates, subsidiaries, and Third Party Vendors and Service Providers against any losses (including but not limited to claims, penalties, fines, awards, costs, final judgments, settlements, damages, liabilities, or expenses, including reasonable attorneys' fees) ("Losses") for any claim, action or suit brought or threatened and based on, arising out of, or related to: (a) any indemnification agreed to in other sections of this EULA, including Sections 2.4(f), 3.2, and 11.7; (b) a violation or breach of the Service Terms; (c) Your use or misuse of the Software, Documentation, or Services; (d) Your failure to comply with any term, condition, or restriction in this EULA; or (e) any of Your content or data stored, accessed, or otherwise used in conjunction with the Software or Services. DDN shall promptly notify You of such action and give You authority, information, and assistance (at Your expense) for the defense of such suit or proceeding and You shall have sole control of the defense or settlement of any claim or suit.



7.2. IP Infringement Indemnification. Expressly subject to Section 10.1, and except as to any Trial Edition and Community (DevOps) Edition licenses (where DDN has no liability or indemnification obligations), DDN agrees to defend You and Your directors, shareholders, officers and employees for any Losses in any claim, action or suit brought or threatened and based on or related to an allegation that the Software or DDN Services (where the term “DDN Services” does not include Third Party Software or Third Party Services or any products, software, or services not provided by DDN) infringes a U.S., Canadian or European Union copyright, trade secret or validly issued patent right of a third party (that is not affiliated with You), including reasonable attorneys' fees. You shall promptly notify DDN of such action and give DDN authority, information, and assistance (at DDN's expense) for the defense of such suit or proceeding and DDN shall have sole control of the defense or settlement of any claim or suit. DDN shall have no liability or obligation hereunder for any infringement based on, arising out of, or resulting from (a) the combination or use of the Software or DDN Services with other programs, components or products to the extent arising from the combination or use, if the infringement would not have occurred but for the combination; (b) any modification of the Software or DDN Services by anyone other than DDN or an authorized party acting on DDN's behalf, (c) the use of other than the most recent version of the Software or DDN Services if the infringement or claim would have been avoided by use of the most recent version; or (d) use of the Software or DDN Services in any way not contemplated under this EULA. Notwithstanding the foregoing, if any Software or DDN Services becomes, or in DDN's opinion is likely to become, the subject of a claim of infringement, DDN will, at its option: (i) procure for You the right to continue using the Software or DDN Services; (ii) replace the Software or DDN Services with a non-infringing product substantially complying with the specifications of the Software or DDN Services; or (iii) modify the Software or DDN Services so it becomes non-infringing and performs in a substantially similar manner to the original Software or DDN Services. Upon failure of the foregoing, at DDN's option, DDN may require You to cease any infringing use of the Software or DDN Services and DDN or its agents will refund the fees paid DDN for the infringing product, less a reasonable allowance for use. YOUR SOLE AND EXCLUSIVE REMEDIES AND DDN'S SOLE AND EXCLUSIVE LIABILITIES FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS ARE SET FORTH IN THIS SECTION.

8. USE OF YOUR INFORMATION/ACTIVATION OF CALL HOME FEATURE.

8.1 Use of Your Information. With respect to any information You provide to DDN in connection with the Software or the Documentation, DDN may use such information for any purpose without restriction, including, without limitation, for enhanced communication, license compliance, product support and development purposes, provided that DDN will not use such information without Your consent or as otherwise in a form that identifies You. DDN prioritizes the confidentiality of Your information by securely storing data; for further details please refer to DDN's most current privacy policy found on the Site the DDN Privacy Policy at the Site.

8.2 Activation of Call Home Feature. During the term of this EULA, You may elect to activate the Call Home feature in DDN's health monitoring software. This feature allows DDN to receive automated system log and configuration data, facilitating remote monitoring and diagnostics to enable DDN to respond to error communications more quickly and efficiently. For more information and instructions on how to activate the Call Home feature, please refer to the Installation and Administration Guide located on the DDN Customer Support Portal at <https://support.ddn.io/>.

9. TERMINATION

9.1 Termination. (a) DDN may terminate use of the Software or Services immediately and without notice if You fail to comply with any term of this EULA. DDN has the option in its sole discretion to terminate individual instances (or permit the Services to terminate) when used in excess of Your actual license or usage rights, for non-payment, or otherwise when used in a manner not permitted by the Service Terms or this EULA. You may terminate this EULA immediately (except for any survival clauses) by ceasing use of the Services or returning the Software to DDN or by destroying the Software together with all copies, modifications, and merged portions thereof in any form, where



DDN must be notified of such destruction in a writing or cessation of use of the Services as certified by one of Your authorized executives. In case of such termination by You, You will still owe and be liable for any unpaid fees. Each party shall have the right to terminate this EULA as to any Trial Edition licenses or Community (DevOps) Edition licenses for any reason at any time. Either party shall have the right to terminate this EULA in the event the other party (i) terminates or suspends its business, (ii) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute, (iii) becomes insolvent or subject to direct control by a trustee, receiver, or similar authority, or (iv) has wound up or liquidated, voluntarily or otherwise.

(b) If the Software or Services (and the applicable Documentation) have been licensed or provided to You for a Trial Edition or other evaluation purposes, this EULA will only be effective until and will terminate at the end of the designated evaluation or Trial Edition period. If the Software or Services (and the applicable Documentation) have been licensed or provided to You for a limited term, each as specified in the applicable Quote, sales acknowledgement, invoice, or other writing, then this EULA will be effective only until the end of such term limited term. Software that is subject to any evaluation, limited term or Trial Edition license may contain code where most or all of the features of such Software may be disabled by DDN upon expiration of such Trial Edition or other evaluation period, limited term. Further, unless You have paid the applicable license fee for any additional licenses, You shall have no rights to use the Software or Services (and the corresponding Documentation) upon expiration or termination of the License Term or Subscription Term, as applicable.

9.2 Effect of Termination; Survival. In the event of termination, You must return all DDN hardware and Software or destroy all copies of the Software and/or cease use of the Services, as applicable, and notify DDN in writing and certify such destruction in writing as certified by one of Your authorized executives. The parties' rights and obligations which, by their sense and context are intended to survive the termination of this EULA will survive such termination, cancellation, or expiration, where such clauses include but are not limited to those rights and obligations of the parties set forth in Sections 1 (Definitions), 2.4, 3 (Fees), 3.3 (Compliance Audit), 4.2, 5 (Ownership; Confidentiality), 6.3, 9 (Termination), 10 (Limitations of Liability) and 11 (General).

10. LIMITATIONS OF LIABILITY

10.1 REGARDLESS OF WHETHER ANY REMEDY SET FORTH IN THIS EULA FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL DDN, ITS LICENSORS OR RESELLERS, OR THE THIRD PARTY VENDORS OR SERVICE PROVIDERS BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY LOST PROFITS, LOST REVENUE, LOST OR CORRUPTED DATA, INTERRUPTION OF BUSINESS, GOODWILL, ANTICIPATED SAVINGS, PROCUREMENT OF SUBSTITUTE GOODS AND/OR SERVICES OR OTHER SPECIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THIS EULA OR THE USE OR INABILITY TO USE THE SOFTWARE OR ANY DOCUMENTATION SUPPLIED THEREWITH, EVEN IF DDN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES AND WHETHER OR NOT SUCH LOSS OR DAMAGES ARE FORESEEABLE. IN NO EVENT WILL DDN'S TOTAL AGGREGATE LIABILITY BASED ON, ARISING OUT OF, OR RELATED TO THIS EULA OR THE SOFTWARE, SERVICES, OR DOCUMENTATION EXCEED THE GREATER OF THE FEES ACTUALLY RECEIVED BY DDN FROM YOU FOR THE SOFTWARE, SERVICES, OR DOCUMENTATION AT ISSUE OR TEN DOLLARS (\$10). THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT. THIS SECTION 10.1 DOES NOT LIMIT ANY LIABILITY FOR BODILY INJURY OF A PERSON, DEATH, OR PHYSICAL DAMAGE TO PROPERTY OR FOR FRAUDULENT MISREPRESENTATION, OR FOR A CLAIM WHICH CANNOT BE LIMITED AS A MATTER OF LAW (IN WHICH CASE SUCH CLAIM WILL BE LIMITED TO THE GREATEST EXTENT ALLOWED BY LAW). FURTHER, DDN IS NOT RESPONSIBLE FOR LOSSES, DAMAGES OR CLAIMS ATTRIBUTABLE TO ANY THIRD PARTY ACTS, OMISSIONS, NEGLIGENCE OR INTENTIONAL ACTS OF ANY KIND IN CONNECTION WITH YOUR USE OF THE SOFTWARE OR SERVICES.

10.2 Disclaimer of Tort Liability. The foregoing warranties and remedies are EXCLUSIVE, and You waive and release all other warranties, obligations, and liabilities of Us and all other remedies, claims, and rights that You



may have relating in any way to the Software or Services covered by this EULA, whether arising from contract, warranty, strict liability or tort or from DDN's negligence, tort, or other fault, including claims for loss of or damage to the Software or Services.

10.3 **Basis of Bargain.** The warranty disclaimer and limitation of liability set forth above are fundamental elements of the basis of this EULA. DDN would not be able to provide the Software or Services on an economic basis without such limitations. The warranty disclaimer and limitation of liability inure to the benefit of DDN's distributors, resellers and suppliers, including Third Party Vendors and Third Party Service Providers.

11. GENERAL

Entire Agreement; Waiver; Severability. This EULA constitutes the entire and only agreement between the parties and all other prior negotiations, representations, agreements, and understandings are superseded by this EULA. No failure of DDN to exercise or enforce any of its rights under this EULA will act as a waiver of those rights. This EULA may only be modified or any rights under it waived by a written document executed by the party against which it is asserted. If any provision of this EULA is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this EULA will not be affected.

11.2 **Software Copyright Information and Notices.** Software copyright information and other related Open Source License details are included as part of notices in the Documentation or other documentation published by DDN (e.g., NOTICES.TXT or NOTICES.PDF)

11.3 **Data Privacy.** You have sole responsibility for personal data managed or stored using the Services and agree to comply with all applicable data privacy laws. DDN assumes no responsibility or liability for any personal data (including third party personal data) that You choose to manage and/or store using the Services except where DDN is the Service Provider, where DDN will comply with applicable law. Responsibility for the personal data lies with You. It is Your data and Your responsibility to protect and manage the data and obtain required consents in accordance with applicable data privacy laws. Unless DDN is the Service Provider (in which case the DDN Service Terms will apply), DDN does not request nor need access to any of Your personal data. Further, data may be stored with Third Party Service Providers for which different terms may govern the management of and access to the data. Selection of the Services is Your responsibility, and You should carefully consider the risks when using the Services. Unless DDN is the Service Provider (in which case the DDN Service Terms will apply), DDN is not and will not be responsible for any data loss or errors, omissions, or violations of applicable privacy laws or regulations by a third party or its suppliers (including any Third Party Service Providers). If applicable, DDN's most current privacy policy is found on the Site.

11.4 **United States Government End Users.** For any Software or Services licensed directly or indirectly on behalf of a unit or agency of the United States Government, this paragraph applies. DDN's proprietary software embodied in the Software or Services (if applicable): (a) was developed at private expense and is in all respects DDN's proprietary information; (b) was not developed with government funds; (c) is DDN's trade secret for all purposes of the Freedom of Information Act; (d) is a commercial item and thus, pursuant to Section 12.212 of the Federal Acquisition Regulations (FAR) and DFAR Supplement Section 227.7202, Government's use, duplication or disclosure of such software is subject to the restrictions set forth by DDN.

11.5 **Attorneys' Fees.** In the event of any arbitration or legal proceeding arising out of or relating to this EULA, the arbitrator or court in such proceeding shall have discretion to award the prevailing party's reasonable and actually incurred attorneys' fees and costs in such action or proceeding, including the costs of enforcement of any judgment.



11.6 Publicity. During the term of this EULA, You agree that DDN shall have the revocable right, but not the obligation, to include Your name and logo as a customer of DDN on DDN's website and in other marketing materials promoting DDN's products. In addition, You agree to reasonably participate in at least one of the following marketing activities: a recorded interview and/or written case study, a public quote, a public presentation (e.g., webinar or live event), a conversation with an industry analyst, or serving as a reference in a peer-to-peer call. DDN will coordinate all such activities in good faith and with reasonable notice, and Your approval will be obtained for any public-facing materials. You may revoke the rights granted herein at any time by providing written notice to DDN at marketing@ddn.com, and DDN shall promptly cease any further use of Your name, logo, or materials upon receipt of such notice. All use of Your logo shall remain subject to any trademark usage guidelines provided in writing to DDN by You.

11.7 Compliance with Laws; Export Control and Software and Services Usage Restrictions. (a) You agree to comply with all applicable federal, state and local laws with respect to your use of the Software or Services. You acknowledge and agree that the Software, Services, technical data and/or services ("**Items**"), are subject to U.S. and other export controls, import, customs, U.S. antiboycott and economic sanctions laws ("**Export Control Laws**"). You will comply with all applicable Export Control Laws and not provide any Items to anyone in a country or other destination that is subject to a United States Government export embargo (an "**Embargoed Destination**"), to a representative of an Embargoed Destination, or to persons or for purposes prohibited under the Export Control Laws. Prohibited end uses include: research on or development of chemical, biological or nuclear weapons, unmanned air vehicles or missiles, or nuclear explosive or fuel cycle activities. In addition to any other remedy it may have, DDN may terminate this EULA immediately and without notice or liability, and cancel the download, activation and/or provision of any maintenance or other customer service involving any Item if (i) DDN has not received all export- related documentation requested by DDN or (ii) DDN believes that such activity may violate any Export Control Laws or DDN's own compliance policies. If You access the Site, or purchase, download, or activate Items from the Website, You represent that You are not in any Embargoed Destination and that You are not a person or entity (or owned by one or more entities) that has/have been sanctioned or otherwise listed by the United States on a prohibited persons list issued by the U.S. Departments of the Treasury, Commerce or State or any other governmental entity. You shall indemnify DDN for all losses, costs, claims, damages and expenses (including attorneys' fees and expenses) arising from Your violation or alleged violation of any applicable international, federal, state or local law, including without limitation, any Export Control Law.

(b) You shall not permit any person other than Your employees and authorized agents to possess or use the Software, Services, or Documentation (unless otherwise specifically permitted under this EULA) and You shall cause all such employees and authorized agents to abide by all terms and conditions imposed upon You in this EULA. You may not exceed the number of licenses, agents, tiers, nodes, seats, or other Use restrictions or authorizations agreed to and paid for by You. All Software and Services are solely for use in standard commercial applications and are not intended for use in any critical safety system, nuclear facility, aircraft navigation or communication system, air traffic control system, life support machine, or in any other application in which the failure of the Software or Services could lead to death, personal injury, or real or personal property damage (collectively, "**High-Risk Applications**"). DDN disclaims all liability in connection with the use of the Software or Services in any High-Risk Application. You warrant that You will not use, or knowingly permit any use of, any Software or Services in any High-Risk Application. You agree to indemnify, defend, and hold DDN harmless against any claim, action, loss, liability, or damage of any kind that DDN incurs in connection with Your breach of this warranty.

11.8 Disputes. This EULA shall be governed, construed and enforced in accordance with the laws of the United States of America and of the State of California, excluding that body of laws known as conflict of laws. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. All disputes arising out of or relating to this EULA will be exclusively resolved in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "**AAA Rules**") under confidential



binding arbitration held in Santa Clara County, California. To the fullest extent permitted by applicable law, no arbitration under this EULA will be joined to an arbitration involving any other party subject to this EULA, whether through class arbitration proceedings or otherwise. Any litigation relating to this EULA shall be subject to the jurisdiction of the Federal Courts of the Northern District of California and the state courts of the State of California, with venue lying in Santa Clara County, California. The cost and expense of arbitration will initially be shared equally by the parties to the arbitration, subject to an award to the prevailing party pursuant to Section 11.5. The decision or award of the arbitrator will be final and binding upon the parties, and to the same extent and to the same degree as if the matter had been adjudicated by a court of competent jurisdiction and will be enforceable under the Federal Arbitration Act. If required by DDN's agreement with a third party licensor or a Third Party Vendor, DDN's licensor or Third Party Vendor or Third Party Service Provider shall be a direct and intended third party beneficiary of this EULA and may enforce it directly against You, along with any additional applicable terms and conditions (including but not limited to the Service Terms, which may be enforced by the Service Provider against You).

11.9 Assignment. You shall not assign or otherwise transfer the Software or use of the Services (except as specifically set forth in this EULA), or this EULA, or any rights, liabilities, obligations or duties under this EULA, to anyone (including any parent, subsidiaries, affiliated entities or third parties) without DDN's prior written consent, which consent shall not be unreasonably withheld. For purposes of this Section 11.9, if You are not a publicly traded entity, a change in the persons or entities that control fifty percent (50%) or more of Your equity securities or voting interest shall be considered an assignment. DDN shall have the right to assign this EULA or delegate its duties under this EULA.

11.10 English Language. This EULA has been prepared in the English language and the English language shall control its interpretation.

11.11 Limitation on Actions. Any cause of action by You against DDN with respect to this EULA must be commenced within one (1) year after the discovery thereof or it shall be barred, unless otherwise prohibited by law.

11.12 Force Majeure. Except for the parties' obligations to make payments, neither party shall be responsible for delay or failure in performance caused by or related to causes beyond its reasonable control, including but not limited to any government act, law, regulation, order or decree; by communication line or power failures beyond its control, or by fire, flood or other natural disasters or by wars, riots, pandemics, etc. Further, any such delay or failure due to a force majeure event will not be a breach of this EULA.

If You have any questions about this EULA or the Software or Services, or if You want to contact DDN for any reason, please email support@ddn.com.

Last updated: July 18, 2025

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