

End User License Agreement (Infinia)

This End User Software License Agreement (this “EULA”) is a legal agreement between you as the end user, or you as the individual or entity that has agreed to pay for the rights granted in this EULA (“Licensee” or “You”), and DataDirect Networks, Inc., a California corporation (“DDN”). This EULA governs Licensee’s possession and use of the Software and the Documentation (each as defined below).

BY DOWNLOADING AND INSTALLING, COPYING OR OTHERWISE USING THE PRODUCT, BY CHECKING AND/OR CLICKING “I ACCEPT” OR A SIMILAR BOX OR BUTTON ASSOCIATED WITH THIS EULA AT THE BEGINNING OF THE SOFTWARE DOWNLOAD, INSTALLATION, OR ACTIVATION PROCESS, BY INSTALLING ANY OF THE SOFTWARE, BY ACTIVATING ANY OF THE SOFTWARE WITH ANY ASSOCIATED LICENSE KEY, OR BY USING ANY OF THE SOFTWARE, LICENSEE AGREES TO ALL OF THE TERMS AND CONDITIONS IN THIS EULA. IF LICENSEE DOES NOT AGREE TO ALL OF THE TERMS AND CONDITIONS IN THIS EULA, LICENSEE MUST NOT INSTALL, ACTIVATE, OR USE ANY OF THE SOFTWARE, AND LICENSEE MUST NOT CHECK AND/OR CLICK “I ACCEPT” OR ANY SIMILAR BOX OR BUTTON ASSOCIATED WITH THIS EULA DURING THE SOFTWARE DOWNLOAD, INSTALL, OR PROCEED WITH ACTIVATION. IF LICENSEE DOES NOT AGREE TO ALL OF THE TERMS AND CONDITIONS IN THIS EULA, LICENSEE MAY RETURN THE UNUSED SOFTWARE FOR A FULL REFUND, PROVIDED THAT LICENSEE’S RIGHT TO RETURN THE UNUSED SOFTWARE FOR A FULL REFUND EXPIRES THIRTY (30) DAYS AFTER THE PURCHASE OF THE SOFTWARE FROM DDN OR A DDN-AUTHORIZED RESELLER OR DISTRIBUTOR, AND APPLIES ONLY IF LICENSEE IS THE ORIGINAL END USER PURCHASER.

1. DEFINITIONS

“**Cloud Services Platform**” means the cloud services and platform provided by a third party provider (the “Cloud Services Provider”), where the Cloud Services Provider is authorized by DDN to offer Software Subscriptions.

“**Cloud Services Platform Terms**” means the most current terms of use or service agreement required by the Cloud Services Provider for use of the Cloud Services Platform.

“**Community (DevOps) Edition**” means a limited functionality perpetual version of the Product, if any, designated as such and which is made available without charge by DDN.

“**DDN**” means DataDirect Networks, Inc., and its affiliated companies.

“**Documentation**” means the generally available documentation provided with the Product and the specific terms of Your Quote, as applicable.

“**Enterprise Edition**” means a perpetual version of the Product designated as such and which is made available by DDN for the applicable fees with the specific functionality You have licensed.

“**EULA**” means this DDN End User License Agreement and an applicable Quote, if any. In the event of a conflict between the terms of this EULA and an applicable Quote, the latter shall control and govern, but only to the extent of the specific conflict(s).

“**License Key**” means a document (in physical or electronic format) provided by DDN or its authorized third party vendors that identifies: (i) the Product, including edition, licensed to You; (ii) the machine signature of the computer on which use of the Product is enabled; (iii) the codes that initialize use of such computer; and, (iv) the License Term, if applicable.

“License Term” means the period during which the Product may be used by You, commencing on the date of issuance of Your License Key and subject to Your compliance with the terms and conditions of this EULA continuing (a) in the case of the Enterprise Edition and the Community (DevOps) Edition licenses, in perpetuity, and (b) in the case of the Trial Edition licenses, for the period specified by DDN when You register the Product or acquire Your License Key.

“Product” means the applicable DDN software product that You are licensing and includes all associated applications, plug-ins and adapters that are provided and enabled, and any bug fixes, patches and maintenance releases provided by DDN. The Product specifically excludes (a) any features that are not enabled by the License Key corresponding to the edition You have licensed, (b) any Third Party Software, and (c) any other current or future editions or any separately priced DDN products containing substantially new functionality and features that may be developed or offered from time to time.

“Quote” shall mean a quote issued by DDN and accepted by You by execution or by issuance of a purchase order referencing such quote.

“Site” means the DDN website: <http://www.ddn.com>

“Software Subscription” or **“Subscription”** means a period of time in which You are entitled (subject to any required fee payments and Your compliance with this EULA) to use, access, and install the specified Product and Documentation up to the maximum quantities, capacities or other limitations you have licensed and only in connection with enabling your use of the Cloud Services Platform (whether You consume or use the full Subscription) and not for distribution or use separate from the Cloud Services Platform.

“Storage Space” means the total amount of disk storage that is managed by the Product but excluding disk storage occupied by the Product’s operating system or as otherwise determined by DDN.

“Third Party Software” means any separate third-party software, including but not limited to any third-party open-source software, which may be distributed or bundled with the Product.

“Third Party Vendor” means a DDN authorized reseller.

“Trial Edition” means a time-limited version of the Product designated as such and which is made available without charge by DDN with the specific functionality You have licensed.

“You” means the natural person or the entity that is agreeing to be bound by this EULA, and your employees and third party contractors that provide services to You that You shall cause to be bound by this EULA prior to use of the Product. You represent and warrant that the individual entering into or otherwise accepting this EULA on behalf of You is Your employee or agent and has authority to enter into this EULA on behalf of You.

2. TERMS AND CONDITIONS

2.1 Specific License Terms and Conditions for Enterprise Edition, Community (DevOps) Edition and Trial Edition. With respect to Enterprise Edition, Community (DevOps) Edition and Trial Edition licenses, DDN grants You a non-exclusive, non-sublicensable, non-transferable, perpetual (except as to Trial Edition licenses), revocable (in the event of a breach by You) world-wide license for a user designated by You to use the Product (in object code format) during the License Term, subject to the terms and conditions of this EULA and in accordance with the Documentation. Subject to any further limitations set forth in this EULA and the Documentation, You may install, use or deploy the Products up to the maximum quantities, capacities or other limitations as You have licensed and for which You have paid the applicable fees. The Products may not

otherwise be shared or used concurrently on different computers, except in compliance with the foregoing. The Enterprise Edition, Community (DevOps) Edition and Trial Edition licenses must be activated with a License Key that can be obtained by registering the Product with DDN.

If You have acquired a Community (DevOps) Edition license, the total amount of Storage Space is limited as specified on the Site and is subject to change without notice. The Community (DevOps) Edition may ONLY be used for educational, academic, and other non-commercial purposes expressly excluding any commercial usage. The Trial Edition licenses may ONLY be used for the sole purposes of evaluating the suitability of the Product for licensing of the Enterprise Edition for a fee. If You have obtained the Product under discounted educational pricing, You are only permitted to use the Product for educational and academic purposes only and such license expressly excludes any commercial purposes. You cannot use a Community (DevOps) Edition license or a Trial Edition license for any production purposes.

2.2 Specific License Terms and Conditions for Software Subscriptions. Subject to the terms of this EULA, payment of all fees and Your compliance with the Cloud Services Platform Terms, DDN grants You a personal, non-exclusive, worldwide, limited, non-transferable and terminable right to access, execute, and use the Subscriptions (including downloading and installing certain Product updates and components to Your device to enable the Subscriptions) for Your internal business purposes or otherwise only as strictly permitted below. A separate, fully paid license is required for each instance in use either separately or concurrently when using the Subscription.

Use of the Subscription or any of its components outside of the scope of this EULA constitutes a material breach and You agree to promptly pay to DDN any additional use fees when notified by DDN or by the Cloud Services Provider for any additional Cloud Services Platform fees, as applicable. DDN has no obligation to deliver Product to You but may provide Product and updates to enable the Software Subscription or otherwise provide Support.

If You are using the Subscription to provide a service to Your customers, You must comply fully at all times with the following requirements: (i) You and Your customers and affiliates and subsidiaries must comply with this EULA and the associated Cloud Services Platform Terms and You shall fully indemnify DDN, its licensors, and Third Party Vendors for a breach; (ii) You must require any user of Your service (including Your subsidiaries and affiliates) to agree to terms that limit both DDN's and its suppliers' (including but not limited to the Cloud Services Providers and Third Party Vendors) liability in a manner substantially similar to and no less protective than this EULA; (iii) You must obtain all legally required consents regarding the storage, use, transfer, or handling of any third party data; (iv) You must use the Subscription in a manner that complies with any and all laws and regulations, including but not limited to data protection regulations; (v) You must indemnify, defend, and hold harmless DDN, each of its affiliates (as well as the officers, directors, and employees of each DDN entity) and DDN agents from and against any claim, fine, loss, or action arising from Your breach of this EULA or the breach of any Cloud Services Platform Terms and You must either require Your subsidiaries and affiliates to do the same or provide indemnity on their behalf; (vi) You must provide support to Your customers without obligating DDN or the Cloud Services Provider to provide any support; and (vii) You must permit audit(s) by DDN or its suppliers or licensors to confirm Your compliance with this EULA or the Cloud Services Platform Terms.

2.3 General Terms and Conditions for All Licenses (Including Subscriptions).

2.3.1 The Product is licensed, not sold. Except as expressly licensed under this EULA, all rights are reserved by DDN.

2.3.2 The Product is licensed, not sold. Except as expressly licensed under this EULA, all rights are reserved by DDN. You may license the Product either through DDN or a Third Party Vendor. You may license the Product via a Subscription through the Cloud Services Platform only. When You license the Product, then the applicable terms and conditions of this EULA, along with the terms and conditions provided by such Third Party Vendor or the Cloud Services Platform Terms (if applicable), will govern such purchase. To the extent that such Third Party Vendor or the Cloud Services Platform Terms conflict with the terms of this EULA, then as between You and DDN, this EULA will control, but only to the extent of the specific conflict(s).

- 2.3.3 Unless You have the express written authorization of DDN, You represent, warrant, and covenant that You will NOT (a) copy, sell, sublicense, or otherwise transfer the Product to any third party; (b) remove any titles, trademarks or trade names, copyright notices, legends, or other proprietary markings on or in the Product; (c) except to the extent expressly permitted by applicable law, and to the extent that DDN is not permitted by that applicable law to exclude or limit the following rights, You will not decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Product, in whole or in part; (d) disable, circumvent or de-install any computer system license management routines, access codes or control programs, or (e) modify or create derivative works of the Product. You agree that upon a breach of the covenants above, DDN shall have the right, without notice, liability, or demand to disable the Product or otherwise limit its functionality in addition to seeking any other remedies to which it may be entitled.
- 2.3.4 DDN may update, modify or discontinue offering the Product (except to the extent such obligation is set forth in a valid and existing Subscription), discontinue offering support and maintenance for the Product (except to the extent such obligation is set forth in a valid and existing support agreement or Subscription) or revise the Documentation at any time without prior notice to You. If DDN delivers a revision of the Product, You agree and acknowledge that DDN shall have no responsibility for testing that the Product is compatible with previously delivered versions of the Product, other than to one (1) prior minor version, if any (designated as e.g., version 2.0 to 2.1). All prices mentioned on the DDN Site are subject to change without notice.
- 2.3.5 Product Descriptions; Pricing; Errors. DDN attempts to be as accurate as possible and eliminate errors in the Product and Documentation. However, DDN does not warrant that the Product and the Documentation is accurate, complete, reliable, stable, defect free, current, or error-free. In the event of an error, DDN reserves the right to correct such error at any time.

2.3.6 Third Party Software.

(a) The Third Party Software is separately licensed and governed exclusively by the applicable license agreement accompanying, included or referenced with such software packages ("**Third Party Terms**"). You agree to comply with the Third Party Terms. Open source Third Party Software may be distributed and contained within the Product, where such independent code is licensed under an open-source license ("**Open-Source Licenses**"). This EULA does not alter any rights or obligations You may have under those Open Source Licenses or the Third Party Terms. Until the earlier of (i) three (3) years from the date of Your purchase of the Product, or (ii) expiration or termination of the applicable license Term, DDN will, at Your written request, provide a copy of the code, if and as required by the applicable license. You may request a list of the components and licenses at support@ddn.com.

(b) DDN DISCLAIMS ANY AND ALL WARRANTIES EXPRESS OR IMPLIED FROM ANY THIRD PARTIES REGARDING ANY THIRD PARTY SOFTWARE, AND THE USE OF ANY OR ALL THIRD PARTY SOFTWARE IN CONNECTION WITH THE PRODUCT, INCLUDING (WITHOUT LIMITATION) ANY WARRANTIES OF SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. NO THIRD PARTY LICENSORS OF THIRD PARTY SOFTWARE SHALL HAVE ANY LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS), HOWEVER CAUSED AND WHETHER MADE UNDER CONTRACT, TORT OR OTHER LEGAL THEORY, ARISING IN ANY WAY OUT OF THE USE OR DISTRIBUTION OF ANY THIRD PARTY SOFTWARE OR THE EXERCISE OF ANY RIGHTS GRANTED UNDER EITHER OR BOTH THIS EULA AND THE LEGAL TERMS APPLICABLE TO ANY THIRD PARTY SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

3. Fees

- 3.1 **Payment of Fees.** In consideration for the license granted by DDN under this EULA, You shall pay DDN the fees as set forth in the applicable Quote or otherwise quoted to You in writing. All amounts due by You to DDN and not paid within thirty (30) days of the due date shall bear interest at the lower of the rate of one and one-half percent (1½ %) per month or the highest rate allowed by law, from the date due until the date payment is received by DDN.
- 3.2 **Taxes.** In addition to the other amounts payable under this EULA, You shall pay all sales, use, excise, value added or other taxes, federal, state or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this EULA (excepting DDN's corporate franchise and net income taxes) ("Tax"). If DDN is required to pay any Tax, You must reimburse DDN for such amounts. You agree to indemnify DDN for any Tax and related costs, interests, and penalties paid or payable by DDN for Your use of the Product or Subscription.
- 3.3 **Compliance Audit.** You agree to implement reasonable controls to ensure compliance with the intended use of the Product authorized by this EULA. DDN reserves the right to have a compliance audit performed, no more often than once every 12 months, of Your deployment and use of the Product at any time during Your normal business hours at Your principal place of business, upon no less than five (5) business days written notice and at DDN's expense, by inspecting records, information and systems that are directly relevant to such compliance or verification. If the audit discloses material non-compliance, You shall promptly pay to DDN any additional use fees identified by DDN, calculated in accordance with DDN's price list, and the reasonable costs of conducting such audit, if any. The audit and any results thereof or information learned shall be maintained as confidential information.
- 3.4 **Data Capture.** You acknowledge and agree that DDN shall have access (remotely or otherwise) to the Product and the right to capture data relating to Your use of the Product for the purpose of (i) performing diagnostics of the Product in response to a request of You for support service or a believed issue by DDN, (ii) monitoring Your usage of the Product to ensure that the number of licenses and procedures are equal to the authorized number of the same, and (iii) to otherwise capture, compile or analyze any non-personally identifiable data or information resulting from Your use of the Products in the form and content as may be determined by DDN from time to time. Such data or information collected by DDN shall be solely owned by DDN and may be used by DDN for any lawful business purpose.

4. MAINTENANCE AND SUPPORT

- 4.1 You shall be entitled to receive the support and maintenance for the use of the Product and the Third Party Software (collectively, "**Support**") during the applicable support period to the extent set forth on the Site and at the support level for which You have paid a separate additional fee. No Support is provided for Trial Edition and Community (DevOps) Edition licenses.
- 4.2 You acknowledge that DDN has no obligation to (i) continue offering Support after expiration of the applicable support period, (ii) provide updates for other than the current release of the Product, (iii) issue updates, upgrades or bug fixes at any time or on any regular schedule and DDN shall develop and issue updates, upgrades or bug fixes in its sole and absolute discretion, (iv) provide any support or maintenance unless You have provided complete and accurate documentation of the issue and DDN is able to replicate the issue, or (v) provide any Support with respect to any hardware issues, including, without limitation, resulting from use of any hardware that does not meet DDN minimum specifications.

4.3 No Support of Modifications. Any modifications of the Product and any Third Party Software will not be supported by DDN unless indicated otherwise by expressed written authorization. DDN will not be liable for any modifications to the Product, or any Third Party Software included with the Product, or any errors or damages resulting from such modifications. DDN DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE USE OF THE THIRD PARTY SOFTWARE.

4.4 Any administration or reconfiguration of the Product shall be in accordance with the Documentation.

5. OWNERSHIP; CONFIDENTIALITY

5.1 DDN and its licensors retain all right, title, and interest in and to the Product, Documentation and License Keys and in all related copyrights, trade secrets, patents, trademarks, and any other intellectual and industrial property and proprietary rights, including registrations, applications, renewals, and extensions of such rights. Except for the limited license expressly granted in this EULA, You do not have rights to any intellectual property rights in or to the Product.

5.2 Any suggested modifications or improvements to the Product submitted to DDN by You become DDN's exclusive property to exploit or use as DDN solely deems appropriate without necessity for remuneration or attribution to You

5.3 (a) You acknowledge that the Product, License Keys, and any benchmarking data and related information contains trade secrets and confidential material and You agree to maintain all such information in confidence and apply security measures no less stringent than the measures which You apply to protect Your own confidential information, but not less than a reasonable degree of care, to prevent their unauthorized disclosure and use.

(b) Subject to any restrictions imposed by applicable law, the period of confidentiality shall be indefinite. You agree that You shall not use any such information other than in normal use of the Product under the licenses granted in this EULA.

(c) This EULA does not prevent You from using the Product for internal benchmarking purposes. However, You shall treat any and all benchmarking data relating to the Product, and any other results of Your use or testing of the Product which are indicative of its performance, efficacy, reliability or quality, as confidential information and You shall not disclose such confidential information to any third party without the express written permission of DDN.

6. LIMITED WARRANTY

6.1 (a) Except as to any Trial Edition and Community (DevOps) Edition licenses, DDN warrants to You that, for a period of thirty (30) days after Your initial installation of the Product or initial commencement of Your Subscription period, the unmodified portions of the Product shall conform substantially to the then current Documentation.

(b) AS TO ANY DEFECTS DISCOVERED AFTER THE THIRTY-DAY PERIOD, THERE IS NO WARRANTY OR CONDITION OF ANY KIND. DDN DOES NOT PROVIDE ANY WARRANTY OR GUARANTEE OF ANY KIND FOR TRIAL EDITION AND COMMUNITY (DEVOPS) LICENSES

(c) Any updates to the Product, including without limitation, those provided after the expiration of such 30- day period are not covered by any warranty or condition, express, implied or statutory. To the extent that the Product is derived from Third Party Software or licensed from third parties, such third party does not warrant the Product, assume any liability regarding use of the Product, or undertake to furnish You any support or information relating to the Product. You shall be solely responsible for the choice of proper hardware and all hardware maintenance, including periodic inspections, adjustments, and repair to the hardware.

- 6.2 Exclusive Remedy for Breach. If the Product fails to conform to the warranty in Section 6.1, You must notify DDN within a reasonable time and in no event more than fifteen (15) days after the discovery of the nonconformity. DDN will investigate and, in the event of a breach of warranty, will provide within a reasonable time and at DDN's option, and in its sole discretion, one of the following:
- (a) use commercially reasonable efforts to correct any reproducible error in the Product constituting a breach of the warranty at no additional charge, or (b) replacement of any nonconforming Product with conforming Product. THE REMEDY SELECTED BY DDN IN ACCORDANCE WITH THIS PARAGRAPH SHALL BE YOUR EXCLUSIVE AND SOLE REMEDY FOR ANY BREACH OF WARRANTY.
- 6.3 NO OTHER WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.1, DDN DOES NOT WARRANT THAT YOUR USE OF THE PRODUCT WILL BE FREE OF DEFECT, STABLE, ERROR-FREE OR UNINTERRUPTED AND THE PRODUCT IS PROVIDED TO YOU ON AN "AS IS" OR "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY AND WHETHER ARISING OUT OF A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. YOU ASSUME ALL RISKS, INCLUDING BUT NOT LIMITED TO DATA LOSS OR DATA BREACH, ASSOCIATED WITH USE OF THE SUBSCRIPTION TOGETHER WITH THE CLOUD SERVICES PLATFORM AND ANY ASSOCIATED SERVICES OR PRODUCTS,. DDN MAKES NO WARRANTY THAT THE SOFTWARE SUBSCRIPTION (INCLUDING SUBSCRIPTIONS THAT ARE DEPENDENT ON THE CLOUD SERVICES PLATFORM OR ANY PRODUCTS) WILL BE UNINTERRUPTED, TIMELY OR ERROR FREE. DDN EXPRESSLY DISCLAIMS, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, NON-INFRINGEMENT, TITLE AND FITNESS FOR A PARTICULAR PURPOSE OR USE.

7. INDEMNIFICATION

- 7.1 You agree to defend DDN and its directors, shareholders, officers, employees, licensors, affiliates, subsidiaries, and Third Party Vendors 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 or related to: (1) any indemnification agreed to in other sections of this EULA, including Sections 2.2, 3.2, and 10.7; a violation or breach of the Cloud Services Platform Terms; or any of Your content or data stored, accessed, or otherwise used in conjunction with the Product or Software Subscription. 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 9.1, and except as to any Trial Edition and Community (DevOps) Edition licenses, 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 Product infringes a US, 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 or resulting from (a) the combination or use of the Product 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 Product by anyone other than DDN or a party acting on its behalf, (c) the use of other than the most recent version of the Product if the infringement or claim would have been avoided by use of the most recent version;

or (d) use of the Product in any way not contemplated under this EULA. Notwithstanding the foregoing, if any Product becomes, or in DDN's opinion is likely to become, the subject of a claim of infringement, DDN will, at its option: (1) procure for You the right to continue using the Product; (2) replace the Product with a non-infringing product substantially complying with the Product's specifications; or (3) modify the Product so it becomes non-infringing and performs in a substantially similar manner to the original Product. Upon failure of the foregoing, at DDN's option, it may require You to cease any infringing use of the Product and Licensor or its agents will refund the fees paid Licensor 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. TERMINATION

- 8.1 Termination. DDN may terminate use of the Products or access to the Software Subscriptions 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 (or permit the Cloud Services Platform to terminate) individual instances when used in excess of your actual license rights, for non-payment, or otherwise when used in a manner not permitted by the Cloud Services Platform Terms or this EULA. You may terminate this EULA immediately (except for any survival clauses) by destroying the Product together with all copies, modifications, and merged portions thereof in any form, where DDN must be notified of such destruction in a writing 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.
- 8.2 Effect of Termination; Survival. In the event of termination, You must destroy all copies of the Product and/or cease use of the Software Subscription, 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 nature, would continue beyond the termination of this EULA, including but not limited to those rights and obligations of the parties set forth in Sections 1 (Definitions), 2.3, 3 (Fees), 4.2, 5 (Ownership; Confidentiality), 6.3, 8 (Termination), 9 (Limitations of Liability) and 10 (General) will survive such termination, cancellation, or expiration.

9. LIMITATIONS OF LIABILITY

- 9.1 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 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 PRODUCT 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 AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS EULA OR THE PRODUCT EXCEED THE GREATER OF THE FEES ACTUALLY RECEIVED BY DDN FROM YOU FOR THE PRODUCT AT ISSUE OR TEN DOLLARS (\$10). THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT. THIS SECTION 9.1 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 PRODUCT.

- 9.2 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 Product 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 Product.
- 9.3 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 Product 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.

10. GENERAL

- 10.1. Entire Agreement; Waiver; Severability. This EULA constitutes the entire and only agreement between the parties for the Product 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.
- 10.2. Entire Agreement; Waiver; Severability. This EULA constitutes the entire and only agreement between the parties for the Product 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.
- 10.3. Data Privacy. You have sole responsibility for personal data managed or stored using the Software Subscription 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 Subscription. Sole responsibility for the personal data lies with You. It is Your data and Your responsibility to protect and manage the data in accordance with applicable data privacy laws. DDN does not request nor need access to any of Your personal data. Further, data may be stored with the Cloud Services Platform for which different terms may govern the management of and access to the data. Selection of the Cloud Services Platform is Your responsibility, and You should carefully consider the risks when using the Cloud Services Platform. DDN is not and will not be responsible for any data loss or errors, omissions, or violations of applicable privacy laws or regulations by the Cloud Services Platform or its suppliers (including the Cloud Services Providers). DDN's most current privacy policy is found on the Site.
- 10.4. United States Government End Users. For any Product 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 Product: (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.

- 10.5. 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.
- 10.6. Publicity. Upon receipt of Your written approval, You grant DDN the right to use Your name and logo and to otherwise refer to You as a customer in promotional material (including, but not limited to, on the Site and in case studies, advertising, press and similar public disclosures in any medium or format) relating to DDN and the Product. You, in Your sole discretion, can revoke this right by submitting a written request via email to marketing@ddn.com to request to be excluded from certain or all such promotional materials (which shall be effective within 30 days) and DDN shall make no further reference to You.
- 10.7. Compliance with Laws; Export Control Restrictions. You agree to comply with all applicable federal, state and local laws with respect to your use of the Products or Software Subscription. You acknowledge and agree that the Products, Software Subscriptions, 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: the 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 (a) DDN has not received all export- related documentation requested by DDN or (b) 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. 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 federal, state or local law, including without limitation, any Export Control Law.
- 10.8. 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 10.5. 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 shall be a direct and intended third party beneficiary of this EULA and may enforce it directly against You, along with any additional applicable license terms (including but not limited to the Cloud Services Platform Terms, which may be enforced by the Cloud Services Provider against You).

- 10.9. Assignment. You shall not assign or otherwise transfer the Product, the Software Subscription or this EULA, or any rights 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 10.9, if You are not a publicly traded DDN, a change in the persons or entities
- 10.10. English Language. This EULA has been prepared in the English Language and the English language shall control its interpretation.
- 10.11. 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.
- 10.12. 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 considered to be a breach of this EULA.

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

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