



End User Software License Agreement

Last updated: June 1, 2019

IMPORTANT — PLEASE READ CAREFULLY

This End User Software License Agreement (this “EULA”) is a legal agreement between you, the individual or entity that has agreed to pay for the rights granted herein (“Licensee”), 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 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, INSTALLATION, OR ACTIVATION PROCESS. 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.** As used herein, the following terms shall have the following meanings:

1.1. “Documentation” means any and all end user documentation provided by DDN in connection with the Software, and all Updates thereto.

1.2. “Factory Installed Software” means Software that is installed by DDN on a DDN hardware product prior to delivery of that DDN hardware product to Licensee, and all Updates thereto. Factory Installed Software may include, without limitation, firmware, DirectOS, DirectMon, and certain third party file server programs.

1.3. “GPL Software” refers to certain open source software that DDN may provide to Licensee in connection with a DDN hardware products. GPL Software is provided by DDN to Licensee solely under the terms of (a) the GNU General Public License, Version 2, June 1991 (the “GPLv2”) and (b) the GNU General Public License, Version 3, June 2007 (the “GPLv3”), and other GPL Software licenses as may be cited in Documentation provided with the applicable Software, a copy of each of which can be obtained from the website of the relevant open source software. Consistent with the requirements of the applicable GPL Software license, DDN will provide a complete machine-readable copy of the source code for GPL Software for a charge of no more than DDN’s cost of physically performing such distribution, provided that such copy is requested within three (3) years following Licensee’s receipt of the corresponding GPL Software from DDN. This offer is valid to anyone in receipt of this information.

1.4. “Remote Software” means Software that is meant to be installed on Licensee’s own hardware and that is not installed by DDN or a DDN reseller on a DDN hardware product prior to delivery

of that DDN hardware product to Licensee, and all Updates thereto. Remote Software may include, without limitation, DDN's GUI program.

1.5. "Software" means all software and firmware that accompanies this EULA, all copies thereof, all media associated therewith, and all Updates thereto; provided that the term "Software" does not mean any software or other materials for which a separate end user license agreement is provided (including but not limited to the GPL Software).

1.6. "Updates" means any and all updates, upgrades, new releases, modifications, and/or supplements that may be provided by DDN from time to time, whether through an online download process or otherwise.

1.7. "Use" means to install, store, load, execute, and display one copy of the Software on one device at a time for Licensee's internal business purposes.

2. LICENSE GRANTS.

2.1. Software. Subject to all terms and conditions in this EULA, DDN hereby grants to Licensee a limited, revocable, non-exclusive, non-sublicenseable license to:

(a) Use Factory Installed Software, only in object code form, and only on the DDN hardware products that are purchased by Licensee and that contain such software when first delivered to Licensee, *provided that* Licensee may not Use Factory Installed Software in connection with any storage media (e.g., disk drives) or storage media enclosures that were not purchased from DDN, and *provided further that*

- (i) SFAOS firmware may only be used with the number of SFA System ports (if any) specified in the corresponding invoice;
- (ii) SFAOS firmware may only be used with the amount of disk storage (if any) specified in the corresponding invoice; and
- (iii) SFAOS feature licenses such as SFX and SED management may only be used if specified in the corresponding invoice

(b) Use Remote Software, only in object code form, and only on the number of Licensee computers for which Licensee has purchased a license (as specified in the corresponding invoice); and

(c) make one copy of the Software, only in object code form, and Use that copy only for backup and archival purposes.

2.2. Documentation. Subject to all terms and conditions in this EULA, DDN hereby grants to Licensee a limited, revocable, non-exclusive, non-sublicenseable license to copy and use the Documentation to the limited extent reasonably necessary to support Licensee's permissible Use of the Software.

3. OWNERSHIP. Licensee acknowledges and agrees that DDN, its suppliers, and/or its licensors, as applicable, own and shall retain all rights, title, and interest in and to the Software and the Documentation, including but not limited to all patents, trademarks, trade names, inventions, copyrights, know-how, trade secrets, and other intellectual and industrial property rights (and any corresponding applications or registrations) related to the Software or the Documentation. DDN's suppliers and licensors are intended beneficiaries under this EULA and independently may protect their rights in the Software and the Documentation in the event of any infringement or breach of this EULA.

4. RESERVATION OF RIGHTS. Licensee acknowledges and agrees that the Software and the Documentation have been licensed to Licensee pursuant to the terms and conditions of this EULA, and that the Software and the Documentation have not been sold to Licensee. DDN and its suppliers and licensors

reserve all rights not expressly granted herein. Licensee shall not use or copy the Software or the Documentation except as is expressly authorized in this EULA. Licensee acknowledges and agrees that the Software and the Documentation are protected by United States copyright laws and international treaty provisions. Except as otherwise expressly provided herein, Licensee must treat the Software and the Documentation like any other copyrighted material. Licensee shall not knowingly take any action that would cause the Software or the Documentation to be placed in the public domain.

5. RESTRICTIONS.

5.1. Usage Restrictions. Licensee shall not permit any person other than Licensee's employees and authorized agents to possess or use the Software or the Documentation, and Licensee shall cause all such employees and authorized agents to abide by all terms and conditions imposed upon Licensee herein. Licensee may not exceed the number of licenses, agents, tiers, nodes, seats, or other Use restrictions or authorizations agreed to and paid for by Licensee. All Products are manufactured 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 Products could lead to death, personal injury, or real or personal property damage (collectively, "High-Risk Applications"). DDN disclaims any and all liability in connection with use of Product in any High-Risk Application. Licensee warrants that it will not use, or knowingly permit any use of, any Product in any High-Risk Application. Licensee agrees to indemnify, defend, and hold DDN harmless against any loss, liability, or damage of any kind that DDN incurs in connection with a breach of this warranty. Some Software may require license keys or contain other technical protection measures. Licensee acknowledges that DDN may monitor Licensee's compliance with Use restrictions and authorizations, remotely or otherwise. If DDN makes a license management program available which records and reports Software usage information, Licensee agrees to appropriately install, configure, and execute such license management program beginning no later than one hundred and eighty (180) days from the date it is made available to Licensee and continuing for the period that the Software is used.

5.2. No Transfer. Licensee may not, and agrees that it will not, transfer, assign, rent, lease, lend, resell, or in any way distribute or transfer the Software or the Documentation (or any rights in this EULA, the Software, or the Documentation) to any third parties, including by operation of law, without DDN's prior written approval, payment to DDN of any applicable fees, and compliance with applicable third party terms. Upon any approved transfer of this EULA, Licensee's rights hereunder will terminate and Licensee will immediately deliver the Software, the Documentation, and all copies thereof to the transferee. The transferee must agree in writing to the terms of this EULA and, upon such agreement, the transferee will be considered the "Licensee" for purposes of this EULA. Licensee may transfer Factory Installed Software only upon transfer of the associated DDN hardware product.

5.3. No Reverse Engineering; No Modification. To the maximum extent permitted by applicable law, Licensee shall not reverse engineer, disassemble, decrypt, or decompile the Software, or otherwise attempt to discover, reconstruct, or identify the source code for the Software or any user interface techniques, algorithms, logic, protocols, or specifications included, incorporated, or implemented therein. Furthermore, to the maximum extent permitted by applicable law, Licensee shall not modify, port, or translate the Software or the Documentation. Where Licensee has other rights with respect to the Software or the Documentation mandated under statute, Licensee will provide DDN with reasonably detailed information regarding any intended modifications, porting, translations, reverse engineering, disassembly, decryption, or decompilation, and the purposes therefore.

5.4. Proprietary Notices and Legends. If Licensee makes any copies of the Software or the Documentation in accordance with this EULA, Licensee must reproduce in all such copies all proprietary notices and legends contained in the originals.

5.5. Updates. Upon Licensee's installation of any Update to Software, Licensee shall have no further rights, and DDN shall have no further obligations, with respect to those portions of the Software that such Update was intended to replace. If additional or different license terms or conditions accompany an Update, Licensee acknowledges and agrees that Licensee's Use of that Update will be subject to those additional or different terms and conditions.

5.6. Export Restrictions: Compliance with Laws. Licensee represents that it is not listed on a U.S. Government restricted party list for export control or trade sanctions purposes, including the Specially Designated Nationals list administered by the Office of Foreign Assets Control and the Entity List, Denied Persons List and Unverified List administered by the Bureau of Industry and Security, and is not 50% or more owned, in the aggregate, by one or more restricted parties. Any Software or Documentation provided under this EULA may be subject to U.S. export controls. Licensee agrees that it shall not export, re-export, or transfer, directly or indirectly, any Equipment or Confidential Information to any restricted party, to any region subject to U.S. embargo or comprehensive sanctions (currently, Cuba, Iran, North Korea, Sudan, Syria, and Crimea), or for any end use prohibited by Section 744 of the U.S. Export Administration Regulations (e.g., chemical/biological weapons, nuclear, and missiles), without obtaining any required prior authorization from the U.S. government.

6. RESPONSIBILITIES OF LICENSEE.

6.1. Payment. In consideration for the licenses and rights granted to Licensee herein, Licensee agrees to pay all amount(s) for such licenses and rights as set forth in the corresponding invoice, in accordance with the payment terms agreed upon by Licensee.

6.2. Indemnification. Licensee hereby agrees to indemnify, protect, defend, and hold DDN and its licensors harmless from and against any and all claims, losses, or damages (including but not limited to reasonable attorneys' and experts' fees) attributable to (a) Licensee's use or misuse of the Software or the Documentation, or (b) any failure by Licensee to comply with any term, condition, or restriction in this EULA.

7. COMPLIANCE AUDIT. DDN shall have the right, upon reasonable notice, to conduct and/or have an independent accounting firm conduct, during normal business hours on Licensee's premises under Licensee's reasonable supervision, an audit to verify Licensee's compliance with the terms of this EULA. If an audit reveals underpayments, then Licensee will immediately pay DDN such underpayments together with the costs reasonably incurred by DDN in connection with the audit and seeking compliance with this section.

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

8.1. Use of Licensee Information. With respect to any information Licensee provides to DDN in connection with the Software or the Documentation, DDN may use such information for any purpose without restriction, including, without limitation, for product support and development purposes, provided that DDN will not use such information in a form that identifies Licensee.

8.2. Activation of Call Home Feature. During the Term of this Agreement, Licensee may elect to activate the Call Home feature in DDN's Directmon product. The Call Home feature enables DDN's servers to receive automated communications from the Software. The Call Home feature supports DDN's ability to respond to error communications faster and in a more streamlined manner. To activate the Call Home feature, Licensee must submit a written order to DDN (with email to DDN's support contact being sufficient), provided that Licensee will be responsible for establishing the IT infrastructure at Licensee's facility to permit the Software to communicate with DDN's servers.

9. TERM AND TERMINATION.

9.1. General. Except as provided below with respect to evaluation and limited term licenses, this EULA and the license(s) granted herein will remain effective until terminated. Licensee may terminate

this EULA and the licenses granted herein by ceasing all use of the Software and the Documentation, and returning all copies of the Software and the Documentation to DDN. This EULA (including but not limited to the licenses granted to Licensee herein) will automatically terminate if Licensee fails to comply with any term or condition of this EULA.

9.2. Evaluation and Term Licenses. If the Software and the Documentation have been licensed to Licensee for evaluation purposes, this EULA will be effective only until the end of the designated evaluation period. If the Software and the Documentation have been licensed to Licensee for a limited term as specified in the applicable sales acknowledgement, invoice, or otherwise, then this EULA will be effective only until the end of such term. Software that is subject to any evaluation or limited term license may contain code that can disable most or all of the features of such software upon expiration of such evaluation or limited term license, and unless Licensee has paid the applicable license fee for any additional licenses, Licensee shall have no rights to use such Software or the corresponding Documentation upon expiration of any such license.

9.3. Obligations Upon Termination or Expiration. Licensee agrees, upon any termination or expiration of this EULA, to cease use of, and to destroy or return to DDN, all copies of the Software and the Documentation. At DDN's request, Licensee will certify in writing to DDN that Licensee has complied with these requirements. Notwithstanding anything in this EULA to the contrary, Sections 1, 3, 4, 5.3, 5.6, 6, 7, 8, 9, 10.2, 10.3, 11, 12, and 13 of this EULA shall survive any expiration or termination of this EULA and continue in perpetuity.

10. LIMITED WARRANTY; DISCLAIMER; LIMITATION OF LIABILITY.

10.1. Limited Warranty. DDN warrants only to the original Licensee that, for a period of ninety (90) days following DDN's initial shipment of Software (and not Updates thereto) to such Licensee, such Software, as delivered to such Licensee, will substantially conform to the corresponding Documentation. Licensee's sole and exclusive remedy, and DDN's entire liability, under this warranty is for DDN to use commercially reasonable efforts to cause the defective or malfunctioning Software to substantially conform to the corresponding Documentation. Notwithstanding the foregoing, DDN will have no liability for any defective or malfunctioning Software under this Section 10.1 if (a) Licensee fails to notify DDN of the defect or malfunction during the Warranty Period, or (b) the defect or malfunction is caused by (i) use of such Software in combination with any hardware or other software that has not been approved in writing by DDN, (ii) the negligence or fault of Licensee or a third party, (iii) Licensee's failure to follow the instructions set forth in the corresponding Documentation, or (iv) modifications to that Software made by any person other than DDN or an authorized representative of DDN.

10.2. Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.1 ABOVE, THE SOFTWARE AND THE DOCUMENTATION ARE PROVIDED "AS IS", AND DDN AND ITS SUPPLIERS AND LICENSORS DO NOT MAKE AND SPECIFICALLY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY KIND RELATING TO THE SOFTWARE, THE DOCUMENTATION, AND/OR USE OF THE SOFTWARE OR THE DOCUMENTATION (INCLUDING, WITHOUT LIMITATION, ACTUAL AND IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT), AS WELL AS ANY WARRANTIES THAT THE SOFTWARE OR THE DOCUMENTATION (OR ANY ELEMENTS OF EITHER) WILL ACHIEVE A PARTICULAR RESULT, OR WILL BE UNINTERRUPTED OR ERROR-FREE.

Should Licensee have any questions concerning this EULA, or if Licensee desires to contact DDN for any reason, please write DDN at 2929 Patrick Henry Drive, Santa Clara, CA 94054 USA, or send an email to DDN at support@ddn.com.