

END USER LICENSE AGREEMENT

THIS END USER LICENSE AGREEMENT (“AGREEMENT”) IS A LEGAL AGREEMENT BETWEEN THE INDIVIDUAL, OR THE COMPANY OR OTHER ORGANIZATION ON WHOSE BEHALF SUCH INDIVIDUAL ACCEPTS THIS AGREEMENT (“CUSTOMER”), THAT EITHER (A) CLICKS THE “I ACCEPT” BUTTON BELOW OR (B) INSTALLS, ACCESSES, OR USES ANY SOFTWARE OR DOCUMENTATION FROM **DATAMOTIVE TECHNOLOGIES LLC** (“LICENSOR”).

PLEASE READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE ACCEPTING THIS AGREEMENT. BY CLICKING ON THE “I ACCEPT” BUTTON BELOW OR BY INSTALLING, ACCESSING, OR USING ANY SOFTWARE OR DOCUMENTATION FROM LICENSOR, CUSTOMER HEREBY AGREES TO BE BOUND BY THIS AGREEMENT AND REPRESENTS THAT IT IS AUTHORIZED TO DO SO.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT OR IF YOU DO NOT HAVE AUTHORITY TO BIND THE COMPANY OR OTHER ORGANIZATION ON WHOSE BEHALF YOU ARE ACCEPTING THIS AGREEMENT, CLICK THE “I DECLINE” BUTTON AND RETURN TO LICENSOR THE SOFTWARE AND DOCUMENTATION PRODUCTS PROVIDED TOGETHER WITH THIS AGREEMENT IN ACCORDANCE WITH THE INSTRUCTIONS PROVIDED WHEN YOU CLICK THE “I DECLINE” BUTTON.

CAPITALIZED TERMS NOT DEFINED IN THE TEXT BELOW ARE DEFINED IN SCHEDULE A AT THE END OF THIS AGREEMENT.

1. Orders and Payment

1.1. Customer may order Licensed Products by submitting to Licensor a Purchase Order and such other order documentation as is required by Licensor. CUSTOMER MAY NOT CANCEL AN ORDER ONCE LICENSOR HAS ACCEPTED IT. Other than the line items that serve to order Licensed Product(s) and Support Services as specified herein, in no event shall any other terms of any Customer purchase order, modify this Agreement or become binding on Licensor.

1.2. Customer shall be obligated to pay the applicable fees for the Licensed Products and Support Services ordered. All fees and other charges due hereunder are due and payable in full within thirty (30) days of start date of the term (and the applicable anniversary of the start date for each subsequent year in the case of renewals). The Licensor may at its discretion provide to the Customer, an instalment based payment plan for payment of the applicable fees for the term of this License or any other renewed term.

1.3. Consideration: The consideration for the license granted hereunder shall be as set forth in the Purchase Order. Unless explicitly provided otherwise in this Agreement or in such quote, the order placed under the Purchase Order is non-cancellable and the consideration is non-refundable. Customer shall pay interest at the rate of ten percent (10%) per annum (or, if less, the maximum amount permitted by law) on all sums due under this Agreement which remain unpaid following the due date. Customer shall pay Licensor’s reasonable attorneys’ fees and costs incurred by Licensor in collecting overdue amounts, and/or in any controversy or litigation arising under or in connection with the Licensed Products and/or this Agreement in which Customer does not prevail against Licensor in all of the claims. Finally, if any charge owing by Customer is overdue, Licensor may, without limiting its other rights and remedies: (a) accelerate Customer’s unpaid fee obligations so that all such obligations become immediately due and payable, and/or (b) suspend the licenses and/or Support Services until such amounts are paid in full; provided that Licensor will inform Customer, at least five days prior to the payment due date, of the impending payment due date and that licenses and/or Support Services will be suspended if payment is not received by the due date.

1.4. License Grant. Upon Licensor's acceptance of an order for Licensed Products and Support Services, Licensor grants to Customer a limited, non-exclusive, non-transferrable fixed term license License to install and use the Licensed Products identified in the Quote during the applicable License Term, solely for Customer's internal business purposes and solely in accordance with this Agreement. Notwithstanding the foregoing, if the Licensed Product is being provided by Licensor on an "evaluation" or "trial" basis, such License will be instead to install and use the Licensed Product solely to evaluate such Licensed Products, and Customer agrees not to use the Licensed Product in any commercial applications or for productive purposes. Also, if the Licensed Product is sold on a "demo and test" or "non-production" basis (or similar designation), such Licensed Product may not be used in a production environment.

1.5. Restrictions on Use., Customer shall not and shall not permit any third party(ies) to:

- (i) modify or create any derivative work of any part of the Licensed Products;
- (ii) rent, lease, or loan the Licensed Products;
- (iii) use the Licensed Products, or permit them to be used, for third-party training, to deliver software implementation or consulting services to any third parties, or for commercial time-sharing or service bureau use;
- (iv) disassemble, decompile or reverse engineer the Licensed Products or the file format of the Licensed Products, or otherwise attempt to gain access to the source code or file format of the Licensed Products;
- (v) sell, license, sublicense, loan, assign, or otherwise transfer (whether by sale, exchange, gift, operation of law, or otherwise) to any third party the Licensed Products, any copy thereof, or any License or other rights thereto, in whole or in part, ;
- (vi) alter, remove, or obscure any copyright, trade secret, patent, trademark, logo, proprietary and/or other legal notices on or in any copies of the Licensed Products; and

1.6. copy or otherwise reproduce the Licensed Products in whole or in part, except as may be required for their installation into computer memory for the purpose of executing the Licensed Products in accordance with this Section 2.

1.7. Third Party Components. The Licensed Products may contain embedded third party software components for which additional terms apply and therefore are governed by the terms of respective third party software components licensing terms.

2. Support

2.1. Support Services Plan; Levels of Support Services. Upon Licensor's acceptance of Customer's order for a License and for Support Services in respect of the Licensed Products, Licensor and/or its authorized subcontractors shall provide L3 Support Services in accordance with these terms for a time period of twelve (12) months or for such other period specified in Customer's order accepted by Licensor (a "Support Services Plan"). The Support Services shall be provided as defined in "Support Services" under Schedule B.

3. Non Data Processor Role of the Licensor

- 3.1. The Licensed Product shall be deployed on the Customer's own virtual infrastructure and the Licensor shall have no access to the Customer's such infrastructure or any devices on which such virtual infrastructure is created. Additionally, the Licensor does not have access to or control of any Data that is being stored, used, recovered or migrated by the Customer including the data in respect of which the Licensed Product may be deployed. The Licensor, by the virtue of this License, does not assume responsibility of protection and security of any such data and disclaims all liability for its protection and/or breach, whether or not intentional. The Licensor is not a processor or controller of any Data in respect of which the Licensed Product is used.

- 3.2. Each Party shall be liable for protection of Data stored or processed by it in accordance with the applicable laws to which it is subject, further taking into account that the Licensor does not fall under the category of Data Processor or Data Controller nor has any access to any Data of the Customer.

4. Intellectual Property

Licensor are the sole owners of the Licensed Products and of any copies of the Licensed Products, and of all copyright, trade secret, patent, trademark and other intellectual or industrial property rights in and to the Licensed Products. All copies of the Licensed Products, in whatever form provided by Licensor or made by Customer, shall remain the property of Licensor, and such copies shall be deemed to be on loan to Customer during the License Term. Customer acknowledges that the License granted hereunder does not provide Customer with title to or ownership of the Licensed Products or any copies thereof, but only a right of limited use consistent with the express terms and conditions of this Agreement. Customer shall have no rights to the source code for the Licensed Products and Customer agrees that only Licensor shall have the right to maintain, enhance, or otherwise modify the Licensed Products.

5. Warranty; Disclaimer of Warranties

5.1. Warranty. Licensor warrants to Customer that Licensor is authorized to grant the License(s). Licensor shall have no warranty obligations hereunder with respect to any (i) Errors attributable to any modifications or customizations of the Licensed Products, (ii) Licensed Products that are provided by Licensor free of charge to Customer.

5.2. Sole Remedy. Licensor's and its licensors' entire liability and Customer's exclusive remedy for any breach by Licensor of the warranty given in the second sentence of Section 6.1 above shall be, at Licensor's sole discretion, either to (a) replace the Licensed Product(s) that contains the Error, or (b) use diligent efforts to repair the Error. Licensor's obligations set forth in the preceding sentence shall apply only if notice of the Error is received by Licensor within 60 (sixty) days from the date of delivery and Customer supplies such additional information regarding the Error as Licensor reasonably requests. If Licensor does not replace the applicable Licensed Product(s) and/or does not repair the Error (either by providing a bug fix, a workaround or otherwise) within a reasonable time after Licensor receives written notice of the Error and associated information from Customer, upon return of such Licensed Product(s) and any copies thereof, Licensor will provide a pro-rata refund of the applicable fees.

5.3. No Additional Warranties. No third party, including any employee, partner, distributor (including any Reseller) or agent of Licensor or any of its Resellers or sales agents is authorized to give any representations, warranties or covenants greater or different than those contained in this Agreement, except as specifically set forth in a written agreement signed on behalf of Customer by an authorized officer and on behalf of Licensor by its authorized officer.

5.4. Disclaimer of Warranties. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 6, LICENSOR DISCLAIMS (AND CUSTOMER WAIVES) ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING ANY WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND/OR ANY WARRANTY THAT CUSTOMER WILL ACHIEVE ANY PARTICULAR RETURN ON INVESTMENT. CUSTOMER IS SOLELY RESPONSIBLE FOR ANY RESULTS OBTAINED FROM USING THE LICENSED PRODUCTS, INCLUDING THE ADEQUACY OF INDEPENDENT TESTING OF RELIABILITY, SECURITY AND ACCURACY OF ANY ITEM DESIGNED USING LICENSED PRODUCTS. LICENSOR DOES NOT WARRANT THAT THE OPERATION OR OTHER USE OF THE LICENSED PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE OR WILL NOT CAUSE DAMAGE OR DISRUPTION TO CUSTOMER'S DATA, COMPUTERS OR NETWORKS. WITHOUT LIMITING THE FOREGOING, LICENSOR WILL HAVE NO LIABILITY ARISING FROM ANY SECURITY INCIDENT OR DATA LOSS THAT WOULD HAVE BEEN PREVENTED IF CUSTOMER HAD IMPLEMENTED SECURITY SOLUTIONS, DEVICES OR FEATURES (INCLUDING "PATCHES," FIXES AND UPDATES) FOR THE LICENSED

PRODUCTS PROVIDED OR MADE AVAILABLE BY LICENSOR TO CUSTOMER.

6. Indemnification; Infringement

6.1. Licensor's Obligation to Indemnify Customer. Licensor, at its own expense, will defend any action brought against Customer based on a claim that any Licensed Product infringes a patent, copyright or trademark and, at its option, will settle any such action or will pay any final judgment awarded against Customer, provided that: (a) Licensor shall be notified promptly in writing by Customer of any notice of any such claim; (b) Licensor shall have the sole control of the defence of any action on such claim and all negotiations for its settlement or compromise and shall bear the costs of the same (unless one or more of the exclusions in Section 7.3 applies); and (c) Customer shall cooperate fully at Licensor's expense with Licensor in the defence, settlement or compromise of such claim. This Section states Licensor's sole and exclusive liability, and Customer's sole remedy, for any and all claims relating to infringement of any intellectual property right.

6.2. Licensor's Right to Act to Prevent a Claim. If a claim described in Section 7.1 hereof occurs or, in Licensor's opinion, may occur, Customer shall permit Licensor, at Licensor's option and expense to: (a) procure for Customer the right to continue using the Licensed Product; (b) modify the Licensed Product so that it becomes non-infringing without materially impairing its functionality; or (c) terminate the applicable Licenses, accept return of the applicable Licensed Products and grant Customer a pro-rata credit thereon..

6.3. Exclusions from Licensor's Obligation to Indemnify Customer. Licensor shall have no liability to Customer under Section 7.1 hereof or otherwise to the extent that any infringement or claim thereof is based upon: (a) use of the Licensed Product in combination with equipment or software not supplied hereunder where the Licensed Product itself would not be infringing; (b) use of other than a current release of the Licensed Product(s) provided to Customer; or (c) modification of the Licensed Product by anyone other than Licensor or its employees or agents.

7. Limitation of Liability

7.1. The warranty and indemnification provisions of Sections 6 and 7 hereof state the entire liability of Licensor, its subsidiaries and affiliates, and each of their respective directors, officers, employees or agents, with respect to the Licensed Products and Support Services, including (without limitation) any liability for breach of warranty, or for infringement or alleged infringement of patent, copyrights, trademarks, trade secrets and other intellectual or proprietary rights by the Licensed Products, or their use.

7.2. EXCEPT FOR LICENSOR'S INDEMNIFICATION OBLIGATIONS IDENTIFIED IN SECTION 7.1 ABOVE AND EXCEPT FOR CLAIMS FOR DEATH OR PERSONAL INJURY, THE MAXIMUM LIABILITY OF LICENSOR AND ITS AFFILIATES, RESELLERS, DISTRIBUTORS AND LICENSORS ARISING OUT OF, OR RELATING TO, THE CREATION, LICENSE, FUNCTIONING, USE OR SUPPLY OF THE LICENSED PRODUCTS OR THE PROVISION OF SUPPORT SERVICES OR OTHERWISE RELATING TO THIS AGREEMENT, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE FEES PAID BY CUSTOMER IN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO DAMAGES FOR THE LICENSED PRODUCTS OR SUPPORT SERVICES THAT GAVE RISE TO THE CLAIM.

7.3. IN NO EVENT SHALL LICENSOR AND ITS AFFILIATES, RESELLERS, DISTRIBUTORS AND LICENSORS OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE FOR: (A) ANY LOSS OF PROFIT, LOSS OF USE DAMAGES, LOSS OF GOODWILL, LOSS OF BUSINESS OPPORTUNITY, LOSS OF SALES, LOSS OF REPUTATION OR LOSS OF ANTICIPATED SAVINGS; (B) ANY LOSS OR INACCURACY OF DATA OR BUSINESS INFORMATION OR FAILURE OR INADEQUACY OF ANY SECURITY SYSTEM OR FEATURE; AND (C) SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER CAUSED; IN EACH CASE EVEN IF LICENSOR HAS BEEN

ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.4. Nothing in this Section 8 will excuse or limit Customer's obligation to pay the applicable fee(s) for all use of the Licensed Products.

8. Term and Termination of Licenses or Support Services

8.1. The License is applicable for a fixed term of 1 (one) year and the term of this Agreement is 1 (one) year from the date of its execution. The Term may be renewed by the Parties with mutual consent stated in writing.

8.2. Events Causing Termination. This Agreement and all Licenses and the provision of Support Services will terminate thirty (30) days after written notice from Licensor specifying a breach of this Agreement, including failure to make any payment due to either Licensor or a Reseller in connection with the Licensed Products in a timely manner, if that breach is not, within that thirty (30) day period, remedied to Licensor's reasonable satisfaction.

8.3. Effects of Expiration or Termination. Upon expiration of a given License Term and/or any expiration or termination of this Agreement, Customer shall promptly pay all sums owed by Customer, return to Licensor the original copies of all Licensed Products for which the License Term has expired or has been terminated, destroy and/or delete all copies and backup copies thereof from Customer's computer libraries, storage facilities and/or hosting facilities.

8.4. Survival. Sections 1.2, and 3 through 10 shall survive expiration or termination of this Agreement.

9. General

9.1. Governing Law and Jurisdiction. All disputes arising under, out of, or in any way connected with this Agreement shall be governed by and construed in accordance with the laws of the State of California, USA without reference to conflict of laws principles (and specifically excluding the Uniform Computer Information Transactions Act). The parties hereby expressly disclaim the application of the U.N. Convention for the International Sale of Goods. All disputes arising under, out of, or in any way connected with this Agreement shall be litigated exclusively in the state or federal courts situated in the State of California, USA, and in no other court or jurisdiction. Notwithstanding the foregoing or anything to the contrary, Licensor shall have the right to bring a claim in any court of competent jurisdiction to enforce any intellectual property rights and/or protect any confidential information. The parties agree that a final judgment in any such action or proceeding shall be conclusive and binding and may be enforced in any other jurisdiction. Each party waives its right to trial by jury in connection with any dispute arising out of this Agreement.

9.2. Notices. Any notice or communication required or permitted under this Agreement shall be in writing. Any notice provided under this section shall be deemed to have been received: (a) if given by mail, five (5) business days after posting; (b) if given by express courier service, the second business day following dispatch; or (c) if given by fax, upon receipt thereof by the recipient's fax machine.

9.3. Assignment, Waiver, Modification. Customer may not assign, transfer, delegate or sublicense any of Customer's rights or obligations hereunder (including without limitation by operation of law or by sale of Customer assets, whether directly or by merger, and a change in control of Customer shall be deemed to be an "assignment" for purposes of the foregoing) without Licensor's prior written consent, and any such attempted delegation, assignment, transfer or sublicense shall be void and a breach of this Agreement. No waiver, consent, modification, amendment or change of the terms of this Agreement shall be binding unless in writing and signed by Licensor and Customer. Licensor reserves the right to charge a transfer fee for any proposed assignment, transfer or sublicense of this Agreement or any Licenses purchased hereunder.

9.4. Compliance with Laws.

- (i) Each party shall be responsible for its own compliance with applicable laws, regulations and other legal requirements relating to the conduct of its business and this Agreement. Further, Customer represents and warrants that it will use the Licensed Products, as well as related technology and

services, in full compliance with applicable laws and regulations.

- (ii) Customer hereby warrants and represents that neither Customer nor any of Customer's directors, officers or affiliates are listed on the U.S. Commerce Department's Denied Persons List, Entity List, or Unverified List, the U.S. State Department's Nonproliferation Sanctions List, the U.S. Treasury Department's List of Specially Designated Nationals and Blocked Persons or the Sectoral Sanctions Identifications (SSI) List (collectively, the "Restricted Party Lists"). Customer acknowledges and agrees that the Licensed Products and related technical data and services are subject to the export control laws and regulations of the United States and any country in which the Licensed Products or related technical data or services are developed, received, downloaded, used, or performed. Further, Customer understands and acknowledges that the release of software or technology to a non-U.S. person within the United States or elsewhere abroad is deemed to be an export to the non-U.S. person's home country or countries, and that the transfer of the Licensed Products or related technology to Customer's employees, affiliates, or any third party, may require a license from the United States Government and possibly other applicable authorities. Customer shall be solely responsible for determining whether Customer's use or transfer of the Licensed Products or related technology or services requires an export license or approval from U.S. or other authorities, and for securing all required authorizations.

9.5. Severability. The unenforceability or invalidity of any provision shall not affect the validity of the remaining provisions, and such provisions determined to be invalid shall be deemed severed from this Agreement and replaced with terms which as closely as possible approximate the intent of such invalid provisions.

9.6. Entire Agreement. This Agreement is the complete and exclusive statement of the contract between Licensor and Customer with respect to the subject matter hereof. No waiver, consent, modification, amendment or change of this Agreement shall be binding unless in writing and signed or otherwise expressly acknowledged by Licensor and Customer.

9.7. Marketing. Customer agrees that while this Agreement is in effect, Licensor shall be authorized to identify Customer as a customer/end-user of Licensor software and services (as applicable) in public relations and marketing materials, unless the Customer informs the Licensor of its unwillingness to be identified as such, by writing to the Chief Executive Officer (CEO) of the Licensor.

9.8. Government Licensees. If Customer is a United States Governmental entity, Customer agrees that the Licensed Products are "commercial computer software" under the applicable federal acquisition regulations and are provided with the commercial license rights and restrictions described elsewhere herein. If Customer is acquiring the Licensed Product(s) under a United States government contract, Customer agrees that Customer will include all necessary and applicable restricted rights legends on the Licensed Products to protect Licensor's proprietary rights under the FAR or other similar regulations of other federal agencies. Customer agrees to always include such legends whenever the Licensed Products are, or are deemed to be, a deliverable under a government contract.

Schedule A - Definitions

“Documentation” - the applicable Licensed Product user manuals provided or made available by electronic means by Licensor as part of the Licensed Product.

“Error” - a failure of the Licensed Product to conform substantially to the applicable Documentation, provided that Customer informs Licensor of such failure in writing.

“License” - the non-exclusive, non-transferable right, without any right to sub-license, to install and use a Licensed Product (in object code form).

“License Term” - the time period during which the License for the applicable Licensed Products shall be in effect as specified in the part name of the Licensed Product or in the applicable Quote. The License Term for evaluation Licenses shall be no longer than thirty days.

“Licensed Products” - the computer software products identified in the applicable Quote and Documentation provided with such computer software products. Licensed Products shall include either one or more of the following:

1. EasyHybridDR is a comprehensive disaster recovery solution designed for hybrid cloud environments. It enables businesses to protect critical business service and data by orchestrating and automating recovery processes across on-premises and cloud platforms. The solution offers granular control over Recovery Time Objective (RTO) and Recovery Point Objective (RPO), ensuring minimal downtime and data loss in the event of disruptions.
2. EasyMigrate, by Datamotive, is a robust, highly scalable solution that streamlines the migration of VMware and Azure workloads to AWS. It distinguishes itself with an agentless approach, ensuring minimal disruption and enhanced security during the migration process. EasyMigrate prioritizes business continuity by offering flatline 10-min downtime, allowing organizations to transition to AWS without significant interruptions to their operations.

“Permitted User” - an individual who is authorized by Customer to use the Licensed Products, such use to be solely in accordance with the terms and conditions of this Agreement. Permitted Users are limited to Customer’s employees, consultants, subcontractors, suppliers, business partners and customers who (i) are not competitors of Licensor or employed by competitors of Licensor and (ii) are directly involved in the utilization of the Licensed Products solely in support of Customer’s internal business purposes.

“Quote” - the product schedule, quote, or other written agreement provided to, or signed by, Customer in connection with the purchase of the applicable items.

“Reseller” - a third-party appointed and authorized by Licensor, if any, to resell or distribute any Licensed Products and Support Services to Customer.

“Support Services” - the provision of Support Services ordered, as defined under Schedule B of this Agreement.

Schedule B
Product Support – Level 3 Support

1. Definitions:

- a. L3 Technical Support: Level 3 Technical support refers to advanced technical support services provided for the Licensed Product, encompassing complex issue resolution, bug fixes, and customization assistance.
- b. Licensed Product: The software, application, or product covered by this licensing agreement.

2. L3 Support Services

- a. The Licensor: The Licensor agrees to provide Level 3 support services for the Licensed Product during the term of this agreement.
- b. Response Time: The Licensor commits to responding to L3 support requests within 24 business hours. Business Hours shall be 9 AM to 7 PM PST, 5 DAYS a week.
- c. Issue Resolution: The Licensor will use commercially reasonable efforts to identify, analyze, and resolve issues reported under the L3 support services.

3. Communication Channels:

- a. The Licensee may initiate L3 support requests through the following designated channels:
 - i. Support Portal
 - ii. Telephone Line
 - iii. Email

The channel details shall be communicated to the Licensee via e-mail.

4. Documentation:

The Licensee agrees to provide comprehensive documentation of issues encountered, including relevant error messages, logs, and steps to reproduce the problem, to facilitate efficient issue resolution.

