

# DIAGNAL END USER LICENSE AGREEMENT (EULA)

BY USING SOFTWARE PROVIDED BY **DIAGNAL LIMITED** ("DIAGNAL"), OR BY OTHERWISE SIGNIFYING YOUR ACCEPTANCE OF THIS EULA, YOU ACKNOWLEDGE AND AGREE:

- (1) THAT YOU HAVE READ AND UNDERSTOOD THIS AGREEMENT;
- (2) THAT YOU AGREE TO BE BOUND BY EACH AND EVERY TERM OF THIS EULA; AND
- (3) IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY, THAT YOU HAVE THE POWER AND AUTHORITY TO DO SO AND TO BIND SUCH COMPANY.

IF YOU DO NOT AGREE TO EACH AND EVERY TERM AND CONDITION OF THIS EULA, YOU MAY NOT USE ANY SOFTWARE PROVIDED BY DIAGNAL. If you do not agree with each and every one of the terms and conditions of this EULA, do not take any action that signifies your agreement to this EULA.

Although this EULA contains specific terms and conditions for how DIAGNAL may update or modify this EULA, the most current version of license agreements for DIAGNAL software is available on request. If you have questions about this EULA or, in the future, would like to request a copy of the license agreement that you entered into, please email [legal@diagnal.com](mailto:legal@diagnal.com).

THIS EULA IS AN AGREEMENT TO LICENSE SOFTWARE, NOT AN AGREEMENT FOR THE SALE OF SOFTWARE.

## 1. DEFINITIONS

- **1.1** "Additional Terms" means those terms and conditions referred to herein, such as terms and conditions on the Website.
- **1.2** "Content" means any video, audio, data, and other input to or output from the Software.
- **1.3** "EULA" means this End User License Agreement, including any Additional Terms.
- **1.4** "DIAGNAL Trademarks" mean all names, trademarks, service marks, trade names, logos, designs, trade dress, domain names, and other brand designations used, registered, owned, or licensed by DIAGNAL in connection with its products and services.
- **1.5** "Instance" means one unique installation of the Software
- **1.6** "Sample Code" means sample code or scripts distributed by DIAGNAL from time to time and identified as such when provided to you.
- **1.7** "Services" means maintenance and support services and includes Support, Updates, and Upgrades.
- **1.8** "Services Period" means the period(s) of time during which you have purchased the right to obtain the Services.
- **1.9** "Software" means software products owned or distributed by DIAGNAL that are licensed to you under this EULA including, but not limited to, any related components, application programming interfaces, software development kits (SDKs), associated media, printed materials, online or electronic documentation, and any updates, maintenance releases, bug fixes, corrections, enhancements, or other modifications thereto.
- **1.10** "Support" means the provision of technical assistance by DIAGNAL to you according to DIAGNAL's then-current policies. Support includes, at a minimum, technical support related to the Software provided by email communication with a DIAGNAL representative.
- **1.11** "Upgrade" means newer versions of the Software that may utilise a distinct installer package, commonly referred to as a "full version" or "dot" release.
- **1.12** "Update" means updates, fixes, or other relatively minor modifications to the Software, which are applied through DIAGNAL's update process.
- **1.13** "Website" means <https://www.diagnal.com>, websites running on DIAGNAL subdomains shared with you, constituent pages, and other websites owned, managed, or operated by DIAGNAL.

- **1.14** "You" or "you" means, and references to "Your" or "your" shall be deemed references to:
  - (i) the natural person, the legal entity, or both, that is or are agreeing to this EULA by downloading, installing, copying, or using the Software;
  - (ii) your employees and third-party contractors or the employees and third-party contractors employed or engaged by the legal entity agreeing to this EULA;
  - (iii) your customers who use the Software, and
  - (iv) any other third party that uses or gains access to the Software, whether with your permission or otherwise.
- **1.15** "Your Email Address" or "your Email Address" means the electronic mail (commonly referred to as "email") address you provided DIAGNAL, either when you downloaded the Software from the Website or at some other time. In the event you have provided multiple electronic mail addresses to DIAGNAL, DIAGNAL may use the electronic mail address of its choosing for purposes of communication regarding the Software or Services, or for communications required or permitted by this EULA, unless you have explicitly notified DIAGNAL that a specific electronic mail address should be removed from DIAGNAL's records.
- **1.16** "Professional Services" means any installation, customisation, or implementation work performed by DIAGNAL under this EULA.

## 2. LICENSE GRANTS; TITLE;

**2.1 Software Licensed, Not Sold:** The Software is licensed, not sold. This EULA does not transfer or modify any ownership rights related to the Software, which are exclusively held by DIAGNAL and its licensors.

**2.2 License Grant to the Software:** Subject to the terms of this EULA, DIAGNAL hereby grants you a limited, worldwide, non-exclusive, non-transferable, revocable license, without rights to sublicense, to install the Software, and to use the Software for the purposes set forth in the applicable Software documentation, to the extent permitted by your payment of applicable fees and the specifications of your specific license grant and license type.

**2.3 Title:** DIAGNAL retains all right, title, and interest in and to the Software, copies of the Software, and Sample Code, and in and to all related copyrights, trade secrets, patents, trademarks, service marks, domain names, and other intellectual and industrial property and proprietary rights, including registrations, applications, renewals, and extensions of such rights.

**2.4 Rights Reserved:** Any and all rights not expressly granted to you by this EULA are reserved in all respects by DIAGNAL.

**2.5 Usage by Others:** You agree to reasonably communicate the terms and conditions of this EULA to anyone who may or will come into contact with the Software and other intellectual property of DIAGNAL, including, without limitation, your customers, employees, and contractors. You agree to use your best efforts to ensure their compliance with the terms and conditions of this EULA, and you agree to be solely responsible for any failure by a third party to comply with this EULA.

## 3. LICENSE RESTRICTIONS

In addition to the other restrictions herein, you shall not:

- **3.1** copy the Software except for a reasonable number of machine-readable copies of the Software for backup or archival purposes only;
- **3.2** use the Software to transmit, reproduce, store, or share Content that you do not have the right to transmit, reproduce, store, or share;

- **3.3** at any time provide a license to the Software to any other person or entity, or otherwise permit any other person or entity to use the Software;
- **3.4** make any changes, modifications, or alterations to this EULA;
- **3.5** make any statements, warranties, or representations concerning the Software or Sample Code that exceed or are inconsistent with the documentation provided by DIAGNAL;
- **3.6** reverse engineer or copy the Software;
- **3.7** provide software and services that are directly competitive to DIAGNAL;
- **3.8** assist, encourage, or permit any other person or entity to do anything prohibited or not permitted by this EULA.

#### 4. MAINTENANCE AND SUPPORT

DIAGNAL offers Services during applicable Services Periods. Additional terms and conditions regarding the Services may be posted on the DIAGNAL Website or communicated to you by DIAGNAL from time to time.

**4.1 Services Provided Per License** The Services are provided on a per-instance license basis, and not on a per-customer basis. Each license has an individual Services Period that begins on the date you obtained such License from DIAGNAL or purchased an additional Services Period for such license from DIAGNAL. You agree to only access or obtain the benefit of the Services for the specific license provided by DIAGNAL when requesting such Services.

**4.2 Services Periods** Services are only provided during the Services Period.

- **4.2.1** The Services Period for licenses begins on the date you obtain the Software from DIAGNAL and ends at the expiration of such license.
- **4.2.2** If you obtained your Software from a party other than DIAGNAL (such as a DIAGNAL authorised reseller or OEM partner), your Services Period may differ from those described herein.

**4.3 Services** Subject to the terms of this EULA and other terms and conditions on the Website and provided to you from time to time, DIAGNAL will provide the Services to you during the Services Period for each individual License.

- **4.3.1** DIAGNAL will not provide Services related to:
  - (i) prior versions of the Software;
  - (ii) improper installation or use of the Software;
  - (iii) software or other products or services not offered, licensed, and provided to you by DIAGNAL, and the implementation or use of the Software with any of the foregoing;
  - (iv) modified code;
  - (v) other things not specifically described herein as within the scope of the Services.
- **4.3.2** In the event a Services Period expires for a given License and you elect to not purchase additional Services Periods but later wish to receive Services from DIAGNAL related to such license, DIAGNAL may, in its sole discretion, require you to purchase Services Periods retroactively to the date on which the relevant Services Period previously lapsed, pay a reinstatement fee, or both.
- **4.3.3** DIAGNAL may suspend or terminate the Services without owing a refund to you if your use of the Services is determined by DIAGNAL, in its sole and reasonable discretion, to be excessive or improper.
- **4.3.4** The Services will be provided within the timeframes described in the documentation provided by DIAGNAL. No failure to meet a timeframe to provide Services shall be deemed a breach of this EULA or any obligation of DIAGNAL.

## 5. PROFESSIONAL SERVICES

If required, DIAGNAL can provide professional services to install and customise the Software based on a fixed setup fee or a quoted fee based on an estimation of the scope of work.

## 6. TERMINATION

**6.1 Termination** DIAGNAL may terminate this EULA immediately and without notice if you fail to comply with any term of this EULA or fail to timely pay any amounts due to DIAGNAL. DIAGNAL may terminate this EULA for any reason or no reason upon sixty (60) days' advance notice to your Email Address.

**6.2 Effect of Termination** In the event of termination, you must immediately and completely cease using the Software in any way, and destroy all copies of the Software in your possession or under your control licensed under this EULA. In addition, you must remove the Software and all copies thereof, including all backup copies, from all Servers, computers, and other media on which it is installed, stored or archived. If requested by DIAGNAL, you shall provide DIAGNAL with written certification that you have complied with these requirements within five (5) business days of such request.

## 7. INDEMNIFICATION BY YOU

You will indemnify, defend, and hold harmless DIAGNAL and its affiliates, and each of their respective officers, directors, shareholders, employees, agents, advisors, and representatives (collectively, the "Indemnified Parties") against all liabilities, obligations, losses, costs, damages, and other expenses and attorneys' fees (collectively, "Indemnified Costs") arising out of or relating to your breach of this EULA or any other of your acts, omissions, or representations. Without limiting the foregoing, your indemnification under this paragraph shall include, without limitation, indemnification for Indemnified Costs incurred by the Indemnified Parties caused by or related to:

- (i) the Content;
- (ii) your violation of applicable law or regulation; or
- (iii) your provision of services to any third party utilising the Software;
- (iv) any failure to pay required taxes or other amounts due to third parties related to the Software or this EULA.

## 8. LIMITED WARRANTY AND LIMITATION OF LIABILITY

**8.1 Limited Warranty** DIAGNAL warrants that the Software will substantially conform to the description contained in the applicable end user documentation for a period of 90 days after the date you downloaded the Software. EXCEPT FOR THE PRECEDING EXPRESS LIMITED WARRANTY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DIAGNAL PROVIDES THE SOFTWARE AND SERVICES WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS EULA OR COMMUNICATION WITH YOU, AND DIAGNAL SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. DIAGNAL DOES NOT WARRANT THAT THE SOFTWARE OR SERVICES WILL MEET YOUR NEEDS OR THAT THE SOFTWARE OR SERVICES WILL BE OR PROVIDE FOR ERROR-FREE OPERATION OR OPERATION WITHOUT INTERRUPTION. IN THE EVENT YOU OBTAINED THIS LICENSE FROM A RESELLER, DISTRIBUTOR, OR OTHER THIRD PARTY, DIAGNAL SHALL HAVE NO OBLIGATION TO YOU UNDER ANY WARRANTY GIVEN BY SUCH RESELLER, DISTRIBUTOR, OR THIRD PARTY, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES.

- **8.1.1** The exclusive remedy for breach of the preceding warranty with regard to the Software is, at DIAGNAL's sole discretion and subject to DIAGNAL's limitation of liability, to either:
  - (i) repair the Software;
  - (ii) replace the Software; or
  - (iii) terminate the license to the Software granted to you and provide you with a pro-rata refund of the fees paid by you for the Software for the period of time, if any, that you were prevented from using the Software.
- **8.1.2** The exclusive remedy for breach of any warranty with regard to the Services is, subject to DIAGNAL's limitation of liability, to re-perform the Services in a commercially reasonable manner.

## 8.2 Limitation of Liability

- **8.2.1** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL DIAGNAL BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE RELATED TO THE SOFTWARE, SERVICES, OR OTHER SUBJECT MATTER HEREOF. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU.
- **8.2.2** DIAGNAL'S LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, EXCEED THE FEES, IF ANY, PAID BY YOU IN THE TWELVE MONTHS PRIOR TO ANY CLAIM FOR THE SOFTWARE AND SERVICES LICENSED TO YOU UNDER THIS EULA. THE FOREGOING LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER DIAGNAL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. YOU AND DIAGNAL AGREE THAT, GIVEN THE PRICE OF THE SOFTWARE AND THE NATURE OF THE CIRCUMSTANCES, THE PRECEDING LIMITATIONS ARE FAIR AND REASONABLE.

## 9. SECURITY; DATA PROTECTION

**9.1 Security** DIAGNAL has implemented, and shall maintain in effect, for the term of this Agreement, written security management policies and procedures, which are updated from time to time, and which are designed to ensure the security, confidentiality and integrity of the Software and to protect your information from unauthorised access, destruction, and/or disclosure.

**9.2 Data Protection** The terms of the data processing agreement to be communicated from Diagnal (the "DPA") are hereby incorporated by reference and shall apply to the extent DIAGNAL processes any Personal Data (as such term is defined in the DPA) for or on behalf of you in the course of providing the Software and/or Professional Services under this Agreement.

## 10. GENERAL

**10.1 Entire Agreement** This EULA, including the Additional Terms, sets forth DIAGNAL's entire liability and your exclusive remedy with respect to the Software, Services, and other subject matter hereof, and supersedes the terms of any purchase orders and any other communications or advertising with respect to the Software, Services, and other subject matter hereof. You acknowledge that this EULA, including Additional Terms, is a complete statement of the agreement between you and DIAGNAL with respect to the Software, Services, and other subject matter hereof, and that there

are no other prior or contemporaneous understandings, promises, representations, or descriptions with respect to the Software, Services, and other subject matter hereof. Additional Terms referenced herein are deemed incorporated herein by reference. ANY PURCHASE ORDER OR OTHER DOCUMENT PROVIDED BY OR RECEIVED FROM YOU SHALL BE FOR YOUR INTERNAL USE ONLY AND SHALL NOT BE APPLICABLE TO DIAGNAL NOR SHALL IT MODIFY THE TERMS OF THIS EULA OR GOVERN YOUR USE OF THE SOFTWARE. DIAGNAL REJECTS ANY TERMS CONTAINED IN PURCHASE ORDERS OR SIMILAR DOCUMENTS.

**10.2 Headings and Interpretation** Headings under this EULA are intended only for convenience and shall not affect the interpretation of this EULA. References herein to the singular include the plural and vice versa. DIAGNAL and You agree that, if an ambiguity or question of intent or meaning arises with respect to any provision of this EULA, this EULA will be construed as being drafted jointly by DIAGNAL and you, and no presumption or burden of proof will arise in favour of or disfavouring either party by virtue of authorship of any of the provisions of this EULA.

**10.3 Waiver and Modification** No failure of either party to exercise or enforce any of its rights under this EULA will act as a waiver of those rights. DIAGNAL may modify this EULA from time to time by one of three methods:

- (i) posting the changes on the Website;
- (ii) providing notice of such changes to your Email Address; or
- (iii) signing a written agreement with you specifying changes to this EULA.

You agree to be bound by such changes if you continue using the Software following the effective date of any such change to this EULA. Changes to this EULA are effective upon the earlier of:

- (i) DIAGNAL posting notice of such changes on the Website;
- (ii) DIAGNAL providing notice to your Email Address of such changes; or
- (iii) the signing of a written amendment modifying this EULA by both you and DIAGNAL.

Other than as provided in Section 11.3, 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.

**10.4 Supersession** This EULA, Additional Terms, or both may be superseded by a subsequent version of this EULA or Additional Terms, as the case may be. Such supersession may occur if you download, install, or use Software or Software upgrades or updates. This EULA supersedes prior EULA versions under which the Software was licensed to you.

**10.5 Assignment** You may not assign this EULA or any interest in this EULA without the prior written approval of DIAGNAL.

**10.6 Notices** Notices required by or related to this EULA from you must be sent via reputable overnight carrier, return receipt requested, to the attention of "Legal Department" at DIAGNAL's then-current mailing address, which is present "Rm 908, Two Grand Tower, 625 Nathan Road, Kowloon, Hong Kong". DIAGNAL may provide notices required by or related to this EULA to you at your Email Address.

**10.7 Severability** If a 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.

**10.8 Relationship of You and DIAGNAL** This EULA shall not be construed to create any employment, partnership, joint venture, franchise, or agency relationship between you and DIAGNAL, or to authorise either party to enter into any commitment or agreement binding on the other party.

**10.9 No Responsibility for Content** You acknowledge and understand that the Content is entirely your responsibility. You acknowledge, agree, and agree to assert and acknowledge in legal proceedings that DIAGNAL exercises no control whatsoever over the Content and that DIAGNAL will not be liable for Content.

**10.10 Representations** You represent and warrant that you are authorised to enter into this EULA and comply with its terms, and are of legal age to do the same. Furthermore, you represent and warrant that you will at all times meet your obligations hereunder and comply with all laws, regulations, and policies that apply to the use of the Software. If you are entering into this EULA on behalf of an entity or organisation, you represent and warrant that you have full authority to do so and to bind that entity or organisation.

**10.11 Force Majeure** Neither party shall be in default by reason of any failure in performance of this EULA, except for an obligation to pay money, if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control or foreseeability of such party, including but not limited to, default by subcontractors or suppliers, acts of God or of the public enemy, terrorist act, governmental acts in either a sovereign or contractual capacity, fire, flood, epidemic, restriction, strikes, or freight embargos.

**10.12 Precedence** If there is a conflict between the EULA and Marketplace terms regarding billing or deployment, the Marketplace terms take precedence.

**10.13 Governing Law** This EULA shall be governed by the laws of Hong Kong

**10.14 Contact Information** If you have any questions about this EULA, please contact DIAGNAL at [legal@diagnal.com](mailto:legal@diagnal.com).