



END USER LICENSE AGREEMENT

Nyansa is committed to providing you critical insights to more effectively manage your network. That means generating actionable data that you can quickly digest and easily use. We take the same approach to our legal terms, keeping them simple, transparent, and easy to understand.

This End User License Agreement (this "**Agreement**") is a binding agreement between us (Nyansa, Inc., a Delaware corporation ("**Nyansa**")) and you, the end customer and user of our products ("**Customer**")—even if you purchased through one of our channel partners—and it governs your purchase and use of our software and services.

You and Nyansa may each be referred to as a "Party" and collectively as the "Parties." Please keep in mind that your use of the Products after changes to this Agreement are published at [<http://www.nyansa.com/eula/>] will constitute your acceptance of the changes. Any material changes are considered effective upon the earlier of (i) your continued use of the Products once you know about the changes, and (ii) 30 days after they are published.

With all that in mind, you and we agree to the following terms.

- 1. The Service.** Nyansa provides a software-as-a-service (SaaS) platform and related on-premise and client agent software for analyzing networks (the "**Service**") as well as various hardware appliances depending on the nature of your use of the Services ("**Hardware**"). The term "Service" also includes (i) any private cloud instance of our software that you install in your local environment, whether on a hardware appliance or a virtual machine, and (ii) the software installed on any Hardware you purchase. Our customers use the Service to diagnose and optimize application and network performance, understand best-practices by anonymous cross-company benchmarking, monitor compliance, and increase the end-user experience on their networks. As a SaaS platform, we are continually maintaining, modifying, and improving the Service. In this Agreement, we refer to the Service, all related user documentation, and other deliverables we may provide to you, collectively, as the "**Technology**."
- 2. Orders and Payment.** You'll purchase the Service via a purchase order submitted by you and accepted by us, either directly or through a channel partner (each a "**Purchase Order**"). A Purchase Order must contain Customer's full contact information, including business phone number and email address, billing information. We may refuse to accept a Purchase Order in our sole discretion, in which case we will generally provide you electronic notice within two business days of receipt of the Purchase Order to your email address specified on the Purchase Order. If we receive a Purchase Order through a channel partner, then payment terms will be between you and the channel partner. If we receive a Purchase Order from you, then we will deliver a written or electronic invoice to you, and payment in full will be due 30 days from the date of the invoice. Any Hardware you purchase will be shipped (FCA our shipping facility) as soon as possible following receipt and acceptance of a Purchase Order.

3. **Term and Termination.**

a. **Term.** The term of this Agreement means the time period of the license to use the Service specified in the initial Purchase Order (the "**Term**"). The Term will be renewed for additional periods of the same time (each a "**Renewal Term**") unless (i) you submit a Purchase Order for a new license of a different time period, in which case the Term will be renewed for the time period specified on such Purchase Order, or (ii) either party provides written notice to the other at least 60 days in advance of the expiration of the then-current Term. Nyansa will deliver an invoice to you following the commencement of the Renewal Term, and payment will be due in accordance with Section 2 above.

b. **Termination.**

- i. **By Customer.** You may terminate this Agreement at any time upon 30 days' prior written notice to us. You may terminate this Agreement for cause if we breach any material obligations of ours under this Agreement and fail to cure such breach within 10 business days of following receipt of written notice from you (including by email). If you terminate this Agreement for cause you will receive a refund equal to the pro rata amount you paid for the subscription to the Service allocable to the remaining Term.
- ii. **By Nyansa.** We may suspend your use of the Products at any time if we reasonably believe you have breached any material obligation of yours under this Agreement, including the payment terms of Section 2 and the restrictions set forth in Section 4(b); if such breach remains uncured 10 business days following receipt of written notice from us (including by email), then we may terminate this Agreement. In such event, you will not be entitled to a refund of any amounts paid for your subscription to the Service.

4. **Grant and Use Rights.**

- a. **License Grant.** Subject to your compliance with the terms of this Agreement, Nyansa hereby grants you the right to access and use the Service during the Term. If you install a private cloud instance of the Service, then we grant you a nonexclusive, nontransferable, worldwide, personal license to install and use the Service in your local environment. As with the SaaS version, we update the Service from time to time, and when we do the version of the Service running in your local environment will be automatically upgraded. You consent to such automatic upgrading. All updates to the Service will be subject to the terms and conditions of this Agreement.
- b. **Restrictions.** You will not (and will not to permit anyone else with access to your user account within the Service to): (a) reverse engineer or otherwise attempt to derive the source code for the Technology; or (b) use the Technology other than in accordance with (i) this Agreement, (ii) any specifications, or (iii) all applicable laws and regulations, including export laws and regulations of the United States or any other country, including any export, re-export, or use of the Service or Technology to provide services in violation of such export laws and regulations.

5. **Ownership and Customer Data.**

- a. **Customer Data.** You understand that by using the Service you will be transferring information about your network to us, including data that may constitute personal information (collectively, "**Customer Data**"). Customer Data includes information regarding web traffic categories, networking protocols, flow statistics, radio frequency characteristics, network infrastructure, device statistics (including device MAC address, operating system, device name, and IP address), and limited user information (derived from any user authentication methods your organization employs). It is your responsibility to provide notice to and obtain any necessary consent from your network users to collect

the Customer Data and provide it to us. Nyansa uses your Customer Data exclusively for the purpose of providing the Service to you, including displaying statistics regarding your network and generating Insights (defined below) to assist you in better managing and securing your network and delivering unparalleled end user experience. Except as set forth below regarding Insights, you retain all ownership in the Customer Data and grant Nyansa a limited right to use the Customer Data for the purpose of making the Service available to you. Nyansa treats any personal information contained in the Customer Data in accordance with our Privacy Policy, available at <http://www.nyansa.com/privacy>, which is incorporated into this EULA by reference.

- b. **Nyansa Rights.** Nyansa owns and retains all intellectual property rights in the Technology and the Insights (as defined below). You hereby assign to us all of your interest in any feedback you convey to us related to the Technology. In connection with providing the Service to you, Nyansa uses Customer Data to generate (i) anonymous, aggregated reporting data regarding network usage across its customer base, (ii) predictive analytics regarding your specific network, and (iii) other data generated from but in no way identifying your Customer Data (collectively, "**Insights**").
 - c. **Customer Responsibilities.** In addition to complying with the restrictions set forth in Section 4(b), you are responsible for establishing a username and password for your user account within the Service and for verifying that only your designated employees or other service providers have access to the Service through your user account. You are also responsible for maintaining administrative control over your account. Nyansa is not liable for liabilities in connection with any of your acts or omissions related to access or use of the Service through your user account.
- 6. Support Service.** As part of the license granted to you in Section 4(a), we provide you the technical support services at no additional charge. More information can be found in our FAQ, available at www.nyansa.com/faqs.
 - 7. Service Level Warranty.** We use our best efforts to provide the Service to you on an ongoing basis. If you are a subscriber to the public cloud instance of the Service, then the Service Level Agreement (the "SLA") available at www.nyansa.com/sla is your exclusive remedy with respect to any interruptions in the availability of the Service (the SLA does not apply to a private cloud instance). The SLA is incorporated into this EULA by reference.
 - 8. Confidentiality.** Each party (the "**Recipient**") understands that the other party (the "**Discloser**") has disclosed or may disclose non-public, proprietary information relating to the Discloser's technology or business (the "**Confidential Information**" of the Discloser). The Recipient will not use any Confidential Information of the Discloser except in connection with the performance of its obligations under this Agreement, and will disclose the Confidential Information of the Discloser only to the employees or contractors of the Recipient who have a need to know such Confidential Information and who are under a similar duty of confidentiality. Confidential Information does not include information that (a) is or was lawfully received by the Recipient from a third party without confidentiality obligations, (b) becomes available in the public domain through no action or inaction of the Recipient, or (c) is developed independently by the Recipient without reference to the Discloser's Confidential Information. If legally permissible, Recipient will provide Discloser prompt written notice if legally compelled to disclose Discloser's Confidential Information.
 - 9. Limitation of Liability and Indemnity.** In no event will either party be liable for any consequential, indirect, exemplary, special or incidental damages, including any lost data and lost profits, arising from or relating to this Agreement or the Technology. Each of our total cumulative liability under this Agreement will not exceed the amount of fees you have paid to us during the Term. You will indemnify us from all liabilities, including reasonable attorneys' fees, relating to any claims brought by a third party arising out of or in connection with misuse of the Technology under the terms of this Agreement.

10. Disclaimer. Nyansa does not warrant that the Service will be error free. Except as provided in the SLA, we specifically disclaim all other warranties, express, implied, or statutory, regarding the Technology or any Support Services, including any warranties of merchantability, fitness for a particular purpose, title, and non-infringement of third-party rights and regardless of whether any remedy fails of its essential purpose.

11. General. This Agreement is the entire agreement between you and us and supersedes all prior agreements and understandings regarding the Technology. If any provision of this Agreement is determined to be unenforceable, this Agreement will be construed as if such provision had not been included. This Agreement will be governed by the laws of the State of California without regard to conflict of laws principles that would require the application of the laws of another jurisdiction, and each party irrevocably submits to the personal jurisdiction and exclusive venue of any such court in any such action or proceeding. Any delay in the performance of any duties or obligations of either party will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party as long as such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.

Thanks for reading. We're grateful for your business and look forward to working with you!