

## END USER LICENSE AGREEMENT

Last Updated: April 9, 2020

By using a Service or downloading, installing or using the Software, you agree to be bound by these terms between you and Nyansa ("Agreement"). If you do not agree to these terms, you must not use the Service or download, install or use the Software. "You" means you individually or the entity that you represent. If you are entering into the Agreement for an entity, you represent that you have the authority to bind that entity. "Nyansa", "we", or "us" means Nyansa, Inc. Capitalized terms used in these Agreement are defined throughout this Agreement and in Section 1 ("Definitions"). Section references in this document are to the provisions of this Agreement.

The Agreement takes effect when you click "I accept" or similar button or check box presented to you as part of the sign-up process or when you first use the Service or install the Software, whichever is earlier, and will remain in effect during the relevant Term or until terminated as specified in the Agreement.

PLEASE NOTE THAT THE TERMS OF THIS AGREEMENT WILL GOVERN YOUR USE OF THE SOFTWARE, REGARDLESS OF ANY TERMS THAT MAY APPEAR DURING THE INSTALLATION OF THE SOFTWARE.

## 1. Definitions.

- 1.1. **"Content"** means any data, including all text, sound, video, or image files, and software (including machine images), or other information.
- 1.2. **"Documentation"** means: (i) the Support Policy, and Service Level Agreement (if any) for the Service and (ii) end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software; all as revised by Nyansa from time to time.
- 1.3. **"Hardware"** means any hardware appliance that may be provided by Nyansa to you, depending on the nature of your use of the Services.
- 1.4. **"Infringement Claim"** means any claim by a third party that a Service or any Software infringes any patent, trademark, or copyright of the third party, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of your actions), under the laws of: (a) the United States, (b) Canada, (c) European Economic Area member states, (d) Australia, (e) New Zealand, (f) Japan, or (g) the People's Republic of China, to the extent that your instance of the Service is provisioned in a data center located in the applicable country.
- 1.5. **"Insights"** means (i) anonymous, aggregated reporting data regarding network usage and IoT security posture across its customer base, (ii) predictive analytics regarding your specific network and IoT assets, and (iii) other data generated from but in no way identifying your customer Content.

1.6. **“Intellectual Property Rights”** means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

1.7. **“License”** means a license granted under Section 7.1 (General License Grant).

1.8. **“Purchase Order”** means a purchase order, enterprise license agreement, or other ordering document issued by You to Nyansa or a Nyansa authorized reseller that references and incorporates this Agreement and that evidences your purchase of the Service.

1.9. **“Service”** means the Nyansa SaaS platform and Software as specified in the Purchase Order.

1.10. **“Service Level Agreement”** means the then-current version of the Service Level Agreement for the Nyansa SaaS available at [www.nyansa.com/sla](http://www.nyansa.com/sla). Certain Services may not have a Service Level Agreement.

1.11. **“Software”** means the Nyansa computer programs to which You acquire a license under an Order, including the software installed on any Hardware you purchase.

1.12. **“Software as a Service or “SaaS”** means the Nyansa software as a service platform.

1.13. **“Support Service”** means Nyansa's then-current support policies, copies of which are posted at [www.nyansa.com/support/](http://www.nyansa.com/support/).

2. **Service.** The service provided by Nyansa includes:(i) the SaaS platform; and (ii) related on-premise and client agent Software for analyzing networks (together the “Service”).In addition, Nyansa may provide Hardware, depending on the nature of your use of the Service. 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.

3. **Modification.** As a SaaS platform, we are continually maintaining, modifying, and improving the Service. Please keep in mind that your use of the Service after material 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 Service once you know about the changes, and (ii) 30 days after they are published.

4. **Monitoring.** We monitor and collect Insights data exclusively for the purpose of providing the Service to you, including: to assist you in better managing and securing your network, implementing IoT operational assurance, and delivering unparalleled end user experience.

5. **Order and Payment.** You will 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 (2) 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 thirty (30) days from the date of the invoice. Any Hardware you purchase will be shipped (Ex Works our regional fulfillment facility) as soon as possible following receipt and acceptance of a Purchase Order.

## 6. **Term and Termination.**

6.1. **Term.** The term of this Agreement means the time period during which you are using the Service as set forth in the Purchase Order (the "Term").

### 6.2. **Termination.**

6.2.1. **By Customer.** 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 thirty (30) business days of following receipt of written notice from you (including by email).

6.2.2. **By Nyansa.** We may suspend your use of the Service at any time if we reasonably believe you have breached any material obligation of yours under this Agreement, including the payment terms of Section 5 and the restrictions set forth in Section 7.2; if such breach remains uncured thirty (30) 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.

## 7. **Grant and Use Rights.**

7.1. **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, non-transferable, worldwide, personal license to install and use the Service in your local environment during the Term.

7.2. **Software License Restrictions.** Without Nyansa's prior written consent, you must not, and must not allow any third party to: (a) use the Software in an application services provider, service bureau, or similar capacity for third parties; (b) disclose to any third party the results of any benchmarking testing or comparative or competitive analyses of Software done by or on behalf of you; (c) make the Software available in any form to anyone other than your employees or contractors reasonably acceptable to Nyansa who require access to use Software on behalf of you in a manner permitted by this Agreement; (d) transfer or sublicense the Software or Documentation to any third party; (e) use the Software in conflict with the terms and restrictions of the Software's licensing model and/or the applicable Order; (f) except to the extent permitted by applicable mandatory law, modify, translate, enhance, or create derivative works from the Software, or reverse engineer, decompile, or otherwise attempt to derive source code from the Software; (g) remove any copyright or other proprietary notices on or in any copies of Software; or (h) violate or circumvent any technological restrictions within the Software or specified in this Agreement, such as via software or services.

7.3. **Service Restrictions.** You must not: (a) resell or sublicense the Service; or (b) use the Service (i) in a way prohibited by law or that would cause you or us to be out of compliance with applicable law, (ii) to violate any rights of others, (iii) to try to gain unauthorized access to, test the vulnerability of, or disrupt the Service or any other service, device, data, account, or network, (iv) to distribute spam or malware, (v) in a way that could harm the Service or impair anyone else's use of it, or (vi) in a way intended to work around the Service's technical limitations, recurring fees calculation, or usage limits.

8. **Optional Feedback.** You may provide comments and suggestions regarding a Service, but you are not required to do so. If you provide comments or suggestions, we may use that feedback without restriction, and you hereby irrevocably assign to us all right, title, and interest in and to that feedback. Subject to the preceding sentence regarding any feedback you provide, providing any comments and suggestions does not grant us any rights in Content or your intellectual property.

## 9. **Data Protection and Security.**

9.1. You are solely responsible for ensuring that the Service and its security is appropriate for your Content and your intended use.

9.2. You are responsible for taking and maintaining appropriate steps to protect the confidentiality, integrity, and security of your Content. Those steps include (a) controlling access you provide to your users, (b) configuring the Service appropriately, (c) ensuring the security of your Content while it is in transit to and from the Service, (d) using encryption technology to protect your Content, and (e) backing up your Content.

9.3. 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 expressly disclaims any liability in connection with any of your acts or omissions related to access or use of the Service through your user account.

## 10. **Intellectual Property Ownership and Customer Content**

10.1. **Ownership of Service.** As between you and us, we own all right, title, and interest in and to the Service and any related Nyansa Software, including all improvements, enhancements, modifications, and derivative works of them, and all Intellectual Property Rights including Insights data in all of them. Your rights to use the Service are limited to those expressly granted in the Agreement. No other rights are implied with respect to the Service, any related Nyansa Software, or any related Intellectual Property Rights.

10.2. **Ownership of Your Content.** As between you and us, you retain all right, title and interest in and to your Content and all Intellectual Property Rights in your Content. Our rights to access and use your Content are limited to those expressly granted in the Agreement, including the grant of a limited right to use the Content for the purpose of making the Service available to you. You understand that by using the Service you will be transferring information about your network to us, including data that may constitute personal information.

11. **Privacy and Security.** Nyansa treats any personal information contained in the Content in accordance with our Privacy Policy, available at <https://www.nyansa.com/security-privacy/>, which is incorporated into this Agreement by reference.

12. **Support Service.** As part of the license granted to you in Section 7.1, we provide you support services under Nyansa's then-current support policies, copies of which are posted [www.nyansa.com/support](http://www.nyansa.com/support).

## 13. **Warranties.**

13.1. **Software – Limited Warranty: Duration, and Remedy.** We warrant to you that the Software will, for a period of ninety (90) days following notice of availability for electronic download or delivery ("Software Warranty Period"), substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and used at all times in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than Nyansa or its authorized representative. We will, at our own expense and as our sole obligation and your exclusive remedy for any breach of this limited warranty, either replace that Software or correct any reproducible error in that Software reported to Nyansa by you in writing during the Software Warranty Period. If we determine that we are unable to correct the error or replace the Software, we will refund to you the amount paid by you for the License to that Software, and the License for that Software will terminate.

13.2. **Service – Limited Warranty: Duration, and Remedy.** We warrant that the Service will perform in accordance with the applicable Service Level Agreement, if any, during the Term, provided that the Service has at all times been used in accordance with this Agreement. If we fail

to meet this limited warranty, your sole and exclusive remedy for that failure is as specified in the Service Level Agreement.

13.3. **Disclaimer of Warranties.** OTHER THAN THE LIMITED WARRANTIES ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE, FOR OURSELVES AND ON BEHALF OF OUR SUPPLIERS, DISCLAIM ALL WARRANTIES RELATING TO THE SOFTWARE AND THE SERVICE OR TO ANY MATERIALS OR SERVICES PROVIDED TO YOU UNDER THIS AGREEMENT, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. WE AND OUR SUPPLIERS DO NOT WARRANT THAT ANY SOFTWARE OR SERVICE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR ERRORS, OR THAT ANY SERVICE WILL MEET (OR IS DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS..

#### 14. **Confidential Information.**

14.1. **Protection.** Either party (the "recipient") may use Confidential Information of the other party (the "discloser") solely to exercise its rights and perform its obligations under this Agreement or as otherwise permitted by this Agreement. Each party must use reasonable care to protect the other party's Confidential Information in the same manner as it protects its own Confidential Information of a similar nature, but in any event with not less than reasonable care. The recipient may disclose the discloser's Confidential Information only to the recipient's employees, or to third parties, who have a need to know the Confidential Information for purposes of this Agreement, and who are under a duty of confidentiality no less restrictive than as specified in this Section 14.

14.2. **Exceptions.** The recipient's obligations under Section 14.1 with respect to any of the discloser's Confidential Information will terminate if the recipient can show by written records that the information: (a) was, at the time of disclosure by the discloser, already rightfully known to the recipient without any obligation of confidentiality; (b) was disclosed to the recipient by a third party who had the right to make the disclosure without any confidentiality restrictions; (c) at the time of disclosure is, or through no fault of the recipient has become, generally available to the public; or (d) was independently developed by the recipient without access to or use of the discloser's Confidential Information.

14.3. **Required Disclosures.** If we are required by a subpoena, court order, agency action, or any other legal or regulatory requirement, to disclose any of your or any user's Confidential Information or any of your Content, we will provide you with notice and a copy of the demand as soon as practicable, unless we are prohibited from doing so pursuant to applicable law or regulation. If you or the user request, we will, at your (or the user's) expense, take reasonable steps to contest and to limit the scope of any required disclosure.

14.4. **Injunctive Relief.** You and Nyansa each acknowledge that disclosure or use of the other party's Confidential Information in violation of this Agreement may cause irreparable harm to the discloser for which monetary damages may be an inadequate remedy and difficult to ascertain. Each party agrees that the discloser will have the right to seek injunctive or other equitable relief for any violation of the confidentiality provisions of this Agreement by the recipient, in addition to any other rights and remedies that the discloser may have at law.

#### 15. **INDEMNIFICATION.**

15.1. **Defense and Indemnification.** Subject to the remainder of this Section 15, we will defend you against any Infringement Claim and indemnify you from the resulting costs, fines, and damages finally awarded against you to the third party by a court of competent jurisdiction or a government agency or agreed to by us in settlement. The foregoing obligations are applicable only if you: (a) promptly notify us in writing of the Infringement Claim; (b) allow us sole control over the defense for

the claim and any settlement negotiations; and (c) reasonably cooperate in response to our requests for assistance. We will not, without your prior written consent, which will not be unreasonably withheld, conditioned, or delayed, enter into any settlement that obligates you to admit any liability or to pay any unreimbursed amounts to the party bringing the claim.

15.2. **Remedies.** If the allegedly infringing Software or Service becomes, or in our opinion be likely to become, the subject of an Infringement Claim, we will, at our option and expense, do one of the following: (a) procure the rights necessary for you to keep using the affected Software or Service; or (b) replace or modify the affected Software or Service to make it non-infringing; or (c) terminate the License to the affected Software or terminate your right to use the Service (as applicable) and discontinue related support services. Upon (i) your certified deletion of the affected Software or (ii) confirmation of your termination of use of the Service, we will refund: (A) for Software, the fees paid by you for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on that Software's delivery date, and any prepaid service fees attributable to related support services to be delivered after the date that service is stopped; or (B) for the Service, any prepaid fees, prorated for the remaining portion of the then-current Term. Nothing in this Section 15.2 limits our obligation under Section 15.1 to defend and indemnify you, provided that you replace the allegedly infringing Software upon us making alternate Software available to you, or you stop using the allegedly infringing Software or Service upon receiving Nyansa's notice terminating the affected License or use right for the Service.

15.3. **Exclusions.** We will have no obligation under this Section 15 or otherwise with respect to any claim based on: (a) combination of Software with non-Nyansa or VMware products (other than products that are listed on the Order and used in an unmodified form) or any of your Content (if applicable); (b) use of the Software or Service for a purpose or in a manner for it was not designed or in a manner not permitted by this Agreement; (c) use of any older version of the Software when use of a newer version would have avoided the infringement; (d) any modification to the Software or Service made without Nyansa's express written approval; or (e) any Software or Service provided on a no-charge, beta, or evaluation basis.

15.4. **Sole and Exclusive Remedy.** THIS SECTION 15 STATES YOUR SOLE AND EXCLUSIVE REMEDY AND NYANSA'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS.

## 16. **LIMITATION OF LIABILITY.**

16.1. **Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL WE BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE OF THE SERVICE OR OF CONTENT, FOR ANY REASON INCLUDING POWER OUTAGES, SYSTEM FAILURES, SUPPLY FAILURES, OR OTHER INTERRUPTIONS (SUBJECT TO OUR OBLIGATIONS UNDER THE APPLICABLE SERVICE LEVEL AGREEMENT), LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. THIS LIMITATION WILL APPLY REGARDLESS OF WHETHER ANY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE FOREGOING LIMITATION MAY NOT APPLY.

16.2. **Cap on Monetary Liability.** OUR LIABILITY FOR ANY CLAIM UNDER THIS AGREEMENT WILL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL FEES PAID OR PAYABLE TO US FOR YOUR USE OF THE PARTICULAR SERVICE GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. THE LIMITATIONS OF LIABILITY IN SECTION 16.2 WILL NOT APPLY TO (i) NYANSA'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT OR (ii) ANY LIABILITY WHICH MAY NOT BE EXCLUDED BY APPLICABLE LAW.

17. **Compliance with Laws; Export Control; Government Regulations.** Each Party shall comply with all

laws applicable to the actions contemplated by this Agreement. You acknowledge that the Service is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Service to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Service and documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this Agreement.

18. **General.** This Agreement is the entire agreement between you and us and supersedes all prior agreements and understandings regarding the Service. 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.