

# SNAPPYDATA

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**7. TERMINATION.** SnappyData may terminate this EULA effective immediately upon written notice to Licensee if: (a) Licensee fails to pay any portion of fees due under an applicable Quote and/or Order within 10 days after receiving notice that payment is past due; (b) Licensee suffers an insolvency or analogous event; (c) Licensee commits a material breach of this EULA that is incapable of being cured; or (d) Licensee breaches any other provision of this EULA and does not cure the breach within 15 days after receiving written notice of breach. If the EULA expires or terminates, Licensee must remove and destroy all copies of

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**8. CONFIDENTIALITY.** Recipient shall (a) use Discloser's Confidential Information only for exercising rights and performing obligations in connection with this EULA; and (b) protect from disclosure any Confidential Information disclosed by Discloser for a period commencing upon the disclosure date until 3 years thereafter. Notwithstanding the foregoing, Recipient may disclose Confidential Information: (i) to an Affiliate to fulfill its obligations or exercise its rights under this EULA so long as such Affiliate agrees to comply with these restrictions in writing; and (ii) if required by law or regulatory authorities provided Recipient has given Discloser prompt notice before disclosure. SnappyData shall not be responsible for unauthorized disclosure of Licensee's data stored within Software arising from a data security breach. Licensee is solely responsible for all obligations to comply with laws applicable to Licensee's Software use, including without limitation any personal data processing. SnappyData may collect, use, store and transmit technical and related information about Licensee's Software use, including server internet protocol address, hardware identification, operating system, application software, peripheral hardware, and Software usage statistics, to facilitate the provisioning of updates, support, invoicing, and online services. Licensee is responsible for obtaining all consents required to enable SnappyData to exercise its confidentiality rights, in compliance with applicable law.

**9. RECORDS/AUDIT.** For the period set forth in the Quote and/or Order, any renewals, and for 3 years thereafter, Licensee shall maintain accurate records regarding its compliance with this EULA. Upon reasonable notice (and no more than once per year), SnappyData may audit Licensee's Software use to determine such compliance and payment of fees. Licensee will promptly pay additional fees identified by the audit and reimburse SnappyData for all audit costs if it discloses underpayment by more than 5% in the audited period, or that Licensee breached any EULA term.

**10. GENERAL.** This EULA is governed by Oregon law. Each Party hereby expressly consents to the personal jurisdiction of either the Oregon courts or the United States District Courts located in the State of Oregon and agrees that any action relating to or arising out of this EULA be instituted and prosecuted only in the state or federal courts located in Portland, Oregon. The U.N. Convention on Contracts for the International Sale of Goods does not apply. Software and Support Services are subject to U.S., European Union and other export and import laws and regulations. Both parties shall comply with all applicable laws and regulations and diversion contrary to such laws is expressly prohibited. Except to the extent expressly set forth to the contrary in this EULA, this EULA is not intended to confer upon any person other than the parties hereto any rights or remedies. The parties are independent contractors. This EULA is the complete statement of the parties' agreement with regard to the subject matter hereof and may be modified only by written agreement. Licensee shall not assign or transfer any rights under this EULA or delegate any of its duties hereunder, by operation of law or otherwise, without SnappyData's prior written consent, and any such action in violation of this provision, is null and void, and of no force, and a breach of this EULA. SnappyData may assign or transfer this EULA to any successors-in-interest to all or substantially all of the business or assets of SnappyData whether by merger, reorganization, asset sale or otherwise, or to any Affiliates of SnappyData, and this EULA shall inure to the benefit of and be binding upon the respective permitted successors and assigns. SnappyData may use SnappyData Affiliates or other sufficiently qualified subcontractors to provide Support Services, provided that SnappyData remains responsible for performance thereof. If any part of this EULA, an Order, or a Quote is held unenforceable, the validity of the remaining provisions shall not be affected. In the event of conflict or inconsistency among the Guide, this EULA and the Order, the following order of precedence shall apply: (a) the Guide, (b) this EULA and (c) the Order. Licensee understands that any breach of this EULA will cause SnappyData irreparable damage for which recovery of money damages alone would be inadequate. SnappyData will therefore be entitled to obtain timely injunctive relief to protect SnappyData's rights under this EULA in addition to any and all remedies available at law or under this EULA.

**11.1 Section 4 (WARRANTY/DISCLAIMER).** The last sentence of Section 4 shall be deleted and replaced with:



EXCEPT AS EXPRESSLY STATED IN THE APPLICABLE WARRANTY SET FORTH IN THIS EULA, SNAPPYDATA (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, WRITTEN OR ORAL. INsofar AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING WARRANTIES ARISING BY STATUTE, COURSE OF DEALING OR USAGE OF TRADE.

**11.2 Section 6 (LIMITATION OF LIABILITY).** The entire Section is deleted and replaced with:

6. LIMITATION OF LIABILITY.

A. In case of death or personal injury caused by SnappyData's negligence, in case of SnappyData's willful misconduct, fraud or gross negligence, and where a limitation of liability is not permissible under applicable mandatory law, SnappyData shall be liable according to statutory law.

B. Subject always to subsection 6.A, the liability of SnappyData (including its suppliers) to the Licensee under or in connection with a Licensee's Order, whether arising from negligent error or omission, breach of contract, or otherwise shall not exceed the lesser of (i) fees Licensee paid for the specific service (calculated on an annual basis, when applicable) or Software during the 12 months preceding SnappyData's notice of such claim; or (ii) one million euros (€1,000,000).

C. In no event shall SnappyData (including its suppliers) be liable to Licensee however that liability arises, for the following losses, whether direct, consequential, special, incidental, punitive or indirect: (i) loss of actual or anticipated revenue or profits, loss of use, loss of actual or anticipated savings, loss of or breach of contracts, loss of goodwill or reputation, loss of business opportunity, loss of business, wasted management time, cost of substitute services or facilities, loss of use of any software or data; and/or (ii) indirect, consequential, exemplary or incidental or special loss or damage; and/or (iii) damages, costs and/or expenses due to third party claims; and/or (iv) loss or damage due to the Licensee's failure to comply with obligations under this EULA, failure to do back-ups of data or any other matter under the control of the Licensee and in each case whether or not any such losses were direct, foreseen,

foreseeable, known or otherwise, and whether or not that party was aware of the circumstances in which such losses could arise. For the purposes of this Section 6, the term “loss” shall include a partial loss, as well as a complete or total loss.

D. The parties expressly agree that should any limitation or provision contained in this Section 6 be held to be invalid under any applicable statute or rule of law, it shall to that extent be deemed omitted, but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out in this Section 6.

E. The parties expressly agree that any order for specific performance made in connection with this EULA in respect of SnappyData shall be subject to the financial limitations set out in sub-section 6.B.

F. Licensee waives the right to bring any claim arising out of or in connection with this EULA more than twenty-four (24) months after the date of the cause of action giving rise to such claim.

#### G. LICENSEE OBLIGATIONS IN RESPECT OF PRESERVATION OF DATA.

During the term of the EULA the Licensee shall:

- 1) from a point in time prior to the point of failure, (i) make full and/or incremental backups of data which allow recovery in an application consistent form, and (ii) store such back-ups at an off-site location sufficiently distant to avoid being impacted by the event(s) (e.g. including but not limited to flood, fire, power loss, denial of access or air crash) and affect the availability of data at the impacted site;
- 2) have adequate processes and procedures in place to restore data back to a point in time and prior to point of failure, and in the event of real or perceived data loss, provide the skills/backup and outage windows to restore the data in question;
- 3) use anti-virus software, regularly install updates across all data which is accessible across the network, and protect all storage arrays against power surges and unplanned power outages with uninterruptible power supplies; and

4) ensure that all operating system, firmware, system utility (e.g. but not limited to, volume management, cluster management and backup) and patch levels are kept to SnappyData recommended versions and that any proposed changes thereto shall be communicated to SnappyData in a timely fashion.

**11.3 Section 10 (General)** The first two sentences of Section 10 shall be deleted and replaced with: This EULA is governed by the laws of the Republic of Ireland, excluding its conflict of law rules. Each party hereby expressly consents to the personal jurisdiction of the Dublin Courts and agrees that any action relating to or arising out of this EULA be instituted and prosecuted only in the Dublin Courts.

## **12. DEFINITIONS**

**“Affiliate”** means a legal entity controlled by, controls, or is under common control of SnappyData or Licensee, with “control” meaning more than 50% of the voting power or ownership interests then outstanding of that entity.

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