



End User License Agreement

This IntelliFlash End User License Agreement (this “Agreement”) is a legal contract between you, either as an individual or acting in your capacity as an employee or other representative of your company or other entity (“you”), and IntelliFlash by DDN, Inc. and its affiliates (collectively, “IntelliFlash”), governing your use of the software, firmware, services, associated online or electronic documentation, and any applicable Updates (as defined below) that are published, distributed, or otherwise made available by IntelliFlash (collectively, the “Software”), and if applicable, your use of the Software designed for application with IntelliFlash hardware devices and products, including without limitation IntelliFlash storage devices (collectively, “Devices”). For IntelliFlash software or services that are accompanied by a separate license agreement, the terms of that separate license agreement will govern your use of that IntelliFlash software or services. You represent and warrant that you have the full legal authority to bind yourself or the employer or entity you represent to this Agreement.

PLEASE READ THIS AGREEMENT CAREFULLY. BY CLICKING TO ACCEPT THE TERMS IN THIS AGREEMENT OR BY INSTALLING, ACTIVATING, COPYING, OR OTHERWISE USING THE SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND THE PRIVACY STATEMENT (AS INCORPORATED BY REFERENCE IN SECTION 5), WHICH ARE CONDITIONS TO INTELLIFLASH’S LICENSE GRANT TO YOU PURSUANT TO THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT AND THE PRIVACY STATEMENT, YOU MAY NOT INSTALL, ACTIVATE, COPY, OR OTHERWISE USE THE SOFTWARE.

IntelliFlash may update or modify this Agreement from time to time. By accepting any modifications to this Agreement, including, by continuing to use the Software after reasonable notice is provided to you, you are agreeing to be bound by such modifications to this Agreement.

1. LICENSE AND RESTRICTIONS

The Software is licensed to you and not sold. Subject to your continuous compliance with the terms of this Agreement, IntelliFlash grants you a limited, non-exclusive, non-transferable, non-sublicensable, and revocable license to use the Software for your internal purposes only, and to make a reasonable number of copies of the Software solely for the purpose of using the Software as permitted pursuant to this Agreement.

Except as expressly permitted under this Agreement, you agree that you will not and you will not enable others to: copy, distribute, encumber, sell, rent, lease, lend, sublicense, or otherwise transfer, publish, or disclose the Software to any third party; modify, translate, adapt, or create derivative works of the Software; decompile, reverse engineer, disassemble, decrypt, or attempt to derive the source code of the Software; use the Software to do anything illegal or violate any laws or regulations; use the Software in any manner to aid in the violation of any third-party intellectual property rights, including without limitation copyrights, trademarks, trade secrets, and patents, or the applicable laws of any applicable jurisdictions, including without limitation libel, defamation, obscenity, and privacy-related torts; attempt to circumvent or disable the Software or any technology features or measures in the Software, including without limitation any access controls or copyright protection mechanisms, by any means or in any manner; remove or alter any trademark, logo, copyright, or other proprietary notices, legends, symbols, or labels in or on the Software or used in connection with the Software; and publish, market, or otherwise distribute to any third party the results of any performance or benchmark tests or analyses relating to the Software or Devices without IntelliFlash’s prior written consent.

2. RESERVATION OF RIGHTS

You acknowledge that the Software is protected by copyrights and other intellectual property and proprietary rights. IntelliFlash and its third-party licensors (“Licensors”) reserve and retain ownership of all right, title, and interest in and to the Software, including without limitation any and all intellectual property rights. IntelliFlash and its Licensors reserve all rights not expressly granted to you.



3. USE OF THIRD-PARTY DEVICES

In some instances, the Software may operate with devices manufactured by entities other than IntelliFlash (“Third-Party Devices”). You acknowledge and agree that IntelliFlash makes no representations or warranties with respect to the quality or capability of any Third-Party Devices. You acknowledge that IntelliFlash may offer support for some Third-Party Devices and not others. IntelliFlash makes no guarantees that the Software is, will be, or will remain compatible with any applicable Third-Party Device.

4. DELIVERY; UPDATES; AUTOMATIC FEATURES; SOFTWARE KEYS

IntelliFlash may elect to deliver the Software by electronic transmission or download.

You acknowledge that IntelliFlash has no obligation to provide you with, but may, from time to time, issue updates to the Software, including without limitation bug fixes, patches, upgrades, additional or enhanced functions, plug-ins, and new versions (collectively, “Updates”).

The Software may automatically connect to IntelliFlash or third-party servers via the Internet to check for available Updates and may automatically download and install Updates on your device or give you the option of manually downloading and installing Updates. By accepting this Agreement and using the Software, you agree to receiving these types of automatic Updates.

Some Software may require software keys or utilize other technical protection measures, and you agree that IntelliFlash may monitor your compliance with this Agreement, remotely or otherwise.

5. REGISTRATION AND INFORMATION COLLECTION; SHARING SERVICES

As part of any registration process for Software or Devices, IntelliFlash may request registration-related information, including without limitation your name, email address, username, or password. By providing this information, you consent to its collection and use by IntelliFlash to provide non-promotional communications regarding any Devices purchased with the Software, including without limitation notices of Update availability, product recalls, or safety concerns. Some Software may provide sharing services to allow you to share content with other users and may display information about you (e.g., name, email address, username) when using those sharing services. By choosing to use such Software that provides sharing services, you consent to the sharing of your information for this purpose. The Software may also contain automatic communication features that relay certain information to IntelliFlash and its third-party data analytics providers in connection with the operation of the Software. IntelliFlash’s use of information it collects from you or that you otherwise provide to IntelliFlash in connection with the Software, shall be governed by the Privacy Policy of DataDirect Networks, Inc. (“DDN Privacy Policy”), an affiliate of IntelliFlash, which is incorporated into this Agreement by reference and located and available at <https://www.ddn.com/privacy-policy/>. By accepting this Agreement, you also agree to the terms of the DDN Privacy Policy. If you do not agree to the terms of the DDN Privacy Policy, you may not use the Software.

6. CREDENTIALS

You agree that you will maintain the confidentiality of your username and password related to your use of the Software, and assume all responsibility for any loss, theft, or other destruction of any data resulting from any failure to comply with these obligations.

7. THIRD-PARTY CONTENT AND SERVICE PROVIDERS

The Software may allow you to access and use third-party software, websites, or content (collectively, “Third-Party Content”). You acknowledge that all Third-Party Content is the property of the applicable Third-Party Content owner(s) and may be protected by copyright and other intellectual property rights. You may not use any Third-Party Content in any manner that has not been authorized by the applicable service provider (“Service Provider”) or Third-Party Content owner(s). You acknowledge that you may be required



to enter into a separate agreement with a Service Provider or Third-Party Content owner(s), or comply with a Service Provider's terms or conditions of use, in order to access or have the right to access and use certain Third-Party Content. It is your responsibility to ensure that accessing, reproducing, displaying, or otherwise using Third-Party Content in connection with your use of the Software does not infringe any third-party intellectual property rights. It is IntelliFlash's policy to respond to notices of alleged infringement that comply with the Digital Millennium Copyright Act and other applicable intellectual property laws and to terminate the accounts of repeat infringers in appropriate circumstances.

8. DISCLAIMER OF WARRANTY

EXCEPT AS OTHERWISE PROVIDED BY SEPARATE WARRANTY TO YOU IN WRITING BY INTELLIFLASH, THE SOFTWARE IS PROVIDED TO YOU "AS IS" WITHOUT WARRANTY OF ANY KIND, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INTELLIFLASH AND ITS LICENSORS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS, OR LACK OF VIRUSES, AND ANY WARRANTIES REGARDING THE INTEGRITY, SECURITY, OR RELIABILITY OF THE SOFTWARE. INTELLIFLASH DOES NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR BE ERROR-FREE. INTELLIFLASH DOES NOT WARRANT THAT USE OF THE SOFTWARE WILL BE CONTINUOUS OR UNINTERRUPTED, AND INTELLIFLASH SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SOFTWARE. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SOFTWARE REMAINS WITH YOU. YOU UNDERSTAND AND AGREE THAT ANY SOFTWARE, MATERIAL, OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH USE OF THE SOFTWARE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER, DEVICE, SYSTEM, OR NETWORK, INCLUDING WITHOUT LIMITATION ANY LOSS OR CORRUPTION OF DATA. THE FOREGOING WARRANTY DISCLAIMER SHALL NOT MODIFY, CONSTRUCT, OR AMEND THE APPLICABLE WARRANTY THAT RELATES TO YOUR USE, IF APPLICABLE, OF DEVICES.

INTELLIFLASH DOES NOT MAKE ANY REPRESENTATIONS ABOUT, AND DISCLAIMS ALL WARRANTIES WITH RESPECT TO, ANY THIRD-PARTY CONTENT, ANY THIRD-PARTY DEVICE, OR THE ACTIONS OR OMISSIONS OF A SERVICE PROVIDER OR THIRD-PARTY CONTENT OWNER. INTELLIFLASH IS NOT RESPONSIBLE FOR EXAMINING OR EVALUATING THE CONTENT, ACCURACY, COMPLETENESS, TIMELINESS, VALIDITY, COPYRIGHT COMPLIANCE, LEGALITY, DECENCY, QUALITY, OR ANY OTHER ASPECT OF THIRD-PARTY CONTENT. INTELLIFLASH DOES NOT WARRANT OR ENDORSE AND DOES NOT ASSUME AND WILL NOT HAVE ANY LIABILITY OR RESPONSIBILITY TO YOU OR ANY OTHER PERSON FOR ANY THIRD-PARTY CONTENT OR WEBSITES, OR FOR ANY OTHER MATERIALS, PRODUCTS, OR SERVICES OF THIRD PARTIES ACCESSED THROUGH THE SOFTWARE. TO THE EXTENT YOU CHOOSE TO USE OR ACCESS ANY THIRD-PARTY CONTENT THROUGH THE SOFTWARE, YOU DO SO AT YOUR OWN INITIATIVE AND ARE RESPONSIBLE FOR COMPLIANCE WITH ANY APPLICABLE LAWS, INCLUDING WITHOUT LIMITATION APPLICABLE LOCAL LAWS AND PRIVACY AND DATA COLLECTION LAWS.

NO VENDOR, DISTRIBUTOR, DEALER, RETAILER, SALES PERSON, OR OTHER PERSON IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY WARRANTY, REPRESENTATION, OR PROMISE ON BEHALF OF INTELLIFLASH THAT DIFFERS FROM THE TERMS OF THIS AGREEMENT.

9. LIMITATION ON LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL INTELLIFLASH OR ITS LICENSORS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, SALES, BUSINESS, GOODWILL, OR DATA, FOR BUSINESS INTERRUPTION, FOR



COMPUTER SYSTEM FAILURE OR MALFUNCTION, OR FOR OTHER PECUNIARY LOSS RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SOFTWARE OR DEVICES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF INTELLIFLASH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IN NO EVENT SHALL INTELLIFLASH'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES IN CONNECTION WITH THIS AGREEMENT OR THE SOFTWARE EXCEED THE AMOUNT ACTUALLY PAID BY YOU TO INTELLIFLASH FOR THE APPLICABLE SOFTWARE DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

INTELLIFLASH IS NOT RESPONSIBLE OR LIABLE FOR ANY INFECTIONS OR CONTAMINATIONS OF, OR DAMAGE TO, YOUR SYSTEM, OR DELAYS, INACCURACIES, ERRORS, OR OMISSIONS ARISING OUT OF OR RELATED TO YOUR USE OF THE SOFTWARE OR DEVICES.

10. U.S. GOVERNMENT RESTRICTED RIGHTS

The Software contains "commercial items," as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202, as applicable. Accordingly, if you are using the Software on behalf of the U.S. government, or any contractor therefor, the government shall receive only those rights with respect to the Software as are granted to all other end users under license, in accordance with 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or 48 C.F.R. § 12.212, with respect to all other U.S. government licensees and their contractors.

11. EXPORT RESTRICTIONS

IntelliFlash makes no representation that the Software is appropriate for use in your country of use. You acknowledge and agree that the Software, including without limitation any underlying information or technology, may be subject to the U.S. Export Administration Laws and Regulations, the United States Treasury Department's Office of Foreign Assets Control ("OFAC") Economic Sanctions Regulations, as well as export laws of other countries, and that diversion of the Software contrary to U.S. law or the law of other applicable countries is prohibited. You agree that no part of the Software, including without limitation any underlying information or technology, will be used for any nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the U.S. government (or other relevant government) for such purposes. You acknowledge and agree that no part of the Software may be directly or indirectly downloaded or otherwise exported, re-exported, shipped, transferred, or acquired for/to any countries or regions subject to U.S. trade embargo (or their citizens, nationals, or residents), anyone on the OFAC list of Specially Designated Nationals, or anyone on the restricted or denied party list maintained by the U.S. government or Wassenaar member countries. By using the Software, you agree to the foregoing, and represent and warrant that you are not on any such list and are not a citizen of, located in, customarily resident in, or under the control of a national or resident of any such country/region. You further acknowledge and understand that certain functionality of the Software, such as encryption or authentication, as well as your own materials, files, data, or use may be subject to export or import restrictions and you agree to comply strictly with all export, re-export, and import laws and assume sole responsibility for obtaining licenses to export, re-export, or import as may be required.

12. INDEMNITY

To the maximum extent permitted by law, you agree to defend, indemnify, and hold harmless IntelliFlash and its respective directors, officers, employees, and agents and IntelliFlash's Licensors from and against



any and all claims, actions, suits, or proceedings, as well as any and all losses, liabilities, damages, costs, fines, and expenses (including without limitation reasonable attorney's fees) arising out of any breach of this Agreement by you.

13. TERMINATION

Without prejudice to any other IntelliFlash rights, IntelliFlash shall have the right to immediately terminate this Agreement and any accounts associated with the Software, with or without notice to you if IntelliFlash deems that you are failing or have failed to comply with your obligations under this Agreement. Upon termination, you must immediately cease all use of the Software and destroy all copies of the Software subject to this Agreement.

Sections 1, 2, 6, 8, 9, 10, 11, 12, 13, and 16 of this Agreement, and any other terms of this Agreement that require or contemplate performance after the termination of this Agreement, shall survive and be enforceable notwithstanding termination of this Agreement.

Upon reasonable notice, IntelliFlash may audit you for compliance with the terms of this Agreement. In the event that an audit identifies material non-compliance with this Agreement, you agree that you will reimburse IntelliFlash for the costs of such audit.

14. OPEN SOURCE SOFTWARE

The Software licensed under this Agreement may include open source software that is subject to open source license terms. Notwithstanding anything to the contrary herein, use of such open source software shall be subject to the applicable open source license terms to the extent required by the applicable licensor. IntelliFlash provides no support for such open source software.

15. SUPPORT

For questions regarding the Software, please visit the relevant support forum on the IntelliFlash website related to your product or contact IntelliFlash at <https://www.intelliflash.io/support/>.

16. GENERAL

This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any and all prior or contemporaneous oral or written understandings. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. This Agreement shall be governed by the laws of the State of California, without regard to conflicts of law provisions. If you have a dispute with IntelliFlash, you agree to promptly send written notice to: IntelliFlash by DDN, Inc., ATTN: Legal Department, 2929 Patrick Henry Drive, Santa Clara, CA 95054, U.S.A. You and IntelliFlash agree that any judicial proceeding to resolve a dispute shall be brought exclusively in the federal or state courts sitting in Santa Clara County, California, U.S.A., except you agree that IntelliFlash shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction. You may not assign or otherwise transfer, by operation of law or otherwise, this Agreement or the Software. If any term of this Agreement is held unenforceable by a court of competent jurisdiction, such term shall be modified to the extent necessary to render it enforceable without losing its intent or severed from this Agreement if no such modification is possible, and other terms of this Agreement shall remain in full force and effect. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. Neither party shall be in default or be liable for any delay, failure in performance, or interruption of service resulting directly or indirectly from any cause beyond its reasonable control.

Last update: November 2019