

End User License Agreement

This End User License Agreement (“**Agreement**”) is a legal agreement between Icebrg Inc. (“**Icebrg**”) and the end-user of the Icebrg® Insight Application for Splunk (“**Customer**”). Icebrg is willing to license the Icebrg Insight Application for Splunk (the “**Application**”) to Customer only on the condition that Customer accepts and complies with the terms contained in this EULA.

BY ACCEPTING THIS AGREEMENT OR USING, INSTALLING OR ACCESSING THE APPLICATION, CUSTOMER ACKNOWLEDGES THAT IT HAS READ, UNDERSTANDS AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE AGREEMENT. IF CUSTOMER DOES NOT AGREE, IT SHOULD NOT ACCEPT THIS AGREEMENT OR ACCESS AND/OR INSTALL THE APPLICATION. ANY INDIVIDUAL ACCEPTING THE AGREEMENT ON BEHALF OF CUSTOMER REPRESENTS AND WARRANTS THAT HE OR SHE HAS AUTHORITY TO ACCEPT THE TERMS AND CONDITIONS OF THE AGREEMENT ON BEHALF OF CUSTOMER AND TO BIND CUSTOMER TO THE TERMS AND CONDITIONS SET FORTH IN THE AGREEMENT.

1. **Definitions.**

- a. “**Approved Source**” means an authorized Icebrg channel partner, including, without limitation Gigamon Inc. and its channel partners.
- b. “**Documentation**” means the documentation published by or on behalf of Icebrg and relating to the Application.

2. **License Grant.** Subject to and conditioned upon Customer’s compliance with the restrictions and terms set forth in this Agreement Icebrg hereby grants Customer a non-exclusive, non-sublicensable, non-transferable, worldwide, license to use, duplicate modify, and create derivative works of the Application for Customer’s internal business purposes only, solely with the Gigamon Insight Service (the “**Service**”) provided by Icebrg Inc. or an Approved Source on Icebrg’s behalf, all in connection with Splunk Enterprise. Except as set forth in this Section 2, no other licenses are granted by implication, estoppel or otherwise. Customer may permit Customer’s contractors and subcontractors to use the Application as set forth in this Section 2; provided that (i) such contractors and subcontractors may do so only for the sole purpose of providing services to Customer, (ii) such use is subject to all of the restrictions set forth in the Agreement; and (iii) Customer will be liable for any actions of, or failure to act by, the contractors and subcontractors as if such actions or inactions were Customer’s.

3. **Restrictions.** Customer will not, nor will it allow or authorize or permit any third party to:

- a. license, disclose, distribute, or exploit the Application;
- b. sublicense the Application, and any attempted non-compliant sublicense will be void;
- c. use, transfer, or distribute the Application in competition with Icebrg or otherwise;
- d. decompile, reverse translate, disassemble, or reverse engineer the Application or cause the Application to be subject to any open source obligations or release;
- e. remove any proprietary markings or copyright notices from the Application, or translate the Application into any other format or language without Icebrg’s prior written consent;
- f. publicly display, transmit or use supporting Documentation for any other purpose other than to support Customer’s authorized use of the Application within its internal organization; or
- g. create, disclose, distribute, sublicense, license or otherwise transfer any implementation of Icebrg’s application programming interfaces (APIs) except to support Customer’s authorized use of the Application with the Service and within its internal organization.

4. **Ownership.** The license granted in this Agreement is not a transfer or sale of Icebrg’s or its licensors’ ownership rights in the Application (including any copies) or its intellectual property. Except for the license specifically granted in this Agreement, Icebrg and its licensors retain all right, title, and interest in and to the Application, the related source code and intellectual property, and any and all modifications or derivatives. The Application is confidential to Icebrg and protected by applicable trade secret and intellectual property laws.

5. **Open Source Software.** The Application may include or be distributed with third party software covered by an open source software license that supersedes the licensing terms of this Agreement to the extent required by that open source license (“**Open Source Code**”). All open source software is provided WITHOUT ANY WARRANTY INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. If, and to the extent required by the applicable open source license, the source code for the open source software will be made available to Customer upon Customer’s request emailed to legal@gigamon.com.

6. **Technical Support, Limited Warranty.** The Application is not eligible for support. However, Customers wishing to provide Feedback or to submit questions regarding support with respect to the Application may contact Icebrg at apps@gigamon.com. Icebrg values its Customers and will use commercially reasonable efforts to respond to such Feedback or questions, but does not undertake any obligation to do so. If Customer provides any feedback to Icebrg concerning the functionality and performance of the Application (including identifying potential errors, enhancements, and improvements) (“**Feedback**”), Customer hereby assigns

to Icebrg all right, title, and interest in and to the Feedback. Icebrg and its licensees may use Feedback without any payment or restriction

7. **Warranty Disclaimers and Exclusions**

8.1 EXCEPT AS SET FORTH HEREIN, THE APPLICATION IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. CUSTOMER ASSUMES ALL RESPONSIBILITIES FOR SELECTION OF THE APPLICATION TO ACHIEVE ITS INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED. IN ADDITION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ICEBRG AND ITS LICENSORS DISCLAIM ALL WARRANTIES RELATING TO THE APPLICATION AND/OR ANY ACCOMPANYING DOCUMENTATION, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, ACCURACY, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE WITH THE ENJOYMENT OF THE SERVICE, AND FITNESS FOR A PARTICULAR PURPOSE.

8.2 NOTWITHSTANDING ANY OTHER TERM HEREIN, ICEBRG MAKES NO REPRESENTATIONS REGARDING, ARISING FROM, OR RELATED TO THE LEGALITY OF ENCRYPTION OR DECRYPTION OF DATA OR MONITORING OF NETWORKS OR INFORMATION IN A PARTICULAR JURISDICTION, AND CUSTOMER IS SOLELY RESPONSIBLE FOR DETERMINING THAT CUSTOMER'S PROPOSED OR ACTUAL USE OF THE APPLICATION COMPLIES WITH APPLICABLE LAWS. CUSTOMER ACKNOWLEDGES AND AGREES THAT ICEBRG AND ITS LICENSORS WILL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS RESULTING FROM: (A) THE USE OF THE APPLICATION BY CUSTOMER OR THIRD PARTIES; (B) SECURITY BREACHES; OR (C) EAVESDROPPING, INTERCEPTION, FAILURE OF DELIVERY OR LOSS OF DATA SENT, STORED, OR RECEIVED USING THE APPLICATION. THESE LIMITATIONS APPLY EVEN IF ICEBRG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

8. **Term and Termination.** This Agreement is effective as of the date of Customer's first use of, access to or installation of the Application and remains in effect until Customer's failure to comply with any term of this Agreement. Either party may terminate the License Grant section of this EULA at any time upon written notice to the other. Icebrg's rights and Customer's obligations survive the termination of this Agreement. Upon termination of this Agreement and upon Icebrg's request, Customer will certify in writing to Icebrg that all instances and copies of the Application, or any portion thereof (other than firmware), have either been returned to Icebrg or otherwise destroyed or deleted from any of its devices or storage devices.

9. **Limitation of Liability.** UNDER NO CIRCUMSTANCES WILL ICEBRG OR ITS LICENSORS BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, DATA OR INFORMATION, SECURITY BREACH OR BUSINESS INTERRUPTION) ARISING OUT OF OR RELATED TO THE USE OR INABILITY TO USE THE PRODUCTS, EVEN IF ICEBRG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF AN EXCLUSIVE REMEDY. IN NO EVENT WILL ICEBRG'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER FOR THE APPLICATION. BECAUSE SOME JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE LIMITATION SET FORTH IN THIS PARAGRAPH MAY NOT APPLY.

10. **Indemnification.** Customer will defend, indemnify, and hold harmless Icebrg (including its officers, employees, directors, subsidiaries, representatives, affiliates, agents, and licensors) from and against any damages (including reasonable attorney's fees and expenses), claims, and lawsuits that arise or result from Customer's breach of any provision of this Agreement.

11. **Compliance with Laws and Export Restrictions.** The Application may be subject to U.S. export control laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations maintained by the Department of State. Customer will comply with all applicable laws and regulations regarding use of the Products, including all U.S. export control laws and regulations as well as those of any country of import and/or export. Customer will not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of the Application to any destination, entity, or person prohibited by the laws or regulations of the United States. In addition, Customer may not use the Application for any end-use prohibited by the laws or regulations of the United States without obtaining prior authorization from the competent government authorities as legally required. Customer will indemnify, to the fullest extent permitted by law, Icebrg (including its officers, employees, directors, subsidiaries, representatives, affiliates, agents, and licensors) from and against any fines or penalties that may arise as a result of its breach of this Section. This Section will survive indefinitely.

12. **US Government Rights.** The Application is a "commercial item" as that term is defined at FAR 2.101. If Customer is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), Icebrg provides the Application, including any related documentation, technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD)), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software

customarily provided to the public as defined in this Agreement. If acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with Icebrg to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government's needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use of the Application and return the Application and any other software or technical data delivered as part of the Application, unused, to Icebrg. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

13. **Equitable Relief.** Customer acknowledges that (a) the Software is confidential and proprietary to Icebrg and its licensors and contains valuable trade secrets; (b) any breach, threatened or actual, of this Agreement will cause irreparable injury to Icebrg; (c) such injury would not be quantifiable in monetary damages; and (d) Icebrg would not have an adequate remedy at law in the event of such a breach or threatened breach. Customer therefore agrees that Icebrg will be entitled, in addition to other available remedies, to seek and be awarded an injunction or other appropriate equitable relief from a court of competent jurisdiction restraining any breach, threatened or actual, of Customer's obligations under any provision of this Agreement. Accordingly, Customer hereby waives any requirement that Icebrg post any bond or other security in the event any injunctive or equitable relief is sought by or awarded to Icebrg to enforce any provision of this Agreement.
14. **General.** This Agreement is governed by the laws of the State of California, without reference to its conflict of laws principles. Except as set forth above, any dispute regarding this Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California, U.S.A. This Agreement is the entire agreement between Customer and Icebrg and supersedes any other communications with respect to the Application. Additional or conflicting terms on any purchase order or other document issued by Customer or any Approved Source will have no force or effect. If any provision of this Agreement is held invalid or unenforceable, such provision will be deemed replaced by the provision permitted by law that most closely effectuates the parties' original intent as documented hereunder, and the remainder of this Agreement will continue in full. No waiver by either party of any rights under the Agreement will be effective unless such waiver is in a writing signed by the party against whom enforcement is sought. Any notices relating to this Agreement should be sent via receipted delivery to Icebrg Inc., c/o: Legal Department, 3300 Olcott Street, Santa Clara, CA 95054 or by email to legal@gigamon.com.