

# AVM CONSULTING CUSTOMER AGREEMENT

Last updated: This Agreement was last updated on August 18, 2021

This Customer Agreement (“**Agreement**”) governs all uses of Software (defined below), provided by AVM Consulting, Inc., a California corporation (“**Vendor**”) located at 555 w 5<sup>th</sup> St. 35<sup>th</sup> floor, Los Angeles, CA 90013, by the individual or organization using Software (“**Customer**”). By using Software or any part of it, including by registering for Software, Customer agrees to this Agreement effective on the date that Customer first uses the software or registers for it (“**Effective Date**”).

**From time to time, Vendor may update this online Agreement with or without prior written notice to Customer. Customer’s continued use of the Software after any such update or amendment to this Agreement means that Customer agrees to this Agreement in its updated form.**

## BACKGROUND:

The Vendor wishes to license computer software to the Licensee and the Licensee desires to use the software license under the terms and conditions stated below.

IN CONSIDERATION OF the provisions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

## LICENSE

1. Under this Agreement the Vendor grants to the Licensee a non-exclusive and non-transferable license (the “License”) to use Vendor software hosted on Datadog marketplace (the “Software”).
2. “Software” includes the executable computer programs, the source code and any related printed, electronic and online documentation and any other files that may accompany the product. “Software” also includes any configuration files generated by the product.
3. Title, copyright, intellectual property rights and distribution rights of the Software remain exclusively with the Vendor. Intellectual property rights include the look and feel of the Software. This Agreement constitutes a license for use only and is not in any way a transfer of ownership rights to the Software
4. The rights and obligations of this Agreement are personal rights granted to the Licensee only. The Licensee may not transfer or assign any of the rights or obligations granted under this Agreement to any other person or legal entity. The Licensee may not make available the Software for use by one or more third parties.
5. The Software may not be modified, reverse-engineered, or de-compiled in any manner through current or future available technologies.
6. Failure to comply with any of the terms under the License section will be considered a material breach of this Agreement.

#### DISCLAIMERS AND LIMITATION OF LIABILITY

7. Software is provided “as is” without warranty of any kind. Vendor disclaims all warranties to Customer and to any third party, whether express, implied or statutory, regarding Software, including without limitation any implied warranties of merchantability, accuracy, results of use, reliability, fitness for a particular purpose, title, non-infringement of third-party rights and any warranties or conditions arising out of course of dealing or usage of trade. Vendor also disclaims any warranty that Software will be uninterrupted, error-free, virus-free, or secure and that Customer’s use of Software will produce any particular business result or protect Customer Systems will be protected from attack.
8. Vendor does not provide any warranties regarding any Third-Party Tools. Any warranty on Third-Party Tools will only be provided by their respective providers. Customer assumes the entire cost of all necessary servicing, repair, or correction of problems caused by viruses or other harmful components, unless such errors or viruses are the direct result of Vendor’s gross negligence or willful misconduct.
9. The Third-Party Tools may vary during the Term if Vendor from time to time chooses to remove individual Third-Party Tools from Software or if suppliers of Third-Party Tools discontinue them, discontinue Vendor’s access to them or make them available to Vendor on terms that Vendor deems commercially impracticable. Accordingly, Vendor does not warrant or guarantee that any or all Third-Party Tools accessible via Software at the time of execution of this Agreement will remain accessible to Customer throughout the Term.
10. Except with respect to either party’s confidentiality or indemnification obligations hereunder or damages arising from either party’s violation of the other party’s Intellectual Property rights, (a) neither party will be liable to the other party or to any third party for any incidental, indirect, punitive, special or consequential damages relating to this Agreement and (b) Vendor’s aggregate liability for any and all claims relating to or arising from this Agreement under any theory will not exceed the total fees (if any) paid by Customer to Vendor solely for access to Software in the three months before the event giving rise to the claim or \$5,000, whichever is more.
11. Vendor will have no liability to any third party for any losses or damages under any theory of liability.
12. The limitations in this Section will apply to all claims for damages, whether based in contract, warranty, strict liability, negligence, tort, or otherwise, and regardless of the person bringing the claim.
13. This Section “Disclaimers and Limitation of Liability” is intended to be as inclusive as California law and any other applicable law permit. Customer’s agreement to this Agreement confirms that Customer has read this Section, fully understands it, has had the opportunity to discuss it with legal counsel of Customer’s choice, understands that through it Customer is giving up substantial rights, and intends to completely and unconditionally release liability to the greatest extent allowed by law.

#### WARRANTS AND REPRESENTATIONS

14. The Vendor warrants and represents that it is the copyright holder of the Software. The Vendor warrants and represents that granting the license to use this Software is not in violation of any other agreement, copyright or applicable statute

#### ACCEPTANCE

15. All terms, conditions and obligations of this Agreement will be deemed to be accepted by the Licensee ("Acceptance") upon acceptance of this Agreement

#### USER SUPPORT

16. User support is provided as part of this agreement by emailing [integrations@avmconsulting.net](mailto:integrations@avmconsulting.net)

#### TERM

17. The term of this Agreement will begin on Acceptance and is perpetual

## TERMINATION

18. This Agreement will be terminated and the License forfeited where the Licensee has failed to comply with any of the terms of this Agreement or is in breach of this Agreement. On termination of this Agreement for any reason, the Licensee will promptly destroy the Software or return the Software to the Vendor

## FORCE MAJEURE

19. Neither Party shall be liable to the other Party for any failure to perform any of its obligations (except payment obligations) under this agreement during any period in which such performance is delayed by circumstances beyond its reasonable control including, but not limited to, fire, flood, war, embargo, water, strike, rebellion, accident, supply shortages, other acts of God, riot or the intervention of any governmental authority (a "Force Majeure").

## ADDITIONAL CLAUSES

20. The Licensee is agreeing to use this software is a free trial for 14 days. Once the 14-day period is over, the user agrees to either purchase or immediately stop using this software or any files that have been generated using this software.
21. The Licensee agrees, after the end of this 14-day trial, unless software is purchased to immediately destroy any files that have been created using this software to be consumed by the Datadog agent or any other purposes.
22. The Licensee agrees to not copy or clone or manipulate any of the files generated by this software for use after the trial has expired.
23. The Licensee agrees to contact Vendor's Sales team, by email, phone, or website form, in order to purchase licensing to continue using this product after the 14-day trial has expired, or by agreeing to pay for the product using the existing Datadog billing agreement.
24. Failing to comply with any of the above clauses will result in Vendor seeking damages against the end user, and the company they are associated with. This includes, but is not limited to, any corporation, enterprise, LLC, incorporated company, or any other form of company to which this software has been used in any capacity

## DISPUTE RESOLUTION, GOVERNING LAW AND JURISDICTION

25. In the event of a dispute between the parties, the respective managers of each party shall attempt to resolve the dispute. If the managers cannot resolve the dispute, the matter shall be referred to each parties' highest executive level manager for resolution. If the dispute cannot be resolved by negotiation the parties shall endeavor to settle the matter by non-binding mediation.
26. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Jurisdiction is agreed to be any court of competent jurisdiction within the State of California. For all purposes, and for venue determination, Los Angeles County, California shall be the site of any legal proceeding arising out of or relating to this Agreement. This MSA will be interpreted and construed in accordance with the English language. NEITHER PARTY SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CLIENTS OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY

## ATTORNEYS' FEES

27. In the event of any action at law or inequity between the Parties hereto to enforce any of the provisions hereof, including alternative dispute resolution ("ADR") proceedings, the successful Party to such litigation shall have the right to seek all costs and expenses, including reasonable attorneys' fees, incurred therein by such successful Party; and if such successful Party shall recover a judgment in any such action or proceeding, such costs, expenses and attorneys' fees may be included in and as part of such judgment.

#### INDEMNIFICATION

28. Customer will indemnify, defend and hold harmless (collectively “indemnify” or “indemnification”) Vendor and Vendor’s officers, employees, directors, agents, independent contractors, licensors and suppliers from and against any third party claims, demands, actions and proceedings, and any resulting liabilities, damages, costs and expenses (including reasonable legal fees and expenses), brought against any Vendor Indemnitee relating to actions that Customer or any Customer officer, employee, director, agent or independent contractor takes or fails to take in connection with Software.

#### MISCELLANEOUS

29. This Agreement does not create or imply any relationship in agency or partnership between the Vendor and the Licensee.
30. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the parties' intent that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result.

#### NOTICES

31. All notices to the parties under this Agreement are to be provided at the following addresses, or at such addresses as may be later provided in writing:

AVM Consulting, Inc.  
555 W 5th St. 35th floor  
Los Angeles, CA 90013