

End User License Agreement

These Terms of Use constitute a legally binding agreement made between you, whether personally or on behalf of an entity ("you") and Nimble Data Technologies Inc. (DBA: Crest Data Systems) ("Company", "we", "us", or "our"), concerning your access to and use of the NetApp ONTAP integration on the Datadog Partner Marketplace as well as any other media form related, linked, or otherwise connected thereto (collectively, the "Software"). You agree that by accessing the Software, you have read, understood, and agree to be bound by all of these terms of Use.

Supplemental terms and conditions or documents that may be posted on the Software from time to time are hereby expressly incorporated herein by reference. We reserve the right, in our sole discretion, to make changes or modifications to these Terms of Use at any time and for any reason. We will alert you about any changes by updating the "Last updated" date of these Terms of Use, and you waive any right to receive specific notice of each such change. It is your responsibility to periodically review these Terms of Use to stay informed of updates. You will be subject to, and will be deemed to have been made aware of and to have accepted, the changes in any revised Terms of Use by your continued use of the Software after the date such revised Terms of Use are posted.

Last Updated: 01/23/2023

License

- Under this Agreement the Company grants a non-exclusive and non-transferable license to you to use any Crest Data Systems software hosted on Datadog marketplace ("Software").
- "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, including but not limited to YAML configuration, SNMP templates, Datadog Dashboard JSON configurations, Datadog Monitor JSON configurations.
- Title, copyright, intellectual property rights and distribution rights of the Software remain exclusively with the Company. 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.
- This Agreement grants the Software license to monitor up to a maximum of one (1) NetApp ONTAP Cluster. You can also use the software to monitor up to a maximum of one (1) NetApp ONTAP Cluster as part of the free trial of fourteen (14) days.

- The rights and obligations of this Agreement are personal rights granted to you only. You may not transfer or assign any of the rights or obligations granted under this Agreement to any other person or legal entity. You may not make available the Software for use by one or more third parties.
- The Software may not be modified, reverse-engineered, or de-compiled in any manner through current or future available technologies.
- Failure to comply with any of the terms under the License section will be considered a material breach of this Agreement.

Limitation of Liability

- The Software is provided by you and accepted "as is". With the exception of violations involving Confidential Information and amounts owed under a party's obligation to Indemnify, neither party's total liability to the other will exceed User' annual subscription fee.
- The Company will not be liable for any general, special, incidental or consequential damages including, but not limited to, loss of production, loss of profits, loss of revenue, loss of data, or any other business or economic disadvantage suffered by you arising out of the use or failure to use the Software.
- The Company makes no warranty expressed or implied regarding the fitness of the Software for a particular purpose or that the Software will be suitable or appropriate for the specific requirements you may have. The Company reserves the right to delete all code, functionality, and configuration files that may have been generated by the software on the Licensee's hosts and Datadog instance.
- The Company does not warrant that use of the Software will be uninterrupted or error-free.
- You accept that software in general is prone to bugs and flaws within an acceptable level as determined in the industry.

Warranty and Representations

By using the Software, you represent and warrant that:

- All registration information you submit will be true, accurate, current, and complete
- You will maintain the accuracy of such information and promptly update such registration information as necessary
- You have the legal capacity and you agree to comply with these Terms of Use
- You are not a minor in the jurisdiction in which you reside
- You will not access the Software through automated or non-human means, whether through a bot, script or otherwise
- You will not use the Software for any illegal or unauthorized purpose

- Your use of the Software will not violate any applicable law or regulation.

If you provide any information that is untrue, inaccurate, not current, or incomplete, we have the right to suspend or terminate your account and refuse any and all current or future use of the Software (or any portion thereof).

Acceptance and User Support

- All terms, conditions and obligations of this Agreement will be deemed to be accepted by you upon acceptance of this Agreement.
- User support is provided as part of this agreement by emailing datadog.integrations@crestdatasys.com.

Term and Termination

These Terms of Use shall remain in full force and effect while you use the Software. WITHOUT LIMITING ANY OTHER PROVISION OF THESE TERMS OF USE, WE RESERVE THE RIGHT TO, IN OUR SOLE DISCRETION AND WITHOUT NOTICE OR LIABILITY, DENY ACCESS TO AND USE OF THE SOFTWARE (INCLUDING BLOCKING CERTAIN IP ADDRESSES), TO ANY PERSON FOR ANY REASON OR FOR NO REASON, INCLUDING WITHOUT LIMITATION FOR BREACH OF ANY REPRESENTATION, WARRANTY, OR COVENANT CONTAINED IN THESE TERMS OF USE OR OF ANY APPLICABLE LAW OR REGULATION. WE MAY TERMINATE YOUR USE OR PARTICIPATION IN THE SOFTWARE OR DELETE YOUR ACCOUNT AND ANY CONTENT OR INFORMATION THAT YOU POSTED AT ANY TIME, WITHOUT WARNING, IN OUR SOLE DISCRETION.

This Agreement will be terminated and the License forfeited if you have failed to comply with any of the terms of this Agreement or in breach of this Agreement. On termination of this Agreement for any reason, you will promptly destroy the Software or return the Software to the Vendor.

You can cancel your subscription at any time by contacting us. Your cancellation will take effect at the end of the current paid term.

Force Majeure

Except for payment obligations, neither party hereto will be liable for defaults or delays due to acts of God, or the public enemy, acts or demands of any government or governmental agency,

fires, earthquakes, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence.

Additional Clauses

- You agree to use this software for a free trial for 14 days. Once the 14 day period is over, the user agrees to immediately stop using this software or any files that have been generated using this software.
- You agree, after the end of this 14 day trial, to immediately destroy any files that have been created using this software to be consumed by the Datadog agent or any other purposes.
- You agree to not copy or clone or manipulate any of the files generated by this software for use after the trial has expired.
- You agree to contact the Crest Data Systems team, by email, phone, or website, 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.
- Failing to comply with any of the above clauses will result in Crest Data Systems Inc., 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.
- This Agreement can only be modified in writing signed by both the Company and you.
- This Agreement does not create or imply any relationship in agency or partnership between the Company and you.
- Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in the neutral gender include the masculine gender and the feminine gender and vice versa.
- 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.
- This Agreement contains the entire agreement between the parties. All understandings have been included in this Agreement. Representations which may have been made by any party to this Agreement may in some way be inconsistent with this final written Agreement. All such statements are declared to be of no value in this Agreement. Only the written terms of this Agreement will bind the parties.
- This Agreement and the terms and conditions contained in this Agreement apply to and are binding upon the Company's successors and assigns.

Governing Law

This Agreement shall be governed by and construed under the laws of the State of California, U.S.A., without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. The parties consent to the exclusive jurisdiction and venue of the courts located in and serving San Francisco, California. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. End User will always comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its purchase and use of the Product Offering, Documentation, Support and Maintenance and Professional Services.

Notices

Notices to Crest Data Systems under this Agreement must be sent to legal@crestdatasys.com.

Mailing Address:

Crest Data Systems

3031 Tisch Way STE 602, San Jose, CA 95128

Ph: +1 (408) 551-0051

A notice will be deemed to have been given three business days after mailing, if delivered by registered mail, or two business days after sending, if sent by email.