⬡ MistServer non-commercial license agreement

In this document:

1. **DDVTech B.V.**, registered at Johan de Wittlaan 10, 3054 AA, Rotterdam, The Netherlands hereinafter called "DDVTech", is the developer and publisher of the software "MistServer".

2. "Licensee" will refer to the party purchasing a non-commercial license for MistServer Pro.

3. "The product" will refer to the binary version of MistServer, as delivered to licensee by DDVTech.

Article 1 — Product license

DDVTech grants and licensee accepts a limited, non-transferrable license to run a single simultaneously active instance of the product, provided all the conditions in the following sections are met.

Multiple licenses may be bought by licensee from DDVTech, in which case as many simultaneously active instances are allowed as licenses have been bought.

Article 2 — Non-commercial use only

The product may only be used for non-commercial purposes. Non-commercial purposes are only purposes where no payments, fees, or other monetary exchanges happen from third parties towards licensee.

Licensee is however explicitly allowed to take donations from third parties, but only if such donations do not involve the third party being allowed to use the product in a different way than without having donated.

All activities by an internationally recognized non-profit will always be considered non-commercial.

Other uses may be allowed at DDVTech's discretion, but only with DDVTech's explicit permission in advance.

Article 3 — Support

No support service is included in this license. DDVTech will do their best to respond to inquiries about the product and its use, but no guarantees on response timings (or receiving a response at all) are given. Professional level support from DDVTech is available and can be bought separately from this product license.

Article 4 — Payment

A static monthly license fee as mentioned on DDVTech's product website is due, paid in advance either manually or through DDVTech's product website. The license becomes active the moment payment is received by DDVTech, unless agreed otherwise in advance.

DDVTech maintains publicly available pricing in USD, but will invoice either in USD or EUR depending on licensee's preference. By default DDVTech will invoice in EUR to licensees within Europe, and in USD elsewhere.

DDVTech's listed prices are excluding any applicable sales tax and are subject to indexation based on inflation of consumer products and service in the Netherlands as measured by the Dutch Central Bureau of Statistics (CBS) in their "consumentenprijsindex" (CPI) and (if applicable) the exchange rate from currency of invoices to the Euro.

Article 5 — Other licenses

DDVTech already offers publicly available licensing under the aGPLv3 open source software license. This agreement does not interfere with that existing license, and any material that licensee obtains from DDVTech which is already available under the aGPLv3 license elsewhere may still be used under those conditions. However, additional materials which are not already available under the aGPLv3 license may only be used in accordance with this license.

Article 6 — Tampering, fingerprinting and monitoring

Licensee may not reverse engineer, decompile, or disassemble the product, except and only to the extent that such activity is expressly permitted by DDVTech.

The product contains digital fingerprints allowing DDVTech to passively track the use of their technology for the purpose of preventing unauthorized use by third parties. Licensee understands the need for these digital fingerprints and will not tamper with them in any way.

The product contains an active monitoring system that contacts DDVTech's servers to obtain information about active licenses and outstanding payments. Licensee understands the need for this active monitoring system and that the product will not function when made unable to reach said servers.

Article 7 — Distribution

Licensee may not distribute the product, except for the sole purpose of using it on their owned or rented machines (either virtual or physical).

Article 8 — Enforcement and liability

DDVTech may remotely prevent the operation of MistServer while the terms and conditions of agreements and licenses between DDVTech and licensee are being violated and/or take legal action against licensee to enforce compliance with such.

DDVTech will take licensee's position into account and attempt to alert licensee before such actions are deemed necessary by DDVTech, in an effort to limit possible intentional or unintentional damages incurred by the licensee. If however, such action causes damages, DDVTech will not be held liable under any circumstance.

Should DDVTech ever be held liable for damages by any court of law regardless of this license, such damages will be limited to the amount of licensing fees paid by licensee to DDVTech, excluding any applicable sales tax.

Regardless of the above described actions, DDVTech may claim damages from licensee in the following cases of license violations:

- Overuse of simultaneously active instances (as measured by DDVTech's active monitoring system), in which case damages will be the exact amount as would normally be due under the terms of this license, plus reasonable legal and/or processing fees where applicable.

- Commercial use of the software, in which case damages will be the amount as would normally be due under the commercial license that most closely resembles the actual use, plus reasonable legal and/or processing fees where applicable.

- Unauthorized distribution of the software, in which case damages will be the amount of licensing fees normally due from use by third parties as a result from such distribution, plus reasonable legal and/or processing fees where applicable, limited to a maximum of 1 million USD per incident.

Licensee agrees to pay such damages to DDVTech when asked, regardless of whether such license violations were intentional or not.

Article 9 — Survivability and jurisdiction

If any term of this agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then the remaining terms of this agreement will remain in full force and effect as if such invalid or unenforceable term had never been included.

Both parties accept that this agreement and any resulting ventures are governed by law of the Netherlands and any dispute connected with these are subject to the exclusive jurisdiction of the Rotterdam courts.

Article 10 — Acknowledgments

Licensee mentioning DDVTech and showing DDVTech product/company logos is allowed and encouraged, but not mandatory. DDVTech may use licensee's (and/or licensee's company) name and/or logo in listings of their client base.