

## Enterprise End User License Agreement

THIS ENTERPRISE END USER LICENSE AGREEMENT ("AGREEMENT") IS A LEGAL AGREEMENT BETWEEN YOU ("CUSTOMER") AND NANOME, INC. ("SUPPLIER"). BY DOWNLOADING, INSTALLING OR USING THE "SOFTWARE" (AS DEFINED BELOW) ACCOMPANYING THIS AGREEMENT. CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS REVIEWED AND ACCEPTS THIS AGREEMENT. IF YOU ARE AGREEING TO THIS AGREEMENT AS AN INDIVIDUAL, "CUSTOMER" REFERS TO YOU INDIVIDUALLY. IF YOU ARE AGREEING TO THIS AGREEMENT AS A REPRESENTATIVE OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY AND "CUSTOMER" REFERS TO THAT ENTITY SPECIFIED IN THE PURCHASE ORDER. IF CUSTOMER DOES NOT AGREE WITH ALL THE TERMS OF THIS AGREEMENT, DO NOT DOWNLOAD OR OTHERWISE USE THE SOFTWARE REFERENCED IN THE ORDER FORM.

### 1. DEFINITIONS.

**1.1.** "Affiliate" means any entity, now or hereafter existing (so long as such entity does not have its own agreement with Supplier for use of the Software or access and use of the Supplier's Services) that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the subject entity. For purposes of this definition, "control" means direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise. An entity shall be considered an "Affiliate" only so long as that entity meets the foregoing definition.

**1.2.** "Ancillary Services" means implementation, training or consulting services that Supplier may perform as described in a SOW executed by the parties.

**1.3.** "Authorized Purposes" means Customer's internal business purposes if the License Term is not for an Evaluation License. If the License Term is for an Evaluation License, then "Authorized Purposes" means Customer's internal testing and evaluation use only.

**1.4.** "Beta License" means a license granted to Customer with respect to a pre-release version of the Software for the period specified in the Purchase Order, and that is not supported, may contain bugs or errors (but shall not knowingly contain any undisclosed Malicious Code), and may be subject to additional terms that shall be provided by Supplier to Customer.

**1.5.** "Customer System" means Customer's internal website(s), servers and other equipment and software, including, without limitation, mobile devices and virtual reality hardware systems.

**1.6.** "Delivery Date" means the date, set forth in the applicable Quote or Invoice, on which the Software is scheduled to be made available to Customer.

**1.7.** "Documentation" means the printed, paper, electronic or online user instructions and help files made generally available by Supplier for use with the Software, as may be updated from time to time by Supplier.

**1.8.** "Evaluation License" means a non-production license granted to Customer with respect to the Software for the applicable License Term and which may have limited functionality or features.

**1.9.** “Intellectual Property Rights” means all intellectual property rights or similar proprietary rights, including (a) patent rights and utility models, (b) copyrights and database rights, (c) trademarks, trade names, domain names and trade dress and the goodwill associated therewith, (d) trade secrets, (e) mask works, and (f) industrial design rights; in each case, including any registrations of, applications to register, and renewals and extensions of, any of the foregoing in any jurisdiction in the world.

**1.10.** “License Term” means the license period for Customer’s use of the Software set forth in an Invoice and any renewals or extensions thereof. Unless otherwise specified by Supplier in writing, the License Term for an Evaluation License is limited to thirty (30) days from the Delivery Date.

**1.11.** “Malicious Code” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

**1.12.** “Non-GA Solutions” means Supplier products or services that are not generally available to Supplier customers, including, without limitation, Beta Licenses, and that may be subject to additional terms that shall be provided by Supplier to Customer.

**1.13.** “Open Source Software” means all software that is available under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, BSD licenses, or any other license that approved by the Open Source Initiative ([www.opensource.org](http://www.opensource.org)).

**1.14.** “Purchase Order” means the ordering documents for Services and licenses for Software purchased from Supplier that are entered into or otherwise mutually accepted in writing hereunder by the parties from time to time, including modifications, supplements and addenda thereto. If there is any inconsistency or conflict between a Purchase Order and this Agreement, the Agreement controls, unless the Purchase Order specifically identifies by Section reference the provision that such Purchase Order is modifying, and then such change will apply for such Purchase Order only. Any terms or conditions stated in any Purchase Order, sales acknowledgment or Invoice (except for details of the software provided, price, quantity of licenses, subscription term, delivery date and other details of delivery which are not pre-printed and which are inconsistent with the terms of this Agreement) shall be of no force and effect, and no course of dealing, usage of trade, or course of performance shall be relevant to explain or modify any term expressed in this Agreement. Affiliates of Customer may purchase Services and licenses for the Software subject to this Agreement by executing Purchase Orders hereunder, and by executing a Purchase Order, that Affiliate of Customer shall be bound by this Agreement as if it were an original party hereto.

**1.15.** “Plugins” means a software component provided to Customer by Supplier that adds a specific feature to the Software, whether developed by Supplier or a third party. Plugins may be supplied to Customer subject to separate or additional terms and conditions provided to Customer by Supplier at the time of acquisition.

**1.16.** “Services” means the Support Services and any Ancillary Services.

**1.17.** “SOW” means a written statement of work entered into and signed by the parties describing Ancillary Services to be provided by Supplier to Customer.

**1.18.** “Software” means the software product and any Supplier Plugins specified in a Purchase Order and any Supplier Updates that Supplier provides to Customer in accordance with Support Services that Customer is entitled to receive pursuant to this Agreement, all in

object code form only. For all purposes of this Agreement, "Software" excludes any Open Source Software and all Third Party Offerings, such as third party Plugins, software, content and other virtual and digital assets.

**1.19.** "Support Services" means the support and maintenance services provided by Supplier under Section 6 below.

**1.20.** "Third Party Offerings" means certain software or services delivered or performed by third parties that are required for the operation of the Software, such as the Photon engine and the Oculus Desktop Client, and any associated products provided by third parties, such as third party Plugins, that interoperate with the Software.

**1.21.** "Updates" means bug fixes, patches and maintenance releases to the Software to the extent made generally available by Supplier to its licensees.

**1.22.** "Users" means Customer's or its Affiliates' employees, consultants, contractors, agents and third parties with whom Customer may transact business and (a) for whom access to the Software during a License Term have been purchased pursuant to a Purchase Order, (b) who are authorized by Customer or its Affiliates to access and use the Software, and (c) where applicable, who have been supplied user identifications and passwords for such purpose by Customer (or by Supplier at Customer's request).

## **2. ORDERS; LICENSES; AND RESTRICTIONS.**

**2.1** Orders. Subject to the terms and conditions contained in this Agreement, Customer may purchase licenses for Users to use the Software pursuant to a Purchase Order. Unless otherwise specified in the applicable Purchase Order, Software may be installed and concurrently used only on the number of computer equal to the number of licenses specified in the Purchase Order. Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Supplier regarding any future functionality or features.

**2.2** License Grant. Subject to Customer's compliance with the terms and conditions contained in this Agreement, Supplier hereby grants to Customer, during the relevant License Term, a limited, non-exclusive, non-assignable/non-transferable (except as expressly permitted herein) right for its Users to use the applicable Version of the Software specified in the Purchase Order in accordance with the Documentation in each case solely for Customer's Authorized Purposes and not for the benefit of any other person or entity. Customer may make a reasonable number of backup copies of the Software solely for Customer's internal use pursuant to the license granted in this Section. Customer's use of the Software may be subject to certain limitations as set forth in a Purchase Order. Any such limitations will be specified either in the Purchase Order or in the Documentation.

**2.3** Restrictions. Customer shall not, directly or indirectly, and Customer shall not permit any User or third party to: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Software; (b) modify, translate, or create derivative works based on any element of the Software or any related Documentation; (c) rent, lease, distribute, sell, resell, assign, or otherwise transfer its rights to use the Software; (d) use the Software for timesharing purposes or otherwise for the benefit of any person or entity other than for the benefit of Customer and Users; (e) remove any proprietary notices from the Documentation; (f) publish or disclose to third parties any evaluation

or benchmarking of the Software without Supplier's prior written consent; (g) use the Software for any purpose other than its intended purpose; (h) interfere with or disrupt the integrity or performance of the Software; or (i) attempt to gain unauthorized access to the Software or Supplier's systems or networks.

2.4 Reservation of Rights. Except as expressly granted in this Agreement, there are no other licenses granted to Customer, express, implied or by way of estoppel. All rights not granted in this Agreement are reserved by Supplier.

### **3. THIRD PARTY OFFERINGS.**

3.1 Use of Third Party Offerings. Supplier or third parties may from time to time make Third Party Offerings available to Customer. Any acquisition by Customer of any such Third Party Offerings, and any exchange of data between Customer and any provider of a Third Party Offering, is solely between Customer and the applicable provider of the Third Party Offering. Supplier does not warrant or support any Third Party Offering, whether or not they are available directly from Supplier or designated by Supplier as "approved", "certified" or otherwise, except as specified in a Purchase Order.

3.2 Integration with Third Party Offerings. The Software may contain features designed to interoperate with Third Party Offerings (e.g., Google, Facebook/Oculus or Twitter applications). To use such features, Customer may be required to obtain access to such Third Party Offering from their providers. If the provider of any Third Party Offering ceases to make the Third Party Offering available for interoperation with the corresponding Software features on reasonable terms, certain features of the Software may not be available to Customer.

### **4. DELIVERY.**

4.1 Delivery. Supplier will make the Software available for download to Customer from a secure server. The Software will be deemed accepted upon delivery and may not be rejected by Customer.

### **5. CUSTOMER OBLIGATIONS.**

5.1 Customer System. Customer is responsible for (a) obtaining, deploying and maintaining the Customer System, and all computer hardware, software, modems, routers and other computer and communications equipment necessary for Customer, its Affiliates and their respective Users to use the Software; and (b) paying all third party fees and access charges incurred in connection with the foregoing. Except as specifically set forth in this Agreement, a Purchase Order or an SOW, Supplier shall not be responsible for supplying any hardware or other equipment to Customer under this Agreement. In the event that Supplier does supply to Customer any hardware or other equipment, such hardware or equipment may be supplied to Customer subject to separate terms and conditions provided to Customer by Supplier and the acquisition of such hardware will be subject to the manufacturer's standard terms.

### **6. MAINTENANCE AND SUPPORT SERVICES.**

6.1 Maintenance and Support. Subject to the terms and conditions of this Agreement (including payment of the applicable fees, if any), Supplier will use commercially reasonable efforts to provide the following "Support Services" during the License Term: (a) technical support

by telephone and email (in a reasonable time frame), and (b) bug fixes. Support Services may include Updates generally issued by Supplier to customers during the applicable License Term. In no event will Support apply with respect to Third Party Offerings.

6.2 Support Term; Termination. Unless otherwise specified in an Order Form, Supplier will provide Support Services during the License Term starting on the Delivery Date (the "Support Period").

6.3 Non-GA Solutions. Except as expressly set forth in a Purchase Order, no Support Services are offered or made in connection with this Agreement for a Non-GA Solutions and Supplier will not be obligated in any way to correct any errors or deficiencies in Non-GA Solutions or to provide updates or new builds.

## **7. AUDIT**

7.1 Supplier shall have the right to review Customer's use of the Software and/or enter Customer's facilities and premises solely to verify only that the number of computers with the Software used by Customer does not exceed the number of licenses granted to Customer under this Agreement. Any visit to Customer's facilities under this Section shall be subject to Customer's on site regulations and shall occur at a mutually agreed upon day and time no earlier than 10 days after notice from Supplier. Alternatively, Supplier may request that Customer provide a written report as to identity and location of the computers with the Software (detailed on a monthly basis) in order to verify compliance with the license granted herein. In the event that an audit reveals an overuse of licenses, Supplier shall issue an invoice for the number of licenses equal to the number of such excess computers at the then-current rate for the Software and Customer shall pay such invoice within thirty (30) days of date of invoice. Supplier will pay the costs of the audit unless such audit reveals additional computers being operated by the Customer without permission of Supplier, in which event the costs of the audit shall be paid by Customer.

## **8. ANCILLARY SERVICES.**

8.1 Supplier shall use commercially reasonable efforts to timely perform the Ancillary Services as set forth in applicable mutually executed SOWs. Each SOW will include, at a minimum: (a) a description of the scope of Ancillary Services, (b) any work product or other deliverables to be provided to Customer (each a "Deliverable"), (c) the schedule for the provision of Ancillary Services, and (d) the applicable fees and payment terms for such Ancillary Services. All SOWs shall be deemed part of and subject to this Agreement. If there is any inconsistency between an SOW and this Agreement, the SOW shall control. If either Customer or Supplier requests a change to the scope of Ancillary Services described in a SOW, the party seeking the change shall propose such change by written notice. Promptly following the other party's receipt of the written notice, the parties shall discuss and agree upon the proposed changes. Supplier will prepare a change order document describing the agreed changes to the SOW and any applicable change in fees and expenses (a "Change Order"). Change Orders are not binding unless and until executed by both parties. Executed Change Orders shall be deemed part of, and subject to, this Agreement. Supplier and Customer shall cooperate to enable Supplier to perform the Ancillary Services according to the dates of performance and delivery terms set forth in each SOW. In addition, Customer shall perform any Customer obligations specified in each SOW. In the event the Ancillary Services are not performed in

accordance with the terms of the applicable SOW, Supplier shall notify Customer in writing no later than thirty (30) calendar days after performance of the affected Ancillary Services by Supplier, Customer's notice shall specify the basis for non-compliance with the SOW and if Supplier agrees with the basis for non-compliance, then at Supplier's sole option, Supplier shall re-perform the Ancillary Services at no additional charge to Customer or refund to Customer the applicable fees for the affected Deliverable or Ancillary Service. THE FOREGOING CONSTITUTES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SUPPLIER'S SOLE AND EXCLUSIVE LIABILITY WITH RESPECT TO PERFORMANCE OR NON-PERFORMANCE OF THE ANCILLARY SERVICES.

## **9. FEES AND PAYMENT.**

9.1 Fees. Customer agrees to pay all fees specified in all Purchase Orders and SOWs using one of the payment methods Supplier supports. Except as otherwise specified in this Agreement or in a Purchase Order, (a) fees are quoted and payable in United States dollars and certain cryptocurrencies (such as Bitcoin, Ethereum and Matryx) at their then current market rate, as determined by Supplier, (b) fees are based on licenses purchased as specified in the Purchase Order, (c) payment obligations are non-cancelable and fees paid are non-refundable and (d) are payable in advance. User license fees are based on the License Term specified in the Invoice beginning on the Activation Date; therefore, fees for additional licenses or Plugins added in the middle of a License Term will be charged at a prorated License Term. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding.

9.2 Invoices and Payment. All fees for Software and applicable Support Services will be invoiced in advance and in accordance with the applicable Purchase Order. Fees for Ancillary Services will be invoiced as set forth in an applicable SOW or Purchase Order. Except as otherwise set forth in the applicable Purchase Order or SOW, Customer agrees to pay all invoiced amounts within thirty (30) calendar days of the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Supplier and notifying Supplier of any changes to such information.

9.3 Overdue Charges. If Supplier does not receive fees by the due date, then at Supplier's discretion, (a) such charges may accrue late interest at the rate of One Percent (1%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid; and (b) Supplier may condition future purchases of Software and Support Services on payment terms shorter than those specified in Section 9.2 or require prepayment.

9.4 Payment Disputes. Supplier agrees that it will not exercise its rights under Section 9.3 if the applicable charges are under reasonable and good-faith dispute and Customer is cooperating diligently to resolve the dispute.

9.5 Taxes. "Taxes" means all taxes, levies, imposts, duties, fines or similar governmental assessments imposed by any jurisdiction, country or any subdivision or authority thereof including, but not limited to federal, state or local sales, use, property, excise, service, transaction, privilege, occupation, gross receipts or similar taxes, in any way connected with this Agreement or any instrument, purchase order or agreement required hereunder, and all interest, penalties or similar liabilities with respect thereto, except such taxes imposed on or measured

by a party's net income. Notwithstanding the foregoing, Taxes shall not include payroll taxes attributable to the compensation paid to workers or employees and each party shall be responsible for its own federal and state payroll tax collection, remittance, reporting and filing obligations. Fees and charges imposed under this Agreement or under any purchase order or similar document ancillary to or referenced by this Agreement shall not include Taxes except as otherwise provided herein. Customer shall be responsible for all of such Taxes. If, however, Supplier has the legal obligation to pay Taxes and is required or permitted to collect such Taxes for which Customer is responsible under this section, Customer shall promptly pay the Taxes invoiced by Supplier unless Customer has furnished Supplier with valid tax exemption documentation regarding such Taxes at the execution of this Agreement or at the execution of any subsequent instrument, purchase order or agreement ancillary to or referenced by this Agreement. Customer shall comply with all applicable tax laws and regulations. Customer hereby agrees to indemnify Supplier for any Taxes and related costs paid or payable by Supplier attributable to Taxes that would have been Customer's responsibility under this Section if invoiced to Customer. Customer shall promptly pay or reimburse Supplier for all costs and damages related to any liability incurred by Supplier as a result of Customer's non-compliance or delay with its responsibilities herein. Customer's obligation under this Section shall survive the termination or expiration of this Agreement.

## **10. REPRESENTATIONS AND WARRANTIES; DISCLAIMER.**

10.1 Mutual Representations and Warranties. Each party represents, warrants and covenants that: (a) it has the full power and authority to enter into this Agreement and to perform its obligations hereunder, without the need for any consents, approvals or immunities not yet obtained; and (b) its acceptance of and performance under this Agreement shall not breach any oral or written agreement with any third party or any obligation owed by it to any third party to keep any information or materials in confidence or in trust.

10.2 Non-Generally Available Solutions. From time to time Supplier may, in its sole discretion, invite Customer to try Non-GA Solutions. Customer may accept or decline any such trial in its sole discretion. Any Non-GA Solutions will be clearly designated as Beta, pilot, limited release, developer preview, non-production or by a description of similar import. Non-GA Solutions are provided for evaluation purposes and not for production use, are not supported, will likely contain bugs or errors (but shall not knowingly contain any undisclosed Malicious Code), and may be subject to additional terms that shall be provided by Supplier to Customer prior to or concurrent with Supplier's invitation to the applicable Non-GA Solution. Non-GA Solutions are not considered "Software" hereunder. Supplier has the right to discontinue Non-GA Solutions at any time in its sole discretion and may never make them generally available.

10.3 Software Warranty. Unless otherwise set forth in the applicable Purchase Order, Supplier warrants that during the period of sixty (60) days after the Delivery Date (the "Warranty Period") the Software will function substantially in conformance with the Documentation. If Customer becomes aware of the Software not functioning in substantial conformance with the Documentation (a "Defect"), Customer must provide Supplier with written notice that includes a reasonably detailed explanation of the Defect within the Warranty Period. If Supplier is able to reproduce the Defect in Supplier's own operating environment, Supplier will use commercially reasonable efforts to promptly correct the Defect or provide a replacement software product to

Customer with substantially similar functionality, or at Supplier's option, terminate the License Term for the defective Software and refund to Customer the fees paid for that defective Software (as well as any fees paid for any Support Services not received). THE FOREGOING SETS FORTH SUPPLIER'S SOLE AND EXCLUSIVE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY DEFECTIVE SOFTWARE.

10.4 Disclaimer. EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 8.1 AND 10, THE SOFTWARE, SUPPORT SERVICES, ANCILLARY SERVICES, THIRD-PARTY OFFERINGS AND ANY NON-GA SOLUTIONS ARE PROVIDED ON AN AS-IS BASIS AND CUSTOMER'S USE THEREOF IS AT ITS OWN RISK. SUPPLIER DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS, STATUTORY AND IMPLIED REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, QUALITY, SUITABILITY, OPERABILITY, CONDITION, SYSTEM INTEGRATION, NON-INTERFERENCE, WORKMANSHIP, TRUTH, ACCURACY (OF DATA OR ANY OTHER INFORMATION OR CONTENT), ABSENCE OF DEFECTS, WHETHER LATENT OR PATENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THE EXPRESS WARRANTIES MADE BY SUPPLIER IN SECTIONS 8.1 AND 10 ARE FOR THE BENEFIT OF THE CUSTOMER ONLY AND NOT FOR THE BENEFIT OF ANY THIRD PARTY. ANY SOFTWARE PROVIDED BY SUPPLIER PURSUANT TO THIS AGREEMENT IS LICENSED AND NOT SOLD. NO WARRANTIES OF ANY KIND WHATSOEVER ARE MADE FOR CUSTOMER'S BENEFIT DURING THE LICENSE TERM OF ANY FREE LICENSE, EVALUATION LICENSE OR BETA LICENSE.

NO AGENT OF SUPPLIER IS AUTHORIZED TO ALTER OR EXPAND THE WARRANTIES OF SUPPLIER AS SET FORTH HEREIN. SUPPLIER DOES NOT WARRANT THAT: (A) THE USE OF THE SOFTWARE OR NON-GA SOLUTION WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY NON-SUPPORTED HARDWARE, SOFTWARE, SYSTEM OR DATA; (B) THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; OR, (C) THE SOFTWARE AND NON-GA SOLUTIONS WILL BE ERROR-FREE OR THAT ERRORS OR DEFECTS IN THE SOFTWARE AND NON-GA SOLUTIONS WILL BE CORRECTED. THE SOFTWARE AND NON-GA SOLUTION MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. SUPPLIER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

## **11. INDEMNIFICATION.**

### **11.1 Supplier Indemnity.**

(a) General. During the License Term (other than with respect to a Free License, an Evaluation License or a Beta License), Supplier, at its expense, shall defend Customer and its Affiliates and their respective officers, directors and employees (the "Customer Indemnified Parties") from and against all actions, proceedings, claims and demands by a third party (a "Third-Party Claim") alleging that the Software infringes any copyright or misappropriates any

trade secret and shall pay all damages, costs and expenses, including attorneys' fees and costs (whether by settlement or award or by a final judicial judgment) paid to the Third Party bringing any such Third-Party Claim. Supplier's obligations under this Section are conditioned upon (i) Supplier being promptly notified in writing of any claim under this Section, (ii) Supplier having the sole and exclusive right to control the defense and settlement of the claim, and (iii) Customer providing all reasonable assistance (at Supplier's expense and reasonable request) in the defense of such claim. In no event shall Customer settle any claim without Supplier's prior written approval. Customer may, at its own expense, engage separate counsel to advise Customer regarding a Claim and to participate in the defense of the claim, subject to Supplier's right to control the defense and settlement.

(b) Mitigation. If any claim which Supplier is obligated to defend has occurred, or in Supplier's determination is likely to occur, Supplier may, in its sole discretion and at its option and expense (a) obtain for Customer the right to use the Software, (b) substitute a functionality equivalent, non-infringing replacement for such the Software, (c) modify the Software to make it non-infringing and functionally equivalent, or (d) terminate this Agreement and refund to Customer any prepaid amounts attributable the period of time between the date Customer was unable to use the Software due to such claim and the remaining days in the then-current License Term.

(c) Exclusions. Notwithstanding anything to the contrary in this Agreement, the foregoing obligations shall not apply with respect to a claim of infringement if such claim arises out of (i) use of the Software in combination with any software, hardware, network or system not supplied by Supplier where the alleged infringement relates to such combination, (ii) any modification or alteration of the Software other than by Supplier, (iii) Customer's continued use of the Software after Supplier notifies Customer to discontinue use because of an infringement claim, (iv) use of Open Source Software; (v) Customer's violation of applicable law; (vi) Third Party Offerings; and (vii) Customer System.

(d) Sole Remedy. THE FOREGOING STATES THE ENTIRE LIABILITY OF SUPPLIER WITH RESPECT TO THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS BY THE SOFTWARE OR OTHERWISE, AND CUSTOMER HEREBY EXPRESSLY WAIVES ANY OTHER LIABILITIES OR OBLIGATIONS OF SUPPLIER WITH RESPECT THERETO. NO INDEMNITIES OF ANY KIND WHATSOEVER ARE MADE FOR CUSTOMER'S BENEFIT DURING THE LICENSE TERM OF ANY FREE LICENSE, EVALUATION LICENSE OR BETA LICENSE.

11.2 Customer Indemnity. Customer shall defend Supplier and its Affiliates, licensors and their respective officers, directors and employees ("Supplier Indemnified Parties") from and against any and all Third-Party Claims which arise out of or relate to: (a) Customer's use or alleged use of the Software other than as permitted under this Agreement, (b) Customer or its Affiliates' Users use of the Software in violation of any applicable law or regulation, or the Intellectual Property Rights or other rights of any third party, or (c) arising from the occurrence of any of the exclusions set forth in Section 11.1(c) (Exclusions). Customer shall pay all damages, costs and expenses, including attorneys' fees and costs (whether by settlement or award or by a final judicial judgment) paid to the Third Party bringing any such Third-Party Claim. Customer's obligations under this Section 11.2 are conditioned upon (x) Customer being promptly notified in writing of any claim under this Section 11.2, (y) Customer having the sole and exclusive right to

control the defense and settlement of the claim, and (z) Supplier providing all reasonable assistance (at Customer's expense and reasonable request) in the defense of such claim. In no event shall Supplier settle any claim without Customer's prior written approval. Supplier may, at its own expense, engage separate counsel to advise Supplier regarding a Third-Party Claim and to participate in the defense of the claim, subject to Customer's right to control the defense and settlement.

## **12. CONFIDENTIALITY.**

12.1 Confidential Information. "Confidential Information" means any and all non-public technical and non-technical information disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") in any form or medium, whether oral, written, graphical or electronic, pursuant to this Agreement, that is marked confidential and proprietary, or that the Disclosing Party identifies as confidential and proprietary, or that by the nature of the circumstances surrounding the disclosure or receipt ought to be treated as confidential and proprietary information, including but not limited to: (a) techniques, sketches, drawings, models, inventions (whether or not patented or patentable), know-how, processes, apparatus, formulae, equipment, algorithms, software programs, software source documents, APIs, and other creative works (whether or not copyrighted or copyrightable); (b) information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans and information; (c) proprietary or confidential information of any third party who may disclose such information to Disclosing Party or Receiving Party in the course of Disclosing Party's business; and (d) the terms of this Agreement and any Purchase Order or SOW. Confidential Information of Supplier shall include the Software, the documentation, the pricing, and information regarding the characteristics, features or performance of Beta Licenses and Non-GA Solutions. Confidential Information also includes all summaries and abstracts of Confidential Information.

12.2 Non-Disclosure. Each party acknowledges that in the course of the performance of this Agreement, it may obtain the Confidential Information of the other party. The Receiving Party shall, at all times, both during the term of this Agreement and thereafter, use reasonable efforts to keep in confidence and trust all of the Disclosing Party's Confidential Information received by it. The Receiving Party shall not use the Confidential Information of the Disclosing Party other than as necessary to fulfill the Receiving Party's obligations or to exercise the Receiving Party's rights under this Agreement. Each party agrees to secure and protect the other party's Confidential Information with the same degree of care and in a manner consistent with the maintenance of such party's own Confidential Information (but in no event less than reasonable care), and to take appropriate action by instruction or agreement with its employees, Affiliates or other agents who are permitted access to the other party's Confidential Information to satisfy its obligations under this Section. The Receiving Party shall not disclose Confidential Information of the Disclosing Party to any person or entity other than its officers, employees, affiliates and agents who need access to such Confidential Information in order to effect the intent of this Agreement and who are subject to confidentiality obligations at least as stringent as the obligations set forth in this Agreement.

12.3 Exceptions to Confidential Information. The obligations set forth in Section 12.2 (Non-Disclosure) shall not apply to the extent that Confidential Information includes information which: (a) was known by the Receiving Party prior to receipt from the Disclosing Party either itself or through receipt directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (b) was developed by the Receiving Party without use of the Disclosing Party's Confidential Information; or (c) becomes publicly known or otherwise ceases to be secret or confidential, except as a result of a breach of this Agreement or any obligation of confidentiality by the Receiving Party. Nothing in this Agreement shall prevent the Receiving Party from disclosing Confidential Information to the extent the Receiving Party is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, the Receiving Party shall (x) assert the confidential nature of the Confidential Information to the agency; (y) immediately notify the Disclosing Party in writing of the agency's order or request to disclose; and (z) cooperate fully with the Disclosing Party in protecting against any such disclosure and in obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.

12.4 Injunctive Relief. The Parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Receiving Party will be entitled, in addition to any other available remedies, to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.

### **13. PROPRIETARY RIGHTS.**

13.1 Software. As between Supplier and Customer, all right, title and interest in the Software and any other Plugins, materials, software, virtual items and other content furnished or made available hereunder, and all modifications and enhancements thereof, and all suggestions, ideas and feedback proposed by Customer regarding any such items, including all copyright rights, patent rights and other Intellectual Property Rights in each of the foregoing, belong to and are retained solely by Supplier or Supplier's licensors and providers, as applicable. If the License Term is for an Evaluation License or any Non-GA Solutions (including Beta Licenses), Customer shall periodically (and, in any case, not less than once every thirty (30) days or more frequently as specified by Supplier) provide Supplier with written feedback regarding Customer's use of the Software, the functionality of the Software, any bugs, errors or deficiencies that Customer encounters regarding the operation and functionality of the Software and any suggestions that Customer may have regarding improvement of such operation and functionality ("Feedback"). Additionally, Customer shall promptly respond to any questions that Supplier may have regarding such Feedback or to any other questions Supplier may have regarding Customer's use of the Software. Customer hereby does and will irrevocably assign to Supplier all Feedback and all Intellectual Property Rights in the Feedback.

13.2 Supplier Developments. All inventions, works of authorship and developments conceived, created, written, or generated by or on behalf of Supplier, whether solely or jointly, including without limitation, in connection with Supplier's performance of the Ancillary Services hereunder, including (unless otherwise expressly set forth in an applicable SOW) all Deliverables ("Supplier Developments") and all Intellectual Property Rights therein, shall be the

sole and exclusive property of Supplier. Customer agrees that, except for Customer Confidential Information, to the extent that the ownership of any contribution by Customer or its employees to the creation of the Supplier Developments is not, by operation of law or otherwise, vested in Supplier, Customer hereby assigns and agrees to assign to Supplier all right, title and interest in and to such Supplier Developments, including without limitation all the Intellectual Property Rights therein, without the necessity of any further consideration.

13.3 Further Assurances. To the extent any of the rights, title and interest in and to Feedback or Supplier Developments or Intellectual Property Rights therein cannot be assigned by Customer to Supplier, Customer hereby grants to Supplier an exclusive, royalty-free, transferable, irrevocable, worldwide, fully paid-up license (with rights to sublicense through multiple tiers of sublicensees) to fully use, practice and exploit those non-assignable rights, title and interest. If the foregoing assignment and license are not enforceable, Customer agrees to waive and never assert against Supplier those non-assignable and non-licensable rights, title and interest. Customer agrees to execute any documents or take any actions as may reasonably be necessary, or as Supplier may reasonably request, to perfect ownership of the Feedback and Supplier Developments. If Customer is unable or unwilling to execute any such document or take any such action, Supplier may execute such document and take such action on Customer's behalf as Customer's agent and attorney-in-fact. The foregoing appointment is deemed a power coupled with an interest and is irrevocable.

13.4 License to Deliverables. Subject to Customer's compliance with this Agreement, Supplier hereby grants Customer a limited, non-exclusive, non-transferable license during the License Term to use the Deliverables solely in connection with Customer's authorized use of the Software. Notwithstanding any other provision of this Agreement: (i) nothing herein shall be construed to assign or transfer any Intellectual Property Rights in the proprietary tools, source code samples, templates, libraries, know-how, techniques and expertise ("Tools") used by Supplier to develop the Deliverables, and to the extent such Tools are delivered with or as part of the Deliverables, they are licensed, not assigned, to Customer, on the same terms as the Deliverables; and (ii) the term "Deliverables" shall not include the Tools.

#### **14. LIMITATION OF LIABILITY.**

14.1 No Consequential Damages. NEITHER SUPPLIER NOR SUPPLIER'S LICENSORS OR SUPPLIERS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST DATA, BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUE OR LOST BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUPPLIER OR SUPPLIER'S LICENSORS OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES ARISING OUT OF THE LICENSING, PROVISION OR USE OF THE SOFTWARE, ANCILLARY SERVICES, SUPPORT SERVICES OR THE RESULTS THEREOF. SUPPLIER WILL NOT BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

14.2 Limits on Liability. NEITHER SUPPLIER NOR ITS LICENSORS OR SUPPLIERS SHALL BE LIABLE FOR CUMULATIVE, AGGREGATE DAMAGES GREATER THAN AN AMOUNT EQUAL TO THE LESSER OF (a) THE AMOUNTS PAID BY CUSTOMER TO SUPPLIER UNDER THIS AGREEMENT DURING THE PERIOD OF SIX (6) MONTHS

PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED, AND (b) THE AMOUNT OF FEES PAID BY CUSTOMER IN A SINGLE LICENSE TERM.

14.3 Essential Purpose. CUSTOMER ACKNOWLEDGES THAT THE TERMS IN THIS SECTION 14 (LIMITATION OF LIABILITY) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SHALL APPLY EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE AND WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, PRODUCT LIABILITY OR OTHERWISE.

## **15. TERM AND TERMINATION; AUTOMATIC RENEWAL.**

15.1 Term. The term of this Agreement commences on the Effective Date and continues until the expiration or termination of the applicable License Term(s), unless earlier terminated as provided in this Agreement. Evaluation Licenses and Non-GA Solutions, including Beta Licenses, will terminate at the end of their respective License Term unless the parties mutually agree in writing to a new License Term.

15.2 Termination for Cause. A party may terminate this Agreement and any SOW (and all License Term(s)) upon written notice to the other party in the event the other party (a) files a petition for bankruptcy or has a petition for bankruptcy filed against it that is not dismissed within sixty (60) days after filing or admits its inability to pay its debts as they mature, makes an assignment for the benefit of its creditors or ceases to function as a going concern or to conduct its operations in the normal course of business and such termination shall occur immediately upon notice; or (b) commits a material breach of any provision of this Agreement and does not remedy such breach within thirty (30) days (or ten (10) days after a failure to pay any fees hereunder) after receipt of notice from the other party or such other period as the parties may agree. Upon any termination for cause by Customer, Supplier shall refund Customer the pro rated amount of any prepaid fees for the remainder of the terminated License Terms after the effective termination date. Upon any termination for cause by Supplier, Customer shall pay any unpaid fees covering the remainder of the term of all Purchase Orders after the effective date of termination. In no event shall any termination relieve Customer of the obligation to pay any fees payable to Supplier for the period prior to the effective date of termination.

15.3 Termination for Convenience. Either party shall have the right to terminate any License Term for convenience on at least ten (10) days prior written notice to the other party. Pre-paid fees for the then-current License Term are non-refundable unless Supplier exercises such termination right for convenience in which case Supplier shall refund to Customer the prorated amount of any pre-paid fees for the terminated License Term.

15.4 Effects of Termination. Upon expiration or termination of this Agreement, (a) Customer's use of and access to the Software and Supplier's performance of all Support Services and Ancillary Services shall cease; (b) all SOWs shall terminate; (c) all fees and other amounts owed to Supplier shall be immediately due and payable by Customer, including without limitation, all fees incurred under any outstanding SOW up through the date of termination for any Ancillary Services completed and a prorated portion of the fees incurred for any partially completed Ancillary Services; and (d) in the case of a termination for convenience by Supplier or termination by Customer due to Supplier's breach, Supplier will refund to Customer the amount of any pre-paid fees for the terminated License Term and pre-paid fees for Support

Services for the terminated portion of the Support Period. Within ten (10) days of the effective date of termination each Receiving Party shall: (a) return to the Disclosing Party, or at the Disclosing Party's option, the Receiving Party shall destroy, all items of Confidential Information then in the Receiving Party's possession or control, including any copies, extracts or portions thereof, and (b) upon request shall certify in writing to Disclosing Party that it has complied with the foregoing.

15.5 Survival. This Section and Sections 1, 2.3, 2.4, 9, 10, 11, 12, 13, 14, 15.4 and 16 shall survive any termination or expiration of this Agreement.

## **16. MISCELLANEOUS.**

16.1 Notices. Supplier may give notice to Customer by means electronic mail to Customer's e-mail address on record with Supplier, or by written communication sent by first class postage prepaid mail or nationally recognized overnight delivery service to Customer's address on record with Supplier. Customer may give notice to Supplier by written communication sent by e-mail to support@nanome.ai for by first class postage prepaid mail or nationally recognized overnight delivery service addressed to Supplier, 7770 Regents Rd Suite #113, Box #102, San Diego, CA 92122, Attention: Nanome Inc. Notice shall be deemed to have been given upon receipt or, if earlier, two (2) business days after mailing, as applicable. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

16.2 Governing Law, Dispute Resolution. This Agreement and the rights and obligations of the parties to and under this agreement shall be governed by and construed under the laws of the United States and the State of California as applied to agreements entered into and to be performed in such State without giving effect to conflicts of laws rules or principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. The parties further agree to waive and opt-out of any application of the Uniform Computer Information Transactions Act (UCITA), or any version thereof, adopted by any state of the United States in any form. Any disputes arising out of or in connection with this Agreement, including but not limited to any question regarding its existence, interpretation, validity, performance or termination, or any dispute between the parties arising from the parties' relationship created by this Agreement, shall be heard in the state and federal courts located in San Diego County, State of California and the parties hereby consent to exclusive jurisdiction and venue in such courts.

16.3 Attribution. If the Software is used by Customer to obtain results that are published in a scientific or research publication, Customer shall acknowledge its use of the Software with an appropriate citation referencing the Software.

16.4 U.S. Government Customers. If Customer is a Federal Government entity, Supplier provides the Software, including related software and technology, for ultimate Federal Government end use solely in accordance with the following: Government technical data rights include only those rights customarily provided to the public with a commercial item or process and Government software rights related to the Software include only those rights customarily provided to the public, as defined in this Agreement. The technical data rights and customary commercial software license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer

Software or Computer Software Documentation). If greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be included in this Agreement.

16.5 Export. The Software utilizes software and technology that may be subject to United States and foreign export controls. Customer acknowledges and agrees that the Services shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Software, Customer represents and warrants that it is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National, or that has been designated by the U.S. Government as a "terrorist supporting" country. The Software may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000. Customer agrees to comply strictly with all applicable export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. Supplier and its licensors make no representation that the Software is appropriate or available for use in other locations. None of the information acquired through the use of the Software, is or will be used for nuclear activities, chemical or biological weapons, or missile projects.

16.7 General. Customer shall not assign its rights hereunder, or delegate the performance of any of its duties or obligations hereunder, whether by merger, acquisition, sale of assets, operation of law, or otherwise, without the prior written consent of Supplier. Any purported assignment in violation of the preceding sentence is null and void. Subject to the foregoing, this Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties thereto. With the exception of Affiliates of Customer who have executed Purchase Orders under this Agreement, there are no third-party beneficiaries to this Agreement. Except as otherwise specified in this Agreement, this Agreement may be amended or supplemented only by a writing that refers explicitly to this Agreement and that is signed on behalf of both parties. No waiver will be implied from conduct or failure to enforce rights. No waiver will be effective unless in a writing signed on behalf of the party against whom the waiver is asserted. If any of this Agreement is found invalid or unenforceable that term will be enforced to the maximum extent permitted by law and the remainder of the Terms will remain in full force. The parties are independent contractors and nothing contained herein shall be construed as creating an agency, partnership, or other form of joint enterprise between the parties. This Agreement, including all applicable Purchase Orders, SOWs and separate or additional terms referred to herein, constitute the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral. Except for payment obligations hereunder, neither party shall be liable to the other party or any third party for failure or delay in performing its obligations under this Agreement when such failure or delay is due to any cause beyond the control of the party concerned, including, without limitation, acts of God,

governmental orders or restrictions, fire, or flood, provided that upon cessation of such events such party shall thereupon promptly perform or complete the performance of its obligations hereunder.

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