



Nimmetry Inc End User License Agreement

IMPORTANT

BY DOWNLOADING, INSTALLING AND/OR USING NIMMETRY INC SOFTWARE, OR BY RECEIVING NIMMETRY SERVICES.

BELOW TERMS AND CONDITIONS, AS THEY, TOGETHER WITH THE PURCHASE ORDER FORM ON WHICH THEY ARE REFERENCED, CONSTITUTE A LEGALLY BINDING AGREEMENT AND GOVERN YOUR USE OF THE NIMMETRY INC SOFTWARE.

IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT DOWNLOAD, INSTALL THE NIMMETRY INC SOFTWARE OR RECEIVE THE NIMMETRY INC SERVICES.

1. DEFINITIONS

- 1.1. "Nimmetry Inc" means Nimmetry Inc, a Delaware company with its headquarters at 5201 Great America Parkway, Suite#320, Santa Clara, CA-95054, USA including any of its subsidiaries.
- 1.2. "Nimmetry Partner" means an entity with which Nimmetry Inc has a valid partner contract in place for promoting or reselling and distributing the Nimmetry Inc Software for placing and processing orders from end users.
- 1.3. "Agreement" means these terms and any other terms referenced in this document.
- 1.4. "Affiliate" means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with a Party, where "Control" means control of greater than 50% of the voting rights or equity interests of a Party. If a Customer Affiliate places a Purchase Order under this Agreement, such Affiliate shall be deemed as "Customer" for the purpose of that Purchase Order.
- 1.5. "Claim" means a claim, action, or legal proceeding filed against a Party.
- 1.6. "Customer" means the entity identified in the Purchase Order as "Customer" or otherwise identified in the Purchase Order as the end user.
- 1.7. "Customer Data" means any information that is shared by or on behalf of Customer to Nimmetry Inc from its internal data stores or other sources not supplied by Nimmetry Inc.
- 1.8. "Development Outputs" means any artifacts created by the Customer using Nimmetry Software, and the definition shall be construed to include any Customer Data.
- 1.9. "Improvements" means all versions, updates, corrections, improvements, developments, modifications, enhancements, variations, derivative works, scripts, any customizations, adaptations or extensions of feature sets of any of the Nimmetry Software components, or any software referenced herein, created or acquired by Nimmetry Inc.
- 1.10. "Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in computer software, and any other intellectual property rights or rights of a similar nature.
- 1.11. "License Fee(s)" means the fees payable by Customer for the Nimmetry Software components, as set in the applicable Purchase Order document or another document signed by the Parties.
- 1.12. "Purchase Order" means the order form or other written document for the Nimmetry Software or related services that is either (a) executed between Nimmetry Inc and Customer or (b) the document executed between an Nimmetry Inc Partner and Customer, substantially in the form provided by Nimmetry Inc.



- 1.13. "License Term" means the duration of the License for Nimmetry Software (or for the provision of Professional Services), as specified in the Purchase Order, or any shorter term as an effect of the termination of the Agreement.
- 1.14. "Party" means Nimmetry Inc and the Customer.
- 1.15. "Professional Services" means any consulting, training, implementation, or technical services provided by Nimmetry Inc, directly or through subcontractors, to the Customer.

2. LICENSE AND ORDERING PROCESS

- 2.1. **License:** Nimmetry Inc grants to the Customer a limited, non-exclusive right to use the components of the Nimmetry Software specified in the Purchase Order during the License Term in accordance with Nimmetry Inc Licensing Models and Manuals as published by Nimmetry Inc from time to time. Customer retains all rights, including Intellectual Property Rights, in the Development Outputs created by the Customer with the Nimmetry Inc Platform, in accordance with this Agreement.
- 2.2. **Purchase Order:** All Purchase Orders will be placed with Nimmetry Inc.
- 2.3. **Ordering Process:** All purchase orders with Nimmetry Inc for any Nimmetry Software components during the term of this Agreement will be deemed to be subject to the provisions of this Agreement, irrespective if a reference to this Agreement is made within the Purchase Order or not.
- 2.4. **License Term:** The License Term commences on the date Nimmetry Inc delivers the software bundle and is valid for the term indicated in the Purchase Order. The expiration date of each License Term, as well as the terms regarding the applicable pricing and quantity, including the selected Licensing Model, will be included on each Invoice and Purchase Order.
- 2.5. **Orders by Customer Affiliates:** Customer Affiliates can place orders separately for the Nimmetry Software by explicitly referencing this Agreement in the Purchase Order. The Customer Affiliates will be deemed to have accepted the terms herein and any reference to "Customer" shall be deemed as a reference to the Customer Affiliates.
- 2.6. **Evaluation License:** The Nimmetry Software may be used in non-production environments for evaluation purposes subject to the terms located at the following web address: <http://www.nimmetry.com/legal> (or successor website).

3. THIRD-PARTY ACCESS

- 3.1. **Outsourcing:** Customer may allow its Affiliates, and third-party contractors to operate or access the Nimmetry Software solely on Customer's behalf, but only for Customer's direct business purposes. At Nimmetry Inc's request, Customer will provide a list of the entities having access to the Nimmetry Software in accordance with this provision.
- 3.2. **Customer Responsibility:** If Customer allows any person or entity to operate, use or access the Nimmetry Software, the Customer is responsible for ensuring that such person or entity complies with the terms of this Agreement and will be liable towards Nimmetry Inc as if the actions of that other person or entity would have been its own.
- 3.3. **No Additional Rights:** For clarity, the rights granted under this section (Third-Party Access) do not modify the License permissions as provided under the Support Terms section.



4.SUPPORT TERMS

- 4.1.**Support Services:** Support services provided and regularly updated for the Nimmetry Software in accordance with the Support Terms located at the following web address: <http://www.nimmetry.com/legal>
- 4.2.**No Personal Data:** During the performance of all Services (including any Professional Services, if any), Customer needs to avoid transmission of information that is regulated by applicable privacy laws (“Personal Data”) (for example, by using “dummy data” when configuring or testing solutions). If such “dummy data” cannot be provided, the Customer will provide anonymised data. Nimmetry Inc neither wish to receive Personal Data nor it is required for the performance of the Services. Accordingly, Customer must not transmit Personal Data to Nimmetry Inc, unless the Parties have agreed in writing on terms specifying that Nimmetry Inc has agreed to receive Personal Data and detailing the security measures in place and agreement for the processing of Personal Data.

5.PAYMENT TERMS

- 5.1.**Applicability:** This section applies only if Customer orders the Nimmetry Software directly from Nimmetry Inc. If Customer orders the Nimmetry Software from Nimmetry Inc Partner, payment terms are agreed between Customer and the Nimmetry Inc Partner. If a Customer orders Nimmetry Software from a Nimmetry Inc Partner under a Purchase Order with Nimmetry Inc Partner, the terms of this Agreement apply to Customer’s use of the Nimmetry Software and will prevail in case of any inconsistency between these terms and the Nimmetry Inc Partner order for which Nimmetry Inc Partner is solely responsible.
- 5.2.**Payment:** Customer must pay the fees specified in the Purchase Order. All fees are non-cancelable and, save as otherwise provided in this Agreement, non-refundable. The fees are invoiced annually in advance and due within 30 days from the invoice date unless otherwise specified in the Purchase Order. All invoices will only be delivered electronically to Customer and will be issued by Nimmetry Inc. Nimmetry Inc may charge interest at a monthly rate equal to the lesser of 1% per month or the maximum rate permitted by applicable law on any overdue fees, from the due date until the date the overdue amount (plus applicable interest) is paid in full. Any fees that are unpaid as of the date of termination or expiration of this Agreement will be immediately due and payable.
- 5.3.**Failure to Pay:** If Customer fails to pay any amount due under this Agreement per the payment terms in the Purchase Order, Nimmetry Inc will send Customer a reminder notice. If Customer fails to pay within 30 days of the date of the reminder notice, Nimmetry Inc may, in its sole discretion, suspend or terminate the applicable License Agreement after notifying the Customer in writing.
- 5.4.**Disputes:** If Customer believes in good faith that Nimmetry Inc has incorrectly billed Customer, the Customer must contact Nimmetry Inc in writing within 15 days of the invoice date, specifying the error. If Nimmetry Inc and Customer will not settle the dispute amicably in a term of maximum 60 (sixty) days, then the dispute shall be referred to a court of law in accordance with the Governing Law Venue section. Customer will pay the undisputed portions of the invoice.
- 5.5.**Taxes:** Prices do not include applicable taxes like, but not limited to, VAT. All payments will be made in cleared funds, without any deduction or set-off and free and clear of and without deduction for or because



any taxes, levies, imports, duties, charges, fees and withholdings of any nature now or hereafter imposed by any governmental, fiscal or other authority as required by law.

5.6. **Changes:** Nimmety Inc is entitled to establish its own License Fees, at its own discretion. Nimmety Inc will not change the amount of the fees for already acquired Licenses, after the acceptance of a Purchase Order by Nimmety Inc. In case of any change of the License Fees, Nimmety Inc will send to the Customer a 90 calendar-day prior notice regarding the newly proposed fees. The Customer is bound to respond to this notice until the expiry of the License Term. In the absence of a response from the Customer by the expiry of the License Term, the newly proposed License Fees will apply, unless otherwise agreed in writing by the Parties.

6. THIRD PARTY INTELLECTUAL PROPERTY CLAIMS

6.1. **Nimmety Inc Obligations:** Nimmety Inc will defend, at its expense, any third-party Claim against Customer during the License Term to the extent the Claim alleges that the Nimmety Inc Platform infringes the third party's patent, copyright, or trademark, or that Nimmety Inc has misappropriated the third party's trade secret ("IP Claim"). Nimmety Inc will pay any damages finally awarded by a court of competent jurisdiction (or settlement amounts agreed to in writing by Nimmety Inc).

6.2. **Remedy:** In case of any IP Claim, Nimmety Inc at its sole discretion may: (a) procure for Customer a License to continue using Nimmety Inc Platform under the terms of this Agreement; (b) replace or modify the allegedly infringing components to avoid the infringement; or (c) terminate Customer's License and access to the Nimmety Inc Platform (or its infringing component) and refund the Customer pro rata fees pertaining to the Nimmety Inc Platform components, computed on the basis of the prepaid and unused License Fees, but only if Customer confirms in writing that it destroyed all copies of the Nimmety Inc Platform component (and any related materials) from all computer systems on which it was stored.

6.3. **Conditions:** Nimmety Inc will have no liability for any IP Claim: (A) that arises from any: (i) use of the Nimmety Inc Platform in violation of this Agreement; (ii) modification of the Nimmety Inc Platform by anyone other than Nimmety Inc; (iii) failure by Customer to install the latest updated version of the Nimmety Inc Platform, as requested by Nimmety Inc to avoid infringement; or (iv) third-party products, services, hardware, software, or other materials, or combination of these with the Nimmety Inc Platform, if the Nimmety Inc Platform would not be infringing without this combination; or (B) if Customer fails to: (i) promptly notify Nimmety Inc in writing of the IP Claim; (ii) provide Nimmety Inc with reasonable assistance requested by Nimmety Inc for the defense of the IP Claim; (iii) provide Nimmety Inc with the exclusive right to control or settle the IP Claim; or (iv) refrain from making admissions about the IP Claim without Nimmety Inc's prior written consent. The remedies in this Third Party Intellectual Property Claims section are Customer's sole and exclusive remedies and Nimmety Inc's sole liability regarding the subject matter giving rise to any IP Claim.

7. OTHER CLAIMS

7.1. **Customer's Obligations:** Customer will, at its expense, defend or settle any third-party Claim against Nimmety Inc to the extent it arises from any Customer Development Outputs, Customer Data, or Customer's breach of Third Party Providers section. Customer will pay any damages finally awarded by a



court of competent jurisdiction (or settlement amounts agreed to in writing by Customer)

7.2. **Conditions:** Customer's obligations under this Other Claims section are conditioned upon Nimmetry Inc (to the extent permitted by applicable law): (i) promptly notifying the Customer of any Claim in writing; (ii) cooperating with the Customer in the defense of the Claim; (iii) granting the Customer sole control of the defense or settlement of the Claim; and (iv) refraining from making any admissions about the Claim. The remedies in this Other Claims section are Nimmetry Inc's sole and exclusive remedies and Customer's sole liability regarding the subject matter giving rise to any such Claim.

7.3. **Other Responsibility:** For the avoidance of any doubt, under no circumstances Nimmetry Inc may be liable for any Claims, judgments, awards, costs, expenses, damages and liabilities (including reasonable attorneys' fees) of any kind and nature that may be asserted, granted or imposed against, directly or indirectly, arising from or in connection to any Customer Development Outputs.

8. LIMITATION OF LIABILITY

8.1. **Damages Exclusion:** Neither Party will be liable to the other Party for any special, indirect, moral, consequential, incidental, punitive, or exemplary damages, the use or inability to use the Nimmetry Inc Platform, computer malfunction or failure, server down time, failure of the Nimmetry Inc Platform to operate with any other programs, loss of profits, reputation, use, or revenue, loss or corruption of data, or interruption of business.

8.2. **Liability Cap:** The maximum aggregate liability of each Party for each and all Claims (individually and together) under or relating to this Agreement or its subject matter will not exceed an amount equal to the License Fees paid under this Agreement for the 12 months before the initial Claim. This limitation will apply whether an action is in contract or tort and regardless of the theory of liability but will not limit payment obligations as specified in the Payment Terms section. This limitation will also apply for Nimmetry Inc benefit when Customer ordered Nimmetry Inc Product from a Nimmetry Inc Partner, irrespective of the terms agreed between the Customer and Nimmetry Inc Partner.

9. REPRESENTATIONS & WARRANTIES

9.1. **Nimmetry Inc Platform Limited Warranty and Remedy:** Nimmetry Inc warrants that the Nimmetry Inc Platform, as delivered to Customer, will substantially conform to the applicable Manuals during the License Term, to the extent that the Nimmetry Inc Platform is used in accordance with the Manuals. Customer must notify Nimmetry Inc of a Claim under this warranty within 30 days of the date on which the condition giving rise to the Claim first appeared. To the extent permitted by law, Customer's sole and exclusive remedy and Nimmetry Inc's sole liability under or about this warranty will be a replacement of the Nimmetry Inc Platform component, or if replacement is not commercially reasonable, a termination of the applicable Nimmetry Inc Platform component or services and a refund of pro rata fees pertaining to the Nimmetry Inc Platform component or service, computed on the basis of the prepaid and unused License Fees.

9.2. **Implied Warranties:** Except for the express warranties herein, Nimmetry Inc Platform is provided on an "as-is" basis. Neither Party makes any warranty of any kind, whether express, implied, statutory or



otherwise, and each Party specifically disclaims all implied warranties, including any implied warranties of merchantability, fitness for a particular purpose or non-infringement, to the maximum extent permitted by applicable law. Nimmetry Inc does not warrant the Nimmetry Inc Platform or its components will run uninterrupted or error free. Customer bears the entire risk as to the use of the Nimmetry Inc Platform. Each Party disclaims all liability for any harm or damages caused by any third-party hosting providers.

10. TERM

10.1. **Duration:** This Agreement applies to the Nimmetry Inc Platform from the Effective Date until the expiration of the applicable License Term or the term for Professional Services. If Customer has not signed a renewal at the end of a License Term prior to the expiration of the then current License Term, the License Term will be automatically renewed for successive renewal terms of 1 year each, unless either Party provides written notice of non-renewal to the other Party at least 30 days before such expiration.

10.2. **Material Breach:** If either Party commits a material breach of this Agreement, the non-breaching Party may give written notice describing the nature and basis of the breach to the breaching Party. If the breach is not cured within 30 days of the notice date, the non-breaching Party may immediately terminate this Agreement upon written notice.

10.3. **Effect of Termination:** Upon termination or expiration of this Agreement or any License Term the License and associated rights for the Nimmetry Inc Platform will immediately terminate and Customer must, at its expense remove and delete all copies of the Nimmetry Inc Platform. Customer understands that some or all the Nimmetry Inc Platform components may cease to operate without prior notice upon expiration or termination of the License Term. The Parties agree that, except as otherwise provided under this Agreement, the Customer will not be entitled to a refund of any fees paid hereunder after the delivery of the Nimmetry Inc Product or any renewal thereof.

11. PROFESSIONAL SERVICES

11.1. Any Professional Services provided by Nimmetry Inc shall be governed by the Professional Services Terms located at the following web address: <http://www.nimmetry.com/legal> (or successor website) and incorporated into this by reference.

12. GENERAL

12.1. **Assignment:** Neither Party may assign this Agreement without the other Party's prior written consent, except upon written notice of a change of control. Notwithstanding the foregoing, if a Party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other Party, then such other Party may terminate this Agreement upon written notice.

12.2. **Confidentiality Obligations:** Parties must, and will ensure their Affiliates, employees and/or agents shall, keep the Confidential Information (means and refers to any document and information to which a Party



has access during the performance of this Agreement, including but not limited to technical information, business methods, software programs, licensing model, of the other Party) confidential. Neither Party will in any manner, directly or indirectly, use or otherwise employ all or any of the Confidential Information of the other Party for any purpose other than the performance under this Agreement. This confidentiality obligation will survive for 3 years after the termination or expiration of this Agreement. The Customer acknowledges that if it provides any suggestions or feedback to Nimmetry Inc, it does so voluntarily and without any obligation of confidence on Nimmetry Inc in relation thereto who will be entitled to use any suggestions or feedback, in any way and for any purpose.

12.3. Data Use Consent: Customer agrees that Nimmetry Inc and its Affiliates may collect and use technical information gathered as part of the software support services provided, if any, related to the Nimmetry Inc Platform. Nimmetry Inc may use this information solely to improve the software or to provide customized services or technologies to the Customer and will not disclose this information in a form that personally identifies the Customer.

12.4. Entire Agreement: This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes any prior written or oral agreement between them with respect to such subject matter. Any amendments to this Agreement may only be made in writing and become effective when signed by both Parties. In case of any discrepancy between the terms of this Agreement and a Purchase Order, the terms of the Purchase Order will prevail. The Parties agree any termination of this Agreement shall trigger termination of all Purchase Orders placed on the basis of this Agreement, however, termination of a Purchase Order will not trigger termination of this Agreement, unless otherwise agreed by the Parties in writing.

12.5. No Other Terms: Any terms or conditions in any purchase order or any other related documentation submitted by or on behalf of Customer to Nimmetry Inc (or any other entity, such as an Nimmetry Inc Partner) do not form part of this Agreement and are void, unless otherwise expressly agreed in writing and signed by both Customer and Nimmetry Inc.

12.6. Governing Law, Venue : This Agreement is governed by the laws indicated in the below table, depending on the location of the Customer. For any dispute arising out of or relating to this Agreement (if the Parties do not reach a settlement within 60 days), the Parties consent to personal jurisdiction in, and the exclusive venue of, the courts indicated in the below table. Nimmetry Inc will have the right to pursue claims against Customer in any other jurisdiction worldwide to enforce its rights under this Agreement. The terms of the United Nations Convention on Contracts for the Sale of Goods and the Uniform Computer Information Transactions Act (UCITA) will not apply to this Agreement regardless of when or where adopted. To the fullest extent permitted by law, each of the Parties waives any right it may have to a jury trial in respect of litigation directly or indirectly arising out of, under or in connection with this Agreement. If a waiver of jury trial is deemed by any court of competent jurisdiction as not being enforceable for any reason, then to the fullest extent permitted by law, each of the Parties hereto agree to binding arbitration as determined in good faith by the Parties.

Country where Customer is located	Applicable Law	Venue
North America	California Law	Santa Clara



Rest of the world	California Law	Santa Clara
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12.7. **License Compliance:** Nimmetry Inc may, at its expense and no more than once every 12 months, appoint its own personnel or an independent third party (or both) to verify that Customer's use, installation, or deployment of the Nimmetry Inc Platform comply with the terms of this Agreement and Customer agrees to provide all the required assistance and support during such verification.

12.8. **No Partnership:** Nothing in this Agreement is intended to constitute a fiduciary relationship, agency, joint venture, partnership, or trust between the Parties and neither Party has authority to bind the other Party.

12.9. **Notices:** Any notice given under this Agreement must be in writing by e-mail, with a suggestive subject, to the addresses listed below (or addresses notified in writing by either Party) and will be effective the earlier of (i) when received by the Party, or refused by the Party or (ii) the next business day.

Matter	To Nimmetry Inc	To Customer
Privacy	support@nimmetry.com	<To be filled by customer>
Maintenance	support@nimmetry.com	
Invoices	support@nimmetry.com	
Orders	support@nimmetry.com	
Others	support@nimmetry.com	

12.10. **Publicity:** The Customer authorizes Nimmetry Inc to publicly identify the Customer as a customer and include the Customer's name and logo on the Nimmetry Inc's website and other promotional and marketing materials.

12.11. **Privacy:** During the performance of this Agreement each Party may collect, store and use personal data related to the other Party's representatives or employees, such as their name, telephone number, e-mail address, job title. This personal data may be collected from the other Party or directly from the representatives or employees and it is necessary to allow the parties to enter into and perform this Agreement. Each Party will be responsible for informing its own representatives or employees of the processing of their personal data as provided in this Agreement. Each Party is responsible for complying with the applicable data protection legal requirements for the purposes of this Agreement. If any of the Parties would at any time act as a data processor on behalf of the other Party during the performance of this Agreement, the Parties shall enter into a data processing agreement in accordance with the General Data Protection Regulation (EU) 2016/679 ("GDPR") or equivalent.

12.12. **Severability:** If any provision of this Agreement is or becomes illegal, invalid or unenforceable for any reason, all other provisions of the Agreement remain in force and shall produce legal effects.

12.13. **Third Party Providers:** If Customer uses certain features of the Nimmetry Inc Platform in conjunction with third party data, products, services, and platforms, then the Customer is responsible for complying with



the terms and conditions required by such third-party providers, and all such use is at Customer's own risk.

12.14. **Third Party Licenses:** The Nimmetry Inc Platform contains or may be used in conjunction with other software, including open source, which are the property of their respective owners and are Licensed under their respective Licenses specified in the Third Party Licenses section on the Nimmetry Inc website, as updated from time to time or communicated to the Customer.

12.15. **Export:** Notwithstanding anything from the above, each Party acknowledges that the Nimmetry Inc Platform may be subject to export control regulations as set forth by (i) the U.S. Department of Commerce Export Administration Regulations (EAR), U.S. Department of State International Traffic in Arms Regulations (ITAR) or other requirements of the U.S. Government; (ii) European Commission regulations; (iii) United Nations Security Council resolutions (the "Export Control Regulations") regulating the export and reexport of the Nimmetry Inc Platform. Each Party represents that it is not named on any Export Control Regulations list of restricted parties. Each Party hereby agrees and undertakes that it shall not knowingly export or reexport the Nimmetry Inc Platform (or any product, process or service resulting directly therefrom), directly or indirectly, to any country or a foreign national of a country in violation of any such Export Control Regulations.

12.16. **Anti-Corruption:** Each Party confirms it has not been offered or received any illegal or improper bribe, kickback, payment, gift, or thing of value from the other Party's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. Any violation of the above restrictions will be promptly notified to support@nimmetry.com.

12.17. **Waiver:** No failure to exercise, nor any delay in exercising, any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies (provided by law). Any waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach.