

# NOMADIX END USER LICENSE AGREEMENT

Please read this agreement carefully

## SECTION 1 - PRODUCT TERMS

**A. BY PURCHASING, INSTALLING, DOWNLOADING OR USING ANY NOMADIX PRODUCT, YOU (REFERRED TO HEREIN AS EITHER “YOU” OR THE “END USER”) ACCEPT AND WILL BE BOUND BY THIS AGREEMENT (“EULA”). IF YOU DO SO AS AN EMPLOYEE OR FOR THE BENEFIT OF A COMPANY OR BUSINESS ENTITY, YOU REPRESENT THAT YOU HAVE THE POWER AND AUTHORITY TO ACCEPT THIS AGREEMENT OF BEHALF OF SUCH COMPANY OR ENTITY, AND IN SUCH EVENT “YOU” REFERS TO SUCH COMPANY OR ENTITY. IF YOU DO NOT AGREE TO BE BOUND TO THIS AGREEMENT, THEN NOMADIX DOES NOT GRANT TO YOU THE RIGHT TO USE THE SOFTWARE AND DOCUMENTATION, AND YOU MAY NOT DO SO. YOU AGREE THAT YOU SHALL USE THE PRODUCT ONLY AS INTENDED AS PROVIDED IN THE DOCUMENTATION AND THIS EULA. CERTAIN NOMADIX PRODUCTS AND SERVICES ARE, IN ADDITION, SUBJECT TO SPECIFIC TERMS WHICH ARE FOUND AT THIS [LINK](#). YOU ACKNOWLEDGE REVIEWING SUCH SPECIFIC TERMS AND YOU ACCEPT THEM AS PART OF THIS AGREEMENT. NO RESELLER OR DISTRIBUTOR OF NOMADIX PRODUCTS OR ANY OTHER PERSON HAS THE AUTHORITY TO EXPAND NOMADIX’S OBLIGATIONS OR LIABILITY UNDER THIS AGREEMENT OR TO CHANGE ANY OF THE TERMS OF THIS AGREEMENT AND THE END USER SHALL NOT RELY ON ANY SUCH ACTION BY SUCH PARTIES.**

### **B. The Product**

The Nomadix Product may consist of Hardware, Software, and Documentation (together, the “Product”). Software and Documentation may be delivered as components of a Product or be delivered or made available via other means and media. Software shall include any upgrades, updates, releases, or modifications provided by Nomadix. Product Documentation for Nomadix Products may be found at [this link](#). (“Documentation”). Support for Nomadix Products may be requested by contacting Nomadix using the contact information at [this link](#). Extended premium support (fee based) may be offered by Nomadix for some Products. Product support is subject to Product Life Cycle Notices at [this link](#).

### **C. Amendment**

Nomadix may amend the terms of this Agreement at any time upon reasonable notice, including without limitation by posting a revised Agreement on its website at [this link](#) which amended Agreement will be effective as of the date of such posting and which You agree shall be binding on You by way of Your continued use of the Product, and upon download and installation of any Software upgrades, updates, or modifications.

### **D. Complete Agreement**

This Agreement constitutes the sole, final, and entire understanding, and concurrence between the parties with respect to the subject matter referenced herein. Any conflicting or additional terms set forth on any purchase order, correspondence, or other communication will have no force or effect. This Agreement supersedes and terminates all prior discussions

and understandings, whether oral or written with respect to the subject matter referenced herein.

#### **E. Indemnification**

You will defend, indemnify, and hold harmless Nomadix, its distributors and resellers, and their officers, directors, employees, agents, affiliates, representatives, and distributors from and against any and all suits, actions, claims, costs, damages, losses, liabilities, and expenses (including attorney fees, litigation costs, and expert fees) suffered or incurred by Nomadix, its distributors and resellers that are attributable to Your breach of the terms of this Agreement.

#### **F. Limitation of Liability**

**IN NO EVENT WILL THE TOTAL LIABILITY OF NOMADIX, ITS VENDORS AND ITS RESELLERS TO YOU FOR ALL DAMAGES, LOSSES, OR CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY YOU FOR THE PRODUCT IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING YOUR CLAIM. UNDER NO CIRCUMSTANCES WILL NOMADIX, ITS VENDORS, OR ITS RESELLERS BE LIABLE FOR ANY LOST REVENUE OR PROFITS, COST OF PROCUREMENT OF SUBSTITUTE GOODS, OR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, RELIANCE, OR CONSEQUENTIAL DAMAGES. THIS LIMITATION WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT.**

#### **G. Limited Warranty**

1. Nomadix warrants to You, the original End User, that from the date of Your purchase of the Product(s): (i) the Software will be free from material defects and will perform in substantial compliance with the Documentation for a period of ninety (90) days; and (ii) the Hardware will be free from material defects and will perform in substantial compliance with the Documentation for a period of one (1) year or as otherwise directed by applicable law. Upon confirmation by Nomadix of a warranty defect during the warranty period applicable under either Section 1(G)(1)(i) or 1(G)(1)(ii) above (in each case, the "Warranty Period"), Nomadix, at its sole option, will either repair or replace the defective Hardware or Software or refund the amount You paid for the Product. Replacement products or repaired items may be new or functionally equivalent refurbished items. Repair, replacement, or refund is the sole and exclusive obligation of Nomadix and is the only remedy available to You from Nomadix for defective Products.

2. Nomadix's obligations under Section 1(G)(1) above arise only if the following conditions are satisfied at the time of Nomadix's confirmation of a warranty defect: (i) You have registered the Product and complied with all provisions in this Agreement; (ii) the Product's external label or serial number has not been tampered with; (iii) the case of the Product has not been opened; (iv) the Product has not been modified or altered by anyone other than Nomadix; (v) no one other than Nomadix has attempted to repair the Product; (vi) the Product has been used only as described in the Documentation. In addition, Nomadix's obligations under Section 1(G)(1) above will not apply to defects or damage resulting from accidents, acts of nature, or other causes beyond Nomadix's control. Your warranty rights are also contingent on Nomadix verifying that a material defect exists and upon Your return of the defective Product as instructed by Nomadix during the applicable Warranty Period.

**3. THE WARRANTIES IN SECTION 1(G)(1) ABOVE ARE THE SOLE WARRANTIES PROVIDED TO YOU BY NOMADIX. NOMADIX DOES NOT WARRANT THAT ANY PRODUCT WILL (i) MEET YOUR REQUIREMENTS, (ii) BE INTEROPERABLE WITH ANY OTHER TECHNOLOGY, OR (iii) FUNCTION WITHOUT INTERRUPTION OR ERROR. EXCEPT AS EXPLICITLY WARRANTED IN SECTION 1(G)(1) ABOVE, NOMADIX DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, TRADE OR PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, NOMADIX DOES NOT WARRANT THAT THE PRODUCTS WILL DETECT, IDENTIFY, OR REMOVE ALL THREATS OR OTHER HARMFUL APPLICATIONS. YOU AGREE TO BEAR THE RISK OF THE LIMITED NATURE OF THE WARRANTY SET FORTH IN THIS AGREEMENT AND YOU AGREE THAT REPAIR, REPLACEMENT, OR REFUND OF YOUR PAYMENTS FOR THE PRODUCT IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING YOUR CLAIM IS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO YOU FROM NOMADIX FOR BREACH BY NOMADIX OF ANY APPLICABLE WARRANTY.**

#### **H. Jurisdictional Restrictions**

**CERTAIN JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, CERTAIN WARRANTIES OR LIABILITY. HENCE, THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU. THE WARRANTY IN SECTION 1(G)(1) GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.**

#### **I. Nomadix Intellectual Property**

The Product contains, embodies, or otherwise practices Nomadix or its licensors' valuable

inventions, discoveries, works of authorship, trade secrets, and other valuable intellectual property rights. You shall not (a) use the Product except as expressly provided in this Agreement or (b) disclose the Product to any other person without Nomadix's prior written consent, which Nomadix may grant, condition, delay, or withhold in its sole discretion. You may not assign, sublicense, or transfer this Agreement or any rights under this Agreement to any other person. If You wish to sell the Hardware, You must notify Nomadix and give Nomadix at least 30 days to disable and/or remove the Software and any of Nomadix's other intellectual property rights from the Hardware. You will indemnify Nomadix for all damages, costs, and expenses, including attorney fees, resulting from any third-party gaining access to Nomadix's or its licensors' intellectual property due to Your transfer of a Product to any other person in violation of this section.

#### **J. Governing Law**

This Agreement will be deemed to have been made in, and will be solely and exclusively construed under, the laws of the State of California, United States of America, without giving effect to any law that would result in the application of a different body of law. The United Nations Convention on Contracts for the International Sales of Goods will not apply to this Agreement.

#### **K. Dispute Resolution**

Any and all disputes arising under or in connection with this Agreement will be brought and resolved solely, exclusively, and finally in the state or federal courts located in Los Angeles County, California, U.S.A. Each party hereby irrevocably consents to the jurisdiction and venue of the state and federal courts located in Los Angeles County, California, U.S.A., in connection with any claim, action, suit, or proceeding relating to this Agreement. A judgement of such court thereon may be entered in, and enforced by, any court having jurisdiction over the party against which an award is entered, or the location of a party's assets and the parties irrevocably waive any objection to the jurisdiction of such courts based on any ground.

## **L. Enforceability**

If any provision in this Agreement is ruled entirely or partly unenforceable by any court of competent jurisdiction, then: (i) the parties shall ask the court to reform the provision to the minimum extent necessary to render it valid and enforceable in conformity with the parties' intent manifest in this Agreement; and (ii) the validity and enforceability of all provisions not ruled to be invalid or unenforceable will remain unaffected.

## **M. Export Law and Regulatory Compliance**

In the event You wish to export a Product from the United States, You agree to comply in all respects with the applicable United States export control laws and regulations. You will not export, directly or indirectly, any Product to any country without first obtaining any required licenses or approvals. You agree that you, and not Nomadix, are solely responsible for export control compliance; and You agree to indemnify Nomadix from any cost, expense, claim, demand, fine or penalty resulting from Your failure to comply with applicable export control laws and regulations.

## **N. Feedback**

You agree that Nomadix (including its subsidiaries, affiliates, and operating units, collectively "Nomadix") will have from You and Your users, a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into any and all Nomadix Products and services, any suggestions, enhancement requests, recommendations or other feedback (collectively "Feedback") provided by You and/or Your users. You agree that nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Nomadix's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting You or the individual providing such Feedback, and You shall not designate Feedback as Your confidential

information to the extent that such Feedback relates to Nomadix's Products or services.

## **O. Survival**

The provisions of Sections 1(E), 1(F), 1(I), 1(N), 2(A), 2(E), 2(F), 2(G) and 2(I) of this Agreement will survive expiration or termination of the Agreement for any reason.

## **P. Injunctive Relief**

You acknowledge and agree that your breach of the obligations under the EULA may result in substantial and irreparable harm and injury to Nomadix for which monetary damages alone may be an inadequate remedy, and which damages may be difficult to accurately measure. Accordingly, You agree that Nomadix may be entitled to obtain immediate injunctive relief, as well as any other equitable relief allowed by the federal or state courts. The foregoing remedy of injunctive relief is without prejudice to Nomadix to exercise any other right and remedies it may have at law, in equity, under contract (including, without limitation, this EULA) or otherwise (all of which Nomadix hereby expressly reserves).

## SECTION 2 - SOFTWARE LICENSE

### A. Ownership

Nomadix licenses but does not sell to You the Product software and documentation, whether on disk, in read only memory, or any other media or in any other form (collectively the “Software”). Nomadix and its licensors and suppliers shall at all times and under all circumstances retain all right, title and interest in all patents, copyrights, trademarks, trade names, trade secrets and other intellectual property rights related to the Software. The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties.

### B. Use of Agent

If a reseller, service provider, consultant, contractor, employee, or any other person (each an “Agent”) downloads, installs or uses the Product at Your direction or agreement with such party, You agree that such Agent will be deemed to be Your duly authorized agent acting on your behalf, and You will be deemed to have accepted this Agreement as if You had by Your own action downloaded, install and/or used the Product.

### C. Registration

You must register the Product to obtain the Software license key (if a key is required) and warranty service. You must use one of the following options to register Your Product and obtain a Software license key: (1) Use the Nomadix automated online registration process at [this link](#); (2) Complete the registration form included with the Product (or which you download from the Nomadix website) and email the completed and duly authorized signed form to [register@nomadix.com](mailto:register@nomadix.com).

### D. Grant of License

Conditioned on Your acceptance of and compliance with this Agreement at all times (including timely payment of all sums due Nomadix), Nomadix grants You, the original End User, a limited, fee-bearing, non-exclusive, non-sub-licensable, non-transferable, revocable license to use the Software and the Documentation embodied in or used by the Product solely for Your internal business purposes during the Initial Term and, if applicable, any renewal terms, in accordance with the Documentation and this Agreement. Under such license You may use the Software and the Documentation only at the indicated location.

**YOU MUST PROVIDE TO NOMADIX THE FULL STREET ADDRESS AT WHICH THE PRODUCT IS INSTALLED AND PLACED IN USE AND MANAGEMENT CONTACT INFORMATION (EMAIL AND PHONE) AT SUCH LOCATION. YOU SHALL ENSURE THAT YOU CONFIRM IN WRITING WITH NOMADIX THAT THE CONTACT INFORMATION IS CURRENT, ACCURATE AND COMPLETE DURING THE LIFE OF THE PRODUCT. YOU SHALL NOT MOVE THE PRODUCT TO A LOCATION OTHER THAN INDICATED BY YOU AT THE TIME OF REGISTRATION WITHOUT WRITTEN AUTHORIZATION FROM NOMADIX.**

### E. License Restrictions

#### 1. General Restrictions

You shall not: (i) copy the Software or the Documentation, (ii) modify, create derivative works of, or translate the Software or the Documentation, (iii) incorporate the Software into other software or combining the Software with other software; (iv) sublicense, rent, or otherwise provide or disclose the Software, the Documentation, the trade secrets, or any other Intellectual Property Rights related to the Product to any third party; (v) use the Software or any of the other Intellectual Property Rights related to the Product for illegal purposes or in violation of any third party's rights; (vi) reveal



serial numbers, accounts, passwords, device identification numbers, or other information that could jeopardize the integrity of your Nomadix account; (vii) modify, delete or tamper with the splash screen containing the Nomadix “Swirl” logo or other Nomadix trademarks, trade dress, or tag lines; (viii) delete, remove, conceal, or modify any Intellectual Property Rights notices or any other notices (e.g., concerning any applicable restrictions on use or export) on any Product; (ix) disable license-tracking capabilities or disablement capabilities; or use the Product to provide managed services to other entities.

## **2. Restrictions on Reverse Engineering**

You shall neither reverse engineer, decompile, or disassemble the Software nor reverse engineer or reveal underlying ideas or algorithms of the Software or any other trade secrets related to the Product, except and only to the extent that applicable law guarantees You the right to do otherwise. To the greatest extent permissible under applicable law, You agree that this Agreement prohibits You from reverse engineering, decompiling, or disassembling the Software and from reverse engineering or revealing underlying ideas or algorithms of the Software or any other trade secrets related to the Product. To the extent applicable law gives You the right to decompile the Software, before exercising any such possible right, You shall (i) first notify Nomadix of Your specific grounds for believing You have such a right; and (ii) provide Nomadix with a commercially reasonable amount of time to respond to You regarding that assertion.

## **3. Keys; Disabling Code**

The Software license is time limited and may include “disabling code” that will prevent the Product from operating normally (i) following the last day of the license term described below, (ii) on account of a failure to pay any amount due Nomadix with respect to the Product, or (iii) upon any breach of the terms of this Agreement. In addition, a software key may be required to unlock and activate the Software before the Product may be used. You understand and agree your license to use the Software is subject to such disabling code. You shall (i) not tamper

with the Software in any way that would circumvent the requirement for that key, (ii) use the key only to activate the Software for which it was issued and for no other purpose; and (iii) maintain the confidentiality of all information related to the key, including which Product is associated with that key.

## **F. No Implied License or Rights**

License rights are strictly enumerated in Section 2(D) above. No additional license or other rights to the Software are implied hereunder.

## **G. High Risk Activities**

The Software is not fault-tolerant and is not intended for use in hazardous environments requiring fail-safe performance (for example, the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, medical device and life support machines, or weapon systems) in which Software failure could lead to death, personal injury, or severe physical and environmental damage (“High Risk Activities”). Accordingly, You agree that this Agreement excludes any High Risk Activities and that You will not use the Software in connection with High Risk Activities of any kind.

## **H. Remote Server Communication and Software Maintenance**

Nomadix Products may be programmed to routinely communicate with remote servers owned or contracted for by Nomadix for purposes of delivering technical data of a non-personally identifiable nature on the current operating status of the Products and for certain Products to periodically permit remote maintenance. You agree to provide and maintain at all times Internet connectivity to allow the Products to communicate with those remote servers for such purposes. Failure to allow such communication may result in the Product being disabled or being rendered unable to be operated normally, as described in sub-Section E above. Nomadix assumes no responsibility for (i) undesirable configuration changes, (ii) disclosure of configuration settings, whether occurring inadvertently or as a result of a compromised remote server; or (iii) service

outage resulting directly or indirectly from such remote communications.

## **I. Consent to Use of Data.**

You agree that Nomadix and its affiliates may collect and use technical information that You provide in relation to support services related to the Products. Nomadix agrees not to use this information in a form that personally identifies You except to the extent necessary to provide such services. To the extent Nomadix uses Your personally identifiable information ("PII") it shall do so only in accordance with applicable law, including but not limited to the then-current EU General Data Protection Regulation ("GDPR") and applicable California data protection laws and regulations.

## **J. Term and Termination**

### **1. License Term**

Your Software license term is effective on the earlier of the date of (i) receipt of the Hardware in which the Software is embedded or (ii) activation of the applicable Software and will remain in force for 12 months or other period as may be agreed to by Nomadix (the "Initial Term"). The Initial Term may be extended only on condition that You signify Your continued concurrence with the terms of this Agreement. If You want to renew this Agreement to use the Software, Documentation and other Intellectual Property Rights related to the Product, beyond the Initial Term (or any subsequent renewal period), You must contact Nomadix or your Nomadix Product reseller. You shall have a license to use the Software and the Documentation following the Initial Term only if You agree to the requirements set forth herein and timely pay (directly or through your Nomadix Product reseller) the applicable license fee.

### **2. Termination**

Your license to use the Software and the Documentation will terminate immediately without notice from Nomadix if: (i) You (or your Nomadix Product reseller) fails to pay the license fee or other amounts due Nomadix in accordance with the agreed payment terms; or

(ii) You fail to comply with any of the terms and conditions of this Agreement, including but not limited to the provisions in Section 2(E); or (iii) You become the subject of a bankruptcy proceeding, receivership, assignment for the benefit of creditors or other debtor relief proceeding or are insolvent. If Your license terminates due to the occurrence of any of these conditions, Nomadix shall have the option to terminate this Agreement without notice. Upon the expiration or earlier termination of Your license or this Agreement for any reason, You must, at Nomadix's option, either return or destroy the Software and the Documentation. If You fail to do so, Nomadix has the right to remotely prevent Your further use of the Software as described in this Agreement.

## **K. Federal Procurement Regulations**

If You are acquiring any Product on behalf of any unit or agency of the United States Government, the Government acknowledges that: (i) the Product, including the Software, was developed at private expense; and (ii) the Software is "Restricted Computer Software" as that term is defined in Clause 52.227-19 of the Federal Acquisition Regulations ("FAR") and is "Commercial Computer Software" as that term is defined in Subpart 227.471 of the Department of Defense Federal Acquisition Regulation Supplement ("DFARS"). The Government agrees that: (x) if the Software is supplied to the Department of Defense ("DoD"), the Software is classified as "Commercial Computer Software" and the Government is acquiring only "limited rights" in the Software as that term is defined in Clause 252.227-7013(a)(13) of the DFARS, and (v) if the Software is supplied to any unit or agency of the United States Government other than DoD, the Government's rights in the Software will be as defined in Clause 52.227-19(c)(2) of the FAR.

## **L. Inspection**

Nomadix shall have the right, at its own expense and upon reasonable written notice to You, to periodically inspect Your premises and such documents as Nomadix may reasonably require, for the exclusive purpose of verifying Your

compliance with Your obligations under this Agreement.

#### **M. Personally Identifiable Information**

You may be required to provide personally identifiable information (“PII”) during the registration process and/or in connection with the use of the Product. You hereby consent and authorize Nomadix to collect and use such information solely for internal purposes of Nomadix. Nomadix shall maintain such PII according to its then-current Nomadix Privacy Policy available at [this link](#).

#### **N. Additional Software**

You agree that, through Your use of the Products, Nomadix may periodically offer You the opportunity to license additional Software, either royalty-free or for additional consideration.