

Nanome Enterprise Usage Tier Attachment

This Enterprise Usage Tier Attachment (“Enterprise Attachment”) is an attachment to and made part of the Nanome License Agreement (the “Agreement”) by and between Nanome, Inc. and Customer, and provides supplemental terms applicable to Customer’s use of the Software. This Enterprise Attachment supersedes the terms of the Agreement only to the extent that its terms conflicts with the terms of the Agreement. Capitalized terms used but not defined herein have the meanings provided in the Agreement.

1. DEFINITIONS.

1.1. “Authorized Purposes” means use of the Software for Customer’s internal business purposes and not for the provision of services to any third party.

1.2. “Full License” means a production license that permits the use of all available functionality and features of the Software and access to and use of all Plugins available in the Marketplace.

1.3. “Limited License” means a production license that permits the use of a subset of the available functionality and features of the Software and/or access to and use of a subset of the Plugins available in the Marketplace, as set forth in an applicable Order Form.

2. LICENSES

2.1. On-Premises License Grant. Subject to Customer’s compliance with the terms and conditions of the Agreement, Supplier hereby grants to Customer and, if applicable, its Users, during the relevant License Term, a limited, non-exclusive, non-assignable/non-transferable (except as expressly permitted herein) right:

(a) If Customer has purchased a Generic License, to install and use the On-Premises Software in accordance with the Documentation and the terms of this Agreement, in each case solely for Customer’s Authorized Purposes and not for the provision of services to any other person or entity. Generic License logins may not be shared with other entities (including, but not limited to, Customer Affiliates) without Licensor’s express written consent and such entity’s agreement to comply with the terms and conditions of this Agreement; or

(b) If Customer has purchased a Named-User License, to install and use the On-Premises Software specified in the Order Form in accordance with the Documentation and the terms of this Agreement, in each case solely for Customer’s Authorized Purposes, on any number of computing devices, provided that the Software may only be used by those Users to whom such licenses have been assigned. Named User licenses may only be assigned to one User and cannot be shared or used by more than one User, except that Customer may reassign such licenses to new Users replacing former Users who no longer require ongoing use of the Software.

Customer may make a reasonable number of backup copies of the On-Premises Software solely for Customer’s internal use in compliance with the foregoing license.

2.2. Hosted Software License Grant. Subject to User's compliance with the terms and conditions of the Agreement, Supplier, during the relevant License Term, hereby grants Customer and, if applicable, its Users, a limited, non-exclusive, non-transferable right to access and use the Hosted Software 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.

2.3. Certain Limitations. If Customer has purchased a Full License, the licenses granted in Sections 2.1 and 2.2 apply to Customer's use of all available functionality and features of the Software and access to and use of all Plugins available in the Marketplace. If Customer has purchased a Limited License, then the licenses granted in Sections 2.1 and 2.2 apply only to the functionality and features of the Software and subset of the Plugins set forth in Customer's applicable Order Form.

3. PROPRIETARY RIGHTS.

3.1. Customer Research Content. As between Supplier and Customer, all right, title and interest in the Customer Research Content, belongs to and is retained solely by Customer. By posting, displaying, sharing, processing or distributing Customer Research Content on or through the Hosted Software, Customer hereby grants Supplier a limited, sublicenseable non-exclusive, royalty-free, worldwide license to reproduce, display, publicly perform, distribute and otherwise use the Customer Research Content, and perform all acts with respect to the Customer Research Content solely as may be necessary for Supplier to provide the Software and Services to Customer. Supplier may modify, copy, translate or make any derivative works of Customer Research Content in connection with its provision of the Software as required to format such Customer Research Content for use with the Software, to continually improve the Software and to develop new services and offerings.

3.2. Aggregated Statistics. Notwithstanding anything else in this Agreement or otherwise, Supplier may monitor Customer's and its Users' use of the Software and use Customer Research Content and other data and information related to such use, in an aggregate and anonymous manner, including to compile statistical and performance information related to Software and its users ("Aggregated Statistics"). As between Supplier and Customer, all right, title and interest in the Aggregated Statistics and all Intellectual Property Rights therein, belong to and are retained solely by Supplier. Customer acknowledges that Supplier will be compiling Aggregated Statistics based on Customer Research Content and information input by other users into the Software and Customer agrees that Supplier may (a) make such Aggregated Statistics publicly available, and (b) use such information to the extent and in the manner required by applicable law or regulation and for purposes of data gathering, analysis, service enhancement and marketing, provided that such data and information does not identify Customer or its Confidential Information.

4. INDEMNIFICATION.

4.1. Supplier Indemnity.

(a) **General.** During the License Term (other than with respect to a Free License, an Evaluation License or a license to a Non-GA Solution), 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 of 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 end of 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 to the extent 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; or (vii) Customer Research Content and/or the 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 WITH RESPECT TO ANY FREE LICENSE, EVALUATION LICENSE OR LICENSE TO A NON-GA SOLUTION.