

## Nanome Terms of Service

These Terms of Service (“Terms”) govern your (“You” or “Customer”) access to and use of any of the following (collectively, the “Services”) provided by Nanome, Inc. (“Nanome”): the [www.nanome.ai](http://www.nanome.ai) website and any other Nanome websites, all Nanome mobile applications, and any services, including (a) the virtual marketplace offered or maintained by Supplier or its affiliates as the “Marketplace” which may include allowing customers to acquire for free or to purchase license rights to Plugins, software, content and other virtual assets (“Assets”) from Supplier and third parties (“Marketplace”) and (b) all private or public virtual rooms offered and maintained by Supplier or its affiliates as such which may include allowing customers to access and maintain virtual rooms and other multi-user capabilities and functions with other users and permit users to submit, upload and/or post information, opinions, messages, comments, virtual assets and other content and material (“Virtual Rooms”). Except to the extent that you have entered into a signed license agreement governing your use of Nanome software, the Nanome End User Agreement (located at [www.nanome.ai/EULA](http://www.nanome.ai/EULA)) governs your use of any other Nanome software that you may have downloaded, including the Nanome Software, NanoPro, NanoOne and CalcFlow tools (“Tools”). By using any of the Services you, the Customer, agree to be bound by these Terms. If you are using the Services on behalf of an organization, you are agreeing to these Terms for that organization and promising that you have the authority to bind that organization to these Terms.

**1) Registration; Account.** You become a Subscriber of the Nanome Services by completing the registration of a Nanome user account. As a Subscriber you may obtain access to certain of the Services available to Subscribers including to the Marketplace and use of Virtual Rooms. The Nanome and third party Assets, software, content, and updates you download or access via the Services, including but not limited to Nanome or third-party Plugins, are referred to in this Agreement as “Content and Services.”

When you complete Nanome’s registration process by providing certain information such as name, e-mail address, you create a Nanome account (“Account”). Your Account may also include billing information you provide for the purchase of license subscriptions to the Tools and Content and Services. You may not reveal, share or otherwise allow others to use your password or Account except as otherwise specifically authorized by Nanome. Customer is responsible for safeguarding the password that Customer uses to access the Services and Customer agrees not to disclose the password to any third party. Customer is responsible for any activity using Customer’s account, whether or not Customer authorized that activity. Customer should immediately notify Nanome of any unauthorized use of Customer’s account. It is Customer’s responsibility to use a secure encrypted connection to communicate with the Services to protect transmission of data or User Submissions to the Services.

When you enter sensitive information such as a credit card number, Nanome encrypts the transmission of that information using secure socket layer technology (SSL). When your User Submissions and Assets are sent to Nanome servers from the Tools or the web interface, they are sent over SSL encryption.

However, Nanome cannot guarantee absolute security as no method of electronic transmission or storage is 100% secure.

Nanome uses Amazon Web Services and Photon for data storage. You can find more information about Amazon and Photon security at [Amazon's AWS site](#) and [Photon's site](#). Amazon and Photon have both physical and service level security in place to prevent unauthorized access to the data. They also keep redundant backups of all data over multiple devices and across multiple facilities.

If Customer contact information or other information related to Customer account changes, Customer must notify Nanome promptly and keep the information current.

**2) Billing; Payment; Automatic Renewal.** All charges incurred and all purchases made at Nanome are payable in advance and final, except as expressly provided herein. Nanome accepts US Dollars and may accept certain cryptocurrencies (including Bitcoin, Ethereum and Matryx) at their then current market rate, as determined by Nanome. If your purchases from Nanome are subject to any type of use or sales tax, then Nanome may also charge you for those taxes. When you provide payment information to Nanome or to one of its payment processors, you represent that you are the authorized user of the card, PIN, key or account associated with that payment, and you authorize Nanome to charge your credit card or to process your payment with the chosen third-party payment processor for charges or fees incurred by you. Nanome may require you to provide your address or other information in order to meet its obligations under applicable tax law. For subscriptions for licenses to the Tools where recurring payments are made in exchange for continued use ("Recurring Payment Subscriptions"), by continuing to use the Recurring Payment Subscription you agree and reaffirm that Nanome is authorized to charge your credit card or to process your payment with any other applicable third-party payment processor, for any applicable recurring payment amounts. If you have purchased any Recurring Payment Subscriptions, you agree to notify Nanome promptly of any changes to your credit card account number, its expiration date and/or your billing address, or your PayPal or other payment account number, and you agree to notify Nanome promptly if your credit card or PayPal or other payment account expires or is cancelled for any reason.

**3) License.** Subject to your compliance with these Terms, Nanome hereby grants you a non-exclusive, time-limited, non-transferable and non-sublicensable (except as set forth herein), revocable license to use the Services, as provided by Nanome, in connection with your licensed use of the Tools, subject to these Terms. You may not incorporate any portion of the Services into your own programs or compile any portion of them in combination with your own programs, transfer them for use with another service, or sell, rent, lease, lend, loan, distribute or sub-license the Services or otherwise assign any rights to the Services in whole or in part.

**Storage Limits.** There may be storage limits associated with the Services which are described in the services descriptions on the Websites or in the generally available the documentation. Nanome reserves the right to charge for additional storage or overage fees at the then-current rates specified on the Website. You understand that Nanome may, at any time in its sole discretion, impose new or modify existing, storage limits for the Services, with or without notice to Customer.

**Use of Third Party Services.** When you use the Services, you may also be using the services of one or more third parties, such as a wireless carrier or a mobile platform provider. Your use of these third party services may be subject to the separate policies, terms of use, and fees of these third parties.

**No Reverse Engineering.** You may not, and you will not encourage, assist or authorize any other person to copy, modify, reverse engineer, decompile or disassemble, or otherwise tamper with, the Services, whether in whole or in part, or create any derivative works from or of the Services.

**Updates.** In order to keep the Services up-to-date, we may offer automatic or manual updates at any time and without notice to you.

**Government End Users.** If you are a U.S. Government end user, we are licensing the Services to you as a "Commercial Item" as that term is defined in the U.S. Code of Federal Regulations (see 48 C.F.R. § 2.101), and the rights we grant you to the Services are the same as the rights we grant to all others under these Terms.

**4) Marketplace.** Nanome's Marketplace allows customers to acquire for free or to purchase license rights to Assets developed or supplied by Supplier or by third parties ("Developers"). Customers may also upload and publish Assets that it has developed to the Marketplace for free or for purchase by other customers but any such submissions shall be governed by the Nanome Developer's Agreement located at [www.nanome.ai/developeragreement](http://www.nanome.ai/developeragreement).

Any Asset that you acquire from the Marketplace that has been developed by Nanome or that has been made available by third party Developers, will be subject to the standard Nanome Developer Asset License Terms, which is attached as Appendix 1 to these Terms and which you must accept as an integrated part of these Terms. Certain Assets offered by third parties may be governed by a separate end user license agreement between Developer and customers.

You agree that Nanome may stop (permanently or temporarily) providing the Marketplace (or any features within the Marketplace) to you or to users generally at Nanome's sole discretion, without prior notice to you.

**5) Virtual Rooms.** Nanome may offer the use of Virtual Rooms which will allow customers to access and maintain private (access will be managed by the owner of the private Virtual Room) or public virtual rooms. Nanome may also offer other multi-user capabilities and functions and permit users to submit, upload and/or post information, opinions, messages, comments, virtual assets and other content and material ("User Submissions"). User Submissions shall not include any Feedback.

**6) Ownership.** Except for the license expressly provided herein, these Terms do not grant you any right, title, or interest in the Services, any software or other technology used by Nanome or its partners in connection with providing the Services, or the Content and Services.

All comments, inputs, suggestions, and feedback (“Feedback”) regarding or relating to any of Nanome’s products or the Services submitted shall be considered non-confidential and Nanome’s property. By providing such Feedback, you agree to assign to Nanome, at no charge, all world-wide rights, title and interest in copyrights and other intellectual property rights in and to the Feedback. Nanome shall be free to use and disseminate such Feedback on an unrestricted basis for any purpose in connection with its products and services.

Customer retains full ownership of any User Submissions but expressly excluding any Feedback that you submit to the Services. Nanome does not claim any ownership to any User Submissions. These Terms do not grant Nanome any rights to User Submissions except for the limited rights that are needed to provide the Services, as explained below. Customer represents and warrants that it is authorized to provide, and view, receive and access the User Submissions. Without any liability to you or any third party, Nanome may remove or delete any or all User Submissions on the earlier of (a) termination of your Nanome End User License Agreement, or (b) expiration of your License Term (if applicable). Nanome may also remove or delete User Submissions and/or suspend access to any portion of the Services at any time, without notice, upon Nanome’s good faith determination that you have breached these Terms or the Nanome End User License Agreement or in response to copyright/trademark infringement takedown requests.

Customer hereby grants a world-wide, non-exclusive, perpetual, royalty-free right and license to Nanome to use the User Submissions in order to provide the Services such as hosting User Submissions, maintaining User Submissions in Virtual Rooms, and creating backup data, and to perform analytics on the User Submissions and how the Tool and Services are used, such as usage patterns and characteristics of our customers, on an aggregated anonymous basis. This permission also extends to trusted third parties that assist in providing the Services.

The Services and any technology used to provide the Services are protected by copyright, trademark, and other laws of both the United States and foreign countries. These Terms do not grant you any rights to use any Nanome trademarks, logos, domain names, or other brand features.

**7) Sharing Assets.** Certain of the Services provide features that allow Customer to share User Submissions with others, whether via a publicly accessible area or private or public Virtual Rooms. Nanome has no responsibility for what others do with the User Submissions including copying, modifying or re-sharing. Nanome has no obligation to review any User Submissions and is not responsible for the accuracy, completeness, appropriateness, or legality of User Submissions, user posts, or any other user-submitted information Customer may be able to access using the Services.

**8) Privacy.** Any personally-identifiable and other information that you provide during your use of the Service, and Nanome's collection and maintenance thereof, will be subject to and governed by the Nanome Privacy Policy located at [www.nanome.com/privacypolicy](http://www.nanome.com/privacypolicy).

**9) Customer Responsibilities.** User Submissions in the Services may be protected by intellectual property rights of others. Customer will not copy, upload, download, or share User Submissions unless Customer has the right to do so. Customer, not Nanome, will be fully responsible and liable for what Customer copies, shares, uploads, downloads or otherwise uses while using the Services. Customer must not upload viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs to the Service. Customer, and not Nanome, is responsible for maintaining and protecting its User Submissions and Assets. Nanome will not be liable for any loss or corruption of User Submissions or Assets, or for any costs or expenses associated with backing up or restoring any User Submissions or Assets.

**10) Not for Under 13 Year Olds.** The Services are not intended for use by Customers under 13 years of age. By agreeing to these Terms, Customer is representing to Nanome that Customer is over 13.

**11) Unacceptable Uses.** Customer will not, and will not attempt to or assist anyone to, use the Services other than as intended and permitted, including, without limitation, by engaging in the following activities with respect to the Services:

- probe, scan, or test the vulnerability of any system or network;
- breach or otherwise circumvent any security or authentication measures;
- access, tamper with, or use non-public or shared areas of the Service, Virtual Rooms that Customer has not been given access, or Nanome or its service providers' computer systems;
- interfere with or disrupt any user, host, or network, for example by sending a virus, overloading, flooding, spamming, or mail-bombing any part of the Services;
- plant malware or otherwise use the Services to distribute malware;
- access or search the Services by any means other than our publicly supported interfaces (for example, "scraping");
- send unsolicited communications, promotions or advertisements, or spam;
- send altered, deceptive or false source-identifying information, including "spoofing" or "phishing";
- publish anything that is fraudulent, misleading, or infringes another's rights;
- promote or advertise products or services other than your own without appropriate authorization;
- impersonate or misrepresent your affiliation with any person or entity;
- publish or share materials that are unlawfully pornographic or indecent, or that advocate bigotry, religious, racial or ethnic hatred;
- violate the law in any way, or to violate the privacy of others, or to defame others.

**12) Changes to the Services.** The Services will continue to change over time. We may modify the Services and add or remove features at any time without prior notice to you. We may also remove any content from our Services at our discretion. Certain portions of the Services may not remain compatible with certain Tools which have been obsoleted or with prior versions of the Tools.

**13) Termination and Suspension.** Customer can stop using the Services any time. Nanome reserves the right to cease providing, suspend or end the Services at any time, with or without cause, and with or without notice. For example, Nanome may suspend or terminate Customer use if Customer is not complying with these Terms, or uses the Services in any way that would cause Nanome legal liability or disrupt others' use of the Services. Your rights to use the Services will automatically terminate without notice from Nanome if you fail to comply with any of these Terms, the Privacy Policy or the Nanome End User License Agreement.

**14) Warranty.** TO THE FULLEST EXTENT PERMITTED BY LAW: THE SERVICES AND SOFTWARE ARE PROVIDED "AS IS", AT YOUR OWN RISK, WITHOUT EXPRESS OR IMPLIED REPRESENTATIONS, GUARANTIES, OR WARRANTIES OF ANY KIND. NANOME ALSO DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. Nanome will have no responsibility for any harm to Customer's computer systems and other hardware, loss or corruption of data, or other harm that results from your access to or use of the Services. WITHOUT LIMITING THE ABOVE, CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT NANOME MAKES NO REPRESENTATION, GUARANTY, OR WARRANTY THAT (a) THE SERVICES WILL MEET YOUR REQUIREMENTS, (b) THE SERVICES WILL BE UNINTERRUPTED, CONTINUOUS, TIMELY, SECURE, OR ERROR-FREE, (c) THE RESULTS FROM THE USE OF THE SERVICES WILL BE COMPLETE, ACCURATE OR RELIABLE, AND (d) THE QUALITY OF SERVICES, AND THE INFORMATION AND OTHER MATERIAL OBTAINED BY YOU THROUGH THE SERVICES WILL MEET CUSTOMER'S EXPECTATIONS.

**15) Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL NANOME, ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS OR LICENSORS BE LIABLE FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL (INCLUDING LOSS OF USE, DATA, BUSINESS, OR PROFITS) DAMAGES, REGARDLESS OF LEGAL THEORY, WHETHER OR NOT NANOME HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE; (B) AGGREGATE LIABILITY FOR ALL CLAIMS RELATING TO THE SERVICES MORE THAN THE GREATER OF \$1,000 OR THE AMOUNTS PAID BY CUSTOMER TO NANOME FOR THE PAST THREE MONTHS OF THE SERVICES IN QUESTION.

**16) Indemnity.** To the extent permitted by applicable law, you agree to indemnify, defend and hold Nanome and its affiliates, directors, shareholders, officers, agents, representatives and employees, harmless from any liability, action, suit, damages, claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your use of the Services or your violation of these Terms of Use, except to the extent arising out of the sole active negligence or willful misconduct of Nanome or its agents.

**17) Export Restrictions.** The Services 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 Services, 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 Services 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 Services are appropriate or available for use in other locations. None of the information acquired through the use of the Services, is or will be used for nuclear activities, chemical or biological weapons, or missile projects.

**18) DMCA Notice.** Nanome respects the intellectual property of others, and we ask you to do the same. If you are a copyright owner or an owner's agent and find any content on the Services, or referenced or linked within the Services, that infringes upon your copyrights, you may submit a notification according to the Digital Millennium Copyright Act at [www.nanome.ai/dmca](http://www.nanome.ai/dmca).

**19) Changes to Terms.** Nanome may revise these Terms from time to time and the most current version will be posted on our website. By continuing to access or use the Services after revisions become effective, Customer agrees to be bound by the revised Terms. For ease of your review of any changes, the following is a list of the date of all revisions to these Terms:

<b>Version</b>	<b>Date Promulgated</b>
Version 1.0	July 22, 2018

**20) Miscellaneous Legal Terms.** THESE TERMS AND THE USE OF THE SERVICES WILL BE GOVERNED BY CALIFORNIA LAW EXCEPT FOR ITS CONFLICTS OF LAWS PRINCIPLES. ALL CLAIMS ARISING OUT OF OR RELATING TO THESE TERMS OR THE SERVICES MUST BE LITIGATED EXCLUSIVELY IN THE FEDERAL OR STATE COURTS OF SAN DIEGO COUNTY, CALIFORNIA, AND BOTH PARTIES CONSENT TO VENUE AND PERSONAL JURISDICTION THERE. These Terms (including the Nanome Privacy Policy) constitute the entire and exclusive agreement between you and Nanome with respect to the Services, and supersede and replace any other agreements, terms and conditions applicable to the Services. Customer agrees to comply with all applicable laws and regulations relating to its use of the Services. These Terms create no third party beneficiary rights. Nanome’s failure to enforce a provision is not a waiver of its right to do so later. If a provision is found unenforceable the remaining provisions of the Agreement will remain in full effect and an enforceable term will be substituted reflecting our intent as closely as possible. You may not assign any of your rights in these Terms, and any such attempt is void, but Nanome may assign its rights to any of its affiliates or subsidiaries, or to any successor in interest of any business associated with the Services. Nanome and you are not legal partners or agents; instead, our relationship is that of independent contractors.

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**Appendix 1**

**Nanome Developer Asset License Terms**

*[To be attached]*