# Nanome License Agreement

THIS LICENSE AGREEMENT (TOGETHER WITH ALL APPLICABLE USAGE TIER ATTACHMENTS, THE "AGREEMENT") IS A LEGAL AGREEMENT BETWEEN YOU ("CUSTOMER") AND NANOME, INC. ("SUPPLIER"). BY EXECUTING AN ORDER FORM THAT INCORPORATES THIS AGREEMENT BY REFERENCE, OR BY DOWNLOADING, INSTALLING OR USING THE "SOFTWARE" (AS DEFINED BELOW), CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS REVIEWED AND AGREES TO BE BOUND BY 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 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, development or consulting services that Supplier may perform as described in a SOW.

**1.3.** "Authorized Purposes" shall have the meaning set forth in Customers applicable Usage Tier Attachment(s) unless the applicable license is an Evaluation License or Beta License. If the applicable license is an Evaluation License or Beta License, then "Authorized Purposes" means Customer's internal testing and evaluation use only.

**1.4.** "Beta License" means a non-production 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 Research Content**" means all Customer research data and content stored, posted, displayed, or otherwise transmitted by or on behalf of Customer or its Users, and received and analyzed by the Software.

**1.6** "Customer System" means, as necessary for Customer's use of the Software, Customer's internal website(s), servers, computing devices and other equipment and software, including, without limitation, mobile devices and virtual reality hardware systems.

**1.7.** "Delivery Date" means the date, set forth in the applicable Order Form, on which the Software is scheduled to be made available to Customer.

**1.8.** "Documentation" means the paper or electronic 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.

**1.9.** "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.

**1.10**    "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.

**1.11.**    "License Term" means the license period for Customer's use of the Software set forth in an applicable Order Form and any renewals or extensions thereof. Unless otherwise specified by Supplier in writing, the License Term for Evaluation Licenses and Beta Licenses is limited to thirty (30) days from the Delivery Date.

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

**1.14.**    "Marketplace" means 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.

**1.15.**    "Named User License" means, as further described in Section 2.2, below, a license model under which the Software may be installed on any number of computing devices, but may only be used by the specific User to whom it has been assigned (i.e. the User corresponding to the email address associated with the applicable login).

**1.16.**    "Generic License" means, as further described in Section 2.2, below, a license associated with a generic login under which the Software may be installed on any number of devices, but may only be used by one User at a time (i.e. the generic login may not be used concurrently on different devices).

**1.17.**    "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.

**1.18.**    "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, MIT License, or any other license that approved by the Open Source Initiative (www.opensource.org).

**1.19.**    "Order Form" means the ordering documents for Services and licenses for Software purchased from Supplier that are entered into or otherwise mutually accepted electronically or in writing by the parties from time to time, including modifications, supplements and addenda thereto which may include Customer purchase orders. If there is any inconsistency or conflict between an Order Form and this Agreement, the Agreement controls, unless the Order Form specifically identifies by Section reference the provision that such Order Form is modifying, and then such change will apply for such Order Form only. Any terms or conditions stated in any Customer 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  who have not entered into separate agreements with Supplier may purchase Services and licenses for the Software subject to this Agreement by entering into Order Forms hereunder, and by entering into such Order Form(s), that Affiliate of Customer shall be bound by this Agreement as if it were an original party hereto.

**1.20.** "Plugins" means a software component that adds a specific feature to the Software, whether developed by Supplier or a third party. Customer's use of Plugins may be subject to separate or additional terms and conditions.

**1.21.** "Services" means the Support Services and any Ancillary Services.

**1.22.** "Software" means the software products, hosted software services and Supplier Plugins specified in in Customer's applicable Order Form(s) and any 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.

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

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

**1.25.** "Third Party Offerings" means certain software or services provided or performed by third parties that are required for the operation of the Software or useful for improving users' experience using the Software, including but not limited to SteamVR, Vive Business Stream, the Photon engine, the Oculus Desktop Client, and any associated products provided by third parties, such as third party Plugins, that interoperate with the Software.

**1.26.** "Updates" means certain patches, new features and maintenance releases to the Software made available by Supplier to licensees under Support Services plans.

**1.27.** "Usage Tier Attachment" means certain additional terms and conditions provided by Supplier and applicable to the Software license tier for which Customer has subscribed.  All applicable Usage Tier Attachments are incorporated herein by reference.

**1.28.** "Users" means Customer's 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 one or more Order Forms.

2.2        On-Premises Software.  Subject to Customer's compliance with the terms and conditions of this Agreement, for Software provider by Supplier for use on Customer's premises ("On-Premises Software"), unless otherwise specified in the applicable Order Form Or Usage Tier Attachment, such Software may be installed (i) in the case of Generic Licenses, on any number of computing devices, but not used concurrently on more than one device; or (ii) in the case of Named-User Licenses, only by those Users for whom Customer has purchased licenses. Installed On-Premises software may be used solely in compliance with the terms set forth herein, the license grants set forth in Customer's appliable Usage Tier Attachment(s) and all applicable Documentation.  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.

2.3        Hosted Software.  Subject to Customer's compliance with the terms and conditions of this Agreement, for Software provider by Supplier as a hosted service ("Hosted Software"), Customer may access and use such Hosted Software in accordance with the terms set forth herein, the license grants

set forth in Customer's appliable Usage Tier Attachment(s) and all applicable Documentation in each case solely for User's Authorized Purposes and not for the benefit of any other person or entity. User's use of the Hosted Software may be subject to certain limitations – for example, certain functionality is not available at all Service Tiers and different Service Tiers have varying limits on storage capacity.

2.3     Restrictions. Customer shall not, directly or indirectly, and Customer shall not direct or induce any User or other 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) use the Software for any purpose other than its intended purpose; or (g) interfere with or disrupt the integrity or performance of the Software. Customer's use of the Software may be subject to certain additional limitations specified either in the Purchase Order or in the Documentation.

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     Third Party Offerings – Software. Supplier or third parties may from time to time make Third Party Offerings available to Customer or provide Customer with access to download or install such Third Party Offerings. 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.

3.2     Third Party Offerings – Hosted Services. The Software may also contain features designed to interact with Third Party Offerings that are hosted services (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.

3.3     Third Party Offerings – Hardware and Computing Devices.  Certain of the Software is intended to be used on computing devices and other hardware (collectively "Devices").  To use such Software, Customer must obtain compatible Devices running compatible software.  Supplier does not warrant that the Software will be compatible with Customer's Device(s) or the particular version of the software running on such Device(s).  Customer acknowledges that Supplier may from time to time issue upgraded versions of the Software, which may require Customer to upgrade its Device(s) and/or the software running on such Device(s) before it can use the upgraded Software.

Customer's and its Users' use of all Third Party Offerings must comply with the then current terms of the then-current terms of service and polices applicable thereto.

CUSTOMER UNDERSTANDS AND AGREES THAT SUPPLIER IS NOT THE MANUFACTURER OF ANY THIRD PARTY OFFERINGS,  AND CUSTOMER ALONE ARE RESPONSIBLE FOR ASSESSING THE SUITABILITY OF USING SUCH THIRD PARTY OFFERINGS.  IN PARTICULAR, UNDER NO

CIRCUMSTANCES WILL SUPPLIER BE LIABLE IN ANY WAY FOR HARMS ARISING OUT OF USE OF ANY DEVICES.  CUSTOMER IS SOLELY RESPONSIBLE FOR ITS AND ITS USERS' COMPLIANCE WITH ALL TERMS AND CONDITIONS RELATED TO THE USE OF SUCH DEVICES.

**4.      DELIVERY; ACCOUNTS AND PASSWORDS.**

4.1      Delivery. Supplier will make the On-Premises Software available for download to Customer from a secure server. The Software will be deemed accepted upon delivery.

4.2      Accounts.  Customer and all Users will be required to have an account with Supplier before being permitted to access and use the Hosted Software. To create an account, the user must complete the registration process by providing Supplier with current, complete and accurate information. All the information provided when registering for an account must be accurate, complete and up to date. Users may change, correct, or remove their account information by logging into the account directly and making the desired changes. Supplier reserves the right to terminate any account for which the provided information is untrue, inaccurate, incomplete or not current.

4.3      Passwords.  Customer and its Users shall be responsible for maintaining the confidentiality of all user logins and passwords and for ensuring that each user login and password is used only by the person to which it was issued. Customer is solely responsible for any and all access and use of the Hosted Software that occurs using any User's account. Customer shall not share, and shall restrict its Users from sharing, passwords. Customer agrees to immediately notify Supplier of any unauthorized use of any account or login and password issued to Customer and/or its Users.  Supplier shall have no liability for any loss or damage arising from Customer's or its Users failure to comply with the terms set forth in this Section.

**5.      CUSTOMER OBLIGATIONS.**

5.1      Customer System. Customer is responsible for (a) obtaining, deploying, configuring and maintaining the Customer System; (b) configuring the Customer System as described in the Documentation and as required for Supplier to monitor and maintain the Software; and (c) paying all fees incurred in connection with the foregoing. Except as specifically set forth in this Agreement, an Order Form or a SOW, Supplier shall not be responsible for supplying any hardware or other equipment to Customer. 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.

5.2      Acceptable Use.  Customer shall be solely responsible for its actions and the actions of its Users while using the Software.  Customer acknowledges and agrees: (a) to abide by all local, state, national, and international laws and regulations applicable to Customer's use of the Software; (b) not to send or store data on or to the Hosted Software which violates the rights of any individual or entity established in any jurisdiction; (c) not to upload in any way any information or content that contain Malicious Code or data that may damage the operation of the Software or another's computer or mobile device; (d) not to use the Software for illegal, fraudulent, unethical or inappropriate purposes; (e) not to interfere or disrupt networks connected to the Software or interfere with others' ability to access or use the Software; (f) not to distribute, promote or transmit through the Hosted Software any unlawful, harmful, obscene, pornographic or otherwise objectionable material of any kind or nature; (g) not to transmit or post any

material that encourages conduct that could constitute a criminal offense or give rise to civil liability; (h) to comply with all regulations, policies and procedures of networks connected to the Hosted Software; and (i) to use the Software only in accordance with the Documentation.  Customer acknowledges and agrees that Supplier does not assume any responsibility for any offensive material contained in the Customer Research Content, any infringement of third party Intellectual Property Rights arising therefrom or any crime facilitated thereby.  Supplier may, but is not required to, remove any violating content posted or stored using the Software or transmitted through the Hosted Software, without notice to Customer.  Notwithstanding the foregoing, Supplier does not guarantee and is not obligated to verify, authenticate, monitor or edit the Customer Research Content, or any other information or data input into or stored in the Software for completeness, integrity, legality, quality, accuracy or otherwise.  Customer shall be responsible and liable for the completeness, integrity, legality, quality and accuracy of Customer Research Content and other information input into the Software.  Customer shall be solely responsible for ensuring compliance with applicable laws and regulations in its use of the Software.

5.3     Accuracy of Customer's Contact Information; Email Notices. Customer agrees to provide accurate, current and complete information as necessary for Supplier to communicate with Customer from time to time regarding the Software and/or Services, issue invoices or accept payment, or contact Customer for other account-related purposes. Customer agrees to keep any online account information current and inform Supplier of any changes in Customer's legal business name, address, email address and phone number. Customer agrees to accept emails from Supplier at the e-mail addresses specified by it for login purposes. In addition, Customer agrees that Supplier may rely and act on all information and instructions provided to Supplier by Users from such e-mail addresses.

**5.4.**     Temporary Suspension.  Supplier may temporarily suspend Customer's or its Users' access to the Hosted Software in the event that either Customer or any of its Users is engaged in, or Supplier in good faith suspects Customer or any of its Users is engaged in, any unauthorized conduct (including, but not limited to any violation of this Agreement). Supplier will attempt to contact Customer prior to or contemporaneously with such suspension; provided, however, that Supplier's exercise of the suspension rights herein shall not be conditioned upon Customer's receipt of any notification. A suspension may take effect for Customer's entire account and Customer understands that such suspension would therefore include its Users' and Affiliates' accounts. Customer agrees that Supplier shall not be liable to Customer, Users, or any third party if Supplier exercises its suspension rights as permitted by this Section.  Upon determining that Customer has ceased the unauthorized conduct leading to the temporary suspension to Supplier's reasonable satisfaction, Supplier shall reinstate Customer's and its Users' access to and use of the Hosted Software.  Notwithstanding anything in this Section to the contrary, Supplier's suspension of access to the Hosted Software is in addition to any other remedies that Supplier may have under this Agreement or otherwise, including but not limited to termination of this Agreement for cause.  Additionally, if there are repeated incidences of suspension, regardless of the same or different cause and even if the cause or conduct is ultimately cured or corrected, Supplier may, in its reasonable discretion, determine that such circumstances, taken together, constitute a material breach.

**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. Depending on the level of Support Services purchased by

Customer, such services may include Updates. Unless expressly agreed by Supplier in writing, in no event will Supplier provide Support for Third Party Offerings.

6.2     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, no more than once per calendar quarter, 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 upon which the Software is installed or the number of Users using the Software (depending on the license model applicable to 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 certified written report on a monthly basis in order to verify compliance with the license granted herein. In the event that an audit reveals use of the Software on more computing devices that Customer is licensed to use, 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 installations of the Software 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, if any, 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 either (i) re-perform the Ancillary Services at no additional charge to Customer, or (ii) 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 NONPERFORMANCE OF THE ANCILLARY SERVICES.

**9.     FEES AND PAYMENT.**

9.1     Fees. Customer agrees to pay all fees specified in all Order Forms and SOWs using one of the payment methods Supplier supports. Except as otherwise specified in this Agreement or in an Order Form, (a) fees are quoted and payable in United States dollars and certain cryptocurrencies (such as Bitcoin, Ethereum, Matryx and Dogecoin) at their then current market rate, as determined by Supplier, (b) fees are based on licenses purchased as specified in the Order Form, and (c) payment obligations are non-cancelable and fees paid are non-refundable and payable in advance. User license fees are based on the License Term specified in the Order Form; therefore, fees for additional licenses or Plugins added in the middle of a License Term will be charged at a prorated rate based on the amount of time remaining in the applicable 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 the applicable SOW. 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, 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.

9.4     Taxes. The fees and charges imposed under this Agreement are exclusive of all sales, use, value added and other taxes or duties and Customer shall be responsible for paying all such taxes (excluding taxes based on Supplier's net income). Customer shall comply with all applicable tax laws and regulations.


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

10.1 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. Supplier represents and warrants that the Software and Documentation, in the form provided by Supplier (i) except as required for routine monitoring, maintenance and license enforcement, does not contain any back door, time bomb, drop-dead device or other software routine designed to disable the Software automatically or provide access to Customers data, and (ii) does not contain any virus or other code which may interfere with or otherwise impair the Customer System.

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, 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 provided without warranty of any kind. Supplier has the right to discontinue Non-GA Solutions at any time in its sole discretion and may never make them generally available. Customer understand and agrees that Non-GA Solutions are

Supplier's confidential information and that Customer may not disclose them or their existence to any third party for any reason unless otherwise agreed in writing by Supplier.

10.3 <u>Software Warranty</u>. 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 (other than Non-GA Solutions, which are provided without warranty) will function substantially in conformance with the Documentation. If Customer becomes aware of the Software not functioning in substantial conformance with the Documentation during the Warranty Period (a "Defect"), Customer must provide Supplier with written notice within the Warranty Period that includes a reasonably detailed explanation of the Defect. 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 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 SOFTWARE DEFECTS.

10.4 <u>Disclaimer</u>. 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, 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 LICENSE FOR NON-GA SOFTWARE.

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 ANY 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 OR NON-GA SOLUTIONS 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 <u>Supplier Indemnity</u>.

(a) <u>General</u>. 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) 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.

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's or its Users' use of the Software in violation of any applicable law, 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 of 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  <u>Confidential Information</u>.  Each party (the "Receiving Party") hereby understands and acknowledges that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Confidential Information" of the Disclosing Party).  Confidential Information of Supplier shall include any and all non-public information regarding features, functionality and performance of the Software (including any Non-GA Solutions).  The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Confidential Information.  The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the termination of this Agreement or any information that the Receiving Party can document (a) is or becomes generally available to the public; (b) was in its possession or known by it, prior to receipt from the Disclosing Party; (c) was rightfully disclosed to it without restriction by a third party; or (d) was independently developed without use of any Confidential Information of the Disclosing 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.

12.2 <u>Injunctive Relief</u>. 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 <u>Software</u>. 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. Customer hereby does and will irrevocably assign to Supplier all evaluations, ideas, feedback and suggestions made by Customer or its Users to Supplier regarding the Software or the results of any Ancillary Services (collectively, "Feedback") and all Intellectual Property Rights in and to such Feedback..

13.2 <u>Supplier Developments</u>. 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 and thereto, 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 <u>License to Deliverables</u>. 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 <u>No Consequential Damages</u>. NEITHER SUPPLIER NOR ITS 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 <u>Limits on Liability</u>. 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 TWELVE (12) MONTH PERIOD 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 <u>Essential Purpose</u>. CUSTOMER ACKNOWLEDGES THAT THE TERMS OF 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.

15.1 <u>Term</u>. 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 <u>Termination for Cause</u>. 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. 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 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. 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 the other party's 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, 10.4, 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 email to support@nanome.ai by first class postage prepaid mail or nationally recognized overnight delivery service addressed to Nanome, Inc., 7770 Regents Rd Suite #113, Box #102, San Diego, CA 92122. 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 and Venue. 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. The parties further agree that the exclusive venue and jurisdiction any dispute arising or relating to this Agreement shall be a court of competent jurisdiction located in San Diego County, California.

16.3 Attribution. If the Software is used by Customer to obtain results that are published in a scientific or research publication or otherwise publicly presented, displayed or advertised, Customer shall acknowledge its use of the Software and provide clear and conspicuous reference to both Supplier and the Software.  Without limiting the foregoing, Customer shall neither state nor imply that Customer or any third party is the owner, co-owner, developer or co-developer of 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 locations other than the United States. 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.

16.6 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.