



SOFTWARE LICENSE AGREEMENT

Important

Please read this License Agreement carefully before opening the media package. Rights in the Products are offered only on the condition that the Customer agrees to all terms and conditions of this Agreement. Opening the media package indicates your acceptance of these terms and conditions. If you do not agree to the Agreement, you may return the unopened package for a full refund.

This Nobix, Inc. Customer Software License Agreement (the "Agreement") is entered into by and between Nobix, Inc. ("Nobix") and the name specified in the Customer Name field of the Customer Activation Key Card (the "Customer").

1 Grant of license

1.1 Nobix grants to Customer a paid up, personal, nontransferable, and nonexclusive license to use the products listed on the Customer Activation Key (the "Key Card") and all related documentation and material, including any upgrades and enhancements which may be delivered to Customer under Section 4.2 below, (the "Products") in machine readable (object code) form only, solely for purposes of Customer's internal data processing only on the hardware (the "Designated Machines") as listed on the Key Card. Product upgrades and enhancements do not include software products designed to run on a platform different from that on which the original product runs. Customer shall only use the Products on the Designated Machines for which the Products have been licensed by Nobix to Customer and paid for by Customer as indicated on the Key Card.

1.2 Customer shall not, nor shall Customer allow anyone else to (i) copy all or any part of any Product, except that Customer may make one (1) additional copy of the Product at each Site for backup and archival purposes only; (ii) amend, alter, modify, make additions to or derive works from any Product; or (iii) reverse engineer, decompile or disassemble the object code for any Product.

2 License fees

2.1 For each copy of each Product delivered to, installed or used by Customer, Customer shall pay to Nobix the license fees specified on Nobix's invoice for such Product ("License Fees"). All Products will be delivered C.O.D. If payment is not made on delivery, payment terms shall be as provided in Nobix's invoice. All Products are shipped F.O.B. at Nobix's location. The License Fees do not include the cost of upgrade or enhancements or any taxes or duties (except those taxes based on Nobix's net income); Customer is responsible for payment of all such charges.

2.2 Customer understands that, until Customer has accepted this agreement and made payment in full for Product in accordance with the terms of the Nobix invoice, a security device in the Product may automatically render the product inoperable.

3 Proprietary rights and confidential information

3.1 Nobix retains for itself all rights in and title to all Products and parts thereof and all discoveries, modifications, derivations, or inventions and any patents, copyrights and other proprietary rights arising out of any work done in connection with the Products, whether by Nobix or the Customer and whether or not authorized.

3.2 Customer expressly acknowledges and agrees that the Products

embody confidential information of Nobix. Customer shall hold the Products in confidence and shall not disclose the Products or copies thereof to anyone, except Customer's employees to whom disclosure is necessary in connection with this Agreement. Customer shall use, at a minimum, the same degree of care with respect to Nobix's confidential information as Customer uses to prevent disclosure of its own confidential information. The obligation of Customer to refrain from disclosing confidential information of Nobix shall terminate with respect to any part of such confidential information which (i) is or becomes part of the public domain through no fault of the Customer; (ii) was known by Customer at the time Nobix disclosed it to Customer; (iii) is independently developed by Customer; or (iv) subsequently comes into Customer's possession from a third party without contravention of this Agreement or any non-disclosure agreement by which such third party is bound.

3.3 Customer shall not obscure or remove from any Product any Nobix copyright notice, legend, trademark or trade name. Nobix's use of any copyright notice of other similar notice or legend on any Product shall not mean that the Product, or any part thereof, has been published or otherwise placed in the public domain by Nobix.

3.4 Customer agrees that any action in derogation of Nobix's proprietary rights in the Products may cause irreparable harm to Nobix and that Nobix may be entitled to injunctive or other relief to prevent or terminate such infringement.

3.5 Nothing in this Agreement (i) grants to Customer the right to sell, lease, sublicense or otherwise transfer or dispose of any Products in whole or in part or (ii) shall be construed as conferring upon Customer any rights or interests in any Product under any trademarks, copyrights, trade secrets or under any existing or later issued patents.

4 Support and maintenance services

4.1 The fee for the first year of support and maintenance is as provided on Nobix's invoice and due with the license fee. This fee shall entitle Customer to support and maintenance for one year from the Maintenance Anniversary Date as specified on the Key Card (the "Service Year"). Thereafter, services will be made available in annual increments only without proration unless specifically agreed to in writing by Nobix. Such fees shall be at the current rates as determined by Nobix and shall be due prior to the end of the previous Service Year. Provided that Customer has paid all current license and Support/Maintenance Fees in full, Nobix shall provide software support and maintenance for Product, as described in Section 4.2 below. Nobix shall continue to provide the specified support and maintenance services each year, and Customer shall continue to pay all Support/Maintenance Fees, unless one party notifies the other of its desire not to continue such services for the following Service Year. This notification must be made at least thirty (30) days before the expiration of the applicable Service Year.

4.2 Nobix shall provide to Customer error correction and technical assistance by telephone. Further, Nobix shall send to the Customer one (1) copy of any Product upgrade and enhancement which is made generally available to other Nobix customers. Customer may make one (1) additional copy of any such upgrade and enhancement for each copy of the Product licensed hereunder.

5 Limited warranty

5.1 Nobix warrants that each Product will conform to Nobix's published specifications for such Product. Provided Customer notifies Nobix of any defects within the warranty period provided above, for one (1) year following delivery of the first copy of any Product to Customer, Nobix shall at its option and expense, correct any substantial deviations in the Product from Nobix's published specifications, replace the Product, or refund to Customer the License Fees paid by Customer for such Product.

5.2 The foregoing warranty shall not apply to any part of any Product that is revised, changed, modified, or maintained by anyone other than Nobix, or to damage caused by abuse or accident, or incurred in shipping. If Customer modifies any Product, Nobix shall not be responsible for compatibility of such modified Product with equipment, other programs, future programs and releases, test and verification routines or engineering change orders.

5.3 The warranty provided in this Section 5 is in lieu of all other guarantees and warranties, expressed or, including, without limitation, any implied warranty of fitness for a particular purpose or merchantability. Customer's remedies for breach of warranty are limited to those remedies provided in Section 5.1 above.

6 Term and termination

6.1 This Agreement shall become effective as provided for in the first paragraph (above) of this Agreement, and shall remain in effect until terminated as provided below. If Customer materially breaches any of its obligations under this Agreement, Nobix may, by notice to Customer, in addition to any other remedies that Nobix may have, terminate this Agreement unless such breach is cured to the satisfaction of Nobix within thirty (30) days of delivery of such notice. Customer may terminate this Agreement upon ten (10) days' notice to Nobix.

6.2 Within ten (10) days after termination of this Agreement (whether by Customer or Nobix), Customer shall (i) return to Nobix all Products licensed hereunder, including all copies thereof; (ii) destroy all Products, including all copies thereof, that are stored in any storage apparatus or media that are not returned to Nobix; and (iii) completely remove all Products or parts thereof from any derivative software, whether or not such derivative software was authorized hereunder. Customer shall promptly thereafter deliver to Nobix an officer's certificate representing that Customer has fully complied with this section 6.2.

7 Indemnity

Nobix represents that it is the owner of all copyrights to the Products in the United States. Provided Customer notifies Nobix in writing within thirty (30) days of any claim of United States copyright or patent infringement and authorizes Nobix to defend or settle any such suit or controversy involving such claim, Nobix will indemnify Customer against the reasonable expenses of any such suit and will satisfy any settlement or judgment finally rendered on such claims. This Section 7 shall not apply (i) unless the alleged infringement is based on the Products as delivered to Customer or (ii) to any claim that any Product infringes any third party's rights as used in combination with any hardware or software not supplied by Nobix if such claim could have been avoided by use of the Product in combination with other hardware or software. The foregoing is the exclusive and entire expression of Nobix's liability as to any patent copyright or other proprietary rights infringement claims.

8 Limitation of liability

Nobix's liability under this Agreement shall not exceed the license fees paid by Customer for the Products. Notwithstanding the warranties made above, neither Nobix nor Customer shall be liable for any incident

tal or consequential damages (including any loss of or injury to earnings, profits, or goodwill suffered by any person) caused directly or indirectly by the furnishing of services or Products under this Agreement, or any interruption in the service or loss of use, even if Nobix or Customer has been advised of the possibility of such damages.

9 Additional provisions

9.1 Governing Law; Attorneys' Fees. This Agreement shall be governed by the laws of the State of California, to which jurisdiction the parties hereto submit. If either party is required to commence legal action to enforce its rights under this Agreement, the prevailing party in such action shall be entitled to its reasonable expense and reasonable attorneys' fees.

9.2 Modification. This Agreement may not be modified except by an instrument in writing, signed by both parties. Further, no term or provision of this Agreement shall be deemed waived by either party, and no breach excused unless done so in writing by the nonbreaching party. The terms of Customer's business forms shall not modify or add to any of the terms of this Agreement; this Agreement shall control over any conflicting or additional terms appearing in any of Customer's business forms.

9.3 Entire Agreement. This Agreement, including the Key Card supplied with Product, constitute the entire agreement between the parties pertaining to the subject matter hereof, and any previous oral or written communications, representations, understandings, or agreements existing between the parties with respect to the subject matter of this Agreement are expressly canceled. Titles and section headings are for convenient reference only and are not part of this Agreement.

9.4 Severability. The terms of this Agreement shall be construed to enhance their enforceability, provided such construction does not violate the intent of the parties. Nonetheless, if any provision of this Agreement is held to be illegal or unenforceable, such provision shall be severed from this Agreement and the remainder of the Agreement shall remain in full force and effect.

9.5 Notices. All notices required or permitted by this Agreement to be delivered to either party shall be deemed duly delivered when personally delivered to the party to whom it is directed or when deposited in the United States mail, by certified mail, return receipt requested, addressed to each party at the address set forth below its signature at the end of this Agreement.

9.6 Assignment. This Agreement shall not be assigned or otherwise transferred by Customer in whole or in part without the prior written consent of Nobix. Except as otherwise expressly provided herein, the provisions hereof shall be binding on, and inure to the benefit of, the successors and assigns of the parties hereto.

9.7 Survival of Certain Provisions. Customer's obligations under Sections 1.2, 3, and 6 of this Agreement and the disclaimers and limitations of liability of Nobix in Sections 5, 7, and 8 shall survive termination of this Agreement.



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