



Nimmetry Inc Professional Service Terms

1. DEFINITIONS

- 1.1. "Affiliate" means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with a Party, where "Control" means control of greater than 50 % of the voting rights or equity interests of a Party.
- 1.2. "Deliverables" means the materials developed and provided to Customer by Nimmetry Inc in performing the Professional Services.
- 1.3. "Personal Data" means information regulated by applicable privacy laws.
- 1.4. "Professional Services" means any consulting, training, implementation, or technical services provided by Nimmetry Inc to Customer, as specified in the Professional Services Work Order(PSWO).
- 1.5. "Professional Services Work Order(PSWO)" means the order form, statement of work, or other written document for the Nimmetry Software related services that is executed between Customer and Nimmetry Inc, substantially in the form provided by Nimmetry Inc.
- 1.6. "Nimmetry Software" means the suite of software components with all versions, updates, corrections, improvements, developments, modifications, enhancements, variations, derivative works, scripts, customizations, adaptations or extensions of feature sets of any of the Nimmetry Software components, created or acquired by Nimmetry Inc.
- 1.7. "Customer Materials" means any materials or Technology provided to Nimmetry Inc by Customer in connection with the Consulting Services.
- 1.8. "Deliverables" means any reports, analyses, scripts, templates, code or other work products, tangible or intangible, to be delivered by Nimmetry Inc to Customer as set forth in the PSWO.

2. DELIVERABLES & PAYMENT

- 2.1. **License to Deliverables:** Nimmetry Inc grants Customer a non-exclusive, non-sublicensable and non-transferable license to use the Deliverables solely for Customer's business purposes.
- 2.2. **Employment Taxes:** Nimmetry Inc is responsible for all taxes and any employment obligations arising from its employment of personnel and contractors used to perform the Professional Services.
- 2.3. **Subcontractors:** Customer agrees that Nimmetry Inc may use subcontractors for which Nimmetry Inc will be responsible, in the performance of the Professional Services.
- 2.4. **Request for Changes:** No change in the services provided hereunder will be performed until an amendment to this order is signed by both parties; provided, however, that nothing herein will relieve Customer of the obligation to pay Nimmetry Inc for services rendered which were requested by Customer but are not documented in an amendment or within the applicable scope of work.
- 2.5. **Payment:** Payment is due within thirty (30) days of invoice date. After this time period, interest accrues at the lesser of the maximum rate permitted under applicable law or one and one-half percent (1.5%) per month from the date due until paid. Nimmetry Inc agrees to make commercially reasonable efforts to provide Customer with consulting services ("Consulting Services"), if any, set forth on an applicable Purchase Order Form, or as may be further described in an applicable PSWO. Unless expressly specified in the applicable



Order Form, Consulting Services are provided on a time and material (“T&M”) basis pursuant to the T&M rates specified in the applicable Purchase Order Form. Any hour worked during a weekend (Saturday, Sunday) or Bank/National Holiday will be charged at 1.5 times the agreed hourly rate. Any estimate of time or number of days or hours required to perform Consulting Services or any monetary amount stated in the applicable Purchase Order Form or PSWO for T&M Services, shall be deemed an estimate for Customer’s budgeting and Nimmetry Inc resource scheduling purposes.

- 2.6. **Warranty:** Nimmetry Inc warrants the Professional Services will be performed in a professional and workmanlike manner. Customer must notify Nimmetry Inc in writing of any breach of this warranty within 30 days of delivery of such Professional Service. To the extent permitted by law, Customer’s sole and exclusive remedy for breach of this warranty will be re-performance of the relevant Professional Service.
- 2.7. **Customer Warranty:** Customer warrants that it: (i) has the authority to agree to these terms and the funding necessary to pay for the requested Professional Services; (ii) it has the title to or license or rights to use or modify any software or products which Customer requests Nimmetry Inc to modify as part of such Professional Services; and (iii) it will provide Nimmetry Inc with necessary access to Customer personnel, appropriate documentation and records and facilities in order for Nimmetry Inc to timely perform such Professional Services.
- 2.8. **Termination:** Either party may terminate the engagement herein at any time, by giving a 30 (thirty) days prior written notice.
- 2.9. **Assumptions and Exclusions:** Nimmetry Inc assumes that Customer will comply with these requirements prior to the commencement of the agreed Professional Services. Customer will:
 - a. provide all necessary resources, information and work requirements for this engagement.
 - b. provide access to premises and systems (including remote access), as necessary for the performance of the Professional Services
 - c. acknowledge that there is no express or implied commitment for Nimmetry Inc that all tasks can be completed in the hours of Professional Services purchased by Customer under this Professional Services Agreement.
 - d. back-up and validate data from all systems that may be accessed during and in connection with the Professional Services herein; Nimmetry Inc assumes no liability for data loss or corruption.
 - e. acknowledge that installations, deployment assistance or incident resolution in relation to any hardware or software other than the Nimmetry Software is considered outside the scope of the Professional Services herein, unless otherwise agreed by the Parties.

3. INTELLECTUAL PROPERTY

- 3.1. **Personal Data:** During the performance of Professional Services, Customer needs to avoid transmission to Nimmetry Inc of Personal Data (for example, by using “dummy data” when configuring or testing solutions). If such “dummy data” cannot be provided, the Customer shall provide anonymised data. Nimmetry Inc does not wish to receive Personal Data nor it is required for the performance of the Services. Accordingly, Customer must not transmit Personal Data to Nimmetry Inc, unless the Parties have agreed in writing on terms specifying that Nimmetry Inc has agreed to receive Personal Data and detailing the security measures in place and agreement for the processing of Personal Data.
- 3.2. **Privacy:** During the performance of this Agreement each Party may collect, store and use personal data related to the other Party’s representatives or employees, such as their name, telephone number, email address, job title. This personal data may be collected from the other Party or directly from the



representatives or employees and it is necessary to allow the parties to enter into and perform this Agreement. Each Party will be responsible for informing its own representatives or employees of the processing of their personal data as provided in this Agreement. Each Party is responsible for complying with the applicable data protection legal requirements for the purposes of this Agreement. If any of the Parties would at any time act as a data processor on behalf of the other Party during the performance of this Agreement, the Parties shall enter into a data processing agreement in accordance with the General Data Protection Regulation (EU) 2016/679 ("GDPR") or equivalent.

3.3. Customer Data: Any Customer Data used by Nimmetry Inc in connection with the PSWO remain Customer property. Pursuant to Customer's Intellectual Property Rights in Customer Data, Customer grants Nimmetry Inc a non-exclusive and nontransferable right to use Customer Data solely for the benefit of Customer in fulfillment of Nimmetry Inc's obligations under the PSWO. Customer warrants that it has the necessary rights to provide Customer Materials to Nimmetry Inc, so that Nimmetry Inc can access, use, and modify Customer Materials as necessary for Nimmetry Inc's performance of the Consulting Services.

4. LIABILITY

4.1. Indemnification: Nimmetry Inc will defend against any third party claim that the Deliverables, when used as contemplated by the PSWO, infringe any patent, trademark or copyright of a third party, or misappropriate a trade secret (but only to the extent that the misappropriation is not a result of Customer's actions), and indemnify Customer from the resulting costs and damages awarded against Customer by a court of competent jurisdiction or agreed to in settlement. The foregoing obligations are applicable only if Customer: (i) promptly notifies Nimmetry Inc in writing of the Infringement Claim; (ii) allows Nimmetry Inc sole control over the defense for the claim and any settlement negotiations; (iii) reasonably cooperates in response to Nimmetry Inc's requests for assistance; and (iv) is not in material breach of the PSWO. Customer may not settle or compromise any Infringement Claim without the prior written consent of Nimmetry Inc.

4.2. Remedies: If the allegedly infringing Deliverables become, or in Nimmetry Inc's opinion be likely to become, the subject of an Infringement Claim, Nimmetry Inc will, at Nimmetry Inc's option and expense, do one of the following: (a) procure the rights necessary for Customer to make continued use of the affected Deliverables; (b) replace or modify the affected Deliverables to make them non-infringing; or (c) terminate the Deliverables License to the affected Deliverables, and, upon Customer's certified deletion or destruction of the affected Deliverables, refund that portion of the fees paid by Customer for the affected Deliverables. Nothing in this Section 4.1 will limit Nimmetry Inc's obligation under Section 4.2 to defend and indemnify Customer, provided that Customer replaces the allegedly infringing Deliverables upon Nimmetry Inc's making alternate Deliverables available to Customer or Customer discontinues using the allegedly infringing Deliverables upon receiving Nimmetry Inc's notice.

4.3. Limitation on Direct Damages: Except with respect to claims pursuant to Section 4.1 above, Nimmetry Inc's total liability and Customer's sole and exclusive remedy for a claim of any nature arising out of the PSWO, regardless whether the claim is based on contract, tort, strict liability or otherwise, will be limited to proven direct damages caused by Nimmetry Inc's sole negligence in an amount not to exceed (i) US\$100,000 for damages to real or tangible personal property; and (ii) the fees paid to Nimmetry Inc for the Consulting Services from which the claim arises, for damages of any type not identified in (i) above or otherwise excluded under the PSWO. Customer right to recover damages, expenses, losses or costs is limited to the amounts paid to Nimmetry Inc hereunder. Customer acknowledges that this limitation of liability



is part of the consideration and was considered by Nimmety Inc in establishing the prices and rates to be charged to Customer, which, but for this limitation, would have been higher.

- 4.4. **LIABILITY DISCLAIMER:** NIMMETRY INC WILL NOT BE LIABLE FOR INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING FOR LOSS OF DATA OR ITS USE, LOST PROFITS, LOSS OF REPUTATION OR OTHER ECONOMIC DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THIS LIMITATION OF NIMMETRY INC LIABILITY WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR NOT, INCLUDING NEGLIGENCE.
- 4.5. **Liability Exclusions:** The limitations of liability in this Section shall not apply to: (a) Customer's liability for violation of Nimmety Inc or its licensors' Intellectual Property Rights or use of the Deliverables by Customer in a manner not expressly authorized by the PSWO; (b) Nimmety Inc's indemnification obligations under the PSWO; (c) either Party's liability for breaches of confidentiality under the PSWO; (d) Customer's payment obligations under the PSWO; (e) either Party's liability for death or personal injury caused by its negligence; (f) either Party's liability for any fraudulent pre contractual misrepresentations made by one party on which the other party can be shown to have relied; or (g) any liability which cannot be excluded by applicable law.

5. MISCELLANEOUS

- 5.1. **Assignment:** Neither party may assign this Agreement without the other party's prior written consent, except upon written notice of a change of control or as otherwise specified herein.
- 5.2. **Customer's Purchase Order:** Any terms or conditions in the Customer's purchase order or any other related documentation submitted by or on behalf of Customer to Nimmety Inc do not form part of this Agreement and are void.
- 5.3. **Confidentiality Obligations:** Parties must, and shall procure their Affiliates, employees and/or agents shall, keep the Confidential Information (means and refers to any document and information to which a Party has access during the performance of this Agreement, including but not limited to technical information, business methods, software programs, licensing model, of the other Party) confidential. Neither Party will in any manner, directly or indirectly, use or otherwise employ all or any of the Confidential Information of the other Party for any purpose other than the performance under this Agreement. This confidentiality obligation will survive for 3 years after the termination or expiration of this Agreement. The Customer acknowledges that if it provides any suggestions or feedback to Nimmety Inc, it does so voluntarily and without any obligation of confidence on Nimmety Inc in relation thereto who will be entitled to use any suggestions or feedback, in any way and for any purpose.
- 5.4. **Data Use Consent:** Customer agrees that Nimmety Inc may collect and use technical information gathered as part of the services provided and related to the Nimmety Software. Nimmety Inc may use this information solely to improve the software or to provide customized services or technologies and will not disclose this information in a form that personally identifies the Customer.
- 5.5. **Entire Agreement:** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes any prior written or oral agreement between them with respect to such subject matter.
- 5.6. **Governing Law, Venue:** This Agreement is governed by the laws indicated in the below table, depending on the location of the Customer. For any dispute arising out of or relating to this Agreement (if the Parties do not reach a settlement within 60 days), the Parties consent to personal jurisdiction, and the exclusive venue of, the courts indicated in the below table. Nimmety Inc will have the right to pursue claims against Customer in



any other jurisdiction worldwide to enforce its rights under this Agreement. The terms of the United Nations Convention on Contracts for the Sale of Goods and the Uniform Computer Information Transactions Act (UCITA) will not apply to this Agreement regardless of when or where adopted.

Country where Customer is located	Applicable Law	Venue
North America	California Law	Santa Clara
Rest of the world	California Law	Santa Clara

- 5.7. **No Partnership:** Nothing in this Agreement is intended to constitute a fiduciary relationship, agency, joint venture, partnership, or trust between the Parties and neither Party has authority to bind the other Party.
- 5.8. **Severability:** If any provision of this Agreement is or becomes illegal, invalid or unenforceable for any reason, all other provisions of the Agreement remain in force and shall produce legal effects.
- 5.9. **Third Party Providers:** If Customer uses certain features of the Nimmetry Software or the Deliverables in conjunction with third party data, products, services, and platforms, then the Customer is responsible for complying with the terms and conditions required by such third party providers, and all such use is at Customer's own risk.
- 5.10. **Export:** Each Party will comply with all laws applicable to the actions contemplated by the PSWO. All content, including the Consulting Services and the Technology included therein (collectively the "Materials") provided under the PSWO are subject to governmental restrictions on (i) exports from the United States; (ii) exports from other countries in which the Materials may be produced or located; (iii) disclosure of Technology to non-U.S. persons; (iv) exports from abroad of products derivative of the Materials; (v) the importation and/or use of the Materials outside of the United States or other countries (collectively, "Export Laws"). Customer must comply with all Export Laws. Diversion contrary to United States law or other Exports Laws is expressly prohibited. .
- 5.11. **Anti-Corruption:** Each party confirms it has not been offered or received any illegal or improper bribe, kickback, payment, gift, or thing of value from the other party's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. Any violation of the above restrictions will be promptly notified to support@nimmetry.com.
- 5.12. **Waiver:** No failure to exercise, nor any delay in exercising, any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies (provided by law). Any waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach.
- 5.13. **Expenses:** In connection with the Professional Services purchased herein, the Customer will be responsible for all reasonable travel expenses, hotel accommodations, and any other out of pocket expenses properly and reasonably incurred by Nimmetry Inc in connection with the Services. Except as otherwise provided herein, such expenses will be charged to the Customer at cost and will be included on the relevant invoice for the Professional Services.



5.14. **Notices** : Any notice given under this Agreement must be in writing by email, with a suggestive subject, to the addresses listed below (or addresses notified in writing by either Party) and will be effective the earlier of (i) when received by the Party, or refused by the Party or (ii) the next business day.

Matter	To Nimmetry Technologies	To Customer
Privacy	support@nimmetry.com	<To be filled by customer>
Maintenance	support@nimmetry.com	
Invoices	support@nimmetry.com	
Orders	support@nimmetry.com	
Others	support@nimmetry.com	