

End User License Agreement

NetFlow Optimizer End-User License Agreement

NETFLOW LOGIC LICENSES THIS SOFTWARE PRODUCT TO YOU SUBJECT TO THE TERMS OF THIS END-USER LICENSE AGREEMENT (THIS “AGREEMENT” OR “EULA”). THE SOFTWARE IS THE PROPERTY OF NETFLOW LOGIC, COPYRIGHTED AND THE SUBJECT OF PATENT APPLICATIONS, AND IT IS LICENSED TO YOU FOR USE UNDER THIS EULA; IT IS NOT SOLD TO YOU. BY INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA. THIS AGREEMENT SUPERSEDES AND REPLACES ANY PRIOR AGREEMENT, PROPOSAL, REPRESENTATION, OR UNDERSTANDING, VERBAL OR WRITTEN, THAT YOU MAY HAVE HAD WITH NETFLOW LOGIC RELATING TO THE SOFTWARE.

Grant of License

Subject to the terms and conditions of this Agreement, including payment of all annual license fees required herein, NetFlow Logic hereby grants to you a nonexclusive, non-transferable license (without the right to sublicense) (i) to use the Software in accordance with the Documentation solely for internal business purposes, and (ii) to copy Software for archival or backup purposes only, provided that all titles and trademarks, copyright, and restricted rights notices are reproduced on such copies. The Software licensed hereunder will include only the code delivered initially hereunder and updates that you are entitled to receive and that are delivered to you by NetFlow Logic during the term of this Agreement. Additional software components may be introduced for use with or in the Software only by mutual agreement of the Parties and will be included in an amendment hereto prior to their introduction.

Conditions on License Grant

This license is for use of the Software with up to a measured rate of one thousand (1000) input flow records per second in a particular deployment. If you want to use the Software for a greater volume of input flow records, or in a different deployment, you agree to acquire the number of additional licenses to the Software required for such greater volume of flow records. In addition, except as otherwise specifically permitted in this Agreement, you may not: (a) modify or create any derivative works of the Software or Documentation, including translation or localization; (b) copy the Software except as provided in this Agreement; (c) separate Software, which is licensed as a single product, into its component parts; (d) sublicense or permit simultaneous use of the Software by more than one user; (e) reverse engineer, decompile, disassemble or otherwise attempt to derive the source code for the Software (except to the extent applicable laws specifically prohibit this restriction); (f) redistribute, encumber, sell, rent, lease, sublicense, use the Software in a timesharing or service bureau arrangement, or otherwise transfer the Software or any rights to the Software under any circumstances; (g) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Product(s); (h) publish any results of tests run on the Software to a third party without prior written consent from

NetFlow Logic; or (i) use the Software on a system with more input flow records than the level licensed.

Confidentiality

You agree that the Software and the Documentation, including the specific design and structure of individual programs and the Software, constitute confidential proprietary information of NetFlow Logic. You also agree that any information about defects or bugs in the Software and also the performance of the Software, are confidential information. You shall permit only authorized users, who possess rightfully licensed copies of the Software, to use the Software, or to view the Documentation. You agree not to transfer, copy, publish, make available for others to copy or download, disclose, provide or otherwise make available such confidential information in any form to any third party without the prior written consent of NetFlow Logic. You agree to implement reasonable security measures to protect such confidential information, but without limitation to the foregoing, shall use best efforts to maintain the security of the Software and the Documentation. You will also use your best efforts to cooperate with and assist NetFlow Logic in identifying and preventing any unauthorized use, copying, or disclosure of the Software, Documentation, or any portion thereof.

Feedback

You may and are encouraged to provide to NetFlow Logic suggestions, comments and feedback regarding the Software, including but not limited to performance, usability, bug reports and test results, with respect to Software (collectively, "Feedback"). You hereby grant to NetFlow Logic the worldwide, non-exclusive, perpetual, irrevocable, royalty free, fully paid up rights: (i) to make, use, copy, modify, sell, distribute, sub-license, and create derivative works of, the Feedback as part of any NetFlow Logic product, technology, service, specification or other documentation (individually and collectively, "NetFlow Logic Products"); (ii) to publicly perform or display, import, broadcast, transmit, distribute, license, offer to sell, and sell, rent, lease or lend copies of the Feedback (and derivative works thereof) as part of any NetFlow Logic Product or marketing or sales efforts of NetFlow Logic. Further, you confirm that your Feedback is not subject to any license terms that would require NetFlow Logic to comply with any additional obligations with respect to any NetFlow Logic Products that incorporate any Feedback.

Licensing and Rate Measurement

NetFlow Optimizer Software is licensed based upon the number of NetFlow records processed per second, measured in blocks. One block is up to 1000 NetFlow records per second. You may purchase the number of blocks appropriate for your environment, and allocate them to as many NetFlow Optimizer deployments (instances) as needed, with a minimum of one block per instance. For example, if you would like to install two instances of NetFlow Optimizer, one to process 300 flows per second, and another one 200 flows per second, you need to purchase two licenses. If one instance processes 1200 flows per second, and another one 200, you need to purchase three licenses (two licenses for the first instance, and another one license for the second instance).

There may be unanticipated spikes of network traffic in your environment, resulting in spikes of NetFlow data. To accommodate for these peaks the following method of calculating your license requirements is implemented.

The Software measures the average flow record input rate every 5 minutes, rounds it up to the nearest thousand, and records it. At the end of each day (from midnight to midnight according to the clock of the server) the Software sorts that day's records in descending order, disregards the top 5% of the data, and determines the next highest record as that day's measured number of blocks. Overages occur when your day's measured rate exceeds the number of blocks granted for your license.

Payment Terms

The fee for your use of the Software during the first annual term of this License is set forth in your Invoice, with the initial fee payable Net Thirty (30) Days. If you have 5 or more overages in a rolling 30 day period, you are using the Software beyond the scope of your License, and should contact NetFlow Logic sales to secure an appropriate number of additional licenses. NetFlow Logic shall have the right to audit the information you provide concerning your level of use, with the cost of any such audit being the responsibility of NetFlow Logic unless a discrepancy in excess of 20% is determined to exist as a result of such audit, in which case the cost shall be yours.

Product Support

Maintenance and support for the Software will be provided by NetFlow Logic during the annual term of this License as specified in Appendix A to this Agreement.

Ownership of Software

NetFlow Logic explicitly states, and you agree, that the Software is not open source; it is commercial software. Title to the Software and all copies thereof remain with NetFlow Logic. The Software is copyrighted and is protected by United States copyright laws and international treaty provisions. Licensee agrees that it will not remove copyright notices from the Software. Except as expressly provided herein, NetFlow Logic does not grant any express or implied right to you under NetFlow Logic patents, copyrights, trademarks, or trade secret information. Patent applications on the Software are pending.

Term of this Agreement

The term of the license rights granted under this Agreement shall be one (1) year, and such term will automatically be renewed at the then-applicable annual license fee on a year-to-year basis for additional one (1) year terms, unless notice of a contrary intention is provided by either Party to the other at least thirty days prior to the next anniversary of this Agreement. Either party may terminate this Agreement at any time for a breach of a material term hereof, by providing the other party with written notice thereof. The Party receiving such notice shall have thirty (30) days to fully cure any alleged breach, unless such breach is of a type that cannot be cured.

Upon any termination of this Agreement, the rights and licenses granted to you under this Agreement shall immediately terminate, and you shall immediately cease using, and will permanently delete or return to NetFlow Logic, the Software, Documentation, and all other tangible items in your possession or control that are proprietary to NetFlow Logic or contain Confidential Information of NetFlow Logic.

Disclaimer

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Limitation of Liability

NETFLOW LOGIC’S CUMULATIVE LIABILITY TO YOU, OR ANY PARTY RELATED TO YOU, FOR ANY LOSS OR DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR INSTALLATION OR USE OF THE SOFTWARE AND DOCUMENTATION, SHALL NOT EXCEED THE AMOUNT OF LICENSE FEES PAID TO NETFLOW LOGIC BY YOU FOR THE ONE YEAR TERM OF THE AGREEMENT PRIOR TO WHICH YOUR CAUSE OF ACTION AROSE. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER TORTS. IN NO EVENT SHALL NETFLOW LOGIC BE LIABLE TO YOU OR ANY PARTY RELATED TO YOU FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OR LOST PROFITS, EVEN IF NETFLOW LOGIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

United States Government Restricted Rights

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Governing Law and Choice of Forum

This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without regard to the conflicts of law rules thereof. Any claim or dispute arising in connection with this EULA shall be resolved in the federal or state courts situated nearest Redwood City, California. To the maximum extent permitted by law, you hereby consent to the jurisdiction and venue of such courts and waive any objections to the jurisdiction or venue of such courts.

Export Restrictions

You acknowledge that Software is of U.S. origin and agree to comply with all applicable international and national laws that apply to the Software, including the U. S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the United States of America and other governments.

Entire Agreement

This Agreement and the Appendices hereto constitute the complete and exclusive agreement between you and NetFlow Logic with respect to the Software, and supersede all prior or contemporaneous oral or written communications, proposals, representations, understandings, or agreements not specifically incorporated herein. This Agreement may not be amended except in a writing duly signed by you and an authorized representative of NetFlow Logic.

APPENDIX A MAINTENANCE AND SUPPORT OBLIGATIONS

1. MAINTENANCE AND SUPPORT

1.1 NetFlow Logic will provide to you during the term of this Agreement, (a) Updates and appropriate Documentation and release notes providing additional documentation and provisional solutions to reported problems with the NETFLOW LOGIC Software.

1.2 At NetFlow Logic's option, NetFlow Logic may also provide to you, Upgrades to the NetFlow Logic Software released during the term of this Agreement.

1.3 NetFlow Logic will have no obligation of any kind to provide support for problems in the operation or performance of the Software caused by any of the following (each, a "Licensee-Generated Error"): (i) modifications to the Software not made by NetFlow Logic or a party expressly authorized by NetFlow Logic; or (ii) use of the Software other than as authorized in this Agreement or as provided in the documentation for the Software. If NetFlow Logic determines that it is necessary to provide support for a problem caused by a Licensee-Generated Error, NetFlow Logic will notify you thereof as soon as NetFlow Logic is aware of such Licensee-Generated Error and NetFlow Logic will have the right to invoice you at NetFlow Logic then-current time and materials rates for any such support provided by NetFlow Logic.

1.4 NetFlow Logic Standard Support. NetFlow Logic Standard Support is conducted in English and includes telephone support, online documentation, and a web-based portal for submitting cases and tracking case status. Support cases are handled based on case priority. When submitting a case, customers are encouraged to identify the severity of problem encountered. When the case is received, NetFlow Logic Customer Support will assign it a priority in accordance with the levels identified in Section 1.5 below. Workarounds or fixes will be done on a best efforts basis. NetFlow Logic will make every effort to respond to Support requests within the indicated response time.

1.5 Case Priority Levels. Case priorities are assigned based on the technical importance of the problem on your NetFlow Logic Software.

P1 = NetFlow Logic Software is completely inaccessible or the majority of its functionality is unusable. P2 = One or more key features of NetFlow Logic Software are unusable. P3 = Any other case where a NetFlow Logic Software feature is not operating as documented. P4 = All enhancement requests.

1.6 Target Fix, Workaround, Escalation, and Response Times

Initial Response & Acknowledgment, by case priority	Targeted Fix Date or Workaround, by case priority
P1: 4 Hours	P1: 1 day
P2: Next Business Day	P2: 1 Week
P3: Two Business Days	P3: Next Release
P4: Two Business Days	P4: At NetFlow Logic's discretion
Escalation, by case priority	Email Status Updates for Open Cases, by case priority
Manager: Immediate / VP: 1 business day	P1: Daily
Manager: 1 business day / VP: 1 week	P2: Weekly
VP Product Management reviews all open bugs quarterly	P3: None
VP Product Management reviews all enhancement requests quarterly	P4: None

1.7 Authorized Support Contacts. Support and maintenance will be provided solely to your authorized support contacts, which will include a maximum number of three (3) qualified individuals. You will be asked to designate your authorized support contacts, including their primary email address, following NetFlow Logic's acknowledgement of your Order.

1.8 Defect Resolution. Should NetFlow Logic in its sole judgment determine that there is a defect in the Software, it will, at its sole option, repair that defect in the version of the software that you are currently using or instruct you to install a newer version of the Software with that defect repaired. NetFlow Logic reserves the right to provide you with a workaround in lieu of fixing a defect should it in its sole judgment determine that it is more effective to do so.

1.9 Support Hours.

NetFlow Optimizer Standard Support Hours

P1: 24 x 7

P2: Monday through Friday by region (North America, APAC and EMEA) during standard business hours (8 am to 5 pm); excluding U.S. Federal holidays

P3: Monday through Friday by region (North America, APAC and EMEA) during standard business hours (8 am to 5 pm); excluding U.S. Federal holidays

P4: Monday through Friday by region (North America, APAC and EMEA) during standard business hours (8 am to 5 pm); excluding U.S. Federal holidays

1.10 Your Obligation to Assist. Should you report a purported defect in the Software to NetFlow Logic, NetFlow Logic may require you to provide them with the following information: (a) a general description of the operating environment, (b) a list of all hardware components, operating systems and networks, (c) a reproducible test case, and (d) any log files, trace and system files. Your failure to provide this information may prevent NetFlow Logic from identifying and fixing that purported defect.

1.11 Software Updates. You must have a current license agreement in effect to receive access to software updates of Software. Software updates are defined as minor releases with a new version number to the right of the decimal point in the release version number. Software upgrades are defined as major releases with a new version number to the left of the decimal point in the release version number. Access to upgrades of the Software can be received pursuant to an amendment to your existing License Agreement for the then-current additional license fee.

1.12 Ownership. NetFlow Logic will own all rights, title and interest in and to any software programs or tools, utilities, technology, processes, inventions, devices, methodologies, specifications, documentation, techniques and materials of any kind used or generated by NetFlow Logic in connection with performing its Support and Maintenance obligations (collectively “NetFlow Logic Materials”), including all worldwide patent rights (including patent applications and disclosures), copyright rights, moral rights, trade secret rights, know-how and any other intellectual property rights (collectively, “Intellectual Property Rights”) therein. You will have no rights in the NetFlow Logic Materials except as expressly agreed to in writing by the parties. Nothing in this Agreement will be deemed to restrict or limit NetFlow Logic’s right to perform similar services for any other party or to assign any employees or subcontractors to perform similar services for any other party; provided that NetFlow Logic complies with its obligations under this Agreement.