

# Nok Nok Labs, Inc.

## Software License Agreement

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### Accessing and Downloading the Software from the App Stores.

#### B.

- i. You acknowledge and agree that (1) this Agreement is concluded between you and NNL only, and not the App Store and (2) NNL, not the App Store, is solely responsible for the Software and content thereof. Your use of the Software must comply with the applicable App Store Terms of Service.
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- vi. You and NNL acknowledge and agree that the App Store is a third party beneficiary of this Agreement, and has the right to enforce this Agreement as related to your license of the Software against you as a third party beneficiary thereof.
- vii. Without limiting any other terms of this Agreement, you must comply with all applicable third party terms of agreement when using the Software.

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similar items, and any related fines, penalties, or interests relating thereto. Unless otherwise terminated in accordance with this Agreement, subscription periods and renewals for the Software will be as designated in the marketplace for the order(s), subscription(s), or transaction(s) in the NNL authorized marketplace. Fees under the marketplace are subject to change on 90 days' notice or as otherwise permitted therein.

## 5. TERM

- A. Term. This Agreement commences on the date when you accept (as described in the preamble above). This Agreement remains in full force and effect while you use, access, or possess the Software or otherwise have a valid right or subscription to the Software, unless terminated earlier in accordance with this Agreement. The initial term and subscription period to the Software will be for a period of thirty (30) days or such other period as specified in the applicable NNL approved subscription or order. This Agreement and applicable Software subscriptions and orders will automatically renew (on a month-to-month basis or such other period as specified in the applicable NNL approved subscription or order), unless and until either party gives the other notice of termination or if your access to the Software is otherwise discontinued by NNL, in its sole discretion.
- B. Prior Use. Notwithstanding the foregoing, if you used the Software prior to the date you accepted this Agreement, you hereby acknowledge and agree that this Agreement commenced on the date you first used the Software and will remain in full force and effect while you use, access, or possess the Software, unless earlier terminated in accordance with this Agreement.
- C. Termination by NNL. NNL has the right to suspend or terminate this Agreement and your use or access to the Software for any reason, including if you have breached any provision of this Agreement, if you have not paid NNL (or its designated agent, reseller, distributor, or marketplace or they have not paid NNL) applicable amounts, or if NNL is required to do so by law (e.g., where the provision of the Software is, or becomes, unlawful). You agree that all terminations shall be made in NNL's sole discretion and that NNL shall not be liable to you or any third party for any termination of your account or license. However, if NNL is terminating without cause and you pre-paid NNL for Software rights or subscriptions which you could not use due to such termination, NNL will give you an equitable refund for such pre-paid unused periods or portions.
- D. Termination by You. If you want to terminate this Agreement, you may do so by (a) deleting the Software from your device(s) and environment(s), as applicable, and (b) discontinuing your use, access, and possession of the Software. Your termination will not require NNL to provide you a refund, unless such termination was for NNL's proven uncured material breach (which you provided NNL notice of and a reasonable opportunity to cure) or expressly required by law or applicable App Store rules; if NNL is required to give you a refund, it will only be for unused periods or portions for which you pre-paid and as required by law or App Store rules.
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NNL IS NOT OBLIGATED TO INDEMNIFY YOU FROM ANY CLAIM OR ACTION, INCLUDING INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS OR ACTIONS.

#### **7. EXCLUSION AND LIMITATION OF REMEDIES AND DAMAGES**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER NNL NOR ITS SUPPLIERS, LICENSORS, OR PARTNERS SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO THE SOFTWARE OR ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS OR CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY (A) FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, OR (B) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO LOSS OF REVENUES AND LOSS OF PROFITS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NNL'S (AND ITS SUPPLIERS', LICENSORS', OR PARTNERS') AGGREGATE CUMULATIVE LIABILITY SHALL NOT EXCEED THE GREATER OF FIFTY DOLLARS (\$50.00) OR THE AMOUNT PAID BY YOU FOR THE SOFTWARE (IF ANY). CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY TO YOU.

**8. COVENANT NOT TO SUE.** You hereby covenant not to assert any claim or commence any suit against NNL's suppliers, licensors or partners with respect to the Software.

#### **9. APPLICATION OF DISCLAIMERS, EXCLUSIONS AND LIMITATIONS TO CONSUMERS**

The limitations or exclusions of warranties and liability contained in this Agreement do not affect or prejudice the statutory rights of a consumer, i.e., a person acquiring goods otherwise than in the course of a business. The limitations or exclusions of warranties and remedies contained in this Agreement shall apply to you only to the extent such limitations or exclusions and remedies are permitted under the laws of the jurisdiction where you are located.

#### **10. NO SOFTWARE MAINTENANCE OR SUPPORT**

Unless expressly and otherwise agreed by NNL, the Software is provided without software maintenance or support of any kind. Maintenance and support may be offered by NNL subject to additional fees.

#### **11. EXPORT**

The Software and related technology are subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree not to export, re-export, or transfer, directly or indirectly, any U.S. technical data acquired from NNL, or any products utilizing such data, in violation of the United States export laws or regulations. You will indemnify and hold NNL harmless from any and all claims, losses, liabilities, damages, fines, penalties, costs and expenses (including attorney's fees) arising from or relating to any breach by you of your obligations under this section. Your obligations under this section shall survive the expiration or termination of this Agreement.

#### **12. RESTRICTED RIGHTS**

The Software is deemed to be "commercial computer software" and "commercial computer software documentation" as defined in DFARS Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction release, performance, display or disclosure of the Software by the U.S. Government shall be solely in accordance with the terms of this Agreement.

#### **13. FEEDBACK**

If you provide NNL any feedback or suggestions ("**Feedback**"), you hereby assign to NNL all rights in the Feedback and agree that NNL shall have the right to use such Feedback and related information in any manner it deems appropriate. NNL will treat any Feedback you provide to NNL as non-confidential and non-proprietary. You agree that you will not submit to NNL any information or ideas that you consider to be confidential or proprietary.

#### **14. DISPUTE RESOLUTION**

Except for disputes that can be brought in small claims court, all disputes between you and NNL, including any dispute regarding this Agreement, shall be exclusively settled through binding arbitration through the American Arbitration Association ("**AAA**") pursuant to the AAA's then-current rules for commercial arbitration. There is no judge or jury in arbitration. Arbitration procedures are simpler and more limited than rules applicable in court and review by a court is limited. YOU AND NNL AGREE THAT ANY SUCH ARBITRATION SHALL BE CONDUCTED ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. Notwithstanding any provision in this Agreement to the contrary, if the class-action waiver in the prior sentence is deemed invalid or unenforceable, however, neither you nor we are entitled to arbitration. This arbitration agreement is subject to the Federal Arbitration Act. The arbitrator's award may be entered in any court of competent jurisdiction. Notwithstanding any provision in this Agreement to the contrary, we agree that if NNL makes any future material change to this dispute resolution provision, it will not apply to any individual claim(s) that you had already provided notice of NNL. Information on AAA and how to start arbitration can be found at [www.adr.org](http://www.adr.org) or by calling 800-778-7879.

These Terms are governed by the laws of the State of California without regard to conflict of law principles. If the arbitration in this section provision is found unenforceable or not to apply for a given dispute, then the proceeding must be brought exclusively in a court of competent jurisdiction in Santa Clara County, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

## **15. GENERAL**

You may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of NNL and any such assignment shall be null and void. NNL expressly reserves the right to assign this Agreement and to delegate any of its obligations hereunder. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In the event that any provision of this Agreement is found to be contrary to law, then such provision shall be construed as nearly as possible to reflect the intention of the parties, with the other provisions remaining in full force and effect. Any notice to you may be provided by email. This Agreement constitutes the entire agreement of the parties concerning its subject matter and supersedes any and all prior or contemporaneous, written or oral negotiations, correspondence, understandings and agreements between the parties respecting the subject matter of this Agreement. No amendment to this Agreement will be binding unless evidenced by a writing signed by the party against whom it is sought to be enforced. The failure of any party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions. In addition, the terms of this Agreement shall control any conflicting, inconsistent, and/or additional standard terms or conditions on any purchase order, invoice or other document submitted by you, notwithstanding any provision to the contrary in any such document.