

**General Terms and Conditions**  
**of Nanocosmos Informationstechnologien GmbH, Am Borsigturm 50, 13507 Berlin, Germany,**  
**for software and support services**

**§ 1**  
**General**

- (1) These General Terms and Conditions (“**GTC**”) shall apply between Nanocosmos Informationstechnologien GmbH (“**NANOCOSMOS**”) and its customers, insofar as they are entrepreneurs within the meaning of section 14 German Civil Code (*Bürgerliches Gesetzbuch - BGB*) (“**Customer**”), if NANOCOSMOS provides them with the nanoStream Cloud Service for Ultra-Low-Latency Live Streaming. NANOCOSMOS and Customer may each be referred to as a “**Party**” and together as the “**Parties**”.
- (2) Amendments to the GTC that are communicated to the Customer at least in text form shall become valid if the Customer does not object within six (6) weeks. The notification shall also contain a reference to this right of objection. If the Customer objects, NANOCOSMOS is then entitled to terminate the License Agreement within one (1) month.
- (3) Subject to sentence 3, these GTC shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Customer shall not apply unless they are recognised by NANOCOSMOS in writing. Individual agreements made between NANOCOSMOS and the Customer in individual cases (including collateral agreements, or supplements, or amendments) shall in any case take precedence over these GTC.

**§ 2**  
**Recitals / Subject Matter of this License Agreement**

- (1) NANOCOSMOS agrees to license to the Customer the use of the Software and/or Custom Development (as defined in § 3 para. 3 (a) and (e) below), all as more fully set forth in the Order Form between the Parties (“**Order Form**”).
- (2) Each Order Form is subject to and governed by the terms of this GTC. In the event of a conflict between the terms of an Order Form and this GTC, the terms of the Order Form will prevail. The Order Form and this GTC are referred to in their entirety as the “**License Agreement**”.

**§ 3**  
**Rules of Interpretation and Definitions**

- (1) Unless defined below in this clause or elsewhere in the License Agreement and unless the context otherwise requires, defined terms referred to in the License Agreement shall have the meaning given to them in the License Agreement.
- (2) Exhibit A and Exhibit B, are hereby incorporated into this License Agreement and made a part of this License Agreement. Any separate document for the Software or Custom Development shall be governed by the terms and condition of this License Agreement.
- (3) List of definitions:
  - a) “**Software**” means software and any related documentation provided by NANOCOSMOS under the License Agreement. The Software may be provided as:
    - (i) installable software units for end user devices (e.g., PC, desktop, mobile), or server system;
    - (ii) web based software running in a browser (e.g., HTML/JS, Web Player); and/or
    - (iii) server-based or cloud-based services (online services), for example dashboards, REST-API (= Representational State Transfer-Application Service Interface).

In the event Custom Development is added, it is part of the Software, in the event not otherwise specified.

- b) **“Combination Products”** means Customer’s product(s) / application program meant to be used in combination with or integration of the Software.
- c) **“Update”** means a version of the Software that incorporates modifications necessary to maintain the functions, capabilities, and performance of the Software, including, but not exclusively limited to, bug fixes and modifications to improve quality, reliability, speed, ease of use, and ease of maintenance, provided by the unsolicited decision of NANOCOSMOS so long as such Update does not materially decrease the intend functionality of the Software.
- d) **“Upgrade”** means a version of the Software that incorporates new features or functions, or includes revisions to the Software as necessitated by (1) new feature requests, or by (2) the additional requirement to be integrated or made compatible with any software or specifications not part of the Software and not specified in an Exhibit, or a separate quote or invoice, that is owned or licensed by Customer or a third party. This includes, but is not limited to, additional support for new types of video file compressions or streaming protocols, and additional server/service or API features. Upgrades are not integral part of this License Agreement.
- e) **“Custom Development”** means additional development services separate from the Software, provided by NANOCOSMOS. Generally, Custom Development is considered an Upgrade to the Software, covered by the same licensing terms, in the event not otherwise specified.
- f) **“Unit”** means one installed copy of the Software meant to run on one machine or device, including a temporary downloaded software (e.g., desktop, mobile, web application in a browser).
- g) **“Server”** means a Unit (PC, workstation or server machine) running in unattended “server” mode to provide services to other units, devices, PCs or servers.
- h) **“Services”** means any collective combination of Software, Custom Development, Support, or any other services ordered by Customer pursuant to an Order Form.
- i) **“Support”** means assistance and/or updates provided by NANOCOSMOS to troubleshooting requests by Customer for issues regarding installation and maintenance on Customer’s computers. Support only includes support to Customer, not including End Users.
- j) **“Customer Content” / “User Data”** means content, software, data, files, video or information of Customer and/or End Users, including third-party content, software, data and equipment, provided or made available to NANOCOSMOS for storage, delivery or otherwise in connection with Services.
- k) **“Customer Data”** means all data generated by and/or otherwise identifies Customer and its End Users in connection with the Services. Customer Data may include, but is not limited to, Customer and End User names and contact information, data necessary for account establishment, billing data, and content transmission data when such data identifies Customer or any End User.
- l) **“End Users”** means any users that access Customer Data or Customer Content, or that use the Services.
- m) **“Taxes”** means any applicable foreign or domestic taxes, tax-like charges, tax-related charges and other charges or surcharges assessed in connection with Services, including all excise, use, sales, value-added and other fees, withholding tax, surcharges and levies.
- n) **“Defect”** means an occurrence in which any aspect of the Services does not operate according to the

applicable service levels (including the Support Level Agreement (as defined in § 11 para. 1 of this GTC), specification, or accepted use.

#### § 4 License

- (1) Subject to the terms and conditions set forth in this GTC and as agreed in an Exhibit or Order Form, NANOCOSMOS grants Customer a non-exclusive, non-transferable and non-sublicensable (except as otherwise permitted in the License Agreement), limited license to do one or more of the following (the “**Permitted Uses**”).
- (2) **Evaluation license:** is a license for a limited time, allowing only the internal evaluation and demonstration of the Software with the purpose of testing against customer requirements and fitness. During Evaluation, the Software may not be used for commercial purposes beyond functional demonstration. In the event not otherwise specified, the evaluation period is limited to seven (7) days from the first use. Longer evaluation periods or demonstrations to third parties or other commercial use are not covered by an evaluation license and are only possible with a commercial license after payment of a usage fee.
- (3) **Commercial usage and redistribution:**
  - a) End User **single installation license** use the Software in a runnable form (binary object code or client scripts) in one running instance on one device per End User;
  - b) **redistribution license:**
    - (i) combination product license (Software Development Kit “**SDK**”) use the Software in binary object code form in order to produce and run one **Combination Product** like a customer-branded application (web application, mobile app or desktop app);
    - (ii) redistribution license (Original Equipment Manufacturer “**OEM**”) market the Software, as embedded in the Combination Product; and distribute and grant licenses to distribute (directly or indirectly through any distribution channel) the Software to End Users, as **embedded in one Combination Product.**
  - c) **Web-based online license** run the Software on a Server or online web page with temporary download on Customer machines.
- (4) **Restricted License:** License may be restricted to:
  - a) a certain expiration time (whereas a certain expiration time is technically included into the Services and/or Software; any renewal will have to be made on explicit request of Customer only);
  - b) a Server, domain or service;  
Server license is a license to install and/or run the Software on one (1) Server.  
Service license or domain License is a license allowing the usage of the Software for one networking service or internet domain, e.g. mydomain.com
  - c) subscription model; and/or  
in the renewed license model (subscription), any further usage beyond the subscribed time is forbidden.
  - d) current use. - the number of installed or concurrent uses may be limited

Specific usage limitations in a restricted license may be specified in separate written agreements such as an Order Form.

- (5) **Code:** Any source code delivery is not included in this License Agreement.

## § 5 Restrictions

- (1) The copies of Software provided to Customer under the License Agreement are licensed, not sold. NANOCOSMOS reserves all rights not expressly granted.
- (2) The Customer will not:
- a) reverse assemble, decompile, reverse engineer, or otherwise attempt to derive source code or the underlying ideas, algorithms, structure, or organization from the Software including binary object code or any script code or any other NANOCOSMOS Confidential Information (as defined in § 13 para. 1);
  - b) export or re-export the same in violation of any applicable laws, rules, or regulations (collectively, “**Applicable Law**”);
  - c) except as otherwise provided in the License Agreement, cause or permit unauthorized copying, reproduction, or disclosure of any portion of the Software, or the delivery or distribution of any part thereof, to any third person or entity, for any purpose whatsoever, without the prior written permission of NANOCOSMOS;
  - d) sell the Software as a stand-alone or repackaged product separate from the Combination Product without NANOCOSMOS’s prior written consent; or
  - e) seek to register the Software under any patent or copyright, or register NANOCOSMOS’s trade name or trademarks, except as may be requested by or consented to in writing by NANOCOSMOS. Should the Customer register any patent, copyright, or trademark of the Software without the written consent of NANOCOSMOS, such registration shall automatically be deemed to inure to the benefit of NANOCOSMOS.
- (3) The Software is not designed, licensed, or intended for use in the design, construction, operation or maintenance of any dangerous environments or purposes which might be harmful to human health and NANOCOSMOS disclaims any express or implied warranty of fitness for such uses.
- (4) The Software must not be used for illegal or illicit purposes for the place of jurisdiction of either Party or for the place where the Software is made available to End Users by Customer.
- (5) The Software may contain sample source code in the form of example applications and code fragments (collectively, the “**Sample Source Code**”). The Customer may only use the Sample Source Code internally for the Permitted Use.
- (6) *Use by Contractors.* Subject to the terms and conditions of this License Agreement, Customer’s Contractors may only use the licenses granted to Customer in case such use is only for Customer’s benefit. If so, Customer (i) has to safeguard that such Contractors are bound to confidentiality obligations no less protective than those in this License Agreement, and (ii) shall remain responsible for each such Contractor’s actions or omissions (including compliance with all of the terms and conditions of this License Agreement). “**Contractor**” means any third party contracted by Customer to perform development services on its behalf.
- (7) Additional Upgrades, features, additions, and Custom Development on top of the Software shall be paid additionally based on mutual agreement.
- (8) Customer may not commercially use, sell distribute, or show the Software before the license fee is paid or after the paid license period has expired. Product royalty and licenses shall be paid by Customer in advance of the licencing period.

## § 6

### Fees/Payment/Payment adjustment

- (1) Customer shall pay NANOCOSMOS the license fees set forth in the Order Form in accordance with the payment schedule set forth therein.
- (2) **ARREARAGES:** Payments not made in accordance with the payment schedule or within seven (7) days of receipt of an invoice will be deemed in delayed arrears. For accounts in arrears, without the requirement of providing notice of such arrears, NANOCOSMOS may suspend service to such account and bring legal action to collect the full amount due, including any collecting fees and costs.
- (3) **SUSPENSION FOR NONPAYMENT:** If Customer is past due on their balance, NANOCOSMOS may suspend Customer's account. Software or Services may be temporarily disabled during the suspension period. NANOCOSMOS has the right to delete Customer's account and data at the final termination notice.
- (4) The license fee is respectively:
  - a) a one-time, non-refundable (NR) fee,
  - b) a distribution royalty per unit, or
  - c) a time-limited renewed subscription fee (recurring payments)or a combination of these, as upon usage and distribution of the Combination Product or Service, as described in the Order Form, or a separate quote or invoice.
- (5) NANOCOSMOS accepts major credit cards, wire transfers and PayPal payments in Customer's sole discretion. Other payments may be agreed separately.
- (6) Upon the expiration or termination of this License Agreement, Customer's account will be deactivated, and Customer will no longer be able to log into NANOCOSMOS's site and/or have any access to the Services. Except in the case of a subscription model License, which shall be non-refundable in case of termination of this License Agreement by Customer the fees for the first month of the Services and any start-up costs associated with setting up Customer's account that were pre-approved in writing by Customer ("**Start-up Costs**") shall be non-refundable.
- (7) Customer is entirely responsible for the payment of all taxes, including value-add tax ("**VAT**"), but excluding any taxes based on NANOCOSMOS's gross revenues or net income.
- (8) **BILLING AND PAYMENT:**

Unless otherwise provided for in the Order Form, Customers are billed monthly on or about the first day of each month. Customer shall pay the monthly fees no later than seven (7) days past the receipt of the invoice. Monthly fees and renewal fees will be billed at the rate agreed to at conclusion of this License Agreement.
- (9) NANOCOSMOS may use third-party payment processors (the "**Payment Processors**") to bill the Customer through a payment account linked to the Customer's Account on the Services (the "**Billing Account**") for use of the Services. The processing of payments may be subject to the terms, conditions, and privacy policies of the Payment Processors in addition to this License Agreement. By choosing to use Services, Customer agrees to pay NANOCOSMOS, through the Payment Processors, all charges at the prices then in effect for any use of such Services in accordance with the applicable payment terms and Customer authorizes NANOCOSMOS, through the Payment Processors, to charge Customer's chosen payment provider (the "**Payment Method**"). Customer agrees to make payment using that selected Payment Method. NANOCOSMOS reserves the right to correct any errors or mistakes that it makes even if it has already requested or received payment.
- (10) Some of the Services may consist of an initial period, for which there is a one-time charge, followed by recurring period charges as agreed to by the Customer. By choosing a recurring payment plan, Customer acknowledges that such Services have an initial and recurring payment feature, and Customer accepts responsibility for all recurring charges prior to cancellation. NANOCOSMOS may submit periodic charges (e.g., monthly) without further

authorization from the Customer, until Customer provides prior notice (receipt of which is confirmed by NANOCOSMOS) that Customer has terminated this authorization or wishes to change the payment method. Such notice will not affect charges submitted before NANOCOSMOS reasonably could act. To terminate the authorization or change the payment method, Customer shall go to <https://www.nanocosmos.net/contact> or [sales@nanocosmos.net](mailto:sales@nanocosmos.net).

- (11) Customer must provide current, complete, and accurate information for NANOCOSMOS's billing account. Customer must promptly update all information to keep NANOCOSMOS's billing account current, complete and accurate (such as a change in billing address, credit card number, or credit card expiration date), and you must promptly notify NANOCOSMOS or Payment Processors if Payment Method is cancelled (e.g., for loss or theft) or if Customer becomes aware of a potential breach of security, such as the unauthorized disclosure or use of its user name or password. If Customer fails to provide any of the foregoing information, NANOCOSMOS may continue charging Customer for any use of paid Services under the current billing account unless Customer has terminated its paid Services as set forth above.
- (12) Nanocosmos may, at its reasonable discretion, change the amount of the recurring remuneration in order to compensate for the increased total costs of providing the services. Decisive for the calculation of the total costs are, for example, the administrative costs, the costs of maintenance and operation of the IT infrastructure, general overheads (costs of distribution, personnel costs, rent, external service providers), as well as financing costs, taxes, fees and other charges; to the same extent, Nanocosmos is obliged to pass on cost reductions to the Customer. In the event of a change in the statutory value added tax, Nanocosmos is authorised or, in the event of a reduction in the statutory value added tax, obliged to adjust the subscription fees accordingly. Nanocosmos may consider a price increase if, for example, the costs of Nanocosmos' IT infrastructure and general overheads increase, resulting in an increase in the total cost of providing the Services. All price changes shall take effect at the earliest 30 days after Nanocosmos has notified the Customer thereof, with the start of the next billing period. The Customer shall have an ordinary right of cancellation if he does not agree with the price change.

## § 7 Term / Termination

- (1) The term of this License Agreement and the renewal are specified in the Order Form.
- (2) In case the Order Form does not provide for any provisions on the terms and renewals, the minimum contractual term is three (3) months ("**Term**") and begins with the date of the latest signature by the Parties ("**Assumed Effective Date**"). The License Agreement shall be automatically extended by another respective Term, unless at least one of the Parties has terminated the License Agreement by giving at least one (1) months' advance written notice before the end of the agreed Term.
- (3) Either Party may terminate for convenience this License Agreement or any Order Form upon delivery of one (1) month' advance written notice to the other Party.
- (4) Either Party may immediately terminate this License Agreement or any Order Form upon delivery of written notice to the other Party in the event the other Party culpably fails to perform any material term of these GTC or Order Form (as applicable), provided that the non-breaching Party delivered a prior separate written notice to the breaching Party specifying the nature of the failure and such failure to perform continued for a period of seven (7) days after the breaching Party's receipt of such separate written notice.
- (5) Upon expiration or termination of this License Agreement for any reason, Customer will immediately:
  - a) cease all Permitted Uses, in particular usage and distribution of the Software promptly;
  - b) promptly return or destroy all NANOCOSMOS Confidential Information and all copies of the Software and all backups;

- c) in the event applicable, pay all open, fees due then to NANOCOSMOS.
- (6) NANOCOSMOS will not provide support or update Services after expiration or termination of this License Agreement.
- (7) Notwithstanding any other provision of this License Agreement, §§ 5, 6, 7, 8, 9, 13, 15, and any term, which by its nature or express terms is intended to survive expiration or termination of this License Agreement, shall survive the expiration or termination of this License Agreement.
- (8) NANOCOSMOS may, upon giving written notice to Customer, without prejudice to any of NANOCOSMOS's rights to terminate this License Agreement, suspend provision of all or any of Services in the event that:
  - a) Customer has failed to fulfil its payment obligations under any Order Form beyond any applicable notice and cure period with respect solely to accurate fees;
  - b) suspension of Services is required in order to comply with the directive of an applicable governmental or regulatory authority and/or court of competent jurisdiction;
  - c) NANOCOSMOS has the presumption based on facts for suspecting that Customer is committing any illegal or unlawful act in connection with the use of Services, including third-party copyright and content ownership violations; and/or
  - d) any other provision within this License Agreement allows NANOCOSMOS to suspend provision of all or any of Services.
- (9) In the event any Services are suspended because of Customer's act or omission
  - a) Customer shall remain liable to pay the respective fees as if Services had been properly provided by NANOCOSMOS,
  - b) Customer shall reimburse NANOCOSMOS for any additional charges and expenses incurred due to the suspension and/or recommencement of Services.
- (10) In case NANOCOSMOS terminates this License Agreement due to § 7 para. 3, Customer shall pay NANOCOSMOS a penalty of one (1) Monthly Platform Fee as set out in the Order Form.

## § 8

### Representations, Warranties, Covenants, Indemnification

- (1) Because of the diversity of conditions of hardware and software environments under which the Services may be used, the Parties agree that minor defects which only cause an insignificant reduction of serviceability of the Software shall not be regarded a defect.
- (2) NANOCOSMOS warrants to Customer from the Effective Date, or Assumed Effective Date, respectively, that:
  - a) the Services will comply with the terms and conditions of this License Agreement under normal use as verified by Customer during use due to an evaluation license;
  - b) the Services shall comply with all Applicable Law in performing this License Agreement;
  - c) the Services will be performed in a good and workmanlike manner by qualified personnel with the requisite skill and experience to perform the Services;
  - d) NANOCOSMOS has all rights and licenses necessary to grant the rights and licenses granted under this License Agreement and the authority to enter into this License Agreement.
- (3) Customer represents, warrants, and covenants to NANOCOSMOS that:
  - a) it has the authority to enter into this License Agreement;

- b) it is responsible for all warranties it makes to its End Users;
  - c) it will use the Services only for lawful purposes, and will comply with all Applicable Law;
  - d) it disposes of sufficient software and hardware as well as a sufficiently dimensioned internet connection in order to use the Services including the Software; and
  - e) its access to and collection, use, relocation, storage, disclosure, and disposition of Customer Data will comply with all Applicable Law, including without limitation, all privacy and data security laws.
- (4) Customer shall not make any representations or warranties to its End Users regarding the Software or sell the Software as a stand-alone product without NANOCOSMOS's prior written consent.
- (5) NANOCOSMOS does not make any other warranties or representations as set out in this Licence Agreement. Any other warranties, express or implied, including but not limited to, warranties of merchantability and fitness for a particular purpose, shall not be deemed granted to the Customer.
- (6) After Customer has received the Services, in particular the Software, Customer shall be responsible for checking these in terms of any harmful components, such as viruses, malware etc.
- (7) Customer shall provide up free NFR (not-for-resale) access of the Combination Product to NANOCOSMOS, or free access to a web service which includes the Software, which NANOCOSMOS shall use solely for internal purposes.
- (8) NANOCOSMOS and its suppliers do not warrant that the Software will enable the Customer to render its products compatible with NANOCOSMOS or its suppliers' products.
- (9) NANOCOSMOS does not guarantee interoperability with any hard- or software third-party products that client wishes to operate the Services with, unless explicitly agreed to by NANOCOSMOS in writing. In the event NANOCOSMOS makes available to Customer such third-party product, such as server or device hardware, operating system or other software, NANOCOSMOS will pass through to Customer any third-party warranties related to such third-party products. For the avoidance of doubt, NANOCOSMOS is not responsible for the availability or for the fulfilment of any such third-party product warranty or for problems attributable to use of third-party products. ALL SUCH THIRD-PARTY PRODUCTS AND SERVICES ARE PROVIDED BY NANOCOSMOS ON AN "AS IS" BASIS. NANOCOSMOS reserves the right to suspend or terminate any third-party products which NANOCOSMOS uses at own will at any time; in this case, NANOCOSMOS will ensure the proper operability of the Services, where appropriate by use of other third-party components having the same or comparable features.
- (10) The License Agreement does not cover potential third-party license fees for the use of any third-party intellectual property rights which result from the usage of the Services, particularly the Software, for example for the use of streaming protocols or video formats. Customer is responsible for obtaining any such license and payment of respective fees, if any, based on the type of product that is distributed, and Customer shall pay such licence fees separately from the consideration herein and directly to the third party entitled to collect such fees.
- (11) Customer agrees to indemnify and hold NANOCOSMOS harmless from any and all objectively justified claims, damages, and/or liabilities, as well as reasonable settlements, attorneys' fees and/or expenses, as incurred, arising out of (i) any objectively justified third party claim that the Combination Product in fact infringes, violates or misappropriates any intellectual property or other third party right, or (ii) any objectively justified third party claim arising out of any objectively unjustified breach of this License Agreement by Customer. Customer shall not be responsible for any settlement made by NANOCOSMOS that Customer does not approve in writing. NANOCOSMOS agrees to indemnify, defend and hold Customer harmless from any and all objectively justified claims, damages, and/or liabilities, as well as reasonable settlements, attorneys' fees and/or expenses, as incurred, arising out of (i) any objectively justified third-party claim that use of the Services, in particular the Software, in fact infringes, violates or misappropriates any intellectual property or other third party right, or (ii) any objectively justified third-party claim arising out of any objectively unjustified breach of this License Agreement by NANOCOSMOS. NANOCOSMOS shall not be responsible for any settlement made by Customer that NANOCOSMOS does not approve in writing.

- (12) Subject to the provisions of the License Agreement, NANOCOSMOS shall be liable for defects of the Services, in particular the Software, in accordance with the statutory provisions. NANOCOSMOS shall remedy material defects and defects of title without delay and within a reasonable period of time.
- (13) The Customer shall notify NANOCOSMOS of any defects of the Services, in particular the Software, at least in text form and shall describe the defect and the (alleged) cause of the defect as far as possible.
- (14) Subject to the provisions of the License Agreement, the Customer's warranty rights are excluded if a defect originates from the hardware and/or software of a third party with which the Customer uses the Services, in particular the Software; NANOCOSMOS shall not be liable for this or if a defect is caused by the Customer due to handling that is not in accordance with the service description.
- (15) Customer's rights in case of defects are limited to twelve (12) months. This period shall begin on the date of delivery of the respective Service(s).

## § 9

### Liability

- (1) Unless otherwise provided for in this License Agreement including the following provisions, NANOCOSMOS shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.
- (2) NANOCOSMOS' liability is unlimited:
  - a) in the event of a grossly negligent or wilful breach of duty,
  - b) in the event of injury to life, limb or health,
  - c) in accordance with the provisions of the German Act on Liability for Defective Products (*Gesetz über die Haftung für fehlerhafte Produkte – ProdHaftG*),
  - d) to the extent of a guarantee given,
  - e) in the event of fraudulent concealment of a defect.
- (3) For the rest, NANOCOSMOS' liability is limited or excluded in accordance with the following provisions:
- (4) Strict liability pursuant to Section 536a para. 1 German Civil Code is excluded if the defect was already present at the time the contract was concluded, unless NANOCOSMOS fraudulently concealed the defect.
- (5) In the event of a slightly negligent breach of an obligation which is essential for achieving the purpose of the License Agreement (i.e., obligations whose breach would frustrate or jeopardise the achievement of the purpose of the License Agreement or the agreed use of the Services), NANOCOSMOS liability shall be limited to the amount which was foreseeable and typical for NANOCOSMOS at the time of the respective Service; the maximum liability shall be limited to the total fees paid from Customer to NANOCOSMOS due to this License Agreement in average one (1) year.
- (6) The above limitations of liability shall also apply to the personal liability of NANOCOSMOS' employees, representatives and subcontractors. If damage is attributable both to the fault of NANOCOSMOS and to the fault of the Customer, the Customer must allow its contributory negligence to be taken into account. In particular, the Customer shall be deemed to be predominantly at fault if it fails to draw NANOCOSMOS' attention to the risk of unusually high damage.

## § 10

### Copyright and Attribution

- (1) The Software and all supporting documentation constitute valuable property of NANOCOSMOS and all title and ownership rights in the Software, all supporting documentation and related materials shall remain exclusively with NANOCOSMOS. Customer will promptly notify NANOCOSMOS in writing of any possible infringement of any

trademarks or other proprietary rights relating to the Software of which Customer becomes aware of.

- (2) Customer shall include the following copyright notice with each of its product/application programs incorporating the Software: "Portions based on nanocosmos Technology Copyright © nanocosmos, <https://www.nanocosmos.de>." This copyright notice may be placed together with other copyright notices, including Customer's own copyright notice, or in any reasonably visible location in the application's packaging, software, or documentation.
- (3) In respect to copyright and intellectual property rights, and if not otherwise agreed, NANOCOSMOS has the right to reference to the Customer's name and product in communication with third-parties and publicly available material (e.g. website for marketing purposes, case studies, customer references).

#### **§ 11** **Customer Feedback**

Customer may communicate to NANOCOSMOS any and all modifications, design changes or improvements of the Software suggested by Customer. Customer further agrees that NANOCOSMOS shall have and is hereby assigned any and all right, title and interest in and to any such suggested modifications, design changes, or improvements of the Software, without the payment of any additional consideration for Customer. In case such an assignment was not possible, Customer herewith grants to NANOCOSMOS the exclusive, transferrable and sub-licensable right, which shall also be unrestricted in time and content, to use all these modifications, design changes or improvements of the Software for all known and yet unknown modalities of use, irrespective of whether fully or partially and whether without or against payment, without the payment of any additional consideration for Customer; Customer herewith agrees thereto.

#### **§ 12** **Technical Support and Maintenance**

- (1) NANOCOSMOS shall provide technical support to Customer for Defects to the Services. Support for Customer's End Users, including third-party developers and client machines is not included. NANOCOSMOS agrees to comply with the terms and conditions of the Support Level Agreement attached hereto as Exhibit A (the "**Support Level Agreement**"), which, by this reference, is hereby incorporated into this License Agreement and made a part of this License Agreement. The support term and possible additional support fee is mutually agreed to in a fully executed Order Form or Support Level Agreement.
- (2) In case of support and issue requests by Customer to NANOCOSMOS, Customer is responsible to send a complete issue report and provide all required information and material to exactly reproduce the technical setup which leads to any reported issue and provide commercially reasonable access and information to Customer setup or machines, including remote login support and third-party components with capability of installing or debugging software, creating log files and performing other configuration changes to Customer machines.
- (3) NANOCOSMOS is not obliged to remedy Defects caused by (each, an "**Excluded Cause**"): (a) third-party equipment or software not provided by NANOCOSMOS; (b) Customer's equipment or software; (c) amendments or additions to the Services or Software which Customer carries out itself or through third parties, unless Customer proves that the amendment or addition did not cause the defect; (d) improper use or improper operation or the use of unsuitable means of operation by Customer; (e) any third party's actions or interventions (excluding actions or interventions by NANOCOSMOS's affiliates and/or NANOCOSMOS's subcontractors); (f) a Force Majeure Event; and/or (g) the suspension, interruption or termination of Services in accordance with the License Agreement. Further to this, interruptions to the Services in part or as a whole due to Scheduled Maintenance (cf. § 14 para. 8) are not considered Defects.
- (4) Customer shall reimburse NANOCOSMOS for any Service provided by NANOCOSMOS if NANOCOSMOS was not obliged to provide this Service due to an Excluded Cause. In particular, NANOCOSMOS reserves the right to charge Customer for resources devoted by NANOCOSMOS to the receipt, investigation, troubleshooting and/or clearance

of Defects reported by Customer that are not attributable to NANOCOSMOS (e.g., no Defect is found, or the reported Defect is caused by an Excluded Cause).

- (5) If a Defect reported by Customer is found not to be attributable to NANOCOSMOS, then Customer shall compensate NANOCOSMOS at NANOCOSMOS's then current hourly rates (depending on the level of technical qualification of NANOCOSMOS's personnel that investigated the alleged Defect) and for any expenses NANOCOSMOS may have incurred (e.g., for using NANOCOSMOS's affiliates and/or NANOCOSMOS's subcontractors) when investigating and/or remedying the alleged Defect. NANOCOSMOS will invoice these charges for the Defect support and Customer shall make payment in accordance with the terms of the License Agreement.
- (6) Engineering fees and schedules for requested Support, Updates or Upgrades to the Software, which are not due to remedying Defects, will be negotiated with Customer at the time of Customer's request and the consulting fees therefor shall be agreed upon by the Parties in a fully executed Order Form prior to any fees being incurred.
- (7) Each Party will designate/provide a person/means of communication with each other for business and technical reasons.

### § 13

#### Product Registration/Activation

For some parts in the Software, a product registration and/or activation technology might be required. Unregistered Software may be non-functional or subject to evaluation. During registration, a serial number or activation code will be issued to Customer for one or more components. Upon entering a valid serial number for a component (registering the component), the registered component will be released of its evaluation and/or non-functional limitations. Customer agrees not to disclose any serial number issued to Customer to any third-party. The product registration for purposes of redistribution license might need to be renewed regularly for protection reasons. If not otherwise specified in a quote or Order Form, the activation and unlocking may be done by a one-time or recurring web or other internet connection, which might require a network connection to a host within Customer's or NANOCOSMOS's organization.

### § 14

#### Confidential Information

- (1) Each Party agrees that all source and object code, trade secrets, databases, Software, designs and techniques, programs, engine protocols, models, displays and manuals, customer habits, marketing or sales plans, sales forecasts, pricing strategies, costs, pricing information, customer information, vendor information, financial documents, inventions, algorithms, know-how, ideas, and all business, technical and financial information it obtains from the other Party, irrespective of whether explicitly marked as confidential, are the confidential property of the other Party, or each's affiliates and subsidiaries, or its suppliers, respectively ("**Confidential Information**").
- (2) Except as permitted herein, each Party shall (a) use the Confidential Information only for the purposes of this Agreement, (b) hold them in confidence and (c) not use or disclose any Confidential Information of the other Party. Each Party's non-disclosure obligation will not apply to information that (a) is or becomes (through no improper action or inaction by the receiving Party) generally available to the public, or (b) was in the receiving Party's possession or known by it without restriction prior to receipt from the disclosing Party, or (c) was rightfully disclosed to the receiving Party by a third party without restriction, or (d) was independently developed by employees of the receiving Party without use of or access to any Confidential Information of the disclosing Party. The receiving Party of the Confidential Information will use at least the same degree of care, but no less than reasonable care, to avoid disclosure or use of the Confidential Information as the receiving Party uses with respect to its own Confidential Information. The receiving Party may disclose or provide access to its responsible employees who have a need to know Confidential Information only to the extent reasonably necessary to carry out its obligations hereunder. The receiving Party shall remain responsible for any use of the Confidential Information inconsistent with this Agreement as though such use was performed by the receiving Party itself.

- (3) The receiving Party may make disclosures required by law or final and conclusive order issued by a court or public authority provided the receiving Party gives the disclosing Party immediately prior written notice of such required disclosure (to the extent such prior written notice is not permitted under Applicable Law,) and allows the disclosing Party to participate in the proceeding.

## **§ 15** **Online Services**

- (1) This section is only applicable when using the Services on NANOCOSMOS's service infrastructure.
- (2) NANOCOSMOS will provide the Services to Customer as specified in a fully executed Order Form, subject to the terms and conditions herein. NANOCOSMOS will not be bound to provide Services until the applicable Order Form has been fully executed; however, in the event Customer begins using Services before the Effective Date, or Assumed Effective Date respectively, the provision and use of such Services nonetheless will be governed by the terms of this License Agreement.
- (3) Limitations of Use of the Services. Customer will only use the Services with Customer Data to which it has full right, title, or license. Customer represents, warrants, and covenants that its use of the Services and related backup to and storage of Customer Data complies and will comply with all Applicable Laws, including those related to data privacy, data security, international communication, and the exportation of technical, personal, or sensitive data. Customer is solely responsible for Customer Data. Except as provided in Exhibit B or section 8 para. 3 lit. e) of these GTC and otherwise herein, Customer is responsible for protecting the security of Customer Data, including any access to Customer Data that Customer provides to its employees, customers or other third parties, and when it is in transit to and from the Services. Customer will maintain measures regarding the security, protection, and backup of Customer Data. Customer is responsible for providing any necessary notices to End Users and for obtaining any legally required consents from End Users concerning their use of the Services. Customer is responsible for any losses or other consequences arising from Customer's failure to encrypt or back up User Data. Customer will have and maintain appropriate policies and procedures for cybersecurity and to ensure compliance with its regulatory or legal obligations.
- (4) Customer is not allowed to, and will take steps to ensure not to:
- a) use any Service in a manner that violates any Applicable Law;
  - b) use any Service in a manner that infringes any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy;
  - c) use the Services to distribute unsolicited content, email, or SPAM;
  - d) use the Service in a manner that materially interferes with, disrupts, or causes an excessive or disproportionate load on NANOCOSMOS's infrastructure (or affiliates or subcontractors);
  - e) use the Services to commit, or attempt to commit, acts of non-authorized relays through any third-party systems;
  - f) use the Services to do heavy load testing, port scanning, or other security scans;
  - g) use the Services to distribute viruses, trojan horses, worms, or other similar harmful or deleterious programming routines (including port scanning);
  - h) use the Services to gain unauthorized access to or attempt to interfere with or compromise the normal functioning, operation, or security of any network, system, account, computing facility, equipment, data, or information, or to use the Service to engage in any activities that materially interfere with the ability of others to access or use the Service or the Internet;
  - i) use the Services to distribute third-party content in an unauthorized or unlawful way; or
  - j) use any Service to commit any act that is defamatory, threatening, harassing, or may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to anyone; or may create a risk of any other loss or damage to any person or property; or may constitute or

contribute to a crime or tort; or contains any information or content that is illegal, unlawful, harmful, abusive, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libellous, threatening, or otherwise objectionable; or contains any information or content that you do not have a right to make available under any law or under contractual or fiduciary relationships.

- (5) NANOCOSMOS does not own or control all local circuit links, leased co-location spaces, leased space cross-connects, Internet service providers (“ISP”) providing connectivity to NANOCOSMOS, other networks outside the connectivity to NANOCOSMOS or ISPs, or the “Internet” and except as set forth in this License Agreement, NANOCOSMOS will not be responsible for performance or non-performance within such networks or within non-NANOCOSMOS operated interconnection points between the connectivity and other networks. NANOCOSMOS is a mere intermediary (i.e., mere conduit in accordance with article 12 of Directive 2000/31/EC on E-Commerce and the implementing article 60 of Luxembourg E-Commerce Act of 14 August 2000) for transmission of Customer Content and does not exercise editorial or other control over such materials.
- (6) NANOCOSMOS may at any time, and without notice, use the services of one or more affiliates, suppliers or sub-contractors or sub-processors (collectively, “**NANOCOSMOS Contractors**”) in connection with the performance of its obligations under this License Agreement, and Customer’s obligations to NANOCOSMOS extend to those parties when acting on Customer’s behalf.
- (7) *Defects/Interrupts*. To be eligible for a service credit under any support or the Support Level Agreement, Customer must be in good standing with no delinquent invoices, in addition to any other requirements under the Support Level Agreement. NANOCOSMOS shall provide the Services in accordance with the terms of the Support Level Agreement.
- (8) *Scheduled Maintenance*. NANOCOSMOS or any NANOCOSMOS Contractors will from time to time carry out routine maintenance or improvements to the network, facilities, network equipment or other technical equipment required for the provision of the Software or Services (“**Scheduled Maintenance**”). Scheduled Maintenance may cause interruptions to the Services in part or as a whole. NANOCOSMOS may carry out Scheduled Maintenance which is unlikely to affect the Services at its own discretion and without notice. For Scheduled Maintenance which will likely cause interruptions to the Services in part or as a whole or any other problems for the Customer, NANOCOSMOS will notify Customer in writing in advance for maintenance notifications. Such notification will include time and date, duration, and description of any such work. Notwithstanding the foregoing, in the event NANOCOSMOS reasonably believes in good faith that timely providing such notice would result in an unacceptable risk of a Defect, damage or loss of integrity to NANOCOSMOS network, NANOCOSMOS may perform such work and may serve written notice to Customer of the need to perform emergency maintenance on the network within a notice period reasonably practicable under the given the circumstances.
- (9) *Service payments*. Online Services are paid in advance per usage period in accordance with the applicable Order Form. For volume-based usages, payments are based on estimated Service usage. Overuse of the agreed volume will either be automatically charged or pre-paid in advance, as specified in the applicable Order Form. NANOCOSMOS may limit its Services for non-paid overuse of the Service.

## § 16 Customer Data

- (1) NANOCOSMOS, its affiliates and their respective agents will, for the purpose of the provision of Services, come into processing of Customer Data. However, Customer shall remain the controller for the purposes for the applicable data protection laws with NANOCOSMOS, its affiliates and their respective agents having only the functions of the processor acting on behalf of Customer. The Parties shall enter into the Data Processing Agreement (“**DPA**”) attached hereto as Exhibit B.
- (2) NANOCOSMOS will use reasonable technical and organizational measures to protect Customer Content and

Customer Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access and against other unlawful forms of processing, attached to the DPA in Exhibit B. Customer will provide NANOCOSMOS with direction as to processing of the Customer Content and Customer Data in accordance with Customer's then current privacy policy and other privacy laws, rules and regulations applicable to Customer. Without prejudice to any legal constraint, all use of Customer Data by NANOCOSMOS will be at Customer direction and solely on behalf of Customer, including as set forth in this License Agreement.

- (3) NANOCOSMOS, its affiliates and their respective agents may process Customer Data: (i) in connection with the provision of Services; and (ii) to incorporate Customer Data into databases controlled by NANOCOSMOS and its affiliates for the purpose of administration, provisioning, billing and reconciliation, verification of Customer identity and solvency, maintenance, support and product development, fraud detection and prevention, sales, revenue and Customer analysis and reporting, support, development, marketing.
- (4) Customer warrants that all legal requirements for the processing of End User Data and other Customer Data as described in this section within the Customer's responsibility are in place and complied with. Customer shall comply with all applicable data protection laws. If the Customer is located in a third country for which no adequacy decision of the European Commission is in place, the Parties will enter into Module 4 of the Standard Contractual Clauses, which should be attached as another Annex to this License Agreement.
- (5) Customer will not provide to NANOCOSMOS any Customer Content: (a) that is inappropriate or unlawful; (b) contains viruses, worms, corrupt files, Trojan horses and other forms of corruptive code or any other content, which may compromise the Services or NANOCOSMOS's network; (c) that violates the property rights of others, including unauthorized images, programs, trademarks or other Intellectual Property Rights; or (d) that has any links or connections to any of the above.

#### **§ 17 Privacy / Data Protection**

Additional privacy rules may be defined in a separate document/attachment.

#### **§ 18 Force Majeure**

Either Party shall be excused from any delay or failure in performance required hereunder if caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, acts of God, acts of war, fire, insurrection, strikes, lock-outs or other serious labour disputes, riots, earthquakes, floods, lawful lockouts, unexpectedly occurring pandemics or epidemics, explosions or other acts of nature (each, a "**Force Majeure Event**"). The obligations and rights of the Party so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable interruption. When such events have abated, the Parties' respective obligations hereunder shall resume. The affected Party immediately notify the other Party of the occurrence and cessation of the Force Majeure Event and shall use commercially reasonable efforts to minimize and remediate the cause of non-performance and resume performance upon removal of such cause. In the event a Force Majeure Event remains in effect for longer than fourteen (14) consecutive days, either Party may terminate this License Agreement.

#### **§ 19 Miscellaneous**

- (1) Customer may not assign any rights and/or duties according to this License Agreement without the prior written consent of NANOCOSMOS to another party, except to a subsidiary or to a successor to all or substantially all of its assets or business.
- (2) Neither Party has the right or authority to assume or create any obligation or responsibility on behalf of the other.

- (3)** Customer shall provide NANOCOSMOS with full details to its business, such as: full name, email, web page, Phone, address of person or company, reg.no. Any written notice or demand in connection with this License Agreement will be sent by registered or certified mail or email (return receipt requested), personal delivery, overnight commercial carrier, or other guaranteed delivery to the other Party at the address set forth below in the Order Form. All such notices and demands in connection with this License Agreement will be deemed given as of the day they are received by the other Party. Any Party may change the address at which it receives notices by giving written notice to the other Party in the manner prescribed by this section.
- (4)** Any action related to this License Agreement shall not be unreasonably withheld, conditioned, or delayed.
- (5)** Should any provision of this License Agreement, or any provision incorporated into this Agreement in the future, be or become invalid or unenforceable, the validity or enforceability of the other provisions of this License Agreement shall not be affected thereby. The same shall apply if this License Agreement turns out to be incomplete (in particular as a result of the Parties' unintended failure to contemplate an issue). The Parties shall immediately substitute any invalid or unenforceable provision by a suitable and equitable provision which comes closest to the purpose of the invalid or enforceable provision or to the presumed intent of the Parties if had they considered the matter.
- (6)** This License Agreement will be exclusively construed under the laws of the Federal Republic of Germany without regard to conflicts of law provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded. Exclusive place of jurisdiction shall be Berlin, Germany. Termination is not an exclusive remedy and all other remedies will be available whether or not termination occurs.
- (7)** This License Agreement is the complete and exclusive statement of the mutual understanding of the Parties and supersedes all previous written and oral agreements and communications relating to the subject matter of this License Agreement.
- (8)** Any translation of this License Agreement provided is for your convenience. To the extent of any discrepancy between the English language version and the translation, the English language version shall prevail.
- (9)** Each Party will be responsible for its own legal, accounting, and other expenses incurred by it in connection with the negotiation, execution, and delivery of this License Agreement.
- (10)** All rights and remedies contained in this License Agreement shall be cumulative and shall not limit any other right or remedy to which a Party may be entitled.
- (11)** No waiver of any term or condition hereof shall be effective unless in writing and signed by the authorized representative of the Party against whom such waiver is asserted. Any waiver shall be specifically limited to its terms and conditions, and shall not be deemed applicable to subsequent like circumstances.
- (12)** The relationship of the Parties established by this License Agreement is that of independent contractors, and nothing contained in this License Agreement will create or be construed to create any partnership, joint venture, agency, franchise, sales representative, employment, or fiduciary relationship among the Parties.

## Exhibit A

### SUPPORT LEVEL AGREEMENT (SLA)

#### [DETAILS MAY BE SPECIFIED IN A SEPARATE ORDER FORM]

This Licensor Support Level Agreement (this “SLA”) covers two (2) different components:

1. Services, Software, API and integration support (nanoStream SDKs, player API, ...)
2. Online services: nanoStream Cloud service operation

#### Response Time

There are several possible support options with availability based on our office hours 10.00 am – 6.00 pm CET

1. 8/5: (8 hours per day / 5 days per week)
2. 24/7: (24 hours per day / 7 days per week)
3. 16/5: (16 hours per day / 5 days per week)

Usually included in the basic agreement: 8/5 support, “best effort”, target reply time < 48 hours

Additional priority support levels are available dependent on additional agreement and urgency and severity of possible support issues. Basic support includes 24x7 access to online resources, customer service, documentation, whitepapers, blog, videos, etc.

Example Professional Support Plan: (details require a separate business agreement)

Premium 24/7: (24 hours per day / 7 days per week)

24x7 access to Cloud Support via email, chat, and phone

Reaction times for professional/premium support plans:

- General guidance/Low severity (minimal problems in the Services with no operational impacts and no functionality issues): < 24 hours
- System impaired (limitation to functionality or usefulness of the Services, but it does not harm the continued operation of the Services): < 12 hours
- Production system impaired (Defects are high-impact issues in which the Services, or a part of the Services, are inoperative or seriously degraded): < 4 hours
- Production system down (critical failure in the operation of the Services or Defects in the Services that causes the Services to be severely impacted or completely shutdown): less than: < 1 hour

#### Uptime Commitment

For professional/premium support plans there may be a specific target uptime.

NANOCOSMOS will make the Services available with a monthly uptime percentage of at least 99.99% measured monthly (the “Uptime Commitment”). “Uptime” is calculated by taking the total minutes in a month that the Services is available and operational divided by the total minutes available in a month (less any minutes of Scheduled Maintenance so long as NANOCOSMOS provides advance written notice to Customer of any Scheduled Maintenance). 1 month is averaged as 30 days = 720 hours.

In the event any of the Services do not meet the Uptime Commitment, you will be eligible to receive a service credit as described below.

Monthly Uptime Percentage	Service Credit Percentage
---------------------------	---------------------------

Less than 99.99% but equal to or greater than 99.0%	10%
---	-----

PROPRIETARY AND CONFIDENTIAL

Nanocosmos General Terms and Conditions © Nanocosmos Informationstechnologien GmbH, <https://www.nanocosmos.net>

Less than 99.0% but equal to or  
greater than 95.0% 20%

Less than 95.0% 50%

In order to receive any service credit offered under this SLA, Customer must initiate a support ticket related to the event and expressly request that NANOCOSMOS shall issue a service credit. Customer's outage may be wholly unrelated to NANOCOSMOS's Services, so unless NANOCOSMOS contacts NANOCOSMOS via a support ticket, NANOCOSMOS may not be aware any problem existing. Outages related to hardware or other services or events not under NANOCOSMOS's control are not eligible for any service credit offered under this SLA. If only a part of the Services fail, only a part of the service credit will be charged.

#### **Additional support and consulting services**

Consulting/development possible based on daily rates or additional requirements specification as agreed upon in a fully executed Order Form.

### **Exhibit B**

#### **Data Processing and Privacy Agreements**

**See separate document**