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Npcap OEM Internal Use End User License Agreement

This document (“**Agreement**”) documents the rights granted to end user purchasers of the Npcap OEM Internal Use License product. Licensor is Nmap Software LLC (“**NSL**”). Please note that this license only permits internal (within the Licensee organization) redistribution of Npcap OEM—not any redistribution to third parties. Specific terms are in double quotes and bolded when defined, and then capitalized in subsequent uses. Selected options are marked with “**XX**”. All amounts are in U.S. Dollars. This Agreement takes precedence over any EULA displayed by the Npcap installer.

NSL is hereby offering these Agreement terms to Licensee. Licensee may accept these terms in writing or by paying the specified License Fees or issuing a purchase order to pay the License Fees. This offer is void if Licensee has not accepted it within four (4) months of the Effective Date.

1. License Configuration Selections

Licensee Name (“**Licensee**”): _____

Licensee Domain Name (for further identification): _____

“**Effective Date**”: _____

Licensed Concurrent Installs (“**Licensed Installs**”):

___100 Installs ___500 Installs ___Unlimited Installs

“**License Fees**”:

“**Perpetual License Fee**”: _____

“**Initial Maintenance Period**” (for updates & support, starting on Effective Date): 1 year

“**Initial Maintenance Fee**”: \$0

Optional “**Annual Maintenance Fee**” (After Initial Maintenance Period): _____

“**Payment Status**”:

___Fully paid ___Payment due by (“**Payment Date**”): _____

2. Delivery

NSL has created the following credentials for Licensee to download the latest Npcap OEM Edition releases, subject to the terms of this agreement:

URL: <https://npcap.com/oem/dist>

Username: [USERNAME]

Password: [PASSWORD]

Licensee may use these credentials to download any Licensed Version of Npcap OEM, including new versions released during the Maintenance Period. Licensee may also access commercial support from support@nmap.com during the Maintenance Period (see Article 8 for further details). Npcap documentation is available at <https://npcap.com>. We hope you enjoy Npcap OEM!

3. Definitions

“**Licensed Versions**” is the set of Npcap versions that Licensee is permitted to use. Licensees may use any version of Npcap released by the Effective Date or during the Maintenance Period.

“**Maintenance Period**” is the period of time during which Licensee is entitled to Updates and Support. This period starts with the Effective Date and continues through the Initial Maintenance Period, then includes subsequent years for which the Annual Maintenance Fee was paid. The Maintenance Period ends when maintenance or the license itself is terminated per Article 5. This is normally because licensee declines to renew maintenance and thereby terminates maintenance and support for convenience, per Section 5.3.

“**Npcap Technology**” or simply “**Npcap**” describes the OEM edition of the Npcap packet sniffing driver and library for Windows which is developed and distributed by NSL at <https://npcap.com/oem/>.

“**Support**” is the technical support provided by NSL to licensees who purchase support, as described in Article 8.

“**Updates**” are the new releases and improvements made to Npcap and provided to licensees during the Maintenance Period, as described in Article 9.

4. Payment

4.1 General payment terms. In consideration of NSL’s provision and license of Npcap hereunder, Licensee shall pay License Fees to NSL.

4.2 Initial Payment. If Payment Status is marked as “Fully Paid”, then NSL has already received payment for the Perpetual License Fee and Initial Maintenance Fee. Otherwise, these payments are due by the listed Payment Date. The Perpetual License Fee is a one-time buyout fee for use of Npcap in accordance with this Agreement. If Perpetual License Fee, Initial Maintenance Fee, and/or Payment Date are listed as “Reseller”, this sale is through a reseller (“**Reseller**”) and the exact amounts payable and deadlines have been worked out separately between Reseller and NSL. Similarly, the amount charged to Licensee by Reseller for the software as well as the payment terms are negotiated between those two parties.

4.3 Renewal and Maintenance Payments. Licensee has the right (but not requirement) to pay the Annual Maintenance Fee at the end of the Initial Maintenance Period and then following each renewal thereafter. Renewing continues Licensee’s entitlement to Updates and Support. Licensee’s option to renew for the set Annual Maintenance Fee lasts for a grace period of 120 days after the expiration of the previous renewal or Initial Maintenance Period. If Licensee has not paid by the end of that grace period, maintenance is considered permanently terminated for convenience per Section 5.3. Any renewal after such termination is subject to agreement by NSL. Unless otherwise agreed between the parties, any renewal starts on the end date of the previous renewal or Initial Maintenance Period.

5. Term and Termination

5.1 Term. The term of each license granted hereunder (“**Term**”) shall be perpetual, unless terminated as provided for by this Article.

5.2 License Breach. Either party may, without prejudice to any other remedy they may have, terminate this Agreement in the event of any material breach of this Agreement by the other party which isn’t remedied within thirty (30) days after notifying the breaching party. The notification must fully describe the breach and declare intent to terminate the Agreement if not remedied. If this license is

purchased through a reseller, failure of Reseller to pay any amount due shall be treated as a breach by Licensee and may be remedied through payment by either Licensee or Reseller.

5.3 Termination of Maintenance and Support for Convenience. Licensee may terminate maintenance and cease paying the Annual Maintenance Fee if Licensee provides notice of its intent to do so to NSL. After such a termination, Licensee is no longer entitled to Npcap support or any updates or new version releases made available after termination. This election to terminate maintenance does not constitute termination of the Agreement as a whole. Terminating Maintenance and Support does not relieve Licensee of the obligation to pay any amounts already due as of the termination notification date. If Licensee chooses to terminate Maintenance and Support before their current annual Maintenance Period ends, no pro-rated refund is provided, but maintenance rights continue until the term ends. Termination of Maintenance and Support for Convenience is also automatically effected if Licensee fails to pay for maintenance renewal during the grace period specified in Section 4.3.

5.4 Trial Period Termination with Refund. Licensee may terminate this Agreement for any reason during the first 3 months from the Effective Date by notifying NSL of that election. NSL will provide a full refund within 30 days of all money paid by Licensee, including any License Fee and Annual Fee payments. Licensee must cease using Npcap before the termination.

5.5 Cessation of Use. Upon termination of this Agreement for any reason, Licensee shall cease using Npcap.

6. License Scope

6.1 License Grant and Install Limits. Subject to the terms and conditions of this Agreement, NSL grants Licensee the right to install and use Npcap Technology on the number of computing instances specified by Licensed Installs. This Agreement does not permit the installation or use of more copies of the Software than the number specified by Licensed Installs, nor the installation of the Software on more than the number of computers specified by Licensed Installs at any given time, on a system that allows shared use of applications by more users than the number of copies specified by License Installs, or on any configuration or system of computers that allows more than that many users. The terms "computer" and "machine" in this license include any computing device, including software computing instances such as virtual machines, Docker containers, and cloud instances.

6.2 No Unlicensed Use. Licensee may not use or redistribute Npcap, in whole or in part, except as expressly permitted under this (or another existing) Agreement. Any use of Npcap not expressly granted to Licensee is prohibited.

7. Proprietary Rights

The copyright, patent, trade secret, and all other intellectual property rights of whatever nature in Npcap, and all copies thereof, partial or complete, in all media and whether or not merged into other materials, are and shall remain the property of NSL, and nothing in this Agreement shall be construed as transferring any aspects of such rights to Licensee or any third party.

8. Support

During the Maintenance Period, NSL will provide e-mail support at no extra charge beyond those specified in Article 4 ("Payment"). This includes troubleshooting and fixing errors in Npcap and/or generating work-arounds, as well as providing advice relating to the use and implementation of Npcap in Licensed Product. Custom programming other than fixing errors in Npcap is not included. E-mail to support@nmap.com is the preferred form of support, and NSL may not have staff available to take calls.

NSL will use commercially reasonable efforts to respond to any and all support requests within forty-eight (48) hours and to resolve the requests as quickly as possible.

9. Updates

NSL shall provide updates such as error fixes and enhancements (including full new releases) throughout the Maintenance Period at no extra charge beyond the maintenance fees described in this agreement. Updates are announced on the Nmap announcement mailing list. NSL recommends that at least one employee of Licensee subscribe at <https://nmap.org/mailman/listinfo/announce>. Licensee is not entitled to any updates after the Maintenance Period expires (unless Licensee renews during the grace period), but license still maintains the right to use any versions or updates which were released during (or before) their Maintenance Period.

10. Warranties and Disclaimers

10.1 Non-Infringement. NSL warrants and represents to Licensee that Npcap does not infringe upon the copyright, trademark, or trade secret rights of any other person or entity. NSL represents and warrants that it holds the copyrights necessary to extend the licenses described by this Agreement.

10.2 Functionality. For the period of one (1) year following the Effective Date, NSL represents and warrants to Licensee that the unmodified Npcap shall operate in the manner documented, and covenants that upon notification to NSL of any errors, NSL will, during its normal business hours and at no cost to Licensee, use reasonable efforts to correct such errors which are reproducible and verifiable by NSL. To ensure that Npcap meets Licensee's needs, NSL has made a demo version freely available for testing at <https://npcap.com>. Licensee is encouraged to test it before executing this Agreement.

10.3 Warranty Disclaimer. THE WARRANTY SET FORTH BY SECTION 10.2 IS A LIMITED WARRANTY AND IS THE ONLY FUNCTIONAL OR OPERATIONAL WARRANTY MADE BY NSL. EXCEPT AS SPECIFICALLY PROVIDED BY SECTIONS 10.1 and 10.2, NSL EXPRESSLY DISCLAIMS, AND LICENSEE HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NSL DOES NOT WARRANT THAT NPCAP WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF NPCAP WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS IN NPCAP WILL BE CORRECTED. NSL'S LIMITED WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF NSL FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE INSTALLATION, USE OR PERFORMANCE OF NPCAP.

11. Assignment

Except as provided herein, neither party may assign this Agreement or its rights hereunder without the prior written consent of the other party. Either party may, without consent of the other party, assign this Agreement or its rights hereunder to any successor succeeding to the assigning party's business to which this Agreement relates, provided that such successor assumes all obligations of the assignor under this Agreement.

12. Limitation of Liability

12.1 High Risk Use. Npcap is not designed, manufactured, or intended for use in hazardous environments requiring fail-safe performance where the failure of the software could lead directly to death, personal injury, or significant physical or environmental damage ("**High Risk Activities**"). Use of Npcap in High Risk Activities is not authorized.

13.2 Force Majeure. Neither of the Parties shall be liable for any loss or for any failure to perform any obligation hereunder due to causes beyond its control including without limitation industrial disputes of whatever nature, power loss, telecommunications failure, acts of God, or any cause beyond its reasonable control.

13. General

13.1 Headings. The headings and captions used in this Agreement are for convenience only and are not intended to be used as an aid to interpretation.

13.2 Severability. The provisions of this Agreement are severable, and if any part of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected.

13.3 Binding. This Agreement will be binding upon and inure to the benefit of the Parties hereto, their respective successors and assigns.

13.4 No Waiver. Failure by either party to exercise any right or remedy under this Agreement does not signify acceptance of the event giving rise to such right or remedy.

13.5 No UCITA. The parties “opt out” of UCITA in the event that any performance of this Agreement would implicate the laws of a jurisdiction which has adopted UCITA.

13.6 Notices. Notices required or permitted to be given or delivered under this Agreement shall be given in writing and either (a) hand delivered, (b) delivered by mail or courier service with delivery confirmation, or (c) sent by email, as long as the recipient responds to acknowledge receipt.

13.7 Relationship of the Parties. Each of the parties expressly acknowledges that the relationship intended to be created by this Agreement is a business relationship based entirely on and circumscribed by the express provisions of this Agreement and that no joint venture, agency, fiduciary or employment relationship is intended or created by reason of this Agreement.

13.8 Survival. Section 5.5 (“Cessation of Use”) and Articles 4 (“Payment”), 7 (“Proprietary Rights”), 10 (“Warranties and Disclaimers”), 12 (“Limitations of Liability”), and 13 (“General”) shall survive the termination of this Agreement for any reason and continue for such time as they may remain applicable.

13.9 Amendments. The parties further agree that any amendment, waiver, or other matter relating hereto shall require a document signed by both parties. All amendments or modifications of this Agreement shall be binding upon the parties despite any lack of consideration. When one party is granting a right to the other without any consideration, a document signed by the granting party is valid and binding.

13.10 Entire Agreement. This document, when taken with any Schedules, comprise the entire agreement between the Parties regarding the subject matter hereof and supersede and merge all prior proposals, understandings and all other agreements, oral and written, between the Parties relating to the Agreement.