NPCAP OEM TECHNOLOGY LICENSE AGREEMENT

THIS NPCAP OEM TECHNOLOGY LICENSE AGREEMENT (together with all exhibits and other attachments hereto, the "***Agreement***") is entered into and effective as of the last signature date set forth below ("***Effective Date***"), by and between _____ ("**Licensee**") and Nmap Software LLC, a Delaware company located at 9450 SW Gemini Dr. #1337, Beaverton, OR 97008-7105 ("**NSL**").

1. NPCAP TECHNOLOGY & DELIVERY

For the purposes of this Agreement, **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/.

Upon payment of License Fee or receipt of purchase order, NSL shall make Npcap OEM available to Licensee through electronic software delivery (ESD) at a URL provided by NSL along with a corresponding username and password. Licensee may use that access to download any Licensed Versions of Npcap OEM, including new versions released during the Maintenance Period. Npcap documentation is available at https://npcap.com.

2. COVERED PRODUCTS

NSL licenses its technology for use in specific products. This Agreement covers the following product(s): _____ ("Covered Products").

3. LICENSED VERSION

Licensee may use Npcap OEM version 1.____ in accordance with this Agreement. Previous versions may be used, though that is not recommended. Later versions may only be used as described in this contract and subject to payment of the relevant Annual Fee.

4. PAYMENT

4.1 <u>License Fees</u>. In consideration of NSL's provision and license of Npcap hereunder, Licensee shall pay NSL $XX,XXX ("**License Fee**") as a one-time buyout fee for use of Npcap in Covered Products in accordance with this Agreement. In addition, Licensee shall pay NSL

an annual maintenance fee ("**Annual Fee**") of $XX,XXX per year during the Term for updates and support as described in Articles 8 and 9, unless Licensee terminates maintenance as provided in Section 5.3. This first-year total license and maintenance fees of $XX,XXX is due in full thirty (30) days after the Effective Date. Thereafter, annual maintenance fee payments shall be due annually on each anniversary of the Effective Date. All amounts are in United States Dollars.

5. TERM AND TERMINATION

5.1 <u>Term</u>. The term of each license granted hereunder ("**Term**") shall be perpetual, unless terminated as provided for in Sections 5.2 or 5.4 hereof.

5.2 <u>License Breach</u>. 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.

5.3 <u>Termination of Maintenance and Support for Convenience</u>. Licensee may terminate maintenance and cease paying the Annual Fee in the future by providing written notice to NSL. Such maintenance termination will take effect on the Annual Fee due date following the termination notice, or when the current paid-up maintenance period ends, whichever is later. After the maintenance termination becomes effective, Licensee is no longer entitled to Npcap OEM support or any future updates or new version releases. No

refunds of previously paid Annual Fees are provided upon termination, but those license and support rights continue for their original duration and no further payments will be due. This election to terminate maintenance does not constitute termination of the Agreement as a whole.

5.4 <u>Trial Period Termination with Refund</u>. Licensee may terminate this Agreement for any reason during the first six 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 may not redistribute Npcap in any form after electing termination, though rights already granted to existing end user customers are unaffected per Section 5.6.

5.5 <u>Cessation of Use</u>. Upon termination of this Agreement, Licensee shall cease using Npcap in Covered Products.

5.6 <u>End User License Agreements Unaffected</u>. Upon termination for whatever reason, except for Licensee or end user breach of Section 6.2, the end user license agreements shall remain unaffected.

6. LICENSE SCOPE

6.1 <u>Duplication and Distribution by Licensee</u>. Subject to the terms and conditions of this Agreement, NSL grants Licensee a non-exclusive, worldwide, non-transferable, license to use, reproduce, distribute, and display Npcap as necessary or desirable to incorporate and adapt Npcap into the Covered Products, and to update, market, and distribute those products to end users. Licensee may distribute Npcap to end users directly, or through multiple tiers of distribution, including resellers, distributors, VARS and OEMs. Licensee may not distribute Npcap by itself (outside of Covered Products) to the general public (such as a publicly known URL without authentication). Standalone distribution is allowed if reasonable attempts are made to limit distribution to actual customers and known potential customers.

6.2 <u>License of Npcap to End Users.</u> Licensee may grant end users the right to use Covered Products. Licensee may not permit end users to sublicense or externally redistribute Npcap in whole or in part, except as allowed by copyright provisions such as the first sale doctrine and principle of exhaustion.

6.3 <u>Modifications</u>. During the Term, Licensee shall have the non-sublicensable right to modify, add-on to, or enhance Npcap for the purpose of creating the Covered Products and shall own all rights thereto; provided, however, that to the extent that such a modified product constitutes a "derivative work" as defined by 17 U.S.C. 101, Licensee's rights therein shall remain subject to this Agreement.

6.4 <u>Internal Use.</u> Licensee may use Npcap internally for purposes related to development, distribution, testing, and usage of the Covered Products. If Licensee wishes to use Npcap internally for reasons unrelated to the Covered Products, Npcap OEM internal-use licenses are available at https://npcap.com/oem/internal.html. The Npcap open-source license also allows some limited free internal-use of Npcap.

6.5 <u>No Unlicensed Use</u>. Licensee may not redistribute Npcap, in whole or in part, except as expressly permitted under this (or another existing) Agreement.

7. PROPRIETARY RIGHTS

7.1 <u>Ownership</u>. Licensee acknowledges and agrees that 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.

7.2 Use of Npcap Trademark. "Npcap" is a trademark of NSL. Licensee may use the Npcap trademark to identify its use of Npcap in the Covered Products.

8. SUPPORT

8.1 Included Support. During the Term, NSL will provide e-mail and telephone developer support at no extra charge beyond the Annual Fee. This includes troubleshooting and fixing errors in Npcap and/or generating workarounds, as well as providing advice relating to the use and implementation of Npcap in Covered Products. 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 at all times to take calls. NSL will use commercially reasonable efforts to respond to all developer support requests within twenty-four (24) hours and to resolve the requests as quickly as possible.

8.2 Additional Support. Should Licensee require on-site support or support beyond what is outlined herein, a support fee for such required additional support shall be negotiated in good faith by the parties. Licensee is under no obligation to purchase any additional support from NSL.

9. UPDATES

NSL shall provide updates such as error fixes and enhancements throughout the Term at no extra charge beyond the Annual Fee. 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.

10. WARRANTY AND DISCLAIMERS.

10.1 Authority. Each party warrants and represents to the other party that it has full power and authority to enter into this Agreement and to carry out its obligations hereunder.

10.2 Non-Infringement. NSL warrants and represents to Licensee that Npcap does not infringe upon the U.S. 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.

10.3 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 it freely available for testing at https://npcap.com. Licensee is encouraged to test it before executing this Agreement.

10.4 Warranty Disclaimer. THE WARRANTY SET FORTH BY SECTION 10.3 IS A LIMITED WARRANTY AND IS THE ONLY FUNCTIONAL OR OPERATIONAL WARRANTY MADE BY NSL. EXCEPT AS SPECIFICALLY PROVIDED BY SECTION 10.3, 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.

10.5 Warranties to Third Parties. Any

warranty granted by the Licensee to any end users shall be that of Licensee alone, and NSL shall not be liable to any such person on any cause of action or theory of recovery whatsoever. NSL shall not be liable to any third party as express or implied third-party beneficiary under this Agreement.

11. THIRD-PARTY CODE LICENSE

Npcap incorporates code from the libpcap and Winpcap third-party open-source libraries as well as a small open source header file named ieee80211_radiotap.h. All three are open source with BSD-style licenses that allow for unlimited use and royalty-free redistribution within other software (including commercial/proprietary software). Some include a warranty disclaimer (relating to the original authors) and require a small amount of acknowledgment text be added to the documentation of any software which includes them (including indirectly through Npcap). Sample acknowledgement text along with full license text of the 3rd party software and source details are all available from https://npcap.com/src/docs/Npcap-Third-Party-Open-Source.pdf.

Please note that all Npcap support, warranties and indemnification that we (NSL) offer include these 3rd party libraries along with all other Npcap source code. The warranty disclaimers in their license text just mean that the original library authors and maintainers aren't responsible for that support.

NSL is not the author of this 3rd party code and cannot waive or modify its copyright license. Therefore, Licensee must be fully responsible for complying with their license requirements (which are minimal) as well as complying with the terms of this Agreement itself.

12. 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. In the event of such an assignment by Licensee, Covered Product (Article 2) status and rights are not conferred to all products of the successor, but only to existing Covered Products and direct derivatives (such as new versions or editions of those products). These Covered Products may be rebranded and/or further developed by the successor.

13. INDEMNITY AND LIABILITY

13.1 Indemnification. Subject to Article 14 and the balance of this Article 13, as Licensee's sole and exclusive remedy for any breach of Section 10.2, or claim relating to infringement matters of any kind, NSL hereby agrees to indemnify Licensee against any settlement, judgment and reasonable defense costs resulting from a third party claim that Npcap, furnished and used within the scope of this Agreement, infringes any copyright, trademark, or trade secret provided that as conditions of indemnification each of the following is met: (a) NSL is given written notice of the claim within thirty (30) days of its receipt; (b) NSL is given immediate and complete control over the defense and/or settlement of the claim, and Licensee fully cooperates with NSL in such defense and/or settlement; (c) Licensee does not prejudice in any manner NSL's conduct of such claim; and (d) the alleged infringement is not based upon the use of Npcap in a manner prohibited under this Agreement, or in a manner for which Npcap was not designed; and (e) Licensee shall render to NSL a full accounting of any amounts for which indemnification is sought.

13.2 Indemnity Limitations. Notwithstanding Section 13.1, NSL shall have no liability for any claim of infringement based on (a) the use of a superseded or altered version

of Npcap if infringement would have been avoided by the use of a current or unaltered version of Npcap which NSL made available to Licensee, provided that NSL notified Licensee that superseded version contained a possible infringement, (b) the combination, operation or use of Npcap with software, hardware or other materials not furnished by NSL, if infringement would have been avoided but for such combination, operation, or use, or (c) Licensee violations of the 3rd party licenses disclosed in Article 11.

13.3   Modification   and   Replacement. Notwithstanding Section 13.1, if any third party asserts that Npcap infringes a third party copyright, trademark, or trade secret, or if NSL determines that claim of infringement by a third party is possible, it may, at its election and at no additional license fee to Licensee (a) obtain a license from such third party, (b) modify Npcap so that it is not infringing, or (c) refund the applicable License Fee payment.   Upon its election of any such alternative NSL shall incur no further indemnity to Licensee for any continued use by Licensee of Npcap in prior form.

14. LIMITATION OF LIABILITY

14.1 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.

14.2 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.

15. GENERAL

15.1 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.

15.2 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.

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

15.4 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.

15.5 Choice of law and disputes. This Agreement will be governed by and construed in accordance with the laws of the State of Washington, as if performed wholly within the state and without giving effect to the conflicts of law principles of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Washington, and the parties hereby consent to personal jurisdiction and venue therein.

15.6 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, if the recipient responds to acknowledge receipt.

15.7 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.

15.8 <u>Survival</u>. Sections 5.5 (Cessation of Use), 5.6 (End User License Agreements Unaffected); and Articles 7 (Proprietary Rights), 14 (Limitation of Liability), and 15 (General) shall survive the termination of this Agreement for any reason and continue for such time as they may remain applicable. Articles 10 (Warranty and Disclaimers) and 13 (Indemnity and Liability) shall survive for one (1) year following termination of the Agreement or termination of updates and support.

15.9 <u>Execution Period</u>. This Agreement requires execution by all parties within 90 days of the first signature. Failure to do so will render the Agreement void.

15.10 <u>Amendments</u>. 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.

15.11 <u>Entire Agreement</u>. 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.

15.12 <u>Counterparts and Electronic Signature</u>. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and all ancillary documents may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

The parties have duly executed this Agreement by the authorized signatures below.

Licensee	Nmap Software LLC ("**NSL**")
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Email: _____	Email: _____
Date: _____	Date: _____