

## **CodeNotary License Agreement**

This CodeNotary License Agreement ("**CLA**"), is by and between CodeNotary, Inc. ("**CodeNotary**")

and you (either an individual or a legal entity - the "Licensee"), as follows:

**WHEREAS** CodeNotary is the owner of CodeNotary Immutable Ledger Metrics and Logs (**Performance Metrics**), an application which supports the VMware administration and operations team in order to monitor and analyze VMware vSphere environments ("**Software**") which CodeNotary markets directly and indirectly to end users; and

**WHEREAS** Licensee desires to utilize the Software, and CodeNotary agrees to grant Licensee a limited license to use the Software on the terms and conditions as set forth herein.

**NOW, THEREFORE,** in consideration of the mutual undertakings herein contained, the parties hereby agree as follows:

- 1. BY ENTERING INTO AN AGREEMENT WITH CODENOTARY THAT INCORPORATES THESE TERMS BY REFERENCE, OR USING THE SOFTWARE, LICENSEE ACKNOWLEDGES THAT IT HAS READ, UNDERSTOOD, AND AGREES TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS AND ANY ADDITIONAL TERMS OR FUTURE MODIFICATIONS (COLLECTIVELY, THE "TERMS").
- 2. <u>Eligibility</u>. If Licensee is entering into this Agreement on behalf of an entity, organization, or company (a "Subscribing Organization"), Licensee represents and warrants that it has the authority to bind such Subscribing Organization and its Affiliates to these Terms and Licensee agrees to be bound by these Terms on behalf of such Subscribing Organization. In such case, "Licensee" in this Agreement means such Subscribing Organization, its Affiliates, and each end user of the Subscribing Organization. An "Affiliate" shall mean with respect to a Party, any entity which is controlled by such Party, which controls such Party, or which is under common control with such Party, where the term "control" means the ownership, directly or indirectly, of more than fifty percent (50%) of the shares entitled to vote for the election of directors.
- 3. Free Trial. If Licensee registers for a Free Trial on CodeNotary's website, CodeNotary will make all or part of the Software available to Licensee on a trial basis free of charge until the earlier of (a) the end of the Free Trial period for which Licensee registered, or (b) the date on which Licensee purchases a License hereunder. Additional terms and conditions may appear on the Free Trial registration web page within CodeNotary's website. Any such additional terms and conditions are incorporated into these CLAs by reference and are legally binding.

ANY DATA OR CUSTOMIZATIONS ENTERED INTO THE SOFTWARE BY LICENSEE DURING THE FREE TRIAL PERIOD MAY BE PERMANENTLY LOST UNLESS LICENSEE PURCHASES A LICENSE FOR THE SOFTWARE OR EXPORTS SUCH

DATA OR CUSTOMIZATIONS BEFORE THE END OF THE FREE TRIAL PERIOD. NOTWITHSTANDING SECTION 11 (DISCLAIMER OF WARRANTY), DURING THE FREE TRIAL PERIOD THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

PROPRIETARY INFORMATION OF CODENOTARY

Page 1 of 7



- 4. <u>Licensee Information</u>. Licensee shall provide CodeNotary, in manner instructed by CodeNotary, with information regarding Licensee and in particular information regarding user and password credentials ("Licensee Information"). Licensee hereby grants CodeNotary and CodeNotary hereby accepts a right to use Licensee Information in order to enable access of Licensee to the Software. CodeNotary shall not use Licensee Information for any other purpose. Licensee's provision of Licensee Information to CodeNotary is a prerequisite for use of the Software.
- 5. <u>License</u>. Subject to the terms and conditions herein, CodeNotary hereby grants Licensee, and Licensee hereby accepts, a personal, limited, non-transferable, non-exclusive, perpetual ("License") to use the software. The term "Software" may include, in CodeNotary's sole discretion services provided through use of the Software; revisions, corrections, modifications, enhancements, improvements and/or updates and upgrades thereof; and/or related documentation.
- 6. Reservation of Rights. Subject to the limited rights expressly granted hereunder, CodeNotary reserves all rights, title and interest in and to the Software and all related intellectual property rights. No rights are granted to Licensee hereunder other than as expressly set forth herein. Furthemore, CodeNotary Inc also owns all rights to the following trademarks: a) Opvizor b) Performance Analyzer, c) Log Analyzer, d) Snapwatcher.
- 7. <u>Restrictions</u>. Licensee must ensure that any permitted copy of the Software that it makes contains the same copyright and other proprietary notices that appear on or in the Software. Licensee shall not use the Software for any other purpose. Without derogating from the foregoing, Licensee shall not:
  - a. modify, merge or sub-license the Software;
  - b. sell, license (or sub-license), lease, assign, transfer, pledge, or share its rights under this License with/to anyone else;
  - c. create derivative works based on the Software or modify, disassemble, decompile, reverse engineer, revise or enhance the Software or attempt to discover the Software's source code;
  - d. access the Software in order to
    - i. build a competitive product or service, or
    - ii. copy any features, functions, or graphics of the Software;
  - e. enable or allow others to use the Software using the Licensee Information;
  - f. circumvent technological measures intended to control access to the Software or to prevent certain uses of the Software or develop, distribute, or use with the Software, products that circumvent such technological measures.;
  - g. use the Software to share content or engage in behavior that:
    - i. violates anyone's intellectual property right, including copyright, moral rights, trademark, trade dress, patent, trade secret, unfair competition, right of privacy, right of publicity, and any other proprietary rights ("Intellectual")

## Property Rights") or PROPRIETARY INFORMATION OF CODENOTARY

Page 2 of 7



- ii. is unlawful, harmful, threatening, abusive, tortious, defamatory, libelous, vulgar, lewd, profane, invasive of another's privacy, or hateful; or
- h. violate applicable law.
- 8. <u>License Fee</u>. Licensee agrees to pay all fees specified herein or in an applicable purchase order. Except as otherwise specified herein or in a purchase order, (i) fees are quoted and payable in United States dollars (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (vi) CodeNotary may change the Support Fees upon notice to Licensee as set forth below.
  - a. Licensee agrees to pay a one-time License Fee.
  - b. After the first twelve (12) month period of maintenance and support that is included in the base license, if Licensee wishes to obtain maintenance, Licensee shall pay an annual Support Fee. In the event that such Support Fee is not paid, CodeNotary shall have no obligation to provide maintenance for the Software for the period following the coverage of such Support Fee. The pricing during any such annual term shall be the same as that during the prior term unless CodeNotary has given Licensee written notice of a pricing increase at least thirty (30) days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed seven percent (7%) of the pricing for the relevant Support Fees in the immediately prior annual term, unless the pricing in such prior term was designated as promotional or one-time.
  - c. Additional features not originally included in Software are not covered unless the Licensee has paid the annual Support Fee.
  - d. CodeNotary will invoice Licensee for the License Fee and any Support Fees in advance and, unless otherwise stated in a purchase order, invoiced charges are due 30 days from the invoice date.
  - e. The Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Licensee is responsible for paying all Taxes associated with its purchases hereunder. If CodeNotary has the legal obligation to pay or collect Taxes for which Licensee is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Licensee, unless Licensee provides CodeNotary with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, CodeNotary is solely responsible for taxes assessable against it based on its income, property and employees.
- 9. <u>Updates and Support</u>. Licensee hereby acknowledges and understands that:
  - a. The Software must be installed in a VMware vSphere environment. Software updates and support will be provided in the event that Licensee has paid the applicable Support Fees (or is still within the included first

year of maintenance and support). Software updates will be provided online via the manual website <a href="https://manual.codenotary.com">https://manual.codenotary.com</a>.

## PROPRIETARY INFORMATION OF CODENOTARY

Page 3 of 7



Support will be provided via e-mail to <a href="mailto:support@codenotary.com">support@codenotary.com</a> or chat on www.codenotary.com.

- b. The Software may require you to take certain steps to activate your Software. Failure to activate or register the Software, or a determination by CodeNotary of fraudulent or unauthorized use of the Software may result in reduced functionality or inoperability of the Software.
- 10. Feedback. CodeNotary shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Software any suggestions, enhancement requests, recommendations or other feedback provided by Licensee, including Users, relating to the operation of the Software. CodeNotary is under no obligation to make any changes or modifications to the Software suggested by Licensee.
- 11. <u>DISCLAIMER OF WARRANTY</u>. THE SOFTWARE AND SUPPORT SERVICES ARE PROVIDED "AS-

IS". TO THE MAXIMUM EXTENT PERMITTED BY LAW, CODENOTARY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. CODENOTARY MAKES NO WARRANTY THAT THE SOFTWARE WILL MEET

LICENSEE'S REQUIREMENTS OR NEEDS OR THAT THE SOFTWARE WILL BE FREE FROM ERRORS,

NOR DOES CODENOTARY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SOFTWARE OR THE ACCURACY OF ANY OTHER INFORMATION OBTAINED THROUGH THE SOFTWARE OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. The entire risk as to the quality and performance of the Software is borne by Licensee and Licensee shall be responsible for verifying any output resulting from use of the Software if Licensee intends to use or rely on such output. This disclaimer of warranty constitutes an essential part of this CLA.

- 12. No Liability for Consequential or Related Damages. Without derogating from the above, in no event shall CodeNotary or its distributors be liable for any indirect, special, incidental, consequential, cover or punitive damages (including, without limitation, damages for loss of business profits, business interruption, loss of business information, damages to campaign management, or other pecuniary loss), however caused, whether in contract, tort, or under any other theory of liability, arising out of the use of or inability to use the Software even if CodeNotary has been advised of the possibility of such damages.
- 13. <u>Limitation of Liability</u>. IN THE EVENT THAT, NOTWITHSTANDING THE TERMS OF THIS CLA,

CODENOTARY IS FOUND LIABLE FOR DAMAGES BASED ON ANY DEFECT OR NONCONFORMITY OF ITS SOFTWARE, ITS TOTAL LIABILITY FOR ITS SOFTWARE SHALL NOT EXCEED THE LICENSE FEE PAID TO CODENOTARY FOR LICENSING SUCH DEFECTIVE SOFTWARE.

14. <u>Indemnification</u>. Licensee will indemnify CodeNotary and its subsidiaries, affiliates, officers, agents, employees, partners, and licensors from any claim, demand, loss, or damages, including reasonable attorneys' fees, arising out of or related to Licensee's use of the Software in violation of these terms.

PROPRIETARY INFORMATION OF CODENOTARY

Page 4 of 7



- 15.<u>Term and Termination</u>. This CLA shall commence on the Effective Date and shall remain in effect perpetually unless otherwise terminated pursuant to this Section.
  - a. <u>Termination by Licensee</u>. Licensee may stop using the Software at any time. Termination of your account does not relieve you of any obligation to pay any outstanding Fees. Upon termination or expiration of this CLA, the license granted herein shall be immediately terminated and Licensee shall cease using the Software and return to CodeNotary (or delete) any and all information related thereto. CodeNotary shall return to Licensee (or delete) all of Licensee Information.
  - b. <u>Termination by CodeNotary</u>. If CodeNotary terminates these terms for reasons other than for cause, then CodeNotary will make reasonable effort to notify you at least 120 days prior to termination via the address provided to CodeNotary. All unearned maintenance and support fees at the termination date will be refunded based on the unexpired portion of the annual term. Unless otherwise stated herein, CodeNotary may at any time terminate these terms if:
    - (i) Licensee breaches any provision of these terms (or acts in a manner that clearly shows it does not intend to, or is unable to, comply with these terms);
    - (ii) Licensee fails to make the timely payment of Fees for the Software or the Support Fees, if any;
    - (iii)CodeNotary is required to do so by law (for example, where the provision of the support services or Software to Licensee is, or becomes, unlawful); or
    - (iv) CodeNotary elects to discontinue the support services or Software, in whole or in part.
  - c. <u>Survival</u>. Upon expiration or termination of these terms, any perpetual licenses Licensee has granted, Licensee's indemnification obligations, CodeNotary's warranty disclaimers or limitations of liabilities, and dispute resolution provisions stated in these terms will survive. Upon the expiration or termination of the Services, some or all of the Software may cease to operate without prior notice.
- 16. Confidentiality. The license to use the Software herein is granted on a confidential basis. All designs, engineering details, and other technical, financial, marketing, commercial and other information pertaining to the Software, this CLA and/or CodeNotary's business activities shall be considered "Confidential Information" of CodeNotary. Licensee agrees to use CodeNotary's Confidential Information only in connection with the license granted herein, to keep such Confidential Information confidential, and not to reproduce, copy, or disclose such Confidential Information to any third party, except with CodeNotary's prior written consent.
- 17. <u>Governing Law & Jurisdiction</u>. This CLA is governed only by the laws of the State of Texas, and shall have sole jurisdiction over any conflict or dispute arising out of, or in connection to, this CLA.

## PROPRIETARY INFORMATION OF CODENOTARY

Page 5 of 7



- 18. Entire Agreement. This CLA supersedes any previous terms and conditions and any other understandings, oral or written, including such terms preprinted on any of Licensee's prior purchase orders. In any event of conflict between this CLA and any previous agreements or understandings, this CLA shall prevail.
- 19. Manner of Giving Notice. Except as otherwise specified herein, all notices, permissions and approvals shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to Licensee shall be addressed to the registered email address of the Licensee. Notices to CodeNotary shall be addressed to: support@CodeNotary.com.
- 20. <u>Waiver of Jury Trial</u>. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to these CLAs.
- 21. <u>Injunctive Relief</u>. Notwithstanding anything to the contrary herein, in the event of Licensee or other's unauthorized access to or use of the Software in violation of these terms, Licensee agrees that CodeNotary is entitled to apply for injunctive remedies in addition to any other remedies available hereunder.
- 22. <u>Relationship of the Parties</u>. The parties are independent contractors. These CLAs do not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 23. <u>Waiver and Cumulative Remedies</u>. No failure or delay by either party in exercising any right under these CLAs shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 24. <u>Severability</u>. If any provision of these CLAs is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of these CLAs shall remain in effect.
- 25. <u>Assignment</u>. Licensee may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of CodeNotary (not to be unreasonably withheld).
- 26.<u>Audit</u>. If Licensee is a business, company, or organization, then CodeNotary may, no more than once every 12 months, upon seven 7 days' prior notice to Licensee, appoint an independent third party auditor who is obliged to maintain confidentiality to inspect

Licensee's records, systems, and facilities to verify that Licensee's installation and use of any and all Software is in conformity with its valid licenses from CodeNotary. Additionally,

PROPRIETARY INFORMATION OF CODENOTARY

Page 6 of 7



Licensee will provide CodeNotary with all records and information requested by CodeNotary in order to verify that its installation and use of any and all Software is in conformity with Licensee's valid licenses from CodeNotary within 30 days of CodeNotary's request. If the verification discloses a shortfall in licenses for the Software, Licensee will immediately acquire any necessary licenses, subscriptions, and any applicable back maintenance and support. If the underpaid fees exceed 5% of the value of the payable license fees, then Licensee will also pay for CodeNotary's reasonable cost of conducting the verification.