

Ninox General Terms and Conditions (EULA)

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Introduction

- (1) This EULA is the contractual basis between you as customer (hereinafter referred to as **“Customer”** or **“You”**) and us, Ninox Software GmbH, Monbijouplatz 5, 10178 Berlin, Germany (hereinafter referred to as **“Ninox”**, **“We”** or **“Us”**), as provider of the software Ninox Database, which is provided as an application and web application (hereinafter **“Software”**) and the access to the Software. Subject to future changes according to the provisions of this EULA, the version of the EULA valid at the time of conclusion of contract shall apply.
- (2) The EULA applies to the entire business relationship between Ninox and You with respect to the use of the Software. General terms and conditions that conflict with or deviate from the provisions of this EULA shall not apply unless Ninox expressly agrees to their application in writing. The present EULA shall also apply exclusively if Ninox without reservation performs the service in knowledge of terms and conditions that conflict with or deviate from the present EULA.
- (3) Different terms and conditions apply depending on whether You order our Software as a consumer or as an entrepreneur. If You order our Software as a consumer, the relevant terms and conditions are to be taken from the general part (A) in combination with part (B). If You should order our Software as an entrepreneur, the general part (A)

in combination with part (C), which contains specific regulations for entrepreneurs, shall apply.

Part (A) – General Provisions

1. Registration; Test Period and Conclusion of the License Agreement

- (1) In order to use the Software, You must register by providing your email address and agree to this EULA and the Privacy Policy.
- (2) Upon completion of the registration process, you will receive a confirmation email from us. By virtue of this confirmation email the agreement on the use of the Software comes into force and effect (the “**License Agreement**”). The License Agreement is concluded in German and/or English.
- (3) You are entitled to use the Software free of charge for test purposes for an initial period of 30 (thirty) days (“**Test Period**”). During this Test Period, You may stop using the Software at any time. Ninox is entitled to block or restrict the customer account at any time during the Test Period without giving reasons. Your right to use the Software free of charge ends automatically at the end of the Test Period. We are entitled to delete all data entered into the Software after expiry of the Test Period; it is then no longer possible to restore the data. This does not apply if You enter into a fee-based License Agreement (as defined below) before the end of the Test Period.
- (4) The agreement for the paid use of the Software between Us and You is concluded when You, either during or after the lapse of the Test Period make a binding offer to conclude such an agreement on the paid use via our website and the process provided there and we accept your offer by means of a confirmation email. We expressly reserve the right to reject your offer without giving reasons. In addition to the Customer's order data, the confirmation email also contains the invoice and this EULA as (printable) attachments.
- (5) Upon successful registration, You will receive a Customer account. To register and authenticate your Customer account, You must enter your email address and a password (“**Password**” or “**Access Data**”). If the License Agreement includes further Users (see Clause 2 (1)), this shall apply accordingly to each User.
- (6) You are obliged to treat your Password confidentially and to take the necessary care to ensure that third parties do not have access to it. You are expressly prohibited from disclosing your Access Data to any third party. You are solely responsible for ensuring that your Access Data is not used unlawfully by third parties. As soon as You suspect that your access data has been lost, stolen or it appears that your Customer account has been used by third parties, You are obliged to inform Us immediately hereof and to change your Password.
- (7) While using the Software as a web application, the User is in general permanently logged in until the User actively logs out by means of logout or the corresponding browser cookies are deleted. You are aware that there is a basic risk that third parties can access your user account and all personal data stored therein, provided that the third parties can access the terminal device You have logged in. You are also aware that a logged-in

terminal device may exchange data in the background even without its active use, which may use and possibly affect your data volume. We therefore recommend that you actively log out after the end of any use.

2. Service specification and Rights of use

- (1) The type and scope of the services available to You can be found at any time in the descriptions on our website and in the Software. The essential service component of the software is the creation, administration and maintenance of databases. Among other things, You can create databases, enter and evaluate data, export them to other formats and save them on your terminal device. The right to authorize third parties to use the databases (each person for whom an user account has been created at the invitation of the Customer shall be referred to in this EULA as "**User**") as well as the scope of the storage space and the number of databases is limited to the scope selected upon conclusion of the License Agreement. The Customer shall procure that all Users registered via his License Agreement fully comply with the provisions of this EULA. The Customer indemnifies Ninox against all damages, claims and expenses (including reasonable attorney's fees) incurred by Ninox, our employees or bodies due to a violation of this EULA by You or the Users registered via your License Agreement.
- (2) Ninox is entitled to change the Software and its functionalities. This applies in particular, but not exclusively, if the change is necessary due to
 - a necessary adaptation to a new legal situation or jurisdiction,
 - changed technical conditions (new browser versions or technical standards),
 - the protection of system security, or
 - the further development of the software.

If the change of the Software leads to a significant impairment of the Software for the Customer, the Customer is entitled to terminate the License Agreement extraordinarily within 30 (thirty) days after notification by Ninox (via the website or email) about the change with a notice period of one month to the end of the month.

- (3) For the product *Ninox Cloud/Private Cloud* the following shall apply: The Software is operated as a SaaS or cloud solution. The Customer is enabled to use the Software stored and running on the servers of Ninox or a service provider commissioned by Ninox via an Internet connection and by means of a browser for his own purposes during the term of this contract. The Software is made available for use at the router exit of the data center in which the server with the Software is located ("**Transfer Point**"). The Software, the computing power required for use and the required storage and data processing space are provided by Ninox. Ninox does not owe the establishment and maintenance of the data connection between the IT systems of the Customer and the Delivery Point. It is the Customer's responsibility to ensure a sufficient connection to the Internet.
- (4) For the product *OnPrem* the following shall apply: The Customer receives an installation link from Ninox for the installation of the Software on the IT system of the Customer. The Customer himself has to ensure that his IT system meets the respective requirements necessary for the use of the Software. The installation of the Software shall be carried out by the Customer. The access by the User takes place on the IT system of the Customer.

- (5) Upon conclusion of the License Agreement and successful registration, You shall receive the non-exclusive, unlimited in territory, non-transferable and non sublicensable right to use the Software for the creation, administration and maintenance of databases for your own purposes. The right of use includes the use of the Software (i) on a stand-alone basis and/or (ii) in and as part of a solution that combines the Software with one or more third-party product(s) or service(s) ("**Third Party Solutions**"). Any uses beyond the foregoing require Our express written consent. This applies in particular to the duplication, distribution, processing or sublicensing of the Software.
- (6) Insofar as We also provide the Software free of charge in addition to offers subject to a charge (such as, in particular, within a Test Period), we reserve the right to make unannounced modifications and/or to stop providing any services at any time as well as to provide the services in future only against a separate fee. Furthermore, we do not assume any responsibility for the Software offered free of charge or parts thereof with regard to their completeness and/or correctness, unless the respective faults were caused by intent and gross negligence or have been fraudulently concealed.
- (7) We strive to ensure a high availability of the Software at all times. Nevertheless, it may be necessary to temporarily suspend the availability of the Software for maintenance purposes. If possible, we will inform You in good time in advance about maintenance time windows and arrange them in such a way that the impairments in the use of the software are kept to a minimum.
- (8) The availability of the Software shall be 99.5% on a monthly average. The calendar month shall be decisive. Excluded from this are times in which the Software cannot be accessed due to technical or other problems which are not within the sphere of influence of Ninox (force majeure, fault of third parties, etc.). Also excluded are times due to maintenance work that has been announced with a notice period of at least 48 (forty-eight) hours. Scheduled maintenance work does not take place on weekdays Monday to Friday, between 7:00 am and 7:00 pm. The contracting parties agree that the time zone to be observed shall be UTC+1h, namely Central European Time (CET) and, in the summer half-year, Central European Summer Time (CEST). However, maintenance work may not affect or interrupt availability for more than 12 (twelve) hours in succession.
- (9) Adjustments, changes and additions to the Software, as well as measures that serve to determine and remedy malfunctions, will only lead to temporary interruptions or impairments of the accessibility of the Software if this is absolutely necessary for technical reasons.
- (10) The monitoring of the basic functions of the Software is carried out daily. The maintenance of the Software is basically warranted from Monday to Friday from 9:00 am to 06:00 pm. In case of serious errors, which lead to the fact that the use of the Software is no longer possible or is seriously limited, the maintenance is carried out within 3 (three) hours from the time of knowledge or information by the Customer about the existence of the error. We will notify You of the maintenance work immediately and perform it according to the technical conditions in the shortest possible time. If it is not possible to correct the error within 12 (twelve) hours, We will notify You by email within 24 (twenty-four) hours, stating the reasons and the estimated time for the correction of the error.

3. Rights and Obligations

- (1) You are obligated to provide correct and complete information during registration and to inform Ninox immediately of any changes to your registration data. Users are not entitled to make their User account available to a third party or to use the Software for purposes other than intended.
- (2) You are solely responsible for the content You create within the Software and are obligated to back up the content on a regular basis. You must ensure that the content does not infringe the rights of third parties. In particular, You are responsible for ensuring that your content complies with the provisions of competition law, labeling law, name law, copyright law and all other applicable and relevant laws. Furthermore, You undertake not to post any content that
 - contain illegal or immoral material and/or content, in particular information that incites hatred, incites to commit criminal acts or glorifies or trivializes violence, is pornographic or sexually offensive, is likely to seriously endanger the morals of children or adolescents, contains pornographic or obscene material, or
 - are capable of denying, insulting, threatening, defaming or violating the personal rights of others.
- (3) You are not entitled to reverse engineer, decompile, disassemble, duplicate or use any part of the Software to create a separate application.
- (4) The Customer further shall not (i) knowingly introduce viruses, Trojan horses, worms, logic bombs or other material that is malicious or technologically harmful to the Software, or (ii) attack the Software via a denial of service attack or a distributed denial of service attack. The Customer shall not attempt to gain unauthorized access to the Software, the server on which the Software is stored, or any server, computer or database connected to the Software.
- (5) The Customer is solely responsible for all content and processed data used by him. Ninox does not check the contents used by the Customer with the Software.
- (6) The Customer shall indemnify Ninox against all claims, costs, expenses, actions or proceedings, including reasonable attorneys' fees, asserted by third parties against Ninox (or any of its directors, employees or agents) for use of the Software and/or in connection with a Third Party Solution in violation of law and/or this Agreement, unless the claim in question is based on (i) a defect in the Software or (ii) a breach of Ninox's obligations under this EULA or the Customer Agreement. Each party shall promptly notify the other party in writing upon becoming aware of any such claim. The parties shall cooperate in the defense of any such claim and shall provide each other with any information reasonably requested by the other party in order to defend and/or settle such claim.

4. Prices / Payment Terms / Credit assessment

- (1) The usage fees to be paid for the use of the Software are stated on our website and/or on our further price lists.
- (2) Different payment options are available for the payment of the usage fees. The different payment options will be displayed to You during the ordering process, from which You

can choose one. You can change the payment method stored in your Customer account at any time. If our cooperation is required to initiate the payment (e.g. transmission of data to the credit card company), We will only do so after the conclusion of the contract. Your payment data will be transmitted to the corresponding payment service provider depending on the payment option You have selected. Further, We refer to our data protection declaration, which is available in printable form on our website at any time via the "Privacy Policy" button.

- (3) Payment of the usage fees for the First Subscription Period (see below Clause 5) shall be due immediately upon conclusion of the contract. Usage fees for Further Subscription Periods are due at the beginning of each Further Subscription Period.
- (4) Ninox is entitled to adjust the usage fees for Further Subscription Periods. Ninox will notify the Customer of such an adjustment by email no later than 30 (thirty) days prior to the beginning of the Further Subscription Period in which the adjusted usage fees apply. In the event of an increase in the usage fees, the Customer is in each case entitled to terminate the contract at the end of the Further Subscription Period running at the time of receipt of the notification of the respective increase. If no notice of termination is given, the respective increased usage fee shall apply.

5. Term and Termination

- (1) The terms of the License Agreement shall commence upon receipt of the confirmation email at the latest upon activation of the license. The initial term shall be 12 (twelve) months ("**First Subscription Period**"); in case the Customer makes use of the Test Period, the First Subscription Period shall commence with the lapse/termination of the Test Period. Thereafter, the term shall be automatically renewed for further terms of 12 (twelve) months each ("**Further Subscription Period(s)**"), unless the License Agreement is terminated in advance with a notice period of 30 (thirty) days to the end of the respective Subscription Period.
- (2) The termination of the License Agreement, including the Test Period (i.e. the free version) can be made in text form (via email: to support@ninox.com). However, both Ninox and the Customer are also entitled to terminate the License Agreement in writing. In the event of termination by the Customer, the receipt of the notice of termination by Ninox is decisive for the expiry of the deadline.
- (3) The right to extraordinary termination remains unaffected. In particular, We are entitled to terminate the License Agreement with immediate effect if You or a User materially violate the provisions of this EULA.
- (4) Upon termination of the License Agreement, all content that was stored by You in the course of using the Software can be irretrievably deleted by Us. You will no longer have access to this content after the termination of the License Agreement.

6. Suspension of Access

Ninox is entitled to suspend access to the Software if:

- the Customer or a User violates the provisions of this EULA;
- the Software is used by a User in violation of applicable law;
- or
- a usage fee is not paid in full by the due date.

7. Liability

- (1) Ninox shall be liable without limitation for damages resulting from injury to life, body or health. Ninox is only liable for other damages if these are based on an intentional or grossly negligent breach of duty by Ninox, its legal representatives, employees or vicarious agents.
- (2) Ninox is only liable for slight negligence if one of the material contractual obligations is violated by Ninox, its legal representatives, employees or vicarious agents. Ninox shall only be liable for foreseeable damage, the occurrence of which must typically be expected. Material contractual obligations are those obligations which form the basis of the License Agreement, which were decisive for the conclusion of the contract, the fulfilment of which enabled the proper execution of the contract in the first place and on the observance of which the Customer may regularly rely. In addition, Ninox is liable without limitation for damages covered by liability under mandatory statutory provisions, such as the Product Liability Act, or covered by a guarantee.
- (3) Any strict liability for damages for defects that were already present at the time the contract was concluded is excluded. Any right of self-remedy of the Customer in case of defects is excluded.
- (4) The above provisions on limitation of liability also apply in favor of the employees, legal representatives and vicarious agents of Ninox.

8. Data Processing

With regard to the collection, processing and use of personal data, We refer to our privacy policy, which is available in printable form on our website at any time via the button "Privacy Policy".

9. Storage Possibility and Access to the Contract Text

- (1) You can view this EULA on our website at <https://ninox.com/en/terms>. You can further print or save this document by using the usual function of your internet utility. You can also download and archive this document as a PDF file at [Ninox Terms and Conditions \(EULA\)](#) (PDF).
- (2) You can additionally archive the data of your order of the Software by waiting for the automatic order confirmation, which we will send to you by email after completion of your order to the email address You have indicated. This order confirmation email contains the data of your order and can be printed or saved with your email program.

- (3) We will also provide You with a confirmation of the License Agreement in the order confirmation email, in which the content of the contract is reproduced, so that You can save the text of the contract and / or take it for your records. Further legal information obligations that we have to fulfill towards You are not affected by this provision.
- (4) The text of the License Agreement will be stored by Us in compliance with data protection.

10. Copyright and Intellectual Property Rights

All image rights, copyrights and other intellectual property rights to the content of our website and our Software (including texts, images, graphics, videos, trademarks, logos and other corporate identifiers) are owned by Us or our partners. Use without our prior express consent is not permitted.

11. Confidentiality

- (1) The parties are obliged to treat as confidential all confidential information of which they become aware in connection with the License Agreement and which is not public knowledge, regardless of the form in which it is communicated (paper, electronic form, verbal, etc.).
- (2) In deviation from subsection (1), confidential information may be made accessible to
 - members of the governing bodies and employees of the parties;
 - authorities and courts on the basis of legal obligations, court decisions or official orders if the party affected by the disclosure—if and to the extent legally permissible—is immediately informed of such a request for disclosure prior to disclosure. The parties shall, to the extent legally permissible and practicable, promptly coordinate steps to avoid or limit disclosure and implement such steps, provided that this does not result in serious disadvantages to the parties.
- (3) The obligation to maintain confidentiality shall not apply to information that is already lawfully known to the parties prior to the conclusion of the License Agreement or subsequently becomes known without a breach of a confidentiality obligation.

12. Miscellaneous

- (1) This EULA as well as all license agreements concluded between Ninox and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany. The provisions of international private law and the UN Convention on Contracts for the International Sale of Goods shall not apply.
- (2) We are entitled to amend this EULA at any time. In the event of a change, we will notify You of this in writing or by email. Your consent to the changes shall be deemed granted unless You object to the changes in writing within 30 (thirty) days after receipt of the change notification. Together with the notification of change, we will again expressly draw your attention to this consequence of a failure to object. In the event that You refuse your consent to the changes, (1) the contractual relationship will continue under the previous conditions until the expiry of the respective Subscription Period of the License Agreement and will then end automatically without requiring a termination by Ninox or the Customer or (2) it can—in the case of a Test Phase—be terminated by us

with immediate effect. However, a renewed use of the Software will subsequently only be offered to You at the respective current conditions.

- (3) We are entitled to transfer all rights and obligations falling within the scope of this EULA in whole or in part to a third party with discharging effect. You hereby already agree to such a transfer of contract. In the event that We make use of this transfer option, You shall be entitled to terminate your contract without notice.
- (4) All amendments or supplements to the EULA require text form to be effective. This shall also apply to the waiver of this provision.
- (5) You are not entitled to assign the License Agreement concluded with Us or parts thereof to third parties without our written consent. Your ability to set off claims for defects and other claims arising from the same contractual relationship against our claim for payment of the usage fee(s) is not limited by this EULA; however, You may only set off claims arising from other legal relationships against our claim for payment of the usage fee(s) if your claims are undisputed, we have acknowledged them or they have been legally established. As a Customer, You may only exercise a right of retention if your counterclaim is based on the same contract.
- (6) If any provision of the EULA is invalid (e.g. illegal or otherwise unenforceable), such invalidity shall not affect the validity of the remaining provisions.

Part (B) – Special Provisions for Consumers

- (1) Consumer. The provisions of this Part (B) apply in conjunction with the provisions of Part (A) - general part of this EULA if You are a consumer. You are a consumer if the purpose of the conclusion of the License Agreement by You cannot be predominantly attributed to your commercial or independent professional activity (Sec. 13 German Civil Code - BGB)
- (2) Minimum Age of 18 Years. We do not offer the software to minors. If You are under 18 years of age, the cooperation of your legal guardian(s) is required for the conclusion of the License Agreement.
- (3) Withdrawal Instructions. As a consumer, You have a statutory right of Withdrawal when concluding a distance selling transaction, about which We inform You in accordance with the statutory model below.

The right of Withdrawal expires in the case of a contract for the supply of digital content not on a tangible medium if We have begun performance of the contract after You as a consumer (1) have expressly agreed that We may begin performance of the contract before the expiry of the Withdrawal period and (2) have confirmed to Us your knowledge that, by giving your consent, You lose your right of Withdrawal upon commencement of performance of the contract.

Withdrawal Instructions

Right of Withdrawal

You have the right to withdraw this contract within 14 (fourteen) days without giving any reason. The revocation period is 14 (fourteen) days from the day of the conclusion of the License Agreement.

To exercise your right of Withdrawal, You must inform Us (Ninox Software GmbH, Monbijouplatz 5, 10178 Berlin, Germany) of your decision to withdraw this contract by means of a clear declaration (e.g. a letter sent by post or email). For this purpose, You may use the enclosed sample revocation form, which, however, is not mandatory.

To comply with the Withdrawal period, it is sufficient that You send the notice of exercise of the right of Withdrawal before the expiry of the Withdrawal period.

Consequences of the Withdrawal

If You withdraw this contract, We shall reimburse all payments We have received from You, including delivery costs (with the exception of additional costs resulting from the fact that You have chosen a type of delivery other than the most favorable standard delivery offered by Us), without undue delay and no later than within 14 (fourteen) days from the day on which We received the notification of your revocation of this contract. For this repayment, We will use the same means of payment that You used for the original transaction, unless expressly agreed otherwise with you; in no case will You be charged for this repayment.

Sample - Withdrawal form

[complete and return this form only if You wish to withdraw from the contract]

To

Ninox Software GmbH
Monbijouplatz 5
10178 Berlin
Germany

I hereby give notice that I withdraw from my contract of provision of the following service:

Ordered on:

Received on:

First name, last name:

Address:

Date, Signature:

- (4) Online Dispute Resolution Platform. The European Commission provides an Online Dispute Resolution Platform, which is available at: <https://ec.europa.eu/odr>. We are not obliged and not willing to participate in dispute resolution proceedings before a consumer arbitration board.
- (5) Applicable Law. In the case of consumers within the European Union, the law of the consumer's place of residence may also be applicable in whole or in part—in deviation from the provisions in Part (A) Clause 10 (1) of this EULA— insofar as it concerns mandatory consumer law provisions.
- (6) Place of Jurisdiction. If You do not have a general place of jurisdiction in Germany or in another EU member state or if You have moved your permanent place of residence to a country outside the EU after these GTC have become effective or if your place of residence or usual place of abode is not known at the time of filing an action, the exclusive place of jurisdiction for all disputes arising from this contract is the place of business of Ninox.

Part (C) – Special Provisions for Entrepreneur

- (1) Entrepreneur. The provisions of this Part (C) apply in conjunction with the provisions of Part (A) - general part of this EULA if You are an entrepreneur. You are an entrepreneur for the purposes of this contract, if You act in the exercise of your commercial or independent professional activity with respect to the conclusion of the License Agreement (Sec. 14 German Civil Code - BGB).
- (2) Exclusive place of jurisdiction. The exclusive place of jurisdiction for all disputes arising from or in connection with this EULA and/or the License Agreement is the registered office of Ninox.
- (3) Place of performance. Unless otherwise stated in the order confirmation, the place of performance shall be the registered office of Ninox.

Ninox Software GmbH

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Internet: <https://ninox.com>