

## **XMLWizard**

### **Terms of USE**

This Website ("**Site**") is XML Wizard official promotional site operated by NASCA ("**NASCA**", "**we**", "**our**", "**us**") and together with the services provided by NASCA, as defined on our Privacy and Cookie Policy (<https://www.xmlwizard.com/>) (hence: the "**Service**").

THESE TERMS OF USE (THIS "**Agreement**") CONSTITUTE A BINDING CONTRACT BETWEEN YOU AND NASCA AND BY USING THE SITE (AS DEFINED BELOW) AND SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE FOLLOWING (THE DATE OF SUCH OCCURRENCE BEING THE "**Effective Date**"):

- (i) THIS AGREEMENT AND
- (ii) OTHER SUPPLEMENTAL TERMS AND POLICIES REFERENCED HEREIN, WHICH ARE HEREBY INCORPORATED INTO, AND MADE A PART OF, THIS AGREEMENT BY REFERENCE.

IF YOU DO NOT AGREE WITH ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT USE THE SITE.

Capitalized terms which are not defined herein, shall have the meaning ascribed to them in our Privacy and Cookie Policy at (<https://www.xmlwizard.com/>), which this Agreement is incorporated thereto by reference.

This Agreement represents the entire agreement between NASCA and the users / business partners / third parties' providers (hence: "**user**" "**you**") in relation to the subject matter, and supersedes all prior agreements, understandings, and prior and contemporaneous statements between NASCA and its users / business partners / third parties' providers on this subject.

You acknowledge and agree that by entering into this Agreement you have not relied on any representation or statement (whether negligent or naive) that is not expressly written in this Agreement; For example, statements and explanations of any FAQs or other marketing material on the Site are for convenience only and are not a binding part of this Agreement.

The language of this Agreement is expressly agreed to be English. By entering into the Agreement, you hereby irrevocably waive, to the maximum extent legally permitted, any Law

(defined below) applicable to you requiring that the Agreement be localized to meet your language, as well as any other localization requirements.

**You also acknowledge that, except to the extent expressly provided otherwise in this Agreement, the subject matter of this Agreement does not include the sale, licensing, access or use of any NASCA Monitor and/or of the Service.**

## **MINORS**

By using our Services, you state that you are of legal age in your jurisdiction to create a binding contract, but in any case, at least sixteen (16) years old; that the personal information you provide to us belongs to data subjects that are at least sixteen (16) years old. We do not knowingly collect, maintain, handle or use personal identifiable information from data subjects under the age of sixteen (16) old.

## **CHANGE OF THE TERMS OF USE**

NASCA reserves the right, in its sole discretion, to make changes to this Agreement at any time by posting the changed Agreement at the Site. Such changes will be effective ten (10) days after such posting, and your continued use of the Site or Service shall be deemed your agreement to such changes. In such cases, we will also update the "*Last modified date*" set forth above. Please check the above webpage regularly for any changes.

At NASCA sole discretion, any NASCA obligation hereunder may be performed (in whole or in part), and any NASCA right may be exercised (in whole or in part), by an NASCA Affiliate.

## **PRIVACY AND COOKIES**

For more information please read our Privacy and Cookie Policy (<https://www.xmlwizard.com/>).

## **DATA PROTECTION**

To help protect the privacy of personal data and personally identifiable information you transmit using our Service, we maintain technical and organizational measures and safeguards, such as physical, technical, and administrative security measures. We restrict access to your personal data to employees and services providers who need to know this information in order to provide you with benefits or services. In addition, we train our employees on the importance of confidentiality and the privacy and security of your information. We commit to take appropriate disciplinary measures against our employees and service providers in order to maintain the privacy of your information.

Furthermore, NASCA is engaged solely with processors and third parties providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that processing will meet the GDPR and other relevant regulation's requirements; ensure the protection of the rights of the data subject; declare compliance to the GDPR, EU-U.S. Privacy Shield Framework, the Swiss-U.S. Privacy Shield Framework, Israel Data Protection Act, or any other relevant regulation.

## **LICENSE AND LICENSE RESTRICTIONS**

Subject to the terms and conditions of this Agreement, NASCA grants you a limited, non-exclusive, non-assignable, non-sublicensable, revocable license, to use the Site (in executable code version) on one or more compatible Devices that you own or control and use the Site solely for your own personal and non-commercial use (the "License"). Use of the Site must be in accordance with the Documentation.

You shall not (and shall not permit or encourage any third party to) do any of the following: (a) copy or reproduce the Service; (b) sell, assign, lease, lend, rent, distribute, or make available the Service to any third party, or otherwise use the Service in a time-sharing, outsourcing, or service bureau environment; (c) modify, alter, adapt, arrange, translate, decompile, disassemble, reverse engineer, decrypt, or otherwise attempt to discover the source code or non-literal aspects (such as the underlying ideas, algorithms, structure, sequence, organization, and interfaces) of the Service; (d) remove, alter, or conceal, in whole or in part, any copyright, trademark, or other proprietary rights notice or legend displayed or contained on or in the Service; (e) circumvent, disable or otherwise interfere with security-related or technical features or protocols of the Service; (f) make a derivative work of the Service, or use the Service to develop any service or product that is the same as (or substantially similar to or competitive with) the Service; (g) disclose to the public the results of any internal performance testing or benchmarking studies of or about the Service, without first sending the results and related study(ies) to NASCA, and obtaining NASCA's written approval of the assumptions, methodologies and other parameters of the testing or study(ies); (h) publish or transmit any robot, malware, Trojan horse, spyware, or similar malicious item intended (or that has the potential) to damage or disrupt the Service; and/or (i) use the Software to infringe, misappropriate or violate any third party's Intellectual Property Rights, moral rights, privacy or other personal rights, or any Law. References in this paragraph to "Service" shall be taken to mean the Service in whole or in part, as well as any Documentation.

Your full compliance with the above limitations is a condition to the License; provided however, that such limitations shall not apply to the extent expressly permitted otherwise in this Agreement, or to the extent any limitation is prohibited by the Law applicable to you. You acknowledge that

the Service contains information and materials that are confidential and proprietary to NASCA (and may even constitute NASCA, or a NASCA Affiliate's, trade secrets), and therefore you agree that a breach or threatened breach of this Section (License and License Restrictions) may cause NASCA and/or a NASCA Affiliate to suffer irreparable harm or damage for which monetary damages will be inadequate, and accordingly, if NASCA or a NASCA Affiliate seeks an injunction, specific performance, or other equitable relief to enforce any provision under this Section, NASCA or the NASCA Affiliate (as the case may be) shall not be required to post a bond or to prove the likelihood of irreparable harm.

To the extent you are given the right, under any Law applicable to you, to receive information and/or materials for purposes of making the Service interoperable with other software products, you agree to first request from NASCA (in formal writing) access to such information and/or materials, and if NASCA accepts such a request, NASCA may (in its sole discretion) impose additional conditions on such access and use (but such use shall in any event be solely for the purpose of achieving the desired inter-operability).

## **FEATURES**

All references herein to the Site will also include its Features. NASCA reserves the right to remove, modify, and/or add Features at any time, without any notice or obligation to you, and for any reason. Some features may be limited, suspended or restricted by geography, volume, duration or any other criteria decided by NASCA in its sole discretion. Furthermore, if NASCA determines that you are in violation of any provision of this Agreement, we reserve the right to block you from certain features. We make available features because we believe it improves the user experience of the Site. You acknowledge and agree that only because we allow the feature to be available does not mean that we support, or can otherwise control, any way that this feature is being used. A new or modified feature may be accompanied by separate or additional terms or conditions, in which case such terms (as set out in the License and License Restrictions) apply in lieu of, or in addition to, this Agreement. NASCA may, at its sole discretion, accept new features and/or require additional personally identifiable information.

Without derogating from the generality of the foregoing paragraph, you acknowledge that whereas Features currently make the Site compatible for use with monitors and devices other than the NASCA Monitors, these Features may be removed or modified in the future.

## **OWNERSHIP**

You hereby confirm that the Service and the Documentation are or may be protected by Intellectual Property (and similar) Laws, treaties, and conventions. All rights not expressly

granted herein are reserved by NASCA and its licensors and providers. NASCA is the sole and exclusive owner of: (a) the copy(ies) of the Service and Documentation; and (b) all Intellectual Property Rights in and to the Service, the Documentation, and all Content. Furthermore, NASCA shall be the sole and exclusive owner of all Intellectual Property Rights and all ideas, suggestions, or similar feedback about performance of the Service and/or for improving it (collectively, "Feedback IP"). To the extent any Feedback IP does not automatically vest in NASCA, you hereby assign (and agree to assign) such Feedback IP to NASCA, as well as reasonably cooperate with NASCA in executing such further instruments requested by NASCA to perfect NASCA's (or a designated NASCA Affiliate's) ownership of such Feedback IP.

## **DISCLAIMERS**

The Service, the documentation and any content is provided and made accessible to you on an "as is" and "as available" basis, with all faults, and without any representation, warranty, guarantee, or condition of any kind whatsoever, whether express, implied or statutory, including without limitation any implied warranties of merchantability, compatibility for particular purpose, satisfactory quality, quiet possession, title, quality of service, non-infringement, or that otherwise arise from a course of performance or dealing, or usage of trade, all of which are hereby disclaimed by NASCA and its licensors and suppliers.

Some jurisdictions' Laws do not allow the disclaimer of certain implied warranties or conditions, and to the extent applicable to you, NASCA limits the duration of such warranties and conditions to the duration of ninety (90) days from the Effective Date. You acknowledge and agree that this section (Disclaimers) is an essential basis of the transaction between you and NASCA.

## **LIMITATION OF LIABILITY**

IN NO EVENT WILL NASCA OR ANY NASCA AFFILIATE BE LIABLE UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT, FOR:

- (A) ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES;
- (B) ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF REVENUE, OR LOSS OF ANTICIPATED SAVINGS;
- (C) ANY LOSS OF, OR DAMAGE TO, DATA, REPUTATION, OR GOODWILL; AND/OR
- (D) THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES.

THE COMBINED AGGREGATE LIABILITY OF NASCA AND ALL NASCA AFFILIATES UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT SHALL NOT EXCEED THE LOWER OF: (A) FIVE U.S. DOLLARS (US \$5), AND (B) THE AMOUNTS ACTUALLY PAID BY YOU (IF ANY) TO NASCA OR AN NASCA AFFILIATE DURING THE THREE (3) MONTHS

IMMEDIATELY PRECEDING THE DATE ON WHICH YOU BRING YOUR CLAIM.

THE FOREGOING EXCLUSIONS AND LIMITATIONS SHALL APPLY: (A) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW; (B) EVEN IF NASCA OR A NASCA AFFILIATE HAS BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES, DAMAGES, OR COSTS; (C) EVEN IF ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; AND (D) REGARDLESS OF THE THEORY OR BASIS OF LIABILITY, INCLUDING WITHOUT LIMITATION FUNDAMENTAL BREACH, NEGLIGENCE, MISREPRESENTATION, STRICT LIABILITY, OR OTHER CONTRACT OR TORT LIABILITY.

Some jurisdictions' Laws do not allow the exclusion or limitation of incidental or consequential damages, or of other damages, and to the extent applicable to you, such exclusions and limitations shall not apply. Furthermore, nothing in this Agreement shall be deemed to exclude or limit liability for death or personal injury resulting from negligence, or for fraud or fraudulent misrepresentation. You acknowledge and agree that this section (Limitation of Liability) is an essential basis of the transaction between you and NASCA.

#### **INDEMNIFICATION**

If any third party (including, but not limited to, a regulatory or governmental authority) makes any demand, claim, suit, action or proceeding against NASCA, an NASCA Affiliate, and/or any of our respective directors, officers, employees, or representatives (each, an "Indemnitee"), and it is based upon or arises from:

- a) Your use of the Service; and/or
- b) Your breach of any provision of this Agreement

(each of the foregoing, an "**Indemnity Claim**") then, upon written request by NASCA (to be decided in its sole discretion), you agree to assume full control of the defense and settlement of the Indemnity Claim; provided, however, that (a) NASCA reserves the right, at any time thereafter, to take over full or partial control of the defense and/or settlement of the Indemnity Claim, and in such cases you agree to reasonably cooperate with NASCA's defense activities at your own cost and expense; and (b) you shall not settle any Indemnity Claim, or admit to any liability thereunder, without the express prior written consent of the Indemnitee.

In addition, and regardless of whether (or the extent to which) you controlled or participated in the defense and/or settlement of an Indemnity Claim, you agree to indemnify and hold harmless the Indemnitee for and against: (a) any costs and expenses (including reasonable attorneys' fees) incurred by the Indemnitee in the defense of the Indemnity Claim; and (b) any amounts awarded

against, or imposed upon, the Indemnitee under such Indemnity Claim, or otherwise paid in settlement of the Indemnity Claim (including without limitation any fines or penalties).

## **GOVERNING LAW AND DISPUTE RESOLUTION**

This Agreement (including without limitation its validity and formation) shall be governed by and construed in accordance with the Israeli laws. The district court in Tel Aviv, Israel, shall have the exclusive jurisdiction to discuss any disagreement, argument or dispute regarding to this agreement, its enforcement and its interpretation.

## **ASSIGNMENT**

NASCA may assign this Agreement (or any of its rights and obligations hereunder) without your consent, and without personal notice or obligation to you. This Agreement is personal to you, and you shall not assign (or in any other way transfer) this Agreement (or any of your obligations or rights hereunder) without NASCA's express prior written consent. Any prohibited assignment shall be null and void.

## **DATA PROTECTION AGREEMENT**

This Data Processing Agreement (**DPA**) is between NASCA (Processor) and its business partners (controllers) and its third parties' providers (processors) (**the parties**). Capitalized terms which are not defined herein, shall have the meaning ascribed to them in our Terms of Use or in our Privacy and Cookie Policy available at (<https://www.xmlwizard.com/>) which this DPA is incorporated thereto by reference. In the case of any discrepancy between this DPA and our Terms of Use, the terms of this DPA shall govern. The purpose of this DPA is to indicate the responsibilities of each party respectively to the GDPR.

### **Definitions (as defined in the GDPR):**

- (a) **GDPR** – General Data Protection Regulation. Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.
- (b) **Personal data** - Any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

- (c) **Processing** - Any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
- (d) **Controller** - The natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law (business partners).
- (e) **Processor** - A natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller. (NASCA, Wix.com, Adkernal)
- (f) **Third party** - A natural or legal person, public authority, agency or body other than the data subject, controller, processor and persons who, under the direct authority of the controller or processor, are authorized to process personal data. (Wix.com, Adkernal).
- (g) **Personal data breach** - A breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed.

### **The provisions:**

1. NASCA's business partners determine which data to send us according to our requested type of data which is required for us in order to suit the relevant offer for them. Our business partners determine the purposes and means of the processing of personal data. Therefore, the business partners defined as "Controllers", can be defined both as "Controllers and Processors".
2. NASCA processes personal data on behalf of its business partners and therefore is defined as "Processor".
3. According to the GDPR provisions, the controller shall set out, on a writing



document, the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the controller. NASCA engaged solely with processors and third parties providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that processing will meet the GDPR and other relevant regulation's requirements; ensure the protection of the rights of the data subject; declare compliance to the GDPR, EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework, or any other relevant regulation.

4. NASCA shall not engage another processor without prior specific or general written authorization of the controller. In the case of general written authorization, we shall inform the controller of any intended changes concerning the addition or replacement of other processors, thereby giving the controller the opportunity to object to such changes.
5. The processing shall be governed by this document that sets out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the controller.
6. We ensure that persons authorized to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
7. We shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk and engaged only with third parties which can demonstrate those measures. NASCA shall inform the controller on a personal data breach, without undue delay after becoming aware of the breach that occur on its infrastructure or on its providers infrastructure.
8. NASCA will assist the controller in ensuring compliance with the obligations pursuant to Articles 32 to 36 to the GDPR, taking into account the nature of processing and the information available to us.
9. At the choice of the controller, NASCA will delete or return or require its business partners to do so, all the personal data to the controller after the end of the provision of services relating to processing and will delete existing copies unless Union or Member State law requires storage of the personal data.

10. NASCA will make available to the controller all information necessary to demonstrate compliance with the obligations laid down in the GDPR and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.
11. We shall immediately inform the controller if, in our opinion, an instruction infringes the GDPR or other Union or Member State or Israel or other relevant data protection provisions.
12. Where we engage another processor for carrying out specific processing activities on behalf of the controller, the same data protection obligations as set out in this document or other legal act between us and the controller shall be imposed on that other processor by this document or other contract or legal act under Union or Member State law, in particular providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the processing will meet the requirements of the GDPR. Where that other processor fails to fulfil its data protection obligations, the initial processor shall remain fully liable to the controller for the performance of that other processor's obligations.
13. The controller shall notify NASCA by e-mail on data subject's request to erase personal data. NASCA will transmit the request to the relevant third parties in order to comply the request. In case when NASCA receives a direct request from data subject, we will inform the controller by e-mail to comply the request. We will not comply the request without the controller's explicit approval by writing (e-mail).

## **CONTACT US**

You can contact us by sending an email to the following address ([shoshb@xmlwizard.com](mailto:shoshb@xmlwizard.com)). You are required to provide us with certain Personal Information, such as your name and email address in order for us to contact you.

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