

ArcaOS End User License Agreement

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1. Definitions

“Arca Noae” - Arca Noae LLC, 7 Loudoun Street SE Suite 2B, Leesburg VA 20175-3012 USA

“Authorized Use” - the specified level at which you are authorized to execute or run the Product. That level is measured by number of Installed Copies.

“Backup Copy” - any copy of the Product which is not an Installed Copy.

“Installed Copy” - any single installation of the Product on any computer hardware or in a virtual machine which is bootable, startable, or executable. A copy of the Product stored on a network server solely for the purpose of being distributed to other machines is not considered to be an Installed Copy.

The “Product” - ArcaOS and the collection of software, programs, components, modules, files, audio-visual content, and documentation, regardless of whether packaged as ArcaOS or ArcaUpdater.

“Product Deliverables” - the way you actually receive the Product, regardless of form, including, but not limited to, CDs, DVDs, ISO images, ZIP files, etc.

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“Warranty Period” - ninety (90) days, starting on the date you are granted the license.

2. Product Versions

The following ArcaOS products are available:

- ArcaOS Personal Edition

- ArcaOS Commercial Edition

The ArcaOS Personal Edition is for private individual users who will not be using it for business. ArcaOS Personal Edition includes six (6) months of updates and support. Each ArcaOS Personal Edition license allows one (1) Installed Copy.

The ArcaOS Commercial Edition is for business use and includes one (1) year of updates and priority support. If you are a business, require more than fifty (50) Installed Copies, or simply want priority support, then you need the ArcaOS Commercial Edition. The ArcaOS Commercial Edition license can allow any number of Installed Copies as specified by the Authorized Use in your PoE.

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Arca Noae grants you a nonexclusive license to 1) use the Product up to the Authorized Use specified in the PoE, 2) make and install copies to support such Authorized Use, and 3) make a backup copy, all provided that

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- d. you ensure that anyone who uses the Product (accessed either locally or remotely) 1) does so only on your behalf and 2) complies with the terms of this Agreement;
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5. Updates, Fixes, and Patches

When you receive an update, fix, or patch to the Product or any portion of the Product, you accept any additional or different terms that are applicable to such update, fix, or patch. If no additional or different terms are provided, then the update, fix, or patch is subject solely to this Agreement. If the Product is replaced by an update, you agree to promptly discontinue use of the replaced Product.

6. Term and Termination

This Agreement is effective until terminated.

Arca Noae may terminate your license if you fail to comply with the terms of this Agreement.

If the license is terminated for any reason by either party, you agree to promptly discontinue use of and destroy all copies of the Product. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

7. License Fees

The license fees paid by you are paid in consideration for the license granted under this Agreement. Payments must be made to Arca Noae LLC, or designated distributors and resellers from whom you acquired the Product. If you wish to increase your Authorized Use, you must notify Arca Noae LLC, or its distributors or resellers and pay any applicable charges.

8. Taxes

If any authority imposes on the Product a duty, tax, levy, or fee, excluding those based on Arca Noae's net income, then you agree to pay that amount, as specified in an invoice, or supply exemption documentation. You are responsible for any personal property taxes for the Product from the date that you obtain it. If any authority imposes a customs duty, tax, levy, or fee for the import into or the export, transfer, access, or use of the Product outside the country in which you were granted the license, then you agree that you are responsible for, and will pay, any amount imposed.

9. Program Transfer

You may transfer the Product and all of your license rights and obligations to another party only if that party agrees to the terms of this Agreement. If the license is terminated for any reason by either party, you are prohibited from transferring the Product to another party. You may not transfer a portion of 1) the Product or 2) the Product's Authorized Use. When you transfer the Product, you must also transfer a hard copy of this Agreement, including the PoE. Immediately after the transfer, your license terminates.

10. Limited Warranty

Arca Noae warrants that during the Warranty Period the Product media in which the Product is contained are free from defects in material and workmanship. Arca Noae further warrants that during the Warranty Period the Product shall operate substantially in accordance with the functional specifications in the User's Manual. Arca Noae LLC does not warrant uninterrupted or error-free operation of the Product.

If during the Warranty Period, a defect in the Product appears, you may return the Product to your distributor for either replacement or, if so elected by the distributor, refund of amounts paid by you for the Product. You agree that the foregoing constitutes your sole and exclusive remedy for breach by Arca Noae of any warranties made under this Agreement.

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11. Limitation of Liability

Arca Noae's cumulative liability to you or any other party for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement shall not exceed the license fee paid to Arca Noae for the use of the Product. In no event shall Arca Noae be liable for any indirect, incidental, consequential, special, or exemplary damages or lost profits, even if Arca Noae has been advised of the possibility of such damages. THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, MAY BE CONTROLLED BY LOCAL REGULATION, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

The Product may contain components which are not fault tolerant and are not designed, manufactured, or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of a component could lead directly to death, personal injury, or severe physical or environmental damage. You agree that the use of the Product in any of the aforementioned environments requiring fail-safe performance is at your own risk and you agree to hold Arca Noae harmless and free of any liability or claim for damages arising out of such use.

12. Verification Process

You agree to create, retain, and provide to Arca Noae accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that your use of the Product is in compliance with the terms of this Agreement. You are responsible for 1) ensuring that you do not exceed your Authorized Use, and 2) remain in compliance with the terms of this Agreement. Upon reasonable notice, Arca Noae may verify your compliance with the terms of this Agreement at all sites and for all environments in which you use (for any purpose) the Product. Such verification will be conducted in a manner that minimizes disruption to you or your business, and may be conducted on your premises, during normal business hours. Arca Noae may use an independent auditor to assist with such verification, provided Arca Noae has a written confidentiality agreement in place with such auditor.

13. Verification Resolution

Arca Noae will notify you in writing if any such verification indicates that you have used the Product in excess of its Authorized Use or are otherwise not in compliance with the terms of this Agreement. You agree to promptly pay directly to Arca Noae the charges that Arca Noae specifies in an invoice for 1) any such excess use, 2) support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

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15. Governing Law

This License Agreement shall be construed and governed in accordance with the laws of the State of Delaware, USA.

16. Dispute Resolution and Arbitration

All claims and disputes arising under or relating to this License Agreement are to be settled by binding arbitration in the state of Virginia USA or another location mutually agreeable to the Parties. The Parties shall have the right to conduct reasonable discovery prior to the commencement of the arbitration. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator experienced in computer information technologies and shall include a written record of the arbitration hearing. The Parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction.

17. Costs of Litigation

If any action is brought by either party to this License Agreement against the other party regarding the subject matter hereof, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorney fees and expenses of litigation, as appropriate under applicable jurisdiction.

18. Severability

Should any term of this License Agreement be declared void or unenforceable by any court of competent jurisdiction, such declaration shall have no effect on the remaining terms in this Agreement.

19. No Waiver

The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

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The Product contains driver(s), application(s), or other software from Third Parties, hereinafter referred to as Third Party Work (TPW). The ArcaOS installer may install some or all of the TPW depending on the selections you make when installing the Product. If you install any TPW, you acknowledge that each TPW may contain its own license agreement. By installing and using any TPW you agree to be bound by the license agreement for that TPW. License agreements for TPW contained in the Product can be found in the Product Deliverables, in the installation directory where the TPW is installed, and at <http://www.arcanoae.com/tpw>, and are hereby incorporated into this Agreement by reference. Additionally, some license agreements are included in the next Section.

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21. Third Party Licenses and Notices

The Product contains Warp Component of OS/2 Warp 4.52 Install

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The Product contains SMP Pre-Req OS/2 Warp V4 Convenience Pack

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The Product contains the Doodle Screen Saver, SNAP, and Panorama.

This software has been tested and found stable. However this software should not be used on mission critical systems such as MEDICAL, NUCLEAR, AVIATION, NAVIGATION, MILITARY, OR OTHER HIGH RISK APPLICATIONS.

This software can display animations. These animations may contain certain flashing lights and/or light patterns. A very small percentage of people may experience epileptic seizures when exposed to certain patterns or backgrounds. Certain conditions can trigger previously unnoticed epileptic symptoms even with people who have no history of prior seizures or epilepsy. If any person to whom this computer is accessible and/or visible has an epileptic condition, consult your physician prior to using this software.

If you experience any of the following symptoms (after or while using this software) - dizziness, eye and/or muscle twitches, altered vision, loss of awareness, being disoriented, or convulsions - IMMEDIATELY stop using this software and consult your physician.

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