

NICE SYSTEMS, INC.
INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY

All capitalized terms not defined in this document shall have the meaning ascribed to them in the NACR Sales Agreement.

(a) NACR shall defend or, at its option, settle any claim, suit or proceeding (“Claim”) brought against Customer insofar as such Claim is based on a claim that any Product sold hereunder constitutes an infringement of any duly issued patent or copyright in the Territory, and NACR will pay the cost and damages finally awarded in any such Claim after exhaustion of all permissible appeals, provided that NACR is promptly informed in writing and furnished a copy of each communication, notice or other action relating to the alleged infringement and is given all authority, information and assistance (at NACR’s expense) as NACR may require to defend or settle said Claim. NACR shall not be responsible for any compromise or settlement made without the written consent of NACR. If any Claim which NACR is obligated to defend has occurred, or in NACR’s opinion is likely to occur, Customer agrees to permit NACR, at NACR’s option and expense, (i) to procure for Customer the right to continue using the Product, (ii) to replace with non-infringing alternates or modify the Product so that it becomes non-infringing but its functionality after modification is substantially equivalent, or (iii) to terminate this Agreement with respect to the Product in question, to accept the return of such Product and to pay to Customer the Price thereof, less a reasonable allowance for use, damage and/or obsolescence. The foregoing states the sole and exclusive liability of NACR for patent and copyright infringement and is in lieu of all warranties, express or implied, in regard thereto.

(b) The foregoing indemnity shall not apply if the infringement or alleged infringement arises out of compliance with Customer’s specifications or designs or those of a purchaser from Customer, or from a combination with, an addition to or interconnection and/or use of the Product of apparatus or devices not supplied by NACR, or from a modification by any person other than NACR after delivery of the Product.

(c) Customer shall promptly notify the Company in writing of any actual, suspected or apparent infringement of the Company’s proprietary rights that may come to Customer’s attention.