

## Software End User License Agreement (CE)

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and

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10. Term and Termination.

(a) This Agreement and the license granted hereunder shall remain in effect until terminated by Licensor [or Licensee] by email at any time (the "**Term**").

(b) Licensor may terminate this Agreement at any time in its sole discretion without having to provide any reason for the termination, effective upon email notice to Licensee to the email address provided on the Request Form.

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(c) THE LIMITATIONS SET FORTH IN SECTION 12(a) AND SECTION 12(b) SHALL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND LICENSEE IS NOT ENTITLED TO ANY DEFENSE, INDEMNIFICATION, OR WARRANTY PROTECTION. Licensee acknowledges and agrees that the parties entered into this Agreement for a free version of the Software in reliance upon the limitations of liability set forth in this Section 12, that the same reflect an allocation of risk between the parties (including the risk that a remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

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14. US Government Rights. Each of the Documentation and the Software is a "commercial product" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Licensee is an agency of the US Government or any contractor therefor, Licensee only receives those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government licensees and their contractors.

15. Confidentiality. In connection with this Agreement, either Party (the "Receiving Party") may obtain access to information that is not generally known, or readily accessible, either in its entirety or in the precise arrangement and composition of its components, to persons in the circles that normally deal with this type of information, including but not limited to ideas, concepts, know-how, developments, analyses, designs, descriptions, plans, software, technology,

documentation, reports, concepts, sales and pricing information, and any other information that the other Party (the "Disclosing Party") provides or makes available in writing, electronically, orally or in any other form, regardless of whether such information is marked as confidential ("Confidential Information").

(a) The Receiving Party undertakes to keep all Confidential Information strictly secret from third parties and to use it only for the purposes of this Agreement. Internal access to Confidential Information shall be restricted to those employees and, where applicable, external consultants who absolutely require such access within the scope of this Agreement ("need-to-know basis") who are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth here-in. Documents containing Confidential Information may only be used for the purposes of this Agreement.

(b) The obligations arising from this Section 15 do not apply to confidential information that

(i) has been made publicly available without violating this Agreement,

(ii) is already in the lawful possession of the Receiving Party without any obligation of confidentiality,

(iii) was demonstrably acquired by the Receiving Party through an independent discovery/creation or developed/created independently, and/or

(iv) has been published or disclosed by the Receiving Party with the prior written consent of the Disclosing Party.

(c) If a recipient of Confidential Information under this Agreement is requested to disclose any of the Confidential Information pursuant to any judicial or governmental order, the recipient will not disclose the Confidential Information without first giving the discloser of the Confidential Information written notice of the request and sufficient opportunity to contest the order.

(d) The confidentiality obligation shall apply irrespective of the manner in which the Disclosing Party's Confidential Information was disclosed or made available under this Agreement or whether it otherwise became known through this Agreement, whether in written, electronic or oral form.

(e) The Receiving Party shall take all appropriate and necessary measures to ensure the confidentiality of the Confidential Information provided.

(f) The Receiving Party shall be liable for compliance with the confidentiality obligations in accordance with this Section by its employees and, if external consultants are engaged, also for compliance by these external consultants. These confidentiality obligations pursuant to this Section shall be demonstrably transferred to these employees and external consultants in the event that information is passed on, but this shall not reduce the party's own liability for its own employees and external consultants. Any duplication,



use, disclosure, or other act or omission by any person that obtains access to or possession of Confidential Information through the recipient that would be a breach of this Agreement if committed by the recipient is deemed a breach of this Agreement by the receiving party for which the recipient shall be responsible.

(g) The confidentiality obligations shall continue indefinitely beyond the termination of this Agreement.

16. Duty to cooperate and provide information

(a) The Licensee has informed himself about the essential functionalities of the Software and bears the risk as to whether these correspond to his wishes and requirements; in case of doubt, he has sought advice from employees of the Licensor or from expert third parties before concluding this Agreement.

(b) The establishment of a functional hardware and software environment for the Software and the associated IT security processes – which is also sufficiently dimensioned taking into account the requirements of the Software – is solely the Licensee's responsibility.

(c) The Licensee shall test the Software thoroughly before using it to ensure that it is free of defects and can be used in the existing hardware and Software configuration.

(d) The Licensee shall take appropriate precautions in the event that the Software does not work properly in whole or in part (e.g. through daily data backups, fault diagnosis, regular checks of the functionality of the Software).

17. Miscellaneous.

(a) All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in the federal courts of the United States of America or the courts of the State of New York in each case located in New York City and New York County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such legal suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

(b) In no event shall Licensor be liable to Licensee, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Licensor's reasonable control, including but not limited to: (i) acts of God; (ii) flood, fire, earthquake, OTHER POTENTIAL DISASTER(S) OR CATASTROPHE(S), SUCH AS EPIDEMICS, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v)

embargoes or blockades in effect on or after the date of this Agreement; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (viii) shortage of adequate power or transportation facilities.

(c) All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Request Form (or to such other address as may be designated by a party from time to time in accordance with this Section 17(c)).

(d) This Agreement, together with the Request Form, all schedules, and exhibits attached hereto and all other documents that are incorporated by reference herein, constitutes the sole and entire agreement between Licensee and Licensor with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(e) Licensee shall not assign any of its rights under this Agreement without Licensor's prior written consent. Any purported assignment in violation of this Section 17(e) is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(f) This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein shall confer on any other Person any legal or equitable right, benefit, or remedy under or by reason of this Agreement.

(g) This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(h) If any term or provision of this Agreement is invalid or unenforceable in any jurisdiction, such invalidity, or unenforceability shall not affect any other term or provision of this Agreement.

(i) This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Request Form and all Annexes, Schedules, and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

(j) The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.