

This End-User License Agreement ("EULA") is between Licensor and End-User.

## **1. Definitions**

**1.01 "Documentation"** means the documentation and user manuals related to the Software published by Licensor

**1.02 "End-User"** means the entity that has purchased the license(s) for the use of the Software from Licensor via its supplier pursuant to the Purchase Agreement.

**1.03 "Key"** means any software license key or hardware key (e.g. a "dongle") furnished by Licensor to End-User to activate or validate the license and/or administer the license of the Software.

**1.04 "Licensor"** means NEC Nederland BV

**1.05 "New Version"** means any upgrade, update, bug fix, patch or other new version of the Software.

**1.06 "Notices"** means any trademark, logo, copyright, legend, symbol, label or other proprietary notice.

**1.09 "Open Source Software"** means any software that is licensed under Open License Terms.

**1.10 "Open License Terms"** means any terms in any license agreement or grant that require as a condition of use, modification and/or distribution of a work that:

1. Source code will be made available, and/ or
2. Permission will be granted for creating derivative works, and/or
3. A royalty-free license is granted to any party under any intellectual property rights regarding that work and/or any other work that contains, is combined with, requires or is based upon that work.

**1.11 "Purchase Agreement"** means the agreement between End-User and its supplier, pursuant to which End-User purchased the license(s) for the use of the Software. To the extent that there is a conflict between the terms of this EULA and the terms of the Purchase Agreement, the terms of this EULA shall prevail between End-User and Licensor.

**1.12 "Software"** means any of the software for which End-User has purchased (a) license(s) and which has been furnished directly or indirectly by Licensor to End-User. The Software shall include the Documentation, Keys and (subject to Section 4.03) any New Versions of the Software furnished by Licensor to End-User. The Software may include or contain third party software, such software being subject to different and/or additional terms and conditions. Any such different and/or additional terms and conditions applicable in connection with the use of the Software furnished by Licensor is made part of this EULA and is incorporated herein by reference.

## **2. License Grants**

**2.01** Subject to the terms and conditions of this EULA, Licensor hereby grants, and End-User hereby accepts, a limited, non-exclusive, non-transferable, non-assignable license to install and use the Software, in machine readable form, for the internal business purposes of End User in the type and quantity as purchased and paid for by End-User to its supplier. Each license type grants End-User the right to use the Software within different restrictions. For example, certain license types may restrict the use of the Software to a (specified) single system and other types may restrict the number of concurrent users or the scale of the system. The type of license purchased by End-User shall be evidenced by the invoice issued by the supplier of the End-User making reference to the license. Licensor reserves all rights not expressly granted herein.

**2.02** Licensor and/or its suppliers shall retain title and all intellectual property and other proprietary rights in and to the Software and the media on which the same is furnished (and all copies of the foregoing) and no right, title or interest to the intellectual property rights in the Software is transferred to End-User. End-User will not remove, alter, or obscure any Notices of Licensor or its suppliers on or in the Software.

## **3. License Restrictions**

**3.01** End-User may make a reasonable number of non-activated copies of the Software for back-up purposes and a number of copies of the Documentation as reasonably necessary for the authorized use of the Software, provided such copy(ies) shall contain all Notices set forth on or in the original copy.

**3.02** Except as expressly permitted in this EULA or any applicable laws, or to the extent applicable laws specifically prohibit any of the following restrictions, End-User may not: (i) copy the Software, (ii) modify, translate or create any derivative works of the Software (except to the extent such modification capability is an intended feature of the Software), (iii) cause or permit decompilation, disassembly, reverse engineering, or otherwise attempting to derive the source code for the Software), (iv) merge the Software with other software programs except through an authorized integration interface, (v) redistribute, encumber, timeshare, sell, rent, lease, sublicense, loan or otherwise transfer rights in or to the Software or use the Software to provide "bureau services" or application services to third parties, or (vi) remove or alter any Notices on or in the Software.

**3.03** If End-User is a European Union resident and intends to decompile the Software to obtain information necessary to achieve interoperability with other programs within the meaning of the EC Council Directive 14 May 1991 (91/250/EC) on the legal protection of software ("Directive"), End-User shall give Licensor at least 30 days prior notice of such intent and its requirement for information related to the interoperability of the Software with other programs. End-User agrees in such case to request such information from Licensor and, upon such request, Licensor will produce the information to End-User within a reasonable time and on reasonable conditions to the extent that End-User has the mandatory right under the Directive or applicable local laws of any European Union jurisdiction to obtain such information to achieve interoperability. Such information shall, however not be used by, or on behalf of End-User for any purpose other than to achieve interoperability as referred to above.

**3.04** End-User agrees not to perform, and End-User's rights under this EULA are conditional upon End-User not performing, any actions in a manner that would require or cause, or purport to require or cause, any Software and/or any derivative work thereof to be licensed under Open License Terms or otherwise grant, or purport to grant, any third party any rights to or immunities under Licensor's or its suppliers' intellectual property or proprietary rights in the Software. These actions include, without limitation:

- (i) Combining the Software or a derivative work thereof with Open Source Software, by means of incorporation or linking or otherwise; or
- (ii) Distributing the Software or a derivative work thereof with Open Source Software; or
- (iii) Using Open Source Software to create a derivative work of the Software or a derivative work thereof, insofar as these actions would require the Software or a derivative work thereof to be licensed under Open License Terms.

## **4. Installation and Additional Services**

**4.01** Licensor shall not be responsible, nor liable for the correct installation and configuration of the Software unless explicitly otherwise agreed or unless the Software is pre-installed on any hardware (indirectly) supplied by Licensor. If the Software is distributed on a media containing multiple versions of the Software for use on different operating systems, End-User may use only one version of the Software.

**4.02** There may be technological measures in the Software that are designed to prevent unlicensed or illegal use of the Software and End-User may be required to activate the licensed Software in accordance with the Documentation and/or Licensor's instructions. End-User agrees that Licensor and its suppliers may use those technological measures and End-User agrees to follow any requirements regarding such measures. End-User may be required to reactivate the Software if the computer hardware or software is modified. Keys

may only be used with the Software for which it is provided. While Licensor, in its sole discretion, may provide End-User with the applicable Key prior to receipt of the applicable license fees, End-User will remain obligated to pay such fees.

**4.03** In case End-User acquires any New Versions, they will be considered part of the Software and licensed under the terms of this EULA unless and to the extent Licensor specified in writing that such New Versions are licensed under different or additional (license) terms. New Versions may be subject to additional license fees. A New Version provided to replace an earlier version of the Software is provided to End-User on a license exchange basis. End-User agrees in such case to destroy or return the replaced earlier version of the Software.

**4.04** In case Licensor, if agreed upon with End-User, performs (or allows a third party to perform) remote diagnostics to investigate any reports by End User of suspected bugs or errors in the Software and/or performs any maintenance or other support services via remote telecommunications, End-User will provide Licensor and/or such third parties with reasonable access via remote telecommunications to its network and computers to the extent necessary to enable them to perform such remote services. In case of such remote services, Licensor shall not be liable for any loss of data, but shall maintain and shall cause such third party to, a reasonable level of confidentiality with respect to any data of End- User to which Licensor (or such third party) has access through such remote services.

## **5. Warranties; Disclaimer of Warranties**

**5.01** Licensor warrants that the Software, when correctly installed and maintained, shall operate substantially in conformance with the accompanying written Documentation furnished by or on behalf of Licensor. Unless a different warranty period is contractually agreed upon in writing, the warranty period shall be 3 months as from the date of activation of the Software to End-User. Licensor's sole and exclusive obligation for any breach of the foregoing warranty shall be to use commercially reasonable efforts to in Licensor's sole discretion, either (i) remedy any nonconformities in the Software in order to cause the Software to operate substantially in conformance with the accompanying written Documentation, or (ii) replace the Software or part thereof with functionally equivalent software, or, if performing the foregoing alternatives is not commercially reasonable take back the Software against repayment of the price, taking into account a reasonable depreciation since the start of the license granted hereunder. In no event shall the foregoing warranty apply: (i) in case the Software has been modified from its original form as furnished by Licensor or (ii) to Software that is not up-to-date with New Versions released by Licensor or its suppliers, (iii) to difficulties or defects that are not reproducible or that are due End-User's hardware, other software, environment, operating systems or other causes external to the Software, (iv) to difficulties or defects that are due to End-User's misuse or any viruses or any other malicious external code. Any unauthorized modifications to the Software shall void this warranty. Licensor shall not be obligated to remedy any cosmetic or minor nonconformities.

**5.02** Neither Licensor nor its suppliers warrant that the functions contained in the Software will meet the requirements of End- User or that the operation of the Software will be uninterrupted or free from bugs, errors, viruses or security issues.

**5.03** Licensor provides Software which includes features to support the prevention of security breaches and fraudulent miss-use of the designated computer. However, for the avoidance of doubt, the End User retains ultimate and sole responsibility for security and fraud prevention.

**5.04** THE WARRANTY SET FORTH IN SECTION 5.01 IS IN LIEU OF ALL OTHER WARRANTIES. OTHER THAN THE WARRANTY SET FORTH IN SECTION 5.01, LICENSOR DISCLAIMS, ON BEHALF OF ITSELF AND ITS SUPPLIERS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF SATISFACTORY QUALITY, ACCURACY, CORRECTNESS, USE OR APPLICATION AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND ANY WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR TRADE USAGE.

## **6. Confidentiality**

**6.01** The Software (including, without limitation, its structure, sequence, user interface and source code) and any other related materials furnished by Licensor contain valuable and confidential information ("Confidential Information") proprietary to Licensor and/or its suppliers. End-User agrees to hold all Confidential Information in confidence and to protect the Software and other Confidential Information against unauthorized disclosure or use with the same degree of care as it protects its own highly confidential or proprietary information, but in no event with less than reasonable care. The Confidential Information shall not include any information which: (i) is already in End-User's possession at the time of delivery of the information by Licensor, (ii) becomes part of the public domain through no act or omission of End-User; or (iii) is lawfully received by End-User from a third party without any breach of confidentiality and without any obligation of confidentiality.

**6.02** End-User acknowledges that any actual or threatened use or disclosure of the Confidential Information in any manner inconsistent with the provisions of this EULA may cause Licensor and/or its suppliers irreparable harm for which monetary damages would be inadequate. End-User further agrees that Licensor and its suppliers shall be entitled to seek injunctive or other equitable relief to prevent or restrain such (actual or threatened) use or disclosure in addition to any other remedies.

## **7. Infringement Indemnity**

**7.01** Licensor shall defend against and, at Licensor's sole option, settle any claim, action or proceeding brought or instituted against End-User ("Claim") that the Software furnished hereunder infringes any third party patent, copyright, trademark or trade secret, and Licensor will pay any costs related to the defence against such Claim, provided that End-User (i) notifies Licensor promptly in writing of any such Claim or proceeding, (ii) gives Licensor full and complete authority, information and assistance to defend such Claim, and (iii) gives Licensor control of the defence and settlement of any such Claim. If End-User's use of the Software becomes, or in Licensor's opinion, is likely to become, the subject of an infringement claim, or is held to infringe any third party patent, copyright, trademark or trade secret, Licensor may, at its option and expense, either (a) procure for End-User the right to continue using the Software, or (b) replace or modify the same so that it becomes non-infringing (provided that the replacement or modified Software has substantially comparable functionality to the original Software) or, (c) in the event the foregoing alternatives are not commercially reasonable, terminate this EULA to the extent it relates to the infringing Software. Licensor and its suppliers shall have no liability or obligation for any such Claim if such Claim results from: (i) End-User using a version of the Software other than the most current version of the Software made available to End-User, (ii) any modification or enhancement of or to the Software, (iii) compliance with End-User's designs, specifications or instructions, (iv) any unauthorized use of the Software, (v) any combination of the Software with any other software program or any hardware or data, (vi) any use not in accordance with the Documentation or for any purpose not intended by Licensor, or (vii) any open source technology incorporated in or provided with the Software.

**7.02** THIS SECTION 7 STATES THE ENTIRE LIABILITY OF LICENSOR AND ITS SUPPLIERS AND END-USER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OR ACTION FOR INFRINGEMENT OR VIOLATION OF ANY INTELLECTUAL PROPERTY RIGHT OR OTHER PROPRIETARY RIGHT REGARDING THE SOFTWARE.

## **8. Limitation of Liability**

**8.01** Subject to Section 8.02 and 8.03, Licensor shall only be liable under or in connection with this EULA or the Software for damage that arises as a direct and immediate result of Licensor's default to comply with the terms of this EULA.

**8.02** Licensor's entire aggregate liability under or in connection with this EULA or the Software, for any reason(s) or upon any cause(s) of action whatsoever, shall not exceed the license fee paid by End-User at the time such liability would arise, for the particular Software program which gave rise to the claim, provided that Licensor's liability for bodily injury (including death) or damage to tangible personal property shall be limited to Euro 1 million.

**8.03** Licensor will not be liable to End-User or any other person, under any circumstances or under any legal theory, whether in tort, contract, or otherwise, for any indirect, consequential, exemplary, special or incidental damages, including, without limitation, damages for "downtime", loss of business, profits or revenues, additional costs, business interruption or loss of data arising out of or in connection with the use or inability to use the Software, or the provision of or the failure to provide services or otherwise in connection with this EULA, even if Licensor or its suppliers have been advised of the possibility of such damage or if such damage was reasonably foreseeable. No supplier of Licensor shall have any liability to End-User for loss or damage arising out of or in connection with the Software or this EULA.

## **9. Termination**

**9.01** Licensor may terminate this EULA in whole or in part, effective immediately upon written notice to End-User: if

- (a) End-User breaches any provision of this EULA and such breach cannot be remedied, or, if remediable, End-User does not cure the breach within thirty (30) days after receiving written notice to that effect from Licensor,
- (b) if End-User becomes insolvent or is unable to pay its debt as due, enters into or files (or has filed or commenced against it) a petition in bankruptcy or is the subject of a petition in bankruptcy or debtor's relief law, whether voluntary or involuntary, or of any other proceeding under bankruptcy, insolvency or similar laws; or makes an assignment for the benefit of creditors; or a receiver or trustee is appointed for End-User or its property,
- (c) End-User is dissolved or liquidated,
- (d) The execution or other judicial seizure of all or a significant portion of End-User's assets is announced as such,
- (e) End-User ceases to do business, or
- (f) in accordance with Section 7.01 (c).

This EULA shall automatically be terminated if the Purchase Agreement is terminated for any reason whatsoever. Termination of this EULA shall be in addition to, and not in lieu of, any other remedies available at law, under this EULA. Any breach by End-User under the Purchase Agreement shall be deemed a breach under this EULA.

**9.02** Upon termination of this EULA for any reason, all licensed rights related to the Software which are covered by the terminated (part of this) EULA will immediately be terminated, and End-User must promptly discontinue all use of such Software and return to Licensor, at End-User's expense, all copies of the Software in End-User's possession and erase all copies of the Software from End-User's computer(s).

**9.03** Sections 1, 2.02, 6, 7, 8, 9 and 10 and any other provisions hereof which are destined, whether expressed or by their nature, to survive the termination of this EULA, shall so survive termination of this EULA for any reason whatsoever. Under no circumstances will End-User, in the event of a termination of this EULA in accordance with this Section 9, be entitled to a refund of any license fees.

## **10. Miscellaneous**

**10.01 Compliance with Laws.** End-User will comply with all applicable export and import control laws and regulations in its use of the Software and, in particular, End-User will not export or re-export the Software without all required applicable United States and other national and international government licenses and/or permits and shall not export or re-export to a country outside the European Union without the written consent of NEC.

**10.02 Third party beneficiary.** End-User understands that (portions of) the Software may be licensed from Licensor's suppliers. End-User irrevocably agrees that, to the extent that the provisions of this EULA relate to such third party software (including, without limitation, the Sections 1, 2, 3, 4.02, 4.04, 5, 6, 7.02, 8.03 and 10), such provisions are expressly made also for the benefit of such third parties and may be directly enforced by such third parties on their own behalf in addition to Licensor.

**10.03 Assignments.** End-User may not assign or transfer, by operation of law or otherwise, any of its rights or obligations under this EULA to any third party without Licensor's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be void. Licensor may assign or transfer its rights and obligations hereunder to any other member of the NEC group of companies or an acquirer of the majority of its assets or shares.

**10.04 Governing Law and Venue.** This EULA is governed by the laws of The Netherlands, without giving effect to its conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this EULA. In case of any disputes resulting from or arising in connection with this EULA the competent court of the city of Amsterdam, The Netherlands shall have non-exclusive jurisdiction, provided that any action, suit or proceeding by End-User against Licensor shall be exclusively brought in aforementioned court.

**10.05 Remedies.** Licensor's rights and remedies (including, the right to terminate this EULA pursuant to Section 9.1) under this EULA are cumulative and do not exclude any rights and remedies available under applicable law.

**10.06 Waivers.** No waiver by Licensor of any breach of any condition or term hereof shall be effective unless it is in writing and no failure or delay by Licensor in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial waiver thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

**10.07 Severability.** If any provision of this EULA is unenforceable or (declared) invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the maximum extent allowed under applicable law and the remaining provisions will continue in full force and effect.

**10.08 Time Limitation.** No action arising out of this EULA may be brought by End-User more than one (1) year after the cause of action arose.

**10.09 Amendments.** Licensor is entitled to amend the content of this EULA for practical or obligatory legal reasons without the consent of the End-User, to the extent the rights and obligations of End-User are not unreasonably affected.

**10.10 References.** All references in this EULA or in related documentation to the "sale" or "purchase" of Software shall mean the granting of licenses to Software to End-User subject as granted under this EULA.

**10.11 Entire Agreement.** Any varying or additional terms on any purchase order or other document issued by End-User shall not be binding on Licensor except only to the extent expressly accepted and agreed in writing by Licensor.