

# HEXAGON TECHNOLOGY CENTER GMBH

## End User License Agreement

THIS AGREEMENT entered into by and between **HEXAGON TECHNOLOGY CENTER GMBH** ("Licensor"), a Swiss company having principal offices at Heinrich -Wild-Strasse 201, CH-9435 Heerbrugg, Switzerland and the undersigned customer ("Licensee") determines the rights and licenses granted to Licensee in the Licensed Software (hereinafter defined) supplied by the Licensor.

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- (a) "Activated Software" means Licensed Product for which Licensee has paid applicable license fees and charges and for which Licensor has delivered a Security Device.
- (b) "Licensed Documentation" means all the documentation, in printed or electronic form, that is delivered from Licensor to Licensee and related to the Licensed Software.
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- (b) The license fees and charges, taxes and other applicable charges are due and payable upon installation of the Activated Software unless separate arrangements for deferred payment are made with Licensor prior to installation.

## **4. Term.**

- (a) The term of Licensee's Use of Activated Software, excluding Activated Software licensed under a Subscription License, shall commence upon first Use of the Software and shall continue in force until terminated or cancelled as provided by this Agreement. Licensee acknowledges that if Licensee at any time fails to extend the term of Software Maintenance by payment of applicable Maintenance Fees, no versions of Activated Software will be obtained following the expiration of the latest period for which

Software Maintenance has been purchased. The foregoing does not apply to Activated Software licensed under a Subscription License, because the term of the license and Software Maintenance are coterminous. However, Licensor has the right prior to the end of any term for which Software Maintenance has been purchased to notify Licensee that Licensor will not provide Software Maintenance after that term.

- (b) Unless otherwise terminated or cancelled as provided by this Agreement, the term of Licensee's Use of Activated Software licensed under a Subscription License, shall commence upon first Use of the Software and shall continue for that term set out in Licensor's quotation.

## **5. Protection of Licensed Product.**

- (a) Licensee acknowledges and agrees that the Licensed Product and all permitted copies are Licensor's exclusive property and a valuable trade secret of Licensor. Licensee will not disclose or make available to third parties the Licensed Product or any portion or any information from Licensor marked "confidential" without Licensor's prior written approval. Licensor reserves title to, ownership of, and all proprietary rights to the Licensed Product, as well as any related work product and major or minor releases of the Software, if any. Licensee shall promptly and in good faith take all action reasonably necessary, advisable, or requested by Licensor to assure compliance with this Paragraph 5 by all employees and agents of Licensee.
- (b) Upon reasonable notice during this Agreement's term and within six (6) months after termination or expiration of this Agreement, Licensor may arrange for the inspection and review of Licensee's computer systems to assure compliance with all terms and provisions of this Agreement during Licensee's normal business hours and in such a manner as not to interfere unreasonably with Licensee's operations. In the event such audit discloses that the number of permitted copies has been exceeded, Licensee shall promptly pay to Licensor the appropriate license fees and charges for the additional computers or users.

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- (b) Modify, translate, reverse engineer, decompile, disassemble, reduce the Software to a humanly perceivable form, or create derivative works based upon the Licensed Product, or cause or permit another to do so;
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- (e) Copy or attempt to copy the Software for any purpose whatsoever, except as expressly permitted by the terms of this Agreement;
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- (d) Any updates received as part of the Software Maintenance become integrated in the Licensed Product and are treated as such for the purpose of this Agreement.

#### **8. Warranty.**

- (a) Licensor warrants that, for a period of sixty (60) days after delivery of the Licensed

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- (b) If the Licensed Product fails to meet the media warranty of Paragraph 8(a)(1) and Licensee gives Licensor written notice thereof during the applicable warranty period, Licensor shall replace such media. If the Licensed Product fails to meet the warranty of Paragraph 8(a)(2) and Licensee gives Licensor written notice thereof during the applicable warranty period, Licensor's sole obligation shall be to provide technical services to attempt to correct the failure, provided that Licensee gives Licensor detailed information regarding the failure and Licensor is able to duplicate or view the same. Licensee acknowledges that the Licensed Product is complex, may not be error free, and that all errors, if any, may not be correctable or avoidable.
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- (d) Licensee shall be solely responsible for the selection, Use, efficiency, and suitability of the Licensed Product and neither Licensor nor any of Licensor's affiliates shall have any liability therefor.
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(h) Despite any other provision hereof to the contrary "UNACTIVATED SOFTWARE", AS HEREIN DEFINED, IS SUBJECT TO NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, INFORMATIONAL CONTENT, FITNESS FOR A PARTICULAR PURPOSE OR SYSTEM INTEGRATION, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS RELATING TO THE LICENSED PRODUCT.

#### **9. Negation of proprietary rights indemnity.**

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#### **10. Termination/cancellation.**

(a) Licensor has the right to terminate or cancel this Agreement in accordance with other provisions of this Agreement and also if:

(1) Licensee fails to pay Licensor any license fee or charges when due; or

(2) Licensee is in default of any other provision hereof and such default has not been cured within ten (10) days after Licensor learns of the default and gives Licensee written notice thereof; or

(3) Licensee becomes insolvent or seeks protection, voluntarily or involuntarily, under any bankruptcy law; or

(4) Licensee attempts to assign or sublicense its rights under this license.

(b) In the event of any termination or cancellation, Licensor may:

(1) Declare all amounts owed hereunder to Licensor to be immediately due and payable;

(2) Require that Licensee cease any further use of the Licensed Product or any portion thereof and immediately destroy, erase from any temporary RAM and permanent memory, and return to Licensor all copies of the Licensed Product, including the

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(3) Cease performance of all of Licensor's obligations hereunder without liability to Licensee; and

(4) Electronically render the Software of no further Use by Licensee.

Upon Licensor's request, an authorized representative of Licensee shall provide a written certification that warrants compliance with Paragraph 10(b)(2).

- (c) Licensor's foregoing rights and remedies shall be cumulative and in addition to all other rights and remedies available to Licensor in law and in equity.
- (d) UPON ANY TERMINATION, EXPIRATION, OR CANCELLATION OF THIS AGREEMENT, DUE TO BREACH OR OTHERWISE, LICENSOR SHALL IN ALL EVENTS HAVE ALL RIGHTS, POWER AND AUTHORITY TO EXERCISE ELECTRONIC SELF-HELP AND TO EXERCISE ALL RIGHTS, REMEDIES AND RECOURSE TO WHICH IT MAY BE ENTITLED, WHICH SELF-HELP SHALL INCLUDE WITHOUT LIMITATION, ALL ELECTRONIC MEANS AVAILABLE TO LICENSOR.

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## 12. General.

- (a) Any claim arising out of or related to this Agreement must be brought no later than two (2) years after it has accrued.
- (b) This Agreement is the sole agreement between the parties relating to the subject matter and supersedes all prior understandings, writings, proposals, representations, or communications, written or oral, of either party. Only a writing executed by the authorized representatives of both parties may amend this Agreement.
- (c) No Assignability. This Agreement and the licenses granted hereunder cannot be transferred or assigned by Licensee without the prior written consent of Licensor.
- (d) Severability and Survivability. If any part of this Agreement is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible to reflect the original intention of the parties and all other portions of this Agreement remain in full force and effect. In the event of any expiration, termination or cancellation of this Agreement, provisions that are intended to continue and survive shall do so.
- (e) This Agreement is binding upon the Licensor's and Licensee's successors and assigns.
- (f) Failure of either party to enforce any provision of this Agreement will not be deemed a waiver of the provision or the right to enforce that provision.
- (g) Licensee shall not export or re-export, or allow the export or re-export of the Software or any copy, portion or direct product of the foregoing, in violation of any export laws, restrictions, national security controls or regulations of the United States or any other applicable foreign agency or authority. By accepting this license Agreement, Licensee represents and warrants that it is not located in, under control of, or a national or resident in a United States embargoed country, or on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Denied Person's List or Entity List.
- (h) Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. The number of arbitrators shall be three (3) and the arbitrators shall consider the dispute at issue in New York, New York. The language of the arbitration shall be English. If Licensee is organized under the laws of a state not a contracting state to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the "New York Convention"), Licensor shall be free to initiate legal proceedings in any court that has jurisdiction over Licensee.
- (i) Any controversy or claim arising out of or relating to this Agreement or its subject



- matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the State of New York, United States of America, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.
- (j) During this Agreement's term, Licensee agrees to regularly back-up its data on a separate medium. Licensee acknowledges that any failure to do so may significantly decrease its ability to mitigate any harm or damage arising from any problem or error in the Licensed Products or the provision of services under this Agreement.
  - (k) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IT IS SPECIFICALLY ACKNOWLEDGED AND AGREED THAT NO REPRESENTATION, WARRANTY OR OTHER ASSURANCE IS MADE, DIRECTLY OR INDIRECTLY, THAT (I) ALL OR ANY PORTION OF THE LICENSED PRODUCT COMPLIES WITH ANY FEDERAL, STATE OR LOCAL LAWS, RULES, REGULATIONS OR ORDINANCES, AS THE SAME MAY BE CHANGED FROM TIME TO TIME, OR (II) LICENSEE'S USE OF THE LICENSED PRODUCT WILL RESULT IN LICENSEE'S COMPLIANCE WITH ANY FEDERAL, STATE OR LOCAL LAWS, RULES, REGULATIONS, OR ORDINANCES, AS THE SAME MAY BE CHANGED FROM TIME TO TIME.
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