

NEW RIVER KINEMATICS, INC.

End User License Agreement

THIS AGREEMENT entered into by and between NEW RIVER KINEMATICS, INC. ("Licensor"), a Virginia corporation having principal offices at 436 McLaws Circle, Williamsburg, Virginia 23185, 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) Licensee shall pay Licensor's license fees and charges for the Licensed Product in effect at the time of Licensee's acceptance of this Agreement. No license fees and charges apply when the Licensed Software is Unactivated Software.
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- (a) Unless otherwise terminated or cancelled as provided by this Agreement, 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 for five (5) years from the most recent version of Activated Software delivered to Licensee. 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

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- (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.
- (c) Unless otherwise terminated or cancelled, the Term of Licensee's Use of Unactivated Software is five (5) years from the date of first Use of Unactivated Software.

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- (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.
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 - (2) The Licensed Product will meet Licensor's then current published specifications for the Software.
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- (g) DESPITE ANY OTHER PROVISION HEREOF TO THE CONTRARY, LICENSOR'S LIABILITY OF ANY KIND SHALL NEVER EXCEED THE AMOUNT SET OUT IN PARAGRAPH 11.
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- (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) This Agreement shall be interpreted in accordance with the substantive laws of the Commonwealth of Virginia. In an action arising out of or relating to this Agreement or the Licensed Product, both parties consent to the nonexclusive jurisdiction of the federal and state courts located in the City of Roanoke, Virginia. The prevailing party of any dispute shall recover its reasonable attorneys' fees and costs incurred in litigating, arbitrating, or otherwise settling or resolving such dispute.
- (i) During the 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 the Agreement.
- (j) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS

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Licensee will be deemed to accept the terms of this Agreement and agree to perform all obligations of Licensee under this Agreement upon installation of the Software or Use of the Software or by any other means, electronic or otherwise, prescribed by Licensor and accepted by Licensee.

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