

End-User License Agreement

Non-Commercial or Academic Version
For proprietary code (not free/open source)

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In annex : specific terms (optional) and Service Level Agreement

End-User License Agreement

General Terms and Conditions (GTC)

Definitions

All undefined, capitalized words in the present document are defined in the Service Level Agreement (SLA).

“**Documentation**” is the technical documentation, including if included in the package associated guides and user manuals. The documentation can either be printed on paper or in electronic form.

“**Licensor**” is the company styled “ESI ITI GmbH”, the software publisher that either owns the intellectual property rights on the licensed Software Product or has been authorized by the Software Product’s owner to commercialize and provide technical support for the Software Product.

“**Licensee**” is the legal entity that submitted an order to Licensor local representation to obtain a License for one or several Software Product under the terms of the present End-User License Agreement (EULA).

“**License**” is composed of the present EULA (both General Terms and, if applicable, Specific Terms) and associated SLA Agreement. Thus defined, Licensee’s GTC are expressly refused, and do not apply unless accepted in writing by Licensor.

“**Licensor local representation**” in the case where the license is not directly granted by Licensor, it shall refer to a distributor, agent or affiliate of Licensor, contractually authorized to grant Licenses for the Software Product and provide, upon request, first level support and training. In case of direct license, the term shall be interpreted as meaning “licensor”.

“**Software Product**” shall refer to the whole or a part or parts of all executable code of the computer programs and/or databases (like a human model for instance) licensed by Licensor and to all Documentation or associated guides and manuals (hereafter “**Documentation**”).

“**Third Party Product**” means any computer program or database not published by Licensor.

“**To use**” or “**use**” employed in relation to the Software Product shall mean: loading or storing all or part of the Software Product in computers or servers in order to perform any instruction included in the program; executing the Software Product; processing data included in the Software Product; or displaying any part of the Software Product via the execution of said instructions. The terms “to use” or “use” employed in combination with the associated Documentation shall be interpreted in their primary and general meaning.

1 - License scope

1.1 - Rights granted under this License

Licensor hereby grants Licensee a non-exclusive right to use the Software Product, as delivered solely in machine-readable executable code.

Licensee shall be free to use the results obtained with its own data from any authorized use of the Software Product.

Said right is subject to the conditions contained herein.

Licensee shall restrict the use of the Software Product to its own needs, by its own personnel or by students in the case where licensee is an academic entity. The term “own needs” shall **NOT** apply for computing services performed for third parties (such a use implying the grant of a commercial license) and shall expressly exclude any demonstration of the Software Product to competitors

Under the present License, the Licensee has NO right:

- to sublicense or redistribute the Software Product, be it with or without charge;
- to extract data, by any means, from any Software Product database for a purpose incompatible with the intended use of the Software Product.
- to correct errors, as Licensor expressly reserves to itself this right.

No publication or communication is permitted to third parties (outside Licensee's group, if relevant) of benchmark results without Licensor's prior written authorization. This applies wherever such publication or communication contains a comparison between the Software Product and any other computer program(s).

Licensee is entitled to receive maintenance services under the terms of the annexed SLA.

Duration of the maintenance services described in said annex is, as follows:

- 1 year for a Paid-Up-License (PUL) and renewable upon regular payment of maintenance fees;
- The duration of yearly renewable licenses.

1.2 - Tacit renewal

Concerning the duration of the maintenance for Paid-Up-Licenses and the one of the yearly renewable licenses (with a first fixed period of one year or more), it is hereby specified that the obligation to pay the maintenance fee of PUL or the renewable licence fee respectively is tacitly renewed, unless the Licensee renounces to such a renewal by giving a 90 days notice before the term. In that case, a PUL would be transformed to a license with no maintenance and no support for the future and a renewable license would be terminated.

No deviation from this section is permitted, unless agreed by ESI ITI GmbH's general management directly; the Licensor Local Representation having no right to represent ESI ITI GmbH for such a modification.

A renewal shall have effect on the already granted licenses and any additional products (or tokens) that cause the signature of a separate EULA.

1.3 - License fees

The present License is granted contingent upon full payment of the relevant usage fees. Should a temporary license key be communicated and full payment fail to be transferred according to the agreed terms, use of the Software Product shall be terminated with no indemnification due to Licensee.

1.4 - Delivery and validity of the License

Delivery of the Software Product is deemed complete upon the electronic issue and remittance of the License keys that enable the Licensee to use the Software Product for the subscribed configuration.

The License is deemed valid as of the date of electronic remittance of Licensee's first password is transmitted electronically. Said date will be used for calculating the annual renewal of the License.

By exception to the above rules, Licensor shall be entitled not to renew a renewable License or to terminate the maintenance (Service Level Agreement) for a Paid-Up License, where an imperative regulation limits the right to export such products in the Country of Licensee.

1.5 - Installation

Installation of the Software Product is Licensee's sole responsibility and shall be accomplished in accordance with the installation guidelines supplied by the Licensor.

Should the installation fail, the Licensee shall inform Licensor local representation immediately. Licensor local representation and Licensee will communicate and act in good faith to find quickly an efficient remedy. If no remedy is found within a reasonable timeframe, the Licensor shall commit to enter discussions in good faith with the Licensee so as to find a solution acceptable for both Parties.

2 - Hardware

2.1 - Principle of no transfer to different hardware

The Software Product can be installed on any hardware and the location can be changed by the Licensee. But as for the location of the files or system that allow the use - may it be a dongle mounted to a hardware or licenses files stored on some hardware (local computer or server) - a transfer of those license files or dongle to another hardware may only be authorized to Licensees that are entitled to support and maintenance (due to the payment of maintenance fees for PUL or due to the renewal of yearly licenses), on an identical hardware and software configuration, and only in the case where the transfer is necessitated by the obsolescence or failure of the hardware.

Licensee shall provide evidence of such failure or obsolescence and Licensor shall be entitled to a reasonable fee for said transfer, which fee is set out in Licensor's price list.

2.2 - Negotiated exceptions for changes in system (hardware and software) configuration

Licensee acknowledges having been informed of the required minimum configuration for use of the Software Product. Licensor neither claims nor guarantees the adequacy of the Software Product with any other configuration.

Should Licensee wish to change its hardware or software configuration and get a new version of the Software Product that would interoperate with the foreseen new hardware or software, Licensee is hereby informed that such a possibility is only offered to Licensees that are entitled to support and maintenance and subject to the following procedure: .

1. Licensee sends to Licensor a request for a possible change in the hardware or software configuration, with description of said, so Licensor can check-out that a version of the Software Product is compatible with the new foreseen hardware and software configuration.
2. Licensor verifies compatibility and full performance of the Software Product on said hardware or software.
3. If the compatibility and performance tests have never been conducted by Licensor on the proposed new hardware, then:
 - a. if Licensee has already bought the new hardware – Licensee conducts the compatibility and performance tests by itself at his own risk, on the strict condition that (1) Licensor provides Licensee a free and temporary License to conduct such tests and (2) Licensee will provide all results of said tests to Licensor.
 - b. if Licensee has not yet bought the new hardware, the Parties will discuss and make their best efforts together to find an equivalent hardware configuration that corresponds to Licensee's needs.

2.3 - Obligations of Licensee consecutive to an authorized transfer

In any case of replacement of the hardware as provided in 2.1. or 2.2 above, Licensee is required to ensure the deletion or destruction of any Software Product installed on the preceding hardware or on other computer devices which are to be either discarded or no longer used with the Software Product; said Software Products must be definitively erased from or destroyed with said hardware.

If any modification of the hardware is made – as provided above or due to an exceptional authorisation given in writing by Licensor – Licensee shall inform Licensor local representative who will then send Licensee a form to be completed and returned. Failing to do so, no transfer shall be authorized.

3 - Interoperability

3.1 - Interoperability: use within the European Union

Should Licensee use the Software Product within the European Union, the following dispositions apply:

Should Licensee wish to have the Software Product interoperate with a Third Party Product, Licensee will first inform Licensor or Licensor local representation of its intent.

Licensor may then decide to either communicate the required interface information or make a commercial proposal to pursue any development in order to achieve interoperability; the latter includes improvement of the Software Product or writing of an intermediate program.

If Licensee rejects Licensor's commercial proposal, Licensor will then, without requesting further justification, provide Licensee with the required interface information under the strict conditions of a Non-Disclosure Agreement prepared by Licensor and signed prior to any communication, for the sole purpose of achieving the desired interoperability.

Pursuant to the latter case, should Licensor perform subsequent modifications to the Software Product to allow it to interoperate with the concerned Third Party Product, Licensor will provide Licensee with the new version, which Licensee will be obligated to use, in order to facilitate maintenance.

All fees related to the new version shall depend on the origin of the modifications:

- o if requested by Licensee, Licensee shall pay the fees for specific developments performed and associated maintenance;
- o if originating from Licensor's development roadmap, Licensee shall only pay the fees for renewal of its licenses so as to obtain the new release.

3.2 - Interoperability: use outside the European Union

Should Licensee wish to have the Software Product interoperate with a Third Party Product, Licensee shall inform Licensor of its intent. Licensor will then make a commercial proposal for the development of any required modification or addition to the Software Product to achieve interoperability. The preparation of such a proposal may require a fee, depending on the scope of the project and provided that Licensee has been previously informed of estimated costs.

4 - Intellectual Property

4.1 - Warranty

Licensor hereby declares that it is the owner of all intellectual property rights in the Software Product or that it is authorized by the owner of said rights to commercialize the Software Product; and certifies that there is no infringement on the intellectual property rights of any third party.

Licensee shall immediately notify Licensor, if Licensee is sued for infringement based on Licensee's use of the Software Product. Licensor shall assume, on its own behalf and at its own cost, the defence and settlement of the dispute. Licensee shall be obliged to cooperate fully with Licensor at Licensor's expense, providing that Licensor preserves the interests of both Parties.

Licensor shall have no obligation with respect to any claim of infringement to the extent that such infringement is the result of a Licensee's modification of the Software Product or its combination, operation, or use with programs or equipment not specified by Licensor.

The foregoing indemnity obligations are contingent upon Licensee giving prompt written notice to Licensor of any claim, demand, or action for which indemnity is sought and then fully cooperating at Licensor's expense in the defence or settlement or proposal of settlement.

Apart from the above-mentioned exceptions, Licensor shall not be liable for any special, incidental or consequential damages of any nature, providing that in the event Licensee is forced by a third party to discontinue use of the Software Product, Licensor shall assume any direct damages with this respect.

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Any act of infringement committed by third parties of whom Licensee may become aware should be reported without delay to the Licensor who shall then decide what action will be taken.

4.3 - Notices (proprietary and other)

Licensee shall not alter or remove any copyright, patent, trademark, proprietary or legal notices contained on or in copies of the Software Product. Licensee shall reproduce all such notices on or in all copies of Licensed Product as made under this Agreement.

4.4 - Security and audit

Licensor reserves the right to:

- Embed security mechanisms within the Software Product to monitor, store and transmit information concerning usage in order to verify compliance with this License, being pointed out that such security mechanism:
 - o Only reacts in case of non-compliance (use of an illegal copy).
 - o Cannot access to proprietary data created by the Licensee through use of the Software Product (access to proprietary data that are created or modified or to result of creation or modification is impossible).
- Use a hardware lock device, License administration software, or a License authorization key to control access to the Software Product.

The Licensee may not take any steps to avoid, bypass or defeat the purpose of any such security measures. Use of the Software Product without the required lock device or without the authorization key provided by Licensor is prohibited.

Licensor shall be entitled to audit the Licensee or have an audit performed on its behalf, during business hours, in order to verify that all conditions of the present License are respected. Licensor shall give prior notice within three business days of said audit.

5 - Data Protection

The Licensee hereby acknowledge and agrees that Licensor local representation or Licensor will process the contact details and minimal personal data of Licensee's employees that contact Licensor local representation or Licensor to receive services described in the annexed SLA, in accordance with the rights granted to Licensee in 1.1 above and the SLA.

The personal data to be processed include mainly first and last name, job title, email address and phone number as required as a minimum to provide the services subscribed under the SLA.

The purpose of processing Licensee's employees' personal data are:

- Providing services according to the present License (including offer, delivery of License keys or services in SLA).
- Direct marketing by Licensor or its affiliates.

Providing this information is mandatory, as contacting Licensee is required:

- (a) to deliver the License (including License keys) and services subscribed under the SLA,
- (b) to verify the list of Key Users provided by Licensee and the person(s) contacting Licensor local representation or Licensor.

Not providing this information may result in delay (until required information is obtained) or even the impossibility to deliver the services or the License itself.

The employees of Licensor's group (Licensor, holding company ESI group and affiliates of ESI Group) are to be recipient of said personal data.

Licensee acknowledges that the data may be transferred abroad to Licensor's third-party subcontractors.

Licensee further acknowledges that Licensor or Licensor local representation shall process personal data in accordance with Licensee's instruction so as to execute an agreement to its benefit.

It is Licensee's sole responsibility (a) to obtain data subjects' consent to this processing and (b) to inform data subjects of their rights regarding their personal data, including access/rectification or deletion. Furthermore, the Licensee is also the sole responsible for handling such requests from its employees and to inform the Licensor of said in a timely fashion. Licensor will answer to such requests.

Licensee agrees to comply with the requirements of Data Protection Laws and Regulations and further acknowledges and agrees that it has sole responsibility for the accuracy, quality, and legality of personal data and the means by which Licensee acquired said personal data.

6 - Export by Licensee (if allowed in writing by Licensor)

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Licensor or Licensor local representation makes no representation or guaranty with respect to Licensee's right to export or its lack of such right, expressly disclaims any liability concerning such exportation, and asserts that it shall not provide any assistance in any export matters desired by the Licensee.

7 - Warranty and Liability

Licensor shall guarantee the conformity of the Software Product with the specifications mentioned in the Documentation published by Licensor and the good working of the Software Product, according to said specifications, on a platform set up to match the required hardware configuration as defined in the Documentation.

Licensor does NOT guarantee that:

- (a) the functions contained in the Software Product will meet Licensee's requirements
- (b) said functions will enable the Software Product to attain the objectives Licensee has set for itself
- (c) said functions will operate in the combination selected by Licensee
- (d) the operation of the Software Product will be uninterrupted or free of errors.

Licensee shall have exclusive responsibility for

- (a) Software Product installation,
- (b) taking adequate measures to properly test, operate and use each concerned Software Product,
- (c) Software Product selection to achieve Licensee's intended results, all results obtained therefrom, and
- (d) selection, use and results of any other computer program, database or programming equipment or services used in connection with the Software Product.

Any warranty or responsibility of Licensor shall cease immediately upon Licensee's use of the Software Product in a non-appropriate configuration, or if Licensee or any third party makes any modifications not expressly authorized by Licensor.

8 - Termination for cause

Should Licensee's use of the Software Product fail to conform to the present agreement's conditions, Licensor shall have the right to terminate immediately said agreement upon formal notice by registered letter with acknowledgement of receipt.

Reception of said termination letter creates for Licensee an obligation to remove or erase the Software Product from any computer or device and to return or destroy all copies of the Documentation without delay.

Licensee shall send thereupon and without delay written confirmation to Licensor that this obligation has been met.

9 - Miscellaneous

9.1 - Case studies and customer feedback

Unless otherwise specified, Licensor will have the right to make any commercial or informative reference to Licensee's use of the licensed Software Product, without compromising any existing confidential obligations between Licensor, Licensor local representation and Licensee.

Licensor is free to use without restrictions (meaning in any way, at any time, through any means, in any format, wherever in the world, royalty free) any feedback about the Software Product communicated to Licensor by Licensee: either directly or through Licensor local representation and irrespective of the communication's format.

Feedback shall mean Licensee's communication of any ideas, suggestions, guidance or other information, including but not limited to Licensee test results or suggested improvements of the Software Product.

9.2 - Non-waiverability

Nothing in the attitude or actions of Licensor or Licensor local representation (examples: delay, inaction, any failure to perform or execute) shall be construed neither as a waiver of any rights, in whole or in part, granted by Law or in virtue of this License, nor as an authorisation or tolerance of any kind, which would permit Licensee's continuation of any misconduct or breach of the present agreement.

9.3 - Severability

If one or more provisions of the present agreement should be deemed invalid, all other provisions shall remain in force except where a legal ruling states that the nullity of a provision invalidates all other provisions. Moreover, the Parties shall then make all reasonable efforts to replace said provision by a provision complying with the applicable regulation and respecting as closely as possible the intent of the invalid original provision.

9.4 - Contractual documents

All Software Product Licenses are governed by the present EULA including General Terms, Specific Terms (if any), and the Service Level Agreement's terms hereby included as part of the present License. Licensor reserves the right to modify and adapt the present terms and conditions at any time.

The end user license is granted solely according to the present General Terms and Conditions. The general Purchase Terms and Conditions of Licensee are expressly rejected. Licensor is not bound by any other agreement or general conditions and further rejects any and all amendments to and modifications of the present license, unless agreed upon in writing in an agreement duly executed by Licensor's authorized representatives.

9.5 - Order of precedence

The contractual documents below are listed in descending order of precedence:

1. The Specific Terms of the present EULA
2. The General Terms of the present EULA
3. The SLA's terms corresponding to the ordered level of services contained therein
4. The offer made to Licensee
5. Licensee's order.

10 - Jurisdiction

The venue shall be the court of the district in which the Software Product is used. The Licensee's local law (i.e., the law where the Software Product is used), shall govern the present agreement both for its interpretation and its enforcement.

In witness whereof, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives.

Made in duplicate.

For **Licensee**:

For **ESI ITI GmbH**,

Licensor local representation:

(Include here the references of distributor if ESI ITI GmbH is not directly granting the license)

By: ...

By: ...

Title: ...

Title: ...

Date: ...

Date: ...