End User Licence Agreement (EULA)

SPEKTRA Schwingungstechnik und Akustik GmbH Dresden

Heidelberger Straße 12 | 01189 Dresden

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Please read this End User Licence Agreement ("EULA") carefully before using "SPEKTRA Software" ("SOFTWARE"). In using the SOFTWARE, you acknowledge that you have read and understood the terms below and that you accept the terms of this EULA. A natural person acting on behalf of a legal entity expressly confirms that they are entitled to enter into this EULA on behalf of that legal entity. If you do not accept the terms of this EULA, you should not install, copy or otherwise use the SOFTWARE. This EULA does not grant any right to SPEKTRA services such as software maintenance, upgrades or support. Services and associated payments should be checked against any service or subscription contract signed with SPEKTRA or one of SPEKTRA's authorised suppliers or partners.

This EULA regulates use of the SOFTWARE, including all associated updates, source code, visual display, structure and organisation, howsoever supplied.

1. General Information

1.1 The licensor is SPEKTRA Schwingungstechnik und Akustik Dresden, Heidelberger Strasse 12, 01189 Dresden, and the licensee is the end user. The licensor grants the licensee a non-exclusive, non-transferable licence to the SOFTWARE. That includes the special software programme, the associated licensed software modules, subsequent upgrades, updates and patches, the associated documentation for internal use and the associated manuals and software documentation.

1.2 If the SOFTWARE has been marked by the licensor as an "update", "upgrade", "patch" or "subscription", the licensee must have the appropriate software product licence, marked as such by the licensor, for the update, upgrade or patch in order to use the SOFTWARE. SOFTWARE marked by the licensor as an update, upgrade or patch replaces and/or upgrades the original product used as the basis for the update or upgrade.

1.3 The SOFTWARE may contain codes, objects or other intellectual property developed by third-party licensors and integrated in the software product ("embedded third-party software"). Any embedded third-party software or open source code and open source licences used do not restrict or impair the licensee's guaranteed user rights.

2. Deliverable

2.1 The licensor shall supply the SOFTWARE in keeping with the product description in the documentation and the applicable performance specification, which also stipulates the licence fee. Unless agreed otherwise, SOFTWARE is delivered in the latest version available at the time of despatch.

2.2 The functional properties of SOFTWARE delivered by the licensor are specified exhaustively in the product description in the documentation.

2.3 The licensor is not required to deliver SOFTWARE with any additional properties and the licensee cannot assume any such obligation, especially not from other presentations of the SOFTWARE in public statements or in the licensor's advertising, unless the licensor has expressly

confirmed the additional property in writing. Warranties require express written confirmation by the licensor's management.

2.4 The licensee declares that it is aware of the essential functions of the SOFTWARE. It bears the risk as to whether they meet its expectations and needs. If in doubt, the licensee should obtain advice from the licensor's staff or a third-party expert before entering into the contract. The licensor can advise on technical deployment options and conditions of the SOFTWARE on request.

3. Scope of Licence

3.1 All copyright and other property rights to the SOFTWARE remain vested in the licensor alone, unless expressly transferred to the licensee pursuant to the user rights transferred herein.

3.2 Fundamentally, the licensor grants the licensee a non-exclusive right to install and use the SOFTWARE (single site licence). The licensee is entitled to install and use the SOFTWARE on hardware which complies with the performance specification.

3.3 The licensee may transfer the SOFTWARE to a third party, together with the user rights to the extent granted under this EULA, in which case the licensee must physically delete the used copy of the SOFTWARE and any backup copy at the time of transfer, unless it sells the SOFTWARE and all the hardware to the third party. The licensee must obtain written assurance from the purchaser that it will comply with this EULA. The licensee must notify the licensor of the transfer of the SOFTWARE and user rights immediately, together with the purchaser's address.

3.4 It is prohibited to lend or rent out the SOFTWARE without the licensor's consent.

3.5 The licensee may reproduce the SOFTWARE delivered to the extent required in order to use the SOFTWARE. Necessary reproductions of the SOFTWARE include installation of the software product on the mass storage of the device and loading of the SOFTWARE into the main memory of the computer. The licensee is also entitled to make a single copy for data backup. That backup copy of the license SOFTWARE must be marked as such. The licensee is not entitled to make further copies or to instruct third parties to make further copies. That includes in particular printing the programme code using a printer or photocopying the manual.

3.6 Changes to the hardware may generate additional expenditure for the licensee and/or the licensor for a follow-on licence or for licence repair or licence renewal. That applies in particular to changes or extensions to hardware components or replacement of a complete hardware system. If the licensor transfers the SOFTWARE to different hardware, the licensee must stop using the transferred SOFTWARE on the "old" hardware system.

3.7 In the event of breach of the above term, all user rights transferred to the licensee under this EULA shall lapse immediately.

4. Programme Decompilation/Changes

You are not entitled to reverse engineer, decompile or dissemble the SOFTWARE, unless allowed to do so by law notwithstanding this restriction.

5. Reserved Rights/Ownership

5.1 All property rights and copyright in respect of the SOFTWARE, the accompanying printed material and all copies of the SOFTWARE shall remain vested in the licensor or its suppliers. The licensee is not entitled to reproduce the printed material accompanying the SOFTWARE.

5.2 The licensee is not entitled to remove, alter or add to copyright or trademark notices placed by the licensor. That includes without restriction all references in physical and/or electronic media or documents, in the set-up assistant or "about" dialogue fields and/or in other references online or activated online, in the programme code or in other embodiments originally contained in the SOFTWARE or otherwise incorporated by the licensor.

6. Support/ Services

As a rule, the licensor offers technical support services for a fee. The scope of technical support is stated in the performance specification for the SOFTWARE. It is the licensee's responsibility to back up all software and programmes before obtaining technical support from the licensor. The licensor reserves the right to refuse, suspend or cancel free technical support at its discretion.

7. Term and Cancellation

7.1 This EULA and the associated user rights shall take legal effect on full payment of the licence fee to the licensor (effective date). This licence agreement shall commence, unless it is a licence agreement of limited term, on the date stated in the licensor's order confirmation (effective date) or on the start date stated by the licensee in a written agreement (effective date).

7.2 The licensee may cancel this EULA in writing to the licensor at any time. The user rights granted to the licensee shall lapse on cancellation of the licence agreement.

7.3 The licensor is entitled to cancel this licence agreement and the corresponding user rights with immediate effect if the licensee breaches a term of this licence agreement or tacitly tolerates a breach of this licence agreement by a third party or fails to discharge its obligations under this licence agreement or files for bankruptcy.

7.4 The above terms notwithstanding, this EULA shall end automatically if the licensee breaches any terms herein. Furthermore, this EULA shall end automatically if the licensee transfers possession of the SOFTWARE or a copy of the SOFTWARE to a third party or through sale to a third party of the hardware on which the SOFTWARE is installed.

7.5 Licence fees shall not be refunded in full or in part under any circumstance if the licence agreement is cancelled. The licensee undertakes to destroy all copies of the SOFTWARE as a whole, in parts or in conjunction with other software when this licence agreement ends.

8. Limited Warranty

8.1 Unless expressly agreed otherwise, the SOFTWARE provided by the licensor is state of the art and complies with the product information and specifications supplied by the licensor, including the information in the documentation. The licensor does not warrant that the SOFTWARE governed by this EULA is suitable for purposes that go beyond performance of the contract by the licensor.

8.2 The licensee is advised that, in the current state of the art, programme bugs cannot be discounted with 100 % certainty, despite all due diligence.

8.3 Given that the interface software is provided without charging a licence fee, the licensor provides the SOFTWARE and any support services, to the maximum possible extent allowed by applicable law, "as is" and without claiming they are defect-free. The licensor includes in this all other warranties and guarantees, whether express, implied or statutory, including but not limited to any (if any) implied warranty, duty or guarantee of merchantability, fitness for a particular purpose, reliability or availability, accuracy, complete responses, results, professional effort, absence of viruses and lack of negligence, all in respect of

the SOFTWARE, and the provision or failure to provide support or other services or the provision or failure to provide information, software and related content on the SOFTWARE, and all warranties, duties or guarantees otherwise arising out of the use of the SOFTWARE. All warranties or guarantees of ownership, quiet use, quiet possession, compliance with the description or non-infringement of third-party rights in respect of the SOFTWARE are excluded.

8.4 The above is without prejudice to mandatory provisions under the applicable law.

8.5 The licensor offers neither a warranty for nor a guarantee of the functionality of monitoring schedules or programmes prepared by third-party suppliers or the licensee/customers or that the monitoring schedules or programmes will run error-free with the licensor's SOFTWARE or on its systems. The licensor excludes all forms of warranty or guarantee in respect of third-party monitoring schedules or programmes, especially following the installation of software upgrades or new programme versions.

9. Liability

9.1 Unless this EULA and the provisions below stipulate otherwise, the licensor only bears statutory liability in the event of infringement of contractual and non-contractual obligations.

9.2 The licensor can only be held liable for damages, regardless of the legal grounds, in the event of wilful or grossly negligent conduct. In the event of simple negligence, the licensor can only be held liable for:

- Harm caused by injury to life, limb or health.
- Harm caused by breach of a material contractual obligation (an obligation which must be fulfilled before the contract can be duly performed and which the counterparty regularly expects and may expect to be fulfilled), in

which case, however, our liability is limited to reparation of typical foreseeable harm and, in the event of financial losses, to the net remuneration agreed.

9.3 Any claim for damages shall be reduced by the user's contributory negligence.

9.4 The liability limitations set out in paragraph 9.2 shall not apply if the licensor fraudulently concealed a defect or warranted product properties. The same applies to the licensee's claims under the Product Liability Act.

9.5 Liability for damages over and above that provided for in paragraphs 9.1 to 9.4 is excluded, irrespective of the legal basis of the claim brought. This applies in particular to claims for damages on the grounds of fault during execution of a contract, on the grounds of some other breach of duty or on the grounds of claims in tort to damages under Section 823 of the Civil Code.

9.6 Where liability for damages on the part of the licensor is excluded, the same applies to the personal liability for damages of its staff, representatives and agents.

9.7 The above liability rules do not change the burden of proof to the licensee's detriment.

9.8 The licensee undertakes to report any harm within the meaning of the above liability rules in writing to the licensor without delay, so that licensor is made aware promptly and can, where appropriate, take action with the licensee to mitigate the harm.

10. Licensee's Duty of Care of Software/Risk

10.1 The licensee must take appropriate measures to prevent third parties from accessing the SOFTWARE and documentation and must, in particular, instruct its staff to deny third parties access to the SOFTWARE.

10.2 The licensee must keep the backup copies referred to in paragraph 3.5 in a place that is secured against unauthorised third-party access, must insist that its staff comply with these licence and copyright terms and, in particular, it must instruct its staff not to prepare unlawful copies of the SOFTWARE, the user instructions and the installation instructions.

10.3 If a member of the licensee's staff infringes copyright or grants unauthorised third parties access to the SOFTWARE, the licensee must help to clarify the infringement and must advise the licensor of the action taken to deal with the infringement.

11. Final Terms

11.1 German law applies. The UN Convention on Contracts for the International Sale of Goods does not apply.

11.2 No side agreements exist to this EULA. Amendments and addenda to this EULA must be set out in writing. This formal requirement can only be waived by written agreement.

11.3 The place of performance and the place of jurisdiction for all disputes between the parties further to the EULA is Dresden, provided the user is an entrepreneur, a public-law legal entity or a public-law special fund or has no general place of jurisdiction in the Federal Republic of Germany or moves their place of jurisdiction abroad. If the requirements for a choice of forum in accordance with Section 38 of the Code of Civil Procedure are fulfilled, the place of jurisdiction for all claims brought by the parties under this EULA shall be the place of the licensor's registered office. However, the licensor is also entitled to sue the licensee in the court in whose district it is registered.

11.4 If individual provisions in this EULA are or become legally ineffective in full or in part, that shall be without prejudice to the remaining provisions.

The parties hereby agree that, in such an eventuality, the invalid provision shall be replaced by a legally effective provision that best emulates the economic purpose of the invalid provision. The same shall apply to any omissions in the terms.

The current version of this EULA is available at:
https://www.spektra-dresden.com/en/legal.html

Dresden, April 2020