

Systecon License Agreement

This software license agreement ("Agreement") shall be effective upon signature by the below defined Licensee.

Parties:

Systecon AB, org.no. 556536-6605, a Swedish corporation with its principal place of business at Rehngatan 20, PO Box 19171, SE-104 32 Stockholm, Sweden ("Systecon") and;

For [insert full name of Licensee]

Date: _____

Place: _____

By (signature): _____

Print name: _____

Title: _____

1. License Grant

- 1.1. Systecon Software. Systecon hereby grants to Licensee a non-exclusive, non-transferable, revocable license to install and use the software application(s) licensed from Systecon or a Systecon distributor or reseller, ("Systecon Software"), in object code form only, and solely for internal use within Licensee's own business in the agreed site and solely for the scope, functionality and amount of users for which Licensee has registered and paid the applicable license fee.
- 1.2. Back-Up. Licensee may make a reasonable number of back-up copies of the Systecon Software in machine-readable form, provided such copy is used for back-up only and provided all copyright information contained on the original is included in the copy.
- 1.3. Documentation. Systecon further grants to Licensee a right to print and use the documentation for and provided by Systecon for such Systecon Software ("Documentation") solely for internal use within Licensee's own business.

2. Ownership, Restrictions on Use

- 2.1. Restrictions. The use of the Systecon Software is subject to payment of the license fee and the fulfillment of all requirements stipulated in this Agreement. Except as expressly permitted by mandatory applicable law and this Agreement, Licensee agrees not to, either by itself or through any parent, subsidiary, affiliate, agent or other third party, copy, modify, decompile, reverse engineer, create derivative works from, disassemble, or otherwise discover or attempt to reconstruct, identify any source code, underlying ideas or algorithms of the Systecon Software by any means, or to sell, distribute, rent, lease, or loan the Systecon Software, whole or part, or to distribute the functionality of the Systecon Software

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- 2.3. Notices. All copies of the Sysstecon Software contain copyright and proprietary notices describing Sysstecon's or its licensor's proprietary rights thereto. Licensee undertakes not to alter or remove any notices of copyright or proprietary rights or identification, which indicates Sysstecon's or its licensor's proprietary rights in the Sysstecon Software.
- 2.4. Audit Rights. Subject to Government security requirements, Sysstecon reserves the right to conduct audits of Licensee's premises and computer equipment to ascertain whether the Licensee's use of the Sysstecon Software is in accordance with the provisions of this Agreement and the Licensee shall be obliged to assist Sysstecon in the preparation of such audit and shall grant Sysstecon access to the requisite premises and areas as well as to the computer equipment. Such audit shall be conducted by personnel having executed customary non-disclosure agreements.

3. Limited Warranty

- 3.1. Warranty and Warranty Term. Sysstecon warrants that the Sysstecon Software hereunder will perform in substantial conformance to the Documentation during the warranty period. The warranty period applicable to the Sysstecon Software is one (1) year, commencing on the date the Sysstecon Software is delivered to the Licensee.
- 3.2. Remedies. Sysstecon's sole obligation hereunder shall be in Sysstecon's discretion, to refund any license fee paid by Licensee to Sysstecon for any defective Sysstecon Software, or to replace any defective Sysstecon Software with software which substantially conforms to the Documentation.
- 3.3. Exceptions. Sysstecon shall not be liable under this warranty if its testing and examination disclose that the alleged defect in the Sysstecon Software does not exist or was caused by Licensee's or user's or any third person's misuse, negligence, improper installation or testing, unauthorized attempts to support, or any other cause beyond the range of the intended use.
- 3.4. Exclusive Remedy. **THE FOREGOING REMEDY CONSTITUTES LICENSEE'S SOLE AND EXCLUSIVE REMEDY RELATED TO ANY BREACH OF ANY WARRANTY RELATED TO THE SYSTECON SOFTWARE. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, THE WARRANTIES AND REMEDIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SATISFACTORY QUALITY, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. SYSTECON'S WARRANTIES HEREIN RUN ONLY TO LICENSEE, AND ARE NOT EXTENDED TO ANY THIRD PARTIES WHICH, FOR THE AVOIDANCE OF DOUBT, INCLUDES ANY AGENTS OF LICENSEE OR END USERS. SYSTECON NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE LICENSING, SUPPORT OR USE OF THE SYSTECON SOFTWARE,**

AND SYSTECON MAKES NO WARRANTIES OR CONDITIONS WHATSOEVER FOR ANY NON-STANDARD SOFTWARE SUPPLIED BY IT HEREUNDER.

4. Software Provided under Support and Maintenance Offerings

- 4.1. No Support. No support or maintenance is provided under this Agreement. Licensee may subscribe for Sysstecon's or Sysstecon's distributors' or resellers' support and maintenance offerings in effect from time to time. Any updates, upgrades and/or new versions provided pursuant to such support and/or maintenance offerings shall be governed by this Agreement.
- 4.2. No Warranty for Support and Maintenance Offerings. This Agreement does not cover new products which are provided for a separate licensee fee and under separate license agreements. Further, the warranty provision in section 3 does not cover updates and upgrades/new versions distributed under any support and/or maintenance offerings, such software is provided AS IS without any warranty.

5. Fees and Payment Terms

- 5.1. Licensee Fee. Licensee shall pay the license fee for the Sysstecon Software stipulated by Sysstecon from time to time, or if the Sysstecon Software is distributed through a Sysstecon distributor or reseller, the fee stipulated by such distributor or reseller.
- 5.2. Payment Terms. Any payment by Licensee pursuant to this Agreement shall be made according to Sysstecon's reasonable payment instruction in effect from time to time, or if applicable Sysstecon's distributor's or reseller's reasonable payment instruction.
- 5.3. Taxes. Sysstecon shall state separately on invoices taxes excluded from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k). Should Licensee fail to pay any amount when due, Sysstecon or as the case may be Sysstecon's distributors or resellers, shall in addition to any other remedy available, be entitled to receive interest at the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

6. Term and Termination

- 6.1. Term. This Agreement is for an indefinite duration unless expressly agreed otherwise in writing, subject to the proper payment of the license fees stipulated in section 5 and the rightful performance of all Licensee's obligations stipulated by this Agreement.
- 6.2. Termination by Licensee. This Agreement can be terminated by Licensee at any time unless Licensee and Sysstecon or Sysstecon's Partner has agreed for a minimum term.
- 6.3. Termination by Sysstecon. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Sysstecon shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

6.4. Reserved.

- 6.5. Effect of Termination. Upon termination, Licensee shall return any hardware license keys and destroy all copies of the Sysstecon Software and Documentation in Licensee's possession, and all rights and obligations of the parties shall terminate forthwith except Licensee's liability for amounts owed to Sysstecon. No repayment of license fees paid in advance will be made.

7. Patent and Copyright Indemnity

- 7.1. Indemnity. Sysstecon shall, at its own expense, have the right to intervene to defend or settle any suit or proceeding that is instituted against Licensee to the extent such suit or proceeding alleges that any Sysstecon Software licensed hereunder. infringes any rightful patent right or copyright of a third party, and shall pay all damages awarded therein against Licensee or agreed upon in settlement by Sysstecon; provided that Licensee (i) gives Sysstecon immediate notice in writing of any such suit, proceeding or threat thereof; (ii) permits Sysstecon sole control, through counsel of Sysstecon's choice, to answer the charge of infringement and defend and/or settle such suit; and (iii) gives Sysstecon all the needed information, reasonable assistance and authority, at Sysstecon's expense, to enable Sysstecon to defend or settle such suit. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.
- 7.2. Proviso. The above provision shall not apply to, and Sysstecon shall have no liability or obligation for, any infringement arising from the following: (i) any modification, servicing or addition made to the Sysstecon Software by anyone other than Sysstecon; (ii) the use of such a Sysstecon Software as a part of or in combination with any devices, parts or software not provided by Sysstecon; (iii) compliance with Licensee's design requirements or specifications; (iv) the use of other than a current unaltered release of the Sysstecon Software available from Sysstecon; or (v) the use of such Sysstecon Software to practice any method or process which does not occur wholly within the Sysstecon Software or (vi) any use of the Sysstecon Software outside the scope of the license granted in section 1. This exclusion applies to the extent that the infringement would have been avoided but for such modification, combination, compliance with specifications, use of other than the current release, or practice of such method or process.
- 7.3. Right to Mitigate Damage. In the event the use of any Sysstecon Software licensed hereunder shall be enjoined, or if Sysstecon believes the Sysstecon Software infringes or is likely to infringe any third party rights, or in the event Sysstecon wishes to minimize its potential liability hereunder, Sysstecon may, at its sole option and expense and without any cost or harm to Licensee: (i) procure for Licensee the right to use such Sysstecon Software; (ii) substitute a functionally equivalent, non-infringing unit of the Sysstecon Software; (iii) modify such Sysstecon Software so that it no longer infringes but remains functionally equivalent; or (iv) if none of the foregoing are commercially feasible, take back such Sysstecon Software and refund the purchase price paid by Licensee for such Sysstecon Software, depreciated over a five (5) year period using the straight line method.

8. Limitation of Liability

- 8.1. No Liability. IN NO EVENT SHALL SYSTECON BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, OF ANY KIND WHATSOEVER OR FOR LOSS OF OR RECOVERY OF DATA, OR ANY COSTS OF REPROGRAMMING OR REPRODUCING ANY

PROGRAM, ANY DAMAGES CAUSED BY CORRUPT OR INADEQUATE DATA, OR FOR ANY DAMAGE CAUSED BY THE DATA OR RESULT FROM THE USE OF THE SYSTECON SOFTWARE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

- 8.2. **Limitation of Liability.** IN ADDITION, SYSTECON'S AGGREGATE AND TOTAL LIABILITY UNDER THE AGREEMENT IN RESPECT OF ONE OR MORE EVENTS OR SERIES OF EVENTS (WHETHER CONNECTED OR UNCONNECTED) SHALL BE LIMITED TO A TOTAL AMOUNT EQUAL TO THE LICENSE FEE PAID FOR THE SYSTECON SOFTWARE CAUSING THE DAMAGE DURING THE TERM OF THE AGREEMENT; AND (ii) FIVE (5) TIMES THE BASE AMOUNT UNDER, AT ANY GIVEN TIME, THE SWEDISH NATIONAL INSURANCE ACT (1962:381). LICENSEE RELEASES SYSTECON FROM ALL OBLIGATIONS, LIABILITY, CLAIMS OR DEMANDS IN EXCESS OF THE LIMITATION. THIS LIMITATION SHALL SURVIVE AND APPLY EVEN IF ANY LIMITED WARRANTY OR REMEDY HEREUNDER IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

9. Confidentiality

- 9.1. **Definition of Confidential Information.** As used herein, "Confidential Information" means all non-public information, whether in oral, written or other tangible form that the party disclosing the information (the "Disclosing Party") designates as being confidential or which, under the circumstances surrounding disclosure, the receiving party (the "Recipient") knows or has reason to know should be treated as confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (a) is or becomes generally available to the public other than (i) as a result of a disclosure by Recipient or its employees or any other person who directly or indirectly receives such information from Recipient or its employees or (ii) in violation of a confidentiality obligation to Disclosing Party known to Recipient; (b) is or becomes available to Recipient on a non-confidential basis from a source which is entitled to disclose it to Recipient; (c) was developed by employees or agents of the Recipient independently of and without reference to any information communicated to Recipient by the Disclosing Party; or (d) is required by law to be disclosed by the Recipient. A disclosure of Confidential Information which is (x) in response to a valid order by a court or other governmental body, (y) otherwise required by law, or (z) necessary to establish the rights of either party under this Agreement, shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided however, that the party disclosing such information shall provide prompt written notice thereof to the other party to enable it to seek a protective order or otherwise prevent such disclosure. Systecon recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor
- 9.2. **Secrecy.** Recipient shall hold the Confidential Information in confidence, disclosing the Confidential Information only to such of Recipient's employees, contractors and advisors who have a need to know for the purpose of fulfilling Recipient's obligations under this Agreement. Recipient shall advise any such individuals that the Confidential Information is confidential and that by receiving such information such individuals are agreeing to be bound by terms substantially similar to and no less restrictive than the terms of this Section 9, and to not use such information for any purpose other than authorized herein. Without the Disclosing Party's prior written consent, Recipient shall not, and shall direct such individuals not to, disclose the Confidential Information in whole or in part, except to the extent compelled by law (subject to the above provisions). Recipient shall employ all

reasonable steps to protect the Confidential Information from unauthorized or inadvertent disclosure or use, including, without limitation, all steps that it takes to protect its own information that it considers a trade secret.. Recipient's duty to protect Discloser's Confidential Information expires three (3) years from the date of termination of this Agreement.

10. General Provisions

10.1. Reserved.

10.2. Export Compliance. Licensee will be responsible for compliance with applicable export control rules, regulations, directives or laws with respect to its use or disposition of the Systecon Software and any related technical data, and will not export or re-export Systecon Software or any related technical data without first obtaining a license from applicable export or regulatory agency as required by law.

10.3. Relationship of the Parties. Nothing stated in this Agreement will be construed as creating the relationships of joint ventures, partners, employer and employee, franchisor and franchisee, master and servant, or principal and agent. This Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit or be enforceable by anyone else.

10.4. Assignment. Licensee shall not assign this Agreement or delegate any of its rights, duties or obligations hereunder without the prior written consent of Systecon. Any attempt to do so without such consent is void.

10.5. Waivers. No waiver of any default shall be effective unless it is expressly evidenced in written form signed by Systecon and Licensee. The waiver of any one default shall not waive subsequent defaults of the same or different kind or continuing defaults after demand for strict compliance.

10.6. Severability. In the event that any provision of this Agreement shall be held by a court of competent jurisdiction or an administrative authority of either international or national jurisdiction to be invalid or unenforceable, the remaining portions of this Agreement shall remain in full force and effect and be construed so as to best effectuate the intention of the parties in executing it.

10.7. Entire Agreement. This Agreement constitutes the entire agreement between the two parties hereto with respect to its subject matter and any and all written or oral agreements heretofore existing between the parties hereto with respect to its subject matter are expressly cancelled. Any modifications of this Agreement must be in writing and signed by both parties hereto. Each party acknowledges and agrees that in entering into this agreement it has not relied on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or

not) relating to the subject matter of this agreement other than as expressly set out in this Agreement.

10.8. Governing Law. This Agreement shall be governed by and construed in accordance with the Federal laws of the United States of America.

10.9. Reserved.

10.10. Notices. All notices and demands of any kind which either Sysstecon or Licensee may be required or wish to serve upon the other under the terms of this Agreement shall be in writing and shall be served by personal service, by fax, by recorded delivery mail or by e-mail at the address of the receiving party set forth in this Agreement (or at such different addresses as may be designated for such purpose by such party by written notice to the other party); all notices or demands given by personal service shall be effective upon receipt, all notices or demands given by fax or post shall be deemed given upon sending provided the party sending can show a receipt that the fax has reached the addressee's fax machine, and all notices or demands sent by e-mail upon receipt where the e-mail is received at the addressee's e-mail address, provided that the party sending the e-mail has also sent the message by fax or letter the same day. All notices should be in English.
