

END USER SUBSCRIPTION AGREEMENT

0. DEFINITIONS

AGREEMENT: THIS END USER SUBSCRIPTION AGREEMENT (EUSA)

AUTHOR: REFERS TO TULIP CONTROLS, A COMPANY FORMED UNDER THE LAWS OF THE NETHERLANDS.

SOFTWARE: REFERS TO THE AUTHOR SOFTWARE WHICH YOU HAVE SELECTED TO DEPLOY OR DOWNLOAD. THE TERM "SOFTWARE" ALSO INVOLVES ANY AND ALL MODIFIED VERSIONS OR UPDATES OF THE SOFTWARE MADE AVAILABLE TO YOU BY AUTHOR. THE SOFTWARE IS DEEMED ACCEPTED BY YOU UPON DOWNLOAD OR DEPLOYMENT OF THE SOFTWARE. THE TERM "SOFTWARE" ALSO INCLUDES ANY THIRD PARTY SOFTWARE MADE AVAILABLE TO YOU BY AUTHOR.

DEVICE: ANY WORKSTATION, VIRTUALIZED DESKTOP, COMPUTER, OR OTHERWISE NETWORKED DEVICE MEETING THE SYSTEM REQUIREMENTS OF THE SOFTWARE.

SUBSCRIPTION KEY: MEANS A NUMBER OF CHARACTERS THAT ENABLES YOU TO USE SPECIFIC FEATURES AND/OR ENABLES ADDITIONAL PROTECTION AND/OR UPDATE FACILITIES OF THE SOFTWARE (BASED ON THE SPECIFIC CONFIGURATION AND VERSION OF THE SOFTWARE AND THE SUBSCRIPTION TYPE, SUBSCRIPTION TERM, AND/OR NUMBER OF DEVICES THE SOFTWARE MAY BE USED ON).

SUBSCRIPTION PERIOD: MEANS A SPECIFIC FIXED TERM AS SET FORTH FOR THE SUBSCRIPTION KEY, STARTING AT THE MOMENT OF PURCHASE OF THE SUBSCRIPTION.

UPDATE: MEANS A REVISION TO THE SOFTWARE, OR PATCH THAT IMPROVES THE FUNCTIONALITY OF THE SOFTWARE, AND MAY CONTAIN NEW FEATURES OR ENHANCEMENTS, WHICH IS NOT AN UPGRADE.

UPGRADE: MEANS A SUBSEQUENT VERSION OF THE SOFTWARE DESIGNATED BY AUTHOR AS A NEW RELEASE AND MAKES GENERALLY AVAILABLE.

1. GENERAL

THIS END USER SUBSCRIPTION AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU (EITHER ON BEHALF OF AN ENTITY AS ITS AUTHORIZED REPRESENTATIVE OR ON BEHALF OF YOURSELF AS AN INDIVIDUAL) AND TULIP CONTROLS. PLEASE READ THIS AGREEMENT CAREFULLY AND PRINT OUT A COPY FOR YOUR RECORDS. THIS AGREEMENT SUPERSEDES PREVIOUS VERSIONS.

BY DOWNLOADING, DEPLOYING, INSTALLING, COPYING OR OTHERWISE USING AUTHORS SOFTWARE YOU AGREE TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, CLICK ON THE "CANCEL" BUTTON AND/OR DO NOT DOWNLOAD, DEPLOY, INSTALL, COPY OR OTHERWISE USE THE SOFTWARE.

SOFTWARE USES OR CONTAINS PARTS FROM THE OPEN SOURCE LIBRARIES:

* OXYPLOT (SEE <http://docs.oxyplot.org/en/latest/introduction/license.html>)

2. GENERAL RESTRICTIONS

YOU ARE 18 YEARS OF AGE OR OLDER, AND ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON BEHALF OF ALL OF THE INDIVIDUALS AND ENTITIES FOR WHOM (OR FOR WHOSE DEVICES) YOU OBTAIN SOFTWARE;

YOU ARE NOT LOCATED IN A COUNTRY THAT IS SUBJECT TO A U.S. GOVERNMENT, OR EUROPEAN UNION EMBARGO, OR THAT HAS BEEN DESIGNATED BY THE U.S. GOVERNMENT, OR EUROPEAN UNION AS A "TERRORIST SUPPORTING" COUNTRY AND THAT YOU ARE NOT A PERSON WHO IS EITHER BARRED OR OTHERWISE LEGALLY PROHIBITED FROM RECEIVING OR USING THE SOFTWARE UNDER THE LAWS OF THE COUNTRY IN WHICH YOU ARE RESIDENT OR FROM WHICH YOU ACCESS OR USE THE SOFTWARE;

YOU ACKNOWLEDGE THAT THIS AGREEMENT EXTENDS ONLY TO YOUR USE OF THE SOFTWARE AS DESCRIBED IN THE ONLINE DOCUMENTATION ACCOMPANYING THE SOFTWARE DOWNLOADED OR DEPLOYED BY YOU. YOU MAY NOT:

- (I) REVERSE ENGINEER, DECOMPILE, OR DISASSEMBLE THE SOFTWARE;
- (II) MODIFY, OR CREATE DERIVATIVE WORKS BASED UPON THE SOFTWARE IN WHOLE OR IN PART;
- (III) REMOVE ANY PROPRIETARY NOTICES OR LABELS ON THE SOFTWARE; OR

(IV) RESELL, LEASE, RENT, TRANSFER, SUBSCRIPTION, OR OTHERWISE TRANSFER RIGHTS TO THE SOFTWARE. ANY USE IN VIOLATION OF THIS SECTION SHALL IMMEDIATELY TERMINATE YOUR SUBSCRIPTION TO THE SOFTWARE.

YOU WILL NOT, AND WILL NOT PERMIT ANY THIRD PARTY TO USE ANY SUBSCRIPTION KEY SUPPLIED BY AUTHOR RELATED TO ANY SOFTWARE ON MORE THAN THE NUMBER OF DEVICES SPECIFIED BY THE SUBSCRIPTION TERMS.

3. GRANT OF SUBSCRIPTION

AUTHOR HEREBY GRANTS YOU A NON-EXCLUSIVE, NON-TRANSFERABLE RIGHT TO: (A) INSTALL AND/OR DEPLOY THE SOFTWARE, (B) USE THE SOFTWARE FOR YOUR INTERNAL USE, AND (C) COPY THE SOFTWARE FOR BACK-UP PURPOSES. NOTWITHSTANDING THE FOREGOING, YOU ACKNOWLEDGE AND AGREE THAT, DEPENDING ON THE SUBSCRIPTION TYPE CERTAIN RESTRICTIONS MAY APPLY TO YOUR USE OF THE SOFTWARE AND CERTAIN FEATURES OF AND PROTECTION LEVELS PROVIDED BY THE SOFTWARE (IF APPLICABLE) MAY BE UNAVAILABLE TO YOU OR AVAILABLE SUBJECT TO CERTAIN TIME LIMITATIONS, AS FOLLOWS:

3.1 SUBSCRIPTIONS

DEPENDING ON THE CHOSEN SUBSCRIPTION TYPE, YOU WILL BE ABLE TO ACCESS AND USE (A SUBSET OF) THE FEATURES OFFERED BY THE SOFTWARE ONLY FOR A LIMITED PERIOD OF TIME ON THE NUMBER OF DEVICES FOR WHICH YOU HAVE PAID THE APPLICABLE SUBSCRIPTION FEE SUBJECT TO THE TERMS OF THIS AGREEMENT. IF YOUR SUBSCRIPTION IS LIMITED TO A CERTAIN NUMBER OF DEVICES, THEN YOU MAY NOT HAVE THE SOFTWARE WITH THE RESPECTIVE SUBSCRIPTION KEY INSTALLED ON MORE THAN THIS NUMBER OF DEVICES AT ANY ONE TIME DURING THE SUBSCRIPTION PERIOD. MOVING THE SOFTWARE ONTO ANOTHER DEVICE IS ONLY ALLOWED IF ALL INVOLVED DEVICES ARE YOURS AND IF THE MOVING OF THE SOFTWARE IS INTENDED FOR REPLACEMENT. CONTINUED USE OF THE SOFTWARE AFTER THE END OF THE SUBSCRIPTION PERIOD RESULTS IN THE TERMINATION OF ONE OR MORE FEATURES OFFERED BY THE SOFTWARE UNTIL A (NEW) VALID SUBSCRIPTION KEY IS ENTERED AND SUCCESSFULLY VALIDATED.

3.2 SUBSCRIPTION PERIOD

THE SUBSCRIPTION PERIOD STARTS AT THE MOMENT OF PAYMENT OF PURCHASING THE RESPECTIVE SUBSCRIPTION(S). A SUBSCRIPTION PERIOD OF 1 (ONE) YEAR IS CONSIDERED VALID FOR 365 CALENDAR DAYS. A SUBSCRIPTION PERIOD OF 2 (TWO) YEARS IS CONSIDERED VALID FOR 730 CALENDAR DAYS.

3.3 PIRACY AND ILLEGAL USE OF SUBSCRIPTION KEYS

IF ILLEGAL USE IS DISCOVERED FOR ONE OR MORE SUBSCRIPTION KEYS, THEN THE RESPECTIVE SUBSCRIPTION(S) MAY BE TERMINATED AT ANY TIME WITHOUT NOTICE BY TULIP CONTROLS. TERMINATION OF SUBSCRIPTION DUE TO ILLEGAL USE WILL NOT RESULT IN ANY FORM OF REIMBURSEMENT OF THE SUBSCRIPTION FEES PAID RESPECTIVE TO THE TERMINATED SUBSCRIPTION KEYS, NOR A PART OF THE RESPECTIVE SUBSCRIPTION FEES. FOR THE WHOLE DURATION OF THE SUBSCRIPTION PERIOD IT IS YOUR RESPONSIBILITY TO LIMIT THE NUMBER OF DEVICES USING ANY OF YOUR SUBSCRIPTION KEYS TO THE AMOUNT OF DEVICES FOR WHICH YOU PURCHASED (A) SUBSCRIPTION KEY / SUBSCRIPTION KEYS.

4. CONFLICTING SYSTEM FUNCTIONALITY

SOME THIRD-PARTY APPLICATIONS MAY NOT ALLOW THE SOFTWARE TO INSTALL OR RUN CORRECTLY. IF YOU CHOOSE TO IGNORE THE WARNINGS PROVIDED DURING THE INSTALLATION AND/OR USE, THEN THE SOFTWARE AND/OR THIRD-PARTY APPLICATION MAY NOT FUNCTION PROPERLY, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, AUTHOR DISCLAIMS ANY AND ALL WARRANTIES AND LIABILITY.

5. TITLE

YOU AGREE THAT NO TITLE TO THE INTELLECTUAL PROPERTY IN THE SOFTWARE, SUBSCRIPTION SERVICES (AS DEFINED), OR SUBSCRIPTION KEYS IS TRANSFERRED TO YOU. TITLE, OWNERSHIP, RIGHTS, AND INTELLECTUAL PROPERTY RIGHTS IN AND TO THE SOFTWARE AND SUBSCRIPTION KEYS SHALL REMAIN AT AUTHOR. THE SOFTWARE

AND SUBSCRIPTION KEYS ARE PROTECTED BY INTELLECTUAL PROPERTY LAWS OF THE NETHERLANDS AND OTHER COUNTRIES AND BY INTERNATIONAL TREATIES.

6. LIMITED WARRANTY

ALL SOFTWARE IS PROVIDED ON AN "AS IS," "WITH ALL FAULTS," AND "AS AVAILABLE" BASIS, AND AUTHOR AND ITS REPRESENTATIVES, SUPPLIERS, DISTRIBUTORS, RESELLERS OR OTHER BUSINESS PARTNERS AND EACH OF THEIR RESPECTIVE GROUP COMPANIES, REPRESENTATIVES, VENDORS, AGENTS AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS WITH RESPECT TO THE SOFTWARE AND ANY OTHER SUBJECT MATTER OF THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, WHETHER GIVEN BY ANY THIRD PARTY AUTHORS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, ANY IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTY OR CONDITION OF NONINFRINGEMENT. AUTHOR DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, THAT THE SOFTWARE WILL WORK PROPERLY ON ANY GIVEN DEVICE OR WITH ANY PARTICULAR CONFIGURATION OF HARDWARE AND/OR SOFTWARE. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON CERTAIN WARRANTIES, SO THE ABOVE LIMITATIONS OF THIS SECTION 7 MAY NOT APPLY TO YOU. YOU MAY HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

SOFTWARE IS NOT DESIGNED FOR USE IN SENSITIVE ENVIRONMENTS, INCLUDING WITHOUT LIMITATION OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION SYSTEMS, AIRCRAFT COMMUNICATION SYSTEMS, AND ANY OTHER ENVIRONMENT IN WHICH BODILY INJURY OR DEATH COULD RESULT FROM FAILURE OF OR INABILITY TO USE ANY SOFTWARE. WITHOUT LIMITING THE PROVISIONS OF THIS SECTION 6 OF THIS AGREEMENT, AUTHOR AND ITS AUTHORS HEREBY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTIES OF FITNESS FOR SUCH PURPOSES OR USES.

7. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL AUTHOR OR ITS GROUP COMPANIES, AGENTS, AUTHORS, REPRESENTATIVES, SUPPLIERS, DISTRIBUTORS, RESELLERS, OR OTHER BUSINESS PARTNERS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES WHATSOEVER, WITHOUT REGARD TO CAUSE OR THEORY OF LIABILITY, OR ANY DAMAGES (WHETHER DIRECT OR INDIRECT) INCURRED FOR LOSS OF BUSINESS, PROFITS OR REVENUE, LOSS OF USE OF ANY DEVICE OR SOFTWARE INCLUDING THE SOFTWARE, COSTS OF PROCURING SUBSTITUTE OR REPLACEMENT GOODS AND SERVICES, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR OTHER PECUNIARY LOSS ARISING OUT OF THIS AGREEMENT OR THE SOFTWARE PROVIDED HEREUNDER, EVEN IF AUTHOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AUTHOR WILL NOT BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO, OR ANY CORRUPTION, ERASURE, THEFT, DESTRUCTION, ALTERATION, INADVERTENT DISCLOSURE OR LOSS OF DATA, INFORMATION OR CONTENT TRANSMITTED, RECEIVED OR STORED BY OR IN CONNECTION WITH SOFTWARE REGARDLESS OF THE CAUSE. IN NO EVENT SHALL AUTHOR'S LIABILITY RELATED TO ANY SOFTWARE EXCEED THE SUBSCRIPTION FEES YOU ACTUALLY PAID FOR THE SOFTWARE. THE FOREGOING LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

8. INDEMNIFICATION

YOU WILL INDEMNIFY, DEFEND AND HOLD HARMLESS AUTHOR, ITS GROUP COMPANIES, AGENTS, AUTHORS, REPRESENTATIVES, SUPPLIERS, DISTRIBUTORS, RESELLERS AND OTHER BUSINESS PARTNERS, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND REPRESENTATIVES FROM AND AGAINST ALL LOSSES, EXPENSES, DAMAGES AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES, RESULTING FROM YOUR USE OF THE SOFTWARE OR ANY VIOLATION OF THIS AGREEMENT BY YOU, INCLUDING BUT NOT LIMITED TO ANY BREACH OR ALLEGED BREACH OF ANY OF YOUR REPRESENTATIONS, WARRANTIES, OBLIGATIONS OR UNDERTAKINGS HEREUNDER. AUTHOR RESERVES THE RIGHT TO ASSUME, AT ITS SOLE EXPENSE, THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER SUBJECT TO INDEMNIFICATION BY YOU, IN WHICH EVENT YOU WILL FULLY COOPERATE WITH AUTHOR IN ASSERTING ANY AVAILABLE DEFENSES.

9. MISCELLANEOUS

9.1 GOVERNING LAW AND APPLICABILITY

THIS AGREEMENT IS GOVERNED BY THE LAWS OF THE KINGDOM OF THE NETHERLANDS. TO THE EXTENT PERMITTED BY LAW, THE COURT LOCATED IN THE CITY OF UTRECHT (THE NETHERLANDS) WILL BE THE EXCLUSIVE JURISDICTION FOR DISPUTES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

IF FOR ANY REASON A COURT OF COMPETENT JURISDICTION FINDS ANY PROVISION OF THIS AGREEMENT, OR PORTION THEREOF, TO BE UNENFORCEABLE, THAT PROVISION OF THE AGREEMENT SHALL BE ENFORCED TO THE MAXIMUM EXTENT PERMISSIBLE SO AS TO AFFECT THE INTENT OF THE PARTIES, AND THE REMAINDER OF THIS AGREEMENT SHALL CONTINUE IN FULL FORCE AND EFFECT.

9.2. INTERPRETATION

THE HEADINGS IN THIS AGREEMENT DO NOT AFFECT ITS INTERPRETATION. THE USE OF ANY GENDER INCLUDES ALL GENDERS. THE SINGULAR INCLUDES THE PLURAL AND VICE-VERSA. WHERE A WORD OR PHRASE IS DEFINED, ITS OTHER GRAMMATICAL FORMS HAVE A CORRESPONDING MEANING.

9.3. ENTIRE AGREEMENT

YOU AGREE THAT THIS IS THE ENTIRE AGREEMENT BETWEEN YOU AND AUTHOR, AND THAT IT SUPERSEDES ANY PRIOR AGREEMENT, WHETHER WRITTEN OR ORAL, AND ALL OTHER COMMUNICATIONS BETWEEN AUTHOR AND YOU RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. THIS AGREEMENT MAY BE AMENDED, MODIFIED OR SUPPLEMENTED ONLY BY A WRITING THAT IS SIGNED BY THE AUTHORIZED REPRESENTATIVES OF BOTH PARTIES.

AUTHOR MAY AMEND THIS AGREEMENT AT ANY TIME BY NOTICE PROVIDED TO YOU IN ACCORDANCE WITH THIS AGREEMENT, AND YOUR CONTINUED USE OF, OR DECISION NOT TO SEEK A REFUND FOR, ANY SOFTWARE AT ANY POINT AT MAXIMUM 45 DAYS AFTER THE NOTICE DATE WILL CONSTITUTE YOUR ACCEPTANCE OF THE AMENDMENT OF THIS AGREEMENT.

9.4. RESERVATION OF RIGHTS

ALL RIGHTS NOT EXPRESSLY GRANTED IN THIS AGREEMENT ARE RESERVED BY AUTHOR.

9.5. INTERNET CONNECTION

CERTAIN SOFTWARE MAY REQUIRE AN ACTIVE AND STABLE CONNECTION TO THE INTERNET IN ORDER TO FUNCTION. IT IS THEREFORE YOUR RESPONSIBILITY TO ENSURE THAT YOU HAVE AT ALL TIMES AN ACTIVE AND STABLE INTERNET CONNECTION.

9.6. PRODUCT NAMES

AUTHOR RESERVES THE RIGHT TO CHANGE THE NAME OF ITS SOFTWARE IN ITS SOLE DISCRETION FROM TIME TO TIME.

10. CONTACT INFORMATION

PLEASE DIRECT LEGAL NOTICES TO LEGAL@TULIPCONTROLS.COM.

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