

## End User License Agreement for the use of Software of CEVOTEC GmbH, Unterhaching

Status: April 28, 2020

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**I. DEFINITIONS.**

1. **“Agreement”** means the terms and condition applying to the purchase and/or order of the Software, including the subscription plan, purchase agreement and/or order form with Seller and this EULA accompanying CEVOTEC Products, the purchase agreement, order form and/or available at the time of your order.
2. **“CEVOTEC Product”** means one of CEVOTEC’s proprietary products including the related marketing materials, Documentation, EULAs, and other supplemental materials.
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5. **“Documentation”** means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) pertaining to the Software and made available by CEVOTEC or its authorized partners with the Software in any manner (including on USB, hard drive, or via online access).
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9. **“Host-ID”** means a set of characters used for unique identification of a Device within the Host Identity Protocol (HIP), a host identification technology for use on Internet Protocol (IP) networks, such as the Internet.
10. **“Licensee”** means the Licensee, or the company, organization, or entity the Licensee represent as his authorized legal representative.
11. **“License Server”** means the centralized computer software system either (i) installed by CEVOTEC at its own responsibility as cloud service (**“CEVOTEC License Server”**) with an average availability via internet of 99% p.a., or (ii) installed by Licensee as On-Premise-Installation at his site at his own responsibility (**“On-Premise License Server”**) which provides access tokens, or keys, to Devices in order to enable licensed Software to be executed on them.

12. **“MAC address”** means a **m**edia **a**ccess **c**ontrol address of a Device as a unique identifier assigned to a network interface controller (NIC) for communications at the data link layer of a network segment.
13. **“Plugin”** means CEVOTEC’s software component that adds a specific feature to an existing computer program.
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- 4.3. Depending on the agreed subscription plan, the license is limited to the Volume as specified in the Agreement.
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#### **5. REGISTRATION.**

The Licensee acknowledges that registration or activation may be required in order for the Licensee to utilize the full benefits of the Software. If registration is required, and the Licensee is not registered as the End User, the Licensee has no license to use the Software and the limited warranty in this EULA, if applicable, does not apply.

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- 8.1. The Licensee may make a reasonable number of backup copies of the Software, provided the Licensee's backup copies are not installed or used for other than archival purposes.
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A license for the Software may not be shared or used concurrently on different Devices, nor to support multiple Users or operational requests as indicated above. As a result, the Licensee may not use the Software in an automated, unattended, non-interactive server application or component (including application service providing) where: (i) multiple User requests from different Users are queued for processing; or (ii) multiple requests from one User are queued for processing but acting against content created or edited by other Users. Examples which would violate this Section 9 include but are not limited to use as a plot server, file translator, print server, or other applications using or employing similar methods.

## **10. RESTRICTIONS ON CERTAIN SOFTWARE.**

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considered a defect of the Software and the Licensee releases CEVOTEC from any and all claims, however characterized, arising from or related to Volume Checking or its operation.

- 11.3. The Licensee agrees that CEVOTEC retrieves information regarding the Licensee's Production Use by Volume Checking and Time Clocks, as this is essential part of the license Fee and limitation of the Licensee's license.

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- 12.2. **External.** The transfer of perpetual licenses to a third party are subject to the prior notification of CEVOTEC, Licensee's restrictions to export according to Sec. 21 and that Licensee refrains from further using the Software in the scope of the license transferred. The recipient of such transfer must agree to all terms and conditions of the EULA. Any transfer of non-perpetual licenses to a third party is subject to CEVOTEC's prior written consent. Any unpermitted sublicense, assignment, transfer, or encumbrance is void without CEVOTEC's prior consent.

## **13. UPGRADES.**

The Licensee may not use any Software identified as an Upgrade unless the Licensee is properly licensed to use Software which CEVOTEC has identified as being eligible for an Upgrade. After installing an Upgrade, the Licensee may use the original Software product that was eligible for an Upgrade provided that at any one time the Licensee uses only the upgraded Software or the prior Software version subject to the Upgrade.

## **14. NO EXTENSION OF CAPABILITIES.**

The Licensee may develop his own applications that interoperate or integrate with the Software. CEVOTEC prices its Software, among other factors, based on capabilities that we expose to the Licensee. The Licensee may not extend the Software to enable or unlock capabilities of the Software not specifically identified by CEVOTEC as forming part of the specified End User functionality.

## 15. DECOMPILATION.

Nothing in this EULA shall limit the Licensee's right according to sections 69 c no. 3, 69 d para. 2 and 3 and 69 e of the German Copyright Act (UrhG). Decompilation for the purpose of this section means to reverse engineer, decompile, or disassemble the Software for the purpose of achieving interoperability with other computer programs according to section 69 e UrhG. If the Licensee wants to decompile the Software for this purpose, the Licensee shall contact CEVOTEC before doing so and request the provision of the respective information necessary for the achievement of such decompilation. If CEVOTEC supplies such information without undue delay, the Licensee shall be allowed to decompile the Software.

## 16. TERMINATION.

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## 17. LIMITED WARRANTY.

- 17.1. Unless expressly agreed otherwise, the Software provided by CEVOTEC shall be in line with the current state of the art technology and shall conform to all relevant product information and specifications provided by CEVOTEC, including those in the Documentation. CEVOTEC does not warrant that the Software under the Agreement will be fit for purposes beyond the fulfillment of CEVOTEC's obligations under the Agreement.
- 17.2. The Licensee is advised that based on the current state of the art technology, program errors cannot be excluded with complete certainty in spite of exercising greatest conscientious care and diligence. The Parties acknowledge that CEVOTEC Products are inherently complex and may not be completely free of errors.
- 17.3. In no event shall the Licensee be entitled to demand the source code for the Software in regard to any defects.

**In the event that you have purchased or ordered the Software directly from CEVOTEC, the following Sections 17.4 to 17.8 will additionally apply. If you have purchased or ordered the Software from an authorized reseller please refer to the warranty provisions agreed between you and the reseller:**



- 17.4. The following errors are excluded from CEVOTEC's warranty: (a) insignificant defects, including but not limited to errors that can be easily corrected and will not show up as a performance defect and (b) defects discovered in any CEVOTEC Product that has been modified, altered, or enhanced by anyone other than CEVOTEC itself and the defect would not show up without the modification, alteration or enhancement.
- 17.5. If the Licensee is an Entrepreneur and CEVOTEC has provided the Licensee with the Software against payment and with a perpetual term, defects in the provided Software shall be rectified by CEVOTEC as follows, provided the Licensee has notified CEVOTEC of the respective defect in accordance with section 377 German Commercial Code (HGB):
- Notified defects shall be rectified by CEVOTEC's choice through elimination of the defect ("**repair**") or provision of a defect-free Software ("**substitute delivery**"). Costs for such rectification shall be borne by CEVOTEC.
  - If the defects in the Software cannot be rectified within a reasonable period or if repair and substitute delivery can be deemed to have failed for other reasons, then the Licensee may, at his choice, reduce the Fee or - if the defects are not immaterial - rescind the Agreement.
  - Any damage claims by the Licensee or claims for expenses incurred in vain (*Ersatz vergeblicher Aufwendungen*) that arise from such defects shall be governed exclusively by section 19.
- 17.6. If CEVOTEC has provided the Licensee with the Software against payment but for a non-perpetual Term, defects in the Software, shall be rectified by CEVOTEC within a reasonable period after notification of the defect. The rectification of defects shall be effected, at CEVOTEC's choice, by way of repair or substitute delivery free of charge. The Licensee's right to reduce the Fee for the time the defect persists remains unaffected. If the defects in the Software cannot be rectified within a reasonable period or if repair and substitute delivery can be deemed to have failed for other reasons, then the Licensee may terminate the affected Agreement.
- 17.7. The Licensee shall notify CEVOTEC without undue delay if a third party asserts claims against the Licensee based on infringement of intellectual property rights by the Software (*Rechtsmangel*). Should there be any information of such, whether in written documents or correspondence or in other forms, the Licensee shall provide these to CEVOTEC without undue delay. In case of legitimate claims by third parties, CEVOTEC will indemnify the Licensee of the costs that originate from the assertion of such third party's claims (including reasonable attorney fees, limited to the statutory remuneration of attorneys if applicable). CEVOTEC liability for loss of profits due to such defects is limited to the liability pursuant to Section 19.
- 17.8. If the Licensee is an Entrepreneur and the Software has been provided in perpetuity, his warranty claims for defects of the Software lapse after one (1) year from the statutory commencement of the limitation period, except in cases

of intentional behavior of CEVOTEC. The statutory limitation pursuant to section 479 of the German Civil Code (BGB) remains unaffected hereby.

## **18. HIGH RISK ACTIVITIES.**

The Software is not fault tolerant and is not designed, manufactured, or intended for use or resale as control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("**High Risk Activities**"). Accordingly, CEVOTEC and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

## **19. LIMITATION OF LIABILITY.**

Notwithstanding the legal nature of the relevant claim, the following shall apply to the Licensee's damage claims and claims for expenses incurred in vain (*Ersatz vergeblicher Aufwendungen*):

- 19.1. CEVOTEC accepts unlimited liability for any damage caused by intent or gross negligence.
- 19.2. In the event of a slightly negligent breach of a duty whose breach puts the achievement of the purpose of this EULA at risk or whose fulfilment is essential to the due and proper performance of this EULA and whose fulfilment the Licensee may reasonably rely upon ("Material Obligation"), the liability of CEVOTEC shall be limited to damage foreseeable at the time of execution of the contract and characteristic for the contract. CEVOTEC accepts no liability for a slightly negligent breach of any duties which are not Material Obligations.
- 19.3. CEVOTEC's liability for the loss of data is limited to the typical expenditures required for the restoration thereof, which are normal and typical if security copies have been made. Licensee's obligation for regular data backups according to section 8 of this EULA remains unaffected.
- 19.4. The exclusions and limitations of liability in this Section 19 shall not apply in the event of fraudulent concealment of defects or a guarantee as to quality or durability, to claims under the German Product Liability Act (Produkthaftungsgesetz) and to personal injury (life, limb, health). This does not involve a reversal of the burden of proof to Licensee's disadvantage.
- 19.5. Any exclusions or limitations of the liability of CEVOTEC apply also to the personal liability of CEVOTEC's employees, staff, representatives, and vicarious agents.
- 19.6. To the exception of claims based on tort (*unerlaubte Handlung*) or warranty, the claims for damages for which the liability of CEVOTEC is limited under this

EULA, shall become time-barred one (1) year after the beginning of the statutory limitation period. This shall not involve any reversal of the burden of proof to the Licensee's disadvantage.

- 19.7. A strict liability of CEVOTEC for defects existing at the time of entering into this EULA pursuant to section 536 a para. 1, alternative 1 German Civil Code (BGB) is hereby expressly excluded.
- 19.8. The Licensee shall test any data for robot machines exported from CEVOTEC Software at slow robotic speeds before using in automatic robotic mode, specifically to check for insecure or invalid movements that may cause bodily harm or loss of property.

## **20. STATUTORY CONSUMER RIGHTS.**

Nothing in this EULA is meant to contravene statutory rights that consumers may have pursuant to local law.

## **21. EXPORT CONTROL**

CEVOTEC agrees to take all appropriate measures to comply with all applicable export control regulations, including without limitation, using its best effort to obtaining necessary export licenses. The Licensee understands that the export of Software for the Licensee under this Agreement is subject to export laws and regulations. Licensee agrees that Licensee will not directly or indirectly export the CEVOTEC Products into any country or use the CEVOTEC Products in any manner except in compliance with all applicable EU, U.S. and other countries export laws and regulations. CEVOTEC does not warrant that if any import or export license is required for the fulfillment of any of its contractual obligations, such license can be issued in due time. In case the fulfillment of any contractual obligation of CEVOTEC would violate import or export laws and regulations, CEVOTEC is not obligated to fulfill that obligation. In any such case each Party shall be entitled to terminate this Agreement with immediate effect. Compensation claims shall be excluded in case of any restriction resulting from import or export laws and regulations and/or any delay of the granting of the import or export license; provided however, CEVOTEC shall return any license fee to the Licensee in case Licensee has already paid for such license fee.

## **22. DISPUTE RESOLUTION AND GOVERNING LAW.**

- 22.1. Let's try to sort things out first. CEVOTEC wants to address the Licensee's concerns without needing a formal legal case. Before filing a claim against CEVOTEC, the Licensee agrees to try to resolve the dispute informally by contacting [service@cevotec.com](mailto:service@cevotec.com). CEVOTEC will try to resolve the dispute informally by contacting the Licensee via email, telephone or other appropriate

communication means. If a dispute is not resolved within 15 working days of submission, the Licensee or CEVOTEC may bring a formal proceeding.

22.2. Unless expressly prohibited by local law, this EULA and warranties are controlled by and construed under the laws of Germany, notwithstanding any conflicts of law provisions; and the German courts in Munich shall have exclusive jurisdiction over any claim arising under the Agreement or warranties. The UN Convention on Contracts for the International Sale of Goods shall be explicitly excluded.

### **23. SEVERABILITY.**

The provisions of this EULA shall be deemed to be separable and the invalidity of any provision hereof shall not affect the validity of the remainder of this Agreement.

### **24. QUESTIONS.**

Should You have any questions regarding this EULA, please contact Your authorized reseller serving your license, or write to us directly: CEVOTEC GmbH, Biberger Str. 93, 82008 Unterhaching, Germany. You can also contact us via [service@cevotec.com](mailto:service@cevotec.com) or on +49 89 2314 1650.

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