

TPT- Software-License agreement

PikeTec GmbH

NOTICE TO USER: PLEASE READ THIS AGREEMENT CAREFULLY. BY COPYING, INSTALLING OR USING ALL OR ANY PORTION OF THE SOFTWARE YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AGREE THAT THIS AGREEMENT IS LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. THIS AGREEMENT IS ENFORCEABLE AGAINST YOU AND ANY LEGAL ENTITY THAT OBTAINED THE SOFTWARE AND ON WHOSE BEHALF IT IS USED: FOR EXAMPLE, IF APPLICABLE, YOUR EMPLOYER. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT USE THE SOFTWARE AND CONTACT PikeTec GmbH tpt@piketec.com.

You may have another written agreement directly with PikeTec GmbH that supplements or supersedes all or portions of this agreement.

PikeTec GmbH and its suppliers own all intellectual property in the Software. The Software is licensed, not sold. PikeTec GmbH permits you to copy, download, install, use, or otherwise benefit from the functionality or intellectual property of the Software only in accordance with the terms and contractual period of this agreement. Use of some third-party materials included in the Software may be subject to other terms and conditions typically found in a separate license agreement or "license" files located near such materials.

The Software may include product activation and other technology designed to prevent unauthorized copying. The activation technology may prevent your Use of the Software if you do not follow the activation process described in the Software and Documentation.

1. **Definitions.**

"PikeTec" means PikeTec GmbH, Waldenserstr 2-4, 10551 Berlin, Germany; Geschäftsführer: Eckard Bringmann, Andreas Krämer, Jens Lüdemann; Sitz der Gesellschaft: Berlin; Handelsregister: Amtsgericht Berlin, HRB 105491 B.

"Computer" means a computer device accessible only licensee and its employees and individual contractors (i.e., temporary employees) of a specific corporation or similar business entity that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions.

"Internal Network" means a private, proprietary network resource accessible only by licensee and its employees and individual contractors (i.e., temporary employees) of a specific corporation or similar business entity. Internal Network does not include the Internet or any other network community open to the public, including but not limited to membership or subscription driven groups, associations and similar organizations.

"Permitted Number" means the number of concurrently licensed Users, for example five (5) unless otherwise indicated under a valid license (e.g., volume license) granted by PikeTec.

"Software" means (a) all of the information with which this agreement is provided, including but not limited to (i) PikeTec or third-party software files and other computer information; (ii) related

explanatory written materials and files ("Documentation"); and (b) any modified versions and copies of, and upgrades, updates and additions to, such information, provided to you by PikeTec at any time, to the extent not provided under a separate agreement (collectively, "Updates").

2. Software license.

As long as you obtained the Software from PikeTec or one of its authorized licensees and as long as you comply with the terms of this agreement, PikeTec grants you a non-exclusive license to use the Software in the manner and for the purposes described in the Documentation, as further set forth below. See Section 13 for specific provisions related to certain components and limitations.

2.1 General Use.

You may install the Software on compatible Computers. The usage is permitted up to the Permitted Number of concurrent licensed Users.

2.1.1 Node-locked license.

If the license is tied to a computer, a maximum of one licensed user may at any one time have access to the Software. The usage is only permitted locally on the licensed computer. The license usage over a network is not permitted.

2.1.2 Dongle license.

If the license is tied to a hardware dongle, a maximum of one licensed user may at any one time have access to the Software. The usage is only permitted on the computer to which the hardware dongle is connected. The license usage over a network is not permitted.

2.1.3 Network license (Concurrent license).

If the license is administered on a server using a license manager, the maximum "permitted number" of licensed users is permitted simultaneous access to the Software. Parallel use of the software requires one licence in each instance. In this case, the Software is not tied to individual computers, but may be used by any computer within the "internal network". The user agrees to send his user name, password, licensing options and license version number to the license server, where this is processed.

2.1.4 Network license (Named User License).

If the network license (cf.2.1.3) is a "Named User License", the license is connected to specific users who are known to PikeTec and may not be transferred. A licensed user holding a "Named User License" may use the Software on any computer within the "internal network". The user agrees to send his user name, password, licensing options and license version number to the license server, where this is processed.

2.2 Stock Files.

The PikeTec Software incorporates components of licensed software from third parties (for example Open Source Software) that may potentially be subject to separate rights and restrictions. Both the components concerned as well as the associated license terms are attached to the installation. The licensee is granted a non-exclusive right to use the Open Source Software according to the terms the respective right holders concede. The license at hand applies only for those components that are not licensed as Open Source Software.

Unless stated otherwise in the "license" files or license terms and conditions associated with the Stock Files, which may include specific rights and restrictions with respect to such materials, you may display, modify, reproduce and distribute any of the Stock Files. However, you may not distribute the Stock Files on a stand-alone basis (i.e., in circumstances in which the Stock Files constitute the primary value of the product being distributed). Stock Files may not be used in any illegal manner. You may not claim any trademark rights in the Stock Files or derivative works thereof.

3. Intellectual Property Ownership.

The Software and any authorized copies that you make are the intellectual property of and are owned by PikeTec and its suppliers. The structure, organization and code of the Software are the valuable trade secrets and confidential information of PikeTec and its suppliers. The Software is protected by law, including but not limited to the copyright laws of the Germany and other countries, and by international treaty provisions. Except as expressly stated herein, this agreement does not grant you any intellectual property rights in the Software and all rights not expressly granted are reserved by PikeTec and its suppliers.

4. Restrictions.

4.1 Notices.

You may not copy the Software except as set forth in Section 2 and 13. Any permitted copy of the Software that you make must contain the same copyright and other proprietary notices that appear on or in the Software

4.2 No Modifications.

You may not modify, adapt or translate the Software. You may not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software except to the extent you may be expressly permitted under applicable law to decompile only in order to achieve interoperability with the Software.

4.3 No Unbundling.

The Software may include various applications, utilities and components, may support multiple platforms and languages and may be provided to you on multiple media or in multiple copies. Nonetheless, the Software is designed and provided to you as a single product to be used as a single product on Computers as permitted by Sections 2 and 13. You are not required to use all component parts of the Software, but you may not unbundle the component parts of the Software for use on different Computers. You may not unbundle or repackage the Software for distribution, transfer or resale.

4.4 No Transfer.

YOU MAY NOT RENT, LEASE, SELL, SUBLICENSE, ASSIGN OR TRANSFER YOUR RIGHTS IN THE SOFTWARE, OR AUTHORIZE ANY PORTION OF THE SOFTWARE TO BE COPIED ONTO ANOTHER INDIVIDUAL OR LEGAL ENTITY'S COMPUTER EXCEPT AS MAY BE PERMITTED HEREIN. You may, however, transfer all your rights to use the Software to another individual or legal entity provided that: (a) you also transfer (i) this agreement, (ii) the license dongle, the Software and all other software or hardware bundled, packaged or pre-installed with the Software, including all copies, upgrades, updates and prior versions, and (b) you retain no upgrades, updates or copies, including backups and copies stored on a computer; and (c) the receiving party accepts the terms and conditions of this agreement and any other terms and conditions under which you purchased a

valid license to the Software. NOTWITHSTANDING THE FOREGOING, YOU MAY NOT TRANSFER TRIAL, EVALUATION, EDUCATION, PRE-RELEASE, OR NOT FOR RESALE COPIES OF THE SOFTWARE. Prior to a transfer PikeTec may require that you and the receiving party confirm in writing your compliance with this agreement and to provide PikeTec with information about both parties.

5. Updates.

If the Software is an upgrade or update to a previous version of the Software, you must possess a valid license to such previous version in order to use such upgrade or update. All upgrades and updates are provided to you on a license exchange basis. You agree that by using an upgrade or update you voluntarily terminate your right to use any previous version of the Software. As an exception, you may continue to use previous versions of the Software on your Computer after you use the upgrade or update but only to assist you in the transition to the upgrade or update, provided that the upgrade or update and the previous versions are installed on the same computer. Upgrades and updates may be licensed to you by PikeTec with additional or different terms.

6. Software maintenance contract

6.1 Object of the contract

The licensor shall undertake the maintenance of the licensed Software in accordance with these conditions. Software maintenance shall include the delivery of the current releases of the Software in each case. Software maintenance shall comprise a support service to maintain the operational readiness of the Software and to eliminate bugs which occur in the Software, although it is impossible to exclude any such influences on, or interruptions to, operational readiness completely.

6.2 Scope of Service

The licensor shall provide to the client at no additional charge all standardised bug fixes, enhancements, updates and upgrades for the licensed Software.

The licensor shall provide an on-call maintenance service to fix or workaround errors or other defects which may occur during the use of the Software and/or which become apparent in the accompanying user documentation. An error occurs when the Software does not fulfil the functions described in the documentation, provides false results, stops running in an uncontrolled manner, or does not function correctly in any other way, such that this prevents or influences the use of the Software. Other errors are imperfections in the Software which do not affect its function.

The licensor shall, through the efforts of its staff, ensure the elimination of errors which may occur in the Software as rapidly as possible, in particular through the use of professional consultancy, information and explanations.

This performance obligation shall only apply to the latest respective version of the Software issued by the licensor, as well as the version which immediately preceded it. This shall only apply where the client has the possibility to procure under reasonable conditions the modified version of the Software.

In the event that the client modifies the Software other than at the behest of the licensor, the licensor shall be exempted from such performance obligation, without cancelling the entitlement to compensation for such maintenance services.

The following are not covered by software maintenance services:

- a) Maintenance services for Software which is not used in accordance with the usage conditions set by the licensor,
- b) Maintenance services for Software which has been modified by programming on the client's side,
- c) Maintenance services for Software components which were not included in the original version of the Software mentioned in the license and maintenance certificates,
- d) Maintenance services for Software components whose function depends on other software, unless an appropriate maintenance contract has also been concluded between the client and the licensor for these other software items,
- e) Revision service for Software adjustments, for whose implementation the new programming of autonomously deployable software modules is either required or advisable,
- f) Information provision to the staff of the client beyond the limits set out in Section 6.2,
- g) The setup or transfer of software, or consultancy for this purpose or on the use of computational units,
- h) Support services requested by the client from the licensor due to difficulties encountered in the use of the Software or other circumstances which were not caused by an error in the sense of Section 6.2. These shall in particular include cases of misuse, hardware failures, faulty power supply, accidents as well as incorrect implementations of patches provided by the licensor,
- i) Other services provided by the licensor by agreement with the client which are not covered in Sections 6 of this agreement. Additional services in accordance with Section 6.4 provided by the licensor at the client's request will be subject to separate charges if sufficient qualified personnel are available at the time of the request. Billing shall take place according to the time spent on the basis of the generally applicable hourly rates of the licensor at the time of the requirement.

Where work is required at the installation location, the client will be invoiced separately for travel and accommodation costs.

The maintenance and care of computer software of other manufacturers is dependent on the maintenance and care conditions of the relevant manufacturer. Claims going beyond these maintenance and care conditions in relation to the computer software of other manufacturers shall not be entertained by PikeTec GmbH.

6.3 Obligation to cooperate of the client

The client undertakes to support the activities of the licensor. In particular, the client is obliged to create all of the conditions in their sphere of operations which are required for the regular performance of the licensor's services, and in particular

- a) To prohibit any request for services from the licensor by staff who are not authorised to make such service requests,
- b) To report errors which occur in the Software immediately to the relevant contact persons,
- c) To fully describe and document these errors in written form in a way which will allow them to be verified, as well as to submit the thus created document to the licensor and/or in the case of initial telephonic contact, to later furnish a written communication,
- d) To provide the licensor with access and to enable the use of the equipment required to provide the services.

In the event that the client does not fulfil this obligation to cooperate, the licensor shall be exempted from any performance obligation without cancelling his entitlement to payment.

6.4 Remuneration and payment terms

The licensor shall receive an annual lump-sum remuneration of a set amount for the provision of maintenance services in accordance with Section 6.1. The remuneration to be paid for the first year of maintenance is included in the one-time license fee.

The entitlement to this lump-sum remuneration shall not be dependent on whether and how the services were provided. The lump-sum remuneration shall become due at the start of each year of the duration of the contract. In the event that the contract is terminated prior to the expiration of the full contract period, the time shall be calculated proportionately for each commenced month of this period. Invoices issued by the licensor must be paid within 14 days of the invoice date without deductions. All remuneration and expenses shall be paid exclusive of statutory VAT.

In the event that the client defaults on the payment of a due amount, the licensor shall be entitled, for the duration of the default period, to suspend the service while remaining entitled to payment of the remuneration. In addition, the licensor shall be entitled, during the default period of the client, to demand interest at the rate of statutory interest, unless the user is able to prove that the licensor has accrued a lower level of damage.

6.5 Rights to the results of work

With regard to the maintenance of the Software which the licensor has authorised the client to use as part of a transfer of possession agreement, the licensor shall grant the customer the right to use the results of regular maintenance services performed as part of this Software for the duration of the licensing contract subject to the conditions of this contract. No further usage by the client shall be permitted. The licensor reserves all other exploitation rights, as well as the right to make available the same work results to third parties.

The work results of the maintenance of the client's own software shall belong to the client. The existing rights of third parties shall remain unaffected. The licensor shall remain free to provide similar work results to third parties.

Either of the parties to the contract may freely dispose of ideas, processes, concepts and other techniques which arise during the performance of contractual maintenance service as defined in Section 0.

6.6 Confidentiality

Both parties undertake to preserve the confidentiality of information or documentation of the other party which they become aware of in connection with the maintenance services and which are identified as trade or industrial secrets or which are clearly identifiable as such for other reasons, as well as all internal processes, for the duration of the contract and following the expiration thereof. The same shall apply to personal data to which data protection provisions are applicable.

6.7 Contract term

The care contract shall start as of the delivery of the Software and shall expire after a period of 12 months. The care contract may be extended after this 12-month period for another year, subject to a contractual charge.

The right to immediately terminate the contract for cause shall remain unaffected. Cause shall particularly include any default on a significant portion of the remuneration owed by the client. The care contract in accordance with Section 6 of this agreement shall terminate in all cases with the termination of the licensing agreement in accordance with Section 2 of this agreement.

7. LIMITED WARRANTY.

Except as may be otherwise provided in Section 13, PikeTec warrants that the Software provides the functionalities set forth in the Documentation (the "agreed upon functionalities") for the limited warranty period following receipt of the Software when used on the recommended hardware configuration. The parties to the contract hereby agree that it is impossible to develop software in such a way that this shall remain free from error under all usage conditions. The Software provided by PikeTec shall however be up-to-date. Significant defects in the Software should be reported by the client without delay. As used in this Section, "limited warranty period" means one (1) year if you are a business user and two (2) years if you are not a business user. Non-substantial variation from the agreed upon functionalities will not and does not establish any warranty rights. THIS LIMITED WARRANTY DOES NOT APPLY TO SOFTWARE PROVIDED TO YOU FREE OF CHARGE, FOR EXAMPLE, PRE-RELEASE, TRYOUT, STARTER, PRODUCT SAMPLER AND NOT FOR RESALE (NFR) COPIES OF SOFTWARE, OR SOFTWARE THAT HAS BEEN ALTERED BY YOU, TO THE EXTENT SUCH ALTERATION CAUSED A DEFECT. To make a warranty claim, during the limited warranty period you must contact with proof of purchase the location where you obtained it or PikeTec. If the functionalities of the Software vary substantially from the agreed upon functionalities, PikeTec is entitled -- by way of re-performance and at its own discretion -- to repair or replace the Software. If this fails, you are entitled to a reduction of the purchase price (reduction) or to cancel the purchase agreement (rescission).

8. Limitation of Liability.

8.1 Subject to the provisions in Section 8.2 and 13, PikeTec and its affiliates' statutory liability for damages will be limited as follows: (i) PikeTec and its affiliates will be liable only up to the amount of damages as typically foreseeable at the time of entering into the purchase agreement in respect

of damages caused by a slightly negligent breach of a material contractual obligation and (ii) PikeTec and its affiliates will not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation. (c) Where the damage in the event of a simple negligent breach of contract solely comprises loss of data, liability for damages shall be limited to that which would have been incurred if regular back-up had taken place.

8.2 The aforesaid limitation of liability will not apply to any mandatory statutory liability, in particular, to liability under the German Product Liability Act, liability for assuming a specific guarantee or liability for culpably caused personal injuries and for damages due to the intentional or grossly negligent conduct of its officers, representatives or employees.

8.3 You are required to take all reasonable measures to avoid and reduce damages, in particular to make back-up copies of the Software and your computer data subject to the provisions of this agreement. The Software shall undergo thorough testing by you, the user, prior to its application in a particularly safety-critical area. The functionality of the Software must be continuously verified by the user, particularly in safety-critical areas.

9. Export Rules.

You agree that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by the German Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Software is identified as an export controlled item under the Export Laws, you represent and warrant that you are not a citizen of, or located within, an embargoed or otherwise restricted nation and that you are not otherwise prohibited under the Export Laws from receiving the Software. All rights to use the Software are granted on condition that such rights are forfeited if you fail to comply with the terms of this agreement.

10. Governing Law.

This Agreement will be governed by, construed, and interpreted in accordance with the laws of Germany. The court of Berlin shall have jurisdiction over all disputes relating to this agreement.

This agreement will not be governed by the conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

11. General Provisions.

If any part of this agreement is found void and unenforceable, it will not affect the validity of the balance of this agreement, which will remain valid and enforceable according to its terms. This agreement will not prejudice the statutory rights of any party dealing as a consumer. This agreement may only be modified by a writing signed by an authorized officer of PikeTec. The English version of this agreement will be the version used when interpreting or construing this agreement. This is the entire agreement between PikeTec and you relating to the Software and it supersedes any prior representations, discussions, undertakings, communications or advertising relating to the Software.

12. Compliance with Licenses.

If you are a business, company or organization, you agree that upon request from PikeTec or its authorized representative you will within thirty (30) days fully document and certify that use of any and all PikeTec software at the time of the request is in conformity with your valid licenses from PikeTec.

13. Specific Provisions and Exceptions.

This section sets forth specific provisions related to certain components of the Software as well as limited exceptions to the above terms and conditions. To the extent that any provision in this section is in conflict with any other term or condition in this agreement, this section will supersede such other term or condition.

13.1 Pre-release Software Additional Terms.

If the Software is pre-commercial release or beta software ("Pre-release Software"), then this Section applies. The Pre-release Software is a pre-release version, does not represent final product from PikeTec, and may contain bugs, errors and other problems that could cause system or other failures and data loss. PikeTec may never commercially release the Pre-release Software. If you received the Pre-release Software pursuant to a separate written agreement, such as the PikeTec Systems Incorporated Serial Agreement for Unreleased Products, your use of the Software is also governed by such agreement. You will return or destroy all copies of Pre-release Software upon request by PikeTec or upon PikeTec's commercial release of such Software. YOUR USE OF PRE-RELEASE SOFTWARE IS AT YOUR OWN RISK.

PikeTec provides no warranty, nor accepts any liability therefor, including all guarantees, representations, terms or conditions either express or implied in nature therefor, which arise from a business relationship or commercial practice or which are derived from any other legislation, particularly with regard to merchantability, quiet enjoyment or fitness for a particular purpose. The only liability not excluded shall be that in the event of death or injury to persons, when this is due to gross negligence, intent or fraud on the part of PikeTec.

13.2 Trial versions with time-limited licenses, additional conditions.

If the Software is a trial or evaluation version with a time-limited license, the provisions of the following clause shall apply:

Trial versions may contain limited functionality and are only intended for demonstration or trial purposes, and not for commercial purposes. YOU USE THE TRIAL SOFTWARE AT YOUR OWN RISK AND ACCESS ANY FILES OR RESULTS CREATED BY SUCH SOFTWARE OR ANY PRODUCT CONNECTED WITH THIS ENTIRELY AT YOUR OWN RISK. PikeTec provides no warranty, nor accepts any liability therefor, including all guarantees, representations, terms or conditions either express or implied in nature therefor, which arise from a business relationship or commercial practice or which are derived from any other legislation, particularly with regard to merchantability, quiet enjoyment or fitness for a particular purpose. The only liability not excluded shall be that in the event of death or injury to persons, when this is due to gross negligence, intent or fraud on the part of PikeTec.

Where this is expressly declared to be a trial or evaluation version, the licensor grants the licensee a non-exclusive, non-transferable usage right to the Software limited to a limited time period, during

which the licensee may try out the Software free of charge. The trial period starts at the moment that the licensee receives the Software. The licensee may use all of the Software's functions within the trial period, in order to gain an impression of the quality of the Software and its suitability for the purposes of the licensee. The use of the information, benchmark or comparison with other software is only permitted within the organisation of the licensee and may not be shared with third parties.

In the event that the licensee decides to no longer use the Software upon the expiration of the trial period and does not wish to sign a licensing agreement, the supplied Hardware (such as a dongle) must be returned to the licensor, the software including the documentation provided must be uninstalled and all copies deleted. The right to use the Software will then end automatically. From this time onwards, the exceptions to the licensing agreement under §13.2 shall no longer apply.

13.3 Educational Software Product.

If the Software accompanying this agreement is Educational Software Product (Software manufactured and distributed for use by only Educational End Users), you are not entitled to use the Software unless you qualify in your jurisdiction as an Educational End User.

13.4 Limited licenses

If you have received the Software with time-limited or project-related license, the provisions of the following clause shall apply.

13.4.1 Time-limited licenses

The licensor grants the licensee non-exclusive, non-transferable usage rights to the Software for the contractual determined/agreed period (Usage Period) (e.g. 12 month). The Usage Period begins at the moment that the licensee receives the Software and license (including the dongle where necessary).

The rights of a time-limited license may not be transferred to third parties.

The usage rights of the Licensee to the TPT software expire at the end of the Usage Period/Contract Period. In the event that the licensee decides to no longer use the Software upon the expiration of the Usage Period and does not extend the licensing period, the supplied Hardware (such as a dongle) must be returned to the licensor at the end of the rental period. The right to use the Software ends automatically.

13.4.2 Project-based, time-limited licenses

If you have received the Software with a project-based, time-limited license, the provisions of the following clause shall apply:

The licensor grants the licensee non-exclusive, non-transferable usage rights to the Software for the determined/agreed period (Usage Period) (e.g. 12 month). The Usage Period begins at the moment that the licensee receives the Software and license (including the dongle where necessary).

The TPT usage rights of the licensee are limited to the project named in the acquired license and/or such projects which meet the criteria set out in the license (Usage Project). The following additional provisions shall apply to Usage Project limitations: The TPT Software may generally only be used to

ensure the quality of Software modules, components or systems which were created, expanded or modified directly or indirectly as part of the Usage Project, and which thus form part of the product under development in the Usage Project. Furthermore, the TPT Software may be used for demonstration purposes, and training purposes for the TPT training of individual employees of the licensee or of a sub-contractor who are also involved in the Usage Project.

The rights of a project-based, time-limited license may not be transferred to third parties.

The usage rights of the Licensee to the TPT software expire at the end of the Usage Period/Contract Period. In the event that the licensee decides to no longer use the Software upon the expiration of the Usage Period/Contract Period and does not extend the licensing period, the supplied Hardware (such as a dongle) must be returned to the licensor at the end of the rental period. The right to use the Software ends automatically.

If you have any questions regarding this agreement or if you wish to request any information from PikeTec please visit <http://www.piketec.com>.