



## Software License and Service Terms RTS Hypervisor Software Product

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1.2. Subject to Section 5.3, Licensor grants Licensee a nonexclusive, perpetual (except in case of an evaluation License and subject to Section 1.5), non-transferable, world-wide license to use the Software Product as set out in Section 1.3 ("License"), subject to the restrictions and confidentiality provisions of the Agreement. No right to grant sublicenses is granted hereunder, except with the prior written consent of Licensor. All copyrights and other intellectual property rights are retained by Licensor, its affiliates, licensors and subcontractors.

1.3. The License grants and is limited to the following types of use depending on the type of License specified in the Agreement:

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- b) in case of a project License, use of the Software Product (i) on a single computer, (ii) on as many computers as Licenses were purchased, or (iii) on all computers of Licensee (as specified in the Agreement), provided in each case that any such computers are dedicated for use with Licensee's development project specified in the Agreement;
- c) in case of a runtime License (provided that Licensee has also purchased a project License), the right for Licensee to distribute to its customers the number of its own products (as specified in the Agreement) enabled with the Software Product for which an equivalent number of valid runtime Licences has been purchased (maximum number of distributed products);
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- e) the right to distribute maintenance releases of the Software Product provided by Licensor to its customers solely to fix bugs of the Software Product originally installed on Licensee's products (as specified in the Agreement) and previously rightfully distributed by Licensee to its customers in accordance with the Agreement.

1.4 If a Linux Kernel Patch has been provided along with the Software product, the Linux Kernel patch is licensed under the GNU/GPLv2. The complete license text is available at <http://www.gnu.org/licenses/gpl-2.0.txt>. The use of the Software product or parts of it may be subject to further open source license terms.

1.5 Licensor may rescind the Agreement together with the License (*Rücktritt vom Vertrag*) in case of breach by Licensee of any material provisions thereof (in particular the license restrictions) which is not capable of being remedied or, if remediable, is not remedied by Licensee within thirty (30) calendar days after becoming aware of the breach, including through a written notice by Licensor of such breach.

### 2. Use Restrictions and Licensee Responsibilities

2.1 The License shall not include, and the License shall not permit any third party to:

- a) Transfer, lease or sell the License and/or the Software Product to third parties, except with Licensor's express prior written consent,
- b) remove any copyright notices or any other indications of legal ownership of Licensor from the Software Product. In case of a runtime License, Licensee shall affix the license sticker provided by Licensor to or inside of each of its own products enabled with the Software Product,
- c) (i) alter or modify the Software Product in any way, (ii) decompile, disassemble or reverse engineer the Software Product except as expressly permitted under mandatory applicable law, (iii) use it for testing or evaluating its functionalities and/or technology for the purpose of further developing Licensee's own competing products except as expressly permitted under mandatory applicable law, or (iv) attempt to do any of such things.

2.2. Licensee, its end users and its customers shall be solely responsible for the selection of software and hardware for use in connection with the Software Product, for its installation, integration and use, for defining the expected results from its use, and for compliance with data protection and any other laws, legal requirements, governmental orders, codes and regulations in connection with the use of the Software Product. Licensor shall have no obligation or responsibility in relation to any of the aforementioned aspects. Licensee shall indemnify and hold Licensor, its directors, officers or other legal representatives, employees, suppliers and vicarious agents harmless from and against any third party claims, including without limitation and claims of Licensee's customers, based on or relating to Licensee's conduct, products or services.

### 3. Licensee Reporting, Audits

3.1 No later than within one (1) month following the lapse of each calendar quarter, Licensee shall report to Licensor the types, trading names and quantity of each of such type of product manufactured by Licensee based on a runtime License which incorporates, includes or otherwise makes use of the Software Product.

3.2 Licensor may at any time verify and audit (i) the use of the Software Product and/or (ii) the completeness and correctness of Licensee's reporting pursuant to Section 3.1 if Licensor has reason to believe that the Software Product is used in violation of the Agreement or such reporting is incorrect or incomplete, in particular that Licensee has exceeded the maximum number of distributed products pursuant to Section 1.3(c). Licensor may conduct such audits by itself or through a third party engaged by Licensor. Licensee agrees to provide reasonable assistance to Licensor by making available relevant information and, in case of site visits by Licensor, providing access to relevant systems and employees. Site visits shall be conducted during normal business hours. Licensor shall give Licensee reasonable prior notice of any site visits unless this would defeat the purpose of the audit. Licensee shall bear the costs of such audit if it reveals any use of the Software Product in violation of the Agreement.

#### 4. Services

The following shall apply to any Services to be provided by Licensor under the Agreement.

##### 4.1 Development Services

- a) Licensor shall only provide development services and provide any related deliverables if and as expressly specified in the Agreement.
- b) Unless otherwise expressly agreed in the Agreement by specifically deviating from this Section 4.1, any developments made by Licensor for Licensee under the Agreement ("Developments") are and shall remain Licensor's sole intellectual property and Licensor shall have the sole right to register any inventions or other intellectual property underlying or incorporated in the Developments. Subject to Section 5.3, the Licensee receives a non-exclusive, perpetual (subject to paragraph d)), non-transferable, world-wide license to use such Developments (in case of software: in object code form only).
- c) In any case and irrespective of the provisions of the Agreement, Licensor shall retain the right to use (including the re-use in its own products or for other customers) any concepts, methodologies, algorithms, inventions and any other know-how underlying or incorporated in the Developments.
- d) Unless otherwise expressly agreed in the Agreement, the Developments and any related deliverables shall be deemed accepted by Licensee unless Licensee notifies Licensor (i) of any visible material defects without undue delay after their receipt or (ii) of any hidden defects without undue delay, but in any case no longer than fourteen (14) days, after detection of such defects.
- e) Section 1.5 shall apply accordingly in relation to any rights in Developments granted to Licensee hereunder.

##### 4.2 Workshops and Trainings

- a) Trainings and workshops may take place as online events or in-person meetings and with the group of participants consisting solely of employees of Licensee, all as specified in the Agreement. Licensee shall not invite or admit any further participants except with Licensor's prior written permission. Licensor reserves the right to change the type of meeting (in-person/online) in its reasonable discretion for health reasons (e.g., due to pandemic), to comply with legal regulations or court or governmental orders or due to other reasonable operational constraints or requirements. In case of such change Licensor shall notify Licensee as soon as reasonably practicable.
- b) Trainings and workshops shall in no case include software testing, rendering of support or provision of any Licenses.

#### 5. Fees and Payment

5.1 The purchase price for the Licenses and the fees for the Services, if any, shall be specified in the Agreement.

5.2 Unless otherwise agreed in the Agreement, the purchase price for the License shall be invoiced upon conclusion of the Agreement and Services shall be invoiced upon their completion. Any invoices shall be payable within fourteen (14) calendar days.

5.3 Licensor shall retain full title of the goods that have been delivered until, and the granting of any Licenses or of rights of use in Developments pursuant to Section 4.1 shall be subject to the condition precedent (*aufschiebende Bedingung*) that Licensee has paid any amounts due to Licensor and arising from the business relationship of Licensor and Licensee (retention of title). The following shall apply in addition:

- a) If any such goods, the Software Products or the Developments are inseparably assembled or mixed with goods that are Licensee's or any third party's property, Licensor shall acquire co-title in the new goods or the mixed stock. The proportion of title shall correspond with the proportion of the invoice value of the goods, the Software Products and/or the Developments delivered by Licensor under retention of title and the invoice value of the other goods.
- b) If Licensor's claims are secured through the retention of title by more than 110%, any surplus of the goods, the Software Products and/or the Developments delivered by Licensor under retention of title shall, upon Licensee's request, be released by Licensor pursuant to Licensor's choice.
- c) Goods in which Licensor so acquires sole or co-title shall as well be considered as goods delivered under retention of title for purposes of the Agreement.
- d) In the event of any third party enforcement action in relation to Licensee's goods, the Software Products or the Developments which are subject to retention of title pursuant to Section 5.3, Licensee shall notify such third party of Licensor's property and intellectual property and retained rights, and shall inform Licensor without undue delay of such action. Licensee shall bear the costs of any intervention.

#### 6. Warranty and Liability

6.1 Licensor warrants during the warranty period of twelve (12) months, commencing on the date of delivery of the Software Product or the Developments and related deliverables, that

- a) the data medium on which the Software Product or the Developments and related deliverables are delivered is free of material and manufacturing defects which render it incapable of use or substantially reduces its usability, and
- b) when used as agreed and in particular in compliance with the Agreement, the Software Product substantially conforms to the associated documentation and the Developments and related deliverables substantially conform to the agreed specification.

If Licensee requests supplemental performance (*Nacherfüllung*), Licensor may at its option either rectify the defect or make a new delivery that is free from defects. All other warranties and guarantees, whether statutory or implied, are excluded and waived by Licensee, including, but not limited to merchantability or fitness for a particular purpose. The foregoing provisions shall not apply and any warranties shall be excluded to the fullest extent permitted by applicable law in case of an evaluation License.

6.2 Licensor shall only be liable to Licensee for any act or omission or breach of any duty under or in connection with the Agreement to the extent that such liability results from (i) Licensor's wilful misconduct or gross negligence, (ii) damage from injury to life, body or

health due to negligent breach or (iii) a slightly negligent breach of a fundamental duty under the Agreement that endangers the achievement of the objective of the Agreement. A fundamental duty shall mean an obligation whose fulfilment is critical for the due implementation of the Agreement and on the fulfilment of which Licensee relies on and may rightfully rely on. Licensor's liability in case of a slightly negligent breach of a fundamental duty under the Agreement shall be limited to typical and reasonably foreseeable damage to Licensee. The foregoing provisions shall apply to the contractual and non-contractual liability (including liability in tort) as well as any liability arising out of dealings before the conclusion of a contract (*culpa in contrahendo*). They shall also apply to the benefit of Licensor's directors, officers or other legal representatives, employees, suppliers and vicarious agents. Licensor's liability according to the German Product Liability Act shall remain unaffected.

## **7. Confidentiality**

7.1 Licensee shall treat all corporate, technical and other information of Licensor confidential and shall not enable access to or use any information, data, documents or materials in any form (whether written, electronic, graphic, visual, oral or otherwise), including this Agreement and its provisions, and any copies of the foregoing that are provided by Licensor to Licensee or which otherwise become accessible or known to Licensee (in each case, the "Confidential Information"). Licensee shall use all reasonable endeavours to prevent any access by third parties to such Confidential Information.

7.2 Confidential Information shall however not include any information which (i) is in the public domain, (ii) subsequently enters into the public domain, except through a disclosure by Licensee under a breach of any undertaking under this Agreement; or (iii) is or becomes available to Licensee from a third party, provided that such third party is not in breach of any confidentiality obligation in relation to such information.

7.3 This Section 7 shall not prohibit disclosure or use of any information if and to the extent:

- a) the disclosure or use is required by law or any regulatory body, provided that Licensee shall notify Licensor without undue delay and reasonably cooperate with Licensor in the defence of such request and/or to obtain assurances as to confidentiality from such body;
- b) the disclosure or use is required for the purpose of any judicial proceedings arising out of the Agreement or the disclosure is made to a tax authority in connection with the tax affairs of Licensee; or
- c) Licensor has given prior written approval to the disclosure or use.

Any applicable laws for the protection of trade secrets and other confidential information, including the German Law for the Protection of Trade Secrets (*Geschäftsgeheimnisgesetz*) shall remain unaffected.

## **8. Miscellaneous Provisions**

8.1 Licensor's General Terms of Delivery and Performance ("GTDP") shall apply to the License and shall form an integral part of the Agreement. In case of any conflicts between the GTDP or any order or offer and these Terms, these Terms shall prevail. Any terms and conditions of Licensee are herewith rejected by Licensor and shall not apply.

8.2 The Agreement and all documents specifically referenced therein constitute the entire agreement between Licensor and Licensee in connection with the License and shall supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions of the parties.

8.3 With respect to Agreement which are entered into by means of e-commerce, the information, notification and other duties pursuant to § 312j para. 1, first sentence no. 1 through 3 and second sentence of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB) shall not apply.

8.4 If individual provisions of the Agreement are or become invalid, the validity of the remaining provisions shall remain unaffected. Invalid provisions shall be replaced by valid provisions whose effect comes closest to the intended commercial purpose of the invalid provisions.

8.5 Additions or changes to the Agreement need to be mutually agreed upon and in writing.

8.6 Any waiver of strict compliance with the Agreement (including the GTDP) by Licensor must be in writing and signed by Licensor to be valid, and any such waiver shall not constitute a waiver of Licensor's rights under any other provision of the Agreement or the GTDP.

8.7 The Agreement shall be governed by the laws of the Federal Republic of Germany. The courts of Deggendorf, Germany, shall have exclusive jurisdiction over any disputes arising out of or in connection with the Agreement. The rules of the United Nations Convention on Contracts for the international Sale of Goods (CISG) shall be excluded.

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